



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



***LEGAL AFFAIRS***

**WORKSHOP**  
**Recasting the Brussels IIa**  
**Regulation**  
**8 November 2016**



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT**  
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***LEGAL AFFAIRS***

**The Role of Family Mediation in  
Matters of Parental Responsibility**

**Christoph C Paul**

# Cross-border Family Mediation (CBFM)

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- 1999: German-French Mediation Project
- 2002: Adoption of the model by professional mediators
- 2010: EU-funded CBFM training - 2 mediators from each EU Member State
- Since then, regular MiKK 50-hour Cross-border Family Mediation Training for mediators from the EU and internationally

# Cross-border Family Mediation MiKK Model

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- Both Cultures
- Both Languages
- Bi-professional
  - both legal & psycho-social  
professional background
- Both Genders



# MiKK Mediators Network

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- 150+ qualified, specialised mediators
- based in the EU and worldwide
- mediating in 30+ languages

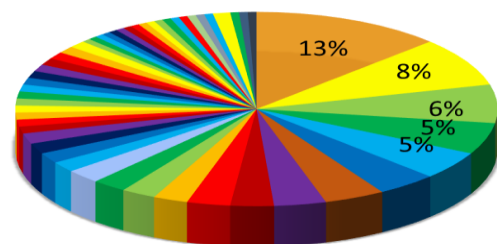
## Requests for Cross-border Mediation and Information received by MiKK's Advisory Service

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2008	2009	2010	2011	2012	2013	2014	2015	2016
39	59	79	140	143	159	142	165	150 – Sept.

# MiKK Statistics 2015

## Enquiries from 54 Countries



### TOP 10

- |                |                      |
|----------------|----------------------|
| 1. USA (22)    | 6. Great Britain (7) |
| 2. France (14) | 7. Mexico (7)        |
| 3. Poland (10) | 8. Turkey (7)        |
| 4. Spain (9)   | 9. Italy (5)         |
| 5. Belgium (8) | 10. Switzerland (5)  |

- USA
- Spain
- Mexico
- Switzerland
- Norway
- Canada
- Austria
- China
- Estonia
- Ireland
- Sweden
- Algeria
- Dominican Republic
- Hungary
- Japan
- Morocco
- Portugal
- Thailand

- France
- Belgium
- Turkey
- Argentina
- Russian Federation
- The Netherlands
- Bosnia and Herzegovina
- Croatia
- Greece
- Mali
- Tunisia
- Cyprus
- Egypt
- Iran
- Lebanon
- Paraguay
- Romania
- Uruguay

- Poland
- Great Britain
- Italy
- Australia
- Brazil
- Pakistan
- Chile
- Czech Republic
- Indonesia
- Slovakia
- Albania
- Denmark
- Finland
- Israel
- Libya
- Phillippines
- South Africa

# International Mediation Requests (as % of enquiries)

	2008	2009	2010	2011	2012	2013	2014	2015	2016/ August
Custody/ Visitation	49	37	53	42	16	20	23	34	35
Child Abduction	36	49	37	40	48	44	44	39	35
Prevention/ Relocation	8	2	0	7	21	17	20	20	26
Others	7	12	10	11	15	19	13	7	4



# RECOMMENDATIONS

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- The training of judges across the EU should be facilitated to encourage them to refer parties to mediation.
- Courts and Central Authorities should be encouraged to refer parties to mediation by providing parties with information on mediation.
- The Hague Conference's Working Group on cross-border recognition and enforcement of mediated agreements should be continued and extended beyond the borders of the EU and Hague Convention Contracting States.

# RECOMMENDATIONS

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- EU Member States should be encouraged to provide state-financed mediation aid in cases of cross-border family conflicts.
- Training programmes for mediation in cross-border child custody disputes with non-EU States that have not acceded to the Hague Convention should be facilitated because of increasing demand.

# Presentation by

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Christoph C. Paul



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## ***LEGAL AFFAIRS***

### **Recasting the Brussels IIa Regulation: enhancing cross-border cooperation**

Thalia Kruger

**Proposed additions by Parliament to  
Commission's Proposal**

# Throughput of cases

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- Two months (Art. 64(6))
  - Shorter timeframe in urgent cases, upon request
- Six weeks for child abduction cases (Art. 63(1)(g))
  - Until submission to court

## Division of costs

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- Each Central Authority bears own costs (Art. 66(4))
  - Unless agreed otherwise

# Cooperation among judges and between CAs and judges

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- **New Recital 48bis:**
  - Where interests of child require -> direct communication between judges and CAs
- Space in judges' workload

# Provisional measures

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- Enforceable across borders (Art. 48 et seq. & Recital 17)
  - Information by court with jurisdiction on substance



CA where provisional measures issued (New Art. 12(3))



# Child abduction cases

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- Return orders enforceable across borders (Art. 49)
  - Information by court with jurisdiction on substance



CA where return order granted  
(New Art. 25(6))

