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BRIDGING JURISDICTIONS: ENFORCING ACCESS RIGHTS UNDER THE  
BRUSSELS IIB REGULATION

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**Abstract:** The research work discusses the issue of the maintaining contact with children in the context of the new Brussels IIB Regulation. The Regulation introduces several important innovations that will make it easier to resolve international divorce cases and to ensure that the rights and best interests of the child are respected. The study highlights the provisions of the Regulation, with particular attention to the issue of recognition and enforcement of foreign judgments in the context of national family law. Finally, a recent decision of the Hungarian Curia is presented, which is an important precedent in the enforcement of the right of access.

**Keywords:** Brussels IIB Regulation, right of access, international divorce, best interests of the child, recognition of foreign judgments, parental responsibility

**Joghatóságok áthidalása: A kapcsolattartási jog érvényesítése a Brüsszel IIB rendelet alapján**

**Absztrakt:** A kutatás a gyermekekkel való kapcsolattartás kérdését vizsgálja az új Brüsszel IIB rendelet kontextusában. A rendelet számos fontos újítást vezet be, amelyek megkönnyítik a nemzetközi válások kezelését, és biztosítják, hogy a gyermek jogai és legfőbb érdekei érvényesüljenek. A tanulmány kiemeli különös figyelmet fordít a külföldi ítéletek elismerésére és végrehajtására a nemzeti családjogban. Végezetül bemutatásra kerül egy közelmúltbeli kúriai döntés, amely



fontos precedenst jelent a kapcsolattartási jog érvényesítése terén.

Kulcsszavak: Brüsszel IIb rendelet, kapcsolattartási jog, nemzetközi válás, gyermek legfőbb érdeke, külföldi ítéletek elismerése, szülői felelősség

### Überbrückung von Gerichtsbarkeiten: Durchsetzung von Umgangsrechten nach der Brüssel-IIb-Verordnung

Abstrakt: Die Forschungsarbeit befasst sich mit der Aufrechterhaltung des Kontakts zu Kindern im Kontext der neuen Brüssel-IIb-Verordnung. Die Verordnung führt eine Reihe wichtiger Neuerungen ein, die die Lösung internationaler Scheidungsfälle erleichtern und sicherstellen sollen, dass die Rechte und das Wohl des Kindes gewahrt werden. Die Studie hebt die Bestimmungen der Verordnung hervor, wobei besonderes Augenmerk auf die Anerkennung und Vollstreckung ausländischer Urteile im Kontext des nationalen Familienrechts gelegt wird. Schließlich wird eine jüngste Entscheidung der ungarischen Kúria vorgestellt, die ein wichtiges Präzedenzfall im Zusammenhang mit der Durchsetzung des Umgangsrechts darstellt.

Schlagworte: Brüssel-IIb-Verordnung, Umgangsrecht, Internationale Scheidung, Wohl des Kindes, Anerkennung ausländischer Urteile, Vollstreckung, Elterliche Verantwortung

### Introduction

When a marital relationship breaks down, or the parents dissolve their marriage or civil partnership, the only guarantee of the survival of the family relationship between the minor child and the separating parents is the maintenance of the relationship itself. One of the most problematic areas of divorce litigation is the fate of the joint child of the parents in the divorce proceedings following the divorce, since the divorce does not remove the parents' joint responsibility for the child. They are forever bound together by the fruit of their relationship, which means that a judgment in a divorce cannot result in a complete separation. These problems are exacerbated in international divorce proceedings, where, in addition to the physical distance, there is (at least) one border between countries and different substantive and procedural rules in different countries, raising a number

of jurisdictional issues and questions of recognition and enforcement of judgments.

Council Regulation 2019/1111 on jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility and the expulsion of children (hereinafter: Brussels IIb Regulation) is intended to solve these problems. The importance of the topic is that the Regulation introduces innovations, focuses on the rights and best interests of the child, and brings significant changes, especially in the area of expression of opinion. The detailed rules contribute to maintaining a stable and safe environment for children and to respecting the rights of parents.

