



CONSEJO GENERAL DEL PODER JUDICIAL  
ESCUELA JUDICIAL



Red Europea de Formación Judicial (REFJ)  
*European Judicial Training Network (EJTN)*  
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## MODULE II

### UNIT VI

**The Judge and Family Law in the EU. Brussels II bis: Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. Protection of children\*:** Hague Conventions; the International Hague Network of Judges

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## **I. SUMMARY**

The free movement of persons within the European Union has led to a significant increase in the number of stable marriages or unions between persons of different nationalities, not necessarily EU citizens, with the resulting increase in disputes with a foreign or cross-border element.

The presence of an international element in a dispute obliges us to examine international rules and raises three basic problems: determining the international jurisdiction, specifying the applicable law and ensuring that the judgment handed down is effective in a third state and, as a result, can be recognised and enforced there. In any event, it is necessary to look for the answer in community law, as community legislation takes precedence over the national legislation of each state. Domestic legislation has been displaced by community legislation. Secondly, it is necessary to assess whether there is an applicable rule outside the community.

It is important to remember that the principle of mutual recognition constitutes the cornerstone of the edifice that is a Europe of Justice.

In such situations of family strife, we often see cases of children being abducted by their own parents and will be analysing the resolution of a case of international child abduction via civil channels.

There are several Regulations and Conventions covering the areas of marital breakdowns, the protection of children and international child abduction that we will be outlining.



## **II. BRUSSELS II BIS: 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,**

Before a court can examine the criteria for attributing objective, functional and territorial jurisdiction established by the *lex fori*, it is necessary to examine whether it has international jurisdiction. In order to do so, it is necessary to take into account that there are several sources of international law that are going to take precedence over the system of jurisdiction established in the different national laws. In the area of marital breakdown, it is necessary to take into account that there may be a legal dispersion of the dispute, insofar as we have to apply different international instruments depending on the matter in dispute, meaning that the following will have to be considered:

- in order to determine international jurisdiction in relation to the modification of the ties, the provisions of Regulation 2201/2003, or international treaties, or, failing that, national law will have to be observed.
- in order to determine international jurisdiction with regard to parental responsibility, the provisions of Regulation 2201/2003, or international treaties, or, failing that, national law will have to be observed.
- in order to determine international jurisdiction with regard to maintenance obligations, (expressly excluded from the scope of Regulation 2201/2003), the provisions of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations [Official Journal L 7, 10.1.2009] will have to be observed. Failing that, and in the absence of conventional legislation, the provisions of domestic law will apply.
- in order to determine international jurisdiction with regard to setting a right to compensation, the provisions of EC Regulation 4/2009 will apply. Failing that, and in the absence of conventional legislation, the provisions of domestic law will apply.
- In order to determine the applicable law, we will apply different regulatory instruments depending on the subject matter:
  - With regard to marriage annulment, Article 107 of the Spanish Civil Code applies in Spain.
  - With regard to Separation and Divorce: Regulation 1259/2010 (as of 21 June 2012).
  - With regard to parental responsibility: the 1996 Hague Convention.
  - With regard to maintenance and alimony / payments: 1973 Hague Convention / Regulation 4/2009. Protocol



### III. JURISDICTION

With regard to jurisdiction, we will differentiate between the cases of marital breakdown and parental responsibility.

#### a) MARITAL BREAKDOWN

The Regulation applies to divorce, legal separation and marriage annulment, i.e., the constitutive effect of the dissolution of matrimonial ties, and Article 3 of the same attributes jurisdiction to 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.

EXAMPLE: "A couple that wish to divorce and, after the same, one leaves for Australia and the other is habitually resident in an EU country. They can present a joint application to the Court of the country in which the EU resident is habitually resident".

EXAMPLE: "An Ecuadorian residing in Spain for over one year. He can file the application before the Spanish courts as he meets the criterion of one year's residence prior to filing the application. If he changes his residence to Paris, for example, this forum would not apply until he has lived there for at least one year".

