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The Interaction of the 1980 Child Abduction Convention with the Brussels II-ter Regulation: A Focus on the Regime of Recognition and Enforcement

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Abstract: The paper addresses the interplay between the 1980 Child Abduction Convention and the Regulation (EU) 2019/1111, briefly presenting the main novelties contained in Chapter III of the Regulation devoted to international child abduction, and then focusing on the provisions concerning the peculiar regime of recognition and enforcement of decisions on this subject matter. Final considerations are drawn with a view to determining whether the Regulation is able to streamline the most critical issues arising from the practical application of the predecessor Regulation (EC) No 2201/2003 and, more broadly, to cope with evolving and challenging cases of child abduction.

Keywords: 1980 Child Abduction Convention; Regulation (EU) 2019/1111; recognition and enforcement; best interests of the child

1. Introduction: The Brussels II-ter Regulation and Its Novelties

In child abduction cases involving Member States of the European Union (EU), Regulation (EU) 2019/1111 (hereinafter also ‘Brussels II-ter Regulation’ or ‘Regulation’) complements, within its scope of application, the legal framework established by the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (hereinafter also ‘Child Abduction Convention’, or ‘1980 Hague Convention’) for the purposes of enhancing its functioning, considering the common objectives shared by the two instruments¹.

The recast of the previous Regulation (EC) No 2201/2003, more than ten years after its entry into force, was precisely aimed at addressing the critical issues that had arisen in its practical application in the Member States (in general, on the recast procedure: [Honorati 2017](#); [Kruger 2017](#); [Carpaneto 2018](#)). The amendments introduced by the Brussels II-ter Regulation insisted mainly—if not exclusively—on the provisions relating to children, whose rights must always be protected with a view to pursuing their best interests. As the free movement of persons has been the means by which the Union, since the Treaty of Amsterdam, has been able to enact secondary legislation in a field of traditional competence of the Member States such as family matters in cases having cross-border implications, the principle of the best interests of the child has become the instrument allowing an increasingly significant intervention in this area.

Among the shortcomings that were identified in the Explanatory Memorandum of the European Commission to the recast proposal², child abduction and the regime of recognition and enforcement of decisions on parental responsibility were probably the most crucial. Indeed, the provisions of the previous Regulation No 2201/2003 were not well-equipped, for instance, to secure rights of access to the child following the parents’ divorce or separation, nor to effectively prevent cases of child abduction. The main challenges in



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¹ In the extensive case law of the CJEU, see e.g., opinion 1/13 of 14 October 2014, ECLI:EU:C:2014:2303, para. 78; judgment of 8 June 2017, case C-111/17 PPU, *OL v PQ*, ECLI:EU:C:2017:436, para. 61.

² COM(2016) 411 final of 30 June 2016.

this regard were encountered in relation to the circulation of decisions, rather than the prior allocation of jurisdiction, because the recognition and enforcement procedural rules are essentially within the remit of the Member States. Therefore, the paper focuses on the above-mentioned aspects, analyzing the interaction of the Child Abduction Convention with the procedural regime of the Brussels II-ter Regulation. Following a preliminary presentation of the revised and improved framework for international child abduction laid down in the Regulation, and specifying at the outset that Article 9 on the special jurisdiction will not be dealt with here, nor the provisions concerning the cooperation of Central Authorities (on which, respectively, [Garber 2023](#); [Knöfel 2023](#)), the main issues concerning the application of the relevant rules on recognition and enforcement are discussed with a view to drawing some reflections as to whether the Regulation is indeed able to cope—or at least, to do so more effectively than its predecessor, Regulation No 2201/2003—with the developments occurring in increasingly challenging child abduction cases.

2. A General Overview of the New Chapter Devoted to International Child Abduction in the Brussels II-ter Regulation: A Revised Framework for the Coordination with the 1980 Hague Convention

Already from the choice of inserting a direct reference in the title and dedicating a separate chapter of the Brussels II-ter Regulation to international child abduction, it is clear that this subject matter has “acquired an autonomous relevance” ([Biagioni 2023](#), p. 1078) within the revised legal instrument (for a general overview, see [Martiny 2021](#)). The current provisions indeed combine substantive and procedural aspects that give rise to a comprehensive regime as opposed to the single uniform rule previously contained in Article 11 of Regulation No 2201/2003.

