



Review of the Council Regulation 2201/2003 (Brussels II bis Regulation)



Brussels II bis - objectives

Mutual recognition of all decisions in matrimonial matters and matters of parental responsibility

Establish uniform jurisdiction rules

Facilitate cross-border visiting rights

Ensure the immediate return of the child in case of child abduction

It supplements and reinforces the 1980 Hague Convention on the civil aspects of international child abduction.

Jurisdiction rules (Articles 8-15)

- General rule:
the MS of the habitual residence of the child Art. 8

- Exceptions:
 - child abduction Art. 10
 - visiting rights Art. 9

- Transfer possible
Art. 15 (forum non conveniens)



Rules to facilitate cross-border visiting rights (Articles 40-41)

How? A decision granting access rights is directly recognised and enforceable in the other MS, without the need for “exequatur”

Condition: a certificate shall be issued by the court of origin

Aim: remove any obstacles to the exercise of cross-border visiting rights



Rules to prevent parental child abduction (Articles 10,11 and 42)

The court of origin retains **jurisdiction** after an abduction. Jurisdiction may only shift under very special circumstances.

The Regulation reinforces the principle of 1980 Hague Convention that the court shall order the **immediate return** of the child. It restricts the exceptions of Article 13(b) of the 1980 Hague Convention to a strict minimum.



Court of Member State B

A child is abducted from Member State A to Member State B

The court receives a request for return of the child. It applies the 1980 Hague Convention and the Regulation (Art.11(1 to 5))

The court decides that the child shall return to Member State A

If the court decides that the child shall not return, it shall transmit a copy of the decision to the competent court in Member State A (Art.11(6))

The courts of Member State B acquire jurisdiction (Art. 10(b)(b)(iii))

The courts of Member State B acquire jurisdiction (Art. 10(b)(b)(iv))

Once the court has received a copy of the decision on non-return, it invites the parties to submit comments within 3 months (Art.11(7))

If the parties do not submit comments, the case is closed (Art.11(7))

If the parties submit comments, the court examines the question of custody (Art.11(7))

The court's decision does not entail the return of the child.

The court's decision entails the return of the child. The decision is accompanied by a certificate (Art.42)

The decision accompanied



Procedural safeguards (Art. 11):

- The child shall have the opportunity to be heard.
- The requesting party shall have the opportunity to be heard (cf. Hague Convention).
- The court shall issue a decision within six weeks (cf. Hague Convention).



Giving the last word to the court of origine (Art. 11)

- If the court decides that the child shall not return, it must send a copy of its decision to the competent court in the MS of origin within one month.
- The court of origin invites the parties to submit comments.
- If the parties so wish, the court shall examine the substance of the case and take the final decision whether or not the child shall return.

What happens if the court of origin decides that the child shall return?

- A decision entailing the return of the child is directly recognised and enforceable in the other MS, without the need for "exequatur"
- Only condition: certificate
- Aim: ensure the speedy return of the child

Article 12:

The court of the MS to which the child has been abducted (“the court”) shall in principle order the immediate return of the child if less than a year has elapsed from the abduction.

Article 13(1)(b):

The court is not obliged to order the return if there is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

Article 13(2):

The court is not obliged to order the return of the child if he or she objects and has attained a certain age and maturity.

(no provision)

The obligation to order the return of the child

Article 11 (2 to 5):

The Regulation confirms and reinforces this principle.

The exception to this obligation

Article 11(4):

The court must order the return of the child even if it would put the child at risk, if it is established that the authorities in the MS of origin will secure the protection of the child upon his/her return.

Hearing the child

Article 11(2):

The court shall ensure that the child is given an opportunity to be heard, unless it is inappropriate having regard to the child’s age and maturity.

The hearing of the non-abducting custody holder

Article 11(5):

The court cannot refuse to return the child unless the person who requested the return has been given an opportunity to be heard.

The time limit for handling requests for return



Mediation in international child abduction cases

EJN working group mandated in 2010

Conclusions:

- *the need for mediation in international cross- border family cases, including child abduction, and ways to promote it among professionals and individuals;*
- *a clearly emerging demand for the supply of specialised knowledge (training needs) and sharing information and experience based on the experience that some MS already have;*
- *the importance of reinforcing cooperation among all stakeholders in mediation (in particular the parties to the conflict, judges, central authorities, lawyers and child-protection institutions);*
- *the importance of strengthening the flow of information and networking at EU level among relevant players (mediators, public institutions and specialised private entities);*

Conclusions

- *the proposal to establish a cross-border family mediation website;*
- *the importance of transparency in relation to costs, the usefulness of making lists of specialised mediators available, and of facilitating the use of several languages (the mediator(s) should preferably speak the languages of the parties or their common language);*
- *the need to develop and apply modern and secure means of communication, including IT tools specifically designed for cross-border family mediation purposes;*
- *the importance of support (by the Member States and the EU) for bi-national projects allowing for an exchange of detailed information on practices;*