# Parallel Proceedings

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- Court first seised has right of way (Art. 19)
  - Court may ask other court: date seised (New Art. 19(2bis))
  - CAs provide assistance on date (Art. 63(1)(d) should refer to Art. 19)

# Information on foreign law

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- Sometimes application of foreign law
  - CAs must assist to provide information on foreign law

(New Art. 64(5bis))

# Recognition and enforcement

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- Abolition of exequatur (Art. 30 & Recital 31)
    - CAs' assistance also at this stage
      - Eg locating child
- (Art. 63(1)(a) -> broader; not only requests)

# Protecting children's rights

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- Hearing the child
  - CAs provide practical assistance (New Art. 63(1)(fbis))
- CAs also assist holders of parental responsibility (Art. 63(2))
  - Also for locating child (Art. 63(2) -> refer also to Art. 63(1)(a))

# Mediation

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- Obligation for courts to consider mediation in child abduction cases (Art. 23(2))
  - Court can ask assistance of CAs
  - More general  
(New Art. 20bis)
  - CAs provide assistance in arranging mediation  
(New Art. 63(1)(i))

## Presentation by

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## ***LEGAL AFFAIRS***

### **Recasting the Brussels IIa Regulation: the experience of a national Central Authority**

**Lukáš Fridrich**



# Presentation structure

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- Role of the Office for International Legal Protection of Children (“Office”)
- Recasting the Brussels IIa Regulation
  - cooperation between Central Authorities
  - child abduction cases
  - risk factors, recommended changes, comments
- Key findings

# Role of the Office

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- Central Authority of the Czech Republic
  - child abductions, right of access
  - enforcement of maintenance
  - intercountry adoption of children
- Social and legal protection of children
  - children's guardian *ad litem*
- Conceptual activities
  - development of good practice

# Cooperation between Central Authorities – problematic issues

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- Speed and flexibility of cooperation
  - delays in processing requests
  - delays in communication
- Quality and scope of services provided
  - different standards of provided services
  - rare application of some provisions

# Cooperation – Commission proposal

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- Speed and flexibility of cooperation
  - adequate financial and human resources
  - time limits
- Quality and scope of services provided
  - specification, clarification and strengthening of the competences of the Central Authorities
  - who, for what, from whom may apply

# Child abduction cases – problematic issues

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- Speed of handling a case
  - time limits are not met
  - delays in communication/procedures
- Functioning of the mechanism
  - no specialized courts/judges
  - no special rules on return proceedings in domestic law
  - overriding mechanism is not applied

# Child abduction cases – Commission proposal

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- Speed of handling a case
  - time limits for Central Authorities/Courts
- Functioning of the mechanism
  - concentration of jurisdiction/specialized courts
  - specific instruments (undertakings, mediation)
  - overriding mechanism is amended

# Risk factors, recommended changes, comments

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- Fulfilment of the stipulated obligations
- Recommended changes
  - specification of some provisions
  - safety mechanisms
  - revision of other provisions
- Strengthened role of mediation and participation rights of children

## Key findings

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- The Commission proposal
  - may improve the quality of services provided
  - may harmonize the procedures and standards
  - reflects the current trends in family law
- Risk factor - fulfilment and enforcement of the stipulated obligations
- Other changes may be recommended



# Presentation by

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## ***LEGAL AFFAIRS***

### **Recasting the Brussels Ia Regulation: a judge's perspective on the cooperation mechanisms**

*Judge Annette Olland*

# **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

**The importance of direct judicial communication:  
'oil in the machine'**



# Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms

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An example from practice: UK-NL Family

in good times



parents split up



## **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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Child is removed from UK to Netherlands by the mother

Two court cases pending at the same time in NL and in UK

## **Recasting the Brussels Ia Regulation: a judge's perspective on the cooperation mechanisms**

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The Brussels Ia Regulation in practice:

- Proceedings about one family can be pending at the same time in two different Member States
- Both court decisions are immediately enforceable in the other Member State

# **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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NL court: Child abduction return case 1980 Hague Convention (immediate return or not?)

UK court: custody case (should the child live with mother or with the father?)

Both NL and UK courts have jurisdiction for these two matters

## **Recasting the Brussels Ia Regulation: a judge's perspective on the cooperation mechanisms**

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Possible scenario if no communication between NL judge and UK:



# Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms

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NL judge orders the return -> child should go to UK



## Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms

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At the same time: UK judge decides the child should live with mother -> child should go back to NL



## **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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This leads to:

- Total confusion
- 'Ping-ponging' of the child between Member States
- Insecurity and harm for the child and the parents

## **Recasting the Brussels Ia Regulation: a judge's perspective on the cooperation mechanisms**

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In this case, there was direct judicial communication between NL court and UK court.

The judges presiding over the case in the two countries contacted each other, first by e-mail, through the Network Judges, and then by phone.