From a general standpoint, it is worth mentioning that the relation between the 1980 Hague Convention and the Brussels II-ter Regulation is set out in Article 96 of the latter instrument. It specifies, on the one hand, the changes in the application of the rules of the Convention when the child has been wrongfully removed or retained in a EU Member State other than the EU Member State of previous habitual residence, and, on the other hand, the supplementary role of the Regulation rules on recognition and enforcement of return orders given in a EU Member State—this being a matter not governed by the Convention. As it has been underlined ([Biagioni 2023](#), p. 1082; [Calvo Caravaca and Cebrián Salvat 2023](#), p. 633), the policy choice of clarifying the relation between the two legal sources does not impact on the principle of primacy of EU law but emphasizes the “parallel path” to be followed in intra-EU child abduction cases.

Moving to the actual contents of Chapter III of the Regulation, measures to improve the efficiency of the procedure for the return of the child were introduced with a view to addressing the sensitivity of the interests at stake and the possible risks related to the consolidation of the situation of wrongful removal or retention. In particular, Article 24 provides that the maximum time limit of six weeks from the receipt of the return application for the issuing of the relevant decision is to be understood as referring to the individual instance, with the clarification that it runs from the moment that the court of first instance is seized, and from the moment when the appeal can be examined for the higher court, except in both cases when it is impossible due to exceptional circumstances. Moreover, the Regulation now specifically regulates, in its Article 23, the time limit within which the Central Authority of a Member State is obliged to acknowledge receipt of an application for return of an abducted child, set at five working days from the date of receipt of the application, as well as, in its Article 28, the time limit within which the decision ordering return must be enforced, also set at six weeks from the date of commencement of enforcement proceedings. In the latter instance, the party seeking enforcement can additionally request a statement from the competent authority detailing the reasons for the delay whenever this six-week limit is not complied with.

A proper innovation of the Brussels II-ter Regulation, as compared to previous instruments of EU civil judicial cooperation, concerns the rule dedicated to alternative dispute resolution mechanisms (in the different framework of the Hague Conference of Private

International Law, see the [Guide to Good Practice on Mediation 2012](#)). Pursuant to Article 25, the competent court is obliged to invite the parties to consider whether they are willing to make recourse to mediation or other means of alternative dispute resolution, and this must be ensured “as soon as possible and at any stage of the proceedings”. However, this obligation is subject to certain limits: firstly, it must not be contrary to the best interests of the child and, secondly, it must not be inappropriate in the case at issue, nor should it unjustifiably delay the proceedings. Mediation has thus become a systematic consideration in child abduction cases, and this can be seen as a consequence of the need to prevent highly conflictual disputes between the parties, which may not be properly ensured through the involvement of qualified experts in the context of court litigation due to time and procedural constraints. At the same time, significant costs upon the parties are usually associated with mediation and other mechanisms of alternative dispute resolution, which represent a practical issue that cannot be underestimated either.

Article 25 of the Regulation is supplemented by Recitals 22 and 43, which both draw attention to the further aspect related to reaching, in the context of return proceedings, an agreement that also regulates the exercise of parental responsibility, and the subsequent attribution of binding legal effects to that agreement. In this regard, parties should be enabled to confer jurisdiction in matters of parental responsibility, in accordance with the provisions of the Regulation laid down in Article 10 thereof, to the same court seized under the 1980 Hague Convention, so that the court may provide for the agreement to take binding effect on the basis of the procedures regulated at national level (for a practical outlook on the use of mediated agreements also involving children in child abduction cases, see the [Hirsch 2020](#), elaborated within the framework of the EU co-funded project “AMICABLE”).

As to the procedural rules incorporating the relevant provisions of the 1980 Hague Convention, significant changes were brought in order to devolve more powers to the court of the Member State of refuge and, furthermore, certain existing rules were better detailed to clarify their scope and application. The previous regime was enshrined in Article 11 of Regulation No 2201/2003, already introducing innovative aspects that nonetheless posed several challenges in their practical implementation, such as the excessively short deadlines to issue a judgment on return, or the limitation on the use of the “grave risk” exception provided in Article 13(1)(b) of the 1980 Hague Convention. As a result, the corrective mechanisms envisaged by the Regulation were often overlooked and the courts of the Member State of refuge decided on the return application relying exclusively on the Convention provisions.

