

A FEW KEY POINTS REGARDING THE FREE CIRCULATION OF DIVORCE DECISIONS WITHIN THE EU

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Abstract

The free circulation of divorce decisions is intended to facilitate the free movement of persons in an increasingly dynamic and complex European Union in terms of marriages. The concept under consideration is based on mutual recognition and it essentially involves the dismissal of any special procedure for the recognition and enforcement by one Member State of a court decision issued in another Member State.

Although it involves mutual trust between Member States, in order to circulate freely within the EU, a divorce decision must meet certain conditions so that its recognition is not refused. At the same time, a divorce decision usually entails not only the dissolution of the marriage, but also the effects of this dissolution, both financial and non-financial, which complicates the issue of recognition of the divorce decision.

In this paper, we will begin our analysis with the principle of mutual trust, then we will examine, from the perspective of EU law, the conditions required to recognize such a decision in another Member State, we will identify the legal and factual obstacles and we will draw our conclusions to answer the question of whether divorce decisions rendered by a court in one Member State actually circulate freely within the EU.

Finally, depending on the above conclusions, if we identify impediments to the free circulation of divorce decisions, we will propose appropriate legal measures.

Keywords: divorce decision, recognition, enforceability, EU law.

1. Introduction

The European Union is not merely an economic market, as the legislative measures adopted within it have a substantial impact on the social sphere in which family relationships take place. EU citizens move freely from one Member State to another and, in many cases, establish their habitual residence in a Member State other than that of their nationality, so that cross-border families have become an everyday reality and are no longer the exception.

At the same time, the number of cross-border divorce cases is increasing significantly year by year, and when such a case is finalized, the former spouses discover the reality of the bureaucratic obstacles inherent in national administrative procedures regarding the recognition of court judgments issued in another Member State.

The EU's legal framework on matrimonial matters has evolved positively, including with regard to the mutual recognition and enforcement of court decisions, so that currently a divorce decision issued in one Member State should be recognized in the other Member States, without the former spouses having to go through any special procedure.

Furthermore, the Brussels IIb Regulation¹ facilitates the circulation within the Union of divorce judgments rendered by a court of a Member State, by providing for their recognition and enforcement in another Member State. The interested party may submit to the competent public authority a copy of the judgment relied upon, accompanied by the certificate issued in accordance with the Regulation. The public authority may refuse to recognize the judgment only in the specific situations provided for in that same legal instrument.

The principle of mutual recognition of court decisions lies at the heart of the free circulation of such decisions, including divorce ones.

Through this scholarly endeavor, we aim to determine whether the EU's legal framework regarding divorce is sufficiently clear and precise to effectively ensure the free circulation of divorce judgments. To address this challenge, we will examine the substance of the principle of mutual recognition of judicial decisions from the

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¹ Council Regulation (EU) 2019/1111 of June 25, 2019, on jurisdiction, the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, and on international child abduction, published in the Official Journal L 178, pp. 1–115.

perspective of its evolution over time, in conjunction with legislative changes and the case law of the Court of Justice of the European Union, after which we will analyze several cases from the case law of Romanian courts concerning the application of the principle in question and draw relevant conclusions regarding the subject matter of this paper.

2. Historical aspects and legislative developments

The basis for the principle of mutual recognition of judgments within the EU is Article 220 of the Treaty establishing the European Economic Community². The Community's competences in the area of judicial cooperation in civil matters were limited to the mutual recognition and enforcement of court decisions and arbitral awards. The Member States of the European Communities implemented this principle by signing, in 1968, the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters³.

Family law is a branch of civil law⁴, therefore, the provisions of the Convention concerning the recognition and enforcement of court decisions were also applicable in matrimonial matters.

Since 1992, the area of judicial cooperation in civil matters has been incorporated into the third pillar of the European Union, entitled "Justice and Home Affairs" (Title VI), through the Treaty of Maastricht⁵, and until May 1, 1999, when the Treaty of Amsterdam⁶ entered into force, the measures adopted at the European Community level in the field of judicial cooperation in civil matters took the form of conventions signed and ratified by the Member States, pursuant to Article 220 of the Treaty establishing the European Economic Community or, subsequently, Article 293 of the Treaty establishing the European Community. Following the entry into force of the Maastricht Treaty, such conventions could also be drafted by the Council and recommended to the Member States for adoption, in accordance with the constitutional requirements of the Member States, pursuant to Title VI (Article K) of that Treaty⁷.

