

Will the advent of Brussels IIa Recast herald a new dawn?

By Helen Blackburn

02 Aug 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 (recast) (otherwise known as 'Brussels IIa Recast') came into operation in the EU on 1 August 2022

Brussels IIa Recast, which governs the procedural aspect of cross border family proceedings, brings in a number of changes including:

- The introduction of an obligation for member states to provide children with a genuine and effective opportunity to express their views, either directly or through a representative, in proceedings that concern them
- The abolition of exequatur – i.e., the abolition of the procedure for decisions to be declared enforceable before they could be enforced in another member state
- The introduction of clearer deadlines for the determination of intra-EU child abduction cases at first instance and on appeal. The new regulation stipulates that a court of first instance shall, except where impossible, give its decision no later than 6 weeks after it is seized. Further, except where impossible, a court of higher instance shall give its decision no later than 6 weeks after the court is able to examine the appeal whether by hearing or otherwise. The new regulation also places an onus on member states to concentrate jurisdiction for 1980 Hague Convention proceedings which brings the EU in line with England and Wales where this is already the case
- Clearer rules regarding the placement of children in other member states and
- The harmonisation of rules for enforcement

The new rules apply as from 1 August 2022.

Time will tell whether the changes introduced by Brussels IIa Recast are minor tweaks to established practice or result in genuine improvements and efficiencies that impact on the day-to-day application of family law within the EU.

Sadly, although the UK was fully involved in the 5 years of inter EU negotiations that resulted in Brussels IIa Recast, it will not apply in the UK.

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children. She has extensive experience of cases involving arrangements for children, custody/residence, contact/access (domestic and international), adoption (domestic and inter country), the reciprocal enforcement of foreign orders, international relocation/ leave to remove applications and jurisdiction disputes.

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©August 2022

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