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The Recast of the Regulation on Jurisdiction, the Recognition and Enforcement of Decisions in Matrimonial Matters and the Matters of Parental Responsibility

(Brussels IIb)

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About this paper

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The Recast of the Regulation on Jurisdiction, the Recognition and Enforcement of Decisions in Matrimonial Matters and the Matters of Parental Responsibility (Brussels IIb)

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I. The recast of Brussels IIa Regulation

Regulation 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels IIa) unified the rules of jurisdiction within the European Union and created a system for the recognition of decisions in matrimonial matters and matters of parental responsibility. This legal instrument repealed Regulation No. 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (Brussels II).

In 2014, it was published a report evaluating the application of the Brussels IIa Regulation[1]. This report identified the problems existing in the application of the Regulation, and motivated the European Commission's initiative to proceed with a recast. On July 30 2016, the proposal to recast Brussels IIa Regulation was published[2]. The opinion of the European Economic and Social Committee followed on 21 April 2017[3]; on 18 January 2018 the European Parliament adopted a legislative resolution on that proposal[4]; and on March 14, 2019, issued a second opinion[5]. Finally, on July 2nd, 2019, the recast of Brussels IIa Regulation was published, with a renewed designation: Regulation 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (Brussels IIb). This new version repeals

[1] European Commission, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000* (Brussels: COM(2014) 225 final, 2014), 2-17.

[2] European Commission, *Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)* (Brussels: COM(2016) 411 final 2016/0190 (CNS), 2016), 2-105.

[3] European Economic and Social Committee, *Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)'* (COM(2016) 411 final — 2016/0190 (CNS), OJ C45, 2017), 46-50.

[4] European Parliament, *European Parliament legislative resolution of 18 January 2018 on the proposal for a Council regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, and on international child abduction (recast)* (COM(2016)0411 – C8-0322/2016 – 2016/0190(CNS)), P8_TA(2018)0017, 2018), 1-31.

[5] European Parliament, *European Parliament legislative resolution of 14 March 2019 on the draft Council regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)* (15401/2018 – C8-0023/2019 – 2016/0190(CNS)) P8_TA(2019)0206, 2019), 1.

the Brussels IIa Regulation, with effect from 1 August 2022 (Article 104, Section 1, of the Brussels IIb Regulation), which is also the date from which the Brussels IIb Regulation shall apply (Article 105, Section 2)[6].

The Proposal of Brussels IIa Regulation aimed at reinforcing the principles of mutual trust and automatic recognition of decisions, eliminating existing barriers to the free movement of decisions, promoting the principle of the best interests of the child, simplifying procedures and increasing the effectiveness of the rules provided for in that legal instrument[7]. It identified six shortcomings that should be faced: the child return procedure; placement of the child in another Member State; the requirement of *exequatur*; actual enforcement of decisions; hearing of the child; cooperation between the Central Authorities[8]. Now that the Brussels IIb Regulation has been published, it is time to look at the final version and analyse the most relevant changes.

II. Matrimonial matters

Matrimonial matters were excluded from any change in the proposal and in the final version of the Recast. It is possible to state that the Recast focused essentially on matters of parental responsibility. Taking into consideration the high divorce rate in the Union[9], this is a questionable option, since the jurisdiction rules on matrimonial matters were recognized has having an influence on that and as being controversial[10].

Article 3 of the Brussels IIa Regulation gives alternative jurisdiction to a number of courts, which means that any of the forums listed in the legal provision can settle the dispute. According with Article 3, in matrimonial matters, jurisdiction lies with the courts of the Member State of: the spouses' habitual residence; the spouses' last habitual residence, if one of them still resides there; the respondent's habitual residence; the habitual residence of either spouse, if the application is joint; the applicant's habitual residence, provided that he/she has resided there for at least a year immediately before the application was made; the applicant's habitual residence, provided that he/she has resided in that country for at least a six months immediately before the application was made and is a national of the Member State concerned, or in the case of the United Kingdom and Ireland, has his/her domicile there; the nationality of both or spouses or in the case of the United Kingdom and Ireland of the common domicile.

This alternative jurisdiction creates the well-known rush to court phenomenon, where the party that has a specific interest in the dispute anticipates and runs to court, and files the action in the court that best saves his/her interest. This phenomenon, also known as *forum shopping*, jeopardizes the principle of procedural equality between the parties, as it benefits the part of the dispute that prevents jurisdiction[11]. This consequence led several authors to criticize Article 3 for producing a *favor divortii* in the European Union[12].

The aforementioned *forum shopping* was mitigated by the unification of the conflict-of-law rules applicable to divorce and legal separation issues, through Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III). However, Rome III Regulation was adopted within the framework of enhanced cooperation, under the terms of Article 329, Section 1, of the Treaty on the Functioning of the European Union (TFEU). This means that Rome III Regulation does not

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6 With the exception of Articles 92, 93 and 103, applicable from July 22, 2019.

7 European Commission, *Proposal for a Council Regulation on jurisdiction*, 2.

8 European Commission, *Proposal for a Council Regulation on jurisdiction*, 3-5.

9 See, European Commission, *Report from the Commission to the European Parliament,* 4, n. 19.

10 European Commission, *Report from the Commission to the European Parliament*, 5.

11 About the rush to court phenomenon in Brussels IIa Regulation, see Anabela Susana de Sousa Gonçalves, "Âmbito de aplicação do Regulamento n.º 2201/2003 e reconhecimento de decisões em matéria matrimonial", *Cadernos de Direito Privado*, n.º 44 (2013), 54-55; Maria Angeles Sanchez Jimenez, "Regulation (EU) 2019/1111 and the Continuity of the Jurisdiction Rules in Matrimonial Matters", 19-20 *Anuario Espanol Derecho Int'l Priv.* (2019-2020), 310-311; Maria Angeles Sanchez Jimenez, "Alcance de la operatividad de los foros de competencia de las legislaciones de los Estados miembros en materia de divorcio, separación y nulidad matrimonial. La clarificación introducida por el artículo 6 del Reglamento (UE) 2019/1111", *Bitacora Millennium DIPr.* 12 (2020), 29. This problem was also identified in the European Commission report of 2014: European Commission, *Report from the Commission to the European Parliament*, 5.

