



**Brussels, 4 December 2020
(OR. en)**

13594/20

**JUSTCIV 142
JAI 1059**

NOTE

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| From: | General Secretariat of the Council |
| To: | Delegations |
| Subject: | Replies from the European Union to questionnaires of the Council of Europe on the rights and the best interests of the child in situations of parental separation and the best interests of the child in proceedings to limit parental responsibilities or place a child in care |

Delegations will find in the annexes the replies that the Commission provided on behalf of the European Union to the questionnaires drafted by the Council of Europe Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings, along with its cover letter, for their information.

The annexes are, respectively:

- the cover letter by the Commission,
- the replies to the questionnaire on the best interests of the child in proceedings to limit parental responsibilities or place a child in care,
- the replies to the questionnaire on the rights and best interests of the child in situations of parental separation.

Please note that no further follow-up is required as the requested input has been provided.

Commission cover letter



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Acting Director General

 Ref. Ares(2020)7129247 - 26/11/2020

Brussels, 25 November 2020
JUST.A.1/ASD/MV/ip/just.a.1(2020)7937357
A/Ares(2020)5987501

Council of Europe
CJ/ENF-ISE Secretariat

E-mail: enf-ise@coe.int

Subject: EU replies to two questionnaires

Dear Madam/Sir,

The European Union welcomes the opportunity to reply to the two questionnaires on “The rights and the best interests of the child in situations of parental separation” and “The best interests of the child in proceedings to limit parental responsibilities or place a child in care”, sent by the Council of Europe Committee of Experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE) on 15 October 2020.

You will find attached the EU replies in the Annex to this document.

We are looking forward to participating in the 2nd meeting of the Committee of Experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE) scheduled on 14 and 18 December 2020.

Yours sincerely,


Salla SAASTAMOINEN
(e-signed)

Enclosure: Annex I – EU replies

c.c.: V. Setti, M. Tarragona Fenosa (JUST.C2), A. Stein, P. Lindholm, P. De Luca, M. Alvarez Torne, M. Vautravers, A. Sears-Debono (JUST.A1)

 Electronically signed by the Commission of the European Communities, 1049 Brussels, Belgium. BELGIQUE/BELGIE (Tel) +32 22991111
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Replies to the questionnaire on the best interests of the child in proceedings to limit parental responsibilities or place a child in care

 Ref. Ares(2020)7129247 - 26/11/2020



Strasbourg, 8 October 2020

CJ/ENF-ISE(2020)03B

Committee of Experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE)

QUESTIONNAIRE: BEST INTERESTS OF THE CHILD IN PROCEEDINGS TO LIMIT PARENTAL RESPONSIBILITIES OR PLACE A CHILD IN CARE

enf-ise@coe.int
www.coe.int/enf-ise

QUESTIONNAIRE: THE BEST INTERESTS OF THE CHILD IN PROCEEDINGS TO LIMIT PARENTAL RESPONSIBILITIES OR PLACE A CHILD IN CARE

Thank you for agreeing to take part in this survey, which will support the work of the Committee of experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE). You are kindly invited to return the completed questionnaire **by 30 November 2020** to the following address: enf-ise@coe.int.

CONTACTS

Please indicate the contact person for this questionnaire:

| | |
|---------------------------------|--|
| Country | Brussels, Belgium |
| Institution/Organisation | European Commission |
| Name and Surname | Contact officers: Angele Sears Debono and Marie Vautravers |
| Title | Legal and Policy Officers – Directorate-General for Justice and Consumers, Directorate for Civil and Commercial Justice – Unit A1 (Civil Justice) |
| Email | angele.sears-debono@ec.europa.eu marie.vautravers@ec.europa.eu |
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If any other institution contributed to prepare this document, please list them below:

DECLARATION OF CONSENT

I, in my capacity as the contact person for replies provided to CJ/ENF-ISE, understand that any data, information or assessment, including personal data or confidential information, that I supply to the above survey will be exclusively used by the Council of Europe in the framework of the work of the Committee of experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE). I agree to this use being made of any information provided. I understand that, after the analysis of responses by the Council of Europe Secretariat (Children's Rights Division/DGII and Division for Legal Cooperation/DGI) and any mandated expert, the original replies provided, containing the above personal data, would be deleted by the same Secretariat by 1 March 2022 at the latest.

By ticking the box below, I formally consent to the use of my personal data and any other information I supply as described above. If I submit personal data or confidential information of another person, I confirm that I have obtained the authorisation from that person to do so.

I agree

I. Implementing child rights, safeguards and guarantees¹

1. Which safeguards and guarantees are in place in your legislation, policy and practice to safeguard the best interests of the child in care proceedings?

Please indicate the most important provisions established by law and other regulatory instruments, including any additional safeguards from policy and practice.

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility² (known as "the Brussels IIa Regulation") is a key instrument in the area of European Union family law. It lays down a comprehensive set of common rules that apply within the European Union^{3 4} in cross-border cases, which determine what Member State's courts have the jurisdiction to deal with a case in matrimonial matters or matters of parental responsibility, resolve *lis pendens* issues and allow the recognition and enforcement of decisions in relation to matrimonial matters and parental responsibility, including cases involving parental separation. Civil matters relating to "divorce, legal separation, or marriage annulment, the attribution, exercise, delegation, restriction or termination of parental responsibility" as well as "rights of custody and rights of access" are covered by the Brussels IIa Regulation (Article 1). Parental responsibility is construed by the Brussels IIa Regulation as covering, in addition to the rights of custody and the rights of access, the following matters:

- Guardianship, curatorship and similar institutions
- The designation and functions of any person or body having charge of the child's person or property, representing or assisting the child,
- The placement of the child in a foster family or in institutional care
- Measures for the protection of the child relating to the administration, conservation or disposal of the child's property (Article 1(2)).

The Brussels IIa Regulation applies in care proceedings with a cross-border element, when a child has his or her habitual residence in a Member State of the European Union, or when, no habitual residence can be established when a child is physically present in a Member State.

