



**Missing
Children
Europe**

Invitation

Training for lawyers, judges, court officials and social workers on The child in international child abduction cases 6-7 December 2018 in Antwerp

The training will focus on best practices in international child abduction cases. As the European Court of Human Rights has repeatedly stated, the best interests of the child is an essential principle, also in matters of child abduction. Taking their interests into account and duly hearing children in return proceedings under the 1980 Hague Child Abduction Convention and the Brussels IIbis Regulation is not simple: these proceedings have to be expeditious. Research has revealed the importance of involving the children in the decision-making process. This helps them to cope better and come to terms with trauma.

Therefore the training will include themes such as hearing the child, assessing a child's best interests, mediation and giving feedback to the child after the legal proceedings.

This training is organised by the VOICE consortium (including the Universities of Antwerp and Genoa), co-funded by the European Commission. It is based on research conducted by the Universities of Antwerp and Genoa on how judges take account of the best interests of the child in international child abduction cases.

Register here

A specific 2-days training for mediators on this topic will be organized in Berlin on March 7th and 8th and April 4th and 5th 2019.



This training was funded by the
"European Union's Justice
Programme (2014-2020)".

VOICE

QUANTITATIVE ANALYSES



Prof. dr. Koen Ponnet
Dr. Katrien Symons
Prof. Dr. Lieven De Marez

Content

- I. Background and goals
- II. Data
- III. Results
- IV. Conclusions
- V. Recommendations

I. Background and goals

What affects the wellbeing of a parentally abducted child?

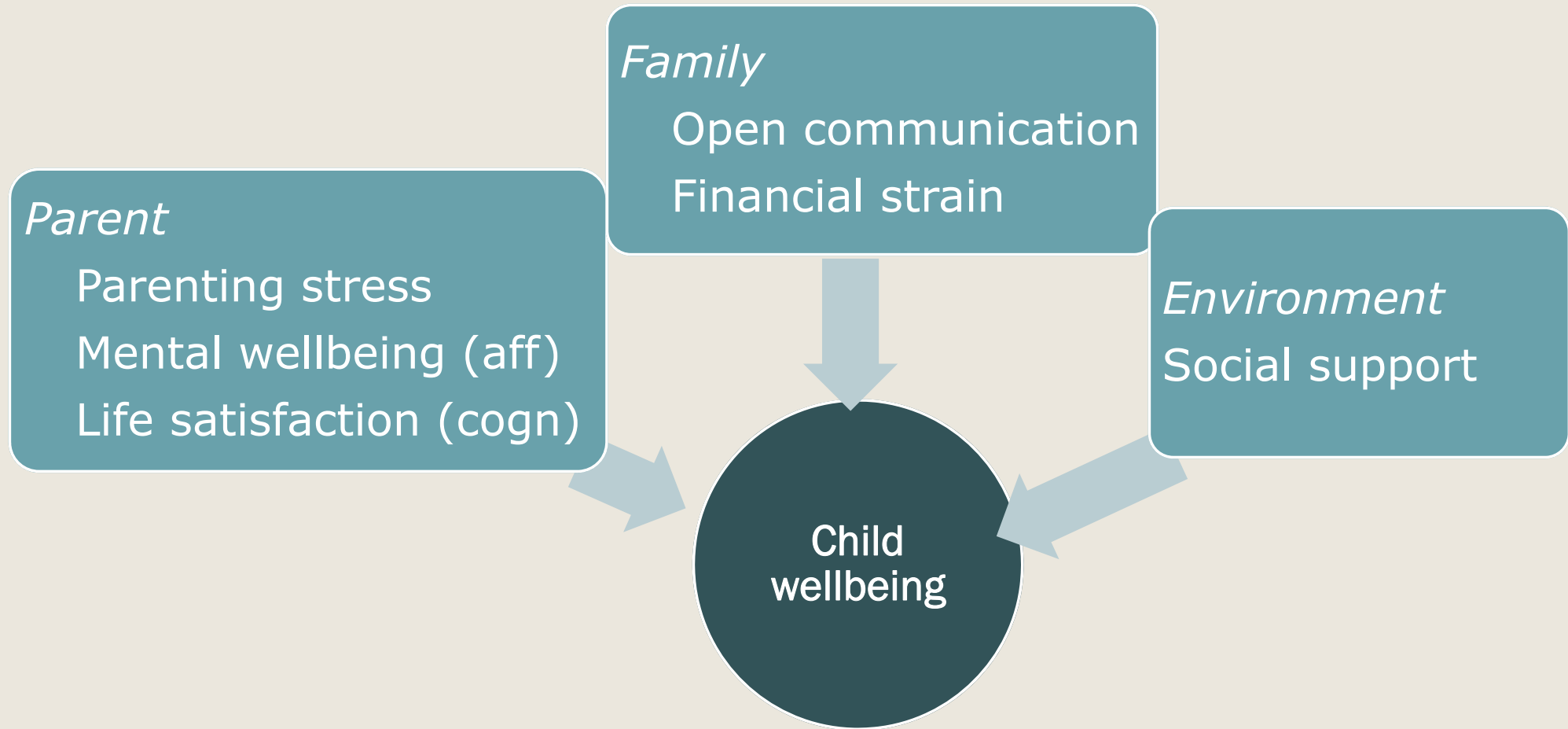
- **eWELL:** focus on characteristics of the abduction, the stay in another country, and the conflict resolution
- **VOICE:** focus on the family context
 - Parental child abduction impacts on the child and the broader family context
 - Parent wellbeing typically affects children
 - Family resiliency important when faced with strain

Family resiliency : family's resources to cope with stressors and to foster positive outcomes for children

“Resiliency is fostered by protective factors and inhibited by risk factors. Protective factors modify or transform responses to adverse events so that families avoid possible negative outcomes. Conversely, risk factors are circumstances that increase the probability of poor outcomes.”

(Benzies and Mychasiuk, 2008, p. 104)

Family resiliency



Parenting stress (lack of competence)

Please indicate your degree of agreement (using a score ranging from 1-7) to the following sentences.

- I often have the feeling that I cannot take care of [TARGET CHILD] as well as I thought I could.
- Being a parent is harder than I thought it would be.
- I have had many more problems raising children than I expected.
- No matter how hard I try to do my best in raising [TARGET CHILD], sometimes I have the feeling that I cannot control things.

Hospital Anxiety and Depression Scale (HADS)

Tick the box beside the reply that is closest to how you have been feeling in the past week.

Don't take too long over you replies: your immediate is best.

D	A		D	A	
		I feel tense or 'wound up':			I feel as if I am slowed down:
	3	Most of the time	3		Nearly all the time
	2	A lot of the time	2		Very often
	1	From time to time, occasionally	1		Sometimes
	0	Not at all	0		Not at all
		I still enjoy the things I used to enjoy:			I get a sort of frightened feeling like 'butterflies' in the stomach:
0		Definitely as much		0	Not at all
1		Not quite so much		1	Occasionally
2		Only a little		2	Quite Often
3		Hardly at all		3	Very Often
		I get a sort of frightened feeling as if something awful is about to happen:			I have lost interest in my appearance:
	3	Very definitely and quite badly	3		Definitely
	2	Yes, but not too badly	2		I don't take as much care as I should
	1	A little, but it doesn't worry me	1		I may not take quite as much care
	0	Not at all	0		I take just as much care as ever
		I can laugh and see the funny side of things:			I feel restless as I have to be on the move:
0		As much as I always could		3	Very much indeed
1		Not quite so much now		2	Quite a lot
2		Definitely not so much now		1	Not very much
3		Not at all		0	Not at all
		Worrying thoughts go through my mind:			I look forward with enjoyment to things:
0		A great deal of the time	0		As much as I ever did

Life satisfaction

Please indicate your degree of agreement (using a score ranging from 1-7) to the following sentences.

- My living conditions are excellent
- On most levels my life is nearly perfect
- I am satisfied with my life
- If I could revive my life, I would hardly change a thing
- Until now I have reached the most important things in life that I wanted

Open parent-child communication

To which degree do you agree or disagree with the following sentences ? (1 = Totally disagree - 7 = Totally agree)

- I am very satisfied about the way we talk together
- [TARGET CHILD] openly shows his or her affection towards me
- I find it easy to talk with [TARGET CHILD] about his or her problems
- It is easy for [TARGET CHILD] to express his or her true feelings towards me

Financial strain

Please indicate your degree of agreement (using a score ranging from 1-7) to the following sentences.

Financial Need

- It is difficult to afford much more than the basics with our current income
- I feel that our current income allows me to maintain a desirable standard of living (r-scored)
- With our current income, it is difficult to make ends meet

Financial Insecurity

- I am worried that I will not be able to pay my bills in the near future
- I think that I will have to scale down my living standards in the following months
- I often worry about my future financial situation
- I think that I (or my household) will experience financial difficulties in the following months.

Social support

How supportive has the following help been during/after the abduction of [TARGET CHILD]? (1 not at all supportive – 5 very supportive)

During the abduction: felt support by

- Mediator
- Central authority
- Attorney
- Police
- Embassy

After the abduction: felt support by

- Mediator
- Social services
- Attorney

Child wellbeing

For each item, please mark the box for Not True, Somewhat True or Certainly True. Please give your answers on the basis of [TARGET CHILD]'s behavior over the last 6 months.

- Restless, overactive, cannot stay still for long.
- Often complains of headaches, stomachaches or sickness.
- Often has temper tantrums or hot tempers.
- Rather solitary, tends to play alone.
- Generally obedient, usually does what adults request.
- Many worries, often seems worried.
- Constantly fidgeting or squirming.
- Has at least one good friend.
- Often fights with other children or bullies them.
- Often unhappy, downhearted or tearful.
- Generally liked by other children.
- Easily distracted, concentration wanders.
- Nervous or clingy in new situations, easily loses confidence.
- Often lies or cheats.
- Picked on or bullied by other children.
- Think things out before acting.
- Steals from home, school or elsewhere.
- Gets on better with adults than with other children.
- Many fears, easily scared.
- Sees tasks through to the end, good attention span.

II. Data

- Eligibility criteria:
 - Having a child that was involved in a parental abduction
 - Child is at survey-moment between 6 and 18 yrs old
 - Abduction took place between January 2005 and December 2014
- Data collection among parents: December 2016 – May 2017
in Belgium, France and the Netherlands
- Study protocol approved by Ethics Committee of University of Antwerp (SHW/16/17/02)

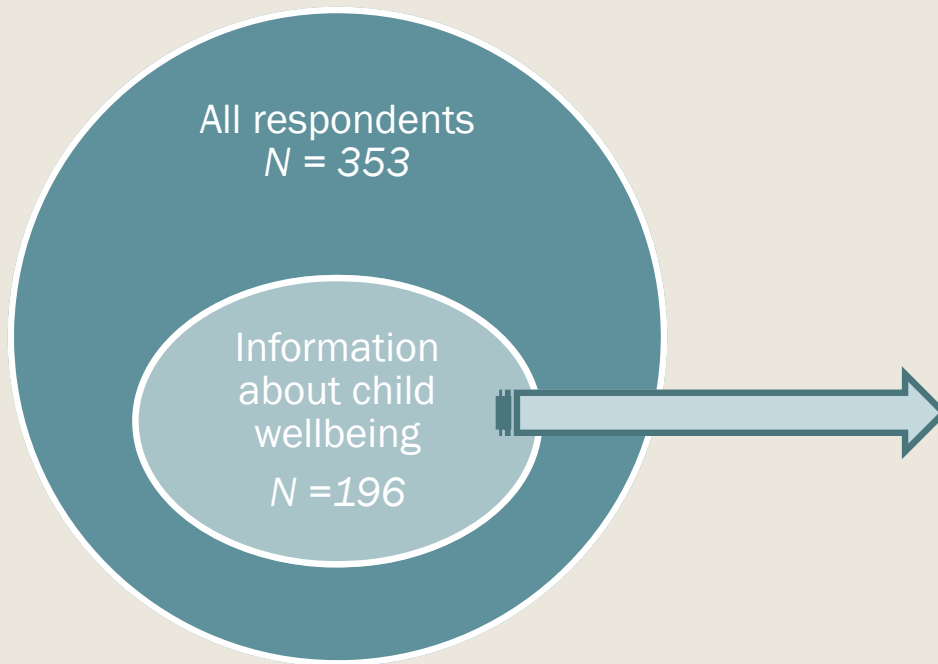
II. Data

- Survey data: 2404 eligible respondents, 14,7% response rate ($N = 353$)
- Non-response analysis: Is there a difference in participation rate according to
 - Parent's gender (m/f ratio: 13%/15%)
 - Type of abduction (abduction/visitation rights breached)
 - Parent's role in the abduction (abducting/left-behind parent)
 - Duration of contact with the organization
 - Parent's nationality
 - Region to which the child was taken
 - How the abduction ended (return/non-return)



Overall response and non-response equally distributed over categories considered

Description of participants



157 respondents (44,5%) were excluded because they indicated that the child never resides with them

- 80,1% left-behind parents
- In 71,9% of the cases the child returned
- Great variety in duration of abduction
- Time elapsed since abduction: 1 to 12 years, $M = 6,10$ years

Aspects of the abduction in relation to child wellbeing

- Return versus non-return to left-behind parent
- Duration of the abduction
- Time elapsed since the end of abduction

No effects on child wellbeing

III. Results

III.1 Family resiliency and child wellbeing

III.2 Mediation and support from professional stakeholders vs. parent wellbeing

III.3 Mediation and hearing of the child in relation to child wellbeing

III.1 Family resiliency

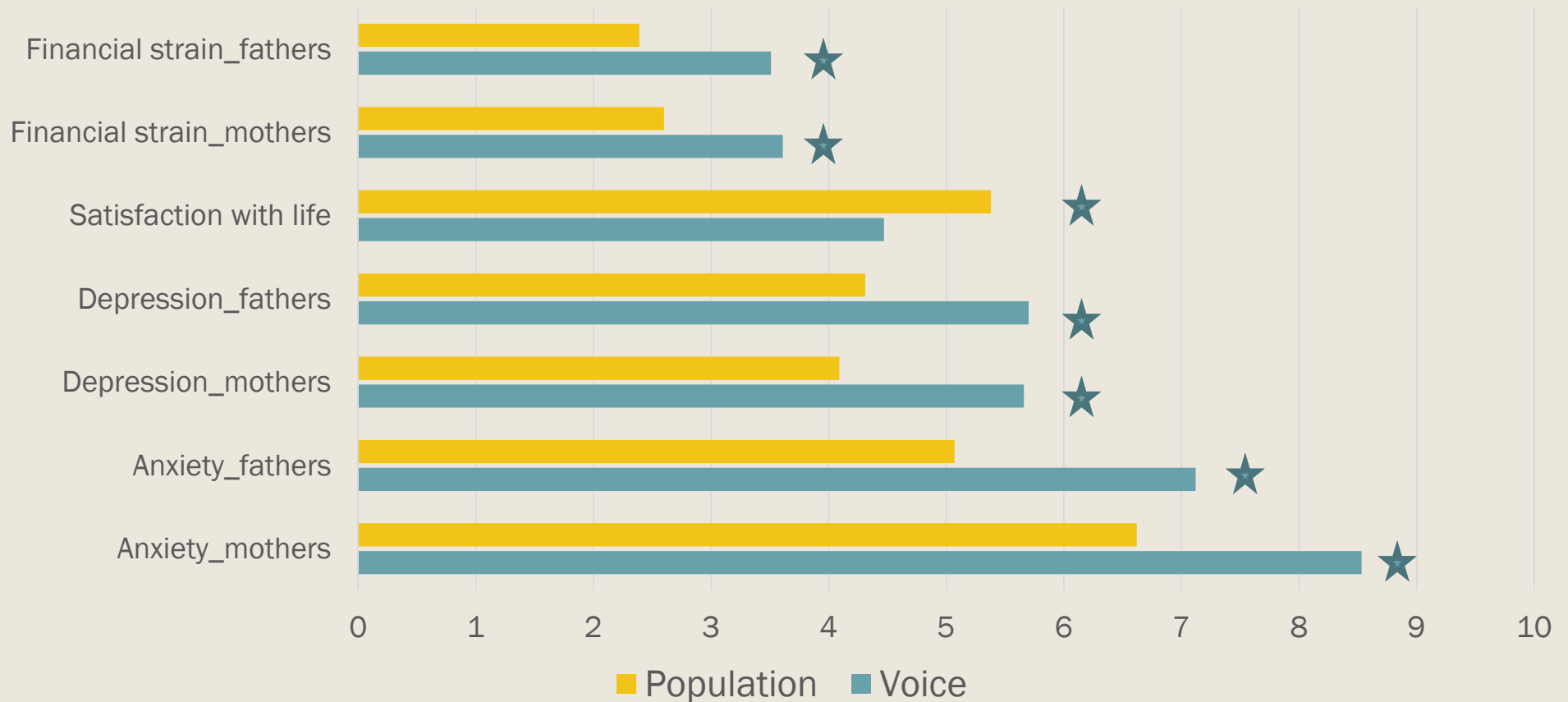
RQ1: do families who have been involved in an international parental abduction differ from families from a general population in terms of family resiliency?

RQ2: is there a difference in family resiliency according to whether or not the child resides in the family?

RQ3: is there a difference in family resiliency between abducting versus left-behind parents?

RQ4: is family resiliency related to the child's wellbeing?

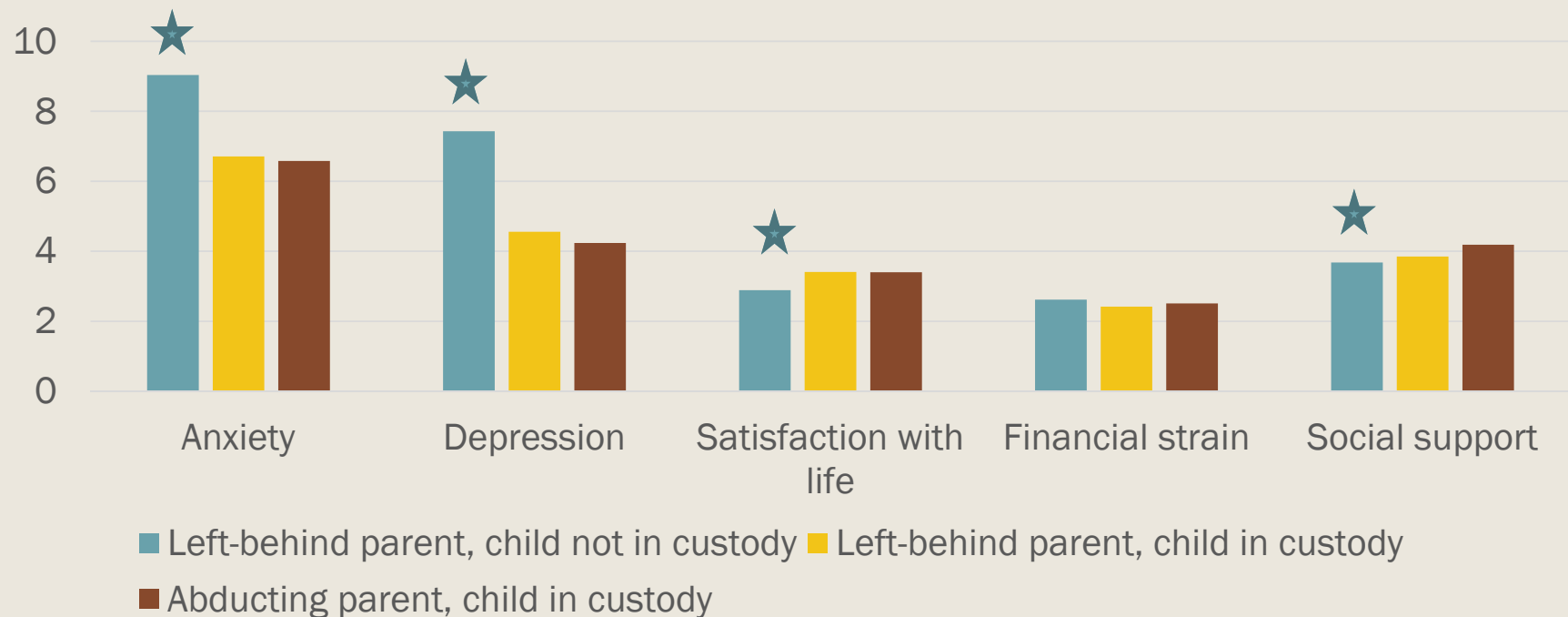
RQ1: Do families who have been involved in an international parental abduction differ from families from a general population in terms of family resiliency?