The coexistence of several courts with jurisdiction has been expressly envisaged, without establishing a hierarchy between them. Any conflict of jurisdiction between them can be resolved by applying the rule contained in Article 19, section 1, of the Regulation.

Pursuant to Article 3.1.b), in cases where the spouses have dual nationality, they can choose to file the application before the courts of one of the states of which they are both nationals.

#### b) PARENTAL RESPONSIBILITY

Regulation 2201 also addresses jurisdiction in relation to parental responsibility and, to be precise, according to Article 1, the attribution, exercise, delegation, restriction or termination of parental responsibility, said concept being defined in Article 2 as "*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*". It also defines the holder of parental responsibility, as "*any person having parental responsibility over a child*", and adds that the areas considered in letter b) of Article 1,



namely, the attribution, exercise, delegation, restriction or termination of parental responsibility refer in particular:

- (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.

The concept of civil matters should be interpreted in the sense that it can also cover measures that, from the point of view of the legal system of a Member State, are subject to public law. The list of matters contained in Article 1, section 2 of Regulation 2201/2003 is purely a guide (Judgment of 2/4/2009 C-523-07 and Judgment of 27/11/2007 C-435/06), and it should be added that the rules on jurisdiction it establishes with regard to parental responsibility are shaped in the light of the best interests of the child, in particular the criterion of proximity. (Judgment of 23/12/09 C-403/09 PPU)

Meanwhile, the Regulation does 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.

Pursuant to CJEU case law regarding the Regulation, it is based on the idea that the best interests of the child must prevail and seeks to ensure respect for the fundamental rights of the child, as set out in Article 24 of the Charter of Fundamental Rights of the European Union. (Judgment of 11/7/08 C-195/08)

With regard to parental responsibility, the general rule set out in Article 8 is that the court where the child is habitually resident has jurisdiction. It states: “*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*”.

As an exception to the general rule in Article 8, Article 9 maintains the jurisdiction of the Member State of the child's former habitual residence, where the child moved lawfully to another Member State (cases of mobility conflict).

Article 9 states that 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.

This exception 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.

EXAMPLE: “A child residing in Spain and in relation to whom measures have been issued in proceedings underway before the Spanish courts, lawfully moves to France. Pursuant to the Regulation, there is *perpetuatio iurisdictionis* regarding Spanish jurisdiction for a term of three months, provided that the holder of visiting rights



continues residing in Spain and has not accepted the jurisdiction of the new Member State. This means that the parent that does not have custody does not have to travel to another state, France in this case, in order to apply for a modification of measures, and is granted this three-month term to do so, provided he/she does not expressly accept the jurisdiction of the Courts of the country to which the child has moved, otherwise the exception will not apply, as set out in paragraph 2 of said rule”.

Article 12 establishes two cases for the prorogation of jurisdiction to hear matters related to parental responsibility:

1. in favour of the courts of a Member State exercising jurisdiction on an application for divorce of the parents (*forum divortii* or *vis atractiva* of the divorce proceedings).

2. if the child is not resident in a Member State, jurisdiction may be assumed if 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 the jurisdiction of the courts has been accepted expressly and is in the best interests of the child.

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.

Finally, pursuant to Article 13, 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 (residual criterion).

In terms of generally applicable criteria, the following considerations should be made:

- the Regulation only applies to civil matters regardless of the nature of the court, understood (Article 2) as covering all the authorities in the Member States with jurisdiction in the matters falling within the scope of the Regulation. This includes all civil public proceedings, judicial and otherwise. For example, registry, administrative or notarial divorce proceedings in countries where the legislation provides for them.

