

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

## CHAPTER III

### RECOGNITION AND ENFORCEMENT

#### SECTION 4

#### **Enforceability of certain judgments concerning rights of access and of certain judgments which require the return of the child**

##### *Article 40*

##### **Scope**

- 1 This Section shall apply to:
  - a rights of access;
  - and
  - b the return of a child entailed by a judgment given pursuant to Article 11(8).
- 2 The provisions of this Section shall not prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions in Sections 1 and 2 of this Chapter.

##### *Article 41*

##### **Rights of access**

- 1 The rights of access referred to in Article 40(1)(a) granted in 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.

Even if national law does not provide for enforceability by operation of law of a judgment granting access rights, the court of origin may declare that the judgment shall be enforceable, notwithstanding any appeal.

- 2 The judge of origin shall issue the certificate referred to in paragraph 1 using the standard form in Annex III (certificate concerning rights of access) only if:
  - a where the judgment was given in default, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defense, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally;
  - b all parties concerned were given an opportunity to be heard;

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and

- c the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The certificate shall be completed in the language of the judgment.

3 Where the rights of access involve a cross-border situation at the time of the delivery of the judgment, the certificate shall be issued ex officio when the judgment becomes enforceable, even if only provisionally. If the situation subsequently acquires a cross-border character, the certificate shall be issued at the request of one of the parties.

## Article 42

### Return of the child

1 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.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child [<sup>X1</sup> mentioned in Article 11(8)], the court of origin may declare the judgment enforceable.

2 The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 only if:

- a the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity;
- b the parties were given an opportunity to be heard; and
- c the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

In the event that the court or any other authority takes measures to ensure the protection of the child after its return to the State of habitual residence, the certificate shall contain details of such measures.

The judge of origin shall of his or her own motion issue that certificate using the standard form in Annex IV (certificate concerning return of the child(ren)).

The certificate shall be completed in the language of the judgment.

#### Editorial Information

- X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 338 of 23 December 2003\)](#).

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### Article 43

#### **Rectification of the certificate**

- 1 The law of the Member State of origin shall be applicable to any rectification of the certificate.
- 2 No appeal shall lie against the issuing of a certificate pursuant to Articles 41(1) or 42(1).

### Article 44

#### **Effects of the certificate**

The certificate shall take effect only within the limits of the enforceability of the judgment.

### Article 45

#### **Documents**

- 1 A party seeking enforcement of a judgment shall produce:
  - a a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
  - and
  - b the certificate referred to in Article 41(1) or Article 42(1).
- 2 For the purposes of this Article,
  - the certificate referred to in Article 41(1) shall be accompanied by a translation of point 12 relating to the arrangements for exercising right of access,
  - the certificate referred to in Article 42(1) shall be accompanied by a translation of its point 14 relating to the arrangements for implementing the measures taken to ensure the child's return.

The translation shall be into the official language or one of the official languages of the Member State of enforcement or any other language that the Member State of enforcement expressly accepts. The translation shall be certified by a person qualified to do so in one of the Member States.

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