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THE REVISION OF BRUSSELS IIA REGULATION ON QUESTIONS OF PARENTAL RESPONSIBILITY AND CHILD ABDUCTION*

BARBARA TÓTH
Assistant lecturer, Department of Civil Procedure and International Law
University of Miskolc
jogtothb@uni-miskolc.hu

1. Introduction

The growing mobility of citizens within the Union[1] has led to an increasing number of families with an international dimension, notably families whose members are of different nationalities, live in the different Member States or live in a Member State of which one or more of them are not nationals. According to Article 81 of the Treaty on the Functioning of the European Union, the Union adopts measures in the field of judicial cooperation in civil matters having cross-border implications. Where families break up, such cooperation is particularly necessary to give children a secure legal environment to maintain relations with persons who have parental responsibility for them and may live in another Member State.

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 was the first Union instrument adopted in the area of judicial cooperation in family law matters.[2] This Regulation was repealed by Regulation No. 2201/2003[3] (commonly

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1 In 2011 there were 33.3 million foreign citizens resident in the Union-27, 6.6% of the total population. The majority, 20.5 million, were citizens of non-Union countries, while the remaining 12.8 million were citizens of other Union Member States. Since citizenship can change over time, it is also useful to present information by country of birth. There were 48.9 million foreign-born residents in the Union in 2011, 9.7% of the total population. Of these, 32.4 million were born outside the Union and 16.5 million were born in another Union Member State (Statistics in Focus, 31/2012: "Nearly two-thirds of the foreigners living in EU Member States are citizens of countries outside the EU-27", Eurostat).

2 Council Regulation (EC) No. 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, OJ L 160, 30. 6. 2000, amended by Council Regulation (EC) No. 2116/2004 of 2 December 2004, OJ L 367, 14. 12. 2004.

known as the Brussels IIa Regulation). The Brussels IIa Regulation is the cornerstone of Union judicial cooperation in matrimonial matters and matters of parental responsibility. It applies since 1 March 2005 to all Member States except Denmark.[4]

The Brussels IIa Regulation provides for uniform rules to settle conflicts of jurisdiction between the 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 another Member State. It complements the Hague Convention of 25 October 1980 on the civil aspects of international child abduction[5] (hereafter "the 1980 Hague Convention") and lays down specific rules with regard to its relation with several provisions provided for in the Hague Convention 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[6] (hereafter "the 1996 Hague Convention").[7] Pursuant to Article 65 of the Brussels IIa Regulation the Commission to the European Parliament, the Council and the European Economic and Social Committee have made a Report on the application of Regulation.[8] The Report is a first assessment of the application of the Brussels IIa Regulation to date and does not purport to be exhaustive. It is based on input received from the members of the European Judicial Network in civil and commercial matters (hereafter "the EJN")[9] as well as on available studies,[10] the Commission's Green Paper on

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3 Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23. 12. 2003, p. 1.

4 Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, does not participate in the Regulation and is therefore neither bound by it nor subject to its application. For the purpose of this report, the term "Member States" does not include Denmark.

5 The Convention applies in all Member States.

6 Council Decision of 19 December 2002 authorising the Member States, in the interest of the Community, to sign the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, OJ L 48, 21/2/2003, p. 1. The Convention applies in all Member States except Belgium and Italy, which have signed the Convention but not yet ratified it.

7 The Regulation applies: (i) where the child has his or her habitual residence in a Member State and (ii) with regard to the recognition and enforcement of a judgment given in a Member State, even if the child has his or her habitual residence in a third State which is Party to the Convention; Article 61.

8 Report from the Comission to the European Parliament, the Council and the European Economic and Social Comittee on the application of Council Regulation (EC) No. 2201/2003 concerning jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000 COM(2014) 225 final.

9 In particular, discussions in the framework of EJN meetings and replies of the EJN to a 2013 Commission questionnaire. See also the EJN Guide to best practices and common minimum standards, available at: https://e-justice.europa.eu/content_parental_responsibility-46-en.do.