In family law, the first initiatives undertaken within the new legislative framework focused on divorce, due to growing demands from the public facing the challenges of cross-border divorce, and were launched within the European Group on Private International Law (GEDIP)⁸. On May 28, 1998, the Council of the European Union, pursuant to Article K.3(2)(c) of the Treaty on European Union, adopted the "Convention on Jurisdiction, Recognition, and Enforcement of Judgments in Matrimonial Matters"⁹, taking into account, among other things, the need to introduce modern rules for the recognition and enforcement of judgments on annulment, divorce, and legal separation among the Member States of the European Union, as well as to establish a uniform procedure¹⁰. This convention did not take effect due to the failure to comply with the procedure established under Article 47 and the rapid changes in EU law at that time.

Subsequently, the Council was empowered to adopt legislative acts under the 1997 Treaty of Amsterdam, which amended the Treaty establishing the European Community (first pillar)¹¹, the relevant provision being Article 61(c).

Following the 1999 European Council meeting in Tampere¹², pursuant to point 34 of its conclusions, in civil matters, the European Council was to request the European Commission to submit a proposal for a further reduction of the intermediate measures that were still necessary to enable the recognition and enforcement of a court decision in the requested State. Thus, in a first phase, these intermediate procedures were to be

² Signed in Rome on March 25, 1957; entered into force on January 1, 1958.

³ Published in OJ L 299, December 31, 1972, pp. 32–42; the provisions governing the recognition and enforcement of judgments are set forth in Article 26 et seq. of the Convention.

⁴ Under Romanian law, this area is governed by the Civil Code, adopted by Law No. 287/2009, Book II, "On the Family," Articles 258–534.

⁵ In force since November 1, 1993.

⁶ In force since May 1, 1999.

⁷ Wendy Kennette, *The enforcement of judgements in Europe*, Oxford University Press, Oxford, 2000, p. 5; Peter Stone, *EU Privat International Law*, Edward Elgar Publishing, Cheltenham, 2010, p. 6.

⁸ Alegría Borrás, *Introduction générale. L'évolution du droit de la famille en Europe*, in: Hugues Fulchiron și Christine Bideaud-Garon, *Vers un statut européen de la famille*, Dalloz, Paris, 2014, p. 7.

⁹ The Brussels II Convention can be viewed online at [https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:41998A0716\(01\)&from=BG](https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:41998A0716(01)&from=BG), last accessed on March 27, 2026.

¹⁰ Explanatory report on the 1998 Convention drawn up by the Council of the EU pursuant to Article K.3 of the Treaty on European Union, on jurisdiction, the recognition and enforcement of judgments in matrimonial matters, prepared by Alegría Borrás, published in OJ C 221, July 16, 1998, pp. 27–64.

¹¹ Consolidated version of 1997, published in the Official Journal, C 340 of November 10, 1997, pp. 173–306.

¹² Conclusions of the 1999 Tampere European Council, paras. 28–39, available online at <https://www.consilium.europa.eu/media/21059/tampere-european-council-presidency-conclusions.pdf>, last accessed on March 27, 2026.

eliminated for court decisions in small claims cases and for certain court decisions in family law matters (for example, regarding maintenance claims and visitation rights). At the same time, the European Council called on the Council and the Commission to adopt, by December 2000, a program of measures to implement the principle of mutual recognition of court decisions, as well as to draft new procedural legislation for cross-border disputes¹³.

Accordingly, the Council adopted Regulation No. 1347/2000 on jurisdiction, the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children¹⁴, by incorporating the provisions of the Brussels II Convention, establishing in Article 14 the principle of mutual recognition of decisions without the need for any special procedure and in Article 15 lists the four situations in which a public authority or a court may refuse to recognize a decision issued in another Member State.

On January 15, 2001, the Council drew up the Draft Program of Measures for the Implementation of the Principle of Mutual Recognition of Decisions in Civil and Commercial Matters¹⁵, which also proposed amendments to the Brussels II Regulation. Consequently, this Regulation was repealed by Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility¹⁶, which incorporated the rules on the recognition and enforcement of judgments in matrimonial matters without substantial changes¹⁷.

In 2014, the European Commission assessed how the Brussels IIa Regulation had been applied by the courts of the Member States and drew up a Report addressed to the European Parliament, the Council, and the European Economic and Social Committee¹⁸, in which it proposed reforming this legal instrument with the aim of further developing the European area of justice by simplifying procedures and increasing their efficiency¹⁹.

As a result of this report, the Brussels IIa Regulation was repealed by Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, and on international child abduction²⁰.

