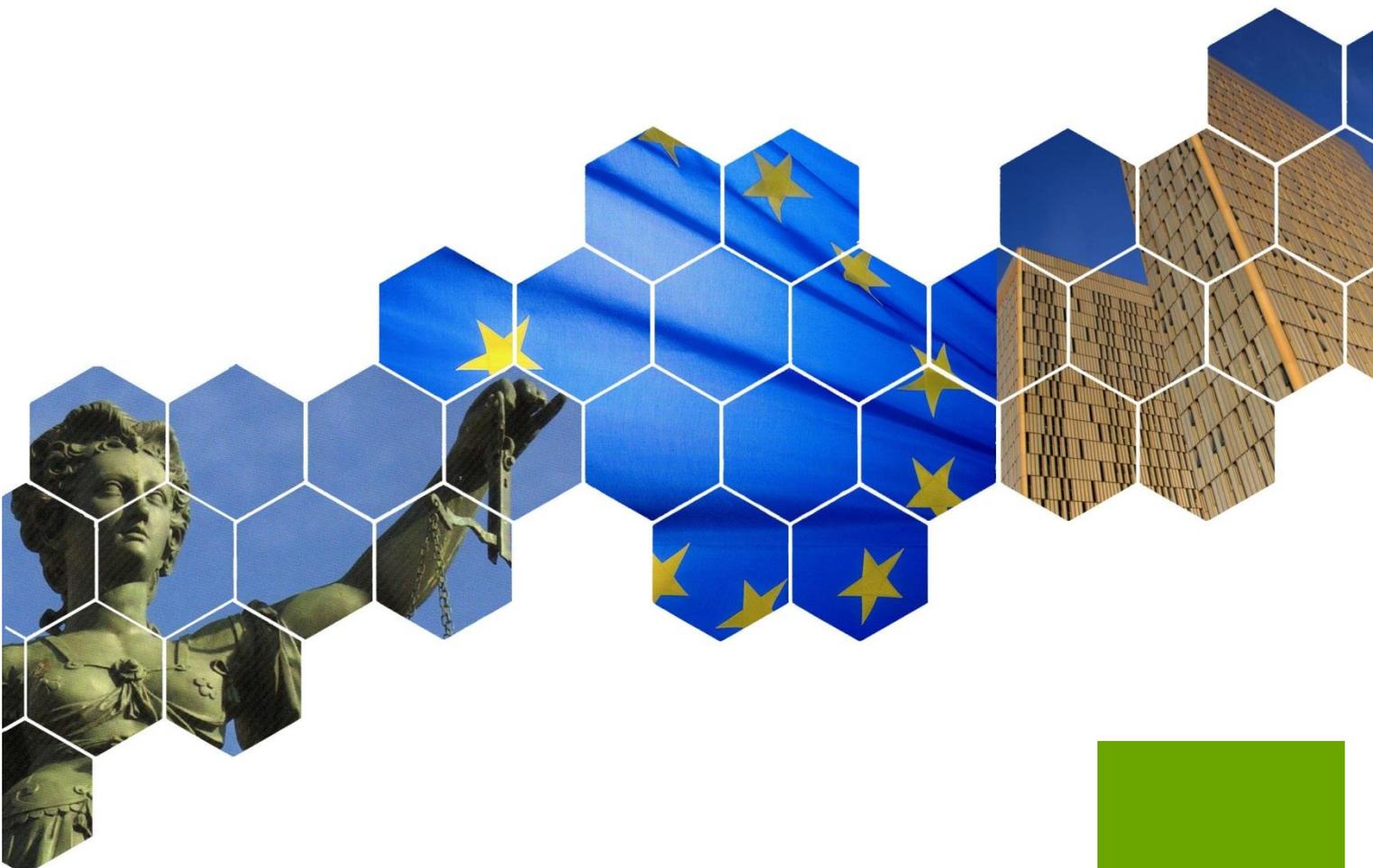


Update of the practice guide on the application of the Brussels IIA Recast Regulation

Questionnaire

JUST/2020/JCOO/FW/CIVI/0121



September 2021

Introduction

This questionnaire is part of the European Commission's project to update the Practice guide on the application of the Brussels IIa Regulation in view of the entry into application of the Recast thereof in 2022 – 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 (hereafter BIIaRR) as carried out by Associate Prof. Dr Boriana Musseva and Milieu Consulting SRL.