¹ For the purpose of this questionnaire, the term "parent" refers to a person who has parental responsibility (not necessarily biological parent).

² Council Regulation (EC) No 2201/2003 of 27 November 2003, OJ L 338, 23.12.2003, pp. 1-29.

³ The Regulation has applied in all Member States, except Denmark, since 1 March 2005. 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 establishing the European Community, Denmark did not participate in the adoption of this Regulation and is therefore not bound by it nor subject to its application.

⁴ Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a "third country". The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [OJ L 29, 31.1.2020, p. 7] ("Withdrawal Agreement") provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom. Refer specifically to pages 4, 6 and 7 of the Notice to Stakeholders - WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF CIVIL JUSTICE AND PRIVATE INTERNATIONAL LAW with specific reference to the application of the Brussels IIa Regulation to the UK: <https://ec.europa.eu/info/publications/civil-justice-judicial-cooperation-civil-and-commercial-matters>.

Recital 5 of the Regulation provides that, *“in order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.”*

Article 1(1)(b) of the Regulation provides that civil matters relating to the attribution, exercise, delegation, restriction or termination of parental responsibility fall within the scope of the instrument. In particular, the Regulation covers the placement of the child in a foster family or in institutional care as outlined above specifically in its Article 1(2)(d).

While the Regulation lays down the rules necessary to establish the court having jurisdiction over a cross-border case and the conditions for the recognition and enforcement of a decision, the Court of Justice of the European Union, in the proceedings brought by A (C-523/07, point 51) clarified that *“it is for the national legislature to lay down the measures to be adopted by the national authorities in order to protect the best interests of the child and to lay down detailed procedural rules for their implementation”*.

In relation to the protection of children in migration, the 2017 Communication on the protection of children in migration⁵, and the recently adopted EU Pact for asylum and migration, stress the importance for a guardian for every unaccompanied child to be appointed swiftly and be given the adequate resources, for ensuring that the child best interests' is given consideration in every decision concerning the child. This is in line with the provisions of existing and proposed EU legislation in the field of asylum. A European guardianship network⁶ has been created and is being developed to foster exchanges of practices and improve guardianship across the EU.

The 4th joined meeting of DG HOME and DG JUST on the protection of children in migration discussed the topic of alternative care and best interests of the child in the migration and asylum procedures⁷.

The European Commission has been working on the topic of child protection systems since 2015. Several European Forums on the Rights of the Child were devoted to this topic, and culminated in the 10 Principles for integrated child protection systems in which the best interests of the child is recognised as one of the guiding principles⁸.

FRA (The European Union Agency for Fundamental Rights) also developed extensive work on integrated child protection systems⁹.

The 2013 Recommendation on investing in children: breaking the cycle of disadvantage¹⁰, recognises the best interests of the child and refers to protection measures of children in alternative care.

The expert group on the transition from institutional to community-based care developed [Common European Guidelines on the Transition from Institutional to Community-based Care](#)¹¹.

⁵https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf

⁶<https://www.egnetwork.eu/>

⁷https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail_groupMeetingDoc&docid=35854

⁸https://ec.europa.eu/info/sites/info/files/10_principles_for_integrated_child_protection_systems_en.pdf

⁹<https://fra.europa.eu/en/publication/2016/mapping-child-protection-systems-eu>

¹⁰<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013H0112>

2. Do child protection authorities adopt a proactive approach to identify situations where care proceedings would be justified / appropriate?

Please indicate the relevant criteria used to initiate the care proceedings and safeguards that apply throughout the proceedings.

N/A

3. How would you define the best interests of the child in such proceedings?

Please indicate the criteria used to define "the best interests of the child" (determination procedures) and how outcomes are assessed for the purpose of ensuring the child's best interests? Please include any checklists or guidance available for courts, social workers and relevant professionals.

Please refer to the answers provided to question 2 under point I (Implementing child rights, safeguards and guarantees) in the QUESTIONNAIRE: THE RIGHTS AND THE BEST INTERESTS OF THE CHILD IN SITUATIONS OF PARENTAL SEPARATION.

4. What time-limits for care proceedings of a child apply in your legislation, policy and practice?

Please indicate cases in which placement of the child in care is implemented in emergency and urgent cases and any measures that can be taken as an alternative to, or in advance of, placing the child in care. Please also indicate the time-limits and criteria used to decide the immediate placement or an alternative measure like home-based intervention.

N/A

5. Are there any specific mechanisms in your legislation, policy and practice to ensure the protection of the rights and interests of the child in care proceedings?

Please describe them (for example, appointment of legal guardian, legal representative, assistance of a support person, person of trust accompanying the child through the proceedings) and indicate the most important provisions established by law and other regulatory instruments. Please also indicate any available tools in relation to the different ages of children.

N/A

¹¹ <https://deinstitutionalisationondotcom.files.wordpress.com/2017/07/guidelines-final-english.pdf>

6. Are alternative childcare arrangements in place that do not involve the use of residential or institutional homes or shelters, such as foster care?

Please describe them, including methods of selecting, monitoring and evaluating candidate foster families. Please also describe any differences between such alternative childcare arrangements where a child is placed as an urgent measure and where a child is placed after a care proceeding.

N/A

7. What measures are taken in situations of placement of a child together with his or her sibling(s), who is/are also to be placed?

Please describe them and indicate the most important provisions established by law and other regulatory instruments, including any additional safeguards from policy and practice. Please also provide information on any specific positive initiatives and practices put in place, including whether they have been assessed and their outcomes evaluated.

N/A

8. What measures are in place to facilitate and ensure contacts between the child and his or her parents and other family members (if any) after being placed in care?

Please list them, including measures to ensure contacts of the child with other members of his or her family (grandparents, siblings, uncles and aunts). Please also indicate situations when the child does not have access to a member of his or her family and the ground for such decision.

N/A

9. What follow-up and assessment measures are in place to evaluate the short and long-term well-being of children placed in residential, institutional homes, shelters and foster families?

