



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2016)

Opinion

Title

DG JUST – Impact assessment accompanying the Proposal for an amendment of the Brussels IIa Regulation (No 2201/2003)

(resubmitted version of 22 January 2016)*

(A) Context

The Brussels IIa Regulation, in force since 2005, contains rules on jurisdiction, recognition and enforcement in matrimonial matters (relating to divorce, legal separation and marriage annulment) and matters of parental responsibility (with rules on custody, access and child protection measures).

The wide variety in family law regulations across Member States, notably in the areas of matrimonial and parental responsibility matters, generates legal uncertainty, delays and/or difficulties in legal proceedings and the enforcement of court decisions for international couples and their children.

The Brussels IIa Regulation is a REFIT initiative in the 2016 Commission Work Programme.

(B) Overall opinion: POSITIVE

The Board gives a positive opinion to the resubmitted version of the impact assessment report.

Overall, the revised report has improved in line with the Board's recommendations. It was extended with a full section on the results of the evaluation of the Brussels IIa Regulation. The main REFIT conclusions are presented and – wherever possible – simplification and cost-saving potential is discussed, including quantitative estimates. The revised report also provides more information on most (but not all) of the problems, including their drivers and likely evolution under a more dynamic baseline scenario. Coherence with other existing measures is also clarified.

However, the report should still be improved in some specific areas. Two of the problems and their likely evolution should be further developed. Evidence of the effectiveness of some of the proposed solutions already implemented in some countries should be added. In addition, the report should better distinguish between substantial and minor changes proposed, and explain whether and how such changes may affect some Member States in particular.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(C) Main recommendations for improvements:

- **The baseline scenario should be strengthened regarding two problems:** recognition and enforcement of judgements as well as the return procedure in cases of parental child abduction. Regarding the former, further information on the Rome III Regulation and its likely evolution should be included in the baseline. It should also be clarified how Rome III will coexist with the proposed measures to prevent a "rush to court". For the latter, the report should further elaborate on the mentioned possibility of developing a soft-law solution, which could be part of the baseline.
- **Further evidence and clarification should be provided on some of the proposed amendments.** The report should expand on the effectiveness of local solutions in place in some Member States that form part of the preferred options (e.g. the use of specialist courts). It should further discuss the feasibility and implications of generalising these solutions to all Member States. As regards the prevention of the "rush-to-court", the report should further clarify whether the proposed solution is equivalent to extending the provisions of the Rome III Regulation to all Member States or if it introduces similar, yet different arrangements.
- **The description of impacts should further differentiate between Member States.** The report provides more information on the position of Member States vis-à-vis particular options and their potential lack of willingness or opposition to accept them. However, it should further elaborate on the relative importance of the identified problems across countries and to what extent the preferred solution(s) may affect some Member States in particular. In addition, the report should further justify the statement whereby the proposed changes will not potentially create two different regimes for domestic and cross-border cases.

(D) Procedure and presentation

The report has not been shortened and is still – despite some efforts – difficult to read for a non-expert reader (e.g. new Latin legal terms were introduced on p. 66).

(E) RSB scrutiny process

Reference number	2013/JUST/003
External expertise used	No
Date of RSB meeting	Written procedure (an earlier version of this report was discussed by the Board on 2 December 2015, for which an opinion was issued on 4 December 2015).