Aim of the questionnaire

Associate Prof. Dr Boriana Musseva and Milieu Consulting have been tasked by the European Commission for updating the Practice Guide on the application of the Brussels IIa Regulation. On 25 June 2019, a the BIIaRR was adopted to remedy the deficiencies in the Brussels IIa Regulation. The BIIaRR will start to apply as of the 1 August 2022.

In view of the entry into application of BIIaRR, it is also needed to update the Practice Guide on the application of the Brussels IIa Regulation, which was developed in 2014 to support judges, legal practitioners and relevant stakeholders with the correct application of the Regulation.

For these purposes, we are collecting, by means of this questionnaire, practitioners' practical experiences in using the current [Practice Guide](#) and their views on how the new Practice Guide could better present the changes introduced by the BIIaRR. The questionnaire will therefore ask for input on the best possible structure for the new Practice Guide and on issues that need to be addressed and clarified. We hope to also receive examples on some matters left by the BIIaRR to the national law and procedure.

Instructions for completing the survey

Please provide the answers in English.

We kindly ask you to fill in the questionnaire by **12 November 2021**.

PRIVACY STATEMENT AND CONFIDENTIALITY

When completing this survey, you might want to share with us some of your personal data such as your name, contact details, position, organisation you work in, as well as your personal views and opinions.

Please be reassured that any personal data you provide will be treated in conformity with the Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and where applicable with the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR).

Any personal data that you provide when answering this survey will only be used for the purpose of conducting the study.

For more information on the processing of your personal data, please see the specific Privacy Statement.

As to the confidentiality of your responses, please note that your answers will be treated as confidential and will be only shared with the European Commission without information concerning the respondent (i.e., name of the organisation, name and position of the respondent). Moreover, your answers will be published anonymously. If you would nevertheless like to share with the European Commission your identifying information, please check the box below.

Please indicate if you consent that your views and opinions are referenced in this study, which may be subject to publication, linking them to your organisation, but without any reference to you as an individual:*

By checking this box, I acknowledge that my views could be shared with the European Commission and published with information concerning the name and type of the organisation that I represent, to which I hereby give my consent.

No, I do not consent. Please note that your answers may always be subject to a request for public access to documents under Regulation (EC) N 1049/2001. If you opted for anonymous answer, please be mindful of not including information that might allow the identification of your organisation or yourself in the open text questions.

If you have any questions, please do not hesitate to contact the project team at Brussels_jia_@milieu.be.

Thank you very much for your valuable contribution!

By checking this box, I confirm that I have read the specific European Commission Privacy Statement and agree with the processing of my personal data for the purposes stated therein.*

About the respondent

- 1) Please provide the name of your profession or organisation and department in the box below (where possible, please include a translation in English).

- 2) Where do you exercise your profession or where is your organisation based?*

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- Other. Please specify:

Based on the information that you will provide to us in this questionnaire, we might contact you for a potential follow-up interview if required. Please enter your contact details, if you would be willing to participate in a follow-up interview:

- 3) Name and surname

4) Profession or position within the organisation

5) E-mail address

6) Phone number (include country code)

Experience in using the current Practice Guide on the application of the Brussels IIa Regulation (Practice Guide)

1. General

1. Do you rely on the Practice Guide in your day to day work?

- No
- Yes
- Not familiar with the Practice Guide

1a. If your answer is 'Yes', how often do you use the Practice Guide?

- frequently (on a daily basis)
- incidentally (on a case-by-case basis)
- for initial clarification of specific matters
- Rarely

2. What are your views on the structure of the Practice Guide.

- it is well structured
- it is too detailed
- it is too concise
- it would be more useful to have an interactive electronic version
- Other views: please specify (add free text).

3. Should the updated Practice Guide on the application of the BIIaRR be structured similarly to the current Practice Guide?

- Yes
- No, please specify how you think the updated guide should be structured

4. Does the Practice Guide have enough practical examples?

- Yes
- No
- Other views: please specify (add free text)

5. Are you aware of any errors or unclarity in the Practice Guide that in your view need to be addressed in the updated Practice Guide? Please indicate these here.

