



The proposed new rules of the Brussels IIa Regulation: Questions & Answers

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Today, the European Commission is proposing improvements to the EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction.

1. 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, access rights and parental child abduction. The Regulation has applied in all Member States except Denmark since 1 March 2005.

Cross-border disputes on family matters have increased in the EU due to the rising number of international families, which is now estimated at 16 million. The number of international divorces now represents around 140,000 per year in the EU. The number of children born to unmarried international couples has also increased. There are around 1,800 cases of parental child abduction within the EU every year.

When the parents live in different EU countries, complications can arise at a time that is already difficult for both parents and children.

To ensure things go as smoothly as possible in the context of parental responsibility, the [Brussels IIa rules](#):

- determine which country's court is responsible for divorce, custody and access proceedings;
- ensure judgments issued in one EU country are recognised and enforced in another country;
- set out a procedure to settle cases where a parent takes a child from one EU country to another without the other parent's agreement.

2. Which cases does the Regulation apply to?

The Regulation applies only in cross-border cases within the EU. This means that the rules which determine the competent court apply to international couples composed of spouses or unmarried parents who are habitually residing in different Member States; have different nationalities; or have the nationality of a Member State but are habitually residing in another Member State. In recognition and enforcement cases, the Regulation applies if a judgment from one Member State needs to be recognised and enforced in another Member State.

The Regulation contains rules to settle only procedural aspects of cross-border proceedings. Member States retain the sole responsibility of any substantive rules, for example, on how access rights should be exercised or which criteria apply for the attribution of custody rights to a parent.

3. What are the objectives of the changes proposed today?

For more than ten years since its entry into application, the Brussels IIa Regulation has worked well, apart from several issues in the area of parental responsibility. These matters will be improved by the proposed Commission update.

The main objectives of the changes are to further develop cross-border justice proceedings which requires mutual trust between EU countries' judicial systems. It will be possible by removing the remaining obstacles to the free movement of judicial decisions with more mutual recognition and to better protect the best interests of the child by simplifying the procedures and enhancing their efficiency. The new rules will bring legal certainty, reduce costs and, most importantly, limit the length of proceedings in parental child abduction cases, for the benefit of both children and their parents.

4. What are the changes proposed today?

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

- **Improving procedures to settle cross-border parental child abduction faster**

The deadlines applied to different stages of the child return procedure will be limited to a maximum

period of 18 weeks (maximum six weeks for the receiving Central Authority to process the application, six weeks for the first instance court, and six weeks for the appellate court). A decision on return will be appealable only once, and the judge will have to consider whether a judgment ordering the return of the child should be enforceable in the meantime.

In full respect of the structure of the national legal systems, it will be ensured that the parental child abduction cases are heard by a limited number of courts so that judges develop the necessary expertise. Experience in several Member States has shown that this leads to quicker decisions which are more easily accepted by the parents.

- Ensuring the child is heard

A child who is capable of forming his or her own views will be guaranteed an opportunity to express these views in all proceedings concerning them. This will apply in particular to proceedings on custody and access, and on the return of children if they were abducted by one of their parents.

- Ensuring enforcement of decisions in other Member States

Currently, parents often need to apply for a decision on custody or access to be enforced in another Member State.

With the new rules, the *exequatur*, an intermediary procedure required for the enforcement of a judgment in another country, will be abolished. Where enforcement has not yet occurred after six weeks, the court will inform the requesting Central Authority in the Member State of origin or directly the applicant about the reasons for the lack of timely enforcement. Sometimes such delays can be triggered by exceptional circumstances, such as the serious illness of a child. In addition, in order to speed up enforcement, the court that issued the judgment will be able to declare it provisionally enforceable.

- Improving cooperation between Member States' authorities

The good cooperation between Central Authorities in handling child cases is an indispensable prerequisite for mutual trust between the authorities of different Member States. The new rules will promote better cooperation between Central Authorities as they are the direct point of contact for parents and play a key role in supporting the judges in applying the rules. Also, child welfare authorities will be better integrated in cross-border cooperation.

5. What are the main benefits of the new rules for parents and their children?

The new rules ensure legal clarity, reduce costs associated with proceedings and legal assistance and, most importantly, limit the length of proceedings, knowing that time is of essence in child related cases.

More efficient 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 will be capped to a maximum period of **18 weeks**: maximum 6 weeks for the Central Authority to process the application; 6 weeks for the first instance court; 6 weeks for the appellate court.

In order to speed up enforcement, the court that issued the return decision will be able to declare it provisionally enforceable. If the decision could not 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 family or an educational institution in another Member State, the receiving Member State will have to approve or refuse the placement within 8 weeks.

Reduced costs

Citizens will avoid the heavy costs usually linked to such procedures. For example, in case of return proceedings, parents will be invited to engage in mediation. This saves possible litigation costs which represent **€ 2,200** on average for the entire proceedings. The proposal now also abolishes *exequatur* proceedings, which incur 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.

Clear rules

The new rules will, for example, clarify the procedure for placing a child in a foster family or an 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 possible for courts and authorities to request reports 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 rule establishes minimum requirements for a request for a social report and an 8-week time limit for the requested authority to respond.

6. What happens if a child is abducted by a parent?

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 violates the rights of custody of the left-behind parent and puts the best interests of the child at risk. The Regulation 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 complements.

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

If return is refused by the Member State the child was abducted to, 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.

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