12 About *favor divortii* in Brussels IIa Regulation, see Alegría Borras, "Article 3", in European Commentaries on Private International Law, Brussels IIbis Regulation, ed. Ulrich Magnus (Köln: Ottoschmidt, 2017), 93; Anabela Susana de Sousa Gonçalves, "Âmbito de aplicação do Regulamento n.º 2201/2003 e reconhecimento de decisões em matéria matrimonial", 53.

apply in all Member States, but only in those considered participating Member States: Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia and Lithuania[13].

Therefore, the recast would have been an opportunity to improve, if not completely correct, the rules regarding matrimonial matters, reducing the forums that have jurisdiction in matrimonial matters, increasing legal certainty and the predictability of jurisdiction[14]. It could also have been an opportunity to test, in matrimonial matters, a limited autonomy of the parties in choosing the jurisdiction, which could help to make more flexible legal provisions regarding international jurisdiction, taking into consideration the interests of the parties. However, this was not Brussels IIa Regulation option.

III. Matters of parental responsibilities

1. Scope of application

Brussels IIb clarifies its scope of application in matters of parental responsibilities, which is positive. Article 2, Section 2 (6), explains that child has the meaning any person bellow the age of 18. The notion of child is an operative concept of Regulation Brussels IIa, but it is not possible to find there any definition. Consequently, authors debated, with various arguments, if the notion includes the age limit of 16 or 18 years[15]. In view of the silence of the Brussels II a Regulation, authors considered that the solution to this problem would be to use the conflict-of-law rules of the State of the forum as a way of determining the persons on whom parental responsibility would fall[16]. This was also the position of the European Commission, which considered that, in view of the silence of the Regulation, the problem could only be solved under national law[17].

With the clarification of the age limit of 18, a uniform criterion for the application of the Regulation is found, not dependent on the national law of Member States. This is an improvement in the uniform application of the Regulation, allowing the child to enjoy a minimum common protection in the European Union. In addition, the adoption of 18 years aligns the application of the Brussels IIb Regulation with Article 2 of the 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, allowing a more effective coordination of both legal instruments.

Note, however, the 1980 Hague Convention on the Civil Aspects of International Child Abduction (1980 Hague Convention), according with its Article 4, only applies to persons bellow the age of 16, which Recital 17 of Brussels IIb Regulation recognizes. As the Brussels IIb Regulation aims to improve the application between the Member States of the 1980 Hague Convention, Recital 17 and Article 22 establishes that in what concerns international child abduction the age of 16 year continues to be the age limit. Consequently, the application of the Regulation provisions regarding international child abduction to children up to the age of 16 years is maintained, due to the need of coordination with the 1980 Hague Convention[18].

2. Improvement of return proceedings in cases of parental abduction

One of the measures to improve the mechanism of return of the child in cases of parental abduction that was in the Proposal, but did not survived the recast, was the concentration of territorial jurisdiction. The concentration of

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[13] According with the Decision 2012/714/EU.

[14] Also with a with a critical perspective of the Recast concerning matrimonial matters, see Maria Angeles Sanchez Jimenez, "Regulation (EU) 2019/1111 and the Continuity of the Jurisdiction Rules in Matrimonial Matters", 301-325.

[15] R. Espinosa Calabuig, "La responsabilidade parental y el nuovo reglamento de "Brusselas II bis": entre el interés del menor y la cooperación judicial interestatal", RDIPP, nº 3-4 (2003), 754-755, with diferent arguments in favour of 16 and 18 years as the age limit.

[16] About this, see Anabela Susana de Sousa Gonçalves, "The Rinau Case and the wrongful removal or retention of children", *UNIO EU Law Journal*, N.º 0 (2014), 131.

[17] European Commission, *Practice guide for the application of the Brussels IIa Regulation* (Brussels: European Union, 2015), 5.

[18] About the relation between both legal instruments, see Anabela Susana de Sousa Gonçalves, "Aspectos civis do rapto internacional de crianças: entre a Convenção de Haia e o Regulamento Bruxelas II bis", *Cadernos de Dereito Actual*, n.º 3 (2015), 173-186.

territorial jurisdiction in child abduction cases exists in some Member States[19] and it can be an effective measure to allow the fast return of the child to the country of habitual residence, as it allows the judge's specialization. This measure would also improve the cooperation between the judges and central authorities of the Member States, since the number of judges who decide these cases would be limited and specialized[20], naturally increasing confidence in each other's decisions[21]. From the concentration of jurisdiction could also result consistency and uniformity of criteria and practices between judges and lawyers in cases of international child abduction[22]. In addition, as the number of international child abduction cases per year is small, the difficulties in implementing this measure would be reduced.

Although the advantages pointed out regarding the concentration of territorial jurisdiction, this measure is not in the final version of Brussels IIb Regulation. However, Recital 41 recognizes its importance, by recommending Member States to concentrate jurisdiction in child abduction cases, suggesting Member States to use, "for example, the number of appellate courts as point of departure and concentrating jurisdiction for international child abduction cases upon one court of first instance within each district of a court of appeal".

One of the most important changes of Brussels IIb Regulation concerns the time limit for examining the return request. According with Article 23, Section 1, the central authority shall act expeditiously in processing an application, and under that obligation it shall acknowledge receipt, within five working days from the date of receipt of the application. Then, every instance should give their decision within six weeks. The court to which the application for the return of the child is made shall decide in six weeks after it is seized, except in exceptional circumstances (Article 24, Section 2). The courts of higher instance shall give its decision in six weeks after all the required procedural steps have been taken, except in exceptional circumstances (Article 24, Section 3).

The period of 6 weeks, provided for in Article 11, Section 3, of the Brussels IIa Regulation was subject to different interpretations by the Member States, which led the ECJ to clarify that the decision adopted within this period would have an enforceable nature and that its enforcement could not be subject to the condition of exhaustion of the procedural means allowed by the law of the State of abduction, under the risk of depriving the Regulation of its useful effect[23]. However, this 6 weeks' period for taking a decision, that would have an enforceable nature, proved to be short[24]. Therefore, the establishment of additional deadlines, the clarification of the object of each deadline, the extension of the deadline (the six weeks that currently appear in the Regulation are hardly respected), can help to improve the effectiveness of the child's return system.

The Proposal limited the possibility of appeal against a decision granting or refusing the return of the child. However, this measure was not accepted in the final version of Brussels IIb Regulation. There is, nevertheless, one reference in Recital 42 that Member States should consider limiting the number of appeals regarding these decisions.