Considering the first objective of attributing a strengthened role to the courts of the Member State of refuge, Article 27 of the Brussels II-ter Regulation provides that such courts may take provisional measures, pursuant to Article 15 of the same instrument, in two situations: at any stage of the proceedings, to ensure contact between the left-behind parent and the child, taking into account his or her best interests (Para. 2), as well as, at the time of ordering return, to protect the child from the grave risk referred to in Article 13(1)(b) of the 1980 Hague Convention, provided that the proceedings are not unduly delayed (Para. 5). Moreover, Article 15(2) on provisional measures in general applies to both cases governed by Article 27(2) and 27(5), thus imposing on the court that has taken the measure a duty to inform the court having jurisdiction as to the substance of the matter, where this is necessary to protect the best interests of the child.

A further new element is found in Article 27(6) establishing a uniform procedural rule under which the decision ordering the return may be declared provisionally enforceable, again upon the condition that it is in the best interests of the child.

As to the changes made to the rules already found in the previous Regulation, Article 27(3) of the Brussels II-ter Regulation stipulates that the court of the Member State of refuge, when evaluating the exception to return pursuant to Article 13(1)(b) of the 1980 Hague Convention, may not refuse to return the child if it considers that “appropriate measures will be taken to ensure the protection of the child after his or her return”. The

court's finding in this regard may be based on "sufficient evidence" provided by the party seeking the child's return, or on evidence otherwise obtained. Also, Article 27(4) underlines the desirability of establishing communication between the authorities of the Member State of refuge and the Member State of former habitual residence (either directly or through Central Authorities) for the purposes of identifying such appropriate measures. In this regard, Recital 45 is particularly illustrative as it gives examples of measures that can ensure the safe return of the child and further reference is made to the forms of cooperation between authorities already operating within the European Judicial Network in civil and commercial matters (EJN) and the International Hague Network of Judges (IHNJ).

The Brussels II-ter Regulation has also substantially intervened on one of the aspects supplementing the application of the 1980 Hague Convention that had caused the most critical problems in practice, namely the so-called 'overriding mechanism' (which some scholars have actually proposed to remove in its entirety from the recast Regulation: [Lazić and Pretelli 2020/2021](#), pp. 178, 181; [González Marimón 2022](#), p. 281; for a broader analysis of the issues stemming from the application of the previous Article 11(6)–(8) of Regulation No 2201/2003, see [Beaumont et al. 2016](#); in the Italian legal order, [Honorati 2015](#)). As is well known, this provision allows the court of the Member State of former habitual residence to issue a decision ordering the return of the child that is capable of prevailing over the contrary decision of the court of the Member State of refuge, and this decision will further benefit from a special enforcement regime.

With a view of enhancing the effectiveness of such a mechanism, Article 29 of the Brussels II-ter Regulation limits its application to two specific exceptions to refuse the return of the child provided in the 1980 Hague Convention: one referring to the already mentioned grave risk of physical or psychological harm to the child (Article 13(1)(b)), and the other referring to the opposition of the child who has reached such an age and maturity that it is appropriate to take his or her views into account (Article 13(2)). In these cases, the Regulation introduces provisions aimed at strengthening coordination between the courts of the Member State of refuge and the Member State of former habitual residence, as well as between those courts and the parties involved. First, the court that refused return is required to issue ex officio a certificate, drawn up in the form of Annex I, summarizing the essential information relating to the decision taken (Article 29(2)). If that court is aware of proceedings on the substance of rights of custody that have already been instituted in the State of former habitual residence, it is also required to send to the competent authority a copy of the judgment refusing return accompanied by that certificate and, if it considers it useful, transcripts or summaries of the minutes of the hearings (Para. 3). Conversely, if there are no pending proceedings on the merits and one of the parties brings an application for custody of the child before the courts of the State of former habitual residence within three months of the notification of the refusal, the same party is required to submit the above-mentioned documents to the court (Para. 5). Consequently, any judgment on the substance of rights of custody entailing the return of the child, which is intended to override the earlier negative judgment (the so-called 'trumping order'), is necessarily linked to the commencement, or prior commencement, of proceedings on the merits before the court having jurisdiction in matters of parental responsibility under the Regulation. In the context of these proceedings, moreover, Recital 48 draws attention to the need to examine "all the circumstances thoroughly", considering the best interests of the child.

