



Family mediation

The European Union's Legal Framework

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The Mediation Directive

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of **mediation in civil and commercial matters**



- Its objective is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.
- It applies in civil and commercial matters, **including family law.**
- Transposed in 2011 and Reviewed in 2016 and concluded at the time that there is no need for changes.
- The Commission continues to monitor the functioning of the Directive, and in the future, if need be, consider appropriate steps in order to enhance the attractiveness of mediation.



Family Mediation

- Mediation can be particularly helpful in **cross-border family disputes** and **parental child abduction cases**.
- The term **'family matters'** covers a broad range of disputes, from purely private matters to those involving public authorities.
- [Dedicated page on Mediation on the European e-justice portal](#) including information on:
 - ✓ Principles and stages
 - ✓ How it works
 - ✓ Costs
 - ✓ Legislation
 - ✓ Information per EU Member State
 - ✓ Link to the HCCH:

[Practitioners' Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children](#)

Specific rules on mediation in EU family law instruments



- **Council Regulation (EC) No 2201/2003, Brussels IIa Regulation**
Applicable on 1.03.2005 and replaced on 01.08.2022 by Brussels IIb Regulation
Continues to apply for proceedings instituted before, and on 1.08.2022
Applicable to the UK for proceedings instituted before, and on 31.12.2022
- **Council Regulation (EC) No 4/2009, Maintenance Regulation**
Applicable on 18.06.2011
- **Council Regulation (EU) 2019/1111, Brussels IIb Regulation**
Applicable on 01.08.2022

(EC) 2201/2003, Brussels IIa Regulation

Became applicable 1.03.2005 and on 01.08.2022 was replaced by a Recast (BIIb Regulation)

- *Similarly to the Hague 1996 Convention, Article 55(e)* obliges central authorities to facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end.
- **Recital 25** calls upon the CAs to cooperate both in general matter and in specific cases, including for purposes of promoting the amicable resolution of family disputes, in matters of parental responsibility.
- To that end they should also cooperate with the European Judicial Network (Civil).
- There is a possibility to transfer jurisdiction and limited possibilities for spouses to prorogate jurisdiction.
- **Article 46** provides a mechanism to give effect to a mediated agreement.

(EC) 4/2009, Maintenance Regulation

Became applicable 18.06.2011

- **Article 51(2)(d)** obliges CAs to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
- **Article 4** provides for a possibility for choice of court, but it is not foreseen for maintenance for children.
- There is no transfer of jurisdiction foreseen

(EU) 2019/1111, Brussels IIb Regulation

Became applicable on 01.08.2022

- **Article 79(e)** also obliges Central Authorities to facilitate agreement between holders of parental responsibility through mediation or other means of alternative dispute resolution, and facilitate cross-border cooperation to this end.
- **Article 25** calls upon courts deciding on parental child abduction, as early as possible and at any stage of the proceedings, either directly or, where appropriate, with the assistance of the Central Authorities, to invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.
- **Recital 22** clarifies that it is also possible even in cases on child abduction
- **Recital 43** highlights mediation might not always be appropriate, especially in cases of domestic violence.

2019/1111 Brussels IIb Regulation

- Additionally, there was a big change foreseen in **Article 10** that made it possible to conclude choice of court agreements in more situations regarding parental responsibility where:
 - the child has a substantial connection with that Member State, in particular by virtue of the fact that:
 - at least one of the holders of parental responsibility is habitually resident in that Member State;
 - that Member State is the former habitual residence of the child; or
 - the child is a national of that Member State;
 - the parties, as well as any other holder of parental responsibility have:
 - agreed freely upon the jurisdiction, at the latest at the time the court is seised; or
 - expressly accepted the jurisdiction in the course of the proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction; and
 - AND the exercise of jurisdiction is in the best interests of the child.
- And of course it retained, in a refined drafting, transfer of jurisdiction to a court better placed to hear the case

European Judicial Network in civil and commercial matters

- The EJM is a network of judges, representatives of ministries of justice and central authorities, together with representatives of legal practitioners, who deal with private international law cases. It is composed of over 500 members, and all Member States except Denmark participate in the EJM (in civil and commercial matters).
- It was set up to facilitate judicial and legal cooperation between Member States.
- The network usually meets about 6 times per year and in 2 of those meetings family law matters are discussed. Members of the EJM discuss the practical operation of different Regulations, including family law ones, and share best practices and experiences.
- The EJM has also developed a number of publications, notably for citizens on specific Union law instruments, which include Practice Guides on certain private international law instruments and factsheets.
- In this remit, the EJM developed factsheets on family mediation that can be found on the e-Justice portal



EJN Non-compulsory standard form on amicable solutions

- To facilitate the implementation of the Maintenance Regulation, and the effective cross-border recovery of maintenance, the EJN-civil developed a (non-compulsory) **standard form on amicable solutions**.
- This form will help **the Central Authorities to facilitate amicable agreements** between the parties, and overcome the language barriers, with a view to obtaining voluntary payment of maintenance.
- The form is available in 23 languages (in PDF format) on the [e-justice portal](https://e-justice.europa.eu): [European e-Justice Portal - Maintenance obligations \(europa.eu\)](https://e-justice.europa.eu/portal/maintenance-obligations)

AMICABLE AGREEMENT FORM

Article 51(2)(d) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations¹

1. APPLICANT/ PERSON FOR WHOM MAINTENANCE IS SOUGHT OR OWED²:

1.1. Surname and given name(s): _____

1.2. Date (dd/mm/yyyy) and place of birth: _____

1.3. Identity number or social security number: _____

1.4. Address:

1.4.1. Street and number / PO box: _____

1.4.2. Place and postal code: _____

1.4.3. Country: _____

1.5. Telephone: _____

1.6. E-mail: _____

2. PERSON REPRESENTING / DEFENDING THE INTERESTS OF PERSON NAMED IN POINT 1 (if applicable):

EJN Guides for practitioners: Family matters

- Brussels IIb: Practice Guide for the application of the Brussels IIb Regulation (2022)
- Brussels IIa: Practice Guide for the application of the Brussels IIa Regulation (2014)
- Maintenance obligations: Practice guide on the application of Regulation no 4/2009 on maintenance obligations
- Can be accessed from this link:
[European e-Justice Portal - EJN's publications \(europa.eu\)](https://e-justice.europa.eu)

Other useful resources

- A [European Code of Conduct for Mediators](#) which sets out a number of principles to which individual mediators can voluntarily decide to commit has been developed by a group of stakeholders with the assistance of the European Commission *(a copy of the code can be accessed from the bottom of the webpage)*.
- [To obtain detailed information on finding a mediator \(e.g. how to access mediation services, what the charges are and guidance on mediators\) & to find information per EU Member States](#)
- To find a mediator specialised in cross-border family mediation follow the link:
<https://www.crossbordermediator.eu/>
- All about the European Judicial Network (Civil):
https://e-justice.europa.eu/431/EN/about_the_network
- Assistance to judges & other judicial authorities via EJN page:
https://e-justice.europa.eu/437/EN/assistance_to_judges_amp_other_judicial_authorities
- The EU electronic one-stop shop in the area of justice:
<https://e-justice.europa.eu/home?plang=en&action=home>

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