Within this time limit that the court has to decide, the court must also analyse whether the parties are willing to start mediation (Article 25). Without questioning the well-known advantages of mediation[25], in international child abduction cases the relations between the parents usually reach a degree of extreme degradation, which can hinder the success of the mediation. Recital 42 of Brussels IIb Regulation establishes that the use of means of alter-

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[19] About the implementation of the concentration jurisdiction in some Member States, see Constanza Honorati, "La proposta di revision del regolamento Bruxelles II bis: piu'tutela per i minori e piu'efficacia nell'esecuzione delle decisioni", *Revista di Diritto Internazionale Privato e Processuale* 2 (2017), 12-13.

[20] With the same opinion, see Philippe Lortie, "Concentration of jurisdiction under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child abduction", *The Judges' Newsletter on International Child Protection XX* (2013), 2-3; Hans van Loon, "The Brussels IIa Regulation: towards a review?" in *Cross-border activities in the EU Making life easier for citizens*, Coord. European Parliament (Policy Department C: Citizens' Rights and Constitutional Affairs, 2015), 204; Constanza Honorati, "La proposta di revision del regolamento Bruxelles II bis", 11-14.

[21] Underlining the importance of direct communication between judges in international judicial cooperation mechanism, see A. Olland, "A judge's perspective on the cooperation mechanisms", *Recasting the Brussels IIa Regulation Workshop*, Coord. European Parliament (Policy Department C: Citizens' Rights and Constitutional Affairs, 2016), 55-56.

[22] Philippe Lortie, "Concentration of jurisdiction", 2-3.

[23] Anabela Susana de Sousa Gonçalves, "The Rinau Case and the wrongful removal or retention of children", 137-138.

[24] In this regard, see European Commission, *Report from the Commission to the European Parliament*, 14.

[25] That clearly result from the Guide of Good Practice of the Hague Conference regarding the 1980 Hague Convention: The Hague Conference on Private International Law, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Mediation*, 2012, accessed May 1, 2017, https://assets.hcch.net/.

native dispute resolution should not be considered an exceptional circumstance that would allow the timeframe of the decision to be exceeded. This means that the period established for mediation and, in case of failure, the judicial decision is short, especially because experience shows that the parent who illegally displaced the child has no interest in solving the dispute quickly and is not collaborative. That is so, even because the delay of the resolution of the situation can be used to later demonstrate that the child is integrated in the new social environment and claim that the return will constitute a serious risk to the child's physical or mental health, as ground of a decision to refuse the return of the child, under Article 13 (b) of the 1980 Hague Convention[26]. However, increasing the time limit of the decision in the event of mediation frustrates the objective of the 1980 Hague Convention and the Regulation in these matters, which is the prompt return of the child, as the passage of time endangers his/her development. As has been stated several times by the European Court of Human Rights (ECtHR), in these cases the course of time causes irreparably damages in the relationship between the child and the parent from whom the child was wrongfully separated and the failure to fulfil the duty of immediate return of the child to his/her country of habitual residence constitutes a violation of Article 8 of the European Convention on Human Rights (ECHR)[27].

In any case, it is welcomed the reference to mediation in Brussels IIb Regulation[28], since, for the child, it is preferable to settle the dispute through mediation that promotes the appeasement of family relationships. However, mediation is not mandatory, should be decided according with the circumstances of the case and the child´s best interest[29] and shall not unnecessarily delay the decision regarding the return proceedings.

The Brussels IIb Regulation also opens up the possibility for the court to provisionally declare enforceable the decision ordering the return of the child, despite any appeal, if that is in the best interest of the child (Article 27, Section 3), regardless of what is established by national law. The decision of provisional enforceability is made on behalf of the child's best interests and its purpose will be to promote greater speed in the child's return to his country of habitual residence. This possibility to assess whether the return decision should be enforceable on a provisional basis may also be a way of neutralizing the negative effects for the child of an appeal of the return decision that has a purpose of manifestly delay the return of the child. According with Recital 47, each Member State may determine which court can declare a decision provisionally enforceable.

Brussels IIb Regulation also establishes some changes in the procedure following a decision refusing the return of the child under Article 13 (1) point (b) and Article 13 (2) of the 1980 Hague Convention, making a distinction. According with Article 29, Section 3, of Brussels IIb Regulation, in case of a decision refusing the return of the child, if the court of the country of the habitual residence has already been seized of proceedings to examine the substance of rights of custody, and the court that refused the return of the child is aware of this proceedings, it should send to the court of habitual residence the documents set in the legal provision. According Article 29, Section 5, within three months of the notification of the decision refusing the return of the child, if one of the parties seizes the court of habitual residence of the child to examine the substance of rights of custody, that party shall submit the referred documents. If these decisions entails the return of the child, they will be enforced according with the system of recognition and enforcement of privileged decisions, set in Section 2, of Chapter IV, without a procedure required and any possibility of opposing its recognition [Article 29, Section 6, and Article 42, Section 1 (b)]. The decisions that Article 29, Section 6, refers to are the ones on the substance of rights of custody which entail the return of the child, subsequent to a decision refusing the return of the child. This means, as resulted already from the Proposal, that the decisions which entails the return of the child should be taken in a context of a decision about the substance of rights

[26] About the grounds of the decision to refuse the return of the child set in Article 13 of the 1980 Hague Convention, see Anabela Susana de Sousa Gonçalves, "The Rinau Case and the wrongful removal or retention of children", 137-139; *idem*, "Aspectos civis do rapto internacional de crianças: entre a Convenção de Haia e o Regulamento Bruxelas II bis", pp. 180-181.

[27] Anabela Susana de Sousa Gonçalves, "O Direito ao Respeito pela Vida Familiar no Rapto Internacional de Crianças", in *Direito na Lusofonia. Diálogos Constitucionais no Espaço Lusófono* (Braga: Escola de Direito da Universidade do Minho, 2016), 101-112; idem, "As orientações do Tribunal Europeu dos Direitos do Homem relativamente ao rapto internacional de crianças", in *Estudos Comemorativos dos 20 Anos da FDUP*, Vol. I, ed. Helena Mota et al. (Coimbra: Almedina, 2017), 136-158.

