Processing incoming return cases by Central Authorities

Content provided by:
European Judicial Network
(in civil and commercial matters)

Belgium

1 Receiving the request

1.1 Please provide information on foreign languages spoken by the Central Authority (contact details can be found in the European Judicial Atlas in civil matters), if any. In which language(s) does the Central Authority accept new incoming requests?

Staff at the Central Authority are proficient in Dutch, English and French.

Applications are accepted in Dutch, French and German.

When choosing the language of the documents to be submitted to the court, account must be taken of the language of the proceedings, which is determined by the location of the minor or parent concerned (binding rules on the use of languages in judicial matters).

For further details, it is advisable to contact the Central Authority before proceeding with translations to avoid translations being carried out in the wrong language.

1.2 What is the Central Authority's preferred method of communication - email, fax or postal service? Does the Central Authority accept requests received electronically? If so, is the original request on paper still needed (either to start the proceedings or at a specific stage of the process) or are electronically transmitted requests accepted at all stages of the proceedings?

The preferred method of communication is email.

Applications received electronically are generally sufficient. If the original application or any other original document is required to initiate proceedings, the requesting Central Authority will be informed and asked to provide it.

1.3 Would your Central Authority refuse an incoming application under Article 27 of the 1980 Hague Convention? If so, under what conditions?

Yes – if the application is manifestly unfounded. The Central Authority refers to the Guide to Good Practice drawn up by the HCCH.

2 Management of the case

2.1 Who can apply for the return of the child before your court (multiple answers possible)? Is it (i) the Central Authority, (ii) a Government lawyer, e.g., public prosecutor, Attorney General etc., (iii) a private lawyer, or (iv) someone else (if so, please elaborate, e.g. the applicant him- or herself)?

1/ Where the return application is processed through the Central Authority, the legal proceedings are initiated by the Public Prosecutor's Office. The applicant may, however, decide to have the proceedings initiated by a lawyer of their choice.

2/ Where the return application is not processed through the Central Authority, the proceedings are initiated directly by the lawyer appointed by the applicant in accordance with Article 29 of the Hague Convention.

2.2 Is the applicant represented by the above-mentioned person or body at the court hearing? If the answer is negative, who is the legal representative of the applicant in the proceedings? Is it (i) the Central Authority, (ii) a Government lawyer, e.g., public prosecutor, Attorney General etc., (iii) a private lawyer, or (iv) someone else (if so, please elaborate)?

If the case is handled by the Central Authority, the application for return is normally submitted to the court by the Public Prosecutor's Office, which may represent the applicant. If they so wish, the Public Prosecutor may be assisted by a Belgian lawyer.

The applicant may also decide to initiate the proceedings directly with the assistance of a lawyer (see 2.1).

2.3 How quickly will the case be referred to the legal representative of the applicant by the Central Authority?

Upon receipt, the Central Authority checks that the application is complete and admissible.

If so, the Central Authority forwards the application without delay to the Public Prosecutor's Office for the purpose of locating the child(ren) and hearing the other parent. This stage may take varying lengths of time depending on the case.

The content of the hearing is then forwarded to the requesting Central Authority for the applicant's information. The applicant is asked to submit their comments in response, accompanied where appropriate by relevant documents, and to indicate the action they wish to be taken on their application.

If the other parent opposes the return of the child(ren), an amicable solution proves impossible and the applicant maintains their request for return, the application will be submitted to the court either by the Public Prosecutor's Office at the request of the Central Authority or directly by the solicitor appointed by the applicant.

2.4 If a private lawyer is used, does the Central Authority make the necessary arrangements on behalf of the applicant? If the case is not referred to a private lawyer by the Central Authority, does the Central Authority provide a list of possible lawyers for the applicant to choose from?

Where the return application is processed through the Central Authority, the legal proceedings are initiated by the Public Prosecutor's Office (2.1). However, in certain exceptional situations, the Public Prosecutor's Office may raise a conflict of interest. In such cases, a lawyer will be appointed by the Central Authority to file the application and represent the applicant's interests in the return proceedings. As an exception, the Central Authority will then be in direct contact with the lawyer.

If the Public Prosecutor's Office does not raise a conflict of interest but the applicant wishes to instruct a lawyer personally, the Central Authority does not intervene in the choice of lawyer and does not contact the lawyer directly. It is then up to the applicant to instruct their lawyer.