Please indicate them, including any checklists or guidance available for courts, social workers and relevant professionals.

N/A

10. What is the average length of a placement order depending on the situation? Do your legislation, policy and practice provide for a review of the justification and proportionality of the placement measure in light of the

circumstances of the case? If so, what is the timeframe for such review?
How is this implemented in practice in each case?

Please indicate the most important provisions established by law and other regulatory instruments, including any additional safeguards from policy and practice.

N/A

II. Does the child and his or her parents have a right to appeal against the placement decision, including when reviewing the decision?

N/A

III. Right to be heard

1. In care proceedings, what are the rules and procedures for obtaining the views of the child?

Please provide detailed information on the rules and procedures, especially on:

- *Length, frequency and time of interview with the child;*
- *Type of professionals hearing the child and other professionals involved;*
- *Rules in relation to the age of children;*
- *Measures taken to ensure a child-friendly and protective environment (child-friendly materials used, physical settings, language used, etc.);*
- *Consideration of personal situation, and background of the child (age, ethnic or national background, gender, potential language or learning difficulties, disabilities).*

Please also provide information if there are instances where the child is not heard, besides where the reason is age/maturity, and the reasons for this.

Please refer to the answers provided to question 1 in point II (Right to be heard) in the QUESTIONNAIRE: THE RIGHTS AND THE BEST INTERESTS OF THE CHILD IN SITUATIONS OF PARENTAL SEPARATION.

2. How much weight is given to the child's viewpoint by the different actors involved in care proceedings (judges, lawyers, social workers)? What option(s) does the child have if he/she considers that his/her views have not been taken into account or have not been obtained?

N/A

3. Could you share, if available, any positive initiatives and practices of obtaining the views of the child in care proceedings?

Please indicate whether the initiative/practice provided has been assessed and whether an evaluation of results is available.

N/A

4. What specific aspects of obtaining the views of the child are considered as important by the different actors involved in care proceedings (judges, lawyers, social workers)? What does your Ministry, or you in your professional capacity, regard as important and why?

N/A

IV. Right to information

1. What are the rules and procedures for informing children about the care proceedings and the manner in which they are permitted to express their views?

Please describe them in detail, including relevant issues of domestic violence, sexual abuse, access to parents and other family members (if any) after the placement and length of placement.

Please refer to the answer provided to question 1 in point III (Right to information) in the QUESTIONNAIRE: THE RIGHTS AND THE BEST INTERESTS OF THE CHILD IN SITUATIONS OF PARENTAL SEPARATION.

2. How are children informed in practice and what is your opinion about the way information is given to children?

Please provide detailed information on:

- *Type, format, content and amount of information;*
- *Mechanisms for providing information;*
- *When and where information is given (i.e. in advance of, during and after placement decisions);*
- *Measures to ensure a child-friendly and protective environment (child-friendly materials used, physical settings, language used, profile of the communicator etc.);*

- *Consideration of personal situation, and background of the child (age, ethnic or national background, gender, potential language or learning difficulties, disabilities).*

-
N/A

3. Could you share, if available, any positive initiatives and practices of children being informed, or initiatives undertaken to ensure children's understanding? In your professional opinion, or from the perspective of your institution, what else could be done to improve children's understanding?

Please indicate whether the initiative/practice provided has been assessed and whether an evaluation of results is available.

Please refer to the answer provided to question 3 in point III (Right to information) in the QUESTIONNAIRE: THE RIGHTS AND THE BEST INTERESTS OF THE CHILD IN SITUATIONS OF PARENTAL SEPARATION.

- V. Are there any specific measures in your legislation, policy and practice on care proceedings when specific considerations arise, such as the following:

- a) Child protection in the case of serious parental conflicts, domestic violence or sexual exploitation or abuse;
- b) Eligibility for adoption (including children in long-term foster care);
- c) Children in a situation of neglect;
- d) Children with disabilities;
- e) Children in situations of social distress due to economic difficulties;
- f) Children from national or ethnic minorities and Roma children;
- g) Children in detention following law breaking.

Please describe them, including any specific positive initiatives and practices put in place, including whether they have been assessed and their outcomes evaluated.

N/A

- VI. Guidance, tools and training of professionals and multi-disciplinary approaches

1. Are there any guidance and/or training courses provided for professionals involved in assessing a child's best interests in care proceedings or representing the child's best interests?

Please provide information on available guidance issued by the relevant authorities on how to assess a child's best interests, distinguishing the type of professionals (childcare professionals, guardians, lawyers, judges etc). With respect to training, please describe the type of training (initial, on-going, professional development courses, mandatory or optional), its length, content, etc.? If possible, how do you assess the quality and impact of such training?

Please also provide information on any difficulties (e.g. structural, economic political, etc.) encountered in setting up certified training that meets the same standards at the national/regional level.

N/A

2. How do different professionals work together in care proceedings?

Please provide information on which professionals are involved, how frequently, quality of interactions, possible improvements in the field, examples of multi-disciplinary teams for assessing the best interests of the child, including initiatives considered good practices and their results.

N/A

- VII. Have there been any recent consultations undertaken involving children who were placed in care in your country on the aspects covered by this questionnaire?

If yes, please provide information on the main findings of children's views on the aspects covered by the consultation.

In the remit of the preparation to the EU strategy on the rights of the child¹², a targeted consultation with children in care is being undertaken by a civil society organisation. Results are not yet available.

- VIII. Are reforms being introduced or considered in your state in the area of care proceedings?

Please refer to the answers provided in point VI (Are reforms being introduced or considered in your state in the area of parental separation?) in the QUESTIONNAIRE:

¹² <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12454-Delivering-for-children-an-EU-strategy-on-the-rights-of-the-child>

THE RIGHTS AND THE BEST INTERESTS OF THE CHILD IN SITUATIONS OF PARENTAL SEPARATION.

- IX. Are there any statistical data or scientific work carried out in the field of childcare proceedings? If possible, please indicate them.