We observe that the mutual recognition and enforcement of court decisions within the EU have not undergone any substantive or qualitative changes over time, but only quantitative changes consisting of an expansion of their scope of application.

3. The principle of mutual trust and the free circulation of court decisions

Mutual trust is one of the cornerstones of cooperation in the field of European Union private international law. Based on this principle the rules on the cross-border recognition and enforcement of judgments in the European Union are still subject to simplification²¹.

The recognition and enforcement of decisions rendered in a Member State are based on the principle of mutual trust²². Thus, the principle of mutual trust forms the foundation of judicial cooperation in the European Union, based on a Member State's confidence in the national legal systems of the other Member States. Specifically, Member States operate on the assumption that other Member States respect fundamental rights and the rule of law when issuing judicial decisions, and there is confidence in the administration of justice within the European Union.

This principle represents a concept distinct from the notion of free circulation of judicial decisions, which has two dimensions: the recognition of judicial decisions and their enforcement.

¹³ Paragraph 37 of the conclusions of the Tampere meeting.

¹⁴ The Brussels II Regulation, published in OJ L 160, June 30, 2000, pp. 19–36, in force since March 1, 2001.

¹⁵ Published in the Official Journal of the European Communities No. C 12, January 15, 2001, pp. 1–9, available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001Y0115%2801%29>, last accessed March 27, 2026.

¹⁶ The Brussels IIa Regulation, published in the Official Journal L 338, December 23, 2003, pp. 1–29.

¹⁷ Peter Stone, *op.cit.*, p. 10.

¹⁸ The report is available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52014DC0225>, CELEX 52014DC0225, last accessed on March 27, 2026.

¹⁹ Botond Czellez et al., *Seminar European – Cooperarea dintre statele membre ale UE în vederea soluționării cauzelor civile referitoare la deplasarea sau reținerea ilicită a unui copil* – Manual, Sitech Publishing House, Craiova, 2018, pp.5-6.

²⁰ Effective as of August 1, 2022.

²¹ Marek Zilinsky, *Mutual Trust and Cross-Border Enforcement of Judgments in Civil Matters in the EU: Does the Step-by-Step Approach Work?*, in *Netherlands International Law Review* volume 64/2017, pp. 115-139, at <https://link.springer.com/article/10.1007/s40802-017-0079-0>, last time consulted on 28.03.2026.

²² See recitals (16) of the Brussels II Regulation, (22) of the Brussels IIa Regulation, and (55) of the Brussels IIb Regulation.

The principle of mutual trust subsequently gave rise to the principle of mutual recognition of judicial decisions, as the cornerstone for the creation of a genuine judicial area, endorsed by the 1999 Tampere European Council²³, as well as the principle of automatic recognition of judicial decisions, established by the Brussels IIa Regulation²⁴.

In light of the historical developments analyzed in section 2, an initial observation must be made regarding the scope of application of the Brussels II Regulation, namely that, in matters of parental responsibility, the Regulation applies only to the common children of married parents and does not apply to children whose parents are not married or to the children of a single parent, as can be easily seen from Article 1 of this legal instrument.

Although the Brussels II Regulation provided for the recognition of court decisions “without recourse to any special procedure,” it nevertheless established the exequatur procedure for the enforcement of decisions issued in another Member State that also contain provisions regarding parental authority²⁵.

In matrimonial matters, a divorce decision, without any ancillary provisions, does not contain enforceable obligations. Thus, the decision is required solely for the purpose of being submitted to the competent authorities to update the civil status records regarding the litigant parties. Therefore, based on the principle of mutual recognition of court decisions, it is sufficient for the relevant authority to recognize the divorce decision and make the corresponding changes in the civil registry records.

The situation becomes more complicated when the divorce decision includes other provisions, such as those determining parental authority over the minor, the minor’s residence, the visitation rights for the non-custodial parent and the minor, maintenance obligation, the spouses’ surnames following the divorce, the division of marital property, or other property-related consequences of the dissolution of the marriage. For some of these ancillary claims it is necessary to follow the exequatur procedure, which involves declaring the decision enforceable within the territory of the Member State of the court hearing the case.

The exequatur procedure should not be confused with the procedure for authorizing enforcement under the national law of the Member States; the former aims to confer enforceability within the territory of one Member State, on a decision rendered in another Member State, whereas the latter is a purely internal procedure and constitutes a stage in the enforcement process²⁶.