The Central Authority does not maintain a list of lawyers, but the applicant may consult the following websites:

- https://avocats.be/ (FR/DE)
- https://www.advocaat.be/ (NL)

2.5 Is legal aid available to applicants? Who decides whether to grant the legal aid to the applicant? Is there a specific application form that the applicant has to complete? Are there preconditions to receive legal aid? Is there a means and/or merits test? What documentary evidence is the applicant required to provide? How long does it take to get the legal aid decision? What expenses does legal aid cover? (e.g., legal consultations, mediation, travel costs)

The applicant may submit an application for legal aid under the relevant international instruments (EU Directive 2003/8/EC, the 1977 European Agreement, bilateral agreements).

For intra-EU applications, the form to be used is the Directive form. For other applications, the applicant must use the national application form available in DE-EN-FR-NL on the bar associations' websites (avocats.be and advocaat.be).

The application must be submitted to the legally aid office with territorial jurisdiction and must be accompanied by the following documents:

- A copy of the applicant's identity document,
- A household composition or any equivalent document stating the identity and age of the persons belonging to the applicant's household,
- Proof of income for the applicant and each of their adult cohabitants for the last three months,
- The most recent document issued by the tax authorities showing the financial situation of the applicant and each of their adult cohabitants.

These documents must be recent (no more than two months old at the time of receipt by the legal aid office) and translated into the language of the proceedings.

The Legal Aid Office has sole authority to decide on the application after assessing the applicant's personal and financial circumstances. The applicant may be granted full or partial legal aid. The time taken to reach a decision may vary.

The costs covered are: solicitors' fees, mediation costs, translation costs, costs of service of documents, and court costs.

2.6 Does (i) the Central Authority, (ii) a government lawyer, e.g., public prosecutor, Attorney General etc., (iii) a private lawyer, (iv) a court itself or (v) someone else (if so, please elaborate) provide assistance in locating the child's exact whereabouts? Does the absence of information regarding the child's exact whereabouts somehow preclude the possibility of applying to the court for the return of the child?

Upon receipt of the application, the Central Authority checks whether the child is registered in the Belgian national register.

If the child is not registered, a request for information on the child's whereabouts may be sent to the Public Prosecutor's Office on the basis of the information provided by the applicant.

If the child is of school age, information may also be requested from the authorities responsible for education.

If the minor's place of residence cannot be determined and confirmed, it will not be possible to identify the court with territorial jurisdiction and the return application cannot be filed.

2.7 Will the Central Authority pursue a voluntary return? If so, will this happen before the case is referred to a lawyer and/or the court?

The return application received by the Central Authority is forwarded to the Public Prosecutor's Office for the purpose of locating the child(ren) and hearing the other parent. During this hearing, the parent will be asked to return the child(ren) voluntarily to their habitual residence and, where appropriate, to propose an amicable solution.

If the parent objects to the return of the child(ren), an amicable solution proves impossible, and the applicant maintains their request for return, legal proceedings for return will be initiated.

When the legal proceedings are initiated, the parties will be informed by the court registry of the possibility of resorting to mediation.

Furthermore, at the first hearing, the judge will hear the parties on how they attempted to resolve the dispute amicably before the case was brought and will determine whether an amicable resolution is feasible, unless this is contrary to the child’s best interests, is not appropriate in the circumstances, or would unduly delay the proceedings.

If the judge finds that a settlement is possible, they may adjourn the case to a fixed date, which may not exceed fifteen days unless the parties agree otherwise, to allow them to present an agreement.

Finally, at the request of the parties or if the judge deems it appropriate, the judge may also refer the case to the mediation chamber.

2.8 Does the Central Authority take any steps to prevent a further removal of the child while a voluntary return is explored? What preventative steps are available in your legal system?

If the applicant has grounds to believe that a further removal of the child is likely to occur, it is recommended that the competent authorities of the requesting State be asked to issue the necessary alerts.

Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU of the Commission provides that it is the child’s country of origin that is responsible for the international alert.

A national alert may be requested by the Central Authority from the Public Prosecutor’s Office.

Finally, if the competent Belgian authorities consider that the child is in a situation of serious and imminent danger due to a risk of further removal or for another reason, the child’s temporary placement may be ordered.

2.9 How quickly will the Central Authority give updates on an active case? How quickly will the Central Authority respond to requests for updates on an active case?

The Central Authority will acknowledge receipt of the request within a few days of receiving it. Once the request has been forwarded to the Public Prosecutor’s Office, it usually takes one to two months to receive the results of the investigation (locating and interviewing the other parent). However, this timeframe may be longer depending on the circumstances.

All new information received by the Central Authority is forwarded without delay to the requesting Central Authority.

2.10 Does the Central Authority arrange for translations of any relevant forms (e.g., legal aid) or court documentation from the hearings? If yes, how long does it take?

The Central Authority does not handle translations in incoming cases (where the child has been removed to Belgium).