Several articles (E.g.: Mészáros – Projics, 2023; Raffai, 2023; Katonáné Pehr, 2023) have already been written on the acquis of the Regulation, but the aim of this study, without ignoring its drawbacks, is to examine in an interpretative manner the common and most important provisions of the Regulation on the recognition and enforcement of certain privileged decisions and to describe the rules of the procedure for enforcement of foreign decisions in the context of the related domestic law on the right of access. Before presenting them, however, it is worth first clarifying the background to the Brussels IIb Regulation and how it is structured. It also briefly describes a precedent curia decision with an international element and a specific role in the enforcement of the right of access.

## 1. Brief background and structure of the Brussels IIb Regulation

The first recital of the Regulation refers to the fact that the Commission's report (COM/2014/0225 final) on the application of the Brussels IIa Regulation (Council Regulation (EC) No 2201/2003) adopted by the Commission. Although the former Regulation is a well-functioning instrument, its rules could be improved and need to be amended in several places. The Commission's proposal (COM(2016) 411 final) was therefore intended to further develop a genuine European area of justice and fundamental rights based on mutual trust by removing the remaining obstacles to the free movement of judicial decisions by the principle of mutual recognition and by better protecting the best interests of the child by simplifying procedures and strengthening their effectiveness. The second recital of the Regulation states that it facilitates the movement of judgments and authentic instruments and certain agreements within the Union by laying down provisions for their recognition and enforcement in other

Member States. It considers it essential to build trust between the different legal systems of the Member States, and therefore to enhance mutual recognition of judgments in civil matters, in particular in family law matters.

Based on the experience gained in the application of the Brussels IIa Regulation, a proposal for a recast of the Regulation was prepared in 2016 and, after years of negotiations, the Council adopted the Brussels IIb Regulation on 25 June 2019, which entered into force on 1 August 2022. The Brussels IIb Regulation is a recast of the Brussels IIa Regulation, not a new Regulation, so where possible and where case law experience has confirmed the positive and timeless nature of the Regulation, the Brussels IIb Regulation has taken over the provisions of the Brussels IIa Regulation. In light of this, the case law of the CJEU on the interpretation of certain articles of the Brussels IIa Regulation provides guidance and may also serve as a basis for the interpretation of certain articles of the Brussels IIb Regulation. (Wopera (ed), 2023)

The regulation consists of nine chapters, more extensive than its predecessor, which shows that the legislative process has sought to provide as broad and detailed a regulation as possible. The scope, definitions, rules on jurisdiction are particularly important because of the international element. The establishment of transitional provisions is a natural part of procedural acts, as they are in the process of being adopted, and it is necessary to provide for the date from which the new provisions will apply. According to Article 100, the Regulation shall apply to legal proceedings commenced on or after 1 August 2022 and to authentic instruments and agreements issued or registered on or after 1 August 2022.

Chapters III, IV, V, namely the sections on the wrongful removal, recognition, and enforcement of children and cooperation in matters of parental responsibility, contain the normative rules that have the greatest impact on the legislation of the Member States, as it is necessary to bring national legislation in line with the content of the Regulation. This study only examines Chapter IV of the Regulation.

## 2. Recognition and enforcement of certain privileged decisions

Chapter IV of the Regulation contains provisions on recognition and enforcement. Structurally, Section 1 contains the general provisions, while Section 2 deals with the recognition and enforcement of certain types of privileged decisions. Although the designation is new, two types already had a privileged status in the Brussels IIa Regulation. (Kurucz – Czellecz, 2022, p. 18.)

However, before describing the rules on recognition and enforcement for certain types of privileged decisions, it is important to highlight one of the virtues of the Regulation, which is to be found among its general provisions. Article 30(1) states that a judgment given in one Member State must be recognized in another Member State without any special procedure being required. Article 34(1) declares that a judgment on parental responsibility given in one Member State which is enforceable in that Member State may be enforced in another Member State without the need for a declaration of enforceability.