[28] Elena Rodriguez Pineau, "La refundición del reglamento Bruselas II bis: de nuevo sobre la función del derecho internacional privado europeo", 69 *REDI* 139 (2017), 144, considers that the European legislator should have established how mediation should be done. It is possible, however, to understand the option of Brussels IIb Regulation, because the decision for return of the child should be fast, and some flexibility in the promotion and implementation of mediation may be essential to its success.

[29] With the same opinion, see Montserrat Guzman Peces, "The Rules of Jurisdiction in the Regulation (EU) 2019/1111: Special Reference in the Choice of Court and the "Best Interest of the Child", *Anuario Espanol de Derecho Internacional Privado* 19 (2019-2020), 204.

of custody and only that way they can be enforced, without a procedure required and any possibility of opposing its recognition.

This new system from Brussels IIb Regulation does not seems to be completely compatible with the 1980 Hague Convention. The 1980 Hague Convention system was designed essentially as a procedural system of fast assessments, in order to achieve the child's prompt return to his/her country of habitual residence. The aim is that the passage of time and the use of delaying procedural expedients do not benefit the parent who abducted the child and, consequently, increase the harmful consequences for the child. As referred before, according with the case law of the ECHR, the course of time harms the child and causes irreparable damage in the child's relationship with the parent from whom was separated. However, in the regulation of the substance of rights of custody it is difficult to have the same urgency in the decision that is necessary in cases of international abduction, because the production of proof is more demanding and the procedural steps are often more complex. It is true, nevertheless, that it is better to have a final decision of the court of habitual residence, taking into account the reasons for the decision refusing the return of the child and the child's best interests[30].

3. Hearing of the child

The child's right to be heard in cases concerning him/her interests is a fundamental right of the child, according with Article 12 of the Convention on the Rights of the Child, and is reinforced in Brussels IIb Regulation. The child's imperative of being hear in those proceedings in which is involved, depending on maturity and age, results from the fact that the child's interest, as a subject of rights, is one of the central interests in the proceedings. The child's right to be heard already plays an essential role in the Brussels IIa Regulation. On the one hand, it is one of the requirements for the abolition of the exequatur of the decision ordering the return of the child in international child abduction (Article 42) or in relation to rights of access (Article 41)[31]. In addition, if the child was not given an opportunity to be heard, it may be a ground for refusing the recognition and enforcement of decisions in matters of parental responsibility (Article 23).

Brussels IIb Regulation provides for the child's right to be heard now in two separate legal provisions, which translates the central role of that right in the Regulation. The first legal provision is Article 21, that states that in matters of parental responsibility the child should be given a genuine and effective opportunity to express his/her views, as long as is capable of forming his/her opinion, directly, through a representative or appropriate body. The second legal provision is Article 26, in the context of an international child abduction (with a reference to the requirements of Article 21). According with both legal provisions, if the child is capable of forming his/her opinions, State authorities must ensure that the child has a real and effective possibility to express them freely in the proceedings. The weighting of the freely expressed child's opinion should be done according with the child's age and maturity.

The clarification of the child's right to be heard is positive and its autonomy in two legal provisions is probably a warning for those Member States that remain hesitant about the child's right to be heard in the cases that concern them, in line with the jurisprudence already established by the ECJ[32]. Following this jurisprudence, Recital 39 of Brussels IIb clarifies that the Regulation does not aim to define how the child should be heard and by who, which is left to national legislation, but only that the child must have a real and genuine opportunity to express freely his/her views. Therefore, it is possible to state that in Brussels IIb Regulation the hearing of the child as a structural principle of its legal framework.

It should also be noted that, according with Article 21, Section 2, of Brussels IIb Regulation, that the court must give due weight to the views of the child, taking into consideration his age and maturity. Note that several annexes of Brussels IIb Regulation establish that the court that issues those certificates should declare if the child was capable of forming his/her own views and if it was given a genuine and effective opportunity to express those views in accordance with Article 21. That happens in Annex III (certificate concerning decisions in matters of parental

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[30] In this regard, see Paul Beaumont, Lara Walker, Jayne Holliday, "Parental Responsibility and International Child Abduction in the proposed recast of Brussels IIa Regulation and the effects of Brexit on future child abduction proceedings", *International Family Law Journal* 4 (2016).

[31] About the importance of hearing the child, see Anabela Susana de Sousa Gonçalves, "The Rinau Case and the wrongful removal or retention of children", 140-141.

[32] To more developments, see Anabela Susana de Sousa Gonçalves, "The Rinau Case and the wrongful removal or retention of children", 140-141.

responsibility); in Annex IV (certificate concerning decisions ordering the return of a child to another Member State pursuant to the 1980 Hague Convention and any provisional, including protective, measures taken in accordance with article 27(5) of the regulation accompanying them); in Annex V (certificate concerning certain decisions granting rights of access); in Annex VI (certificate concerning certain decisions on the substance of rights of custody given pursuant to article 29(6) of the regulation and entailing the return of the child); in Annex IX (certificate concerning an authentic instrument or agreement in matters of parental responsibility). This reinforcement of the declaration by the court that the child was given the opportunity to express his/her opinions in comparison with Brussels IIa Regulation[33] is related to the need to ensure that the child is effectively heard and to the importance that the hearing of the child has in the system of recognition and enforcement of decisions[34].

4. Provisional and protective measures in urgent cases

The legal provisions regarding provisional and protective measures in urgent cases, that in Brussels IIa Regulation is in a section common to parental responsibility and matrimonial matters, appears in Brussels IIb Regulation exclusively in the section regarding parental responsibilities, that are the cases where these measures are most used. However, it launches the doubt if those measures can be order in matrimonial matters[35].

Brussels IIb Regulation puts in the wording of Article 15 some clarifications resulting from the jurisprudence of the Court of Justice of the European Union (ECJ). As already decided by the ECJ, provisional and protective measures can only be decided by the authorities of a Member State that does not have jurisdiction as to the substance of the matter, in case of urgency and in relation to children who are in its territory or property belonging to a child which is located in that Member State (requirements now set in Article 15, Section 1). The ECJ further clarified that these provisional measures cease to have effect when the court of the Member State having jurisdiction on the substance of the matter takes the appropriate definitive measures. To that end, when the protection of the child's best interests so requires, the authority that issued the provisional measure must inform the court of another Member State that has jurisdiction on the substance of the matter directly or through the central authority about the measure taken. All of these interpretative guidelines of the ECJ have been integrated into Article 15, Sections 1, 2 and 3. When the court of the Member State having jurisdiction on the substance of the matter takes the appropriate definitive measures, it may, when appropriate inform the court that took the provisional measure, directly or through the central authority, according with Article 15, Sections 1.