In outgoing cases (where the child is moved from Belgium to another State), the necessary documents in the file are translated, including the application for legal aid. The time taken for the translation depends on the volume of documents and the target language. On average, the turnaround time is 5 to 10 days.

2.11 Does the Central Authority arrange interpretation at any Court hearings that the applicant is required to attend?

The organisation of interpretation during hearings falls within the court’s remit. The Central Authority may ask the Public Prosecutor’s Office to request the court to provide an interpreter for the hearing(s) which the applicant will attend in person or remotely.

3 Mediation or alternative dispute resolution

3.1 Is mediation available? Please provide details of mediation procedure including names of mediation organisations, cost of mediation and whether funding is available for mediation. Can the cost of mediation be covered by legal aid?

In the context of return proceedings, the amicable settlement of disputes is governed by Article1322noniesof the Belgian Judicial Code, which provides as follows:

§ 1. As soon as an application referred to in Article 1322bis, 2°, is lodged, the registrar shall inform the parties of the possibility of mediation, conciliation and any other form of amicable dispute resolution by immediately sending them the text of Articles 1730 to 1737, together with an information leaflet on mediation drawn up by the Minister responsible for justice, a list of accredited mediators specialising in family matters established within the judicial district, as well as information regarding information sessions, drop-in sessions or other initiatives organised within the judicial district to promote the amicable resolution of disputes.
§ 2. The parties are requested to appear in person at the preliminary hearing, as well as at the hearing for the presentation of arguments.
If both parties appear in person at the introductory hearing, the judge shall hear them on the manner in which they have attempted to resolve the dispute amicably prior to the commencement of proceedings and shall determine whether an amicable resolution is feasible, unless this is contrary to the best interests of the child, is inappropriate in the circumstances, or would unduly delay the proceedings.
However, if there are serious indications that violence, threats or any other form of pressure is being or has been exerted by one party against the other, Article 1734(1)(3) applies by analogy.
§ 3. Without prejudice to paragraph 2, subparagraph 3, if the judge finds that a settlement is possible, he or she may adjourn the case to a fixed date, which may not exceed fifteen days unless the parties agree otherwise, in order to allow them to reach an agreement.
At the request of the parties or if the judge deems it appropriate, the judge may also refer the case to the amicable settlement chamber, ensuring compliance with the time limits referred to in Article 1322nonies/4.
§ 4. If the parties have not appeared in person or if they have not reached an agreement within a short period of time, the family court shall hear them on their dispute.

If the parties wish to use mediation before bringing return proceedings, the relevant information is available on the following websites:

Commission fédérale de Médiation : https://www.cfm-fbc.be/
Cross border Family Mediators : https://crossbordermediator.eu/

The cost of mediation may be covered under legal aid.

3.2 If and how is the Central Authority involved in arranging the mediation?

The Central Authority can provide general information on mediation in Belgium but is not involved in organising it.

3.3 Is another type of alternative dispute resolution available? If so, please elaborate on the procedure, organisations involved, including the Central Authority, and cost management

No, you do not have to.

4 Enforcement proceedings

4.1 If and how is the Central Authority involved in enforcement / implementation of return orders?

Once the return order has been issued, the Central Authority may request the assistance of the Public

Prosecutor’s Office for enforcement. Initially, the other parent will be asked to comply voluntarily. In this context, practical arrangements may be made by the parties, through the Central Authority.

If the parent refuses to comply voluntarily, the Public Prosecutor’s Office will be asked to enforce the decision.

Enforcement is not sought from a court as part of new proceedings.

4.2 Does the Central Authority have specialists (e.g., social worker, psychologist, guardian ad litem) available to prepare the child and the abducting parent for the enforcement of the return decision?

No, you do not have to. If necessary, the youth welfare services may be asked to intervene.

4.3 Who applies for the enforcement of a return order? Is it (i) the Central Authority, (ii) a Government lawyer, e.g., public prosecutor, Attorney General etc., (iii) a private lawyer, or (iv) someone else (if so, please elaborate)?

Enforcement is not being sought from a court in new proceedings (see 4.1)

However, if, despite the intervention of the Public Prosecutor’s Office and the police, enforcement remains impossible, the applicant may refer the matter back to the court that issued the return order for a request for enforcement on the basis of Article 387ter of the Civil Code.