It can be seen that the Regulation completely abolishes the so-called exequatur procedure for all parental responsibility decisions, thus saving time for the citizens concerned, while reducing administrative and financial burdens in a group of cases where time is of the essence in the best interests of the child. Accordingly, while under Article 28 of the Brussels IIa Regulation, the enforcement in Hungary of a parental custody decision issued in a Member State requires first the declaration of enforceability of the decision, under the Brussels IIb Regulation the person concerned may apply directly to the Hungarian court for enforcement in Hungary based on the decision of a Member State and by submitting the appropriate certificate under the Regulation. (General Explanatory Memorandum to Act LXII of 2021) The Brussels IIa Regulation has abolished the exequatur procedure for some exceptions, but only for certified decisions on rights of access and certified decisions ordering the return of a child in cases of wrongful removal. The Brussels IIb Regulation extended the principle of mutual recognition of decisions to all decisions on parental responsibility, thus completing the first phase of the mutual recognition program in line with The Stockholm Programme. (Tóth, 2021, p. 281.) The abolition of the exequatur procedure in Hungarian practice therefore means that the enforcement of a parental responsibility judgment given in an EU Member State can be requested in Hungary without any intermediate procedure. (Wopera (ed), 2023)

After the general provisions, the Regulation deals with the recognition and enforcement of certain types of privileged decisions. Article 42 sets out the scope, i.e. which decisions are covered by the following provisions, which are considered to be certain types of privileged decisions within the meaning of the Regulation. These are decisions granting the rights of access relevant to the subject matter in paragraph 2 and decisions taken under Article 29(6), in so far as they entail the return of the child. The existence of the rules of Section 2 does not, however, prevent any party from requesting the application of the general rules of Section 1 for the recognition and enforcement of the decisions falling within its scope.

As regards the recognition of certain types of privileged decisions, the Regulation states that a decision given in one Member State must be recognized in another Member State without any special procedure being required and without any possibility of refusing recognition. The rules are similar as regards enforcement, whereby a privileged decision may be enforced in another Member State without the need for a declaration of enforceability, i.e. without the need for a separate declaration of enforceability procedure. As regards judgments relating to, it also provides that the national court may provisionally declare them enforceable notwithstanding any appeal, but that this does not impose any obligation on the national court, but merely remains an option.

The Regulation includes these provisions for the sake of efficiency and speed but also safeguards. Although at first glance it may seem easy to accept that within the European Union Member States will naturally and unquestioningly accept each other's decisions, the Regulation contains some very serious requirements. The most important and common requirements for recognition and enforcement of the documents to be submitted are set out below.

The first such requirement - which is relatively easy to meet in all cases - is that the requesting party must provide a copy of the decision. The second requirement, which is more burdensome for both the court and the referring party, is that a certificate issued under Article 47 must also be submitted.

Article 47 details the formal requirements for the issue of the certificate. It stipulates that, at the request of either party, the court issuing the decision must issue a certificate of the decision granting a right of access, using the form in Annex V, which must be completed in the language of the decision and may, at the request of the party, be issued in any other official language of the institutions of the European Union.

In addition, the conditions under which the certificate may be issued are also set out in that Article. The court may issue the certificate only if the following conditions are met. The first condition is that all parties concerned must be allowed to be heard during the proceedings. The second is that the child has been given the opportunity to express his or her views in accordance with Article 21. The hearing and the expression of views do not have to take place in fact, but only as an opportunity during the procedure. In any event, the possibility goes beyond the possibility to decide on the right of access and Section 4:181 (3) of the Civil Code states that the parties concerned and the child, who can judge, must be heard before the decision is taken. The third condition is that, if the decision was rendered in default of appearance, the defendant was served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defense; or it was established that the defendant clearly accepted the decision.

