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

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CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1 This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

- a divorce, legal separation or marriage annulment;
- b the attribution, exercise, delegation, restriction or termination of parental responsibility.

2 The matters referred to in paragraph 1(b) may, in particular, deal with:

- a rights of custody and rights of access;
- b guardianship, curatorship and similar institutions;
- c the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- d the placement of the child in a foster family or in institutional care;
- e measures for the protection of the child relating to the administration, conservation or disposal of the child's property.

3 This Regulation shall not apply to:

- a the establishment or contesting of a parent-child relationship;
- b decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- c the name and forenames of the child;
- d emancipation;
- e maintenance obligations;
- f trusts or succession;
- g measures taken as a result of criminal offences committed by children.

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) View outstanding changes*

Article 2

Definitions

For the purposes of this Regulation:

1. the term ‘court’ shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;

2. the term ‘judge’ shall mean the judge or an official having powers equivalent to those of a judge in the matters falling within the scope of the Regulation;

3. the term ‘Member State’ shall mean all Member States with the exception of Denmark;

4. the term ‘judgment’ shall mean a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision;

5. the term ‘Member State of origin’ shall mean the Member State where the judgment to be enforced was issued;

6. the term ‘Member State of enforcement’ shall mean the Member State where enforcement of the judgment is sought;

7. the term ‘parental responsibility’ shall mean 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;

8. the term ‘holder of parental responsibility’ shall mean any person having parental responsibility over a child;

9. the term ‘rights of custody’ shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;

10. the term ‘rights of access’ shall include in particular the right to take a child to a place other than his or her habitual residence for a limited period of time;

11. the term ‘wrongful removal or retention’ shall mean a child's removal or retention where:

    (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

    and

    (b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.

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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.

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.

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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.

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

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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.

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.