N/A

**Replies to the questionnaire on the rights and best interests of the child in situations of
parental separation**

 Ref. Ares(2020)7129247 - 26/11/2020



Strasbourg, 8 October 2020

CJ/ENF-ISE(2020)03A

**Committee of Experts on the Rights and the Best
interests of the Child in Parental Separation and in Care
Proceedings (CJ/ENF-ISE)**

**QUESTIONNAIRE: THE RIGHTS AND THE BEST INTERESTS OF THE
CHILD IN SITUATIONS OF PARENTAL SEPARATION**

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www.coe.int/enf-ise

QUESTIONNAIRE: THE RIGHTS AND THE BEST INTERESTS OF THE CHILD IN SITUATIONS OF PARENTAL SEPARATION

Thank you for agreeing to take part in this survey, which will support the work of the Committee of Experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE). You are kindly invited to return the completed questionnaire **by 30 November 2020** to the following address: enf-ise@coe.int.

CONTACTS

Please indicate the contact person for this questionnaire:

| | |
|---------------------------------|--|
| Country | Brussels, Belgium |
| Institution/Organisation | European Commission |
| Name and Surname | Contact officers: Angele Sears Debono and Marie Vautravers |
| Title | Legal and Policy Officers – Directorate-General for Justice and Consumers, Directorate for Civil and Commercial Justice – Unit A1 (Civil Justice) |
| Email | Angele.sears-debono@ec.europa.eu Marie.vautravers@ec.europa.eu |
| Telephone | Angele Sears-Debono: 0032 2297105 Marie Vautravers: 0032 22956627 |

If any other institution contributed to prepare this document, please list them below:

DECLARATION OF CONSENT

I, in my capacity as the contact person for replies provided to CJ/ENF-ISE, understand that any data, information or assessment, including personal data or confidential information, that I supply to the above survey will be exclusively used by the Council of Europe in the framework of the work of the Committee of experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE). I agree to this use being made of any information provided. I understand that, after the analysis of responses by the Council of Europe Secretariat (Children's Rights Division/DGII and Division for Legal Cooperation/DGI) and any mandated expert, the original replies provided, containing the above personal data, would be deleted by the same Secretariat by 1 March 2022 at the latest.

By ticking the box below, I formally consent to the use of my personal data and any other information I supply as described above. If I submit personal data or confidential information of another person, I confirm that I have obtained the authorisation from that person to do so.

I agree

I. Implementing child rights, safeguards and guarantees ¹

1. Which safeguards and guarantees are in place in your legislation, policy and practice to ensure the best interests of the child in situations of parental separation?

Please indicate the most important provisions established by law and other regulatory instruments, including any additional safeguards from policy and practice.

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility² (known as "the Brussels IIa Regulation") is a key instrument in the area of European Union family law. It lays down a comprehensive set of common rules that apply within the European Union^{3 4} in cross-border cases. Those rules determine what Member State's courts have the jurisdiction to deal with a case in matrimonial matters or matters of parental responsibility, resolve *lis pendens* issues and allow the recognition and enforcement of decisions in relation to matrimonial matters and parental responsibility, including cases involving parental separation. Civil matters relating to "*divorce, legal separation, or marriage annulment; the attribution, exercise, delegation, restriction or termination of parental responsibility*", as well as "*rights of custody and rights of access*" are covered by the Brussels IIa Regulation (Article 1).

Family law remains in general within the competence of Member States. Consequently, the Brussels IIa Regulation does not establish substantive family law rules governing matrimonial matters and parental responsibility, including the question who has, or who can obtain, a right of access to a child and under what conditions. These family law issues are left to national law and do not fall under EU competence. However, in situations where a conflict of jurisdiction arises, or when a decision issued in a Member State must be enforced in another, the Brussels IIa Regulation ensures that the best interest of the child is taken into account:

- Recital 12 of the Regulation provides that "*the grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.*"

¹ For the purpose of this questionnaire, the expression "parental separation" refers to married and unmarried parents.

² Council Regulation (EC) No 2201/2003 of 27 November 2003, OJ L 338, 23.12.2003, pp. 1-29.

³ The Regulation has applied in all Member States, except Denmark, since 1 March 2005. 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 establishing the European Community, Denmark did not participate in the adoption of this Regulation and is therefore not bound by it nor subject to its application.

⁴ Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a "third country". The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [OJ L 29, 31.1.2020, p. 7] ("Withdrawal Agreement") provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom. Refer specifically to pages 4, 6 and 7 of the Notice to Stakeholders - WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF CIVIL JUSTICE AND PRIVATE INTERNATIONAL LAW with specific reference to the application of the Brussels IIa Regulation to the UK: <https://ec.europa.eu/info/publications/civil-justice-judicial-cooperation-civil-and-commercial-matters>.

The main ground for jurisdiction in parental responsibility matters is therefore based on the criteria of proximity between the court and the child (habitual residence), which is meant to better safeguard the child's interests.

- Recital 33 of the Regulation "*recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union*". Article 12⁵ (Prorogation of jurisdiction) and Article 15(1)⁶ (Transfer to a court better placed to hear the case) of the Regulation establish exceptions to the general principle of proximity (habitual residence) between the court and the child. A court from another Member State than the State of the habitual residence of the child may have jurisdiction in certain specific circumstances. Those circumstances must however be established in the interests of the child.⁷

Article 12(1)(b) and 12(3)(b) of the Regulation cited above provides that a prorogation of jurisdiction on parental responsibility to the court seized with divorce or other proceedings is possible if, inter alia, the jurisdiction "*is in the superior interests of the child*" or "*in the best interest of the child*".

Article 15 cited above provides for the possibility for a court to transfer jurisdiction to a court of another Member State that would not have jurisdiction on parental responsibility "*where this is in the best interest of the child*". The requested court may only accept this transfer of jurisdiction if "*due to the specific circumstances of the case, this is in the best interest of the child*".

⁵ 1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

(a) at least one of the spouses has parental responsibility in relation to the child; and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seized, and is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

3. The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State; and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seized and is in the best interests of the child.