A certificate under Article 47 shall have effect only within the limits of enforceability and, as a general rule, there shall be no appeal against the issue of the certificate, except in the case of rectification and revocation as provided for in Article 48. Correction and revocation shall, in accordance with the common rules, be instituted by application or of the court of its motion, in the court of origin, in accordance with the law of the Member State. Rectification shall take place where there is a discrepancy between the certificate and the decision due to a material error or omission. The certificate must be withdrawn by the court if it subsequently transpires that the conditions for its issue were not fulfilled, i.e. that it was issued unlawfully, taking into account the requirements laid down in Article 47. Article 49, which covers the rules for the issue of a certificate of non-enforceability or a certificate of limitation of enforceability, applies *mutatis mutandis*. The court must issue a certificate on request even if the *exequatur* has been revoked, suspended, or limited. As in Article 47, it must be completed and issued in the language of the decision using a standard form.

In the case of privileged decisions, the refusal of recognition and enforcement is set out in Subsection 4.

### 3. Enforcement of foreign decisions granting right of access

The study goes on to describe the rules for implementing the foreign contact decision that entered into force on 1 August 2022. The amendment to the legislation, which was triggered by the Brussels IIb Regulation, was introduced by Section 53 of Act LXII of 2021 on International Judicial Cooperation in Matters of Parental Responsibility (hereinafter: Amending Act), which is found in the final provisions and amending provisions. The new rules were incorporated in Act CXVIII of 2017 on the Rules Applicable to Civil Non-Contentious Proceedings in Court and Certain Non-Contentious Proceedings in Court (hereinafter: Bnptv.) in a separate Chapter 7/C. Under Section 26 of Bnptv, Section 22/L of this Act lays down the provisions necessary for the implementation of the Brussels IIb Regulation.

Subsection (1) of Section 22/L of the Bnptv. states that the rules of Chapter 7/A, i.e. the rules on the enforcement of a decision on right of access, shall also apply to the enforcement of a foreign decision, authentic instrument, convention, or agreement (hereinafter together referred to in this Section as „foreign decision”) issued abroad, with the exceptions set out in subsections (2) to (5). It is clarified in the final explanatory memorandum to Article 53 of Act LXII of 2021 that the internal procedural rules under the Bnptv. shall also apply to the enforcement of foreign decisions, whether or not they fall within the scope of the Brussels IIb Regulation. In light of the new provisions, it can be said that Chapter 7/A contains the general provisions and, by comparison, the provisions in Chapter 7/C lay down specific rules. The present study only describes the derogating provisions. Although the final explanatory memorandum of the amending Act states that Chapter 7/A contains special rules, it is presumably the enforcement of a contact order that is special in comparison with the enforcement procedure, so the general-to-specific relationship previously explained about Chapters 7/A and 7/C remains, in my opinion, irrespective of the explanatory memorandum.

Section 22/L (2) of Bnptv. introduces an additional ground for suspension. It states that if the court finds, upon application by the defendant, that the enforcement of a foreign judgment not covered by Council Regulation 2019/1111 would entail a serious risk of physical or psychological harm to the child due to a temporary obstacle arising after the judgment was given or due to a temporary change of circumstances, it may exceptionally suspend the proceedings for the enforcement of the contact decision. If it is likely that there



is more than a temporary obstacle or a temporary change of circumstances, the court should terminate the proceedings instead of suspending them. Based on the principle of gradualism, Article 56(5) of the Brussels IIb Regulation states that before refusing enforcement, it must make every effort to facilitate enforcement in accordance with national law and procedural rules, taking into account the best interests of the child. However, if these grounds persist, the court must refuse enforcement and the proceedings must be terminated on application.

Suspension or termination of enforcement for the above reasons is possible only in exceptional circumstances; to determine whether these exceptional circumstances are present in the case, the court will also seek the opinion of the guardianship authority as to whether suspension or termination is justified. Since the stay of enforcement may be granted only in temporary circumstances, the court shall set a time limit in the decision ordering the stay of enforcement, appropriate to the nature of the circumstances giving rise to the stay, to establish whether the ground for the stay still exists. According to the Final explanatory memorandum to Article 53 of Act LXII of 2021, if the debtor fails to comply with the time limit or he/she is no longer able to justify the suspension, enforcement shall be continued without further proceedings. It can be seen that out-of-turn is also specifically provided for in relation to the enforcement of foreign judgments. Moreover, the legislator has classified the procedure under Chapter 7/A as out of turn since 16 July 2020, the reason for which is that the increased need to protect the interests and rights of the child can be met if enforcement is ordered as soon as possible, provided that the conditions for enforcement are met. It is also in the interest of speeding up the procedure that the provisions of the Civil Code on the suspension of the judgment cannot be applied based on Section 1 (6) of the Bnptv.