RQ2: is there a difference in family resiliency according to whether or not the child resides in the family?

RQ3: is there a difference in family resiliency between abducting versus left-behind parents?

- Child residence: parents with whom child does not reside score significantly lower on indicators of resilience ★
- Role in the abduction: abducting parents = left-behind parents



RQ4: is family resiliency related to the child's wellbeing?

	SDQ (Pearson correlation scores)
Parenting stress	.37***
Anxiety	.36***
Depression	.26***
Satisfaction with life	-.30***
Financial strain	.25***
Open communication	-.34***
Social support	-.05

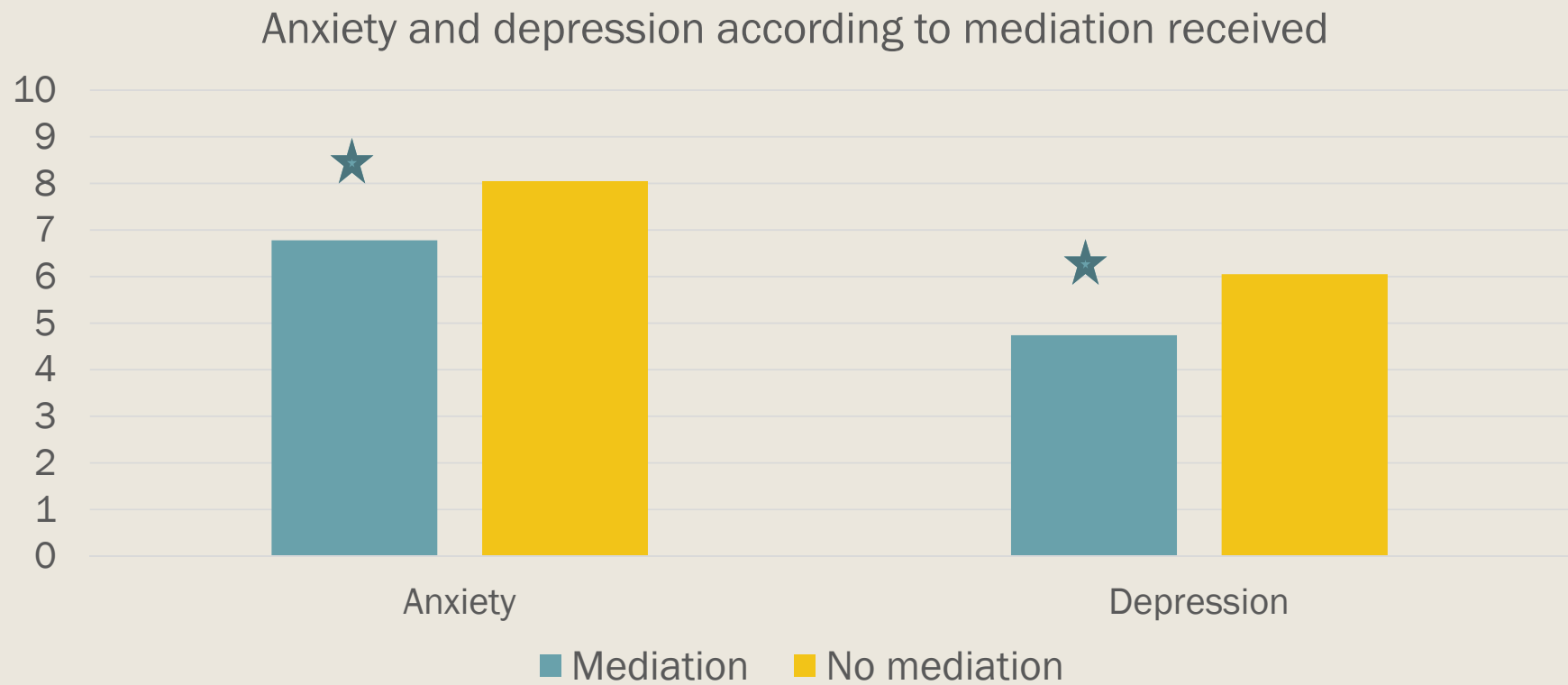
*** $p < .001$

III.2 Mediation and support from professional stakeholders

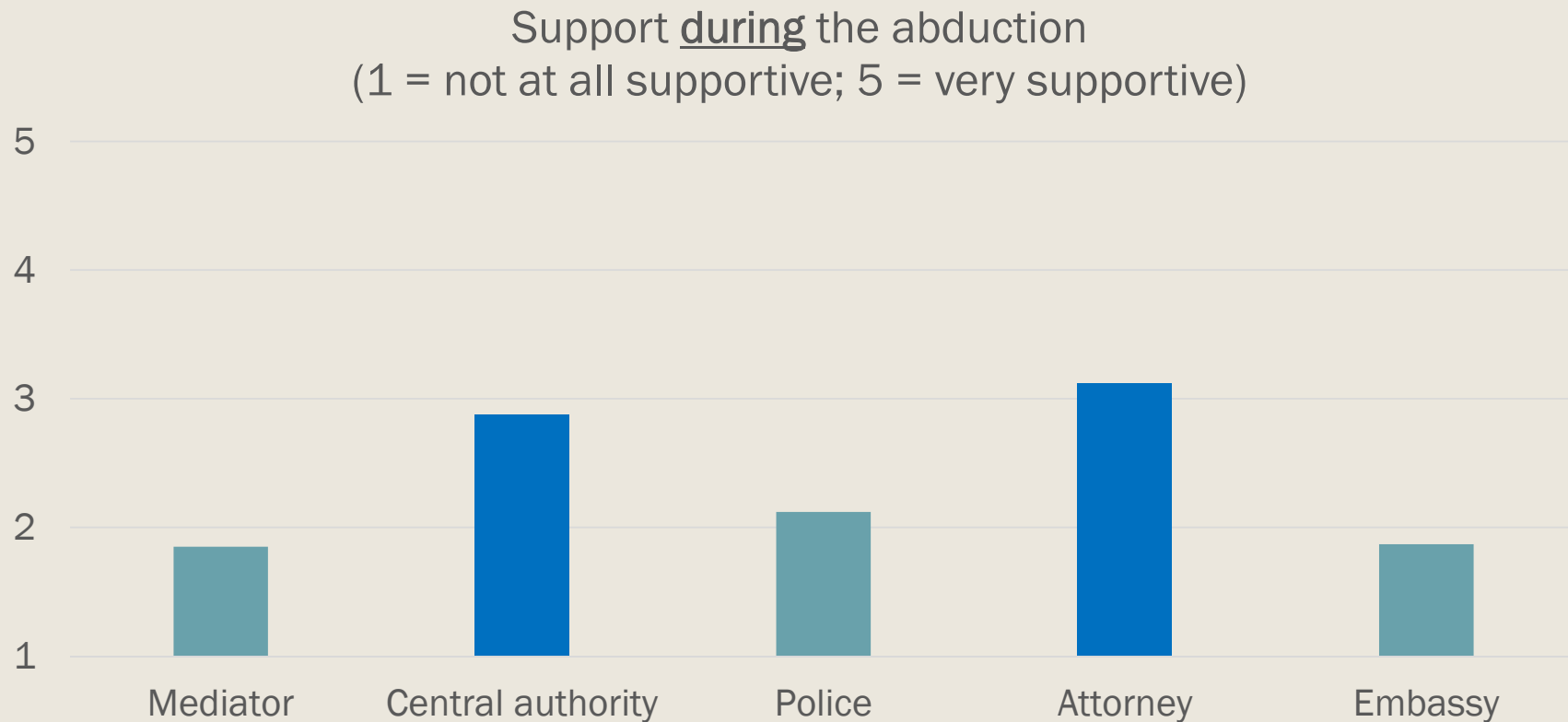
RQ5: is the use of mediation related to **parents' wellbeing**?

RQ6: to what extent is the contact with professional stakeholders during and after the abduction perceived by parents as supportive, and is this support related to the **parent's wellbeing**?

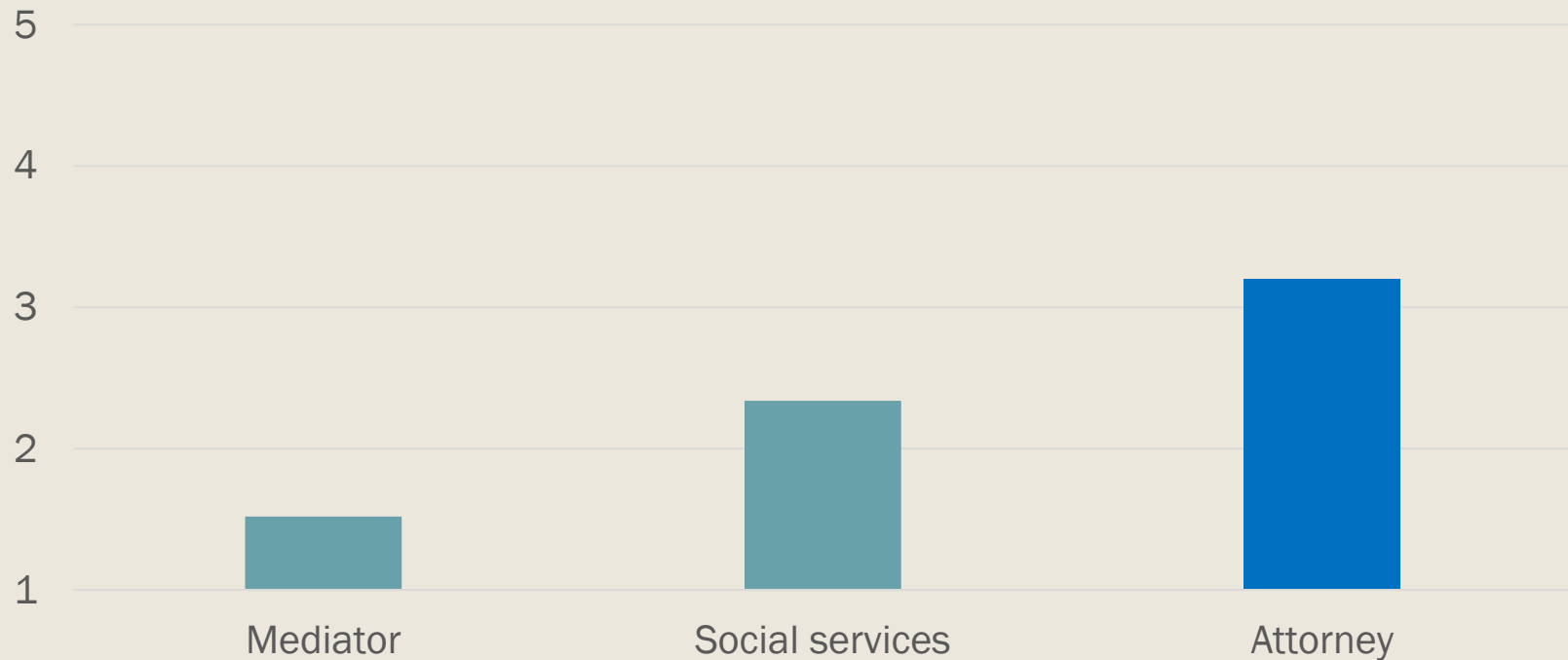
RQ5: is the use of mediation related to parents' wellbeing?



RQ6: to what extent is the contact with professional stakeholders during and after the abduction perceived by parents as supportive, and is this support related to the parent's wellbeing?



Support after the abduction
(1 = not at all supportive; 5 = very supportive)



Possible explanations:

- a mediator is a neutral professional who aims to work with both parents on an equal basis
- an attorney offers services to one parent only. Contact with an attorney also tends to be more frequent as compared to contact with a mediator

Correlation between support from professional stakeholders and parent wellbeing

	Parent anxiety	Parent depression
During the abduction, felt support by		
Mediator	-.062	-.113
Central authority	-.128*	-.067
Police	-.132*	-.141*
Attorney	-.167**	-.267***
Embassy	-.047	-.113
After the abduction, felt support by		
Mediator	-.188	-.018
Social services	-.148	.001
Attorney	-.178*	-.078

Conclusions

- Although mediation improves parents' wellbeing, the mediator him/herself is not perceived as supportive by the parent

Correlation between support from professional stakeholders and parent wellbeing

- Feeling *more* supported by the attorney is significantly related with *less anxiety* and *less depression*, especially support during the abduction
- Support by the mediator during/after abduction does not correlate with parents' anxiety and depression
- During the abduction, support from the police is related with less anxiety and depression (but weak correlation)

Conclusions

- Although mediation improves parents' wellbeing, the mediator him/herself is not perceived as supportive by the parent
- The relationship with the attorney is very important

III.3 Mediation and hearing of the child → child's wellbeing

RQ7: is there an effect of mediation on the child's wellbeing?

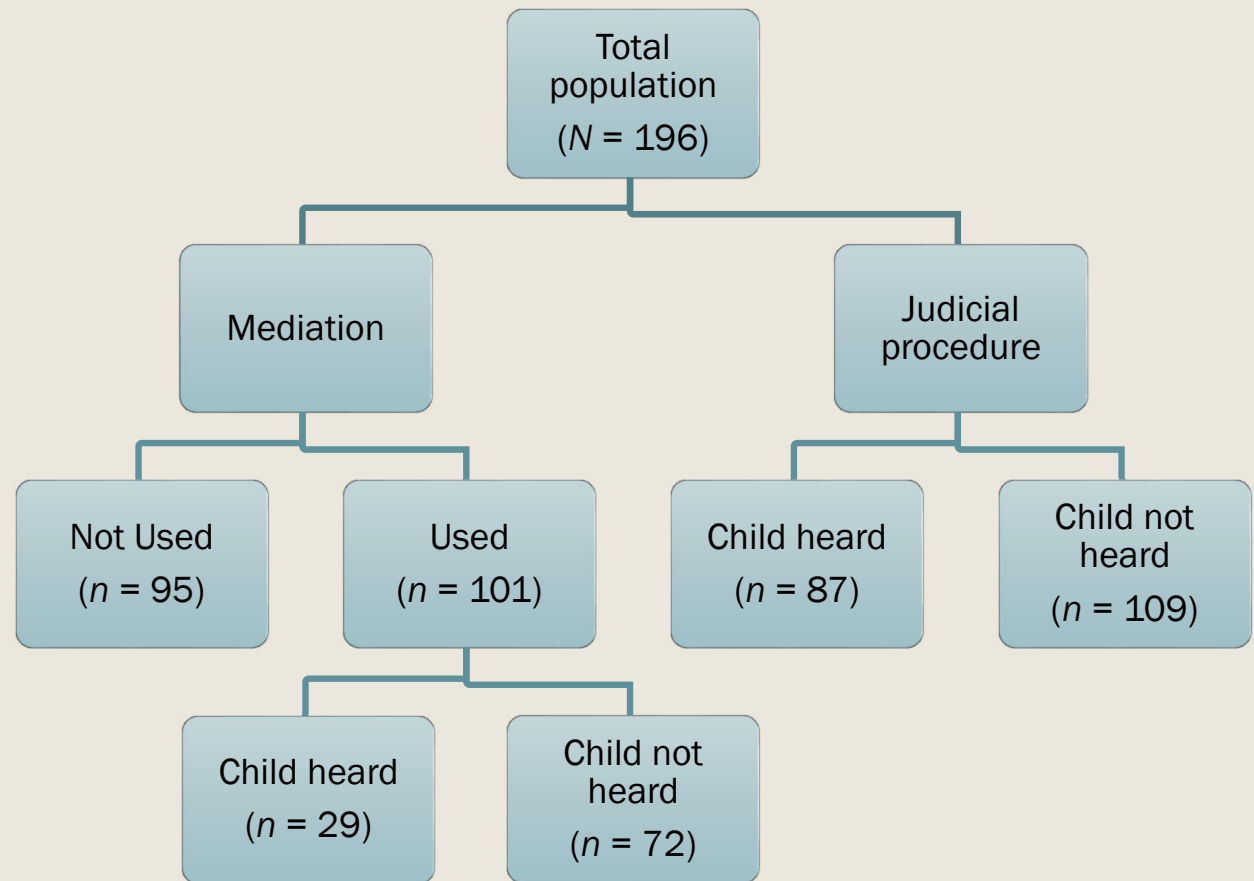
RQ8: is there an effect of the hearing of the child during mediation on the child's wellbeing?

RQ9: is there an effect of the hearing of the child during the judicial procedure on the child's wellbeing?

RQ7-RQ9: Mediation and hearing of the child in relation to child wellbeing

No significant difference in current child wellbeing, depending on

- whether or not mediation was used
- whether or not child was heard during mediation
- whether or not child was heard during court procedure



IV. Conclusions

- Family resiliency is an issue of concern in families that were involved in child abduction
 - ➔ *Supporting parents in becoming more resilient would benefit the children*
- Mediation improves parents' wellbeing while the attorney is experienced as the most supportive professional stakeholder
 - ➔ *Important to ensure access to mediation for all parents*
- Mediation and hearing of the child could not be related to the child's wellbeing

V. Cave

- Wellbeing is measured at the moment of survey (years after abduction took place)
- Krappmann (2010): large variation in the way in which hearing of the child is implemented during mediation and during judicial procedure
→ "It's important that child can also *participate* in decision making"
- Van Hoorde et al. (2017): Being heard is in itself not necessarily a positive experience for the child and much depends on the way in which the hearing is organized

VI. Recommendations

- Need for more structural, long-lasting and multidisciplinary support for parents
- Need for a better understanding of what makes mediation succesful in terms of parent and child wellbeing
- Need for a better understanding of how children can be involved in a way that improves their wellbeing

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Conversation between children and judges in child international abduction cases



Sara Lembrechts - Marieke Putters - Kim Van Hoorde



**Missing
Children
Europe**



Child Focus
116 000



Centrum Internationale
Kinderontvoering



**Universiteit
Antwerpen**



UNIVERSITÀ DEGLI STUDI
DI GENOVA



**UNIVERSITEIT
GENT**



MIKK e.v. - Mediation bei internationalen Kindschaftskonflikten



This training was funded by the
"European Union's Justice
Programme (2014-2020)".