A final mention can be made of another important innovation of the Brussels II-ter Regulation, which also has an impact on child abduction cases. Article 21 contains a general provision on the right of the child to express his or her views, to be granted to those who are "capable of discernment" and in accordance with "national law and procedures" (for a broader assessment, see [Biagioni and Carpaneto 2020/2021](#), pp. 146–50). Any court exercising jurisdiction under the Regulation is obliged to give due weight to the opinion expressed by the child considering "his or her age and degree of maturity". However, there are no rules specifying common minimum standards as to the procedure for hearing the child, which are left to the procedural law of the Member State of the forum or, if applicable,

to other EU instruments on judicial cooperation, as also confirmed by Recitals 39 and 57. Pursuant to 26 of the Regulation, these general provisions on the child's participation also apply in return proceedings, governed by the 1980 Hague Convention, that are instituted before courts of Member States. The extension of the application also in child abduction matters is particularly welcome as these cases often present the most sensitive proceedings in which the child's participation can take place (for instance, considering that the hearing may be conducted by a mediator, or due to the accelerated timeframe of return proceedings, or further to the emotional distress and subsequent loyalty conflicts that the abducted child may face).

3. The Brussels II-ter Regulation Provisions on Recognition and Enforcement That Are Relevant in Child Abduction Cases

Bearing in mind the main features of the revised framework on child abduction proceedings laid down in Chapter III of the Brussels II-ter Regulation, the analysis moves forward to consider the provisions on recognition and enforcement of decisions, found in Chapter IV of the Regulation, that are applicable in these particular cases. As will be pointed out, some of them are specific to the subject matter under discussion, while others have a general scope and therefore apply to decisions in parental responsibility matters, including those rendered in abduction proceedings.

The recast of the Regulation No 2201/2003 introduced a significant change in the regime applicable to decisions on parental responsibility by extending the rule of direct enforcement without *exequatur* (*amplius*, see [Lazić and Pretelli 2020/2021](#)). Nonetheless, certain categories of decisions, namely those on rights of access and the return of the child, are defined as "privileged" and retain a differentiated treatment (set out in Section 2 of Chapter IV, Articles 42–50), in keeping with a policy choice already made in the predecessor Regulation. Insofar as it is relevant in this paper, the scope of the privileged regime will be considered in connection with child abduction matters as specified in Article 42(1)(b) of the Regulation, thus covering decisions taken pursuant to the already illustrated Article 29(6) that concern the custody of the child and entail his or her return, notwithstanding the previous decision refusing the return rendered by the court of the Member State of refuge exclusively on the basis of Article 13(1)(b) or Article 13(2) of the 1980 Hague Convention. A much welcome clarification was provided in this regard, given that Article 29(6) now requires that the decision prescribing the return be granted in custody proceedings, which must be brought before the courts of the Member State of previous habitual residence of the child. This allows to be overcome a shortcoming of the overriding mechanism as governed in the Regulation No 2201/2003 and interpreted by the CJEU in its *Povse* judgment³, whereby any decision entailing the return of the child that was taken by the court of the Member State from which the child was abducted (even isolated and not rendered in custody proceedings) could have prevailed over the non-return order (on the negative consequences of the previous wording of the rule, see [Lazić and Pretelli 2020/2021](#), p. 177). Consequently, under the Brussels II-ter Regulation, a return decision given independently of custody proceedings falls outside the scope of the privileged regime.

For the purposes of the automatic recognition and enforcement of a return decision within the meaning of Article 42(1)(b), an essential role is played by the accompanying certificate, issued by the court of the Member State of origin using the standard form of Annex VI to the Regulation. This document must be produced together with the judgment and, where necessary, a translation may be requested by the receiving court or authority. Among the requirements for issuing this certificate, the court of the Member State of origin shall state to have "taken into account (...) the reasons for and the facts" underlying the prior refusal of return by the court of the Member State of refuge, otherwise the decision cannot benefit from the privileged regime and the recognition would follow the general provisions instead (including the use of the certificate found in Annex III). Therefore,

³ CJEU, judgment of 1 July 2010, case C-211/10 PPU, *Povse v Alpaço*, ECLI:EU:C:2010:400.

the certificate takes the place of any exequatur procedure, and the court of the requested Member State will need to treat the certified decision as a domestic decision (see Article 51(1) of the Regulation).