Based on the Final explanatory memorandum to Article 53 of Act LXII of 2021, if the court terminates the enforcement of an enforceable foreign maintenance order that meets the conditions for recognition, the foreign order cannot be enforced in Hungary, therefore a thorough and prudent procedure is required to establish the existence of the conditions for termination arising from the circumstances after the order was made; a court secretary cannot act on such grounds of refusal of enforcement. This is necessary because court secretaries may act in non-litigation proceedings, and in analyzing the practice of the Debrecen District Court I have observed a tendency for enforcement of contact

orders not to be carried out by a judge, all cases being assigned to court secretaries. The complexity, importance, and significance of the procedure are reflected in the fact that a court secretary can not act in these cases.

Section 22/L (5) of the Bnptv. also determines the application of Article 41 of the Regulation, i.e. the procedure to be followed by the Hungarian courts. If the conditions for refusal of enforcement under that Article are fulfilled, the procedure for enforcement of the contact order must be terminated on request. Article 41 refers to Article 39, so that the grounds for refusal to recognize a decision are in fact the same as those for refusal of enforcement. Such grounds include a manifest conflict with the law of the Member State or incompatibility with a subsequent decision, and a breach of the rules of the hearing, both as regards the parents and the child can judge.

The final provisions of the amendment also relate to suspension and termination of proceedings. It states that if police intervention is necessary for the surrender of the child and the proceedings are terminated or suspended by the court, the relevant provisions of Act LIII of 1994 on Judicial Enforcement (hereinafter: the Judicial Enforcement Act) shall apply.

#### 4. Assessment of the right of access in other proceedings

On 16 April 2024, the Curia issued a precedent-setting decision on divorce, in which the application of the Brussels IIb Regulation and the right of access was also highlighted. (Decision of the Curia Pfv.20034/2024/8)

The decision of the Curia concerns divorce and the exercise of parental custody involving a Hungarian national and a German national. The parties were married in Germany and had children together. After the family moved to Hungary, the marriage broke down and the parties separated. The applicant sought a divorce and parental custody of the children, while the defendant counterclaimed.

The court of first instance granted the defendant parental custody because it considered that the defendant's more stable emotional state and better cooperation made him more suitable to raise the children. It attached particular importance to the fact that the plaintiff had prevented the defendant from having contact with the children. That conduct had a negative impact on the assessment of the applicant's fitness to parent and influenced the court's decision to award parental responsibility. Such obstructive conduct may cause long-term damage to

the children's relationship with the other parent, which may result in not only emotional but also developmental problems. The trial court conducted extensive evidence, including a forensic expert, and found that both parents were fit to raise the children. However, the applicant's ability to tolerate and manage stress is inferior and the interference with contact has significantly reduced her fitness to parent. In its assessment of the objective and subjective circumstances, the court also placed the burden on the plaintiff for having isolated the children from the defendant after the end of their cohabitation and for having permanently prevented them from having contact.

The court of appeal, however, reversed this decision and granted the plaintiff the right to exercise parental custody, reassessing the facts of the case. The Court of First Instance considered that the Court of First Instance had attached undue importance to these aspects and, by assessing all the facts of the case together, had concluded that the children's development in all directions was better safeguarded by placement with the applicant.

In the present case, it is clear that the plaintiff obstructed contact and sought to exclude the other parent. However, he complied with the court's interim order in accordance with the law, so that contact was established and there is no evidence that he subsequently engaged in counter-parenting with the other parent. The parent-child relationship between the children and the defendant remained intimate, and the children accepted and adapted to the situation. As stated in the final judgment, the children value the quality time spent with the defendant, but at the same time, they imagine their daily life with the defendant.