Methodology

- Interviews with children
 - Belgium: 11
 - The Netherlands: 6
- Interviews with judges
 - Belgium: 7
 - The Netherlands: 2

National case law

- Belgium: 25
- The Netherlands: 98

Brainstorming exercise

- Challenges: hearing children
 - Judge?
 - Child?
- Solutions?
- → Red post-it: challenge
- → Green post-it: solution

Quotes

« You are in a dilemma »

« There is no room for delicate distinctions »

« The judge was not really interested in my side of the story because I was rather young »

« The child's words are what you as judge can deal with and interpret in a legal way »

“The judge has to genuinely listen, not just hear us to make us feel a bit better.”

The right of the child to be heard

- Judicial and institutional challenges
- Tensions related to communication & relationships

Judicial and institutional challenges



International standards

- Hague Child Abduction Convention 1980 (HCCA)
 - Not explicit obligation to hear child
 - Ground for refusal: child's objection (Art. 13(2))
 - Age & maturity
- Brussels IIbis
 - General obligation (Art. 11(2))
 - Age & maturity
- UN Convention on the Rights of the Child (UNCRC)
 - Best interests (Art. 3)
 - Right to be given the opportunity to be heard (Art. 12)

International standards

- Different international standards on children's rights and child-friendly justice
- Different interpretation

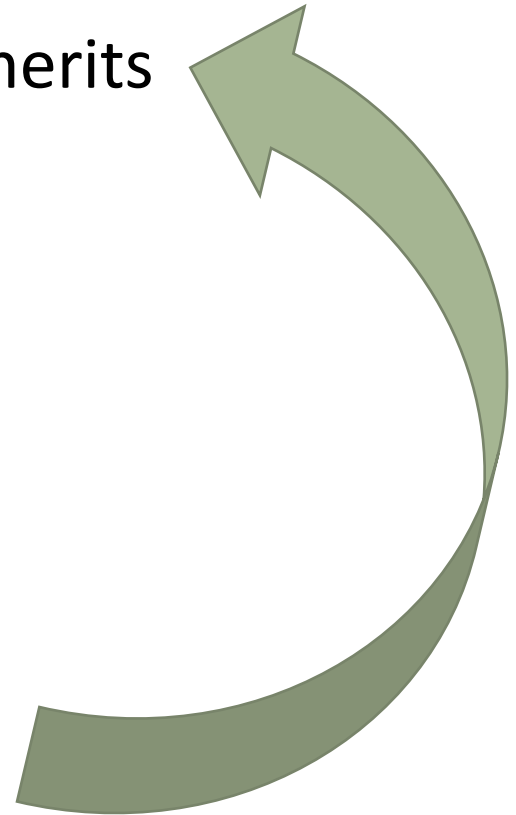
Technical nature of the procedure

- Country A: procedure on the merits



Child

- Country B: return procedure



Technical nature of the procedure

- Quick & to the point >< Careful, individual
- HCCA >< UNCRC

« It is very difficult for the child to comprehend that the return procedure is a technical matter »

The child's age

- Age:
 - BE > 12 years
 - NL > 12 years in law; >6 years in practice
- BE: reluctant to hear young children
 - No miracle cure
 - Can do harm
 - Case-by-case

The child's age

- Children's experience:
 - Excluded because of age

« I am not invisible, you know »

- The Netherlands:
 - Only one court
 - Specialisation

« It is important that the expectations be clear »

Protecting reflex Hearing young children

Fear of not being able to give sufficient support



Not hearing child



Child's right to be given opportunity to be heard
Corresponding obligation on court

Maturity

- 1) Oversee and understand current situation + future consequences of a decision
- 2) Express oneself verbally, voice thoughts, feelings and emotions clearly and comprehensively
- 3) Convey ageappropriate consistency, authenticity, selfreflexivity and independence
- 4) Speak in ageappropriate language, in own words of which implications are understood
- 5) Speak freely, spontaneously, openly
- 6) Give reasoning for a preference or choice
- 7) Speak in a way that is not purely emotional
- 8) Give a mature impression that is genuine

Maturity

Some questions for reflection to take along:

- All children capable of forming and expressing their views >< only children who 'pass' a maturity test?
- Can you generally know if a child is mature without meeting the child in person?
- What is the role of the Court and other professionals to assist children in forming and expressing their views?
- How can judges give weight to the views of a child who is not as persuasive in their speaking?

Preference vs objection

- Objection in a minority of the judgments
- Objection of return \neq expressing a preference
- How to determine?

Preference vs objection

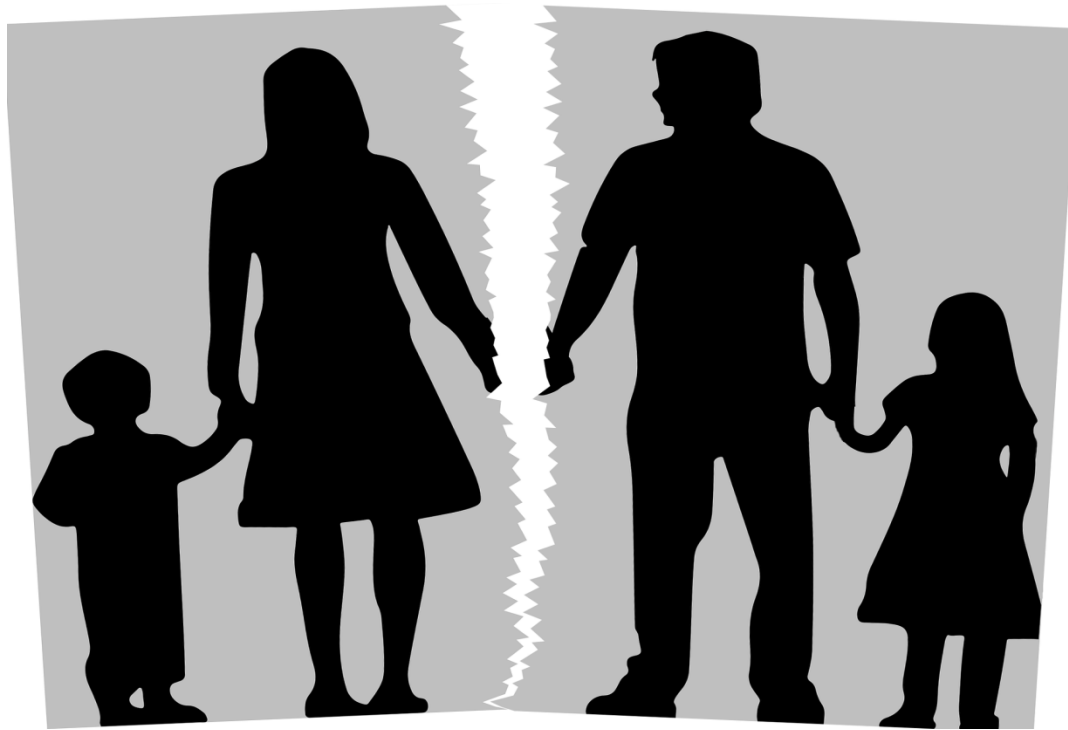
Child's view

- Confused and not aware of the narrow interpretation
- Important:
 - actually listening
 - living conditions

« I was telling them that they were beating me (...) They clearly saw that I didn't want to go back, but they couldn't do anything about it. »

« If we say something... I mean, it is our life, you know? The judge has to... I mean... take this into account. »

Tensions related to communication & relationships



To hear or not to hear

- Experiences of the judges
 - smoothly, not afraid to speak; also young children (NL)
 - not too heavy, they want to be heard (NL/BE)

« The story of the child is also genuinely a view through coloured glass, by means whereof you can see the story of the parents better »

To hear or not to hear

Experiences of the children

- Narrow view

« I did indeed have a wrong idea about that. Because such a judge...then I always think of crime. And then I think, oh. Shit. What have I now done wrong again? »

- An obligation, but unpleasant
- Why not heard?

« (...) they treated me as a child who knew nothing, while the whole situation (...) was about me. I had to experience the whole situation»

Coping with family conflicts

- Deception
- Honesty
- Loyalty conflict
- Pressure

« one side that loses »

« I found it devastating to see how much stress it actually caused for both my parents... »

DISCUSSION AND CONCLUSIONS

Manage expectations

- The voice \neq the choice
- Sketch possible scenarios

« That is good, being cross with me. Then they can at least utter their feelings. They can blame me instead of themselves »

DISCUSSION AND CONCLUSIONS

Feedback

- By whom? (parent, judge, guardian ad litem, ...)
- Clear and systematic
- Extent of agreeing with child's view

« I always seek out other reasons to support my finding that are not dependent upon what the child said. »

DISCUSSION AND CONCLUSIONS

Listen to children, regardless of objection

Avoid protecting reflex

- properly assess real risks
- help of other professionals
- right framework: appropriate way and method

DISCUSSION AND CONCLUSIONS

Suggestions for support:

- explore and evaluate structural support (e.g. guardian ad litem)
- more training and specialisation possibilities
- an explicit mandate for extensive attention to feedback

Discussion



The Well-Being of Children in International Child Abduction Proceedings
Antwerp, 6th December 2018



Mediation: Why the Lawyers Need to be on Board!

Ischtar Khalaf-Newsome
Head of Advisory Services
Lawyer, Mediator, MIKK

Michael Ford
Advisor
Lawyer, Mediator, MIKK



MIKK e.V. International Mediation Centre for Family Conflict and Child Abduction



- Introduction – Name – Country – Profession
- Experience with cross-border cases?
- Experience with mediation?



MIKK e.V. International Mediation Centre for Family Conflict and Child Abduction

Mediation is...



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Mediation is...

Definition

"[Mediation is] a **structured process**...whereby two or more parties to a dispute **attempt by themselves**, on a voluntary basis, to reach an **agreement** on the settlement of their dispute with the **assistance of a mediator**."

European Directive on Mediation, 2008/52/EC of 2nd May 2008, Art.3(a)



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A Mediator is...

Definition

A mediator is defined as "any **third person** who is asked to conduct a mediation in an **effective, impartial and competent way**".

European Directive on Mediation, 2008/52/EC of 2nd May 2008, Art.3(b)



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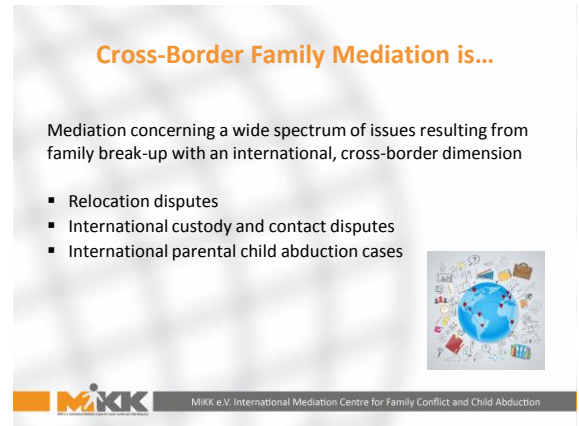
Mediation is...

- A structured process - six distinct phases
- Approx. 3-5 sessions
- Approx. 10-15 hours

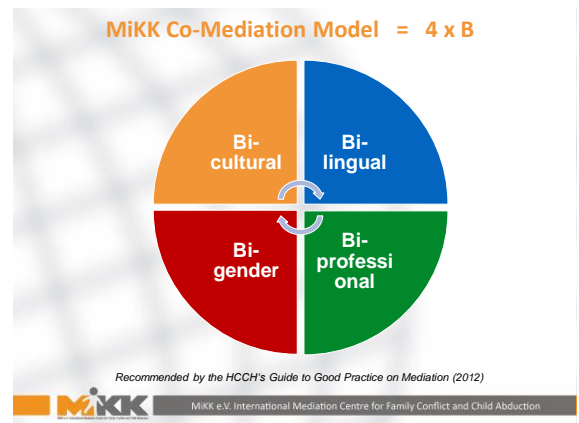


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1. Voluntariness
2. Confidentiality
3. Impartiality
- 4. Self-empowerment**



- ✓ Bi-national
- ✓ Bi-cultural
- ✓ Bilingual
- ✓ High escalation
- ✓ Usually long distances involved



A circular diagram divided into four quadrants, each representing a different type of bilingualism. The quadrants are colored and labeled as follows:

- Top-left (Orange):** Bi-cultural
- Top-right (Blue):** Bi-lingual
- Bottom-left (Red):** Bi-gender
- Bottom-right (Green):** Bi-professional

Two curved arrows in the center of the circle indicate a clockwise cycle between the quadrants.

Recommended by the HCCH's Guide to Good Practice on Mediation (2012)

MiKK International Mediators Network





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✓ More than 150 specialized, bilingual cross-border mediators

✓ In 27 countries

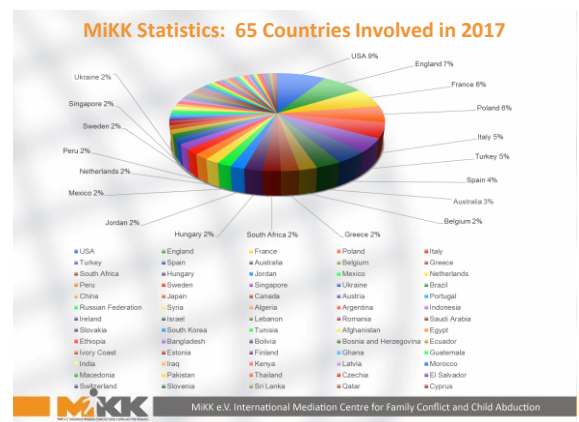
✓ Mediating in 30 languages

&
✓ **International Lawyers List**

MiKK e.V. International Mediation Centre for Family Conflict and Child Abduction

- ✓ More than 150 specialized, bilingual cross-border mediators
- ✓ In 27 countries
- ✓ Mediating in 30 languages

✓ **International Lawyers**
List

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MiKK Mediation Statistics

Agreement/Partial Agreement concluded
in Child Abduction Cases:

- In 2015: 67%
- In 2016: 90%
- In 2017: 83%



MiKK e.V. International Mediation Centre for Family Conflict and Child Abduction

Who Initiates Cross-Border Mediations?

- The Parents
- Central Authorities
- Judges
- Lawyers
- Embassy & Consular staff



An increasing number of **lawyers and judges** support mediation in cross-border cases and **recommend mediation to the parents**



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To recommend or not to recommend...?



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Legal Instruments Recommend Mediation

1980 Hague Convention on Child Abduction , Article 7

“Central Authorities **shall...take all appropriate measures** (...)

- c) to secure the voluntary return of the child or to bring about an **amicable resolution** of the issues;”

Brussels II bis

“(25) Central authorities should cooperate both in general matter and in specific cases, including for purposes of **promoting the amicable resolution** of family disputes, in matters of parental responsibility



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Legal Instruments Recommend Mediation

EU Mediation Directive

Article 1

Objective and scope

1. The objective of this Directive is to facilitate access to alternative dispute resolution and to **promote the amicable settlement** of disputes by **encouraging the use of mediation** and by ensuring a balanced relationship between mediation and judicial proceedings.
2. This Directive shall apply, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law. (...)

DIRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2008 on certain aspects of mediation in civil and commercial matters



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Advantages of Mediation

- ✓ Mediation is future oriented
- ✓ Re-establishes contact between estranged parents
- ✓ Facilitates **direct** communication between the parents
- ✓ Puts the child back into the parents' FOCUS!
- ✓ Safe and confidential space to brainstorm proposals
- ✓ De-escalates dispute
- ✓ Trust and goodwill can be rebuilt
- ✓ Ownership of Outcome
- ✓ Underlying (emotional) aspects of the conflict can be explored



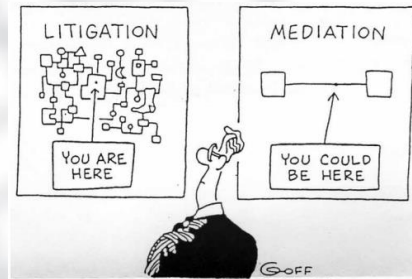
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Research Has Shown That Mediation is...



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Faster...



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Cheaper....



"It's finally over - Frank's lawyer got the apartment and my lawyer got the two cars and the beach house"



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More sustainable....

UK Ministry of Justice research project (2011)
based on legal aid records of 1.4 million clients:

- Parents less likely to return to court following mediation
- Mediation users have more sustainable resolutions
- Esp. agreements relating to children issues more 'sustainable'

Source: "Sustainability of mediation and legal representation in private family law cases"
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217369/sustainability-mediation-private-family-law.pdf

EU Commission Public Consultation Study of BRILLA
("Assessment study", 2015):

- Mediated agreements tend to be more sustainable
- Mediation is more cost effective



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In the best interest of the child....



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The Lawyer's Role in Mediation

- For parents opting for mediation, the lawyer continues to play a vital role
- Mediation **complements** legal procedures in most cross-border family disputes:

It is **not** a substitute for them!



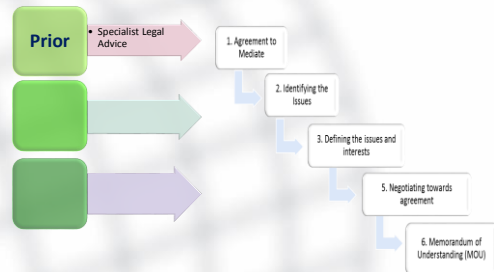
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Why it Won't Work Without the Lawyers....



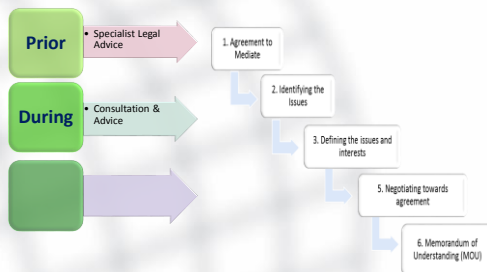
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Lawyers are Involved Throughout



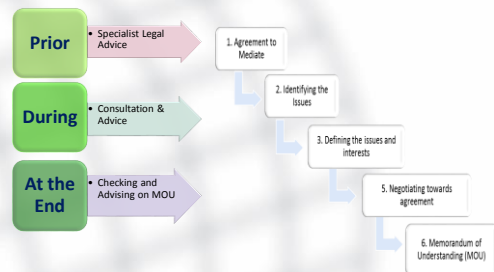
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Lawyers are Involved Throughout



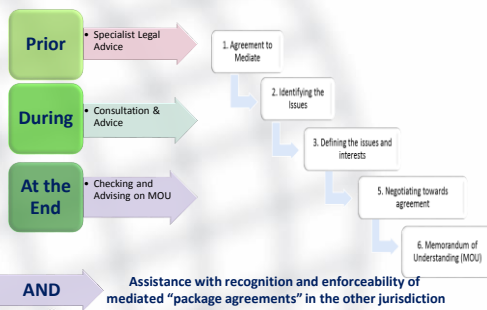
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Lawyers are Involved Throughout



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Lawyers are Involved Throughout



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In the best interest of the child....



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What are the Needs and Interests of the Child?

Including:

- For the ongoing conflict between the parents to be settled as soon as possible
- Stability
- A close relationship to both parents
- Free and open communication with both parents



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In the best interest of the child....

