

Cross-border parental responsibility:
jurisdiction rules, prorogation, recognition and
enforcement
(Brussels IIa)

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Scope of application (Brussel IIa)

Parental responsibility:

Art. 1 (1) (b) and (2) and (3), Art. 2 (7):

= all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access.

ECJ C-435/06 and C- 523/07 *Korkein hallinto-oikeus v Finland*, 2 April 2009
(caravan):

A decision on the child's taking into care and placement in a foster family adopted in public law context falls into the scope

Not return applications under the 1980 HC

International jurisdiction (Brussels IIa)

- **The rule:** Art. 8 (1):
If a child has the habitual residence in a MS in the moment the court is seised >
this MS has international jurisdiction.
- **The exceptions:** Art. 8 (2), Art. 9, Art. 10, Art. 12
- **Special cases:** Art. 14, Art. 15, Art. 19, Art. 20

The concept of habitual residence

- Factual concept without definition in Brussels Ia
- Autonomous and uniform interpretation
- Possibility of
 - no habitual residence (see Art. 13)
 - several habitual residences?
ECJ C-289/20 *IB v FA*: request for a preliminary ruling from the Cour d'Appel de Paris lodged June 30 2020

The concept of habitual residence; jurisdiction of the European Court of Justice

- Place which reflects some degree of integration by the child in a social and family environment
- Factors that have to be taken into account are in particular:
 - physical presence
 - duration, regularity, conditions and reasons for the stay on the territory of a MS and the family's move to that State
 - the child's nationality
 - the place and conditions of attendance at school/ kindergarten,
 - linguistic knowledge
 - the family and social relationships of the child
- It is for the national court to establish the hab. res. of the child, taking account of all circumstances specific to each individual case.

ECJ C-523/07 *Korkein hallinto-oikeus v Finland*, 2 April 2009 (caravan)

ECJ C-497/10 PPU, *Mercredi v Chaffer*, 22 December 2010 (baby)

ECJ C-376/14 PPU, *C v M*, 9 October 2014 (removal in accordance with a provisional judgment which was thereafter overturned)

ECJ C-512/17 *HR*, 28 June 2018 (Brussels)

ECJ C-393/18 PPU, *UD v XB*, 17 October 2018 (Bangladesh)

Art. 8 (2), Art. 9 Brussels Ia modification of a judgment on access

In case of a **lawful** change of the child's habitual residence
from one MS to another MS

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Continuing jurisdiction

of the courts of the child's former habitual residence

for proceedings on modification of a judgment on access

during a 3-month-period

Art. 8 (2), Art. 10 Brussels Ia, in case of abductions

In case of an **unlawful** change of the child's residence (abduction)
from one MS to another MS

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Continuing jurisdiction

of the courts of the child's habitual residence
for proceedings on parental responsibility

unless

the child has a new habitual residence in the other MS

and:

acquiescence of the person having custodial rights

or alternative Art. 10 (b)

ECJ C- 85/18 PPU, *CV v DU*, 10 April 2018:

In case of an abduction no jurisdiction under the Maintenance Regulation 4/2009 to the determination
of a maintenance allowance

Art. 8 (2), Art. 12 Brussels Ia, prorogation of jurisdiction

- **Art. 12 (1) and (2):**

In case of pending proceedings on divorce by virtue of Art. 3:

At least one of the spouses has parental responsibility

+ agreement of the parties

+ prorogation is in the best interest of the child

- **Art. 12 (3) and (4):**

In case of no pending proceedings on divorce:

substantial connection of the child to another MS (in particular child's nationality or habitual residence of a parent)

+ agreement of the parties

+ prorogation is in the best interest of the child

Art. 13 Brussels IIa

In case of

No establishment of the child's habitual residence
or refugee children

or children internationally displaced because of disturbances
occurring in their country

+ jurisdiction cannot be determined on basis of Art. 12

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Jurisdiction based on the child's presence

Art. 14 Brussels Ia, residual jurisdiction

In case

no court of a MS has jurisdiction under Art. 8 to Art. 13

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determination of jurisdiction by the national PIL rules

Art. 15 Brussels IIa, transfer of jurisdiction

Transfer to a court better placed to hear the child:

In case of

courts of one MS having jurisdiction

+ child has a particular connection to another MS, see Art. 15 (3)

+ courts of another MS are better placed to hear the case

+ acceptance by at least one party

- Invitation to the parties to introduce a request before the other court
or
- Direct request to the other court on the court's own motion or by application of the court of another MS
- Acceptance of jurisdiction by the court of the other MS
- Direct judicial communication with the help of the Central Authorities or network judges EJN

