



Helping parents and children involved in cross-border family proceedings

The Brussels IIa Regulation
What will change with the new rules?



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Cross-border disputes on family matters have increased in the EU in line with the rising number of international families, which is now estimated at 16 million and increasing.



When families have disputes or international couples separate, complications can arise at a time that is already difficult for both parents and children involved.

The added legal complexity of cross-border legal disputes accentuates these difficulties. Cross-border judicial cooperation is therefore crucial to give children a secure legal environment to maintain relations with both parents or guardians who may live in different EU countries.

To ensure things go as smoothly as possible, the [Brussels IIa Regulation contains provisions to:](#)

- 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 EU 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.

Following analysis of the current rules, the Commission has proposed to update the Brussels IIa Regulation to make life as trouble-free as possible for parents and children affected by cross-border family proceedings.

Settling cross-border parental child abduction faster

Where a parent leaves with their child to another Member State without the agreement of the other parent who also has rights of custody, this is considered wrongful under the [1980 Hague Child Abduction Convention](#). The courts in the country where the child was abducted to 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 even more quickly than at present:**

- The Central Authority in the State where the child was abducted to must process the application **within six weeks**.
- **Another six-week time limit** applies to the proceedings before the first instance court and the appellate court, respectively.
- In addition, the number of possibilities to **appeal** a decision on return will be **limited to one**. The judge will also have to consider whether a judgment ordering the return of the child should be enforceable in the meantime.



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

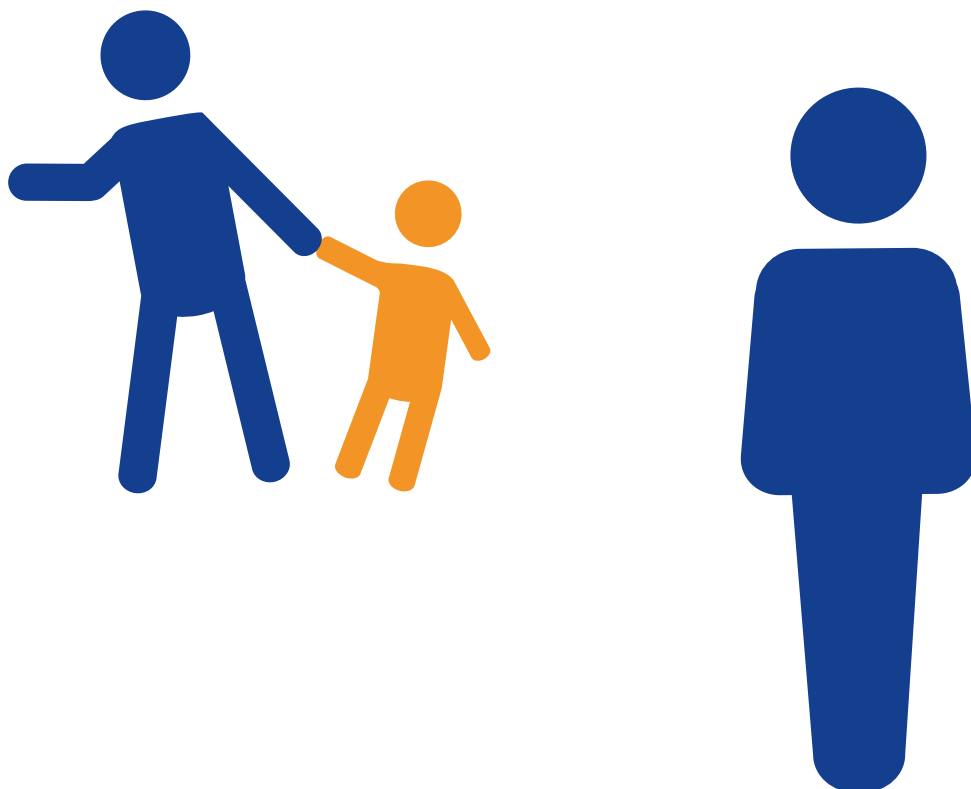
The German Central Authority locates the mother and child and helps him to find a lawyer who takes the case to court within six weeks at the latest. With the new rules, the return order must be issued no later than six weeks after the court proceedings had started. Victoria can appeal it once before 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 might otherwise be placed in an intolerable 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 in the care of her husband for almost a year, Maria finally comes back, but only to take her son to return to Italy. She leaves her husband behind in Sweden. Per, the father, applies to the Italian court for the boy’s return to Sweden. He travels to Italy to see the boy but Maria blocks all contact between them. Marco, the little boy, who is very much attached to his father, misses him terribly. 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

Currently, a frequently raised ground of non-recognition is the fact that the judgment was given without the child having been given an opportunity to be heard or the fact that Member States have different criteria for hearing children. If a judgment is given without having heard the child, there is a danger that the judgment may not take the best interest of the child into account to a sufficient extent. 78% of the respondents to the public consultation acknowledged the important role of the hearing of the child in avoiding problems relating to the recognition and enforceability of judgments.

With the new rules, a child who is capable of forming his or her own views **must be given an opportunity to express these views** in all proceedings concerning him or her.