Underlying (emotional) aspects of the conflict can be explored



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In the best interest of the child....



- ✓ **Avoids** future lengthy litigation on custody matters after the Hague Court Process
- ✓ **Strengthens** parents ability to **co-parent** in the future years to come
- ✓ VOICE (EU) Project Findings: Mediation **strengthens resilience** of the parents/family



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In the best interest of the child....

Wide scope of issues can be negotiated in a Hague Convention child abduction case = a "package agreement"

- Return of the child or not
- Future living arrangements
- Custody arrangements
- Contact with non-resident parent: holiday contact, birthdays, religious holidays
- Cultural and religious upbringing
- Bilingual language upbringing
- Finances: child support, spousal support, asset division
- Criminal proceedings



Expert Group of HCCH: "Package agreements should be promoted because they serve the best interest of the child"

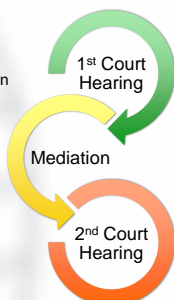


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Judges Recommend: Mediators in Court Model



- Proceedings under the 1980 Hague Child Abduction Convention
- Operated in the specialized Hague Courts in the **Netherlands (IKO), England & Wales (reunite)** and **Germany (MIKK)**
- A mediator attends 1st hearing to talk to parents about mediation
- Mediation takes place before 2nd hearing
- 10 days in between hearing 1 & hearing 2
- **No delay of Hague Proceedings!**



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Hearing the Child and Mediation

Two categories of mediation in relation to children:

- 1. Child-focused mediation**
brings the voice of the child into mediation where child is not present
e.g. empty chair, photo of the child, circular questioning
- 2. Child-inclusive mediation**
direct personal communication between mediator (or child specialist) and child



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Child Inclusive Mediation

The child is seen by:

- The co-mediators
- A third mediator
- **Putting the child back in the parents' focus!**



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Why it Won't Work Without the Lawyers....

- ✓ Mediated solutions can be documented in written Memorandum of Understanding (MOU)
- ✓ Parties' **Lawyers** check the MOU before parents sign this
- ✓ The MOU can be turned into a consent order and made legally binding
- ✓ **ENFORCEABILITY** – jurisdictional situation in cross-border children cases is extremely complex and enforceability is complicated **!**



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Child Inclusive Mediation Training

The VOICE - Child Inclusive Mediation Training Conducted by MIKK & Center IKO

7th & 8th March, Berlin
or
4th & 5th April, Berlin



MIKK e.V. International Mediation Centre for Family Conflict and Child Abduction

Cross-Border Family Mediation Training

MIKK Cross-border Family Mediation Training (CBFM)

22nd-28th September 2019, Berlin (in English)



MIKK e.V. International Mediation Centre for Family Conflict and Child Abduction

Enabling parents to remain partners!



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Thank You! – Questions?



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<https://www.youtube.com/watch?v=3REL8zwnoXE>



MIKK e.V. International Mediation Centre for Family Conflict and Child Abduction

GUARDIAN AD LITEM **(Special Curator/Bijzondere Curator)**

DUTCH EXPERIENCE IN NATIONAL & CHILD ABDUCTION CASES

Antwerpen, 6-7th of December 2018

training: the well-being of children in international child abduction proceedings

Nice to meet you

- * Drs. Lillian van Wesemael

- * Crossbordermediator

- * Guardian ad Litem

- * Trainer & Coach

- * Seagale, Mediation, Training and Coaching

- * www.seagale.nl

- * info@seagale.nl

- * Drs. Anneke van Teijlingen

- * Crossbordermediator

- * Guardian ad Litem

- * Mediation voor Jou

- * www.mediationvoorjou.nl

- * anneke@mediationvoorjou.nl

The presentation

1. Guardian ad Litem: legal framework
2. Voice of the child vs Choice of the child
3. Guardian ad Litem in national cases
4. Guardian ad Litem in child abduction cases
5. Questions/ Discussion

Legal framework

Dutch Civil Code changes in 1979 January 1st :

- * 1979 – April 1st 1995: curator ventris to protect the (financial rights of) unborn child (Lawyer)
- * - Guardian ad Litem in cases of ancestry issues (Lawyer)
Based upon article 212 of the Dutch Civil Code
- * Guardian ad Litem in family issues and the interests of the child
Based upon article 250 of the Dutch Civil Code (Lawyer, as from 2014 social scientist)

Guardian ad Litem art. 250

- Guardian ad Litem, until 1995 applied in cases considering property- and or financial issues
 - 1995: also cases considering upbringing and care of a minor
 - 2009: Adjustment of the law: continued parenthood after divorce
- Appointment of a Guardian ad Litem: in case of **a conflict** between the parents/custodians concerning the interest of the child and / or a conflict between the child and one of his/her parents/custodians

Conference Voice of the child

During a conference in Rotterdam in 2014 children and teens told the professionals:

- * -We want to be heard
- * -We want our vision to be taken in consideration
- * - We want to be informed about the judge's decision

Childrens Call in 2014

- * When you talk to us:
 - Don't ask too many questions
 - Don't put us in a corner
 - Give us the opportunity to **talk**
 - However: Don't expect us to tell everything (*“Verwacht geen open boek”*)
- * And: Please explain us what the court has decided about us

APPOINTING A GUARDIAN AD LITEM

- * By court or high court
- * In the court decision appointing the Guardian ad Litem, the judge puts forwards specific questions / points for investigation to the Guardian ad Litem
- * GL Representing the Voice of the Child ≠ Choice of the Child

The Routing

4 routings:

- * A child writes a letter to the court (informal way) concerning a specific issue and asks in addition for a guardian ad litem
- * -A child is competent, but not being represented, asks by a lawyer for a guardian ad litem
- * -A child's custodian files a specific issue and asks in addition for a guardian ad litem for the child
- * A judge decides without anyone asking for it, to appoint a guardian ad litem

What kind of procedures?

- * Divorce
- * Children placed under-supervision of the child protection services
- * Children placed out of their (parental) house
- * Change of custody, contact- and care arrangement or habitual residence

- * pilot february 2017 in Child Abduction Cases

As from october 2017 definite procedure in Child Abduction Cases:

A Guardian ad Litem is appointed for all children of the age of 3 years old

Course of events in case of appointing a Guardian ad Litem

- * The registry calls the guardian ad litem from the list. Matching factors: content of the case, background of the guardian ad litem and the topographic factors
- * Check: no before-contact with the minor and the guardian ad litem
- * Investigation according to the Guideline: 6 weeks
- * Investigation on the basis of the specific questions in the court decision

Guardian ad litem in national cases

An investigation has the following aspects:

- * - At least two conversations with the minor(s)
- * - At least one conversation with the parents, preferably together
- * - Reading the documents provided by court and/or the lawyers
- * - Collecting all relevant information, at school, child protection services and family
- * Explanation of the court decision to the Child
- * Guardian ad Litem appointment implies presence/involvement of GL in any other procedure concerning of the Child

Ways of representing the child

- * With a time restricted mediating role between parents / custodians in focusing on the child's interests and relieve the child from the burden of their disputes/ procedures
- * With a report to the court / high court focusing on the voice of the child and the child's interests
- * By representing the voice of the child and the child's interest during the court hearing
- * By accompanying the child at the child- hearing by the judge

Guardian ad Litem in child abduction cases since 2017

- * 2 conversations with the child(ren)
- * No meeting with both parents/ no mediating role with parents
- * No contact with school etc.
- * Very short timelaps (report within 2 weeks)
- * Accompanying the child at the child's hearing
- * Contact/ Collaboration with the Raad voor de Kinderbescherming / Child protection services concerning situations where the child's wellbeing is at risk
- * Explaining the court's decision to the child

Court Questions in child abduction cases

- * What does the child express considering a possible stay in the other country and considering a possible stay in The Netherlands?
- * To which extent the child is able to express herself/himself?
- * To which extent the child is able to oversee the consequences of a stay in the other country and in the Netherlands?
- * Is the child willing to speak with the judge and if so, does the child want the guardian ad litem to accompany him or her?
- * Are there other specific factors to be taken in consideration?

Being a bridge between the judge and the child

- * Explaining the procedure
- * Explaining the court hearing
- * Supporting the child during the conversation with the judge (child-hearing)
- * Call to the parent during the court session to overcome their struggle and focus on future parenthood in the interests of their child
- * If relevant: supporting the child during the appeal
- * Explaining the court verdict to the child

Challenges in child abduction cases

- * Language issues
- * Split loyalty/ Memory of the (young) child
- * Ignorance of the parent considering the Dutch way of working
- * Lawyers not being used to the guardian ad litem (yet)
- * Lawyers trying to use/misusing the report of the guardian ad litem

Questions, Discussion and further information

- * Questions?
- * Discussion?
- * info@seagale.nl
- * anneke@mediationvoorjou.nl

Brussels, 30 November 2018
(OR. en)

14784/18

Interinstitutional File:
2016/0190(CNS)

JUSTCIV 292

NOTE

From:	Presidency
To:	Council
No. Cion doc.:	10767/16
Subject:	Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) - General approach

I. STATE OF PLAY

1. By letter of 30 June 2016, the Commission transmitted a proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (the 'Brussels IIa Recast Regulation') to the Council and to the European Parliament.

2. The proposed Brussels IIa Recast Regulation is subject to the special legislative procedure of Article 81(3) of the Treaty on the Functioning of the European Union and requires the Council to act by unanimity.
3. The European Parliament delivered its opinion on the Commission proposal on 18 January 2018. In accordance with the case law of the Court of Justice, the European Parliament needs to be consulted again whenever the text finally adopted, taken as a whole, differs in essence from the text of the Commission proposal on which the Parliament has already been consulted, except in cases in which the amendments substantially correspond to the wishes of the Parliament itself.
4. The European Economic and Social Committee delivered its opinion on the Commission proposal on 26 January 2017.
5. The European Data Protection Supervisor delivered its opinion on the Commission proposal on 15 February 2018.
6. In accordance with Article 3 and Article 4a (1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of the proposed Brussels IIa Recast Regulation.
7. In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark will not be taking part in the adoption of the proposed Brussels IIa Recast Regulation and will not be bound by it or subject to its application.

II. FINALISATION OF THE RECAST

8. The Council has regularly examined and provided guidance for work on the proposed recast of the Brussels IIa Regulation since the start of the negotiations in 2016. It has held policy debates on the following key parts of the proposal: the hearing of the child (June 2017), the abolition of *exequatur* (December 2017), the strengthening of the role of central authorities (March 2018), as well as the placement of the child in another Member State, the circulation of provisional, including protective, measures, and the way forward on how to complete the abolition of *exequatur* (June 2018). These debates paved the way for further work on the proposed recast of the Regulation.
9. Discussions have allowed for considerable progress on substantial issues at technical level. The Presidency is therefore of the opinion that the time has come for the Council to adopt a general approach on the text of the Articles and the most important recitals of the proposed Regulation, without prejudice to the finalisation of certain issues of a technical or editorial nature in connection with the finalisation of the recitals and the Annexes.
10. Bearing in mind the unanimity requirement and the principle that nothing is agreed until everything is agreed, the Presidency is submitting this compromise proposal to the Council with the aim of achieving an agreement among all Member States.
11. The elements of the compromise text are to be seen as an overall package that aims at establishing new rules which are simpler and more efficient to use for the children and their families as well as for practitioners. The compromise also provides for a delicate balance between different positions of Member States, while at the same time fostering mutual trust among them.

III. MAIN ELEMENTS OF THE COMPROMISE PACKAGE

A - Complete abolition of *exequatur* for the decisions in matters of parental responsibility

12. The JHA Council agreed in December 2017 to abolish *exequatur* for all decisions in matters of parental responsibility, subject to the introduction of appropriate safeguards. The completion of the abolition of *exequatur* will save time and money for citizens whenever a decision needs to circulate. This is in particular of key importance in cross-border cases related to children where time is of the essence.
13. Therefore, decisions in matters of parental responsibility which are enforceable in the Member State where they were given should be enforceable in another Member State without any declaration of enforceability being required. The safeguards to the abolition of *exequatur* will be contained in the grounds for refusal of recognition and enforcement, which are: public policy, irreconcilability, lack of effective service in cases of default of appearance, lack of opportunity of holders of parental responsibility to be heard, lack of opportunity of the child to be heard and non-compliance with the consultation procedure for cross-border placements. As under the current Regulation, it is left to national law whether these grounds may be raised by a party or *ex officio* as provided by national law.
14. The new rules should make it clear that those decisions in matters of parental responsibility which enjoy special treatment regarding their cross-border circulation would still remain 'privileged', subject to appropriate safeguards. The Presidency takes the view that a compromise should build upon the *status quo*, which provides special treatment to certified decisions granting rights of access and decisions entailing the return of a child under the so-called 'overriding mechanism'.

15. A legally binding certificate would accompany such 'privileged' decisions, which could be rectified or withdrawn in the Member State of origin where it was wrongly granted. This possibility to challenge the certificate in the Member State of origin would strengthen the rights of the defence and foster mutual trust among Member States. Only irreconcilability could be raised against the recognition and enforcement in the Member State where it is sought.

B - Harmonisation of certain rules for the enforcement procedure

16. The Presidency takes the view that the enforcement procedure for decisions given in another Member State should, in principle, continue to be governed by the law of the Member State of enforcement, irrespective of the nature of the measures used for enforcement, be it fines or other coercive measures. However, minimum harmonised rules on how to deal with a significant change of circumstances that has arisen after the decision was given seem to be crucial for the enhancement of a system of free circulation of decisions in this area. Such rules should therefore include a certain number of harmonised grounds for suspending or refusing enforcement as such in the Member State of enforcement. This would ensure that enforcement may be refused or suspended in all Member States largely under the same conditions and thereby legal certainty for all parents and their children would increase. This approach would not exclude the application of national grounds for refusal which are compatible with this Regulation and relate primarily to formal requirements of the national enforcement law and procedure.

C - Clear rules on the opportunity of the child to express his or her views

17. A dedicated provision establishing the obligation to give the child the opportunity to express his or her views should be included. This provision would state that a child who is capable of forming his or her own views has to be provided with a genuine and effective opportunity to express his or her views in cross border matters covered by the Regulation. Where the child has expressed his or her views, the court, in accordance with national law and procedure, should give due weight to the views of the child in accordance with his or her age and maturity. This does not change the underlying principle of observing the best interests of the child for matters of parental responsibility but it makes clear that the child is not the mere subject of the proceedings. The modalities of how the child should be heard are left to national law and procedure, without any possibility of reviewing such modalities by the courts of another Member State.
18. The obligation to provide the child who is capable of forming his or her own views with a genuine and effective opportunity to express his or her views is, however, not absolute. If a child was not offered an opportunity to express his or her views, the recognition and enforcement of a decision in matters of parental responsibility may be refused, except where the proceedings only concern the property of the child, if not required by the subject matter of the case, or where there were serious grounds for not hearing the child, taking into account, in particular, the urgency of the case.

D - Clearer rules on the placement of a child in another Member State

19. The placement of a child in another Member State will continue to be subject to a consultation procedure for obtaining consent. The Presidency does however still see a need for a clearer scope of the rules for cross-border placements: placement as educational measure following deviant behaviour of the child should also fall under this procedure, while a placement – be it educational or punitive – following an act of the child which could amount to a punishable act under national criminal law, if committed by an adult regardless of whether in the particular case this could lead to a conviction, continues to be excluded. Placements with parents (or, if and to the extent notified by the Member State where the child may be placed, other close relatives) should not be subject to this procedure. The Presidency notes that the Regulation could facilitate the exchange of information, where applicable, to identify and collect information about relatives or other persons who may be suitable to care for the child whose placement in institutional or foster care is contemplated. Furthermore, the Presidency also sees the need for clearer procedural rules: the new rules will include a three-months deadline for giving or refusing consent. The new rules do not preclude the possibility for Member States to retain or conclude cross-border agreements and arrangements simplifying the consultation procedure for obtaining consent in their mutual relations.

E - Clearer rules on the circulation of authentic instruments and agreements

20. Having regard to the growing number of Member States which allow extra-judicial agreements on legal separation and divorce or on matters of parental responsibility, the Presidency compromise text makes it clear that the circulation of such authentic instruments and agreements is a horizontal issue, and should be facilitated, subject to certain safeguards. As the Regulation should not allow free circulation of mere private agreements, the solution should be that circulation is possible only if an authority depending on each national system - formally drew up or registered the authentic instrument or registered the agreement. It is essential that circulation can only take place where the jurisdiction of the Member State whose authorities formally drew up or registered the authentic instruments or registered the agreements has been verified in the Member State of origin. Furthermore, the relevant certificate needs to be issued. Finally, further safeguards, such as public policy, should be applied as a ground for refusal of recognition or enforcement.

F - Clearer rules on intra-EU child abduction cases

21. The circulation of decisions ordering the return of the child pursuant to the 1980 Hague Convention is included in the recast under the general rules on recognition and enforcement of decisions. Other return orders given as a result of the 'overriding mechanism' continue to circulate as 'privileged' decisions under the special rules on recognition and enforcement of decisions. The Presidency compromise text, however, provides that this mechanism should be limited to decisions on the substance of rights of custody which entail the return of a child and were given in the Member State of (former) habitual residence of the child after a decision refusing to return the child was issued in another Member State, based solely on certain grounds for refusal as laid down in the 1980 Hague Convention. This would clarify the rules applicable to intra-EU child abduction cases and the relationship with the 1980 Hague Convention.
22. Moreover, the recast includes clear and realistic deadlines for the courts dealing with child abduction cases at any stage of the proceedings in the most expeditious manner. Alternative dispute resolution is given a more visible place where it is appropriate, to facilitate solutions building on party autonomy and helping to achieve sustainable arrangements.
23. To minimise possible risks for the child's physical and psychological wellbeing, in the course of abduction proceedings, adequate protection measures can be ordered, including to ensure contact between the left-behind parent and the child during those proceedings where this is in his or her best interests, and measures aimed at minimising a grave risk of physical or psychological harm to which the child might be exposed by the return.

IV. CONCLUSIONS

24. Against this backdrop, Ministers are invited to express their views on whether:

- (a) to approve as a compromise package the general approach set out in the Annex to this Note;
- (b) to take note that the remainder of the recitals and the Annexes to the Regulation will be finalised at technical level as soon as possible after the Council.

In comparison with the Commission proposal, changes/additions in the Annex are marked in **bold** and deletions are marked by '(...)'. Recitals in footnotes are without marking.

Proposal for a
Council Regulation
on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters
of parental responsibility, and on international child abduction
(Recast)

[...]

HAS ADOPTED THE PRESENT REGULATION:

CHAPTER I
SCOPE AND DEFINITIONS

Article 1
Scope

1. This Regulation applies (...) in civil matters¹ (...) **of**:

¹ A Recital to be added along the following lines:

"To this end, the Union is to adopt, among others, measures in the field of judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market. The term 'civil matters' should be interpreted autonomously, in accordance with the established case law of the Court of Justice of the European Union. It should be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of this Regulation and, second, to the general principles which stem from the corpus of the national legal systems. The term 'civil matters' should therefore be interpreted as capable of extending also to measures which, from the point of view of the legal system of a Member State, might fall under public law. It should cover in particular all applications, measures or decisions in matters of 'parental responsibility' within the meaning of this Regulation, in accordance with its objectives."