It should be noted, however, that not all the jurisprudence of the ECJ was accepted by Brussels IIb Regulation. In the *Jasna Detiček* case, the ECJ decided that provisional measures should be taken with regard to the persons present in the Member State of the authority that is deciding those measures, which would mean that in matters of parental responsibility, measures ordering a change of custody of a child would not it would be taken only in relation to the child but also to the parent, who would have to be present in that country[36]. Now, Article 15 of the Proposal does not accept this interpretation of the ECJ, establishing the need for only the child to be in the territory of the Member State that orders the provisional measure[37].

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[33] The documentation of the opportunity of the child express his/her opinions existed in Brussels IIa Regulation only in Annex III (certificate referred to in article 41(1) concerning judgments on rights of access) and in Annex IV (certificate referred to in article 42(1) concerning the return of the child).

[34] To more developments, see Anabela Susana de Sousa Gonçalves, "The Rinau Case and the wrongful removal or retention of children", 140-141 and 143-147.

[35] Elena Rodriguez Pineau, Elena Rodriguez Pineau, "La refundición del reglamento Bruselas II bis", 161; Maria Aranzazu Gandia Sellens, "La responsabilidade parental y la sustracción de menores en la propuesta de la comisión para modificar el RBII *bis*: algunos avances, retrocesos y ausências", *AEDIPr*, T. XVII (2017), 810.

[36] ECJ, *Jasna Detiček v. Maurizio Sgueglia*, Case C-403/09 PPU (23.12.2009, ECLI:EU:C:2009:810).

[37] Saluting this clarification, see Elena Rodriguez Pineau, "La refundicion del Reglamento Bruselas II bis: De nuevo sobre la funcion del Derecho Internacional Privado Europeo", *REDI*, vol. 69/1 (enero-junio 2017), 162; Antonio Jesius Calzado Llamas, "Las medidas provisionales y cautelares en los procedimientos de restitucion de menores: analisis del Reglamento (UE) 2019/1111 en conexion con el ordenamiento juridico espanol", *Cuadernos de Derecho Transnacional* (Marzo 2021, Vol. 13, No 1), 94.

5. Other legal provisions

Brussels IIb Regulation makes also other changes in matters of parental responsibility. One is regarding the legal provision about prorogation of jurisdiction, set in Article 12 of Brussels IIa Regulation. In Brussels IIb Regulation, instead of a prorogation of jurisdiction, there is a real choice-of-court rule in Article 10, although limited by several requirements. According with Article 10, Section 1, the courts of a Member State can have jurisdiction in matters of parental responsibility, if: the child has a substantial connection with that Member State; the parties (or other holder of parental responsibility) have, at the latest at the time the court is seized, agreed freely upon the jurisdiction or expressly accepted the jurisdiction in the course of the proceedings[38]; the court has ensured that all the parties are informed of their right not to accept the jurisdiction; and the exercise of jurisdiction is in the best interests of the child. The substantial connection with a Member State can result from the fact that at least one of the holders of parental responsibility is habitually resident in that Member State; or that Member State is the former habitual residence of the child; or the child is a national of that Member State [Article 10, Section 1 (a)]. For example, the parents can choose the jurisdiction of the Member State where proceedings for divorce, legal separation or marriage annulment are pending to solve the matters of parental responsibility. The formal requirement of the choice-of-court agreement are set in Section 2 of Article 10, and Recital 23 sets that before accepting the jurisdiction, resulted from a choice-of-court agreement, the court should examine if there is an informed and free choice of both parties in the agreement and if one of the parties did not took advantage of the weaker position of the other. According to Article 10, Section 3, the jurisdiction resulting from the choice-of-court agreement ceases as soon as the decision of that court is no longer subject to ordinary appeal or the proceedings have come to an end, except if the parties agree otherwise. The aim is to respect the principle of proximity in future proceedings (Recital 24).

There is a new legal provision in Brussels IIb Regulation regarding incidental questions certainly motivated by the case C-404/14 of the ECJ[39]. According with Article 16, Section 1, if the outcome of the proceedings depends of the determination of an incidental question relating to parental responsibility, that court can decide that question for the purpose of those proceedings. However, the decision of the incidental question only produces effects in those proceedings (16, Section 2). Section 3 of Article 16 settles a very specific case, stating that, in succession proceedings, if the validity of a legal act undertaken on behalf of the child requires the approval by a court, the court of that State may decide to approve that legal act, but this that decision only produces effects in the proceedings in which it was made (Section 4). Recital 32 gives an example of a possible situation: "if the object of the proceedings is, for instance, a succession dispute in which the child is involved and a guardian *ad litem* needs to be appointed to represent the child in those proceedings, the Member State having jurisdiction for the succession dispute should be allowed to appoint the guardian for the pending proceedings, regardless of whether it has jurisdiction for matters of parental responsibility under this Regulation".

This solution will allow a faster resolution of the main proceedings, as it avoids the need to stay the proceedings until such time as the court that has jurisdiction according with Brussels IIb Regulation decides[40]. This solution has advantages in terms of procedural speed and, consequently, produces positive consequences for the parties involved in the litigation and for the child.

III. Placement of a child of another Member State

Article 56 of the Brussels IIa Regulation has led to placement of children in a foreign country, without the authorization or information of the authorities of that State, posing several problems. In fact, the current wording of the legal provision in Brussels IIa Regulation gives rise to some doubts as to the procedure to be followed in the case

[38] As long as all the parties are informed of their right not to accept the jurisdiction.

[39] ECJ, *Request for a preliminary ruling under Article 267 TFEU from the Nejvyšší soud*, Case C-404/14 (6.10.2015, ECLI:EU:C:2015:653), although the solution of the Brussels IIb Regulation does not follow the ECJ's position.

[40] With the same opinion, see Elena Rodriguez Pineau, "La refundición del reglamento Bruselas II bis", 161.

of placement of the child in another State and some of the problems in its application result from the non-response or delayed response by the authorities of the States of placement[41].

