

Public consultation on the functioning of Council Regulation (EC) concerning jurisdiction and the recognition and enforcement of matrimonial matters and the matters of parental responsibility, regulation (EC) No 1347/2000 ("Brussels IIa Regulation")

Fields marked with * are mandatory.

Introduction

Disputes on family matters have increased in the EU due to the growing mobility of citizens and the rising number of international families, notably families whose members are of different nationalities, live in different EU countries or live in an EU country of which one or more of them are not nationals.

[The Brussels IIa Regulation](#) (hereafter "the Regulation") is the cornerstone of European Union (hereafter "the EU") judicial cooperation in matrimonial matters and matters of parental responsibility. The Regulation applies since 1 March 2005 in all EU countries except Denmark.

The Regulation determinates in cross-border situations the responsible court for spouses who want to divorce, separate or annul their marriage. In relations between children and their parents, whether they are married or not, the Regulation determines the responsible court to settle parental responsibility disputes including custody and visiting rights, primarily aiming at the protection of the best interests of the child. In cases of cross-border parental child abduction the Regulation makes available a procedure to return the child to the place of his or her habitual residence.

In addition, the Regulation prevents parallel proceedings before the courts of different EU countries and aims at ensuring the free circulation of judgments, authentic instruments or agreements, based on the mutual trust among EU countries.

The Commission has recently launched a review of the functioning of the Regulation. To this end, it has published a report on its [application](#). The results of the present consultation will feed an overall assessment of the instrument.

The questionnaire is addressed to the broadest public possible, as it is important for the European Commission to obtain views and input from all interested individuals, legal practitioners, academics, organisations, courts, national authorities and Member States. Even if you are not an expert, feel free to answer as many questions as you consider appropriate.

You have the option to reply only to some of the questions. In order to best analyse the responses received, there is a need for a limited amount of background information about you as a respondent.

This questionnaire can be filled out online; you can also upload a separate document with your additional comments at the end of the questionnaire.

Responsible service: European Commission, DG Justice, Unit A1 – Civil Justice Policy

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All contributions will be published on the website of the European Commission, provided that respondents clearly identify themselves. Please read the specific privacy statement here below for information on how your personal data and contribution will be dealt with.

Specific Privacy Statement

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Background of the respondent

1. Please indicate your role for the purposes of this consultation*

- Private individual
- Judge
- Court staff member
- Prosecutor
- Lawyer
- Bailiff
- Notary
- Other legal practitioner
- Central authority staff member
- Academic
- Member State
- Other

Please explain

2. Please indicate the country where you are located*

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

Please indicate your country

3. Have you had practical experience with the Regulation? *

- Yes
- No

If so, in what capacity?

- Judge
- Lawyer
- Notary
- Other legal practitioner
- Prosecutor
- Bailiff
- Court's staff member
- Central authority staff member
- Spouse
- Parent
- Other

Which capacity?

4. Please provide your contact information: name, institution, address, e-mail address*

The functioning of the Regulation in general

5. Do you think that the Regulation is a helpful tool for spouses involved in cross-border divorce/legal separation/marriage annulment?

- Yes
- No

Please explain

6. Do you think that the Regulation is a helpful tool in cross-border cases concerning custody over a child?

- Yes
- No

Please explain

7. Do you think that the Regulation is a helpful tool in cross-border cases concerning access rights to children?

- Yes
- No

Please explain

8. Do you think that the Regulation is a helpful and efficient tool in cases of cross-border parental child abduction?

- Yes
- No

Please explain

Jurisdiction (identifying the court responsible to hear the case)

a) Matrimonial matters (divorce, legal separation, marriage annulment)

The Regulation includes seven alternative ways to identify the responsible court, based on either habitual residence or the common nationality of the spouses. This allows parties to choose between several courts to bring proceedings. In some instances, a party may have a specific interest in having the dispute heard by a given court and may "rush to court", that is, apply for divorce before the other spouse does, to ensure that the law applied in the divorce proceedings will safeguard his or her own interests. The Rome III Regulation has successfully reduced the possibility of a spouse rushing to court as it lays down harmonised rules to determine the law applicable to matrimonial disputes in the participating EU countries. However, the "rush to court" concern remains as the Rome III Regulation does not yet apply in all EU countries (the Regulation now applies in 14 EU countries and will soon apply in two more EU countries).