- (a) divorce, legal separation or marriage annulment;
- (b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in **point (b) of** paragraph 1(...) may, in particular, include:

- (a) rights of custody and rights of access;
- (b) guardianship, curatorship and similar institutions;
- (c) the designation and functions of any person or body having charge of the (...) person or property **of the child**, representing or assisting the child;
- (d) the placement of the child in (...) institutional **or foster** care;²
- (e) measures for the protection of the child relating to the administration, conservation or disposal of the (...) property **of the child**.

² A Recital to be added along the following lines:

"Any type of placement of a child in foster care– that is, with one or more individuals– or institutional care, for example in an orphanage or a children's home, in another Member State should fall within the scope of this Regulation, unless expressly excluded, such as is placement with a view to adoption, placement with a parent or with any other close relative as declared by the receiving Member State. As a result, also 'educational placements' ordered by a court or arranged by a competent authority with the agreement of the parents or the child or upon their request following deviant behaviour of the child should be included. Only a placement – be it educational or punitive – ordered or arranged following an act of the child which could amount to a punishable act under national criminal law, if committed by an adult regardless of whether in the particular case this could lead to a conviction, should be excluded."

2a. Chapters III and VI of this Regulation apply in matters of wrongful removal or retention of a child concerning more than one Member State, complementing the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention'). Chapter IV of this Regulation applies to decisions ordering the return of a child to another Member State pursuant to the 1980 Hague Convention which have to be enforced in a Member State other than the Member State where the decision was given.³

3. This Regulation does not apply to:

- (a) the establishment or the contesting of a parent-child relationship;
- (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- (c) the name and forenames of the child;
- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession;
- (g) measures taken as a result of criminal law offences committed by children.⁴

³ A Recital to be added along the following lines:

"Although return proceedings under the 1980 Hague Convention are not proceedings on the substance of parental responsibility, decisions ordering the return of a child pursuant to the 1980 Hague Convention should benefit from recognition and enforcement under Chapter IV of this Regulation where they need to be enforced in another Member State due to a further abduction after return was ordered. Moreover, other chapters of this Regulation should continue to apply to other aspects in situations of wrongful removal or retention of a child, for example the jurisdiction provisions for the court of the Member State of habitual residence, and the recognition and enforcement provisions for any orders made by that court."

⁴ See the proposed Recital in footnote 2.

Article 2

Definitions

1. For the purposes of this Regulation the following definitions apply:

(...)(a) '(...) **court**' means any (...) authority in (...) **any** Member State(...) with jurisdiction in the matters falling within the scope of this Regulation;

(...)

(...)(b) 'decision' means **a decision⁵ of a court of a Member State, including** a decree, order or judgment (...), **granting** divorce, legal separation, (...) **or** annulment (...) **of a marriage, or concerning matters of** parental responsibility;

⁵ A Recital to be added along the following lines:

"According to the case law of the Court of Justice, 'court' should be given a broad meaning so as to cover not only courts exercising judicial functions, but also administrative authorities, or other authorities, such as notaries, who or which exercise jurisdiction in certain matrimonial matters or matters of parental responsibility. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation.

Any agreement approved by the court following an examination of the substance in accordance with national law and procedure should be recognised or enforced as a 'decision'. Other agreements which acquire binding legal effect in the Member State of origin following a formal intervention of a public authority or other authority as communicated to the Commission by a Member State for that purpose should be given effect in other Member States in accordance with the specific provisions on authentic instruments and agreements in this Regulation."

For the purposes of Chapter IV, 'decision' includes:

- (i) a decision given in one Member State and ordering the return of a child to another Member State pursuant to the 1980 Hague Convention which has to be enforced in a Member State other than the Member State where the decision was given;**
- (ii) provisional, including protective, measures ordered by a court which by virtue of this Regulation has jurisdiction as to the substance of the matter or measures ordered in accordance with Article 25(4) in connection with Article 14.**

For the purposes of Chapter IV, 'decision' does not include provisional, including protective, measures ordered by such a court without the respondent being summoned to appear, unless the decision containing the measure is served on the respondent prior to enforcement.

(b1) 'authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in any Member State in the matters falling within the scope of this Regulation and the authenticity of which:

- (i) relates to the signature and the content of the instrument; and**
- (ii) has been established by a public authority or other authority empowered⁶ for that purpose. The Member States shall communicate those authorities to the Commission in accordance with Article 81;**

⁶ The term 'empowerment' referred to in point (b1)(ii) is to be interpreted autonomously in accordance with the definition of 'authentic instrument' used horizontally in other EU instruments (such as the Maintenance Regulation, the Succession Regulation or the Brussels I Recast Regulation) and in light of the purposes of this Regulation.

- (b2) **'agreement' means, for the purposes of Chapter IV, a document which is not an authentic instrument, has been concluded by the parties in the matters falling within the scope of this Regulation and has been registered by a public authority⁷ as communicated to the Commission by a Member State in accordance with Article 81 for that purpose;**
- (...)(c) **'Member State of origin' means the Member State in which the decision (...) has been given, the authentic instrument has been formally drawn up or registered, or the agreement has been registered;**
- (...)(d) **'Member State of enforcement' means the Member State in which enforcement of the decision, authentic instrument or agreement is sought;**

⁷ A Recital to be added along the following lines:

"The Regulation should not allow free circulation of mere private agreements. However, agreements which are neither a decision nor an authentic instrument but have been registered by a public authority competent to do so should circulate. Such public authorities might include notaries registering agreements, even where they are exercising a liberal profession."

- (...)(e) 'child' means any person below the age of 18 years;⁸
- (...)(f) 'parental responsibility' means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by a decision, by operation of law or by an agreement having legal effect, including rights of custody and rights of access;
- (...)(g) 'holder of parental responsibility' means any person, institution or other body having parental responsibility over a child;

⁸ A Recital to be added along the following lines:

"This Regulation should apply to all children up to the age of 18 years like the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children ('the 1996 Hague Convention'), even in cases where before that age, they have acquired capacity under their personal law, for example through emancipation by reason of marriage. This should avoid an overlap with the scope of the Hague Convention of 13 January 2000 on the International Protection of Adults which applies from the age of 18 years onwards and, at the same time, prevent gaps between the two instruments. The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention'), and consequently also Chapter III of this Regulation, which complements the application of the 1980 Hague Convention in relations between Member States, should continue to apply to children up to the age of 16 years."

- (...)(h) 'rights of custody' (...) **includes** rights and duties relating to the care of the person of a child, **and** in particular the right to determine the (...) place of residence **of the child** (...);⁹
- (...)(i) 'rights of access' means rights of access to a child, including the right to take a child to a place other than his or her habitual residence for a limited period of time;
- (...)(j) 'wrongful removal or retention' means (...) **the** removal or retention **of a child** where:
- (...)(i) it is in breach of rights of custody acquired by decision or by operation of law or by an agreement having legal effect under the law of the Member **State** where the child was habitually resident immediately before the removal or retention; and
- (...)(ii) at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

2. For the purposes of Articles [3, 6, 10a, 12, 12a, 31/47e, 42/47q, 59, 72 and 80] the concept of 'domicile' replaces the concept of 'nationality' for Ireland and the United Kingdom and has the same meaning as under each of the legal systems of those Member States.

⁹ A Recital to be added along the following lines:

"For the purposes of this Regulation, a person should be deemed to have 'rights of custody' where, pursuant to a decision, by operation of law or by an agreement having legal effect under the law of the Member State where the child is habitually resident, a holder of parental responsibility cannot decide on the child's place of residence without the consent of that person, regardless of the terms used under national law. In some systems which retain the language of 'custody' and 'access', the non-custodial parent might in fact retain important responsibilities for decisions concerning the child which go beyond a mere right of access."

CHAPTER II

JURISDICTION IN MATRIMONIAL MATTERS
AND IN MATTERS OF PARENTAL RESPONSIBILITY

SECTION 1

DIVORCE, LEGAL SEPARATION AND MARRIAGE ANNULMENT

Article 3

General jurisdiction

(...) In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the (...) **courts** of the Member State:

(a) in whose territory:

(i) the spouses are habitually resident, (...)

(ii) the spouses were last habitually resident, insofar as one of them still resides there, (...)

(iii) the respondent is habitually resident, (...)

(iv) in the event of a joint application, either of the spouses is habitually resident, (...)

(v) the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or

(vi) the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is a national of the Member State in question (...); **or**

(b) of the nationality of both spouses (...).

(...)

Article 4

Counterclaim

The (...) **court** before which proceedings are pending on the basis of Article 3 shall also have jurisdiction to examine a counterclaim, insofar as that counterclaim comes within the scope of this Regulation.

Article 5

Conversion of legal separation into divorce

Without prejudice to Article 3, (...) **a court** of a Member State that has given a decision on a legal separation shall also have jurisdiction to convert that decision into a divorce, if the law of that Member State so provides.

Article 6

Residual jurisdiction

1. **Subject to paragraph 2**, where no (...) **court** of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, jurisdiction shall be determined, in each Member State, by the laws of that (...) State.

2. (...) **A spouse who is:**

- (a) (...) habitually resident in the territory of a Member State; or
- (b) (...) a national of a Member State, (...)

may be sued in another Member State only in accordance with Articles 3, 4 and 5.

3. As against a respondent who is not habitually resident in (...) and is not (...) a national of a Member State (...), any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that (...) State, avail himself of the rules of jurisdiction applicable in that (...) State.

SECTION 2
PARENTAL RESPONSIBILITY

Article 7

General jurisdiction

1. The (...) **courts** of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State **at the time the court is seised**.

2. Paragraph 1 shall be subject to the provisions of Articles 8 to 10a.

Article 8

Continuing jurisdiction in relation to access rights

1. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the (...) **courts** of the Member State of the child's former habitual residence shall, **by way of exception to Article 7**, retain jurisdiction, for three months following the move, to modify a decision on access rights given in that Member State before the child moved if the person granted access rights by the decision continues to have his or her habitual residence in the Member State of the child's former habitual residence.

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the (...) **courts** of the Member State of the child's new habitual residence by participating in proceedings before those (...) **courts** without contesting their jurisdiction.

Article 9

Jurisdiction in cases of **the wrongful removal or retention of a child** (...) ¹⁰

Without prejudice to Article 10a, in case of the wrongful removal or retention of (...) **a child**, the (...) **courts** of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

- (a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
- (b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:
 - (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

¹⁰ A Recital to be added along the following lines:

"In cases of the wrongful removal or retention of a child, and without prejudice to a possible choice of court pursuant to this Regulation, the jurisdiction of the courts of the Member State of the habitual residence of the child should be retained until a new habitual residence in another Member State has been established and some specific conditions are fulfilled. Member States which have concentrated jurisdiction should consider enabling the court seised with the return application under the 1980 Hague Convention to exercise also the jurisdiction agreed upon or accepted by the parties pursuant to this Regulation in matters of parental responsibility where agreement of the parties was reached in the course of these return proceedings. Such agreements should include agreements both on the return and the non-return of the child. If non-return is agreed, the child should remain in the Member State of the new habitual residence and jurisdiction for any future custody proceedings there should be determined on the basis of the new habitual residence of the child."

- (ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in point (i);
- (iii) a request for return lodged by the holder of rights of custody was refused **by a court of a Member State** on grounds other than **point (b) of Article 13(1) or Article 13(2)** of the 1980 Hague Convention **and that decision is no longer subject to ordinary appeal**;
- (iv) (...) **no court (...) was seised as referred to in Article 26a(3) and (5)** in the Member State where the child was habitually resident immediately before the wrongful removal or retention (...);
- (v) a decision on **rights of custody** that does not entail the return of the child has been given by the (...) **courts** of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

Article 10a

Choice of court (...) ^{11 12 13}

¹¹ A Recital to be added along the following lines:

"Maintenance obligations are excluded from the scope of this Regulation as those obligations are already covered by Council Regulation No 4/2009. In addition to the courts for the place where the defendant, or the creditor, is habitually resident, the courts having jurisdiction under this Regulation in matrimonial matters should generally have jurisdiction to decide on ancillary spousal or post-marital maintenance obligations by application of point (c) of Article 3 of that Regulation. The courts having jurisdiction under this Regulation in matters of parental responsibility should generally have jurisdiction to decide on ancillary child maintenance obligations by application of point (d) of Article 3 of that Regulation."

¹² A Recital to be added along the following lines:

"Under specific conditions laid down by this Regulation, jurisdiction in matters of parental responsibility might also be established in a Member State where proceedings for divorce, legal separation or marriage annulment are pending between the parents, or in another Member State with which the child has a substantial connection and which the parties have either agreed upon in advance, at the latest at the time the court is seised, or accepted expressly in the course of those proceedings, where the law of that Member State so provides, even if the child is not habitually resident in that Member State, provided that the exercise of such jurisdiction is in the best interests of the child.

According to the case law of the Court of Justice, anyone other than the parents who, according to the national law, has the capacity of a party to the proceedings commenced by the parents, should be considered a party to the proceedings for the purposes of this Regulation and therefore, opposition by that party to the choice of jurisdiction made by the parents of the child in question, after the date on which the court was seised, should preclude the acceptance of prorogation of jurisdiction by all the parties to the proceedings at that date from being established."

¹³ A Recital to be added along the following lines:

"Before exercising its jurisdiction based on a choice of court agreement or acceptance the court should examine whether this agreement or acceptance was based on an informed and free choice of the parties concerned and not a result of one party taking advantage of the predicament or weak position of the other party. The acceptance of the jurisdiction in the course of the proceedings should be recorded by the court in accordance with national law and procedure."

(...)

1. The courts of a Member State shall have jurisdiction in (...) **matters of** parental responsibility where the following conditions are met:

- (a) the child has a substantial connection with that Member State, in particular by virtue of the fact that **at least** one of the holders of parental responsibility is habitually resident in that Member State, or that **it is the former habitual residence of the child or** that the child is a national of that Member State; (...)
- (b) the (...) parties (...), **as well as any other holder of parental responsibility:**
 - (i) **have agreed freely upon the jurisdiction**, at the latest at the time the court is seised; or (...)
 - (ii) **have accepted the jurisdiction expressly in the course of those proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction;** and
- (c) the **exercise of** jurisdiction is in the best interests of the child.

1a. A **choice-of-court agreement referred to in point (b) of paragraph 1 shall be expressed in writing, dated and signed by the parties concerned or included in the court record in accordance with national law and procedure. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing. Persons who become parties to the proceedings after the court was seised may express their agreement after the court was seised. In the absence of their opposition, their agreement shall be regarded as implicit.**

2. Unless otherwise agreed by the parties, the jurisdiction conferred in paragraph (...)1 shall cease as soon as:

(a) the decision given in those proceedings is no longer subject to ordinary appeal; or

(b) the proceedings have (...) come to an end for another reason.

(...)

3. The jurisdiction conferred in point (b)(ii) of paragraph 1 shall be exclusive.

Article 11

Jurisdiction based on (...) presence of the child¹⁴

1. Where (...) the habitual residence of a child cannot be established and jurisdiction cannot be determined on the basis of Article 10a, the (...) courts of the Member State where the child is present shall have jurisdiction.

2. (...) The jurisdiction under paragraph 1 shall also apply to refugee children or children internationally displaced because of disturbances occurring in their (...) Member State of habitual residence.

¹⁴ A Recital to be added along the following lines:

"Where the habitual residence of a child cannot be established and jurisdiction cannot be determined on the basis of a choice of court agreement either, the courts of the Member State where the child is present should have jurisdiction. This presence rule should also apply to refugee children and children internationally displaced because of disturbances occurring in their Member State of habitual residence. However, in light of this Regulation in connection with Article 52(2) of the 1996 Hague Convention, this jurisdiction rule should only apply to children who had their habitual residence in a Member State before the displacement. Where the habitual residence of the child before the displacement was in a third State, the jurisdiction rule of the 1996 Hague Convention on refugee children and internationally displaced children should apply."

Article (...) 12

Transfer of jurisdiction to a court of another Member State (...)¹⁵

1. (...) **In exceptional circumstances, a court** of a Member State having jurisdiction as to the substance of the matter may, **upon application from a party or of its own motion**, if (...) **it** considers that (...) **a court** of another Member State with which the child has a particular connection would be better placed to (...) **assess the** best interests of the child (...) **in the particular case**, stay the proceedings or (...) **a specific** part thereof (...) and (...):

(a) **set a time limit for one or more of** the parties to (...) **inform the court** of that other Member State (...) **of the pending proceedings and the possibility to transfer jurisdiction and to introduce an application before that court**; or

(b) request a (...) **court** of another Member State to assume jurisdiction in accordance with paragraph (...)2.

(...)

¹⁵ A Recital to be added along the following lines:

"In exceptional circumstances, a court of the Member State of habitual residence of the child might not be the most appropriate court to deal with the case. As an exception and under certain conditions, the court having jurisdiction should be able – but is under no obligation to do so – to transfer its jurisdiction in a specific case to a court of another Member State if this court is better placed to assess the best interests of the child in the particular case. According to the case law of the Court of Justice, the transfer of jurisdiction in matters of parental responsibility, by a court of a Member State, should be made only to a court of another Member State with which the child concerned has a 'particular connection', the decisive elements for which are listed, exhaustively, in this Regulation.

The court having jurisdiction should make the request to the court of another Member State only if its prior decision to stay the proceedings and make a request for transfer of jurisdiction has become final where that decision is appealable under the national law."

2. The court of the other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks following:

- (a) its seisure in accordance with point (a) of paragraph 1; or**
- (b) receipt of the request in accordance with point (b) of paragraph 1.**

The court second seised or requested to accept jurisdiction shall inform the court first seised without delay. If it accepts, the court first seised shall decline jurisdiction.

3. If the court first seised has not received the acceptance of jurisdiction by the court of another Member State seven weeks after:

- (a) the time limit set for the parties to introduce an application before a court of another Member State in accordance with point (a) of paragraph 1 has expired; or**
- (b) that court has received the request in accordance with point (b) of paragraph 1;**

it shall continue to exercise its jurisdiction.

4. The child shall be considered to have a particular connection with a Member State as referred to in paragraph 1 if that Member State:

- (a) has become the habitual residence of the child after the (...) court referred to in paragraph 1 was seised;(...)**
- (b) is the former habitual residence of the child; (...)**
- (c) is the (...) State of the (...) nationality of the child; (...)**
- (d) is the habitual residence of a holder of parental responsibility; or**
- (e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.**

5. Where exclusive jurisdiction of the court was established under Article 10a that court cannot transfer the jurisdiction to the court of another Member State.

Article 12a

Request for transfer of jurisdiction by a court of a Member State not having jurisdiction¹⁶

- 1. In exceptional circumstances and without prejudice to Article 9, if a court of a Member State which does not have jurisdiction under this Regulation but with which the child has a particular connection in accordance with Article 12(4), considers that it is better placed to assess the child's best interests in the particular case, it may request a transfer of jurisdiction from the court of the Member State of the habitual residence of the child.**
- 2. The requested court may, where it considers that due to the specific circumstances of the case, this is in the best interests of the child, accept to transfer its jurisdiction within six weeks following receipt of the request and shall inform the requesting court without delay. The requesting court may only exercise jurisdiction if the request was accepted within this timeframe.**

¹⁶ A Recital to be added along the following lines:

"Also in exceptional circumstances and considering the child's best interests in the particular case, a court of a Member State not having jurisdiction under this Regulation, but a particular connection with the child in accordance with this Regulation, should be able to request a transfer of jurisdiction from the competent court of the Member State of the habitual residence of the child. This should however not be permitted in cases of wrongful removal or retention of the child. It should be for the national law of the requested Member State to identify this specific competent court.