Brussels IIb Regulation establishes essentially a uniform procedure for obtaining authorization in the placement of the child, which is now mandatory: with a decision period, with uniform requirements, with notification to the European Commission, with intervention of the central authorities. All of these new adjustments seem to be positive in order to improve the application of this legal provision.

Article 82 of Brussels IIb Regulation establishes the necessary prior consent from the authorities of the host country for the placement of the child in that Member State. The request for prior consent is now made thought the Central Authority of the requesting State to the Central Authority of the Member State where the child is to be placed, and includes a report on the child and on the reasons for the child's placement, information on any contemplated funding other relevant information, like the expected duration of the placement (Article 82, Section 1), or according with Recital 83, "such as any envisaged supervision of the measure, arrangements for contact with the parents, other relatives or other persons with whom the child has a close relationship, or the reasons why such contact is not contemplated in light of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms". The intervention of the Central Authorities as a way of streamlining the procedure seems to be effective, as they are a guarantor of cooperation between Member States in the system of the Regulation, and may promote conditions for the decision to be taken as quickly as necessary and to satisfy the child's best interests.

A favourable reply to the placement request remains an indispensable condition for the final decision to be taken (Article 82, Section 5). This requirement reflects a commitment on the part of the authorities of the State of placement, as their consent is fundamental to the decision of placement of the child, and this allows that these authorities can also monitor the child's situation. However, according with Article 82, Section 2, the need for consent is not applicable to place the child with a parent or with certain categories of close relatives, decided by each Member State, and communicated to the European Commission pursuant to Article 103.

It is clarified that the request and additional documents must be accompanied by a translation into an official language of the requested Member State or in a language that the requested State declared to accept (Article 82, Section 5), which settles the current doubts that arise regarding the need for translation in Brussels IIa Regulation. Each Member State must communicate to the European Commission the languages that accepts, according with Article 82, Section 4, and Article 103. However, the procedure for obtaining the consent is governed by the national law of the requested State (Article 82, Section 8). Although knowing that EU lacks competence regarding internal procedural law, it would have been positive if States had agreed in a uniform procedure for the consent, avoiding delaying procedures that can result from the national laws. Still, Recital 83 settles that the procedures for the purposes of consent should be clear and allow to grant or refuse the consent promptly. In fact, Article 82, Section 6, safeguarding exceptional circumstances, establishes that the decision about the consent should be transmitted to the requesting Central Authority no later than three months following the receipt of the request. A three-month reply period is not exactly a fast response, nevertheless it is better than the current solution, in which Central Authorities of the Member States frequently communicate that it takes several months to obtain a response regarding consent for the placement of the child, which translates the ineffectiveness of the current system[42].

This dragging of the consent may have generated the phenomenon, recognized by the European Commission, of placement of the child by States when the consultation procedure is still in progress or at the beginning, because the placement is considered urgent and the procedure slow[43]. Despite this justification, this is in clear infringement of the system established by Brussels IIa Regulation, since children sometimes are placed in another Member State, without any control by the State of placement or without the possibility of the authorities of this State to follow the child's situation. Besides, this endangers the child's best interests, as it denies them the possibility of being accompanied by the authorities that are closest to the child and to the social environment in which he/she will live and can intervene in its defence more quickly, if necessary. Therefore, the introduction of this deadline to reply is positive.

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[41] About the mechanism of placement of the child in another Member State and all the problems resulting, see Anabela Susana de Sousa Gonçalves, "O mecanismo de colocação da criança noutro Estado-Membro no Regulamento Bruxelas II bis" in *Os novos horizontes do constitucionalismo global*, Ed. Irene Maria Portela (Barcelos: IPCA, 2017) 389-398.

[42] This information is given in European Commission, *Proposal for a Council Regulation*, p. 4.

[43] Information given in European Commission, *Proposal for a Council Regulation*, p. 4.

IV. Enforcement issues

1. Abolition of exequatur

One of the major changes of Brussels IIb Regulation is the abolition of exequatur. Article 34 of Brussels IIb Regulation states that in matters of parental responsibility, decisions given in a Member State that are enforceable there, will also be enforceable in other Member States without the need for a prior declaration of enforceability. According with Article 51, Section 1, the procedure for the enforcement of the decision that was given in another Member State is done in the Member State of enforcement according with the same conditions as a decision given in that Member State. The enforcement of a decision in matters of parental responsibility can only be refused on the grounds set in Article 39 (Article 41).

According with Recital 54, the decision should be recognised by operation of law, without any special procedure and national law should determine whether the grounds for refusal should be raised by a party or *ex officio*. Specifically, regarding the enforcement, Recital 58 states the abolition of the declaration of enforcement of all decisions in matters of parental responsibility making this type of cross-border litigation less time consuming and costly efficient. According with Recital 62, again national law should determine whether the ground for refusal of recognition are to be examine *ex officio* or upon application. The enforcement proceedings may be suspended under the conditions of Article 56.

The abolition of exequatur has already been implemented in several areas, including family law, for example regarding decisions on the right of access, decisions that entail the return of the child or in maintenance obligations. The most visible abolition of exequatur happened with Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ia). At the time, two essential arguments were put forward by the European Commission: an economic cost-saving argument; a political argument of strengthening of trust between Member States[44]. The cost saving argument is repeated in 58 of Brussels IIb Regulation. However, different situations are at stake.

The cost saving argument has greater weight in contractual and non-contractual matters of civil and commercial nature, governed by Brussels Ib Regulation, in comparison with the interests underlying in the Brussels IIb Regulation, especially in matters of parental responsibility, whose legal framework has to be inspired by the best interests of the child and not by economic interests. Taking into account the personal nature of the rights in question and the specificity of the interests involved in matrimonial matters (in which the civil status of the people is concerned and, consequently, also public interests) and the interests involved in matters of parental responsibility (the superior interests of the child), it seems that a previous declaration of enforceability would guarantee an early assessment on the existence of any grounds of refusal, and that would not be dependent on application of the parties. This could be important because the type of public interests involved, which does not exist in Brussels Ib Regulation, and could justify the control of a public authority in the State of enforcement. The solution now set in Brussels IIb Regulation can give rise to limping situations, which can have more serious consequences, taking into consideration the nature of the matters involved. In addition, the grounds for refusing the enforcement are already extremely limited, and it is not easy to understand why the mandatory public control of exequatur was removed, becoming dependent on the initiative of the parties.