9. Do you think that the ways of identifying the responsible court in matrimonial matters should be revised so as to better reduce the risk of a "rush to court"?

- Yes
- No

In which way?

- By establishing an order of priority of ways to identify the responsible court that should hear the case
- By requiring the other spouse's agreement when the responsible court has been identified based on the habitual residence of the applicant
- Other

Please specify

The Regulation does not provide for the possibility for spouses to agree on the responsible court that should hear their divorce or legal separation (choice of court agreement). Allowing spouses to agree on the responsible court could be particularly useful in cases of divorce by mutual consent, especially as spouses have the possibility under the Rome III Regulation to agree on the law applicable to their matrimonial dispute.

10. Should there be a possibility for spouses to choose the responsible court by a common agreement?

- Yes
- No

If "yes", should the spouses' choice be limited to courts of an EU country with which one or both spouses have a substantial connection? Please specify, if one or more of the following criteria should apply:

- At the time the agreement is concluded, the EU country whose courts have been chosen by the spouses is the country where the spouses have had their habitual residence for at least a certain period of time, provided that this residence period did not end more than a certain period of time before the court is seised
- At the time the agreement is concluded, one of the spouses has the nationality of that EU country
- At the time the court is seised, the courts of that EU country have responsibility to hear the case under the main jurisdiction provisions of the Regulation
- Other

Please specify

11. Should the formal requirements of such agreement draw inspiration from other EU instruments such as:

- The [Maintenance Regulation](#) Article 4(2)
- Other

Please specify

b) Parental responsibility matters (custody and access rights)

The general rule under the Regulation is that the courts of the EU country where the child has his/her habitual residence have jurisdiction to rule on parental responsibility matters over the child. However, where the divorce proceedings are pending in an EU country other than that of the child's residence or other proceedings are pending there and the child has a substantial connection with that country, the Regulation allows parents to extend the jurisdiction of the courts of that country if it is in the best interests of the child.

12. Do you think that the conditions for the application of these provisions should be improved?

- Yes
- No

In which way?

The Regulation allows the court which is responsible to hear the case to consider that another EU country court is better placed to hear the case. The Regulation provides that the courts should cooperate for the purposes of this transfer, either directly or through the Central Authorities designated by each EU country.

13. Do you think that the cooperation mechanism aimed at ensuring a smooth functioning of the transfer should be improved?

- Yes
- No

In which way?

c) Jurisdiction – questions common to matrimonial matters and matters of parental responsibility

The Regulation makes it possible to avoid parallel proceedings between the same parties on the same subject matter (*lis pendens*) and, as a consequence, prevents irreconcilable judgments rendered by courts in different EU countries.

14. Do you think that the existing rules have helped effectively in preventing parallel proceedings?

- Yes
- No

How should these rules be improved?

Please explain

In some cases, the proceedings between the same parties on the same subject matter are pending in parallel before the courts of an EU country and the courts of a non-EU country. The Regulation does not currently include a provision to prevent parallel proceedings and irreconcilable judgements in such situation.

15. Do you think that the Regulation should address parallel proceedings brought before the court of an EU country and those brought before the court of a non-EU country?

- Yes
- No

Please explain

In urgent cases, provisional, including protective, measures (such as placing a child under the supervision of a child welfare authority) may need to be adopted by the courts of an EU country in respect of a person or an asset in its territory even if those courts do not have competence as to the substance of the matter.

16. Do you think that the existing rules function well?

- Yes
 No

How should they be improved?