10 See the Annex to this report.

applicable law and jurisdiction in divorce matters,[11] the 2006 Commission proposal to amend the Regulation, and the work done within the framework of the Hague Conference on Private International Law on the follow-up of the 1980 and 1996 Hague Conventions. Finally, it takes into account citizen letters, complaints, petitions and case law of the Court of Justice of the European Union (hereafter "the CJEU") concerning the Regulation.

2. The Revision of Brussels IIa Regulation

Ten years after the entry into force of the Brussels IIa Regulation, the Commission has assessed the operation of it in practice and considered necessary amendments to the instrument in its application report adopted in April 2014. This is an initiative within the Regulatory Fitness Programme (REFIT). In addition, the European Court of Justice (CJEU) has so far rendered 24 judgments concerning the interpretation of the Regulation, which were taken into account.

The objective of the recast is to develop further the European area of Justice and Fundamental Rights based on Mutual Trust by removing the remaining obstacles to the free movement of judicial decisions in line with the principle of mutual recognition and to better protect the best interests of the child by simplifying the procedures and enhancing their efficiency.

The Juncker Commission's Political Guidelines[12] emphasise that judicial cooperation among the EU Member States must be improved step by step keeping up with the reality of increasingly mobile citizens across the Union getting married and having children, by building bridges between the different justice systems and by mutual recognition of judgments so that citizens can more easily exercise their rights across the Union.[13]

Thanks to the revision procedure, after five years of work the Council adopted the 2019/1111 Council Regulation[14] (hereinafter Regulation) on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction on the 25 July 2019, which is a recast of the Brussels IIa Regulation.

In this paper, I would like to focus on those points of the Report, which were encouraged the European legislator to create a new Regulation. Because modifications concerned mostly the rules on parental responsibility and international child abduction, end the Regulation keeps status quo in the questions on matrimonial matters, I would like to focus on the problems related to parental responsibility.

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11 COM(2005) 82 final.

12 https://www.eesc.europa.eu/resources/docs/jean-claude-juncker---political-guidelines.pdf

13 Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) COM(2016) 411 final – 2016/0190 (CNS)

14 Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, L 178, 2/7/2019, pp. 1–115.

3. Problems in connection with Parental Responsibility

The Brussels IIa Regulation covers all decisions on parental responsibility independently of any link with matrimonial proceedings in order to ensure equality for all children. This reflects the significant increase of the share of extra-marital births over the last two decades in almost all Member States, which indicates a change in the pattern of traditional family formation.[15]

While the Brussels IIa Regulation is overall considered to work well, the consultation of stakeholders and a number of studies have revealed several deficiencies in the Brussels IIa Regulation, the matrimonial and parental responsibility matters, the latter were identified to have caused acute problems which need to be addressed urgently.[16]

Essentially, six main shortcomings concerning parental responsibility matters could be identified and have been modified correspondently in the new Regulation.

3.1. Child return procedure

The harmful impact of parental child abduction on the child and the left-behind parent is significant enough that measures at both international and Union level have been taken.

One of the main objectives of the Regulation is to deter child abductions between the Member States and to protect the child from their harmful effects by establishing procedures to ensure the child's prompt return to the Member State of habitual residence immediately before his/her abduction.[17] In this respect, Brussels IIa Regulation complements the 1980 Hague Convention by clarifying some of its aspects. It also introduces provisions governing conflicting return and non-return orders issued in the different Member States.[18]

The CJEU and the European Court of Human Rights (hereafter "the ECtHR") have laid down a number of principles in their case law on international child abduction with the child's best interests as the primary consideration. The CJEU has upheld the principle that the Regulation seeks to deter child abduction between the Member States and to obtain the child's return without delay once an abduction

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[15] Each year, more than 5 million children are born in the Union-28 (2004–2011 Eurostat Statistics). In 2010, some 38.3% of children were born outside marriage, while the corresponding figure in 1990 was 17.4% (Eurostat).

[16] Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) COM(2016) 411 final – 2016/0190 (CNS).

[17] In 2008, 706 return applications were made between Member States. Statistics show that the overall return rate between Member States was 52% in 2008 while it was 39% when the requesting State was a third State: Statistical analysis of applications made in 2008 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction — Part II — Regional Report, Prel. Doc. No. 8 B — update of November 2011 for the attention of the Special Commission of June 2011, available at http://www.hcch.net.

