

Questionnaire on the Practical Operation of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

Reply of the European Union to a specific question

Part I Recent developments

3. Please provide a brief summary of any other significant developments in your State since the 2010 / 2011 Special Commission relating to international child protection

Within the EU, child protection matters are primarily governed by Regulation (EC) No 2201/2003 (the Brussels IIa Regulation), which contains rules on jurisdiction, cooperation between Central Authorities and the recognition and enforcement of judgments in matters of parental responsibility. To a large extent, the rules of the Regulation are modelled on those of the 1996 Hague Convention. However, there are also some differences. In the application by the courts of EU Member States, the rules of the Regulation on jurisdiction prevail over those of the 1996 Hague Convention for children who are habitually resident in the territory of an EU Member State (Article 61(a) of the Regulation; Article 52(2) of the 1996 Convention). With regard to the recognition and enforcement in an EU Member State of judgments from other EU Member States, the rules of the Regulation prevail over those of the 1996 Hague Convention even if the child concerned has his or her habitual residence on the territory of a third State which is a contracting Party to the Convention (Article 61(b) of the Regulation; Article 52(2) of the Convention). As the rules of the Regulation are more generous with regard to the recognition and enforcement of judgments, this reflects the general approach in Hague Conventions that the most favourable recognition and enforcement regime may be applied.

On 30 June 2016¹ the European Commission adopted a proposal for a recast of the Brussels IIa Regulation. The proposal includes in particular measures to improve the cooperation among Central Authorities, and between Central Authorities and other competent authorities in their own State, in the application of the Regulation. To this effect, the proposal seeks to eliminate some of the differences between the Regulation and the Convention. It also suggests more detailed and specific wording for the cooperation provisions, and introduces deadlines for requests and applications (e.g. for a social report, for consent to a cross-border placement of a child etc.) to be answered. In order to facilitate the application of both the Regulation and the Convention, some clearer wording for the provisions governing the relationship between the Regulation and the Convention has been proposed. With regard to the recognition and enforcement in an EU Member State of judgments given in another EU Member State, the proposal suggests the abolition of *exequatur* for all judgments in matters of parental responsibility.

¹ <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-411-EN-F1-1.PDF>

Currently, only judgments granting access rights and certain judgments ordering the return of an abducted child (given in the Member State of (former) habitual residence of the child after the courts of another Member States have refused return under Article 13 of the 1980 Hague Child Abduction Convention) do not require an *exequatur* any more, provided that the State of origin has issued a certificate under the Regulation.

The examination of the Commission's proposal by the EU Member States started on 19 July 2016 and it is still on-going. The final version of the recast Regulation may be therefore different from the original Commission's proposal described above.