

# Adoption of new rules to better protect children caught in cross-border parental disputes

## **What is the Brussels IIa Regulation?**

The Brussels IIa Regulation is the cornerstone of EU judicial cooperation in cross-border matrimonial matters (divorce, separation, marriage annulment) and matters of parental responsibility, including custody and access rights, and international child abduction. The Regulation has applied in all Member States, except Denmark, since 1 March 2005.

With the rising number of international families, now estimated at 16 million, cross-border disputes on family matters have increased in the EU. There are about 140,000 international divorces per year in the EU. There are around 1,800 cases of parental child abduction within the EU every year.

The Council adopted today improvements to the EU rules (“Brussels IIa Regulation”) that protect children in the context of cross-border disputes relating to parental responsibility and child abduction. The new rules (“Brussels IIa Recast Regulation”) make court proceedings clearer, faster and more efficient. They are based on the [proposal made by the European Commission in 2016](#).

## **Which cases does the Regulation apply to?**

The Regulation applies only in cross-border cases within the EU:

- It sets out rules determining which country’s courts are responsible for dealing with matrimonial matters, parental responsibility and child abduction in disputes involving more than one country.
- It ensures that judgments issued in one EU country are recognised and enforced in another EU country.

The Regulation focusses on settling procedural aspects of cross-border cases only.

Member States retain the sole responsibility of any substantive rules, for example, on how to exercise access rights or on which criteria apply when attributing custody rights to a parent.

## **What are the main changes adopted today?**

Since its entry into application in 2005, the Brussels IIa Regulation has worked well, apart from some issues in the area of parental responsibility. The new Brussels IIa Recast Regulation will improve matters in this area. The new rules will enter into force 20 days after publication in the Official Journal.

The new rules aim to further enhance cross-border judicial proceedings on the basis of mutual trust between EU countries. By removing the remaining obstacles to the free movement of decisions, simplifying the procedures and enhancing their efficiency, the best interests of the child will be better protected. The new rules will bring legal certainty, reduce costs and, most importantly, limit the length of proceedings in international child abduction cases, for the benefit of both children and their parents.

The changes concern mainly proceedings related to parental responsibility matters and international child abduction and will have a positive impact on all procedures involving children by:

- *Settling cross-border child abduction cases faster*

The deadlines applying to different stages of the child return procedure will be limited to a maximum period of 6 weeks for the first instance court and 6 weeks for each court of appeal. Also Central Authorities will process applications for return faster.

- *Ensuring the child is heard*

Children who are capable of forming their own views, will be given the opportunity to express these views in all proceedings concerning them. This will apply to matters of parental responsibility and international child abduction cases. Determining how and by whom the child is heard is a matter left to national law.

- *Ensuring effective enforcement of decisions in other Member States*

With the new rules, the *exequatur*, an intermediate procedure required to obtain cross-border enforcement, will be abolished for all decisions.

Under the new rules, enforcement can be rejected or suspended largely under the same conditions in all Member States, increasing legal certainty for all citizens and in particular the children concerned.

- *Improving cooperation between Member States' authorities*

Good cooperation between the Central Authorities of different Member States in handling child cases is an indispensable prerequisite for mutual trust. The new rules promote better cooperation between Central Authorities, which are the direct point of contact for parents. Also, child welfare authorities will be better integrated into this cross-border cooperation.

The new rules also clarify the sensitive issue of the placement of a child in another Member State, and set up a clear procedure to obtain consent from the Member State where the child is to be placed.

- *Setting out clearer rules on the circulation of authentic instruments and agreements*

Considering the growing number of Member States which allow out-of-court agreements on legal separation and divorce or on matters of parental

responsibility, the new rules will facilitate the circulation of the instruments and agreements.

### **What are the main benefits of the new rules for children and their parents?**

The new rules ensure legal clarity, reduce costs related to proceedings and legal assistance and, most importantly, shorten the length of proceedings, to limit the negative impact on the children as much as possible.

- *More efficient return proceedings*

Currently, average return proceedings for cross-border parental child abduction take up to **24 weeks**, and it can also be much longer in some cases, especially where Member States have several levels of appeal.

With the new rules, return proceedings before a court will be capped to a maximum period: 6 weeks for the first instance court and 6 weeks for each court of appeal. In addition, the Central Authority will have to efficiently process the application, with the new rules introducing a 5-day deadline to confirm receipt of the application.

In order to speed up enforcement, the court that issued the return decision will be able to declare it provisionally enforceable. If the return decision cannot be enforced within 6 weeks, the parent will be informed about the reasons for the delay. In cases where children need to be placed in a foster family or an educational institution in another Member State, the receiving Member State will have to approve or refuse the placement within 3 months.

- *Reduced costs*

Citizens will avoid the heavy costs usually linked to court proceedings. For example, in case of return proceedings, parents will be invited to engage in mediation. This saves possible litigation costs which represent on average **€ 2,200** for the entire proceedings. The new recast Regulation now also abolishes *exequatur* proceedings, which involve costs of **around € 1,100 to 4,000** per case in some Member States. In addition, speedier enforcement will allow families to save money for the work of a specialised lawyer estimated, depending on the Member State, at between **€ 1,000 and 4,000** per every additional 10 working hours.

- *Clearer rules*

The new rules will, for example, clarify the procedure for placing a child in a foster family or an educational institution abroad and ensure that such requests are handled quickly. Currently, it is unclear in which cases the receiving State needs to give its consent, and which documents have to be submitted.

Another clarification will make it possible for courts and authorities to request social reports not only on children, but also on adults or siblings if these are of relevance in child-related proceedings. Also child welfare authorities will be able to obtain the necessary information from other Member States through the Central Authorities. The new rules set out minimum

requirements for a request for a social report and a 3-month time limit for the requested authority to provide the report.

### **What happens if a parent abducts his or her child ?**

If an international couple splits up, the temptation for one of the spouses to return to his or her home country with the child(ren) can be high. If both parents have joint custody for the child, one or other parent taking the child with them without permission violates the rights of custody of the left-behind parent and puts the best interests of the child at risk. The new Brussels IIa Recast Regulation, like the current rules, prevents moving children across borders by establishing a mechanism for the prompt return of the child to the Member State where the child used to live before the abduction. This mechanism is largely based on the return mechanism of the 1980 [Hague Convention](#), which the Regulation supplements.

These return proceedings take place in the Member State to which the child was abducted. If the return is ordered and the child returns, the aim is achieved and the custody case, if the parents wish so, can be heard by the courts of the Member State of the child's habitual residence.

If the Member State the child was abducted to refuses the return, an additional procedure comes into play to give a final say on the return of the child to the court of the Member State in which the child lived before the abduction.

### **For more information**

[Factsheet](#)