The purpose of exequatur is to confer enforceability in the Member State of the court seised, on a decision rendered in another State. In effect, through exequatur, the foreign decision also acquires the force of *res judicata* in the State of the court seised. With certain exceptions, a foreign court decision cannot have the force of *res judicata* before obtaining exequatur or recognition²⁷.

The Brussels IIa Regulation extended the scope of the principle of mutual recognition to all children, regardless of whether the parents are married or not and regardless of whether the children are the biological children of one of the spouses. At the same time, it eliminated the exequatur procedure for decisions concerning visitation rights and the return of the child.

The Brussels IIb Regulation has completely eliminated the exequatur procedure in matters of parental responsibility²⁸, including the exercise of parental authority, thereby effectively establishing the principle of automatic mutual recognition of court decisions.

From the perspective of the case law of the Court of Justice of the EU, the principle of mutual trust made it possible to establish a mandatory system of jurisdiction, which all courts are required to respect, and the corresponding waiver by Member States of their domestic rules on recognition and enforcement in favor of a simplified mechanism for the recognition and enforcement of decisions rendered in proceedings concerning parental responsibility²⁹.

The recognition of a decision must have the effect of conferring upon the decision the authority and effectiveness it enjoys in the State where it was rendered³⁰.

²³ See recital (2) of the Brussels IIa Regulation.

²⁴ See recital (54).

²⁵ See Article 14, paragraphs (1) and (3), and Article 21, paragraph (1).

²⁶ Evelina Oprina, *Tratat teoretic și practic de executare silită. Volumul I. Teoria generală și proceduri execuționale*, Editura Universul Juridic, București, 2013, p. 226.

²⁷ Ion P. Filipescu, *Drept Internațional Privat*, ediție revăzută și completată, Actami Publishing House, Bucharest, 1999, p. 512; Augustin Fuerea, *Drept internațional privat – ediția a II-a revăzută și adăugită*, Universul Juridic Publishing House, Bucharest, 2005, p. 234.

²⁸ See Article 34(1).

²⁹ Judgment of the CJEU of July 15, 2010, Case C-256/09, Bianca Purucker v. Guillermo Vallés Pérez, EU:C:2010:437, para. 72.

³⁰ Judgment of the CJEU of February 4, 1988, Case 145/86, Horst Ludwig Martin Hoffmann v. Adelheid Krieg, EU:C:1988:61.

The term “enforceable” in the first paragraph of Article 31 of the Brussels Convention of September 27, 1968, on jurisdiction and the enforcement of decisions in civil and commercial matters must be interpreted as referring exclusively to the enforceability, from a formal standpoint, of foreign decision and not to the circumstances in which those decisions may be enforced in the State of origin³¹. In other words, the enforcement of a decision rendered in a Member State will, in practice, be carried out in accordance with the domestic enforcement procedures of each Member State. The Brussels Convention aims to facilitate the free circulation of court decisions by establishing a simple and expeditious procedure in the contracting state where enforcement of a foreign decision is sought. This *exequatur* procedure constitutes an autonomous and comprehensive system³², and the enforceability of the decision in the State of origin is a prerequisite for the enforcement of that decision in the requested State³³.

Although these conclusions were formulated in connection with the interpretation of the concepts of recognition and enforcement of decisions contained in the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, we consider that, for the same reasons, they are also applicable in matrimonial matters.

Therefore, in matters of divorce, the general rule is the free circulation of court decisions, with two categories of exceptions. The first category, involving legal limitations, covers cases in which recognition of a decision may be refused:

- where recognition is manifestly contrary to public policy in the Member State in which recognition is sought;
- where the document instituting the proceedings or an equivalent document was not served on the defendant who did not appear in sufficient time to enable him to arrange for his defense, unless it is established that the defendant has accepted the decision unequivocally;
- where it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought; or
- where it is irreconcilable with an earlier decision given in another Member State or in a third State in proceedings between the same parties, provided that the earlier decision fulfills the conditions necessary for its recognition in the Member State in which recognition is sought.

The second category concerns divorce decisions which, in addition to provisions regarding the dissolution of the marriage, the determination of parental authority, and visitation rights, also rule on other non-property or property-related effects of the dissolution of the marriage. In this situation, if no EU regulation has been adopted for such an ancillary matter to apply the principle of automatic recognition of judgments, the interested party may seek *exequatur* or obtain partial enforcement pursuant to Article 53 of the Brussels IIa Regulation.

4. Case study

For this section, I reviewed 50 relevant decisions issued by Romanian courts between August 1, 2022, and March 25, 2026, most of which granted the request for recognition of a divorce decision, while only a few dismissed the request as lacking interest. Thus, given the repetitive nature of these decisions, I selected three recent representative cases to examine how these courts have interpreted and applied the principle of automatic recognition of court decisions in divorce cases.