- with regard to matrimonial matters, it attributes exclusive jurisdiction for hearing applications in relation to the modification of the matrimonial ties, without addressing matters related to the financial consequences. As such, it does not apply to any other area derived from the divorce, separation or annulment (maintenance, financial relations, settlement of the matrimonial property regime...). In disputes with a foreign element, it is important to remember that each disputed measure may be subject, in jurisdictional terms, to different international instruments, which may lead to the dispersion of the jurisdiction of the lawsuit, with the negative consequence of the multiplication not just of the applicable rules but also of the state courts with jurisdiction, even obliging individuals to go to court in different countries depending on the judicial protection sought.

- It should also be remembered that the Regulation does not apply to the dissolution or separation of common law unions, although some authors dispute this exclusion.

- It is applicable in all the States of the European Union with the exception of Denmark as of 1 March 2005.



- the Regulation applies both to community nationals and third-country nationals, as jurisdiction is essentially determined by the criterion of habitual residence rather than nationality.
- the Regulation does not set a maximum age limit for children and, as such, the domestic laws will determine the legal age limits. The Practice Guide for the application of the new Brussels II Regulation (prepared by the European Commission) and several recommendations tend to rule out the application of Regulation 2201/2003 to children aged between 16 and 18 years, because unless the Regulation states otherwise, it maintains the provisions of the Convention of 25 October 1980, which is the one that really sets the applicable age.
- International jurisdiction should be examined by the court of its own motion (Article 17 of the Regulation and Article 38 of the Spanish Civil Procedure Act) (Judgment of 2/4/09 C-523/07).

Where a court of a Member State has no jurisdiction over a case, it shall declare of its own motion that it has no jurisdiction but is not obliged to refer the matter to another court.

However, in cases of parental responsibility, in so far as the protection of the best interests of the child so require, the national court which has declared, of its own motion, that it has no jurisdiction, shall inform the court of another Member State having jurisdiction, either directly or through the central authority designated under Article 53 of Regulation No 2201/2003, or via the European Judicial Network for civil and commercial matters (Article 54), due to the duty of cooperation between Member States established in Article 55. (Judgment of 2/4/09 C-523/07)

- Need to justify jurisdiction: in order to avoid possible checks of jurisdiction derived from the content of the Judgment of 15 July 2010 (C- 256/09), all decisions must be based on criteria sufficient to justify jurisdiction by virtue of Regulation 2201/2003 and, in particular, for decisions on provisional measures. If this is not specified, despite the provisions of Article 24 of the Regulation, it could lead to the application of a presumption that said judicial decision is a measure covered by Article 20 of the Regulation.

## **IV. INTERNATIONAL CHILD ABDUCTION**

The following instruments apply to the international abduction of children:

- a) 1980 Hague Convention on the Civil Aspects of International Child Abduction. Consult the status of the Convention at [www.hcch.net](http://www.hcch.net)
  - b) European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, done in Luxembourg on 20 May 1980. See: [www.coe.int](http://www.coe.int)
  - c) Convention between the Kingdom of Spain and the Kingdom of Morocco regarding judicial assistance, recognition and execution of judicial decisions concerning the right of custody and rights for the visiting and return of children, done in Madrid on 30 May 1997 (Spanish official state gazette no. 150, 24 June 1997)
  - d) Council Regulation (EC) 2201/2003, of 27 November 2003, mentioned above.
- Apart from the Convention with Morocco, which is a bilateral treaty, in relation to the Luxembourg Convention, it is more effective to follow the Hague Convention in cases in which both can apply. In fact, the Luxembourg one is not normally applied in Spain



(except in relation to Liechtenstein) as all the other Member States under the Luxembourg Convention are also parties to the Hague Convention.

With regard to Regulation (EC) 2201/2003, Article 11.1 states that the return of children between EU states will be subject to the Hague Convention with a series of special provisions, contained in Article 10, Articles 40 and 41 and in Article 11 itself.

### **1980 Hague Convention on the civil aspects of international child abduction**

Pursuant to this Convention, the removal or the retention of a child is to be considered wrongful where:

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State, with effective custody being considered to comprise both the parent that lives with the child and the one exercising visiting rights.

It only applies to children under 16 years of age.