[18] COM(2014) 225 final, p. 12.

has taken place.[19] For its part, the ECtHR has ruled[20] that, once it has been found that a child has been wrongfully removed, Member States have a duty to make adequate and effective efforts to secure the return of the child and that failure to make such efforts constitutes a violation of the right to a family life as set out in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "the ECHR").[21]

In cases of parental child, abduction timing is key to the successful operation of the child return procedure established in the Brussels IIa Regulation. It appeared however that the immediate return of the child could not be ensured in all cases.[22] The Brussels IIa Regulation provides that the court to which an application for the return of a child has been made must issue its judgment no later than six weeks after the application is lodged. Member State courts have not always been able to meet this deadline.[23] The inefficiency of the return proceedings can be attributed to several aspects. The six-week time limit to issue a return order proved inadequate in practice since there are doubts among judges and practitioners whether the six weeks apply per instance, include appeals or even the enforcement of a return decision. In addition, the Brussels IIa Regulation sets no time limit for the processing of an application by the receiving Central Authority. Furthermore, problems in meeting the deadline have been attributed in particular to the lack in the national law of a limitation of the number of appeals that can be brought against a return order.[24]

In cases of conflict between a non-return order issued by the court of the Member State to which the child was abducted and a subsequent return order adopted by the court of origin, the Brussels IIa Regulation resolves in favour of the latter in order to secure the return of the child[25] where it is certified by the court of origin, the return order benefits from the abolition of *exequatur*, that is, it is immediately recognised and enforceable in the Member State to which the child was abducted, without the need for a declaration of enforceability and without the

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19 Case C-195/08 PPU *Rinau*, [2008] ECR I-05271, paragraph 52.

20 See, for example, Cases *Šneersone and Kampanella v Italy* (application No. 14737/09), paragraph 85(iv); *Iglesias Gil and A.U.I. v Spain* (application No. 56673/00); *Ignaccolo-Zenide v Romania* (application No. 31679/96), *Maire v Portugal* (application No. 48206/99); *PP v Poland* (application No. 8677/03) and *Raw v France* (application No. 10131/11).

21 The ECtHR has also held in some cases that it may be a breach of Article 8 of the ECHR to return a child, in particular where it found that the requested court had not sufficiently appreciated the seriousness of the difficulties which the child was likely to encounter on return to his/her State of origin, that the requested court could not have determined in an informed manner whether a risk within the meaning of Article 13(b) of the 1980 Hague Convention existed or the requested court failed to carry out an effective examination of the applicant's allegations under Article 13(b) of the 1980 Hague Convention. See, for example, Cases *Šneersone and Kampanella v Italy* (Application No. 14737/09), paragraph 95; *B v Belgium* (application No. 4320/11), paragraph 76; *X v Latvia* (application No. 27853/09), paragraph 119.

22 COM(2016) 411 final, p. 3.

23 In 2008, 15% of applications between Member States were resolved within 6 weeks: see statistical analysis referred to in footnote 56.

24 COM(2016) 411 final, p. 3.

25 Articles 11(8) and 42.

possibility of its recognition being opposed.[26] Such a return order does not need to be preceded by a final judgment on the custody of the child, as the purpose of the return order is also to contribute to resolving the issue of custody of the child.[27] The practical application of the 'overriding mechanism' has proven difficult because the custody proceedings do not take place in the Member State where the child is present and because the abducting parent is often not cooperative. In particular, it is often difficult to hear the child.[28]

Several substantial modifications are proposed with the aim of improving the efficiency of the return of an abducted child and the problems relating to the complexity of the "overriding mechanism" under the Regulation. First of all, the Regulation clarifies the time limit for issuing an enforceable return order in line with the view prevailing among those Member States which handle return cases under the 1980 Hague Convention most quickly. A separate six-week time limit would apply to the proceedings before the first instance court and the appellate court, respectively. In addition, the Regulation would oblige Central Authorities to also work under a six-week time limit to receive and process the application; locate the respondent and the child; promote mediation while making sure that this does not delay the proceedings, and refer the applicant to a qualified lawyer or file the case with the court (depending on the national legal system). This would render the time limit for courts more realistic with a view to protecting the right of the defendant to a fair trial while limiting it to the shortest period realistically possible. The Regulation limits the number of possibilities to appeal a decision on return to one and explicitly invites a judge to consider whether a decision ordering return should be provisionally enforceable. [29]