The actual innovations as compared to the predecessor Regulation reside in the provisions that allow the softening of the rigidity of the previous certified decisions: the rectification and withdrawal of the certificate, on the one hand, and the refusal of recognition and enforcement of a privileged decision, on the other hand. With regard to the available remedies against an issued certificate, according to Article 48 of the Brussels II-ter Regulation the court of the Member State of origin may, upon request or of its own motion, rectify it where there are material errors or withdraw it where it was wrongly granted in the absence of the necessary conditions. It should be also specified that the two remedies are governed by the procedural laws of the Member State of origin (Para. 3). The possibility of withdrawal was precisely introduced to overcome another negative consequence of Regulation No 2201/2003 (as emerged in the *Aguirre Zarraga* case⁴), allowing for an indirect reassessment of the fundamental grounds on which the underlying decision was taken, especially concerning the principles of procedural fairness (in the literature, see [Magnus 2023a](#), p. 447).

Article 50 of the Brussels II-ter Regulation lays down an exceptional rule that better defines the possibility of refusing recognition and enforcement of a return decision in the sense of Article 42(1)(b), providing for a sole ground based on the irreconcilability with a later decision on parental responsibility concerning the same child, which may be given (i) in the Member State in which recognition is sought, (ii) in another Member State, or (iii) in the third country of habitual residence of the child, upon condition that it satisfies the conditions necessary for its recognition in the Member State in which recognition is sought. Under this respect, the ‘special’ position of these return decisions thus lies in the exclusion of the applicability of the general grounds for refusal of recognition and enforcement of decisions on parental responsibility (Article 39), and, when compared to the predecessor Regulation No 2201/2003, the final decision on the opposition to the recognition and enforcement is no longer attributed to the courts of the Member State of origin, but rather to those of the Member State of enforcement, being better placed to assess the best interests of the child concerned. This is aimed at ensuring that a possible conflict between subsequent decisions can be resolved by giving prevalence to the most recent one, in accordance with the principle *rebus sic stantibus* that governs the evaluation of child-related matters.

Another novelty in comparison with the Regulation No 2201/2003 regards the procedure to seek the suspension, and even the subsequent refusal, of the enforcement of judgments in matters of parental responsibility, which has been introduced to balance the abolition of exequatur and the immediate enforceability of such decisions in other Member States (in keeping with the model of Regulation (EU) No 1215/2012 in civil and commercial matters). In particular, it is worth discussing the ground for suspending enforcement in the event that “enforcement would expose the child to a grave risk of physical or psychological harm due to temporary impediments which have arisen after the decision was given, or by virtue of any other significant change of circumstances” (Article 56(4) of the Brussels II-ter Regulation). Should the grave risk for the child further be of a lasting nature, the court of the requested Member State may also refuse the enforcement (Article 56(6)). These rules bring forward an apparent friction to the extent that they enable to take into account substantive interests in a scenario that is generally inspired by the principle of automatic enforcement based on mutual trust, but again they can be explained by the concurring need to serve the best interests of the child, which in such cases would require protecting him or her from the grave risk of harm, or other significant changes of circumstances. It was discussed whether these additional grounds for suspension and refusal of enforcement apply to privileged return decisions, or whether the special ground of Article 50 of the Regulation, previously illustrated, amounts to a special provision prevailing over

⁴ CJEU, judgment of 22 December 2010, case C-491/10 PPU, *Aguirre Zarraga v Pelz*, ECLI:EU:C:2010:828.

the general rule of Article 56 (for an overview of the arguments for and against the two positions, see [Magnus 2023b](#), pp. 453–55). Reasons for compliance with the principle of the best interest of the child, especially in sensitive cases such as abduction proceedings, ultimately support the extension of the application of Article 56 to also return decisions within the meaning of Article 42(1)(b). Furthermore, the same terminology used in Articles 56(4) and 56(6) largely resembles the wording of the exception to return set out in Article 13(1)(b) of the 1980 Hague Convention, indirectly confirming the need to apply this ground for also suspending enforcement to privileged return decisions and adding another layer of complementarity with the Convention (in this regard, [González Beilfuss 2020/2021](#), p. 113, underlines the choice of the Brussels II-ter Regulation to restrict the application of Article 13(1)(b) of the 1980 Hague Convention, which at the same time “come[s] back at the enforcement stage”; see also [Biagioni 2023](#), p. 1089).