6. Which new provisions of the BIIaRR do you find challenging?

2. Chapter "General Introduction"

7. Should the updated Practice Guide include in the Introductory Chapter additional aspects such as the aim and purpose of the BIIaRR or the legislative history leading to the BIIaRR

- Yes
 No
 It is not necessary
 Other views: please specify (add free text)

8. Where should the issues of the relationship between the BIIaRR and other EU instruments, international conventions and the national law be presented in the updated Practice Guide:

- in the chapter “General Introduction”
 in a separate chapter at the end of the Practice Guide
 Other views: please specify (add free text)

3. Chapter “Matrimonial matters”

9. Should the chapter on “Matrimonial matters” include additional subject matters falling within the scope of the BIIaRR other than those covered in the current Practice Guide¹. Examples of additional subject matters are: non-applicability to decisions refusing the dissolution of the matrimonial ties, definition of “habitual residence” of a spouse etc.

10. Should the new provisions and recitals on ‘Authentic instruments and agreements’ be presented in a new separate chapter with cross-reference to the Chapter “Matrimonial Matters”?

- Yes
 No
 Other views: please specify (add free text)

4. Chapter “Parental responsibility”

11. Should the chapter on “Parental responsibility” include additional subject matters falling within the scope of the BIIaRR, other than those covered in the current Practice Guide². Examples of additional subject matters are: the notion of the best interest of the child, relation with the child abduction cases under the 1980 Hague Convention etc.

New Article 10 of the BIIaRR “Choice of court”

¹ Material scope of application, jurisdiction, *lis pendens* and recognition and enforcement.

² Material scope of application, jurisdiction, transfer of jurisdiction, *lis pendens*, recognition and enforcement – general and the rules on rights of access.

12. Please indicate any examples, if any, of obstacles that can hinder the application of Article 10 (Choice of court) concerning:

13.1. The moment until which the choice of court is possible in the course of the proceedings

13.2. The form, including the recording of the choice of court agreements

13.3. The obligation of the court to inform the parties of their right not to accept the jurisdiction.

13.4. The consequences on the failure of the court to inform the parties.

13.5. The persons that can qualify as parties to the proceedings after the court was seized, and implicitly accept the jurisdiction.

13.6. and free choice of the parties

13.7. Other examples of obstacles to the application of Article 10

13.8. I do not see any obstacles to the application of Article 10

13. Do you understand the exclusive nature of the choice of court agreement as limited to only the expressly accepted jurisdiction in the course of the proceedings or it can cover also pre-trial agreements on choice of court with exclusive nature?

Yes, it is limited to the expressly accepted jurisdiction in the course of the proceedings

No, it can cover also pre-trial agreements on choice of court with exclusive nature

I do not know

Other views: please specify (add free text)

Articles 12 and 13 of the BIIARR

14. Should the explanation in the updated Practice Guide on the transfer of jurisdiction (Articles 12 and 13) include for instance additional subject matters such as: the possibility to appeal, the nature of the terms, the non-applicability in case of exclusive jurisdiction and in child abduction cases etc. Please specify.

Yes

No

Other views: please specify (add free text).

Article 15 of the BIIARR “Provisional, including protective, measures”

15. Should the explanation in the updated Practice Guide on provisional, including protective measures (Article 15) include for instance additional subject matters such as: limited applicability to the

measures to a child or the property belonging to the child, the communication duties, the roles of the parties to support the communication or to provide independently information, the documents to be provided for the termination of the imposed measures etc.

- Yes
- No
- Other views: please specify (add free text).

Article 16 of the BIIaRR “Incidental questions”

16. Please provide which cases fall under the scope of application of Article 16 ‘Incidental questions’ according to your national law?

Article 17 of the BIIaRR “Seizing of a court”

17. Who can institute civil proceedings according to your national law?

- A parent
- Of the court’s own motion
- A child
- Child welfare or protection authority
- Prosecutor
- Any other interested party, please specify (add free text)

Article 18 of the BIIaRR “Examination of jurisdiction”

18. Please indicate, whether this part should clarify the impact of a stay to enable mediation or conciliation.

- Yes
- No
- Other views: please specify (add free text).