Moreover, the measures proposed include an obligation for the Member States to concentrate jurisdiction for child abduction cases in a limited number of courts while respecting the structure of the legal system concerned. This would ensure that judges experienced with this very specific type of procedure would rule on the return applications.[30]

Where the child might be at a grave risk of harm or might otherwise be placed in an intolerable situation if returned to the country of the child's habitual residence without any safeguards, it should also be possible for the court of the Member State

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[26] As the Regulation intends to secure the rapid return of the child, the issuing of a certificate by the court of origin in relation to its return order cannot be subject to appeal, and the only pleas in law which can be relied on in relation to the certificate are those seeking its rectification or raising doubts on its authenticity under the law of the Member State of origin; Article 43(2) and Case C-211/10 PPU *Povse*, [2010] ECR I-06673, paragraph 73.

[27] Case C-211/10 PPU *Povse*, [2010] ECR I-06673, paragraph 53. Pursuant to Case C-195/08 PPU *Rinau*, [2008] ECR I-05271, once a non-return order has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of the court of origin issuing a certified return order, that the non-return order has not become final or has been overturned in so far as the return of the child has not actually taken place.

[28] COM(2016) 411 final, p. 3.

[29] COM(2016) 411 final, p. 13.

[30] COM(2016) 411 final, p. 13.

of refuge to order urgent protective measures required there and which, if necessary, can also "travel with the child" to the State of habitual residence where a final decision on the substance has to be taken. Such an urgent measure would be recognised by the operation of law in the Member State where the child was habitually resident immediately before the wrongful removal or retention but would lapse as soon as the courts of that State have taken the measures required by the situation. For example, the court before which return proceedings are pending will be able to grant access rights to one of the parents which will also be enforceable in the Member State of habitual residence of the child until the court of that country takes a final decision with respect to the access to a child.[31]

3.2. Placement of the child in another Member State

The Brussels IIa Regulation contains in Article 56 specific provisions on the placement of a child in institutional care or with a foster family in another Member State. Where the court of a Member State contemplates the placement of a child in another Member State and public authority intervention is required in the host State for domestic cases of child placement, the court must consult the Central Authority or other competent authority in the host State and obtain the consent of the competent authority in that State prior to the adoption of the placement decision. Currently, the procedures for consultation and consent are governed by the national law of the host Member State, which means that diverging internal Member State procedures apply. Central Authorities must cooperate, where requested, in providing information and assistance.[32] Central Authorities which must assist courts and authorities in arranging cross-border placements have regularly reported that sometimes it takes several months until it is established whether consent is required in a particular case. If consent is required, the consultation procedure as such has to follow and is reported to be equally lengthy as there is no deadline for requested authorities to reply. As a result, in practice, many requesting authorities order the placement and send the child to the receiving State while the consultation procedure is still pending or even at the moment it is initiated because they consider the placement as urgent and are aware of the length of proceedings. Receiving States, therefore, complained that children were often already placed before consent had been given, leaving the children in a situation of legal uncertainty.[33]

The CJEU has confirmed that a placement judgment must be, before it can be enforced in the host Member State, declared enforceable in that Member State. One of the grounds that can be opposed against a declaration of enforceability of a decision placing a child in another Member State is the failure to respect the procedure laid down in Article 56 of the Brussels IIa Regulation[34] so as to avoid the imposition of the placement measure on the host State.

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31 COM(2016) 411 final, p. 13.
32 Article 55(d).
33 COM(2016) 411 final, p. 4.
34 Articles 31(2) and 23(g).