A further consequence of the generalized abolition of exequatur for all decisions on parental responsibility is set out in Article 57 of the Brussels II-ter Regulation, which opens the possibility of invoking grounds for suspension or refusal of enforcement provided under the domestic law of the requested Member State, provided that they are not incompatible with the ‘European’ grounds provided in Articles 41, 50, and 56 of the Regulation. It is thus a rule of coordination between the national and supranational levels of enforcement laws, even though it cannot be entirely ruled out that its practical operation may entail a risk of affecting the uniform and effective application of the EU instrument.

Besides the mentioned provisions of Chapter IV of Brussels II-ter Regulation, there are further rules that are relevant at the stage of recognition and enforcement of decisions rendered in connection with child abduction proceedings, and therefore are worth discussing in this paper.

A first aspect to consider relates to the increased importance that the Regulation attaches to agreements that can be reached by the parents in the course of return proceedings initiated under the 1980 Hague Convention, which can regulate the return or non-return of the child and further comprise the definition of issues on parental responsibility and placement of that child. By virtue of the redrafted Article 10 of the Regulation on choice of court, as already mentioned, it is possible that the courts of the Member State of refuge acquire jurisdiction also on the substance in order to give binding legal effect to those agreements. More generally, this is also encouraged under the broad terms of Article 25 on mediation and other means of alternative dispute resolution. It is then essential for that agreement, as incorporated in a decision or otherwise approved by the competent court, to be able to circulate in other Member States. To this end, it will benefit from the regime of recognition and enforcement provided for ‘ordinary’ decisions in parental responsibility matters, without the need for any exequatur procedure, as clarified by Recital 14 of the Regulation, according to which “[a]ny agreement approved by the court following an examination of the substance in accordance with national law and procedure should be recognized or enforced as a ‘decision’”. In addition, it should be mentioned that other types of agreements in matters of parental responsibility, having binding effect in the Member State of origin by means of the formal intervention of a public authority, can circulate in other Member States pursuant to the rules on recognition and enforcement laid down in Section 4 of Chapter IV of the Brussels II-ter Regulation, which equally exempts authentic instruments and agreements from the requirement of a declaration of enforceability (for a comprehensive assessment on this further regime, which falls outside the more limited scope of this paper, see [Frąckowiak-Adamska 2023](#)). The actual extent of the differentiation between the two categories of agreements may be further subject to interpretation by the Court of Justice, which could be beneficial from a practical perspective.

Another issue in connection with the regime of recognition and enforcement concerns provisional measures taken pursuant to Article 27(5) to protect the child from the grave risk referred in Article 13(1)(b) of the 1980 Hague Convention, already illustrated in the previous section. In this regard, the Regulation introduces a further substantial innovation, which is the extraterritorial effect, albeit limited in time, as a derogation to the general regime under

Article 15 (on the advantages brought by this provision, see [Honorati 2022](#), pp. 157–60; [Wilderspin 2022](#), pp. 185–86). This is not clearly stated by the provision, but can be inferred from Article 2(1)(b) of the Regulation, according to which, for the purposes of recognition and enforcement under Chapter IV, a “decision” includes “measures ordered in accordance with Article 27(5) in conjunction with Article 15”, and in particular, they will be treated as ‘ordinary’ decisions in parental responsibility matters. In addition, this is confirmed by Recitals 46 and 59, clarifying that these provisional measures may be recognized and enforced in other Member States until the courts of the Member State, having jurisdiction as to the substance of the matter on the basis of the Regulation, have taken the measures they deem appropriate. As a result, provisional measures issued pursuant to Article 27(5), as well as their regime of circulation, are comparable with those that can be taken under Article 11 of the Hague Convention on the Protection of Children of 19 October 1996, thus being able to perform the same supplementing function in the context of return proceedings between EU Member States governed by the Child Abduction Convention (for further considerations on this complementarity between the 1980 and 1996 Hague Conventions, see [Baruffi 2018](#), pp. 397–401; this was also signaled in the ([Guide to Good Practice on Article 13 1](#), p. 35)).