ECJ C-428/15, *Child and Family Agency v J.D.*, 27 October 2016 (best interest and Art. 15 (1))

ECJ C-530/18, *EP v FO*, 10 July 2019

Art. 19 (2) Brussels IIa, lis pendens

In case of

same proceedings brought to the courts of two MS (same child and same cause of action):

- The court 1st seised (Art. 16 Brussels IIa) has to establish whether it has jurisdiction.
- The court 2nd seised has to stay the proceedings.
- If the court 1st seised determines itself competent:
the court 2nd seised must decline jurisdiction.
- If the court 1st seised considers itself not competent:
the court 2nd seised can continue the proceedings.

ECJ case 296/10, *Purrucker v Pérez*, 9 November 2010:

difference of being seised only for the purpose of provisional measures within Art. 20 and a court having jurisdiction as to the substance

Art. 20 Brussels Ia, jurisdiction for provisional measures

The courts of another MS have jurisdiction

+ case of urgency regarding the situation of the child

- A court of a MS not having jurisdiction
- can take provisional measures in respect of the person or assets in that State
- in accordance with the national law
- Art. 20 (2)

ECJ:

Art. 20 demands that

- not only the child, but also the person whose rights are effected by the measure are in the state of the court seized,
- the measure has to be urgent and provisional.

ECJ C-523/07, *Korkein hallinto-oikeus- Finland*, 2 April 2009

ECJ C- 403/09 PPU, *Deticek*, 23 December 2009

ECJ C- 256/07, *Purrucker*, 15 July 2010

Recognition and Enforcement: Scope of Application of Art. 21 ff Brussels IIa

Judgment on parental responsibility given in a Member State

- Judgment = Art. 2 (4) Br IIa
- Parental Responsibility = Art. 2 (7), (9), (10) Br IIa
- Member State = Art. 2 (3) Br IIa
- Including
 - A judgment ordering the *compulsory placement* of a child in a secure care institution in another Member State, ECJ C- 92/12 PPU, *Health Service Executive*, 26 April 2012
 - A *penalty payment* imposed in a judgment *concerning the rights of access*, ECJ C-4/14, *Bohez ./.* *Wiertz*, 9 September 2015)
 - An action to remedy the lack of agreement of the other parent to their child travelling outside his Member State of residence and a passport being issued in the child's name even though the decision will have to be taken into account in the administrative procedure for the issue of that passport, ECJ- C-215/15, *Gogava./.* *Iliev*, 21 October 2015
 - But **not** a *judgment under Art. 20 Br IIa*, ECJ C- 256/09, *Purrucker I*, 15 July 2010 !!

	Judgment on parental respons. - General rule	Access – If enforceable + Certificate Annex III	Return (Art. 11 VIII Br IIa) if enforceable + Certificate Annex IV
Recognition	automatic, Art. 21 (1), (4) Br IIa	automatic	automatic
Application for (non-) recogn.	possible, Art. 21 (3) Br IIa	no non-recognition, Art. 41 (1) Br IIa	no non-recognition, Art. 42 (1) Br IIa
Documents needed	Copy judgment+ Certificate Annex II + if required: translation		
Grounds for non-recogn.	Limited: Art. 23, 24, 26 Br IIa		
Declaration of enforceability	needed	no, Art. 41 (1) Br IIa	no, Art. 41 (2) Br IIa
Documents needed	Copy judgment + Certificate Annex II		
Grounds for refusal	Art. 31 (2),(3), 23, 24 Br IIa		

SPECIAL CASE:

Decisions on RETURN, Art. 11 (8) Br Iia

State of habitual residence + is a Member State	State of actual presence + is a Member State
	Return proceedings under the 1980 HC; If refusal because of Art. 13 HC > Art. 11 (6) – (8) Br Iia, overriding mechanism
Subsequent decision on parental responsibility ordering return = Art. 11 (8) Br Iia	

The ENFORCEMENT of a decision on parental responsibility granted in another Member State

- Aim of Br IIa: swift and adequate enforcement of decisions falling within its scope
- Ruled by the national law, not by Br IIa
- Member States are obliged to take the most efficient and expeditious measures available
- The European Court of Human Rights: declaration of violation of Article 8 of the European Convention on Human Rights if the return was not enforced in the adequate way

Examples:

No. 48206/99 , *Maire against Portugal* , 26 June 2003

No. 31679/96, *Ignaccio-Zenide ./.* *Romania*, 25 January 2000