The argument of mutual trust between Member States was used in the Proposal to justify the abolition of exequatur, but it seems to be an insufficient one. Firstly, as mentioned, the grounds for refusing the enforcement are kept to the minimum and the list is exhaustive, according with Recital 55. Secondly, the principle of mutual trust, provided for in Article 81 of the TFEU, is the legal basis for judicial cooperation policy in civil matters, but Article 67 of the TFEU defines the general rules of the European area of freedom, security and justice, where judicial cooperation policy is integrated, and establishes that this European area respects fundamental rights and the different

[44] About the abolition of exequatur in Bruxelas Ib Regulation, see. Anabela Susana de Sousa Gonçalves, "A revisão do regulamento Bruxelas I relativo à competência judiciária, ao reconhecimento e à execução de decisões em matéria civil e comercial" *in Estudos em Comemoração dos 20 Anos da Escola de Direito* (Coimbra: Coimbra Editora, Coimbra, 2014), 52-58.

legal systems and traditions of the States Member[45]. Finally, the protection of the best interests of the child should be the greater value in matters of parental responsibility and override the arguments for better European integration through the principle of mutual recognition[46]. In fact, it is questionable that the abolition of exequatur in these matters reinforces the principle of mutual trust, and may rather be a source of tensions between the Member States[47] [48].

Article 56 establishes the possibility of the suspension of enforcement proceedings and refusal of enforcement. One of the changes to underline is the possibility of suspension of the enforcement proceedings in the best interest of the child, set in Article 56, Section 4, if the enforcement will expose the child to a grave risk of physical or psychological harm due to circumstances that have arisen after the decision was given or other significant change of circumstances. After these circumstances cease to exist the enforcement should be resumed. Recital 69 gives the example of "manifest objection of the child voiced only after the decision was given which is so strong that, if disregarded, it would amount to a grave risk of physical or psychological harm for the child". This can only be applied in exceptional cases and if the grave risk is of lasting nature, upon application, and the authority of enforcement can even refuse the enforcement of the decision (Article 56, Section 6). However, before taking that extraordinary decision, the authority of enforcement has to take the appropriate steps to facilitate enforcement according with national law and the best interest of the child. According with Recital 69, these appropriate steps may consist in the assistance of social workers or child psychologist to help to implement the decision.

The possibility of suspension, or in extreme cases even refusal of enforcement, set in Brussels IIb Regulation in exceptional circumstances, aims to avoid the enforcement of a decision that may be harmful to the child and to ensure that the enforcement is not a traumatic experience for the child, as in the *Povse* case[49]. It was precisely the change of circumstances that led the ECtHR to rule on the *Povse* case[50] and, although the ECtHR reaffirmed the *Bosphorus* presumption or presumption of equivalent protection, from the arguments used it was clear the tension between the principle of mutual recognition and the protection of human rights[51]. To this extent, Article 56, Sections 4, 5, and 6 and the need to consider the best interests of the child in the enforcement proceedings can also be seen as a way of facing the warnings of the ECtHR[52], by introducing some flexibility to the system of automatic recognition and enforcement, especially in the absence of exequatur, in more complex situations[53].

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[45] On the principle of trust and mutual recognition in matters of judicial cooperation in civil and commercial matters, see Anabela Susana de Sousa Gonçalves, *Da Responsabilidade Extracontratual em Direito Internacional Privado, A Mudança de Paradigma* (Coimbra: Almedina, Coimbra, 2013), 106-127; Anabela Susana de Sousa Gonçalves, "Cooperação judiciária em matéria civil e Direito Internacional Privado" in *Direito da União Europeia* (Coimbra: Almedina, 2016), 330-291.

[46] Also questioning the European integration argument against the principle of the best interests of the child, see Elena Rodriguez Pineau, "La refundición del reglamento Bruselas II bis", 149.

[47] Elena Rodriguez Pineau, "La refundición del reglamento Bruselas II bis", 164.

[48] The examples given of the abolition of exequatur within the scope of family law does not seem sufficient to justify the same solution in Brussels IIb Regulation. As, for the example, the decisions on the right of access and decisions that entail the return of the child, there is the abolition of *exequatur* to comply with the obligations to promptly enforce the right of access and the return of the child to his/her country of habitual residence, resulting from the 1980 Hague Convention and the Member States' commitment to improve the efficiency of the legal framework of that Convention. The example of maintenance obligations also seems to be doubtful. First, in maintenance obligations cases, the rights involved have a patrimonial nature, different from matrimonial rights and parental responsibility issues. In addition, Regulation 4/2009 establishes a different system for the recognition and enforcement of decisions, whether the decision comes from a Member State bound by the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, or not. In the latter case, there is not a total abolition of exequatur, because the conflict rules involved in determining the applicable law are not common.

[49] ECJ, *Doris Povse c. Mauro Alpago*, Case C-211/10 PPU (1.07.2010, ECLI:EU:C:2010:400).

[50] ECtUR, *Sofia Povse and Doris, Povse v. Austria* (judgment of 18 June 2013, Appl. No. 3890/11).

[51] This was restated in other decisions of the ECtHR. For further development, see Anabela Gonçalves, "The balance between the protection of fundamental rights and the EU principle of mutual trust", *Freedom, Security & Justice: European Legal Studies* (2018, No 1), 111-131.

[52] With the same opinion, see Elena Rodriguez Pineau, "La refundición del reglamento Bruselas II bis", 152; Boriana Musseva, "The recast of the Brussels IIa Regulation: the sweet and sour fruits of unanimity", *ERA Forum* 21, (2020). 140.

[53] With the same opinion, see Constanza Honorati, "La proposta di revision del regolamento Bruxelles II bis", 28.

2. Improving the effectiveness of enforcement

Brussels IIb Regulation tries to address the problem of ineffective enforcement. However, national law continues to govern the procedure for the enforcement of the decisions given in another Member State (Article 51, Section 1). This is precisely the root of the ineffectiveness of the enforcement procedure in Brussels IIa Regulation: it is governed by national law of the Member States which, in the matters covered by the Regulation, varies greatly from one legal order to another. This was recognized by the European Commission in the report that assessed the application of the Brussels IIa Regulation, which highlights the problems arising from differences between the national laws of the Member States in the field of parental responsibility: "some national systems do not contain special rules for the enforcement of family law decisions and parties must resort to procedures available for ordinary civil or commercial decisions, which do not take into account the fact that, in the area of parental responsibility, the passing of time is irreversible"[54]. Consequently, it is recognized that the application of different procedures according to the national law of each Member State jeopardizes the effective and swift enforcement of decisions. This is a serious problem, as it translates into ineffective judicial protection.

