INDEPENDENT INSTITUTIONAL POLICY BRIEF

# When EU Competence Ends: Who Remains Responsible?

## Closing the EU–National Accountability Gap in Consular Protection Cases Involving Third States

> **CORE POLICY PRINCIPLE**
> **A jurisdictional boundary may determine where EU competence ends. It must not determine where public responsibility disappears.**


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*Independent governance analysis. This brief does not determine the legality of any individual case and does not constitute legal advice.*

# Executive Summary

A recurring governance problem arises when the European Union determines that a matter falls outside the scope of EU law and refers the individual back to national remedies.

The jurisdictional boundary may be legally clear. The accountability pathway that follows is often not.

This policy brief examines a documented administrative refusal by the European Commission to pursue a complaint for lack of a sufficient EU-law nexus, in a consular and cross-border child-protection matter involving an EU Member State and a third State.

The Commission concluded that:

- the circumstances described did not appear to involve the implementation of EU law;
- Regulation (EU) 2019/1111 (Brussels IIb) did not govern the dispute because it involved a third State;
- the Commission had no power to intervene in a dispute between an EU Member State and a third State;
- EU consular-protection rules for unrepresented citizens did not apply because the relevant Member State maintained diplomatic representation in the third country; and
- the adequacy of the national authorities' consular assistance was therefore a matter of national law.

The Commission's reply confirms a jurisdictional boundary. The accountability gap emerges from what happens after responsibility is returned to the national level.

In the examined administrative response, the matter was allocated back to national law without the simultaneous identification or activation of a specific national accountability pathway.

> **POLICY THESIS**
> **The exclusion of EU competence must not result in the disappearance of institutional responsibility.**

Where a matter is classified as falling under national law, the Member State should provide a traceable national accountability route, preserve operational ownership and ensure that institutional referral does not become institutional abandonment.

# 1. The Confirmed Institutional Boundary

The Commission's response establishes four jurisdictional conclusions.

## 1.1 No sufficient connection to the implementation of EU law

The Commission stated that it could act only where the application or implementation of EU law was involved. On the information submitted, it concluded that the matter did not appear to satisfy that condition.

## 1.2 The third-State dimension limited the applicability of EU family-law legislation

The Commission stated that Brussels IIb applies within the EU legal framework and does not regulate the relevant dispute involving a third State. It further characterised the operation of the 1980 Hague Convention as bilateral between the State of habitual residence and the State to which the children had been taken.

## 1.3 EU consular-protection rules did not apply

The Commission explained that the EU right to equal consular protection applies where an EU citizen is unrepresented in a third country. Because the relevant Member State maintained representation in the third country, the Commission classified the adequacy of national consular assistance as a matter of national law. This reflects the framework governing consular protection for unrepresented citizens, including Council Directive (EU) 2015/637.

### 1.4 The Charter did not apply independently of EU law

The Commission relied on Article 51(1) of the Charter of Fundamental Rights, explaining that the Charter binds Member States only when they are implementing EU law.

These conclusions define where European competence ends. They do not identify what national institution must act next.

## 2. The Governance Problem

**A jurisdictional decision answers who is not competent. It does not necessarily answer who remains responsible.**

When EU competence ends, the individual may face a fragmented institutional structure involving:

- consular administration;
- Central Authority cooperation;
- foreign-policy decision-making;
- administrative review and ombudsman supervision;
- parliamentary oversight and judicial review; and
- child-protection responsibility.

Each institution may possess only partial competence. The resulting fragmentation creates a material risk that each institution may explain the limits of its authority while no institution remains clearly accountable for continuity, escalation and the unresolved protection outcome.

## 3. The Five Components of the EU–National Accountability Gap

The EU–National Accountability Gap occurs when an EU institution declines competence and returns a matter to national law, but the Member State does not provide a clear, traceable and operational mechanism for receiving, reviewing, escalating and resolving the responsibility transferred back to the national level.

1. **Competence Gap** — The citizen is informed that EU law does not apply, but receives no operational route to a national body capable of addressing the relevant combination of responsibilities.
2. **Responsibility Gap** — No institution is clearly identified as retaining overall ownership after European competence ends or a national procedure closes.
3. **Routing Gap** — Substantive issues are redirected between bodies whose mandates do not match the responsibility raised.
4. **Continuity Gap** — Procedural closure ends the file without resolving the underlying protection risk or transferring it to a competent authority.
5. **Traceability Gap** — The record does not clearly show what was examined, who decided, whether escalation was considered, or where responsibility was transferred.

## 4. Key Analytical Clarifications under GIA

### 4.1 Central Authority Boundary

Central Authorities may remain procedurally active within the scope of the 1980 Hague Convention, but their mandate does not necessarily encompass the wider consular, diplomatic, political or child-protection responsibilities that arise when cooperation with a third State fails.

### 4.2 Representation versus Operational Protection

The existence of a national embassy establishes representation for the purposes of EU consular-protection rules. It does not, by itself, demonstrate that effective assistance, protection continuity or an accountable escalation process has operated in the individual case.

### 4.3 Timing Integrity and Irreversibility

In prolonged child-protection cases, institutional latency is not neutral. The passage of time may consolidate the factual status quo, weaken family relationships and make later remedies progressively less effective. Escalation thresholds must therefore be linked not only to procedural failure, but also to elapsed time and increasing irreversibility.