In order to solve these problems, the Regulation concerning cross-border placements introduces a number of new rules. The consent is of the receiving State mandatory for all cross-border placements originating from a court or authority in a Member State. All request has to be channeled through Central Authorities. And it introduces a time limit of eight weeks for the requested State to decide about the request.[35]

3.3. The requirement of exequatur

The protection of the child's best interests is one of the main objectives of Union action in the context of recognition and enforceability provisions, in particular by giving concrete expression to the child's fundamental right to maintain contact with both parents, as laid down in Article 24 of the Charter of Fundamental Rights of the European Union. In addition, the Regulation aims to achieve the free circulation of judgments in all matrimonial and parental responsibility matters[36]. The abolition of *exequatur*[37] in the area of civil law and the possible introduction of common minimum standards with regard to the recognition and enforceability of parental responsibility decisions were identified in the Stockholm Programme[38] and the Stockholm Action Plan[39] as key for the Commission's future work in civil matters.[40]

The Brussels IIa Regulation was the first Union instrument abolished *exequatur* in civil matters in respect of certain decisions, namely certified judgments on access rights to children and certified return orders in child abduction cases. It also extended the principle of mutual recognition of judgments to all decisions on parental responsibility (protecting the child regardless of the existence of matrimonial links between the parents) thereby completing, in accordance with the Stockholm Programme, the first stage of the programme of mutual recognition, the ultimate objective remaining the abolition of *exequatur* for all decisions.[41]

Exequatur remains an obstacle to the free circulation of decisions, which entails unnecessary costs and delays for parents and their children involved in cross-border proceedings. The time for obtaining *exequatur* varies between the Member States; it can take from a couple of days to several months, depending on the juris-

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35 COM(2016) 411 final, p. 14.

36 The Regulation provides that authentic instruments and agreements must be declared enforceable under the same conditions as judgments if they are enforceable in their Member State of origin. The fact that certificates used in the *exequatur* procedure refer only to "judgments" has caused difficulties.

37 The procedure for declaring a decision given in another Member State enforceable.

38 Stockholm Programme (Council document No. 17024/09 JAI 896), paragraphs 3.1.2 and 3.3.2.

39 Communication from the Commission to the European Parliament, the Council and the Economic and Social Committee, Delivering an Area of Freedom, Security and Justice for Europe's Citizens – Action Plan Implementing the Stockholm Programme of 20 April 2010, COM(2010) 171 final, pp. 10, 12, 23.

40 COM(2014) 225 final, p. 9.

41 Explanatory Report p. 9.

diction and the complexity of the case. If an appeal is lodged against the grant or refusal of *exequatur*, this delay increases considerably: appeal proceedings can take up to two years in some Member States.[42]

As a substantial change, the Regulation, therefore, abolishes the exequatur procedure for all decisions covered by the Regulation's scope. The abolition of exequatur will be accompanied by procedural safeguards that ensure that the defendant's right to an effective remedy and the right to a fair trial as guaranteed in Article 47 of the EU Charter of Fundamental Rights are adequately protected. The abolition of exequatur would allow the European citizens engaged in cross-border litigation to save the major part of the current costs of the procedure (on average € 2,200 to be paid for processing the application) and eliminate delays, which in some cases amount to a couple of months. Where there is a concern that any of the grounds of non-recognition or grounds to challenge concrete enforcement measures might apply, the defendant could make an application to challenge recognition and/or enforcement in the Member State of enforcement in the same procedure. As such, the time and costs of the exequatur procedure will be saved while the necessary protection of defendants will remain ensured. [43]

As it is already the case under the Brussels IIa Regulation, the new Regulation also contains a series of standard certificates which aim at facilitating the recognition or enforcement of the foreign decision in the absence of the exequatur procedure. These certificates will facilitate the enforcement of the decision by the competent authorities and reduce the need for a translation of the decision.[44]

3.4. Hearing of the child

Regarding the recognition of judgments in both matrimonial and parental responsibility matters, the use of the "public policy" ground of non-recognition has been rare. However, in matters of parental responsibility, significant divergences have arisen in practice with regard to a broader or narrower application of this ground.[45] In addition, in matters of parental responsibility, a frequently raised ground of opposition has been the fact that the judgment was given without the child having been given an opportunity to be heard.[46] In this connection, particular difficulties arise due to the fact that the Member States have diverging rules governing the hearing of the child.