19. Please indicate whether a decision on jurisdiction is subject to an appeal under your national law. If this is the case, please explain when appeals are allowed and how many appeals are possible.

Article 20 of the BIIaRR “Lis pendens and dependent actions”

20. Please indicate whether the explanation in the updated Practice Guide on *Lis pendens* and dependent actions (Article 20) could include for instance additional subject matters such as: the inapplicability in case of provisional (including protective measures) and out of court divorce, the relation with the transfer of jurisdiction and the third country *lis pendens* and related actions etc.

- Yes
- No
- Other views: please specify (add free text).

21. How are the grounds for refusal of recognition and enforcement raised according to your national law?

- by a party
- ex officio*
- both
- other views: Please specify (add free text).

5. Chapter “Rules on International Child Abduction”

22. Should the chapter on “Rules on International Child abduction” include additional subject matters, other than those covered in the current Practice Guide³. Examples of additional subject matters are: improvements of the expedience of return proceedings, the access to mediation and other means of alternative dispute resolution (article 25), possibility for the court *ex officio* to “ensure” in the frame of the provisional, including protective measures the contact between the child and the person seeking the return, clarifications of the use of “adequate arrangements”, access to provisional, including protective, measures etc.

- Yes
- No
- Other views: please specify (add free text).

23. Does your national law concentrate jurisdiction in child abduction cases?

- Yes
- No
- Other views: please specify (add free text).

24. Please indicate whether your national laws provide one or two appeals for child abduction cases.

25. Please explain all procedural steps required under your national law that need to be taken in order for the court to be in a position to examine the appeal, whether by hearing or otherwise (Article 24(3) BIIaRR).

6. Chapter “Recognition and Enforcement”

26. Please indicate which is the clearest structure for the updated Practice Guide:

Solution (1): keep the structure in the current Practice Guide (the matter is referred to in Chapter 2 “Matrimonial Matters”, point 2.5, Chapter 3 “Parental Responsibility”, points 3.5 and 3.6., Chapter 4

³ General Introduction, jurisdiction issues as regards child abduction cases, rules to ensure prompt return, the scenario if the court decides that the child should not return.

”International Child Abduction”, point, 4.4.7 and Chapter 5 “Enforcement”) - while adapting the chapter on recognition and enforcement on basis of the novelties introduced by the BIIaRR, or

Solution (2) have a single common chapter on recognition and enforcement, including all aspects on recognition and enforcement. In the second case, this common chapter will be introduced after the chapters on matrimonial matters, parental responsibility and child abduction and it will explain the subject of the abolition of the *exequatur* (by presenting the main principles, the documents, including the certificates, the grounds for refusal and the stay of proceeding).

- Solution (1) is the best
- Solution (2) is the best
- Other views: please specify (add free text).

27. Should the chapter on “enforcement” include additional subject matters, other than those covered in the current Practice Guide⁴. Examples of additional subject matters are: service of the decision and the certificate, parties entitled to apply for suspension and refusal, grounds for suspension and refusal of the enforcement proceedings (stemming from the actual enforcement) etc.

- Yes
- No
- Other views: please specify (add free text).

*Suspension of enforcement proceedings and refusal of enforcement of the BIIaRR
Article 56 (4) (5) (6) read in conjunction with Recital 69 “Suspension and refusal”*

28. Please provide us with examples of situations (if any) which you have experienced in your practice that could have lead to “*temporary impediments which have arisen after the decision was given*” (Article 56(4))that could be used as a ground for suspension or refusal of enforcement?

29. Please provide examples of situations (if any) which you have experienced in your practice of that could have lead to “*any significant change of circumstances*” (Article 56(4)), that could be used as a ground for suspension or refusal of enforcement ?

30. Please provide examples of procedures in national law that could serve to overcome the any temporary impediments or significant changes of circumstances and facilitate the enforcement, if available.

Article 57 read in conjunction with Recital 63 “Grounds for suspension or refusal of enforcement under the national law”

31. Please provide examples for grounds under your national law that can be raised for suspension or refusal of enforcement, if available?

⁴ Importance of enforcement, enforcement of decisions as if granted in the Member State of enforcement, jurisprudence of the ECtHR.