A transfer of jurisdiction, whether requested by a court wishing to transfer its jurisdiction or by a court wishing to obtain jurisdiction, should have effect only for the particular case in which it is made. Once the proceedings for which the transfer of jurisdiction was requested and granted have come to an end, the transfer should not produce any effect for future proceedings."

Article 13

Residual jurisdiction

Where no (...) **court** of a Member State has jurisdiction pursuant to Articles 7 to 11, jurisdiction shall be determined, in each Member State, by the laws of that Member State.¹⁷

Article (...)14

Provisional, including protective, measures **in urgent cases**¹⁸

¹⁷ A Recital to be added along the following lines:

"The term 'laws of that Member State' should include international instruments in force in that Member State."

¹⁸ A Recital to be added along the following lines:

"This Regulation should not prevent the courts of a Member State not having jurisdiction over the substance of the matter from taking provisional, including protective measures, in urgent cases, with regard to the person or property of a child present in that Member State. Those measures should not be recognised and enforced in any other Member State under this Regulation, with the exception of measures taken to minimise the risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention.

Measures taken to minimise that risk should remain in force until a court of the Member State of the habitual residence of the child has taken the measures it considers appropriate.

Insofar as the protection of the best interests of the child so requires, the court should inform, directly or through the Central Authorities, the court of the Member State having jurisdiction over the substance of the matter under this Regulation about the measures taken. The failure to provide such information should however not as such be a ground for the non-recognition of the measure.

A court only having jurisdiction for provisional, including protective measures should, if seised with an application concerning the substance of the matter, declare of its own motion that it has no jurisdiction."

1. In urgent cases, **even if the (...) court of another Member State has jurisdiction as to the substance of the matter, the courts** of a Member State (...) shall have jurisdiction to take provisional, including protective, measures which **may be available under the law of that Member State** in respect of (...):

(a) a child who is present in that Member State; or

(b) property belonging to a child which is located in that Member State.

2. In so far as the protection of the best interests of the child so requires, the (...) **court** having taken (...) **these** measures shall inform **without delay** the **court or competent** authority of the Member State having jurisdiction **pursuant to Article 7 of this Regulation or, where appropriate, any court of a Member State exercising jurisdiction** under this Regulation as to the substance of the matter, either directly **in accordance with Article 67a** or through the Central Authorities designated pursuant to Article 60.

3. The measures taken pursuant to paragraph 1 shall cease to apply as soon as the (...) **court** of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.

Where appropriate, that court may inform the court having taken provisional, including protective, measures, either directly in accordance with Article 67a or through the Central Authorities designated pursuant to Article 60, about its decision.

Article 16

Incidental questions¹⁹

- 1. If the outcome of proceedings in a matter not falling within the scope of this Regulation before (...) a court of a Member State depends on the determination of an incidental question (...) relating to parental responsibility, a court in that Member State may determine that question for the purposes of those proceedings even if it does not have jurisdiction under this Regulation.**
- 2. Any determination in accordance with paragraph 1 shall only produce effects in the proceedings for which it was made.**

¹⁹ A Recital to be added along the following lines:

"If the outcome of proceedings before a court of a Member State not having jurisdiction under this Regulation depends on the determination of an incidental question falling within the scope of this Regulation, the courts of that Member State should not be prevented by this Regulation from determining that question. Therefore, if the object of the proceedings is, for instance, a succession dispute in which the child is involved and a guardian *ad litem* needs to be appointed to represent the child in those proceedings, the Member State having jurisdiction for the succession dispute should be allowed to appoint the guardian for the proceedings pending before it, regardless of whether it has jurisdiction for parental responsibility matters under this Regulation. Any such determination should only produce effects in the proceedings for which it was made.

Where the validity of a legal act undertaken or to be undertaken on behalf of a child in succession proceedings before a court of a Member State requires permission or approval by a court, that Member State should be allowed to decide whether to permit or approve such a legal act even if it does not have jurisdiction under this Regulation. The term 'legal act' should include, for example, the acceptance or rejection of inheritance or an agreement between the parties on the sharing-out or the distribution of the estate."

3. If the validity of a legal act undertaken or to be undertaken on behalf of a child in succession proceedings before a court of a Member State requires permission or approval by a court, a court in that Member State may decide whether to permit or approve such a legal act even if it does not have jurisdiction under this Regulation.

4. Article 14(2) shall apply accordingly.

SECTION 3

COMMON PROVISIONS

Article 15

Seising of a court²⁰

²⁰ A Recital to be added along the following lines:

"This Regulation defines at what time a court is deemed to be seised for the purposes of this Regulation. In light of the two different systems existing in the Member States, which either require the document instituting the proceedings to be served upon the respondent first, or to be lodged with the court first, it should be sufficient for the first step under national law to have been taken, provided that the applicant has not subsequently failed to take any steps that he or she was required to take under national law in order to have the second step effected.

Taking into account the growing importance of mediation and other methods of alternative dispute resolution, also during court proceedings, in accordance with the case law of the Court of Justice, a court should also be deemed to be seised at the time when the document instituting the proceedings or an equivalent document is lodged with the court in cases where the proceedings have in the meantime been suspended, with a view to finding an amicable solution, upon request of the applicant who instituted them, without the document instituting the proceedings having been served upon the respondent yet and without that party having had knowledge about the proceedings or having participated in them in any way, provided that the applicant has not subsequently failed to take any steps that he or she was required to take to have service effected on the respondent.

According to the case law of the Court of Justice, in the case of *lis pendens*, the date on which a mandatory conciliation procedure was lodged before a national conciliation authority should be considered as the date on which a 'court' is deemed to be seised."

A court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he or she was required to take to have service effected on the respondent;
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he or she was required to take to have the document lodged with the court; or
- (c) **if the proceedings are instituted of the court's own motion, at the time when the decision to institute the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.**

Article 17

Examination as to jurisdiction²¹

Where (...) **a court** of a Member State is seised of a case over which it has no jurisdiction **as to the substance of the matter** under this Regulation and over which (...) **a court** of another Member State has jurisdiction (...) **as to the substance of the matter under** this Regulation, it shall declare of its own motion that it has no jurisdiction.

²¹ A Recital to be added along the following lines:

"A court of a Member State seised of a case over which it has no jurisdiction as to the substance of the matter under this Regulation and over which a court of another Member State has jurisdiction as to the substance of the matter under this Regulation should declare of its own motion that it has no jurisdiction. However, this court should have the discretion to request a transfer of jurisdiction under this Regulation but not an obligation to do so."

Article 18

Examination as to admissibility

1. Where a respondent habitually resident in a State other than the Member State where the proceedings were instituted does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him or her to arrange for his or her defence, or that all necessary steps have been taken to this end.
2. Article 19 of Regulation (EC) No 1393/2007 shall apply instead of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.
3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 19

Lis pendens and dependent actions²²

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are (...) **instituted** before (...) **courts** of different Member States, the (...) **court** second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the (...) **court** first seised is established.

2. Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are (...) **instituted** before (...) **courts** of different Member States, the (...) **court** second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the (...) **court** first seised is established. **This does not apply where the jurisdiction of one of the courts is based solely on Article 14.**

3. Where the jurisdiction of the (...) **court** first seised is established, the (...) **court** second seised shall decline jurisdiction in favour of that (...) **court**.

In that case, the party who (...) **instituted** the relevant proceedings before the (...) **court** second seised may bring those proceedings before the (...) **court** first seised.

4. Where a court of a Member State on which an acceptance of jurisdiction as referred to in Article 10a confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the acceptance declares that it has no jurisdiction under the acceptance.

5. Where and to the extent that the court accepted has established exclusive jurisdiction in accordance with the acceptance, any court of another Member State shall decline jurisdiction in favour of that court.

²² See the proposed Recital in footnote 20.

Article 20

Right of the child to express his or her views²³

1. When exercising their jurisdiction under Section 2 of this Chapter, the (...) **courts** of the Member States shall (...), **in accordance with national law and procedure,**²⁴ **provide the child** who is capable of forming his or her own views (...) **with a genuine and effective opportunity to express (...) his or her views (...), either directly, or through a representative or an appropriate body.**

2. **Where the court, in accordance with national law and procedure, gives a child an opportunity to express his or her views in accordance with this Article, the court (...)** shall give due weight to the (...) views **of the child** in accordance with his or her age and maturity (...).

²³ A Recital to be added along the following lines:

"Proceedings in matters of parental responsibility under this Regulation as well as return proceedings under the 1980 Hague Convention should provide the child who is subject to those proceedings and who is capable of forming his or her own views, in accordance with the case-law of the Court of Justice, with a genuine and effective opportunity to express his or her views, as a basic principle, and when assessing the child's best interests, due weight should be given to those views. The opportunity of the child to express his or her views freely in accordance with Article 24(1) of the Charter of Fundamental Rights of the European Union and in the light of Article 12 of the United Nations Convention on the Rights of the Child plays an important role in the application of this Regulation. The Regulation should, however, leave the question of who will hear the child and how the child is heard to be determined by national law and procedure of the Member States. Consequently, this Regulation is not intended to set out whether the child should be heard by the judge in person or by a specially trained expert reporting to the court afterwards, or whether the child should be heard in the courtroom or in another place or through other means. In addition, while remaining a right of the child, hearing the child cannot constitute an absolute obligation, but must be assessed taking into account the best interests of the child, for example, in cases involving agreements between the parties."

²⁴ See the proposed Recital in footnote 32.

CHAPTER III
INTERNATIONAL CHILD ABDUCTION²⁵

Article 21

Return of the child under the 1980 Hague Convention

Where a person, institution or other body alleging a breach of rights of custody applies, **either directly or with the assistance of a Central Authority**, to the court in a Member State for a decision on the basis of the **1980** Hague Convention (...) ordering the return of a child **under 16 years** that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, Articles (...) **21a to 26a and Chapter VI** shall apply **and complement the 1980 Hague Convention**.

²⁵ A Recital to be added along the following lines:

"In order to conclude the return proceedings under the 1980 Hague Convention as quickly as possible, Member States should, in coherence with their national court structure, consider concentrating jurisdiction for those proceedings upon as limited a number of courts as possible. Jurisdiction for child abduction cases could be concentrated in one single court for the whole country or in a limited number of courts, using, for example, the number of appellate courts as point of departure and concentrating jurisdiction for international child abduction cases upon one court of first instance within each district of a court of appeal."

Article 21a

Receipt and processing of applications by Central Authorities

1. The requested Central Authority shall act expeditiously in processing an application based on the 1980 Hague Convention referred to in Article 21.
2. Where the Central Authority of the requested Member State receives an application referred to in Article 21, it shall, within 5 working days from the date of receipt of the application, acknowledge receipt. It shall, without undue delay, inform the Central Authority of the requesting Member State or the applicant, as appropriate, what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information.

(...)

Article 23

Expeditious **court** proceedings (...) ²⁶

²⁶ A Recital to be added along the following lines:

"The courts at every instance should give their decision within six weeks, save where exceptional circumstances make this impossible. The fact that means of alternative dispute resolution are used should not as such be considered an exceptional circumstance allowing to exceed the timeframe. However, exceptional circumstances might arise while using such means or as a result of them. For a court of first instance, the timeframe should start at the moment that the court is seised. For a court of higher instance, it should start at the moment that all required procedural steps have been taken. Such steps could include, depending on the legal system concerned, service of the appeal upon the respondent, either within the Member State where the court is located or within another Member State, transmission of the file and the appeal to the appellate court in Member States where the appeal has to be lodged with the court whose decision is appealed, or an application by a party to convene a hearing where such an application is required under national law. Member States should also consider limiting the number of appeals possible against a decision granting or refusing the return of a child under the 1980 Hague Child Abduction Convention to one."

1. A court to which an application for the return of a child referred to in Article 21 is made shall act expeditiously in proceedings on the application, using the most expeditious procedures available under national law.

2. Without prejudice to (...) **paragraph 1, a court of first** instance shall give its decision no later than six weeks after (...) **it is (...) seised**, except where exceptional circumstances make this impossible.

(...)

3. **Except where exceptional circumstances make this impossible, a court of higher instance shall give its decision no later than six weeks after all the required procedural steps have been taken and the court is in a position to examine the appeal, whether by hearing or otherwise.**

Article 23a

Alternative dispute resolution²⁷

As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is against the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.

Article 24

(...) Right of the child (...) to express his or her views in return proceedings

(...) Article 20 of this Regulation shall also apply in return proceedings under the 1980 Hague Convention.

²⁷ A Recital to be added along the following lines:

"In all cases concerning children, and in particular in cases of international child abduction, courts should consider the possibility of achieving solutions through mediation and other appropriate means, assisted, where appropriate, by existing networks and support structures for mediation in cross-border parental responsibility disputes. Such efforts should not, however, unduly prolong the return proceedings under the 1980 Hague Convention. Moreover, mediation might not always be appropriate, especially in cases of domestic violence.

Where in the course of the return proceedings under the 1980 Hague Convention, parents reach agreement on the return or non-return of the child but also on other matters of parental responsibility, this Regulation should, under certain circumstances, make it possible for them to agree that the court seised under the 1980 Hague Convention should have jurisdiction to give binding legal effect to their agreement, either by incorporating it into a decision, approving it or by using any other form provided by national law and procedure. Member States which have concentrated jurisdiction should therefore consider enabling the court seised with the return proceedings under the 1980 Hague Convention to exercise also the jurisdiction agreed upon by the parties pursuant to this Regulation in matters of parental responsibility where agreement of the parties was reached in the course of those return proceedings."

Article 25

Procedure for the return of a child²⁸

28

A Recital to be added along the following lines:

"The court of the Member State to or in which the child has been wrongfully removed or retained should be able to refuse the return in specific, duly justified cases, as permitted by the 1980 Hague Convention. Before doing so, it should consider whether appropriate measures of protection have been put in place or might be taken to eliminate any risks to the best interests of the child which could prevent the return pursuant to point (b) of Article 13(1) of the 1980 Hague Convention.

Where a court considers refusing to return a child solely on the basis of point (b) of Article 13(1) of the 1980 Hague Convention, it should not refuse to return the child if either the party seeking the return of the child satisfies the court, or the court is otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after his or her return. Examples for such arrangements could include a court order from that Member State prohibiting the applicant to come close to the child, a provisional, including protective measure from that Member State allowing the child to stay with the abducting parent who is the primary carer until a decision on the substance of custody has been made in that Member State following the return, or the demonstration of available medical facilities for a child in need of treatment. Which type of arrangement is adequate in the particular case should depend on the concrete risk to which the child is likely to be exposed by the return without such arrangements. The court seeking to establish whether adequate arrangements have been made should primarily rely on the parties and, where necessary and appropriate, request the assistance of Central Authorities or network judges, in particular within the European Judicial Network for civil and commercial matters and the International Hague Network of Judges.

Moreover, the court might, in appropriate cases, order any provisional, including protective measures necessary pursuant to this Regulation to minimise the risk of physical or psychological harm for the child entailed by the return which would otherwise lead to a refusal of return. Such provisional measures and their circulation should not delay the Hague return proceedings or undermine the delimitation of jurisdiction between the court seised with the return proceedings under the 1980 Hague Convention and the court having jurisdiction on the substance of parental responsibility under this Regulation. If necessary, it should consult with the court or competent authorities of the Member State of the child's habitual residence, with the assistance of Central Authorities or network judges, in particular within the European Judicial Network for civil and commercial matters and the International Hague Network of Judges. Those measures should be recognised and enforced in all other Member States including the Member States having jurisdiction under this Regulation until a competent court of such a Member State has taken the measures it considers appropriate. Such measures could include, for instance, that the child should continue to reside with the primary care giver or how contact with the child should take place after return until the court of the habitual residence of the child has taken measures it considers appropriate. This should be without prejudice to any measure or decision of the court of the habitual residence taken after the return of the child."

1. A court cannot refuse to return a child **unless the person seeking the return of the child has been given an opportunity to be heard.**

1a. The court may at any stage of the proceedings, in accordance with Article 14, examine whether contact between the child and the person seeking the return of the child should be ensured, taking into account the best interests of the child.

2. Where a court considers refusing to return a child solely on the basis of point (b) of (...) Article 13(1) of the 1980 Hague Convention, **it cannot refuse to return the child if (...) the party seeking the return of the child satisfies the court by providing sufficient evidence, or the court is otherwise satisfied,** that adequate arrangements have been made to secure the protection of the child after his or her return.

3. (...) **For the purposes of paragraph 2, the court (...) may communicate** with the competent authorities of the Member State where the child was habitually resident immediately before the wrongful removal or retention, either directly **in accordance with Article 67a** or with the assistance of Central Authorities (...).

4. **Where appropriate, when ordering the return of the child the court may (...) take** provisional, including protective, measures in accordance with Article (...)14 of this Regulation (...) **in order to protect the child from the grave risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention, provided that the examining and taking of such measures would not unduly delay the return proceedings.**

(...)

5. (...) A decision ordering the return of the child may be declared provisionally enforceable, notwithstanding any appeal (...), where the return of the child before the decision on the appeal is required by the best interests of the child.²⁹

(...)

Article 25a

Enforcement of decisions ordering the return of a child

- 1. An authority competent for enforcement to which an application for the enforcement of a decision ordering the return of a child to another Member State is made shall act expeditiously in processing the application.**
- 2. Where the decision was not enforced within six weeks after the enforcement proceedings were initiated, the party seeking enforcement or the Central Authority of the Member State of enforcement shall have the right to request a statement of the reasons for the delay from the enforcement authority.**

(...)

²⁹ A Recital to be added along the following lines:

"The national law may specify by which court the decision may be declared provisionally enforceable".

Article 26a

Procedure following a refusal to return the child under point (b) of Article 13(1) and Article 13(2) of the 1980 Hague Convention³⁰

30

A Recital to be added along the following lines:

"Where the court of the Member State to or in which the child has been wrongfully removed or retained decides to refuse the child's return under the 1980 Hague Convention, in its decision it should refer explicitly to the relevant articles of the 1980 Hague Convention on which the refusal was based. Regardless of whether such a refusal decision is final or still subject to appeal, it might however be replaced by a subsequent decision, given in custody proceedings by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. In the course of these proceedings, all the circumstances should be thoroughly examined, taking into account the best interests of the child and including, but not limited to, the conduct of the parents. Should the resulting decision on the substance of rights of custody entail the return of the child, the return should take place without any special procedure being required for the recognition and enforcement of that decision in any other Member State.

The court refusing the return of the child should, of its own motion, issue a certificate using the appropriate form set out in this Regulation. The purpose of this certificate is to inform the parties of the possibility to seise a court in the Member State where the child was habitually resident immediately before the wrongful removal or retention, within three months of the notification of the decision refusing the return of the child, with applications regarding the substance of rights of custody. It also informs about the fact that any decision resulting from such proceedings which entails the return of the child is enforceable in any other Member State in accordance with this Regulation.

