

Long Live the Regulation? Brussels II ter Regulation becomes fully applicable

(by Krzysztof Pacula and Thalia Kruger)

Starting from 1 August 2022, the Regulation (EU) 2019/1111 of 29 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) became fully applicable, replacing the Brussels II Regulation. This Regulation is called Brussels IIter by some; Brussels IIb by others, Brussels IIbis (recast) by yet others, or simply Regulation 2019/1111 (thanks to its easy number). Brussels IIb will probably prevail, as this is the name that the Commission seems to be opting for.

As nearly two decades has passed since the Brussels IIbis Regulation itself became applicable, it seemed important to record its retirement also on CoL and to welcome its successor. Special thanks need to go to Mayela Celis who rang the bell timely.

The new Regulation was already finalised by the EU legislator in June 2019, after the Commission's proposal of June 2016. They agreed to a three-year preparation phase for authorities to get everything in place. In this time, the Regulation was already in force, but only certain obligations applied, such as obligations of Member State authorities to communicate certain information to the Commission. After some to'ing and fro'ing to get it all correct, this information has been published on the Commission's e-Justice portal for civil matters (but not everything is translated yet). This portal also includes the interactive forms.

Regulation 2019/1111 is longer and more complex than its predecessor. A brief summary of some of the main novelties:

- a full abolition of exequatur for all decisions in matters of parental responsibility, yet maintaining two regimes: a 'general' (Art. 30 et seq.) and a 'privileged' regime (Art. 42 et seq.);

- partial harmonisation of actual enforcement, as opposed to only declaring a decision enforceable and referring for its enforcement to national law (Art. 51 et seq., esp. Arts 56 and 57 on suspension and refusal of enforcement);
- a clear regime for the recognition of authentic instruments and agreements, including private divorces, provided that the jurisdiction rules were respected (Art. 64 and following);
- a clarification of when provisional and protective measures are permitted (Art. 15) and their (limited) cross-border effect (Art. 2(1));
- a limitation of the controversial ‘overriding mechanism’ (also called ‘second chance procedure’ or ‘trumping mechanism’) to procedures on the substance of custody rights (Art. 29, in particular 29(6));
- a strict obligation to give the child the opportunity to be heard (Art. 21 in general; Art. 26 for child abduction cases);
- an obligation for courts to consider and refer parties to mediation in child abduction cases (Art. 25);
- a more correct disconnection between the Regulation and the 1996 Hague Child Protection Convention (Art. 97);
- clarification of the scope of the rule on the placement of children, especially in intra-family cases, although leaving it to national law to define the exact scope (Art. 82, esp. 82(2) on what the Member States have to communicate to the Commission in this regard).

For further discussion on the new Regulation and the changes it brings, see to the special volume of Polish quarterly on civil procedure („Polish Civil Procedure”, „Polski Proces Cywilny”), which we brought to your attention a while ago.

Volume XXII of the Yearbook of Private International Law (2020-21) also featured a section on the highlights of the Regulation.

In 2020 the University of Osijek hosted a series of online expert seminars (still available on the University’s YouTube channel).

Although repealed, the „old” Regulation does not completely lose its relevance. Under Article 100 of the Brussels II ter Regulation, the former is still applicable in particular to the legal proceedings instituted prior to 1 August 2022 and to the decisions given in such proceedings.

So... Exit the Regulation (but not fully), enter the Regulation. Anyway, Long Live to the Latter ?