The Hague Convention functions essentially, although not exclusively, via Central Authorities that have to collaborate in order to obtain the immediate return of wrongfully removed children.

The procedure is set out in the 1980 Convention, but it has essentially two phases: an administrative phase and a judicial phase with court proceedings at the child's place of residence. In Spain, this second phase is regulated by Article 1901 *et seq* of the 1881 Civil Procedure Act, still valid today.

The grounds for dismissing an application for the return of a child in judicial proceedings are set out in Articles 12 and 13 of the 1980 Hague Convention and are as follows:

- A period of less than one year has elapsed from the date of the wrongful removal or retention (Article 12)
- the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention (13 a),
- there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation (13 b).
- the child objects to its return and has attained an age and degree of maturity at which it is appropriate to take account of its views (13 b)





The term for resolving the return procedure is six weeks, as in the case of Regulation 2201/2003. On delays due to a failure to meet the deadline, see Judgment of the European Court of Human Rights of 22 September 2009, *Stochlak vs. Poland*, and Judgment of the European Court of Human Rights of 22 April 2010, *Macready vs. the Czech Republic*).

### **Regulation (EC) 2201/2003**

Starting with the fact that all the Member States of the EU have ratified the 1980 Hague Convention, the EC Regulation partially amends some of its rules when the removal takes place within the European Union:

- The jurisdiction of the Court where the child is resident is extended regarding the substance of the matter, in the cases examined above and envisaged in Article 10.
- Where possible the child will be immediately returned to his/her place of habitual residence prior to the wrongful removal or retention (Article 11.1).
- 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 (Article 11.2).
- Term: six weeks.
- 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 (Article 11.4).
- 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 (Article 11.5).
- If a court has issued an order on non-return, the court must immediately transmit a copy of the court order on non-return and of the relevant documents to the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention within one month (Article 11.6).
- The parties have 3 months as of notification of the non-return to apply for the revocation of the same before the courts of the Member State in which the child was habitually resident prior to the wrongful removal or retention, so that said court can examine the custody of the child, unless it is already deciding on custody, because then it would be transferred to said court. The case will be shelved unless the court receives a complaint within three months (Article 11.7).
- 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 (Article 11.8). This means that even if the Member State



in which the child is wrongfully resident refuses to return him/her, it is the Member State in which the child was residing that has the last word and can revoke the decision of non-return and oblige the child to be returned.

- Provision is made for the direct enforcement of the decisions that order the return of a child. In this regard, see section 4 of Chapter III of the Regulation. 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.

## **BASIC IDEAS ON THE RECOGNITION OF FOREIGN DECISIONS IN FAMILY MATTERS**

With regard to recognition and enforcement, we should highlight three systems:

- INSTITUTIONAL SYSTEM.....currently comprising EC Regulations 2201/2003 and 44/2001
- CONVENTIONAL SYSTEM..... comprising over twenty multilateral and bilateral Conventions.
- AUTONOMOUS SYSTEM.....where there is no international instrument. Domestic law applies; in the case of Spain, Article 951 *et seq.* of the Civil Procedure Act.

In relation to Regulation 2201/2003, the following cases are worth highlighting:

- AUTOMATIC RECOGNITION

Without the need for any procedure, but also without a request for any measure of enforcement. For example, the authorisation for surgery for a child. Or registry-related in the case of decisions of annulment, separation or divorce, which envisage an update (also automatic) of the data appearing in the respective civil registries of the Member States (Article 14. 1 and 2).

This is also applicable to the decisions on visiting rights or the return of a child ordered by a decision of the Member State of origin (Articles 40 to 45 of Regulation 2201/2003).

- INCIDENTAL APPLICATION FOR RECOGNITION

Article 21.4 states that 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. For example, in proceedings regarding civil liability for an accident, there is a discrepancy between who holds the representation of the child for the purposes of receiving the indemnification.