Where proceedings on the substance of rights of custody are already pending in the Member State where the child was habitually resident immediately before the wrongful removal or retention at the time that a court seised with a return application under the 1980 Hague Convention refuses the return of the child on the sole basis of point (b) of Article 13(1), or of Article 13(2), of the 1980 Hague Convention, the court which refused the return of the child should also transmit a copy of its decision, the appropriate certificate and a transcript, summary or minutes of the hearing as well as any other documents it considers relevant to the court seised with the proceedings on rights of custody. The term 'any other documents it considers relevant' should refer to any documents which contain information that might have a bearing on the outcome of the proceedings relating to rights of custody, if such information is not already contained in the decision refusing return itself.

Where no proceedings on the substance of rights of custody are pending yet in the Member State where the child was habitually resident immediately before the wrongful removal or retention and a party seises a court of that Member State following receipt of the information from the court which refused the return of the child, that party should submit to the court seised with the application on the substance of rights of custody, a copy of the decision not to return the child under the 1980 Hague Convention, the appropriate certificate and a transcript, summary or minutes of the hearing. This does not preclude the court seised from asking for any additional documents it considers relevant, which contain information that might have a bearing on the outcome of the proceedings relating to rights of custody, if such information is not already contained in the decision refusing return itself."

- 1. This Article shall apply where a decision refusing to return a child to another Member State is based solely on point (b) of Article 13(1), or on Article 13(2), of the 1980 Hague Convention.**
- 2. The court giving a decision referred to in paragraph 1 shall, of its own motion, issue a certificate using the form set out in Annex [X]. The certificate shall be completed and issued in the language of the decision. The certificate may also be issued in another official language of the European Union requested by a party. This does not create any obligation for the court issuing the certificate to provide a translation or transliteration of [the relevant content].**
- 3. If, at the time the court gives a decision referred to in paragraph 1, a court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has already been seised of proceedings to examine the substance of rights of custody, the court, if it is aware of these proceedings, shall, within one month of the date of the decision referred to in paragraph 1, transmit to the court of that Member State, either directly or through the Central Authorities the following documents:**
 - (a) a copy of its decision;**
 - (b) the certificate issued pursuant to paragraph 2; and**
 - (c) where applicable, a transcript, summary or minutes of the hearings before the court and any other documents it considers relevant.**
- 4. The court in the Member State where the child was habitually resident immediately before the wrongful removal or retention may, where necessary, require a party to provide a translation or transliteration, in accordance with Article 69, of the decision and any other document attached to the certificate in accordance with point (c) of paragraph 3.**

5. If, in cases other than those referred to in paragraph 3, within three months of the notification of a decision referred to in paragraph 1, one of the parties seises a court in the Member State where the child was habitually resident immediately before the wrongful removal or retention in order for the court to examine the substance of rights of custody,³¹ the following documents shall be submitted to the court by that party:

- (a) a copy of the decision;**
- (b) the certificate issued pursuant to paragraph 2; and**
- (c) where applicable, a transcript, summary or minutes of the hearings before the court which refused the return of the child.**

6. Notwithstanding a decision on non-return referred to in paragraph 1, any decision on the substance of rights of custody resulting from proceedings referred to in paragraphs 3 and 5 which entails the return of the child shall be enforceable in another Member State in accordance with Chapter IV of this Regulation.

³¹ See Article 47(4) which states that the certificate triggering the overriding mechanism "shall only be issued if, in giving its decision, the court has taken into account the reasons for and facts underlying the prior decision given in another Member State pursuant to point (b) of Article 13(1), or Article 13(2), of the 1980 Hague Convention".

CHAPTER IV

RECOGNITION AND ENFORCEMENT

SECTION 1

GENERAL PROVISIONS ON RECOGNITION AND ENFORCEMENT

Subsection 1

Recognition

Article 27

Recognition of a decision³²

³² Two Recitals to be added along the following lines:

- (R1) "Mutual trust in the administration of justice in the Union justifies the principle that decisions in matrimonial matters and in matters of parental responsibility given in a Member State should be recognised in all Member States without the need for any recognition procedure. In particular, when presented with a decision given in another Member State and granting divorce, legal separation or the annulment of a marriage which can no longer be challenged in the Member State of origin, the competent authorities of the requested Member State should recognise the decision by operation of law without any special procedure being required and update their civil-status records accordingly. As under the current Regulation, it is left to national law whether these grounds may be raised by a party or ex officio as provided by national law. This does not preclude any interested party from applying, in accordance with this Regulation, for a decision that there are no grounds for refusal of recognition as referred to in this Regulation. It should be for the national law of the Member State where such application is made to determine who can be considered as an interested party entitled to make such application."
- (R2) "The recognition of a decision should be refused only if one or more of the grounds for refusal of recognition provided for in this Regulation are present. The grounds for refusal of recognition listed in this Regulation are exhaustive and grounds not mentioned there, such as, for example, a violation of the *lis pendens* rule, may not be invoked as grounds for refusal. In matters of parental responsibility, a later decision always supersedes an earlier decision with effect for the future to the extent that they are irreconcilable. As concerns the opportunity given to a child to express his or her views, recognition of a decision may not be refused for the sole ground that the court of origin used a different method to hear the child than a court in the Member State of recognition would apply because it should be for the court of origin to decide about the appropriate method.

Whilst, according to the case law of the Court of Justice, it is not a requirement of Article 24 of the Charter of Fundamental Rights and of this Regulation that the court of the Member State of origin obtain the views of the child in every case by means of a hearing, and that that court thus retains a degree of discretion, the case law also provides that, where that court decides to provide the opportunity for the child to be heard, the court is required to take all measures which are appropriate to the arrangement of such a hearing, having regard to the child's best interests and the circumstances of each individual case, in order to ensure the effectiveness of those provisions, and to offer to the child a genuine and effective opportunity to express his or her views. The court of the Member State of origin should, in so far as possible and always taking into consideration the child's best interests, use all means available to it under national law as well as the specific instruments of international judicial cooperation, including, when appropriate, those provided for by Regulation No 1206/2001.

The Member State where recognition is sought should not refuse recognition where one of the exceptions from this particular ground for refusal as permitted by this Regulation applies. The effect of these exceptions is that a court in the Member State of enforcement may not refuse to enforce a decision on the sole ground that the child was not given the opportunity to express his or her views, taking into account his or her best interests, if the proceedings only concerned the property of the child and provided that giving such an opportunity was not required in light of the subject matter of the proceedings, or in the case of the existence of serious grounds taking into account, in particular, the urgency of the case. Such serious grounds could be given, for instance, where there is imminent danger for the child's physical and psychological integrity or life and any further delay might bear the risk that this danger materialises."

1. A decision given in a Member State shall be recognised in the other Member States without any **special** procedure being required.
2. In particular, and without prejudice to paragraph 3, no **special** procedure shall be required for updating the civil-status records of a Member State on the basis of a decision relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.
3. Any interested party may, **in accordance with the procedures provided for in Articles 42/47q to 45/47r and, where appropriate, Section 5 of this Chapter and Chapter VI**, apply for a decision that there are no grounds for refusal of recognition referred to in Articles 37 and 38. (...)

4. The local jurisdiction of the court communicated by each Member State to the Commission pursuant to Article 81 shall be determined by the law of the Member State in which proceedings in accordance with paragraph 3 are brought.

5. Where the recognition of a decision is raised as an incidental question before (...) a court of a Member State, that (...) court may determine that issue.

Article 28

Documents to be (...) produced for recognition

1. A party who wishes to invoke in a Member State a decision given in another Member State shall (...) produce the following:

- (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity; and
- (b) the appropriate certificate issued pursuant to Article (...)36a.

2. The court or competent authority³³ before which a decision given in another Member State is invoked may, where necessary, require the party invoking it to provide a translation or transliteration, in accordance with Article 69, (...) of [the relevant content]³⁴ of the certificate referred to in point (b) of paragraph 1.

³³ Here 'authority' alone, which is normally included in the definition of 'court', is not sufficient because this provision also addresses an authority not deciding in matters under this Regulation.

³⁴ The words 'the relevant content' will be replaced by references to the appropriate field numbers of the appropriate certificate.

3. The court or competent authority before which a decision given in another Member State is invoked may require the party to provide a translation or transliteration, in accordance with Article 69, of the decision (...) in addition to a translation or transliteration of [the relevant content] of the certificate (...) if it is unable to proceed without such a translation or transliteration.

Article 28a

Absence of documents

- 1. If the documents specified in Article 28(1) are not produced, the court or competent authority may specify a time for its production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with its production.**
- 2. If the court or competent authority so requires, a translation or transliteration, in accordance with Article 69, of such equivalent documents shall be produced.**

Article 29

Stay of proceedings

The (...) **court** before which a decision given in another Member State is invoked may stay (...) **its** proceedings, in whole or in part, (...) **where:**

- (a) (...) **an ordinary appeal against that decision (...) has been lodged** in the Member State of origin; **or**
- (b) an application has been submitted for a decision that there are no grounds for refusal of recognition referred to in Articles 37 and 38 or for a decision that the recognition is to be refused on the basis of one of those grounds (...).

(...)

Subsection 2

Enforceability and enforcement

Article 30

Enforceable decisions

1. A decision (...) **in** matters of parental responsibility (...) given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability³⁵ being required.
2. For the purposes of enforcement in another Member State of a decision granting rights of access, the court of origin may declare the decision provisionally enforceable notwithstanding any appeal (...).

(Article 31 moved to Article 31/47e)

(Article 32 moved to Article 32/47f)

³⁵ A Recital to be added along the following lines:

"In addition, the aim of making cross-border litigation concerning children less time consuming and costly justifies the abolition of the declaration of enforceability – which includes registration for enforcement – prior to enforcement in the Member State of enforcement for all decisions in matters of parental responsibility. While Regulation (EC) No 2201/2003 only abolished this requirement for certain decisions granting rights of access and certain decisions entailing the return of a child, this Regulation now abolishes it for the cross-border enforcement of all decisions in matters of parental responsibility while still retaining an even more favourable treatment of certain decisions granting rights of access and certain decisions entailing the return of a child. As a result, subject to the provisions of this Regulation, a decision given by the court of any other Member State should be treated as if it had been given in the Member State of enforcement."

Documents to be (...) **produced** (...) for enforcement

1. (...) **For the purposes of enforcement in a Member State of a decision given in another Member State (...), the party seeking enforcement shall provide the authority competent for enforcement with:**

- (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
and
- (b) the appropriate certificate issued pursuant to Article (...)36a (...).

2. **For the purposes of enforcement in a Member State of a decision given in another Member State ordering a provisional, including a protective, measure, the party seeking enforcement shall provide the authority competent for enforcement with:**

- (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
- (b) the appropriate certificate issued pursuant to Article 36a, certifying that the decision is enforceable in the Member State of origin and that the court of origin:
 - (i) has jurisdiction as to the substance of the matter; or
 - (ii) has ordered these measures in accordance with Article 25(4) in connection with Article 14; and

(c) where the measure was ordered without the respondent being summoned to appear, proof of service of the decision.³⁶

3. The (...) **authority competent for enforcement** may, where necessary, require the (...) **party seeking enforcement** to provide a **translation or transliteration**, in accordance with Article 69, (...) of [the relevant content] of the certificate which specifies the obligation to be enforced.

³⁶ A Recital to be added, inspired by Recitals (32) and (33) of the Brussels Ia Regulation:

"Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the decision containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law.

Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, their circulation should be confined, under this Regulation, to measures taken in international child abduction cases and aimed at minimising the risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention. Those measures should apply until a court of a Member State having jurisdiction over the substance of the matter under this Regulation has taken the measures it considers appropriate."

4. The (...) **authority competent for enforcement** may require the (...) **party seeking enforcement** to provide a translation **or transliteration, in accordance with Article 69**, of the decision (...) if it is unable to proceed without such a translation **or transliteration**.

(Article 34 moved to Article 34/47i)

(Article 35 moved to Article 35/47j)

(Article 36 moved to Article 36/47k)

Subsection 3

Certificate

Article 36a

Issuance of the certificate

1. The court of a Member State of origin as communicated to the Commission pursuant to Article 81 shall, upon application by a party, issue a certificate for:

- (a) a decision in matrimonial matters using the form set out in Annex I;
- (b) a decision in matters of parental responsibility using the form set out in Annex II;
- (c) return orders made pursuant to the 1980 Hague Convention using the form set out in Annex [X].

2. The certificate shall be completed and issued in the language of the decision. The certificate may also be issued in another official language of the European Union requested by the party. This does not create any obligation for the court issuing the certificate to provide a translation or transliteration of [the relevant content].
3. No challenge shall lie against the issuance of the certificate.

Article 36b

Rectification of the certificate

1. The court of a Member State of origin as communicated to the Commission pursuant to Article 81 shall, upon application, and may, of its own motion, rectify the certificate where, due to a material error or omission, there is a discrepancy between the decision to be enforced and the certificate.
2. The law of the Member State of origin shall apply to the procedure for rectification of the certificate.

Subsection (...)4

Refusal of recognition and enforcement

(...)

Article 37³⁷

Grounds **for refusal** of (...)recognition (...) **of** decisions in matrimonial matters

(...) The recognition of a decision relating to a divorce, legal separation or marriage annulment shall be refused:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought; (...)
- (b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the decision unequivocally; (...)
- (c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought; or
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a non-Member State between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

³⁷ See the proposed Recital in footnote 32.

Grounds **for refusal** of (...)recognition (...) **of** decisions in matters of parental responsibility

1. (...) The recognition of a decision relating to parental responsibility shall be refused:
 - (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought, taking into account the best interests of the child;(...)
 - (b) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the decision unequivocally; (...)
 - (c) on the request of any person claiming that the decision infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;³⁹ (...)
 - (d) if **and to the extent that** it is irreconcilable⁴⁰ with a later decision relating to parental responsibility given in the Member State in which recognition is invoked; (...)
 - (e) if **and to the extent that** it is irreconcilable with a later decision relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later decision fulfils the conditions necessary for its recognition in the Member State in which recognition is (...) **invoked; or**

³⁸ See the proposed Recital in footnote 32.

³⁹ A Recital to be added along the following lines:

"Without prejudice to other Union instruments, where it is not possible to hear a party or a child in person, and where the technical means are available, the court might consider holding a hearing through videoconference or any other communication technology unless, on account of the particular circumstances of the case, the use of such technology would not be appropriate for the fair conduct of the proceedings."

⁴⁰ See the proposed Recital in footnote 32.

(f) if the procedure laid down in Article 65 has not been complied with.

2. (...) The recognition of a decision in matters of parental responsibility may be refused if it was given without the child who is capable of forming his or her own views having been given an opportunity to express his or her views in accordance with Article 20,^{41 42} except where:⁴³

(a) the proceedings only concerned the property of the child and provided that giving such an opportunity was not required in light of the subject matter of the proceedings; or

(b) there were serious grounds taking into account, in particular, the urgency of the case.⁴⁴

⁴¹ See the proposed Recital in footnote 32.

⁴² The certificate should contain a tick box indicating whether the child was given the opportunity to express his or her views and, if the child was not given this opportunity, the reasons for it to be explained in free text where appropriate.

⁴³ A Recital to be added along the lines of Recital (21) of the current Brussels IIa Regulation:
"The recognition and enforcement of decisions, authentic instruments and agreements given in a Member State should be based on the principle of mutual trust. Therefore the grounds for non-recognition should be kept to the minimum in the light of the underlying aim of this Regulation which is to facilitate recognition and enforcement and to effectively protect the best interests of the child."

⁴⁴ See the proposed Recital in footnote 32.

Article 39

Procedure for refusal of recognition

1. The procedures provided for in Articles (...) **42/47q** to (...) **45/47r** and, where appropriate, Section (...) **5 of this Chapter** and Chapter VI shall apply accordingly to an application for refusal of recognition.
2. **The local jurisdiction of the court communicated by each Member State to the Commission pursuant to Article 81 shall be determined by the law of the Member State in which proceedings for non-recognition are brought.**

(...)

Article 40

Grounds for refusal of enforcement of decisions in matters of parental responsibility

(...) **Without prejudice to Article 36/47k(6), the enforcement of a decision in matters of parental responsibility shall be refused if one of the grounds for refusal of recognition referred to in Article 38 is found to exist.**⁴⁵

⁴⁵ A Recital to be added along the following lines:

"It is for national law to determine whether the grounds for refusal of recognition set out in this Regulation should be examined *ex officio* or upon application. Therefore, the same examination should be possible in the context of the refusal of enforcement."

SECTION 2
PROVISIONS ON RECOGNITION AND ENFORCEMENT OF CERTAIN PRIVILEGED
DECISIONS

Article 47a
Scope

- 1. This Section shall apply to the following decisions if they have been certified in the Member State of origin in accordance with Article 47l:**
 - (a) decisions in so far as they are granting rights of access; and**
 - (b) decisions pursuant to Article 26a(6) in so far as they entail the return of the child.**
- 2. The provisions of this Section shall not prevent a party from seeking recognition and enforcement of a decision referred to in paragraph 1 in accordance with the provisions on recognition and enforcement laid down in Section 1 of this Chapter.**

Subsection 1

Recognition

Article 47b

Recognition

- 1. A decision referred to in Article 47a(1) given in a Member State shall be recognised in the other Member States without any special procedure being required and without any possibility of opposing its recognition unless and to the extent that irreconcilability⁴⁶ with a decision referred to in Article 47n is found to exist.**
- 2. A party who wishes to invoke in a Member State a decision referred to in Article 47a(1) given in another Member State shall produce the following:**
 - (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity; and**
 - (b) the appropriate certificate issued pursuant to Article 47l.**
- 2. Article 28(2) and (3) shall apply accordingly.**

⁴⁶ See the proposed Recital in footnote 32.

Article 47c

Stay of proceedings

The court before which a decision referred to in Article 47a(1) given in another Member State is invoked may stay its proceedings, in whole or in part, where:

- (a) an application alleging the irreconcilability⁴⁷ with a decision as referred to in Article 47n has been submitted; or**
- (b) the person against whom enforcement is sought has applied, in accordance with Article 47m, for the withdrawal of a certificate issued pursuant to Article 47l.**

Subsection 2

Enforceability and enforcement

Article 47d

Enforceable decisions

- 1. A decision referred to in Article 47a(1) given in a Member State which is enforceable in that Member State shall be enforceable under this Section in the other Member States without any declaration of enforceability being required.**
- 2. For the purposes of enforcement in another Member State of a decision referred to in point (a) of Article 47a(1), the courts of the Member State of origin may declare the decision provisionally enforceable notwithstanding any appeal.**

⁴⁷ See the proposed Recital in footnote 32.

Article 47h

Documents to be produced for enforcement

- 1. For the purposes of enforcement in a Member State of a decision referred to in Article 47a(1) which was given in another Member State, the party seeking enforcement shall provide the authority competent for enforcement with:**
 - (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity; and**
 - (b) the appropriate certificate issued pursuant to Article 47l.**
- 2. For the purposes of enforcement in a Member State of a decision referred to in point (a) of Article 47a(1) which was given in another Member State, the authority competent for enforcement may, where necessary, require the applicant to provide a translation or transliteration, in accordance with Article 69, of [the relevant content] of the certificate which specifies the obligation to be enforced.**

3. For the purposes of enforcement in a Member State of a decision referred to in Article 47a(1) which was given in another Member State, the authority competent for enforcement may require the applicant to provide a translation or transliteration, in accordance with Article 69, of the decision if it is unable to proceed without such a translation or transliteration.