This would include in particular the right to express their opinion during the proceedings on custody and access, or return, if the child was abducted by one of his or her parents. 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 the parents decide to separate, they cannot agree on who shall have custody and where Johan shall live. During the Dutch court proceedings, Johan is heard by a social worker who reports to the court. The court then grants sole custody to Nicholaas, Johan's father. During the proceedings, however, the mother, Johanna already moved to her home country Germany with Johan. Therefore Nicholaas wants to enforce the Dutch custody order in Germany. But in Germany, the judges normally hear children themselves during proceedings.

Now with the new rules, the Dutch Court will be obliged to motivate in the judgment itself 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. And the German courts cannot refuse to recognise and enforce the Dutch order just because in the Netherlands, the hearing of the child was done differently.

Enforcement of judgments in other EU countries

Saving time and costs

Parents will save time and costs as the requirement of exequatur (intermediary procedure) will be abolished for all judgments covered by the Regulation. A judgment from one Member State no longer needs to be declared enforceable (to be “validated”) by the courts of another Member State before concrete measures are to be taken for the actual enforcement. Such abolition of exequatur has already been realised in a number of areas, including in the family law area (access rights, certain return orders, maintenance obligations).

Now the new rules propose to abolish the exequatur procedure for all decisions covered by the Regulation’s scope. The abolition of exequatur would allow the European citizens engaged in cross-border litigation to save the major part of the current costs of the procedure (on average € 2,200 to be paid for court proceedings) and eliminate delays, which in some cases take up to several months.

Maintaining safeguards

The defendant parent will have remedies at his or her disposal to prevent a judgment given in one Member State from taking effect in another Member State in exceptional circumstances. But even if the judgment as such takes effect, the Regulation defines in which situations enforcement could exceptionally be opposed, such as due to an important change of circumstances.

Example: Alex has taken his daughter Viola from the Netherlands to Ireland without his ex-wife’s permission. The Irish court orders Viola’s return to the Netherlands but Alex refuses to take Viola back to the Netherlands. When the Irish authorities want to enforce the return, Alex produces a medical certificate indicating that Viola had to be hospitalised due to a serious but temporary illness. The Irish court waits to enforce the order until Viola is healthy enough to travel.

Court of enforcement

The parent will make the application for enforcement to a court in the Member State of enforcement which decides on the specific enforcement measures. The competent court may make the necessary specifications or adaptations while respecting the essential elements of the judgment.

Example: Nicholaas wants to enforce the Dutch order granting him sole custody in Germany. He wants to take Johan back to the Netherlands. In Germany, however, a judgment has to explicitly order the handover of the child. The mere attribution of rights of custody cannot be enforced. As the Regulation obliges Member States to give the same effect to a judgment that it has in the State where it was given, the enforcement court in Germany will make a supplementary decision ordering the handover of the boy to his father.

Provisional enforceability of judgments

The court of origin could declare a decision provisionally enforceable even if this possibility does not exist in its national law. This is useful in systems where the judgment is not yet enforceable while it is still subject to appeal or the time for filing an appeal has not yet expired.

Example: The unmarried parents Michel and Jana live in France with their son Alain. They have joint custody and agree to maintain this situation when they decide to separate. Michel regularly has contact with his son on weekends and during holidays. After some years Jana suddenly blocks Michel's contact with Alain. He brings court proceedings in France and obtains an order granting him contact with his son after the court has heard Alain. Because of a new job, Jana now provisionally spends part of the week in the next town some 20 km further east with Alain while maintaining her home in the French village where Michel lives. This town is located in Belgium. The French court can now declare the contact order provisionally enforceable regardless of whether this is possible under French law or not, and the order will be directly enforceable also in Belgium. So Michel will be able to see his son while Jana still considers whether to file an appeal against the contact order in France, and contact between father and son will no longer be disrupted.

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 among 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 be potentially considered as a carer for the child, lives in Spain. The Lithuanian court will ask the assistance of the Spanish Central Authority to collect information on any previous decisions taken by the Spanish courts with respect to the child, and will request a social report on whether the grandmother would be an appropriate carer for the child from the Spanish authorities.

Social reports

The new rules clarify that courts and authorities can also request reports on adults or siblings if these are of relevance in child-related proceedings. The request is to be accompanied by a translation into the language of the requested State. They also create a legal basis for child welfare authorities to obtain the necessary information from other Member States through the Central Authorities. They establish minimum requirements for a request for a social report and an 8-week time limit for the requested authority to respond.

Example: A three-year old boy and his one-year old sister have been taken into care by the Austrian child protection authorities because their single mother maltreated them. The mother just moved to Austria eight months ago. Before that, she lived in Estonia where her three elder children were equally taken into care and placed in foster families. Before making its decision on the two youngest children, the Austrian court wants to obtain information through Central Authority channels on whether there are pending proceedings in Estonia on the two youngest children. The court also asks for copies of the decisions on the taking into care of the older children, and for any social reports on the siblings and their relationship with each other (including the two children now in Austria) and on the mother which might be available.

Cross-border placement

The new rules will 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. As a result, often precious time is lost.

Example: Victor, a 5-year-old boy of Czech nationality, has lost his parents in a car accident. His aunt, who is living in Slovakia, would like to take Victor into her household and care for him in the future. She applies to the Czech court for Victor to be placed with her. The new rules clarify that the consent of the Slovak authorities is necessary, and that the Czech court has to give reasons for the envisaged placement and submit a report on the situation of the child. The Slovak authorities have two months to transmit their decision.