In the first case³⁴, the Caraş-Severin Tribunal granted the petition filed by the plaintiff MV, against the defendant CF, for the recognition in Romania of the divorce decision issued by the Judenburg District Court in Austria, which became final on January 11, 2023, confirming the agreement of both parties to dissolve the marriage. The plaintiff based his claim on the provisions of Article 1095 of the Romanian Code of Civil Procedure³⁵ and did not indicate that the Romanian authorities responsible for updating the civil registry in accordance with the new civil status had refused to recognize the divorce decision.

³¹ Judgment of the CJEU of April 29, 1999, Case C-267/97, *Eric Coursier v. Fortis Bank and Martine Bellami*, EU:C:1999:213.

³² *Ibidem*, para. 25.

³³ *Ibidem*, para. 23; Judgment of the CJEU of April 28, 2009, Case C-420/07, *Meletis Apostolides v. David Charles Orams and Linda Elizabeth Orams*, EU:C:2009:271, para. 66.

³⁴ Judgment No. 781 of November 11, 2025, rendered by the Caraş-Severin Tribunal in Case No. 1133/115/2025, unpublished.

³⁵ Law No. 134/2010 on the Code of Civil Procedure, republished in the Official Gazette of Romania, Part I, No. 247 of April 10, 2015

Since the divorce decision was rendered by a court of an EU Member State, namely Austria, the Romanian court erroneously held that the provisions of Article 2567 of the Romanian Civil Code³⁶ and Articles 1095 and 1096 of the Romanian Code of Civil Procedure, concerning the exequatur procedure, are applicable, given the direct applicability of Articles 30 et seq. of the Brussels Ia Regulation, as well as the provisions of Article 1094 of the Romanian Code of Civil Procedure, according to which “for the purposes of this title, the term ‘foreign judgments’ refers to documents of contentious or non-contentious jurisdiction issued by courts, notaries, or any competent authorities of a non-member state of the European Union.”

Consequently, the provisions of Article 30 et seq. of the Brussels IIb Regulation apply to the plaintiff’s application. However, the plaintiff should have demonstrated an interest in filing the application for recognition. The competent Romanian authorities are required to recognize divorce decisions issued in a Member State for the purpose of making the necessary changes in the civil registry, without requiring the applicant to follow any special procedure and, only in the event of a refusal to recognize the decision, the plaintiff has the option to challenge this refusal before a court and to request a finding that there are no grounds for refusing the recognition of the decision and, consequently, to demand the recognition of the divorce judgment throughout the entire territory of the state. Since the plaintiff has failed to establish the prerequisite of a refusal to recognize the decision, his action lacks interest. Therefore, the proper course of action would have been for the court to raise, on its own motion, the defense of lack of interest and to dismiss the claim as lacking interest.

The second case³⁷ under consideration concerns the petition filed by the plaintiff HF, against the defendant GRF, seeking a declaration that there are no grounds for refusing the recognition of the Court of Reggio Emilia’s decision, local tribunal in the Italian Republic, which established parental authority over the minor HJ and the visitation schedule. Although it is not a divorce decision, the case is significant from the perspective of applying the principle of automatic mutual recognition of decisions provided for in the Brussels IIb Regulation.

The first instance court correctly raised the objection of lack of interest in filing the claim and dismissed the claim as lacking of interest, pursuant to Article 30(1) and (2) of the Brussels IIb Regulation. However, on appeal, the appellate court upheld the appeal, annulled the judgment of the tribunal, dismissed the objection of lack of interest as unfounded, and granted the appellant-plaintiff’s claim, recognizing the divorce decision rendered by the Tribunal of Reggio Emilia within the territory of Romania.

The main argument of the appellate court was that the appellant-plaintiff’s interest in filing the application need not be linked to a specific situation in which she encountered actual obstacles to the recognition of the decision in question with the Romania’s authorities, since the appellant-plaintiff sought recognition of the foreign decision in order to obtain travel documents for the minor.

We consider that the reasoning provided by the Court of Appeal is unfounded, since the interest in bringing an action must be specific, legitimate, personal, established and existing, in accordance with Article 33 of the Romanian Code of Civil Procedure. In the present case, the appellant-plaintiff has not demonstrated that she approached the competent Romanian authorities to request the issuance of the minor’s travel documents, and they reportedly refused to issue the documents.

