European Commission

Helping parents and children involved in cross-border family proceedings

Fact sheet | June 2019

Věra Jourová
Commissioner for Justice, Consumers and Gender Equality

Directorate-General for Justice and Consumers

The increase in cross-border disputes in family matters in the EU is a reflection of the rising number of international families, which is now estimated at 16 million.

Cross-border judicial cooperation is therefore crucial to give children a secure legal environment to maintain relations with parents or other family members who may live in different EU countries.

To ensure things go as smoothly as possible, the Brussels IIa Regulation determines since 2005 the court responsible to decide on the custody and access rights of children, the recognition and enforcement of judgments between EU countries and how to settle cases of child abduction.

The new rules of the Brussels IIa recast Regulation will make things as smooth as possible for parents and children affected by cross-border family proceedings by:

- settling cross-border child abduction cases faster
- better protecting children
- allowing children to speak up
- improving international cooperation

Settling cross-border child abduction cases faster

Under the 1980 Hague Child Abduction Convention, it is wrongful for a parent to leave with a child to another Member State without the agreement of the other parent who also has rights of custody. It establishes that the courts in the country where the abducted child is taken must order the immediate return of the child. With the updated rules, the Regulation will ensure that the other parent obtains a decision on the child's return faster than now:

• The Central Authority of the Member State to where the child was abducted, must confirm receipt of the application **within 5 days** and process it **as quickly as possible**.

• **A separate six-week time limit** applies to the proceedings both before the first instance court and the court of appeal.

• The judge will also have to consider whether a decision ordering the return of the child should already be provisionally enforceable before it becomes final.

Example: After her relationship with Javier ended, Victoria leaves Spain and returns to Germany. She takes their daughter, Felicia with her, without informing the father of their whereabouts and without his permission, although they have joint custody. With the assistance of the Spanish Central Authority Javier sends an application to Germany for the return of the child.

The German Central Authority locates the mother and child and helps Javier find a lawyer who takes the case to court. With the new rules, the return order must be issued no later than six weeks after the court proceedings have started. Victoria can appeal before the Court of Appeal which also has to decide within six weeks. The Regulation also encourages parents to mediate in order to find an amicable solution while still respecting the six-week time limit.

Protective measures

Sometimes, a child might be at grave risk of harm or may otherwise face a difficult situation if returned to the Member State where he or she was living before. In such cases, the new rules will make it possible for the court deciding on the return of the child to order urgent protective measures which can also "travel with the child" when the child goes back to the country where he or she used to live before.

Example: After moving out and leaving their 5-year-old son Marco in the care of her husband Per for almost a year, Maria finally comes back, but only to take their son to return to Italy. Per remains in Sweden. Per applies to the Italian court for the boy's return to Sweden. He travels to Italy to see Marco, but Maria blocks all contact between them. Marco, who is very much attached to his father, misses him a lot. Therefore, the Italian court provisionally orders contact to be re-established between Marco and his father to prevent further harm to Marco. This contact order applies while the return proceedings are pending in Italy, but also after the return of Maria and Marco to Sweden – until the Swedish court lifts or changes the order.

Letting the child speak

If a decision is made without hearing the child, there is a risk that the decision may not take the best interest of the child into account to a sufficient extent.

With the new rules, children who are capable of forming their own views **must be given an opportunity to express them** in all proceedings affecting them.

This would include in particular the right to express their opinion during proceedings on custody and access, or on return, if the child has been abducted. Furthermore, Member States will also be obliged to mutually recognise the different national systems for hearing children.

Example: Johan is 7 years old and lives in the Netherlands with his parents. When his parents decide to separate, they cannot agree on who will have custody and where Johan will live. During the Dutch court proceedings, Johan is heard by a social worker who reports to the court. The court decides to grant sole custody to Nicholaas, Johan's father. But in the meantime, Johan's mother moved back to Germany, her home country, with Johan. Nicholaas wants the Dutch custody order to be enforced in Germany. However, in Germany, the hearing procedure is different than in the Netherlands: German judges hear children directly during proceedings.

Thanks to the new rules, the Dutch Court will have to specify in its decision as well as in the accompanying certificate if the child was heard and whether or not his or her wishes were taken into account when making the decision. In return, the German courts cannot refuse to recognise and enforce the Dutch order just because the hearing of the child was carried out differently in the Netherlands.

Enforcement of decisions in other EU countries

Saving time and costs

Parents will save time and costs as the requirement of *exequatur* (intermediate procedure) will be abolished for all decisions covered by the Regulation. A decision from one Member State no longer needs to be declared enforceable (to be "validated") by the courts of another Member State before concrete measures can be taken for the actual enforcement. The new rules abolish the *exequatur* procedure for all decisions covered under the Regulation. Abolishing the *exequatur* would allow European citizens in cross-border litigation to save the biggest part of the current procedural costs (on average € 2,200 to be paid for court proceedings) and prevent delays of several months in some cases.

Authorities and courts competent for enforcement

A parent will request enforcement with the court (or authority competent for enforcement under national law) in the Member State of enforcement. The authorities competent for enforcement may make the necessary arrangements for the exercise of rights of access while respecting the essential elements of the decision.

Example: An Italian order grants Roberto rights of access to his son Max who is in Germany. Roberto wants the order enforced in Germany. However, in Germany, the mere attribution of rights of access "from Friday to Sunday" cannot be enforced. As the Regulation obliges Member States to give the same effect to a decision as in the country in which it was issued, the enforcement court in Germany will make the necessary arrangements to organize the rights of access, making the decision more concrete and precise by determining the exact time and place where the child has to be handed over at the beginning and end of the access period.

Cooperation between national authorities

Enhancing cooperation

Parents, courts and child welfare authorities can request the assistance of Central Authorities. The new rules will promote more effective cooperation between them, and between Central Authorities across borders.

Example: A Lithuanian court has to decide the case of an orphan living in Lithuania, who is a Spanish national. The grandmother, who could potentially become a carer for the child, lives in Spain. The Lithuanian court can ask for the assistance of the Spanish Central Authority to collect information on any previous decisions made by the Spanish courts with respect to the child, and can request a social report on whether the grandmother would be an appropriate carer for the child from the Spanish authorities.