## **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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They discussed and agreed the following:

The NL court was going to decide upon return or non-return within six weeks

The UK court would need about eight weeks after the NL decision

## **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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- The UK court knew that the outcome would be in six weeks so it planned its hearing after six weeks
- The Dutch court ordered the return but ordered that the execution of this decision could only be done 6 + 8 weeks later

## **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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### **Result:**

- After 14 weeks the UK court decided the child should live with the mother in the NL
- The child could stay in NL for the final decision of the UK court
- No 'ping-ponging' of the child

# **Recasting the Brussels Ia Regulation: a judge's perspective on the cooperation mechanisms**

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Direct judicial communication was the key



## **Recasting the Brussels Ia Regulation: a judge's perspective on the cooperation mechanisms**

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What is necessary to get the European Judges to contact each other when handling a cross border case,

on top of:

# Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms

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## **Recasting the Brussels Ia Regulation: a judge's perspective on the cooperation mechanisms**

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They need a Network Judge in their own country:

to find out which is the competent Court or Judge in the other Member State

to establish (the first) contact with the fellow Judge/Court in the other Member State

# **Recasting the Brussels Ia Regulation: a judge's perspective on the cooperation mechanisms**

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The European Judges will need:

## **Recasting the Brussels Ia Regulation: a judge's perspective on the cooperation mechanisms**

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An “**address-book**” with the names and addresses of one or more specialised Family Judges in each Member State, acting as a contact point:

**“the Brussels Ia Network of Judges”**

# **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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**Time** for the Network Judges to do the job and legal and practical assistance

# **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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**Communication tools for the  
(Network) Judges (phone, secured  
e-mail addresses etc)**

# **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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**Knowledge and understanding of the Regulation, and **experience** with its mechanism in practice**



# **Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms**

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## **Training and education**

**Professional meetings with  
colleague family judges in other  
Member States**

# Recasting the Brussels Ila Regulation: a judge's perspective on the cooperation mechanisms

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My text proposals in short:

- **The proposed Article 14 (6) of the Regulation**  
*“The authorities shall cooperate for the purposes of this Article, (...) either through the European Judicial Network in civil and commercial matters -> “or through the Brussels Ila Network of Judges”*

# Recasting the Brussels IIa Regulation: a judge's perspective on the cooperation mechanisms

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## The proposed Article 25 (1) (a) of the Regulation

*To this end the court shall:*

**investigate** the possibilities of protection the child against the grave risk of harm in the particular case in the Member State where the child was habitually resident immediately before the wrongful removal or retention. It shall do so **in cooperation with** the competent authorities of the Member State where the child was habitually resident immediately before the wrongful removal or retention, either directly, with the assistance of the Central Authorities, **or through the IHNJ judge in the other Member State**. This investigation shall be conducted **expeditiously** and will **take no longer than two weeks**. **If no contact has been established** with the Authorities of the other Member State within two weeks, the court referred to under (1) **will give its decision with no further delay**. (...)"

# Presentation by

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## ***LEGAL AFFAIRS***

**Recasting the Brussels IIa  
Regulation: developing training and  
meeting opportunities for national  
judicial authorities**

**Wojciech Postulski**

## **Recasting the Brussels IIa Regulation: developing training and meeting opportunities for national judicial authorities**

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- Judges and prosecutors, as well as other legal practitioners, play a fundamental role in guaranteeing respect for the law of the European Union
- It is not enough to have rights only on paper. These rights must be applied and implemented in practice.
- Any significant amendment to the law requires the judiciary to be involved: aware of the changes, well prepared to its application and committed to its goals. The tool to achieve this is judicial training.

## Recasting the Brussels IIa Regulation: developing training and meeting opportunities for national judicial authorities

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- The European Judicial Training Network (EJTN) and its Members, 35 national judicial training institutions from all 28 Member States and the Academy of European Law, are at the heart of the processes of answering the challenges mentioned.
- Council conclusions – Training of legal practitioners: an essential tool to consolidate the EU acquis:

*“EJTN is best placed to coordinate, through its members, national training activities and to develop a cross-border training offer for judges and prosecutors.”*

## **Recasting the Brussels IIa Regulation: developing training and meeting opportunities for national judicial authorities**

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- EJTN activities in the area of Brussels IIa
  - seminars
  - Exchange Programme
  - linguistic training
  - e-learning
  - AIAKOS
  - Themis competition



## **Recasting the Brussels IIa Regulation: developing training and meeting opportunities for national judicial authorities**

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- **Challenges in judicial training**
  - workload of judges
  - limited linguistic capacities
  - lack of specialisation
  - austerity measures
  - lack of awareness of stakeholders as well as judges

## **Recasting the Brussels IIa Regulation: developing training and meeting opportunities for national judicial authorities**

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- **Post recast training needs**
  - at both European and national level
  - raising awareness
  - recast scope and consequences
  - trust in other Member States' judicial systems

## **Recasting the Brussels IIa Regulation: developing training and meeting opportunities for national judicial authorities**

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- **Post recast training needs**
  - capacity to deal expeditiously with child rights related cases
  - specialised exchange programmes, building a network of specialised judges
  - language skills
  - intercultural competence
  - communication skills
  - dealing with all persons involved appropriately and sensitively
  - important social concerns
  - mediation

# Presentation by

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