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42 COM(2016) 411 final, p. 4.
43 COM(2016) 411 final, p. 14.
44 COM(2016) 411 final, p. 15.
45 Study on the Interpretation of the Public Policy Exception referred to in the Annex to this report.
46 Other frequently raised grounds for the non-recognition of judgments have been the service of documents where the judgment was given in default of appearance, the failure to comply with the procedure laid down in the Regulation for the placement of a child in another Member State and the fact that the judgement was given without the parent concerned having been given an opportunity to be heard. These are important considerations referring to the right to an effective remedy and to a fair trial guaranteed by Article 47 of the Charter.

The Regulation is based on the principle that children's views must be taken into account in cases concerning them as long as this is appropriate in light of their age and maturity and line with their best interests. Difficulties arise due to the fact that the Member States have diverging rules governing the hearing of the child. In particular, the Member States with stricter standards regarding the hearing of the child than the Member State of origin of the decision are encouraged by the current rules to refuse recognition and exequatur if the hearing of the child does not meet their own standards. In addition, the importance of hearing children is not highlighted in the Brussels IIa Regulation in general terms for all cases on matters of parental responsibility, but only in relation to returning proceedings.[47]

The new Regulation leaves Member States' rules and practices on how to hear a child untouched but requires mutual recognition between the legal systems. This means that an obligation to give the child who is capable of forming his or her own views an opportunity to express these views would be made explicit in the Regulation, bearing in mind that all Member States have ratified the UN Convention on the Rights of the Child which already obliges them to hear the children meeting the condition mentioned above in any domestic and cross-border proceedings concerning them. Notably, a distinction is made, as it is the case in the respective Article of the Charter of Fundamental Rights, between the question when the child needs to be allowed to be heard on the one hand (i.e., when he or she is capable of forming/expressing his or her own views) and the question what weight the judge shall give to the child's views on the other hand (which depends on the age and maturity of the child). This distinction has to be recorded in the decision and a certificate annexed to it. For a parent seeking recognition of a decision on another Member State, this means that a court in that country will not refuse to recognise it on the mere fact that a hearing of the child in another country was done differently comparing to the standards applied by that court.[48]

3.5. Actual enforcement of decisions

Decisions on parental responsibility are often enforced late or not at all. Efficient enforcement depends on the national structures put in place to ensure enforcement. The legal and practical approach to the enforcement of family decisions varies among the Member States, in particular with regard to the enforcement measures taken. Once an order has been made, it is important to have effective measures available for enforcing it while it has to be borne in mind that for enforcement against children, it must still be possible to react quickly to any temporary or permanent risks to the child's best interests which might be caused by enforcement.[49]
The Brussels IIa Regulation provides that a judgment delivered by a court of another Member State and declared enforceable in the Member State of enforce-

[47] COM(2016) 411 final, p. 4.
[48] COM(2016) 411 final, p. 15.
[49] COM(2016) 411, p. 4.

ment must be enforced under the same conditions as if it had been delivered there.[50] As the enforcement procedure is governed by the law of the Member State of enforcement and differences exist between national laws, difficulties arise with regard to the enforcement of parental responsibility decisions. Some national systems do not contain special rules for the enforcement of family law decisions, and parties must resort to procedures available for ordinary civil or commercial decisions, which do not take into account the fact that, in the area of parental responsibility, the passing of time is irreversible.[51] The application of different Member State procedures (for example, concerning the right of appeal, which suspends the effects of the judgment) may not, therefore, guarantee effective and expeditious enforcement of judgments.[52]

With regard, in particular, to the enforcement of return orders in cases of parental child abduction, the Regulation provides that a certified return order issued by the court of origin must be enforced in the Member State of enforcement in the same conditions as if it had been delivered there and that the order cannot be enforced if it is irreconcilable with a subsequent enforceable judgment.[53]

While the Regulation abolished exequatur to all categories of decisions under the scope of the Regulation in line with recent Union legislation, so in this connection, the functioning of the current grounds of refusal for the recognition and enforceability of a judgment should be taken into account to establish the necessary safeguards. In addition, the introduction of common minimum procedural standards, in particular regarding the hearing of the child, would enhance mutual trust between the Member States and, thus, the application of the provisions concerning recognition and enforceability.