4. Where the child has his or her habitual residence in the territory of a third State which is not a contracting party 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, jurisdiction under this Article shall be deemed to be in the child's interest, in particular if it is found impossible to hold proceedings in the third State in question.

⁶ 1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

(a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

⁷ The task to evaluate the best interest of the child under Article 12 will lie with the court which is seized of the request for divorce, legal separation or marriage annulment Pursuant to Article 15, the responsibility to assess the best interest of the child will lie with the court seized with the proceedings on parental responsibility, as well as with the requested court (Article 15(5)).

The Charter of Fundamental Rights of the European Union applies to Member States when they are implementing European Union law⁸. Article 24(2) of the Charter provides that "*in all actions relating to children, whether taken by public authorities or private institutions, the child's best interest must be a primary consideration*".

2. How would you define the best interests of the child in such situations?

Please indicate the criteria used to define "the best interests of the child" (determination procedures) and how outcomes are assessed for the purpose of ensuring meeting the child's best interests? Please include any checklists or guidance available for courts, mediators and relevant professionals.

The concept of the "best interests of the child" is used in the Brussels IIa Regulation, and interpreted in accordance with objectives and purposes of the Regulation and relevant case law of the Court of Justice of the European Union. Furthermore, any reference to the best interests of the child need to be interpreted also in light of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child.

In *Jasna Detiček v Maurizio Sgueglia* ([C-403/09, points 58 - 60](#)), the Court of Justice interprets the concept of the best interest of the child in light of Article 24(2) of the Charter of Fundamental Rights of the EU (Recital 33 of the Regulation). The Court concludes that the respect of the fundamental rights of the child, in particular the right to maintain on a regular basis a personal relationship and direct contact with both parents *merges into the best interests of any child*. The Court further recognised that another interest of the child could possibly conflict with the right to have a regular relationship with both parents. In that case, other interests may take priority over the latter, on the condition that a "*balanced and reasonable assessments of all the interests involved*" is carried out by the court, which must be based on objective considerations relating to the actual person of the child and his or her social environment.

In *J. McB. v L. E.* ([C-400/10, point 62](#)), the Court of Justice listed some of the relevant facts to be taken into account when taking a decision on custody and rights of access, to ensure the protection of the child's best interests : "*circumstances surrounding the birth of the child, the nature of the parents' relationship, the relationship of the child with each parent, and the capacity of each parent to take the responsibility of caring for the child*".

In *L. v M.* ([C-656/13, point 58](#)), the Court of Justice made it clear that the conditions for the best interests of the child to be complied with cannot be established on a general level, and must be examined in each individual case.

In *Child and Family Agency v J. D.* ([C-428/15, points 44, 58, 59](#)), the Court of Justice clarified further the criteria used to define the best interest of the child in the context of a transfer or jurisdiction between two Member States. The Court recalls that the "*reason why the best interests of the child are taken into consideration (...) is to ensure respect of the*

⁸ Article 51(1) of the Charter.

child's fundamental rights". The Court further provides a definition *a contrario* of the best interest of the child. The Court indicates that, in order to meet the best interests of child, a transfer of jurisdiction should not be "*liable to be detrimental to the situation of the child concerned*". National courts are in that context required to assess "*any negative effects that such a transfer might have on the familial, social and emotional attachments of the child concerned in the case or on that child's material situation*".

In the proceedings brought by Alessandro Saponaro and Kalliopi-Chloi Xylina ([C-565/16, points 35 - 38](#)), the Court of Justice also indicated that the existence of an agreement reached between the holders of parental responsibility should be taken into consideration by national courts as one of the criteria of the best interest of the child.

3. Are there any specific measures in your legislation, policy and practice covering contested, i.e. (highly) conflictual, separation situations, in which the parents are unable to reach an agreement?

Please describe them, as well as any specific positive initiatives and practices (such as parenting plans) put in place, including whether they have been assessed and their outcomes evaluated.

The European Union actively promotes methods of alternative dispute resolution ("ADR"), such as mediation⁹. The Mediation Directive¹⁰ which applies in all EU countries concerns mediation in civil and commercial matters, and provides an appropriate framework supporting mediation, including family mediation. In 2016, the Commission adopted a report on the application of the Directive¹¹. This report concludes that overall, the Directive has provided EU added value by raising awareness amongst national legislators on the advantages of mediation, introducing mediation systems or triggering the extension of existing mediation systems. One of the best practices identified in the report is that, in particular in family law matters, obligatory information sessions within the framework of a judicial procedure and an obligation on courts to consider mediation at every stage of judicial proceedings would be important.

The new rules revising the Brussels IIa Regulation¹² (*refer to point VI. Below on 'Are reforms being introduced or considered in your state in the area of parental separation?' for a more detailed reply on the Brussels IIa Recast*) underline the growing importance of mediation and other methods of alternative dispute resolution and provide that, in all cases concerning children, and in particular in cases of international child abduction, courts should consider the possibility of achieving solutions through mediation and other appropriate means as early as possible. At the same time, the new Regulation recognises that mediation might not always be appropriate, especially in cases of domestic violence.

⁹ https://e-justice.europa.eu/content_eu_overview_on_mediation-63-en.do

¹⁰ 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: OJ L 136, 24.5.2008, p. 3–8 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV) Special edition in Croatian: Chapter 19 Volume 009 P. 281 - 286

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0542&from=EN>

¹² See, in particular, Article 25 and recital 43 of the Brussels IIa Regulation (Recast): <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1111&from=EN>

4. What time-limits apply in your legislation for parental separation or divorce proceedings, bearing in mind that the passing of time can have irreversible effects on the child-parent relationship? How are these time-limits implemented in practice?

Please indicate the most important provisions established by law and other regulatory instruments as well as any specific positive initiatives and practices put in place, including whether they have been assessed and their outcomes evaluated.

N/A

5. Are there any specific mechanisms to ensure the protection of the rights and interests of the child in situations of parental separation?