4. Conclusions: A Look Ahead

The analysis carried out thus far has tried to summarize the main elements of the interaction between the 1980 Hague Convention and the Brussels II-ter Regulation whenever a child abduction case involves EU Member States. The revised framework resulting from the recast Regulation has brought about several corrective mechanisms and improved provisions that seem able to streamline certain critical concerns arising from the practical application of the predecessor Regulation No 2201/2003. However, the Brussels II-ter Regulation is a particularly complex instrument, with a substantial increase in the number of provisions as compared to the previous Regulation. While the predecessor may have been criticized for its (sometimes) overly concise rules, which were not easy to implement in practice with the consequence of the frequent recourse to the procedure of preliminary ruling to the CJEU, the current Regulation may suffer from the opposite downside of being convoluted and difficult to apply, even for expert legal practitioners. Whatever the case may be, the actual impact of the changes brought to the procedures of recognition and enforcement of decisions is going to be experienced in the longer term, so that any final judgement in this regard appears premature.

Many of the novelties of the Brussels II-ter Regulation can be further read in the light of one of the preliminary documents currently available with regard to the upcoming Eight Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention, which is scheduled in October 2023 and constitutes the subject matter of this Special Issue. In particular, the Draft Table of Conclusions and Recommendations of previous Meetings of the Special Commission that are still relevant today ([Prel. Doc. No 1 of 1 October 2022](#)) lists a number of issues on which the above-illustrated provisions of the Brussels II-ter Regulation may have a positive impact (in this regard, see also the [Reply of the European Union to Specific Questions of the Questionnaire on the Practical Operation of the 1980 Child Abduction Convention 2023](#)). Among these issues there are, for example, the procedures and the means of addressing delays in return proceedings (paras. 51–61), the enforcement of return orders (paras. 70–75), the protective measures upon return (paras. 79–86), the contact between the left-behind parent and the child pending return proceedings (paras. 94–101), and the role of mediation (paras. 102–106).

Beside a preliminary favorable outlook of the new rules of the Brussels II-ter Regulation in child abduction matters, it will additionally need to be determined whether they are effective when applied to “hard cases” such as those stemming from contexts of domestic violence, or when there is an overlap between civil and criminal abduction proceedings,

which may be different from the scenarios that the drafters of the 1980 Hague Convention had envisaged during the negotiations of that global instrument.

For instance, it has been pointed out that the provisional measures taken pursuant to Article 27(5) of the Regulation may prove limited for the purposes of protecting the abducting parent who is a victim of domestic violence, given that the wording of the provision only refers to the protection of “the child” (in this sense, [Honorati 2022](#), p. 160; conversely, according to [Wilderspin 2022](#), p. 186, the wording of Article 27(5) is broad enough to also cover measures in favor of the abducting parent). Therefore, whether it is possible to supplement this gap through the recourse to Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters (on which see, *amplius*, [Dutta 2022](#)) should be explored.

A further consequence, insofar as domestic violence as a cause for child abduction by the primary caregiver is concerned, resides in the concurring criminal proceedings that may be initiated in the State of habitual residence before the wrongful removal. Several elements of overlapping can be imagined in this regard, such as the relevance of the further proceedings when invoking the grave risk exception under Article 13(1)(b) of the 1980 Hague Convention, or as a ground for refusal of the enforcement of a privileged return decision pursuant to Article 56(6) of the Brussels II-ter Regulation, and in any case, it would be important to ensure a proper communication, as envisaged in Article 86 of the Regulation, between the competent courts in the civil and criminal proceedings (for a comprehensive discussion of this overlap, see [Gascón Inchausti and Peiteado Mariscal 2021](#), pp. 634–37).

These examples show, once again, the many layers and implications of international child abduction cases, which require an adequate legal framework at the global and EU levels that can be both strict and flexible enough to adapt to the evolving and sensitive nature of this subject matter.

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