As for the grounds for rejecting recognition, a distinction is made between those referring to divorce, legal separation, or annulment of a marriage, which are identical to those contained in Article 34 of Regulation 44/2001. Apart from these, with regard to parental responsibility, in addition to grounds of non-recognition such as where it is manifestly contrary to public policy, or default of appearance if the person in default



was not served with the corresponding document, there are three that apply specifically to these cases, namely,

- Article 23. “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;
- Article 23.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;
- Article 23 e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;
- Article 23 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” .

In relation to bilateral conventions, the terms of the corresponding convention will apply, although some provide for recognition via the exequatur procedure, the majority, while others allow for automatic recognition.

Chapter V of Regulation 2201/03 establishes the rules on the compatibility of the Regulation with other conventions signed by the Member States.

## **HAGUE CONVENTION OF 19 OCTOBER 1996 ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

The 1996 Convention applies to matters regarding the attribution, full or partial exercise of parental responsibility over a child, as well as delegation of the same, in relation to children under 18 years of age.

This Convention, which entered into force on 1 January 2002, entered into force for Spain on 1 January 2011. It will only affect the measures adopted in a state after the entry into force of the Convention for that state (Article 53.1).

In relation to recognition, the Convention applies to the recognition and enforcement of the measures adopted after the entry into force of the Convention in the requesting and requested states (Article 53. 2)

The definition of the term “parental responsibility” appears in Article 3 and indicates what matters are included, while Article 4 specifies the areas to which it does not apply. The convention regulates the following matters: jurisdiction, applicable law, recognition and cooperation between authorities.

With regard to international jurisdiction, the general rule is that in this area, the Convention will only apply if the child is habitually resident in a Contracting State (Article 5) with two exceptions I: in cases of urgency when the child is in a Member State even though his/her residence is in a third state (Article 11), and in the case of provisional measures for the protection of the person or property of the child (Article 12), in which case the courts of the Member State in whose territory the child or property belonging to the child is present will have jurisdiction.

In terms of applicable law, the rules on conflicts are contained in Articles 15 to 21.



With regard to recognition and enforcement, the Convention will only apply between Contracting States, i.e., when the decision was rendered in one Contracting State and is to be recognised in another Contracting State (Article 23).

The text of the Convention, the explanatory report by Paul Lagard and a file on the Convention prepared in the 4<sup>th</sup> Civil Workshop at the 10<sup>th</sup> Meeting of the Spanish Judicial Network (REJUE), held in Águilas from 4 to 7 October 2010, can be found at the following address:

<http://www.poderjudicial.es/eversuite/GetRecords?Template=Extranets/Jueces/principa.l.htm> We strongly recommend consulting these documents as they deal with this area in greater depth than this unit.

## **THE INTERNATIONAL HAGUE NETWORK OF JUDGES**

The International Hague Network of Judges currently includes 38 countries and can be consulted at the website of the Hague Convention. They provide an advisory service to Judges, domestic and foreign, and to central authorities on the conventions for the protection of children in general, and on their application and enforcement; they participate and represent their country in international legal seminars and conferences on family law and at the meetings of the judges belonging to the Network; they receive and channel, where necessary, all incoming international legal communications and initiate and/or facilitate the corresponding outgoing legal communications while also promoting collaboration in the sphere of international family law in general. Moreover, they collaborate with the database on international child abduction (INCADAT) under the Hague Convention and in publications such as The Judges' Newsletter.

In Spain, the first member of said Network is the Spanish Family Judge and member of the REJUE, Justice Francisco Javier Forcada Miranda.



## UNIT 6. EU LEGISLATION

The legal texts can be found in the Official Journal of the European Union and the majority are also in the Spanish *Vademecum* on Judicial Assistance [www.prontuario.org](http://www.prontuario.org)

- 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. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:338:0001:0029:EN:PDF>
- Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:174:0001:0024:EN:PDF>
- Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:324:0079:0120:EN:PDF>
- Green Paper on applicable law and jurisdiction in divorce matters (Rome III) 2005.
- Green Paper - Succession and wills [COM (2005) 65 final – not published in the Official Journal].
- Commission Green Paper of 17 July 2006 on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition [COM (2006) 400 - not published in the Official Journal].





- Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.
- Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Draft Bill of the Mediation Act. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:EN:PDF>
- Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations [Official Journal L 7, 10.1.2009]. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:007:0001:0079:EN:PDF>
- Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:343:0010:0016:EN:PDF>
- NON-EU LEGISLATION
- Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children. <http://www.hcch.net/upload/conventions/txt34en.pdf>
  - States parties.- consult the current status of the convention on the website of the Hague Convention [www.hcch.net](http://www.hcch.net)
- Hague Convention XVIII of 25 October 1980 on the Civil Aspects of International Child Abduction. Signed in the Hague by Spain on 7 February 1986 and published in the Official State Gazette on 24 August 1987. [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=24](http://www.hcch.net/index_en.php?act=conventions.text&cid=24)



## CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Judgment of 27 November 2007 C-435/06.  
Judgment of 29 November 2007 C 68/07.  
Judgment of 11 July 2008 C-195/08 PPU.  
Judgment of 2 April 2009 C-523/07.  
Judgment of 16 July 2009. C 168/08.  
Judgment of 23 December 2009 C-403/09 PPU.  
Judgment of 1 July 2010 C-211/10 PPU  
Judgment of 15 July 2010 C-256/09.  
Judgment of 5 October 2010 C-400/10 PPU.  
Judgment of 9 November 2010 C-296/10  
Judgment of 22 December 2010 C- 491/10 PPU,  
Judgment of 22 December 2010 C- 497/10 PPU,

Using these judgments, the members of the REJUE prepared the Practice Guide for the application of the new Brussels II Regulation, with a view to supplying Spanish judges with the interpretative criteria of the Court of Justice of the European Union. It is available at:

[http://ec.europa.eu/civiljustice/publications/docs/guide\\_new\\_brussels\\_ii\\_en.pdf](http://ec.europa.eu/civiljustice/publications/docs/guide_new_brussels_ii_en.pdf)

All the judgments can be found at <http://curia.europa.eu/>

Outside of the community sphere, the judgment handed down by the Supreme Court of the United States in the ABBOTT vs. ABBOTT case No. 08–645, argued January 12, 2010—decided May 17, 2010, is of vital importance.



## **Unit 6. To learn more on the Web:**

*Given the layout of the unit, due to the limited space available, I recommend you consult and study the legal texts mentioned, for which the following websites may be of assistance*

1. EUROPEAN JUDICIAL ATLAS IN CIVIL MATTERS  
[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm)
2. SPANISH VADEMECUM OF INTERNATIONAL JUDICIAL ASSISTANCE.  
[www.prontuario.org](http://www.prontuario.org)
3. HOMEPAGE OF THE HAGUE CONVENTION <http://www.hcch.net>
4. EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS:  
<http://ec.europa.eu/civiljustice/>
5. WEBSITE OF THE EUROPEAN ASSOCIATION OF JUDGES FOR MEDIATION:  
[www.gemme.eu](http://www.gemme.eu)
6. WEBSITE OF THE INTERNATIONAL CHILD ABDUCTION DATABASE:  
[www.incadat.com](http://www.incadat.com)
7. WEBSITE OF THE SPANISH COUNCIL OF THE JUDICIARY:  
[www.poderjudicial.es](http://www.poderjudicial.es) . International activities section
8. WEBSITE OF THE OFFICIAL JOURNAL OF THE EUROPEAN UNION: <http://eur-lex.europa.eu/JOIndex.do?ihmlang=en>
9. COURT OF JUSTICE OF THE EUROPEAN UNION:  
<http://curia.europa.eu>
10. LEGISLATION AND CASE LAW OF THE EUROPEAN UNION <http://eur-lex.europa.eu/en/index.htm>