Please describe them (for example, appointment of legal guardian, legal representative, assistance of a support person, person of trust accompanying the child through the proceedings) and indicate the most important provisions established by law and other regulatory instruments. Please also indicate any available tools in relation to the different ages of children.

N/A

6. What measures are taken to facilitate and/or ensure contacts between the child and the parent who does not have custody?

Please describe them, including the manner these measures are enforced and indicate the most important provisions established by law and other regulatory instruments. Please also indicate any available tools in relation to the different ages of children.

Under Article 20(1) of the Brussels IIa Regulation, a court of a Member State may take provisional measures, which include also protective measures, in urgent matters, even though the court of another Member States has jurisdiction under the Regulation as to the substance of the matter. Such a measure can be taken by a court or by an authority having jurisdiction in matters falling within the scope of the Regulation (Article 2(1)). A welfare authority, or child protection or youth authority may, for instance, be competent to take provisional measures under national law. Protective measures may include provisional access rights to a parent.

Finally, a specific legal framework has been established for the recognition and enforcement of so-called "privileged" decisions, in particular decisions on access rights. One of the main policy objectives of the Brussels IIa Regulation is to ensure that a child throughout her or his childhood can maintain contact with all holders of parental responsibility even after a separation and when they live in different Member States¹³. The Brussels IIa Regulation has abolished the *exequatur* for those particular decisions and therefore provides for a **speedy enforcement of decisions related to the access rights of a parent**. This expedited enforcement mechanism allows a parent to directly enforce a decision on his or her access rights in another Member State in the same conditions as if the judgement had been delivered in that Member State, with no possibility to object to its recognition, provided that it is accompanied by a certificate issued by the court which granted the judgement.¹⁴ In this way, the Regulation facilitates the exercise of cross-border access rights.

In child abduction cases, Article 21 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction¹⁵ allows a parent to apply for arrangements to organise or secure the effective exercise of rights of access. In cross-border cases, a parent can make an application for access rights to the Central Authority designated under the Convention. Central authorities must "*promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject*". They, either directly or through intermediaries, may initiate or assist in the institution of judicial proceedings with a view to organising or protecting these rights of access and ensuring the respect for the conditions to which the exercise of these rights may be subject.

¹³ In this way the Regulation expresses the principle in Articles 9 and 10 of the UN Convention on the Rights of the Child. The Convention applies to children under the age of 18 years; see also Article 24(3) of the Charter of Fundamental Rights of the European Union (2010/C 83/02) EN 30.3.2010 OJ C 83/389.

¹⁴ Refer to Articles 40 and 41 of the Brussels IIa Regulation on the direct recognition and enforcement of rights of access (contact).

¹⁵ <https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf>

7. What measures are in place when parents do not comply with agreements entered into or the decisions of the courts or when parents are not ready to accept the advice of social/counselling services, as the case may be?

Please describe them, including the manner these measures are enforced and indicate the most important provisions established by law and other regulatory instruments. Please also advise on any specific positive initiatives and practices, including whether they have been assessed and their outcomes evaluated.

N/A

8. What action is taken by the appropriate authorities when a custodian parent or carer obstructs and hinders contact with the other parent or abuses the procedure?

Please describe the role and responsibilities of relevant authorities, including oversight and enforcement measures.

N/A

9. What measures are taken by the competent authorities when a non-custodial parent does not exercise his or her responsibilities in terms of maintaining contact with the child?

Please describe the role and responsibilities of the competent authorities, including monitoring and enforcement measures.

N/A

10. Are there any measures in place to guarantee the best interests of the child in:

- a) separation of parents who are not married;
- b) separation of parents who are not living together (or have never lived together);
- c) separation of parents before notary, mediator or similar;
- d) amicable separation of parents.

Please describe them, including any specific positive initiatives and practices put in place, including whether they have been assessed and their outcomes evaluated.

N/A

II. Right to be heard

1. In proceedings on parental separation, what are the rules and procedures for obtaining the views of the child?

Please describe in detail, distinguishing the context of civil proceedings and where mediation or other alternative dispute resolution mechanisms are used. Please provide information on:

- *Length, frequency and time of interview with the child;*
- *Type of professionals hearing the child and other professionals involved;*
- *Rules in relation to the age of children;*
- *Safeguards against undue influence on the child;*
- *Measures taken to ensure a child-friendly and protective environment (child-friendly materials used, physical settings, language used, etc.);*
- *Consideration of personal situation and background of the child (age, ethnic or national background, gender, potential language or learning difficulties, disabilities).*

Please also provide information if there are instances where the child is not heard, besides where the reason is age/maturity, and the reasons for this.

The Brussels IIa Regulation emphasises the importance of giving children the opportunity to express their views in proceedings concerning them. In general, a party can oppose to the recognition of a decision on parental responsibility on the ground that the decision was issued without the child having been given the opportunity to be heard (Article 23). Similarly, the Regulation has established expedited enforcement procedures abolishing the exequatur requirement for "privileged" decisions (decisions on the access rights or ordering the return of the child under Article 11(8)). However, those decisions will not benefit from the expedited enforcement procedure unless the child has been given the opportunity to be heard, except when a hearing is considered inappropriate having regard to their age or degree of maturity (Articles 41(c) and 42(2)(a)). It follows that a decision issued in a Member State without the child having been provided the opportunity to be heard, may not be recognised and enforced in another Member State.

In abduction cases, the Regulation reinforces the right of the child to be heard by providing for a positive obligation to give the child such an opportunity as set out in its Article 11(2)¹⁶.

Moreover, as set out in its recital 19¹⁷, the Regulation does not alter the applicable national procedures of the Member States relating to the hearing of the child. It is left to the discretion of the courts in the Member States to develop their own techniques and strategies for taking the views of children of all ages. Whatever technique is employed for taking the views of the child, it is a matter for the court itself to decide whether or not to do so but it is not possible to

¹⁶ "When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity."

¹⁷ The hearing of the child plays an important role in the application of this Regulation, although this instrument is not intended to modify national procedures applicable.

take any informed decision on this point without having been able to assess the child as to her or his age and maturity which is the only criterion¹⁸.