Although knowing that EU lacks competence regarding national procedural law, it would have been positive if there were measures to mitigate the identified problem of ineffective implementation under the Brussels IIa Regulation or if the States had agreed in some uniformity of the procedure, avoiding delaying procedures that can result from the national laws. Of course, it is positive that in procedures concerning the application for refusal of enforcement, Article 60 states that the competent authority for enforcement should act without undue delay in an expeditious procedure. It is also positive that the States have the duty to provide to the Commission, upon request, information about the number of cases where the enforcement did not occur within the six weeks' deadline from the moment the proceedings where initiated in cases of enforcement of decisions ordering the return of the child in international abduction cases [Article 101, Section 2 (b)]. This will allow the Commission to follow the implementation of Brussels IIb Regulation. However, it does not seem to be enough to improve the effectiveness of enforcement.

V. Clarification of the functions of Central Authorities

Regarding the role of Central Authorities Brussels IIb Regulation clarifies functions, establishes new tasks, clarifies collaboration duties or establishes new ones. The changes are positive, not only because they make clear the doubts raised by the current Article 53 of the Brussels IIa Regulation, as well as they give Central Authorities an active and decisive role in the system of the Regulation, fostering cooperation between Member State authorities. However, the Proposal was much more ambitious then the final wording of Brussels IIb Regulation, since the Proposal established deadlines to the Central Authority answer the requests[55].

Regarding the functions of cooperation of the Central Authorities is important to highlight Article 78 that governs the requests through Central Authorities in the application of the Regulation, without excluding the direct communications allowed by Brussels IIb Regulation. As recital 80 states the court or competent authorities have the possibility to freely choose between the different channels available to get the necessary information. Article 79 and Article 80 clarifies the specific Central Authorities tasks and the cooperation on collecting and exchanging information in parental responsibility procedures.

One novelty is Article 81 that allows the courts of a Member State to request to the courts or competent authorities of another Member State to assist in the implementation of decisions in matters of parental responsibility, like decisions grating supervised access to be enforced in another Member State or other accompanying measures. Again, the Central Authorities can have here an important role.

Recital 72 introduces an obligation to the Member States to "ensure that Central Authorities have adequate financial and human resources to enable them to carry out the tasks assigned to them under this Regulation". This

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[54] European Commission, *Report from the Commission to the European Parliament*, 14.

[55] For example, Article 64 of the Proposal established a set of functions of the Central Authorities regarding the collection and exchange of information necessary to decide or enforce decisions in matters of parental responsibilities. In addition, Section 6 established a period of two months from the date of receipt of the request to transmit the requested information to the central authority or the competent authority of the requesting Member State, except in exceptional circumstances. The establishment of a response time would allow faster answers to the requests to the Central Authorities, with positive impact on the effectiveness of the Regulation.

Recital is the result of awareness of the insufficient resources of Central Authorities in some Member States, that did not allowed Brussels IIb Regulation to be more ambitious regarding the tasks of Central Authorities. At this stage is impossible to determine if Recital 72 will be enough to compel Member States to give adequate financial and human resources to their Central Authorities and to structure them in an effective way. However, it is true that the Central Authorities are decisive in the application of the Regulation and the non-compliance with the obligation set in Recital 72 introduces serious distortions in the application of Brussels IIb Regulation and can be seen as an infringement of European Union law[56].

VI. Conclusions

It is true that the final wording of Brussels IIb Regulation was the possible consensus, taking into consideration the need for unanimity between Member States for the approval of the Recast[57]. However, Brussels IIb Regulation misses the opportunity to correct one of the major deficiencies of Brussels IIa Regulation: the section on matrimonial matters, as identified in the report on the application of the Brussels IIa Regulation. It should be regretted the lack of discussion regarding the limitation of jurisdictions in matrimonial matters, reducing the phenomenon of *forum shopping* and increasing legal certainty and predictability of jurisdiction. It is also regretted the miss opportunity to introduce party autonomy, through choice-of-court agreements, in matrimonial matters.

As showed, parental responsibility matters were the core of the Recast. With a positive impact, it is possible to enumerate the clarification the concept of children and its impact in the scope of application of Brussels IIb Regulation, the introduction of choice-of-court agreements and the modifications regarding international child abduction: the establishment of additional deadlines and clarification of the purpose of each deadline; the possibility for the court to provisionally declare enforceable the decision ordering the return of the child, despite any appeal; the introduction of mediation as a way to solve these disputes and to pacify the relationship between parents. The strengthening of the child's right to be heard, as a structuring element of the Regulation regime, also seems positive, as well as the improvement of the placement of the child in another member State, specially by establishing the obligation for the court that contemplates the placement to ask the consent of the competent authority of the country of placement. The clarification of the Central Authorities tasks and cooperation duties is also to applaud. However, the wording of the Proposal was more consonant with the importance and role of the Central Authorities in the application of the Regulation, in comparison with the final text of Brussels IIb. Looking at the Proposal, it is regrettable the non-adoption of the territorial concentration of jurisdiction and of the limitation of appeals regarding the decision that entails the return of the child, in international child abduction.

The advantages of abolition of exequatur may raise some doubts, taking into account the personal rights involved and the specificity of the interests in question, namely the best interests of the child. The measures proposed to resolve the problem of ineffective enforcement also seem to be insufficient. Having identified that the root of the ineffectiveness of the enforcement procedure in the Brussels IIa Regulation lies in the fact that it is based on the national law of the Member States, maintaining the rule that it is the national law of the Member State of enforcement that regulates the procedure, without additional measures to mitigate the problem, is keeping the enforcement ineffective.

In conclusion, the dice is rolled and it remains to monitor the application of the Brussels IIb Regulation and the effectiveness of the changes introduced.

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[56] *In extremis*, it may imply the Member State to be subject to the non-compliance procedure, provided for in Article 258 of the TFEU.

[57] According with Article 81, Section 3, of the TFEU, the recast of the Regulation Brussels IIa had to be adopted by the Council unanimously after consulting the European Parliament.