32. If *force majeure* is a national ground for suspension or refusal of enforcement, can you give express examples?

Article 59 of the BIIaRR “Application for refusal of enforcement”⁵

33. Are the grounds for refusal applied according to your national law, *ex officio* or by request of a party?

- Ex officio
 By request of a party
 Both
 Other views: please specify (add free text)

Article 61 Challenge or appeal and Article 62 Further challenge or appeal

34. Does your national law envisage any terms for challenge or appeal and further challenge or appeal? If your answer is yes, please explain.

35. Is the second and the third instance according to your national law bound by the ground raised by the party or may *ex officio* raise other grounds

36. Under your national law, which specific measures can be taken at the enforcement stage in order to facilitate enforcement? Such measures could include non-coercive measures, coercive measures, criminal or administrative sanctions (e.g. fines and imprisonment), recovery of the child or disqualification from driving. Please explain.

7. Chapter “Authentic Instruments and Agreements”

37. Subject to your reply in question, should the chapter on “Authentic Instruments and Agreements” include additional subject matters, other than those covered in the current Practice Guide⁶. Examples of additional subject matters are: legal definition of authentic instrument, intervention of a public authority in the drawing up or registration of the authentic instrument or agreement, the difference between decision and authentic instrument, agreement and the grounds for refusal of recognition and enforcement.

- Yes
 No
 Other views: please specify (add free text).

38. Does your national law and procedure provide the child with the opportunity to express his or her views when composing or registering authentic instruments or agreement?

⁵ Also for application for a decision that there are no grounds for refusal of recognition

⁶ Brief description of the notion based on the case law of CJEU and the Maintenance Regulation and the recognition and enforcement of authentic instruments in matrimonial and parental responsibility matters.

- Yes
- No
- My national law allows only extrajudicial divorces excluding children related topic, please specify (add free text)

- My national law does not allow out of court divorces and parental responsibility solutions, please specify (add free text)

- I do not know
- Other views: please specify (add free text).

8. Chapter “Hearing of the child” - Articles 21, 26, 39 (2) and 68 (3) read in conjunction with recital 39 BIIaRR

39. Should the chapter on “Hearing of the child” include additional subject matters, other than those covered in the current Practice Guide⁷. Examples of additional subject matters are: the new autonomous obligations for the courts to provide the child with a genuine and effective opportunity to express his or her views and to give due weight to the views of the child in accordance with his or her age or maturity, the moment in the procedure, the arrangement of the hearing in cross-border situations, the amendments concerning the ground for refusal of recognition and enforcement focusing on the autonomous obligation of hearing with optative nature and exceptions.

- Yes
- No
- Other views: please specify (add free text).

40. Please explain whether there is an age below which the child is not heard under your national law?

- Yes, please specify the age.
- No
- I do not know
- Other views: please specify (add free text).

9. Chapter ‘Cooperation in matters of parental responsibility’

⁷ The importance of giving children the opportunity to express their views, exception to the duty, procedure for taking the views, the training, the purpose of taking the views and the UN Convention on the Rights of the Children.

41. Should the chapter on “Cooperation in parental responsibility” include additional subject matters, other than those covered in the current Practice Guide⁸. Examples of additional subject matters are: the channelling of the assistance through the Central Authorities without excluding the direct communication (Article 78), new power of the Central Authorities to request consideration of protective measures of the person or property of the child (Article 80(1)(c)), obligation of the courts and competent authorities to exchange information , new specific requirements set out by the GDPR for the transmission and processing of personal data (Article 88).

Yes

No

Other views: please specify (add free text).

42. Please indicate whether the explanation in the Practice Guide concerning the placement could include, for instance, additional subject matters, such as: the provision of consent of the requested Member States and the cases where it is not needed; the transmission of request; the set of rules when placing the child in institutional or foster care in one Member State where he or she has parent, close relatives, or other persons, and in general a placement based on a close connection with another Member State; etc.

43. Please provide us with good practices or examples of situations (if any) where you have used direct judicial cooperation in practice. Do you see any challenges stemming from the possibilities for the courts to cooperate and communicate directly as envisaged in Article 86?

Thank you very much for your valuable contribution!

⁸ The EJN, duties of the Central Authorities, facilitating agreements, placement of children, resourcing the Central Authorities, Cooperation of courts, liaison Judges.