2. How much weight is given to the child's viewpoint by the different actors involved in family justice (judges, lawyers, mediators, social workers)? What option(s) does the child have if he/she considers that his/her views have not been taken into account or have not been obtained?

N/A

3. Could you share, if available, any positive initiatives and practices of obtaining the views of the child in situations of parental separation?

Please indicate whether the initiative/practice provided has been assessed and whether an evaluation of results is available.

The Fundamental Rights Agency has developed materials in relation to the topic of child-friendly justice which are relevant in the area¹⁹.

4. What specific aspects of obtaining the views of the child are considered as important by the different actors involved in family justice (judges, lawyers, mediators, social workers)? What does your Ministry, or you in your professional capacity, regard as important and why?

N/A

III. Right to information

1. What are the rules and procedures for informing children about the proceedings (including mediation), and the manner in which they are permitted to express their views?

Please describe them in detail, including relevant issues of domestic violence, sexual abuse, custody and divorce or others.

N/A

2. How are children informed in practice and what is your opinion about the way information is given to children?

¹⁸ See European Commission - [Practice Guide for the application of the Brussels IIa Regulation](#); page 77.

¹⁹ [Child-friendly justice - Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States](#) and a [check-list for professionals](#).

Please provide information on:

- *Type, format, content and amount of information;*
- *Mechanisms for providing information;*
- *When and where information is given (i.e. in advance of, during and after the proceedings);*
- *Measures to ensure a child-friendly and protective environment (child-friendly materials used, physical settings, language used, profile of the communicator etc.);*
- *Consideration of personal situation, and background of the child (e.g. age, ethnic or national background, gender, potential language or learning difficulties, disabilities).*

N/A

3. Could you share, if available, any positive initiatives and practices of children being informed, or initiatives undertaken to ensure children's understanding? In your professional opinion, or from the perspective of your institution, what else could be done to improve children's understanding?

Please indicate whether the initiative/practice provided has been assessed and whether an evaluation of results is available. Please also advise what other measures are being discussed in your country to improve children's understanding.

Good practices are promoted at the European Forum on the Rights of the Child²⁰ organised annually by the Commission and at the meetings of the informal expert group on the Rights of the child, where representatives from all Member States together discuss issues of common interest, including inter alia, the functioning of the national child protection services.

Furthermore, the European Judicial Network in civil and commercial matters (EJN-civil)²¹ which is a flexible, non-bureaucratic network continues striving to improve the practical application of the Brussels IIa Regulation by facilitating the networking of national authorities and bringing together Central Authorities in order to contribute building bridges between the different justice systems of the Member States. The network is a major tool to foster mutual trust, and facilitate cross-border access to justice through information given to the public and the practitioners through factsheets and other publications available at the European e-justice portal in all Union languages. In addition, the network convenes regular in-person meetings gathering the Central Authorities, where bilateral meetings are arranged to facilitate the resolution of problems in individual cross-border cases.

²⁰ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/who-we-work-rights-child_en

²¹ https://e-justice.europa.eu/content_ejn_in_civil_and_commercial_matters-21-en.do

IV. What are the rules and procedures in separation cases when specific considerations arise, such as the following?

- a) Child protection in the case of domestic violence, intimate partner violence witnessed by the child or sexual exploitation or abuse;
- b) Cases of child relocation in the same country or abroad (including cross border abduction cases);
- c) Children in a situation of neglect by their parents (food, health, hygiene, clothing, protection, etc.);
- d) Children with disabilities;
- e) Children in situations of social distress due to economic difficulties;
- f) Children in vulnerable situations (dropping out of school, hospitalisation, etc.).

Please describe them, including any specific positive initiatives and practices implemented, including whether they have been assessed and their outcomes evaluated.

The reply is pertinent to the specific consideration outlined in letter (b) relating to cases of child relocation in the same country or abroad (including cross border abduction cases):

The 1980 Hague Convention of the Civil Aspects of International Child Abduction (hereafter "the 1980 Hague Convention") acknowledges that "*the interests of children are of paramount importance in matters relating to their custody*" and was adopted "*to protect children internationally from the harmful effects of their wrongful removal and retention, and to establish efficient procedures to ensure their prompt return to the State of their habitual residence*" (Preamble of the Convention).

*"The Convention is based on a presumption that, save in exceptional circumstances, the wrongful removal or retention of a child across international boundaries is not in the interests of the child, and that the return of the child to the State of the habitual residence will promote his or her interests by vindicating the right of the child to have contact with both parents, by supporting continuity in the child's life, and by ensuring that any determination of the issue of custody or access is made by the most appropriate court having regard to the likely availability of relevant evidence"*²². The 1980 Hague Convention applies in all EU Member States and is complemented by Articles 10 and 11 of the Brussels IIa Regulation.

The 1980 Hague Convention provides for a return mechanism, which is distinct from the judicial proceedings on custody and access rights. According to its Article 12, when a child (aged maximum 16) has been wrongfully removed or retained in another State party to the

²² Outline of the 1980 Hague Child Abduction Convention: <https://assets.hcch.net/docs/1e0452a1-ae70-401f-b641-1fd591a63154.pdf>

Convention, the authority seized shall order the return of the child. The most significant exception to this general obligation to return the child to the State of his or her habitual residence is set out in Article 13(1)(b) which provides that if "*there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation*".

The Brussels IIa Regulation supplements the 1980 Hague Convention and provides for instance for stricter deadlines for the court to issue the return order, which shall be rendered within six weeks after the application is lodged, "*except where exceptional circumstances make this impossible*". The Brussels IIa Regulation also provides for an "overriding mechanism" when the return of the child is denied pursuant to Article 13 of the 1980 Hague Convention, giving the last word to the courts of the Member State of the habitual residence of the child. This mechanism is set out in Article 11(8)²³ of the Brussels II Regulation.

