

Brussels IIa: Towards a Review

The increasing mobility of citizens within the European Union (EU) has given rise to a growing number of international families who at some point may face legal issues with a cross-border dimension, for instance when the family breaks up, and in particular in relation to children. Since the Amsterdam Treaty entered into force, the EU has acquired the power to act in the field of judicial cooperation in civil matters having cross-border implications ([Article 81 of the Treaty on the Functioning of the European Union](#) (TFEU)). [Council Regulation \(EC\) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility](#) ('Brussels IIa') repealed Regulation No 1347/2000 laying down rules on jurisdiction, recognition and enforcement of judgments on divorce, separation and marriage annulment, as well as judgments on parental responsibility for the children of both spouses, which was the first Community instrument adopted in the area of judicial cooperation in family law matters. The Brussels IIa Regulation, which since 1 March 2005 has applied to all Member States except Denmark ([see the European Commission practice guide for its application](#)), is about to be reviewed. The Commission is preparing a legislative proposal to this end.

SUBJECT MATTER AND SCOPE

Brussels IIa is the cornerstone of EU judicial cooperation in **matrimonial and parental responsibility matters**. The regulation covers issues of **jurisdiction**, establishing uniform rules to settle conflicts between Member States, and facilitates the free circulation of judgments, authentic instruments and agreements in the Union by laying down provisions on their **recognition and enforcement** in other Member States. It also establishes rules for **cooperation between central authorities** in matters of parental responsibility. However, it **does not include rules on the law applicable** to cross-border disputes. Conflict-of-law rules in matters relating to divorce were subsequently adopted through [Council Regulation \(EU\) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation](#) ('Rome III'), which now applies to 16 Member States.

Brussels IIa applies to civil matters relating to **divorce, legal separation or marriage annulment** and the attribution, exercise, delegation, restriction or termination of **parental responsibility**, including: rights of custody and rights of access; guardianship, curatorship and similar institutions; the designation and functions of any person or body having charge of the child's person or property representing or assisting the child; the placement of the child in a foster family or in institutional care; and measures to protect the child's property.

The scope **expressly excludes adoption, the establishment or contestation of a parent-child relationship, the child's surname and forenames, emancipation, maintenance obligations, trusts or successions and measures taken as a result of criminal offences** committed by children. Some of these matters, such as [maintenance obligations](#) and [successions](#), are regulated through other EU instruments, but the exclusion of the rest may be seen as creating [gaps](#) in the EU private international law framework.

RELATIONSHIP TO THE RELEVANT HAGUE CONVENTIONS

Brussels IIa integrated the [Hague Conventions of 25 October 1980 on the Civil Aspects of International Child Abduction](#) and [of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#) into EU law. While Brussels IIa takes precedence over these conventions in relations between the Member States, the conventions govern Member States' relations with third countries party to them (except in the case of Italy, which has signed but not ratified the 1996 convention).

LEGISLATIVE PROCEDURE TO BE APPLIED TO THE REVIEW

The special legislative procedure for family law measures with cross-border implications specifies that the Council acts unanimously, and limits the European Parliament to a consultative role. However, Article 81(3) TFEU also includes a bridging clause under which the Council, on a proposal from the Commission and after consulting Parliament, and subject to acceptance by national parliaments, may decide unanimously to submit some aspects of family law to the ordinary legislative procedure. To date, this clause has never been applied.

PARLIAMENT'S WORK IN RELATION TO THE REGULATION

Notwithstanding its limited role under the special legislative procedure, Parliament is regularly contacted by citizens who are victims of the inadequacies of the law, through its [Committee on Petitions](#) or its [Mediator for International Parental Child Abduction](#) (a post created in 1987 and currently held by Vice-President McGuinness). General issues have emerged from these individual cases, an analysis of which is useful for identifying areas for improvement in Brussels IIa.

COMMISSION'S STEPS TOWARDS THE REVIEW PROPOSAL

In 2014 the Commission published a [report](#) on the application of the regulation (Article 65 of Brussels IIa provides for a review by 1 January 2012 and every five years thereafter) and has subsequently carried out a [public consultation](#). A [Group of Experts](#) was set up to assist the Commission in considering issues of concern (e.g. the operation of rules on the return of an abducted child).

PARLIAMENT'S STEPS IN RELATION TO THE REVIEW

The [Committee on Legal Affairs](#) is competent for family law matters with cross-border implications and is organising a hearing on the review of the regulation on 12 October 2015. In its 2015 'Civil Law and Justice Forum', organised by Policy Department C, MEPs, including the [Child Abduction Mediator](#), experts, and the Commission held an exchange on the basis of recommendations for amending Brussels IIa, as presented in the [Compendium](#) or in the 2015 study '[Cross-border Parental Child Abduction in the EU](#)'. Recommendations were also made in the 2010 studies '[The parental responsibility, child custody and visitation rights in cross-border separations](#)' and '[Illegal removal of children: Brussels II a and the Hague Convention](#)' and the 2015 study '[Adoption without Consent](#)'.

Selected and Classified Bibliography

Brussels IIa has given rise to a very important number of publications. The following **non-exhaustive list** is a selection of recent works, relevant to the upcoming review.

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Contact: poldep-citizens@ep.europa.eu

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