



# **EU legislation in the area of family law**

Directorate-General Justice  
Unit A.1 Civil justice policy



# EU legislation on Family Matters

## **Regulation 2201/2003 (Brussels IIa)**

- Creating a common judicial area in matters of divorce, parental responsibility and child abduction

**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 obligations

- **Facilitates the recovery of maintenance claims**

**Council Regulation (EC) No 1259/2010 of 20 December 2010 (Rome III)** implementing enhanced cooperation in the area of the law applicable to divorce and legal separation



## **Family matters** (Brussels IIa)

It aims at facilitating **visiting rights** and deters **parental abduction** in the EU.

It reinforces the application of the 1980 Hague Convention between Member States.

It **simplify and unify the legal framework in the field of family law** within the European Union.





## Family matters (Brussels IIa)

General principle: Court of **habitual residence of the child** retains jurisdiction after abduction

Jurisdiction lies 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.





## Family matters (Brussels IIa)

**Exequatur has been already completely abolished** in relation to: all judgements given in a Member State on the return of the child after abduction or concerning access rights are directly recognised and enforceable in other Member States without any exequatur procedure.

This is linked with the requirement to produce a **certificate issued by the judge of origin**, to have the judgement enforced in another Member State. The purpose of such certification is to prove that certain minimum standards for procedures were met in the original proceedings (e.g. the child has to be heard).



## Family matters (Brussels IIa)

**It gives children the opportunity to express their views in proceedings concerning them.**

Hearing the child is, for example, one of the requirements for the abolition of the exequatur procedure for access rights and decisions entailing the return of the child. As an exception, a child may not be heard if this would be inappropriate having regard to the child's age and maturity. This exception should be interpreted restrictively.



## Family matters (Brussels IIa)

**It creates a genuine co-operation between Member States.** The central authorities designated by the Member States should play a vital role in the functioning of the Regulation. More specifically, they should facilitate agreements between holders of parental responsibility through e.g. mediation





## Family matters (Brussels IIa)

The Commission has published a **Practice Guide** to explain the provisions of the Regulation to facilitate the work of EU practitioners. The Practice Guide is available at the web-site of the **European Judicial Network in civil and commercial matters**:

<http://ec.europa.eu/civiljustice>







## Family matters ( Maintenance Regulation)

Adopted on 18.12.2008 and applicable since 18 June 2011.

**The goal of the Regulation is to protect the situation of maintenance creditors, who are often children.**

A maintenance decision given in one Member State is **automatically recognised and enforceable in any other Member State**, without any further procedure being required (abolition of the exequatur).





## Family matters ( Maintenance Regulation)

It facilitates **cooperation between national authorities**, especially with a view of improving the efficiency of the proceedings and reducing costs for maintenance creditors.

E.g.: Cooperation between CAs in locating the debtor and obtaining financial information; transmission and reception of application **etc.**





## Family matters (Rome III Regulation)

The aim of the enhanced cooperation in the area of **applicable law in divorce and legal separation** is to increase legal certainty, predictability and flexibility for the increasing number of "international" couples who divorce each year in the European Union.





## Family matters (Rome III Regulation)

There is a limited possibility for these couples of choosing the applicable law in proceedings for divorce and legal separation. To make sure that spouses do not abuse of this, the choice is limited to the laws of the countries the spouses have a **close connection** to (like the law of the country of common habitual residence or the last common habitual residence in the case that one of them still lives there).





## Family matters (Rome III Regulation)

In the **absence of choice** by the spouses, the applicable law is determined on the basis of a uniform rule to ensure that proceedings are governed by a law with which the spouses have a close connection: habitual residence/nationality/lex fori

To date **15 EU Member States** participate to enhanced cooperation: Austria, Belgium, Bulgaria, France, Germany, Hungary, Italy, Latvia, Luxembourg, Malta, Portugal, Romania, Slovenia and Spain





**Thank you for your attention!**