The Curia ultimately upheld the decision of the court of appeal, confirming that the best interests of the children are best served by the parental supervision of the plaintiff. The court of appeals reached a different conclusion, assessing the evidence in favor of the plaintiff. The principle of the decision of the Curia is as follows: „The mere fact that, in the absence of additional facts, the right of access is disrupted when the family breaks up cannot be the sole criterion for the exercise of parental authority: a strong assessment of this is justified if it is clear that one of the parents has acted with the intention of doing so.”

According to the principle of the precedent decision, the fact that a family breaks up and contact is initially difficult is not in itself sufficient reason for this factor to play a decisive role in the assessment of the exercise of parental rights. Such difficulties in maintaining contact will only be given priority if it can be shown

that one of the parents is deliberately obstructing contact. In other words, if there is no additional information or evidence that one parent has deliberately sought to prevent contact with the other parent, the initial difficulties should not in themselves be decisive in determining whether parental custody should be exercised.

In my previous research, I found a similar trend. During the emergency, parents regularly referred to the fact that they did not give the child to the separated parent for contact because of the risk of epidemics. Two opposing views have emerged among the courts as to what constitutes an excusable breach and what does not. (For previous research, see: Gönczi, 2021) The majority view was that the mere reference to a situation of danger was not sufficient grounds for refusing the application, and the Debrecen position was in line with this. In two cases, it was observed that the court accepted the defendant's plea of danger on the basis of the additional element and did not find a breach of the contact order. In one case, the applicant was an international truck driver who continued to work during the emergency, and in the other case, he was a doctor who was continuously practicing his profession in the hospital, which was exposed to increased risk. The court reasoned that these constituted reasonable grounds to justify the impediment to contact.

The Curia has also confirmed the type of interpretation that is strongly present in contact cases, that a multiple factual element, additional information, and a combined interpretation of the facts is required in each case.

### Concluding thoughts

Following a brief introduction to the Brussels IIb Regulation, the Hungarian rules that entered into force show that the family law disputes with an international element have had an impact on EU legislation and, at the same time, on national legislation. In the field of family law, EU-level legislation began in 1998, and the difficulties of interpretation and regulatory anomalies that have arisen either as a result of EU law or have emerged in the course of its application are now becoming clear. Among cross-border civil matters, family law is one of the areas where EU law has had the most elementary impact. (Wopera, 2014, p. 64.) Today, there is no longer any lack of regulation, as the scope of the Brussels IIa Regulation is very broad and wide. The new Regulation has the virtue of focusing

specifically on problems that the previous Regulation could not eliminate or that arose during its period of application. It is hoped that the new Brussels IIb Regulation will lead to more efficient enforcement by providing uniform grounds for suspension and refusal of enforcement. (Visontai-Szabó, 2021)

It can be seen that the detailed rules for the enforcement of a contact order are particularly important when there is a foreign element in the case, as different countries have different legal systems and family law rules. These rules ensure that the decision complies with international conventions and facilitates cooperation with foreign authorities. They also help avoid uncertainties and misunderstandings, which can be particularly problematic in an international context. It is important that the interests and rights of the child are properly safeguarded and that enforcement is efficient and swift. Overall, the existence of detailed rules is essential for the smooth implementation of contact orders in cases with a foreign element.

It is important to note, however, that in family law disputes, whether they are internal or cross-border, the law, regulations, and domestic rules are not necessarily the only solution. Even in the most straightforward legal situations, there is a human element and, more importantly, the best interests of the child. It would be naivety to think that enacted norms focusing on problems, shortcomings, and experiences are in themselves sufficient to resolve family law conflicts, because we know that within family law, contact issues are the most problematic part. However, the law must also seek to regulate these areas as well as possible, within the limits of its means.

In the domestic court practice, there are few significant decisions so far (See also: the Curia's precedent-setting decision Pfv.20219/2024/6 on the return of a child unlawfully returned to the country.) that affect the regulation and the contact, and the Curia's decision Pfv.20034/2024/8. only indirectly mentions the contact, but I think that the court has identified a typical situation in life that promotes legal unity and certainty, and guides lower courts.

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