## 5. Why the Gap Matters

### 5.1 Legal rights may exist without an operational route

A State may formally recognise administrative review, parliamentary scrutiny, judicial remedies and consular duties. Those mechanisms may nevertheless remain ineffective where the individual cannot identify which one applies to the specific decision or institutional failure.

### 5.2 Institutional referral may replace substantive examination

A referral can create the appearance of continued access to accountability while transferring the individual to another institution with narrower competence. Where no authority accepts the complete issue, referral becomes procedural displacement rather than remedy.

### 5.3 Procedural closure may be mistaken for substantive resolution

A case may be closed because documents were considered incomplete, the authority lacked competence, a treaty mechanism failed, a deadline expired or no further administrative action was planned. None of these outcomes necessarily establishes that the underlying protection concern was resolved.

### 5.4 Responsibility may disappear between institutional layers

The principal risk is not that one institution has limited competence. The risk is that each limitation accumulates until no institution remains responsible for the continuity, escalation and final protection outcome.

> **EU non-competence must not become national non-accountability.**

## 6. Policy Objective

The policy objective should be to ensure that every formal exclusion of EU competence activates a corresponding national accountability pathway.

The national system should be capable of answering five questions:

1. Which authority receives responsibility once EU competence is excluded?
2. Which body may review the administrative handling?
3. Which institution may examine political or ministerial responsibility?
4. Who retains operational ownership of unresolved protection concerns?
5. What escalation mechanism applies when ordinary procedures have failed?

## 7. Policy Recommendations

1. **Establish a National Accountability Entry Point** — Each Member State should designate a clearly identifiable national entry point for cases in which an EU institution has declined competence and classified the matter as falling under national law. The entry point should register the referral, classify the issues, identify the competent national authorities, separate administrative, judicial, political and protection questions, and communicate a documented pathway to the individual.
2. **Require a Competence Transfer Notice** — Where an EU institution declines competence and redirects a matter to national law, the response should identify, where reasonably possible, the category of national responsibility involved, the type of national remedy potentially available and the appropriate national contact point. The objective is a structured transfer rather than a jurisdictional dead end.
3. **Introduce Mandatory Continuity of Responsibility** — Responsibility should not terminate merely because one procedure closes. Before closure, the competent authority should record the reason, any unresolved risk, whether responsibility is being transferred, the receiving authority, remaining remedies, escalation options considered and the official authorising closure.
4. **Separate and Map Accountability Functions** — Member States should publish an authority map distinguishing administrative supervision, ministerial responsibility, parliamentary control, judicial review, consular operations, Central Authority functions, child-protection responsibilities and access-to-documents procedures.
5. **Require Reasoned Institutional Routing** — An authority redirecting a citizen should state why it lacks competence, which part falls outside its mandate, which authority is believed to be competent, whether the transfer has been made directly and whether any time limit applies.
6. **Create Escalation Rules for Prolonged High-Consequence Cases** — Cases involving prolonged separation, unresolved child-protection concerns, non-cooperative third States or repeated procedural closure should be subject to mandatory senior review. Duration and increasing irreversibility should operate as escalation triggers, not as neutral background conditions.
7. **Introduce a Unified Accountability Record** — Authorities should maintain a traceable record of submissions, classifications, consultations, actions, decisions, referrals, closures, outstanding risks, escalation choices and the authority retaining responsibility.
8. **Require a Post-Closure Protection Review** — Where a procedure closes without resolving the underlying protection issue, a separate review should determine whether risk remains, whether another mechanism must be activated, whether political or diplomatic escalation is required and which authority retains continuing oversight.

## 8. Governance Integrity Standard

> MINIMUM STANDARD
>
> **No jurisdictional exclusion, institutional referral or procedural closure should be considered complete until responsibility has been identified, transferred, documented and made accessible to the affected person.**

The standard requires four operational elements:

**Authority:** A competent institution must be identifiable.

**Continuity:** Responsibility must remain active during transfer.

**Traceability:** Decisions, referrals and closure conditions must be documented.

**Escalation:** Unresolved high-consequence cases must reach a higher review level within a defined time threshold.

**Competence determines the legal authority to act. Governance integrity determines whether responsibility remains active, traceable, timely and capable of escalation when competence ends or is transferred.**

## 9. Documentary Basis

This policy brief was triggered by a documented administrative response issued by the European Commission, Directorate-General for Justice and Consumers, Directorate A – Justice Policies, Unit A.2 – Civil Justice, electronically signed on 23 July 2026, references JUST.A.2/PDL/sc/just.a.2(2026)7651181 and ARES(2026)6526729.

The response is used solely to identify and analyse the institutional boundary between EU competence and national responsibility. It is not used to adjudicate the underlying individual dispute, and no finding is made regarding the legality of the conduct of any national authority.

The governance analysis, terminology, policy architecture and recommendations are independently developed by Sanaa Rezk under the Governance Integrity Architecture (GIA).

## 10. Conclusion

The European Commission's response confirms a boundary between EU competence and national responsibility. The policy issue begins precisely at that boundary.

The central question is not whether the Commission was legally entitled to decline intervention. The central question is what must happen next when responsibility returns to the Member State.

A functioning accountability system must ensure that:

- competence is not confused with responsibility;
- referral is not confused with remedy;
- procedural closure is not confused with protection;
- national law is not invoked without an identifiable national route; and
- institutional responsibility does not disappear during transfer.

**Responsibility must not disappear at the boundary of competence.**

### Sanaa Rezk

Governance Integrity Architecture (GIA)

*Protection fails when activation comes after effect.*