In some cases the Regulation leaves the identification of the court which has jurisdiction to national law. For example, in matrimonial matters, the access of spouses to an EU country court when they are of different EU nationalities and live in a non-EU country depends on the law of each EU country. The national law of each EU country also applies to determine which court is responsible to hear a case in matters of parental responsibility over a child if the child has his/her habitual residence in a non-EU country and the parents do not expressly accept to extend the jurisdiction of the courts of an EU country before which another procedure is pending. The absence of a rule in the Regulation determining which EU country's courts are responsible in all situations results in unpredictability and unequal access to justice for EU citizens given the differences between the laws of EU countries. A rule determining the responsible court to hear the case in all situations has been introduced in recent EU instruments. ([Maintenance Regulation](#), [Succession Regulation](#))

17. Would it be useful to address the lack of a uniform rule so as to allow in all situations the identification of the responsible court?

- Yes
 No

Please explain

In exceptional cases, where the proceedings prove impossible in a non-EU country (for example, because of civil war), it may be useful to allow a court of an EU country to have jurisdiction over a case in order to remedy situations of denial of justice. This approach has been followed in recent EU instruments to address a possible lack of access to justice. ([Maintenance Regulation](#), [Succession Regulation](#))

18. Do you think that the Regulation should ensure access to justice in cases where the responsible courts outside the EU cannot exercise their jurisdiction?

- Yes
- No

Please explain

Return of the child in cases of cross-border parental child abduction within the EU

The Regulation reinforces the requirements laid down in the 1980 Hague Convention on the Civil Aspects of International Child Abduction to ensure the immediate return of the child, for example by introducing strict time limits (six weeks to adopt a decision on return) and by limiting the possibilities for a judge to refuse the return. In some cases, a fast track procedure is available to overcome a refusal by an EU country to return the child.

19. Do you think that the Regulation has ensured the immediate return of the child within the EU?

- Yes
- No

How should the procedure be improved?

Abolition of exequatur

Currently the Regulation still requires formalities to recognise and declare enforceable judgments, authentic instruments and agreements from another EU country (exequatur) in some areas. Exequatur has been abolished only in respect of certified judgments on access rights to children and certified return orders in child abduction cases. The fact that other judgments concerning, for example, the placement of a child in another EU country or custody rights over children, do not benefit from the abolition of exequatur may lead to complex, lengthy and costly procedures.

20. Do you consider that all judgments, authentic instruments and agreements concerning parental responsibility should circulate freely between EU countries without exequatur?

- Yes
- No

If "no", do you consider that, in particular, judgments concerning the placement of a child in institutional care or with a foster family in another EU country should circulate freely between EU countries without exequatur?

- Yes
- No

21. If abolition of exequatur should be expanded, do you consider that maintaining safeguards is required in relation to:

- Public policy reasons
- Proper service of documents
- Right of the parties to be heard
- Right of the child to be heard
- Irreconcilable judgments
- Compliance with the procedure relating to the placement of a child in another EU country
- Other

Please specify

Hearing of the child

In order that a decision freely circulates between EU countries the Regulation requires that the child has been given an opportunity to be heard. As a result of divergences between EU countries on the application of this safeguard, for example as regarding the maturity of the child or the conduct of the hearing, difficulties may arise leading to the non-recognition, non-enforceability or non-enforcement of a judgment from another EU country.

22. Do you think that common minimum standards for the hearing of a child could help in avoiding the refusal of recognition, enforceability and/or enforcement of a judgment from another EU country?

- Yes
- No

If yes, which are the main divergences which give rise to problems that could be addressed by setting common minimum standards?

Enforcement

In practice, hurdles remain in connection with the actual enforcement of parental responsibility decisions. In cases of cross-border child abduction time is of essence in enforcing the return orders. As enforcement procedures are subject to the law of the EU country of enforcement, means of enforcement differ from one EU country to another. In addition, some national systems do not contain special rules for the enforcement of family law decisions, and therefore do not take into account the fact that, in the family law area, the passing of time may have irreversible consequences.