If we were to accept the argument of the Court of Appeal, the provisions of Article 30 of the Brussels IIb Regulation would become ineffective, since the parties concerned would be required to resort to the exequatur procedure in all cases involving a judgment rendered in another Member State.

Finally, by Judgment No. 1188³⁸ of November 10, 2025, the Prahova Tribunal upheld the objection of lack of interest raised ex officio and dismissed, as lacking of interest, the claim brought by the plaintiff SI against the defendant DO, seeking recognition of the divorce decision rendered by the Court of Zaragoza, in Spain.

In its reasoning, the court found that the provisions of Article 21(1) (1) of Regulation 2201/2003 and Article 1094 of the Romanian Code of Civil Procedure are applicable, and concluded that the absence of grounds for refusing a court decision must not be formally established by a court ordering the recognition of the decision, but rather the interested party must file a special claim with the court to bring to the court’s attention the existence of valid grounds for refusal.

Furthermore, regarding the refusal by a Romanian authority to recognize the validity of the court decision at issue, the court held, on the one hand, that this had not been proven by the plaintiff. On the other hand, it

³⁶ Law No. 287/2009 on the Civil Code, republished in the Official Gazette of Romania, Part I, No. 505 of July 15, 2011.

³⁷ Decision 20A of February 11, 2026, issued by the Galați Court of Appeals in Case No. 1025/91/2025, unpublished.

³⁸ Judgment No. 1188 of November 10, 2025, rendered by the Prahova Tribunal in Case No. 1467/105/2025, unpublished.

found that even if such a refusal were proven, it would not justify the party's interest in seeking recognition of the court decision through the procedure provided for by the Romanian Code of Civil Procedure, given the mandatory application of Regulation 2201/2003, and a public official's refusal to recognize such a decision may constitute a breach of official duties, which the interested party may report to the competent authorities.

We agree with the Romanian court's reasoning that the exequatur procedure governed by domestic law does not apply to the plaintiff's application, and that the plaintiff must demonstrate an interest in filing the application, namely the specific refusal by a Romanian authority to recognize the judgment rendered in a Member State, but the Brussels IIb Regulation is applicable as of August 1, 2022, not the Brussels IIa Regulation.

5. Conclusions

From an analysis of legislative developments, we have observed that the recognition by one EU Member State of decisions rendered in other Member States formed the basis of early judicial cooperation in civil matters, grounded in the principle of mutual trust, but subject to the exequatur procedure. Over time, the EU legislature has gradually eliminated the exequatur procedure in several areas, such as matrimonial matters and parental responsibility, with the rule now being that decisions rendered in one Member State are recognized in the other Member States without the need for any special procedure, including the exequatur procedure. Consequently, based on the principle of mutual trust originally regulated in the Treaty establishing the European Economic Community and in the case law of the Court of Justice, the European Union has established the principle of automatic mutual recognition of court decisions.

Based on this principle, we have seen that there are two categories of exceptions: the first consists of the grounds for refusal of recognizing foreign decisions, listed in Article 38 et seq. of the Brussels IIb Regulation, while the second category refers to the situation where the judgment whose recognition is at issue includes both the dissolution of the marriage and solutions on ancillary matters concerning the pecuniary and non-pecuniary effects of the divorce. In the latter case, with respect to ancillary matters that do not fall within the scope of parental responsibility or other matters for which EU legislation has not established, by regulation, the application of the principle of automatic mutual recognition of court decisions, the interested party will have to resort to the national exequatur procedure or may invoke, before the competent authorities, only the partial recognition of the decision, with respect to the provision dissolving the marriage and the solutions pronounced regarding parental responsibility.

According to the Romanian case law reviewed, no plaintiff has invoked, in support of their claim, the refusal of public authorities—in any form—to recognize divorce decisions rendered in another Member State, resorting to the exequatur procedure only as a precautionary measure. Furthermore, based on the reasoning set forth in the analyzed jurisprudence, we observe that the courts either failed to examine the provisions of the Brussels IIb Regulation or applied them incorrectly, contrary to the purpose for which they were enacted—namely, to facilitate the free circulation of judgments— but these issues cannot be remedied through legislative changes, but only through individual study or as part of continuing professional development.

We therefore conclude that the free circulation of divorce decisions is effective within the European Union, from the perspective of applicable law, as interpreted by the Court of Justice of the European Union, subject to the limitations set forth above, so that, in future efforts, we will turn our attention to examining the grounds for refusing to recognize a divorce decision and to a comparative analysis of these grounds with those of the exequatur procedure under national law.

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