Article387terof the Civil Code provides that:

§ 1. Where one of the parents refuses to comply with court decisions relating to the children’s accommodation or access rights, the matter may be referred back to the family court already seised of the case, in accordance with the procedure laid down in Article 1253ter/7 of the Judicial Code.
The judge shall rule as a matter of urgency.
He or she may make new decisions regarding parental authority or the child’s accommodation.
Without prejudice to criminal proceedings, the judge may authorise the party who is the victim of the breach of the decision referred to in paragraph 1 to resort to coercive measures. He shall determine the nature of these measures and the manner in which they are to be carried out in the best interests of the child and shall, if he deems it necessary, designate the persons authorised to assist the bailiff in the enforcement of his decision.
The judge may impose a penalty payment to ensure compliance with the decision to be made and, in that event, rule that Article 1412 of the Judicial Code applies to the enforcement of that penalty payment.
The decision shall be provisionally enforceable by operation of law.
§ 2. This Article shall also apply where the rights of the parties are governed by an agreement as provided for in Article 1288 of the Judicial Code. In that case, and without prejudice to § 3, the [1Family] Court1shall be seised by a joint application.
§ 3. In cases of absolute necessity and without prejudice to recourse to Article 584 of the Judicial Code, authorisation to use the coercive measures referred to in § 1 may be sought by unilateral application. Articles 1026 to 1034 of the Judicial Code shall apply. The applicant must attach to the application all relevant documents tending to establish that the recalcitrant party has indeed been given formal notice to comply with its obligations and that it has opposed the enforcement of the decision.
The application is registered free of charge. The application shall be filed in the case file of the proceedings giving rise to the decision that has not been complied with, unless another judge has since been seised of the matter.
§ 3/1. Paragraph 1, subparagraphs 4 to 6, also applies to foreign court decisions handed down in the same matters and which are enforceable in Belgium.
Without prejudice to paragraph 3, subparagraph 1, proceedings shall be brought before the family court in accordance with the procedure set out in Articles 1034bis to 1034sexies of the Judicial Code. Territorial jurisdiction is determined in accordance with Article 35/2(4) of the Code of Private International Law.
Where the enforcement of the foreign decision referred to in the first subparagraph is governed by Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, and on international child abduction (recast), the applicant shall provide the court with the appropriate certificate issued in accordance with that Regulation.
§ 4. This Article is without prejudice to the international provisions binding on Belgium in matters of international

child abduction.

An application of this kind must be submitted by the applicant to the court that made the decision, with the assistance of a lawyer. The Central Authority has no jurisdiction to intervene.

4.4 In case of a court hearing during enforcement proceedings, is the applicant represented by the above-mentioned person or body?

Under the procedure provided for in Article 387ter of the Civil Code, the applicant must be represented by a lawyer.

5 Case closure

5.1 Who provides confirmation of the child's return?

The requesting Central Authority or the applicant.

5.2 When does the Central Authority consider that the case is closed? Will the applicant receive written confirmation that the case has been closed?

The Central Authority closes the case upon the child's return or upon receipt of a communication from the requesting Central Authority stating that it is closing the case. The closure is confirmed in writing to the requesting Central Authority.

6 Procedure under Article 29 of the Brussels IIb ((EU) 2019/1111) and Article 11(6)-(8) of the Brussels IIa ((EC) 2201/2003) Regulations (the so-called "overriding mechanism")

Where a non-return decision based on Article 13 of the Hague Convention is made, the Central Authority shall close the case:

- once a final decision has been made and, where applicable, enforced following the procedure set out in Article 29 of the Regulation
- if no proceedings have been brought before the court by the end of the time limit laid down in Article 29
- if the applicant indicates that they do not intend to continue the proceedings
- if the requesting Central Authority closes the case.

6.1 Does your Central Authority play any role in the overriding mechanism?

In the context of the proceedings referred to in Article 29 of Regulation 2019/1111 (Article 11(6) of Regulation 2201/2003), the Central Authority does not intervene in court proceedings.

For outgoing cases (children removed from Belgium to another country), at the applicant's request, the Central Authority continues to support them and monitor the progress of the proceedings. Assistance may be provided, in particular, with the translation and transmission of documents.

For incoming cases (child moved to Belgium), the Central Authority may continue to monitor the proceedings and obtain information on their progress from the court, at the request of the requesting Central Authority. If the requesting Central Authority terminates its involvement, the Central Authority will do the same.

6.2 Please describe the procedure for the enforcement of a foreign return order mentioned in Article 11(8) of the Brussels IIa Regulation or foreign privileged decision pursuant to Article 29(6) of the Brussels IIb Regulation entailing the return of a child if the 1980 Hague return proceedings in your State led to a refusal under Articles 13(1)(b) or 13(2) of the 1980 Hague Convention earlier (see sub-questions of 2.2 for the information requested)

See section 4 above.

7 Training

7.1 Are specialised trainings regarding return cases organised for different professionals (such as lawyers, mediators, prosecutors, bailiffs etc)?

The Central Authority may participate in training courses organised, in particular, by the Bar Associations, the Public Prosecutor’s Office and the Judicial Training Institute.