23. Do you think that it is important to improve the actual enforcement of decisions concerning parental responsibility given in another EU country?

- Yes
 No

If yes, how can enforcement of decisions taken in another EU country be improved?

24. Do you think that it is important to improve the actual enforcement of return orders?

- Yes
 No

If yes, how can the enforcement of return orders be improved?

Cooperation between Central Authorities

The Regulation lays down provisions on cooperation between Central Authorities in matters of parental responsibility. This cooperation is essential for the effective application of the Regulation. Under the Regulation, Central Authorities must, for example, collect and exchange information on the situation of the child (for instance in connection with custody or child return proceedings) and assist holders of parental responsibility to have their judgments recognised and enforced (in particular concerning access rights and the return of the child).

25. In general, do you think that the cooperation between the Central Authorities functions well?

- Yes
 No

If "no", what are the main problems that you have encountered?

Currently the Regulation does not provide for the mandatory use of forms for the cooperation between Central Authorities. This may render the cooperation more difficult.

26. Could the cooperation between the Central Authorities be improved through the mandatory use of forms translated into all EU languages to facilitate the exchange of information between Central Authorities?

- Yes
- No

The Regulation provides that the Central Authorities must facilitate the agreement between holders of parental responsibility through mediation.

27. Do you think that it would be useful for the Regulation to provide for additional provisions so as to enhance the use of mediation?

- Yes
- No

If yes, in which way?

Under the Regulation, the Central Authorities must provide information and assistance as is needed by courts in connection with the placement of a child in another EU country.

28. Do you think that this provision should be improved?

- Yes
- No

If yes, in which way?

Child welfare authorities play an important role in cross-border situations where the child's best interests have to be considered and also in fostering mutual trust between EU countries.

29. Do you think that the cooperation between Central Authorities and the local child welfare system in cross-border situations works as well as it should in order to ensure the smooth operation of the Regulation?

- Yes
- No

Please explain

30. Is there a need to adapt the cooperation between a Central Authority and the local child welfare authorities to better take account of cross-border cases?

- Yes
- No

If yes, in which way?

Placement of a child in another EU country

Where the court of an EU country contemplates the placement in another EU country in institutional care or with a foster family and public authority intervention is required in the host country for domestic cases of child placement, the court must consult the Central Authority or other responsible authority in the host country and obtain the consent of the responsible authority in that country prior to the adoption of the placement decision. Currently, the procedures for consultation and consent are governed by the national law of the host country.

Where the court contemplates the placement of a child in a foster family in another EU country and public authority intervention is not required in the host country, the court must inform the Central Authority or other responsible authority in the host country.

31. Do you think that the rules in the Regulation governing the placement of a child in another EU country function in a satisfactory manner?

- Yes
- No

If no, which solutions would you suggest?

Certificates

The Regulation includes four different certificates to facilitate the circulation within the EU of judgments, authentic instruments and agreements.

32. Do you think that the certificates annexed to the Regulation function in a satisfactory manner?

- Yes
- No

If no, which solutions would you suggest?

Relation with other instruments

The Regulation supplements the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

33. Do you think that the rules governing the relations between the Regulation and the 1980 Hague Convention work satisfactorily?

- Yes
 No

If no, which other solution would you suggest?

The Regulation includes compatibility provisions with respect to the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children.

34. Do you think that the rules governing the relations between the Regulation and the 1996 Hague Convention work satisfactorily?

- Yes
 No

If no, which other solution would you suggest?

Other issues

35. Are there any other provisions of the Regulation which, in your view, would need to be improved?

36. Are there any other comments that you wish to make?

If you wish, you can upload a separate document with your additional comments.

THANK YOU VERY MUCH FOR YOUR PARTICIPATION!