Both instruments have instituted Central Authorities to ensure an efficient cross-border cooperation. The left-behind parent can lodge an application with the Central Authority of his/her place of residence and ask, for instance, for the child to be located, for a voluntary return or amicable solutions to be achieved. In addition, the Central Authorities can initiate or help initiating proceedings, and make arrangements to secure the child's safe return.

The reply is pertinent to the specific consideration outlined in letters a) **Child protection in the case of domestic violence, intimate partner violence witnessed by the child or sexual exploitation or abuse**; c) **Children in a situation of neglect by their parents (food, health, hygiene, clothing, protection, etc.)**; d) **Children with disabilities**; e) **Children in situations of social distress due to economic difficulties**; f) **Children in vulnerable situations (dropping out of school, hospitalisation, etc.)**

In relation to other categories of children mentioned in the question, the existing EU legislative and policy framework should be considered. In relation to child sexual abuse, the [Child sexual abuse Directive](#) and [Victims' rights directive](#) with their corresponding strategies²⁴), the [Gender equality strategy](#) and the work related to tackling domestic violence, the disabilities framework, given that the EU is a party of the UN Convention on the Rights of Persons with Disabilities and the upcoming EU [Disability rights strategy](#), the new [EU Roma integration framework on equality, inclusion and participation](#) in the EU framework and legislation in relation to juvenile justice, mainly the [2016/800 Directive on Procedural safeguards for children](#).

V. Tools and training of professionals and multi-disciplinary approaches

1. **Are there any training courses provided for professionals involved in assessing a child's best interests in separation situations?**

²³ Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.

²⁴ [Strategy on the fight against child sexual abuse](#). [Strategy on victims' rights](#).

Please describe the type of training (initial, on-going, professional development courses, mandatory or optional), its length, content, etc.? If possible, how do you assess the quality and impact of such training?

In recent years, the Commission has launched targeted calls for proposals, under the Rights, Equality and Citizenship programme, aimed at building capacity for the judiciary and other practitioners, including child protection professionals and professionals on child-friendly justice²⁵.

2. How do different professionals work together when children are involved in justice proceedings related to separation, including mediation?

Please provide information on which professionals are involved, how frequently, quality of interactions, possible improvements in the field, and/or examples of multi-disciplinary teams for assessing the best interests of the child, including initiatives considered good practices and their results.

The new European judicial training strategy²⁶ and the e-justice portal will provide for training of justice professionals (judges, prosecutors, court staff, bailiffs, lawyers, notaries, mediators, prison staff, probation officers, etc.) on EU law.

VI. Are reforms being introduced or considered in your state in the area of parental separation?

In June 2019, a recast of the Brussels IIa Regulation²⁷ (hereinafter 'the Brussels IIa Regulation (Recast)') was adopted and the new rules revising the current Regulation will enter into application on 1 August 2022²⁸.

Article 21 of the Brussels IIa Regulation (Recast) first establishes **the right of the child to express his or her views**. The new Regulation does not oblige courts to hear the child, rather, they shall *"provide the child who is capable of forming his or her own views with a genuine and effective opportunity to express his or her views, either directly, or through a representative or an appropriate body."*

The Brussels IIa Regulation (Recast) also provides an indication of the weight that courts should give to the opinion of the child: they shall give it due weight, *"in accordance with his or her age and maturity"*. Recital 39 thereof clarifies that **the views of the child are to be taken into consideration when assessing his or her best interests**. This recital

²⁵ https://ec.europa.eu/info/sites/info/files/20190401_compilation.pdf

²⁶ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1176-European-Judicial-Training-Strategy-2019-2025>

²⁷ 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: OJ L 178, 2.7.2019, p. 1–115 (BG, ES, CS, DA, DE, ET, EL, EN, FR, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV). In accordance with the provisions of Article 100 (Transitional provisions) of the Brussels IIa Regulation (Recast), Regulation (EC) No 2201/2003 shall continue to apply to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements which have become enforceable in the Member State where they were concluded before 1 August 2022 and which fall within the scope of that Regulation.

²⁸ The Brussels IIa Regulation (Recast) will apply to all Member States, except Denmark. In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application (refer to recital 96 of the Recast).

underlines that the hearing does not constitute an absolute obligation and lays down exceptions where the child may not be heard, for instance where parties have reached an agreement. The procedure and place of the hearing is left to national law.

The Brussels IIa Regulation (Recast) also introduces the possibility for the parties to make a choice of court in parental responsibilities matters, prior to the proceedings, on the condition that, *inter alia*, the exercise of jurisdiction is in the best interest of the child²⁹.

Finally, the Brussels IIa Regulation (Recast) introduced a number of **improvements to the legal framework of abduction cases**. The new rules aim at **speeding up the return of abducted children** and introduce stricter time-periods to handle abduction cases. For instance, Central Authorities shall acknowledge an application for return within five working days. The six weeks period in which the first instance court must issue its decision under the current Regulation is duplicated at the appeal (or any higher) level to avoid lengthy procedures at the appeal or cassation level. Enforcement of a return decision shall also take place within six weeks; otherwise, the party seeking enforcement has the right to request a statement of the reasons for the delay³⁰.

Courts shall also invite the parties to resort to **alternative dispute resolutions**, unless it is contrary to the best interest of the child, is not appropriate in light of the specific circumstances or would unduly delay the proceedings³¹.

In addition, under the new rules, the procedure to refuse the return of the child under Article 13 of the 1980 Hague Convention has been clarified to enhance the protection of the child and to facilitate the cross-border communication between courts³².

VII. Are there any statistical data or scientific work carried out on children affected by parental separation (legal proceedings/mutual consent etc.)? If possible, please indicate them.

N/A

²⁹ Article 10(1)(c) of the Brussels IIa Regulation (Recast).

³⁰ Refer also to recital 42, Article 23 and Article 28 the Brussels IIa Regulation (Recast).

³¹ Refer to Article 25 of the Brussels IIa Regulation (Recast).

³² Refer also to recital 79, Article 27 and Article 29 of the Brussels IIa Regulation (Recast).