A party challenging the enforcement of a decision given in another Member State should, to the extent possible and in accordance with the legal system of the Member State addressed, be able to invoke, in the same procedure, in addition to the grounds for refusal of recognition, the grounds for refusal against enforcement as such. The incompatibility with the child's best interests which has been caused by a change of circumstances (such as the serious illness of a child) or by the strength of the objections of a child of sufficient age and maturity should only be considered if it reaches importance comparable to the public policy exception.[54]

The Regulation also foresees an indicative time limit for the actual enforcement of a decision. In case the enforcement has not occurred after the lapse of 6 weeks from the moment the enforcement proceedings were initiated, the court of the Member State of enforcement would have to inform the requesting Central Authority in the Member State of origin (or the applicant, if the proceedings were con-

50 Article 47.

51 See the Comparative study on enforcement procedures of family rights referred to in the Annex to this report.

52 COM(2014) 225 final, p. 14.

53 The same enforcement provisions apply in respect of certified judgments concerning rights of access to children; Article 47.

54 COM(2016) 411 final, p. 15.

ducted without Central Authority assistance) about this fact and the reasons for the lack of timely enforcement.[55]

3.6. Cooperation between the Central Authorities

The Brussels IIa 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. 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), assist holders of parental responsibility to have their judgments recognised and enforced (in particular concerning access rights and the return of the child) and facilitate mediation. Central Authorities also meet regularly within the framework of the EJN to exchange views on their practices as well as bilaterally to discuss on-going cases.[56] Despite their overall positive functioning, the provisions on cooperation have been considered as not sufficiently specific. In particular, experts have reported difficulties in connection with the obligation to collect and exchange information on the situation of the child.[57] The main concerns relate to the interpretation of this provision, the fact that applications for information have not always been handled in a timely manner as well as to the translation of the information exchanged. Also, significant differences exist between the Member States with regard to the assistance provided by Central Authorities to holders of parental responsibility that seek enforcement of access rights judgments.[58]

The new Regulation clarifies the following aspects: (1) who can ask (2) which assistance or information (3) from whom and (4) under which conditions. It makes clear that also courts and child welfare authorities can request the assistance of Central Authorities. Moreover, with respect to the transmission of social reports, the proposal clarifies to cover also reports on adults or siblings which are of relevance in child-related proceedings under the Regulation if the situation of the child so requires. The request is to be accompanied by a translation into the language of the requested State. Likewise, the Regulation establishes some minimum requirements for a request for a social report, namely a description of the proceedings for which it is needed and the factual situation that gave rise to those proceedings. In addition, it states that the Member States shall ensure that Central Authorities have adequate financial and human resources to enable them to carry out the obligations assigned to them under this Regulation.[59]

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55 COM(2016) 411 final, p. 15.
56 Since 2010, 155 cases have been discussed in bilateral meetings.
57 Article 55(a).
58 COM(2014) 225 final, p. 11.
59 COM(2016) 411 final, p. 16.

4. Conclusion

The Brussels IIa Regulation is a well-functioning instrument that has brought important benefits to citizens. However, there were indications on the basis of data and preliminary feedback from experts that existing rules could be improved. In order to explore comprehensively the concerns identified in the report, the Commission intends to launch a further policy evaluation of the existing rules and their impact on citizens. To this end, the Commission launched a public consultation. On the basis of the evaluation and the replies to the public consultation, the Commission took action as appropriate.[60] And thanks to that 2019/1111/EU Regulation has born. The Regulation does not contain any changes with regard to the scope and the matrimonial matters for which the status quo is retained. This means that Chapter I (with the exception of mere clarification in definitions) and Chapter II Section 1 (except for clarification of the Articles 6 and 7) remain unchanged. But as we can above, there are many other changes which could hopefully make the application of the Regulation easier in the future.

In order to monitor the effective application of the amended Regulation, regular reporting and ex post evaluation by the Commission will take place supported by consultations of the Member States, stakeholders and external experts. Regular expert meetings will be organised to discuss application problems and exchange best practices between the Member States in the framework of the European Judicial Network in civil and commercial matters. The cooperation with the latter will be particularly useful to formulate the need for the collection of specific data to underpin any future proposal by statistical evidence.

[60] COM(2014) 225 final, p. 16.