Subsection 3

Certificate for privileged decisions

Article 47I

Issuance of the certificate

1. The court that has given a decision referred to in Article 47a(1) shall upon request of a party issue a certificate for:

- (a) a decision granting rights of access using the form set out in Annex III;**
- (b) a decision on the substance of rights of custody given pursuant to Article 26a(6) which entails the return of a child using the form set out in Annex IV.**

2. The certificate shall be completed and issued in the language of the decision. The certificate may also be issued in another official language of the European Union requested by a party. This does not create any obligation for the court issuing the certificate to provide a translation or transliteration of [the relevant content].

- 3. The court shall issue the certificate only if:**
- (a) all parties concerned were given an opportunity to be heard;**
 - (b) the child was given an opportunity to express his or her views in accordance with Article 20;⁴⁸**
 - (c) where the decision was given in default of appearance, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence or it is established that the person defaulting accepted the decision unequivocally.**
- 4. Without prejudice to paragraph 3, the certificate for a decision referred to in point (b) of Article 47a(1) shall only be issued if, in giving its decision, the court has taken into account the reasons for and the facts underlying the prior decision given in another Member State pursuant to point (b) of Article 13(1), or Article 13(2), of the 1980 Hague Convention.**
- 5. The certificate shall take effect only within the limits of the enforceability of the decision.**
- 6. No challenges other than those referred to in Article 47m shall lie against the issuance of the certificate.**

⁴⁸ The certificate should contain a tick box indicating whether the child was given the opportunity to express his or her views and, if the child was not given such opportunity, the reasons for it to be explained in free text where appropriate.

Article 47m

Rectification and withdrawal of the certificate

- 1. The court of the Member State of origin as communicated to the Commission pursuant to Article 81 shall, upon application, and may, of its own motion, rectify the certificate where, due to a material error or omission, there is a discrepancy between the decision and the certificate.**
- 2. The court referred to in paragraph 1 shall, upon application or of its own motion, withdraw the certificate where it was wrongly granted, having regard to the requirements laid down in Article 47l. Article 47m1 shall apply accordingly.**
- 3. The procedure, including any appeal, with regard to the rectification or withdrawal of the certificate shall be governed by the law of the Member State of origin.**

Article 47m1

Certificate on lack or limitation of enforceability

Where and to the extent that a decision certified in accordance with Article 47l has ceased to be enforceable or its enforceability has been suspended or limited, a certificate indicating the lack or limitation of enforceability shall, upon application at any time to the court of the Member State of origin as communicated to the Commission pursuant to Article 81, be issued, using the standard form set out in Annex [Z].

Subsection 4

Refusal of recognition and enforcement

Article 47n

Irreconcilable decisions⁴⁹

The recognition and enforcement of a decision referred to in Article 47a(1) shall be refused if and to the extent that it is irreconcilable with a later decision relating to parental responsibility concerning the same child which was given:

- (a) in the Member State in which recognition is invoked; or**
- (b) in another Member State or in the non-Member State of the habitual residence of the child provided that the later decision fulfils the conditions necessary for its recognition in the Member State in which the recognition is invoked.**

⁴⁹ See the proposed Recital in footnote 32.

Section 3

Common provisions on enforcement

Subsection 1

Enforcement⁵⁰

Article 31/47e

Enforcement procedure

1. **Subject to the provisions of this Section**, the procedure for the enforcement of decisions given in another Member State shall (...) be governed by the law of the Member State of enforcement. Without prejudice to Articles 40, **47n, 36/47k and 47o1**, a decision given in a Member State which is enforceable in the Member State of (...) **origin** shall be enforced (...) **in the Member State of enforcement** under the same conditions as a decision given in (...) **that** Member State (...).

⁵⁰ A Recital to be added along the following lines:

" As enforcement procedures could be judicial or extra-judicial depending on national law, 'authorities competent for enforcement' could include courts, bailiffs and any other authorities as determined by national law. Where, in addition to authorities competent for enforcement courts are also mentioned in the provisions of this Regulation, this should cover cases where under national law, a body other than a court is the authority competent for enforcement but certain decisions are reserved to courts, either from the outset or in the form of reviewing the acts of the authority competent for enforcement. It should be for the authority competent for enforcement or court of the Member State of enforcement to order, take or arrange for specific measures to be taken at the enforcement stage, such as any non-coercive measures which might be available under the national law of that Member State, or any coercive measures which might be available under that law, including fines, imprisonment or the fetching of the child by a bailiff."

2. The party seeking the enforcement of a decision given in another Member State shall not be required to have a postal address in the Member State of enforcement. That party shall be required to have an authorised representative in the Member State of enforcement only if such a representative is mandatory **under the law of the Member State of enforcement** irrespective of the nationality (...) of the parties.

Article 32/47f

(...) **Authorities competent for** enforcement (...)

(...) The application for enforcement shall be submitted to the (...) **authority** competent for enforcement under the (...) law of the Member State of enforcement (...) **as** communicated by (...) **that** Member State to the Commission pursuant to Article 81.

(...)

Article 32a/47g

Partial enforcement

1. A party seeking the enforcement of a decision may request partial enforcement of the decision.
2. Where a decision has been given in respect of several matters and enforcement has been refused for one or more of them, enforcement shall nonetheless be possible for the parts of the decision not affected by the refusal.
3. Paragraphs 1 and 2 shall not be used to enforce a decision ordering the return of a child without also enforcing any provisional, including protective, measures, which have been ordered to minimise the risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention.

(...) **Arrangements for the exercise of rights of access**⁵¹

1. (...) **The authorities competent for enforcement or** courts of the Member State of enforcement may make (...) arrangements for organising the exercise of rights of access, if the necessary arrangements have not **at all** or **have** not sufficiently been made in the decision given by the (...) **courts** of the Member State having jurisdiction as to the substance of the matter **and provided the essential elements of this decision are respected.**

2. The (...) arrangements made pursuant to (...) **paragraph 1** shall cease to apply (...) **following** a later decision by the courts of the Member State having jurisdiction as to the substance of the matter.

(...)

⁵¹ A Recital to be added along the following lines:

"In order to facilitate enforcement of decisions from another Member State, authorities competent for enforcement or courts in the Member State of enforcement should be entitled to specify details regarding practical circumstances, or legal conditions required under the law of the Member State of enforcement. The arrangements provided for in this Regulation should facilitate enforcement of a decision in the Member State of enforcement, which might not otherwise be enforceable because of its vagueness, so that the authority competent for enforcement or court of enforcement can make the decision more concrete and precise. Also any other arrangements to comply with legal requirements under the national enforcement law of the Member State of enforcement, such as, for example, the participation of a child protection authority or a psychologist at the enforcement stage, should be made in the same way. However, any such arrangements should not interfere with, or go beyond, the essential elements of the decision. Moreover, the power under this Regulation to adapt measures should not allow the court of enforcement to replace measures that are unknown in the law of the Member State of enforcement, with different measures."

Article 35/47j

Service of certificate and decision⁵²

1. Where enforcement **is sought** of a decision given in another Member State (...), the **appropriate** certificate issued pursuant to Articles (...) **36a or 47l** shall be served on the person against whom enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the decision, if not already served on that person, **and, where applicable, by the details of the arrangement referred to in Article 34/47i(1).**
2. Where (...) **service has to be effected** in a Member State other than the Member State of origin, (...) **the person against whom enforcement is sought** may request a translation (...) **or transliteration of the following:**
 - (a) the decision, in order to contest the enforcement (...);
 - (b) **where applicable, [the relevant content] of the certificate issued pursuant to Article 47l;**

⁵² A Recital to be added along the following lines:

"In order to inform the person against whom enforcement is sought of the enforcement of a decision given in another Member State, the certificate established under this Regulation, if necessary accompanied by the decision, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service. According to the case law of the Court of Justice, the party against whom enforcement is sought has a right to an effective remedy, which includes the possibility of commencing proceedings to challenge the enforceability of the decision prior to the actual start of enforcement."

if not written in or accompanied by a translation **or transliteration** into either (...) a language which he or she understands, or (...) the official language of the Member State in which he or she is habitually resident or, where there are several official languages in that Member State, the official language or one of the official languages of the place where he or she is habitually resident.

3. Where a translation (...) **or transliteration** is requested under (...) **paragraph 2**, no measures of enforcement may be taken other than protective measures until that translation **or transliteration** has been provided to the person against whom enforcement is sought.

4. (...) **Paragraphs 2 and 3** shall not apply (...) **to the extent that the decision and, where applicable, the certificate referred to in paragraph 1 have** already been served on the person against whom enforcement is sought in (...) **compliance with the translation or transliteration requirements in paragraph 2.**

(...)

Subsection 2

Suspension of enforcement proceedings and refusal of enforcement

Article 36/47k

(...) Suspension and refusal⁵³

⁵³ Three Recitals to be added along the following lines:

- (R1) "In matters of parental responsibility, enforcement will always concern a child, and in many cases the handover of a child to a person other than the person with whom the child is residing at that time and/or the relocation of the child to another Member State. The primary objective should thus be to strike the right balance between the right of the applicant, as a principle, to obtain implementation of a decision as quickly as possible also in cross-border cases within the European Union and, if need be, also by applying coercive measures, and the need to limit, as far as possible, exposure of the child to such possibly traumatising coercive enforcement measures in cases where this cannot be avoided. This assessment should be made by the authorities competent for enforcement and courts in each Member State in the light of each individual case."
- (R2) "This Regulation seeks to establish a level playing field as concerns the cross-border enforcement of decisions in matters of parental responsibility among Member States. In a number of Member States, these decisions are already enforceable even if they are still subject to appeal, or already under appeal. In other Member States, only a final decision no longer subject to ordinary appeal is enforceable. In order to cater for situations of urgency, this Regulation therefore provides that certain decision in matters of parental responsibility might be declared provisionally enforceable by the court of the Member State of origin even if still subject to appeal, namely decisions ordering the return of a child under the 1980 Hague Convention and decisions granting rights of access."
- (R3) "In enforcement procedures concerning children, however, it is important for the authorities competent for enforcement or courts to be able to react swiftly to a relevant change of circumstances, including challenges against the decision in the Member State of origin, loss of enforceability of the decision and obstacles or emergency situations they encounter at the enforcement stage. Therefore, the enforcement proceedings should be suspended, upon application or of the court's or authority's own motion, where the enforceability of the decision is suspended in the Member State of origin. The authority or court competent for enforcement should however not be obliged to investigate actively whether in the meantime enforceability has been suspended, following an appeal or otherwise, in the Member State of origin if there is no indication that this may be the case. Moreover, the suspension or refusal of enforcement in the Member State of enforcement should be left to the discretion of the authority competent for enforcement or court and upon application where one or more of the grounds contained in or permitted by this Regulation are found to exist."

1. (...) **The authority competent for enforcement or court in the Member State of enforcement shall of its own motion or upon application of the person against whom enforcement is sought or, where applicable under national law, of the child concerned** (...) suspend the enforcement proceedings where the enforceability of the decision is suspended in the Member State of origin.

2. **The authority competent for enforcement or court in the Member State of enforcement may, upon application of the person against whom enforcement is sought or, where applicable under national law, of the child concerned, suspend, in whole or in part, (...) the enforcement proceedings (...) for one of the following reasons:**

- (a) **an ordinary appeal against the decision has been lodged in the Member State of origin;**
- (b) **the time for an ordinary appeal referred to in point (a) has not yet expired;**
- (c) **an application for refusal of enforcement based on Article 40, 47n or 47o1 has been submitted; or**
- (d) **the person against whom enforcement is sought has applied in accordance with Article 47m for the withdrawal of a certificate issued pursuant to Article 47l.**

3. **Where the authority competent for enforcement or court suspends the enforcement proceedings for the reason referred to in point (b) of paragraph 2, it may specify the time within which any appeal is to be lodged.**⁵⁴

⁵⁴ A Recital to be added along the following lines:

"Where the decision is still subject to appeal in the Member State of origin and the time for lodging an ordinary appeal has not yet expired, the authority competent for enforcement or court in the Member State of enforcement should have the discretion to suspend, upon application, the enforcement proceedings. In those cases it may specify the time within which any appeal is to be lodged in the Member State of origin, in order to obtain or maintain the suspension of enforcement proceedings. Such specification of a time limit should only have effect for the suspension of the enforcement proceedings and should not affect the deadline for lodging an appeal according to the procedural rules of the Member State of origin."

4. In exceptional cases, the authority competent for enforcement or court may, upon application of the person against whom enforcement is sought or, where applicable under national law, of the child concerned or of any interested party acting in the best interests of the child, suspend the enforcement proceedings if 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.

Enforcement shall be resumed as soon as the grave risk of physical or psychological harm ceases to exist.

5. In the cases referred to in paragraph 4, before refusing enforcement under paragraph 6, the authority competent for enforcement or court shall take any appropriate steps⁵⁵ to facilitate enforcement in accordance with national law and procedure and the best interests of the child.

6. Where the grave risk referred to in paragraph 4 is of a lasting nature, the competent authority for enforcement or court, upon application, may refuse the enforcement of the decision.

⁵⁵ A Recital to be added along the following lines:

"In exceptional cases, the authority competent for enforcement or court may suspend the enforcement proceedings if 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. Enforcement should be resumed as soon as the grave risk of physical or psychological harm ceases to exist. If it continues to exist, however, before refusing enforcement any appropriate steps should be taken, in accordance with national law and procedure, including, where appropriate, with the assistance of other relevant professionals, such as social workers or child psychologists, to try to ensure implementation of the decision. In particular, the authorities competent for enforcement should, in accordance with national law and procedure, try to overcome any impediments created by a change of circumstances, such as, for example, manifest objection of the child voiced only after the decision was given which is so strong that, if disregarded, it would amount to a grave risk of physical or psychological harm for the child."

Article 47o1

Grounds for suspension or refusal of enforcement under national law⁵⁶

The grounds for suspension or refusal of enforcement under the law of the Member State of enforcement shall apply in so far as they are not incompatible with the application of Articles 36/47k, 40 and 47n.⁵⁷

Article 41/47p

Jurisdiction of (...) **authorities or courts competent for refusal of enforcement**

1. The application for refusal of enforcement **based on Article 38** shall be submitted to the court (...) communicated by each Member State to the Commission pursuant to Article 81. **The application for refusal of enforcement based on other grounds set out in or permitted by this Regulation shall be submitted to the authority or court communicated by each Member State to the Commission pursuant to Article 81 .**

⁵⁶ A Recital to be added along the following lines:

"The application of any national ground for refusal should not have the effect of extending the conditions and modalities of the grounds provided for under this Regulation."

⁵⁷ A Recital to be added along the following lines:

"A party challenging the enforcement of a decision given in another Member State should, to the extent possible and in accordance with the legal system of the Member State of enforcement, be able to do so in the procedure for enforcement and should be able to raise, within one procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under the law of the Member State where enforcement is sought which would continue to apply because they are not incompatible with the grounds provided for in this Regulation. This could include, for example, challenges based on formal errors under national law in an act of enforcement or on the assertion that the action required by the decision has already been performed or has become impossible, for instance, in case of *force majeure*, serious illness of the person to whom the child is to be handed over, the imprisonment or death of that person, the fact that the Member State to which the child is to be returned has turned into a war zone after the decision was given, or the refusal of enforcement of a decision which under the law of the Member State where enforcement is sought does not have any enforceable content and cannot be adjusted to this effect."

2. The local jurisdiction **of the authority or court communicated by each Member State to the Commission pursuant to Article 81** shall be determined by (...) **the law of the Member State in which proceedings in accordance with paragraph 1 are brought.**

(...)

Article 42/47q

(...) **Application** for refusal of enforcement

1. The procedure **for making an application** for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State of enforcement.
2. The applicant shall provide the court with a copy of the decision and, where (...) **applicable and possible, the appropriate certificate issued pursuant to Article 36a or 47l.**
3. **The authority competent for enforcement or court may, where necessary, require the applicant to provide a translation or transliteration, in accordance with Article 69, of [the relevant content] of the appropriate certificate issued pursuant to Article 36a or 47l which specifies the obligation to be enforced.**
4. **The authority competent for enforcement or court may require the applicant to provide a translation or transliteration, in accordance with Article 69, of the decision if it is unable to proceed without such a translation or transliteration.**
5. **The authority competent for enforcement or court may dispense with the production of the documents referred to in (...) paragraph 2 if it already possesses them or if it considers it unreasonable to require the applicant to provide them. (...) In the latter case, the court may require the other party to provide those documents.**
6. The party seeking the refusal of enforcement of a decision given in another Member State shall not be required to have a postal address in the Member State of enforcement. That party shall be required to have an authorised representative in the Member State of enforcement only if such a representative is mandatory **under the law of the Member State of enforcement** irrespective of the nationality (...) of the parties.

Article 43/47r

(...) **Expeditious procedures**

(...) **The authority competent for enforcement or court shall act without undue delay in procedures on the application for refusal of enforcement.**

Article 44/47r

Challenge or appeal (...)

1. (...) **A decision on the application for refusal of enforcement may be challenged or** appealed against by either party.
2. The **challenge or** appeal shall be lodged with the (...) **authority or court** communicated by (...) **the Member State of enforcement** to the Commission pursuant to Article 81 **as the court with which such an appeal is to be lodged.**

Article 45/47r

Further **challenge or** appeal (...)

(...) **A decision given on the challenge or** appeal may **only** be contested (...) **by a challenge or appeal where the courts with which any further challenge or appeal is to be lodged have been** communicated by (...) **the Member State concerned** to the Commission pursuant to Article 81.

Article 46/47s

Stay of proceedings

1. The **authority competent for enforcement** or court to which an application for refusal of enforcement is submitted or (...) which **hears** an appeal (...) lodged under Article 44 or 45 may (...) stay the proceedings for one of the following reasons:

- (a) an ordinary appeal **against the decision** has been lodged in the Member State of origin;
- (b) the time (...) **for an ordinary appeal referred to in point (a) has not yet expired; or**
- (c) **the person against whom enforcement is sought has applied for the withdrawal in accordance with Article 47m of a certificate issued pursuant to Article 47l.**

2. Where the **authority competent for enforcement** or court stays the proceedings for the reason referred to in point (b) **of paragraph 1**, it may specify the time (...) within which an appeal is to be lodged.⁵⁸

(...)

(...)

(...)

(...)

⁵⁸ See the proposed Recital in footnote 54.

SECTION (...)4

AUTHENTIC INSTRUMENTS AND AGREEMENTS

Article 55a

Scope

This Section shall apply in matters of divorce, legal separation and parental responsibility to authentic instruments which have been formally drawn up or registered, and to agreements which have been registered, in a Member State assuming jurisdiction under Chapter II of this Regulation.

Article 55

Recognition and enforcement of authentic instruments and agreements

1. Authentic instruments and agreements on legal separation and divorce which have binding legal effect in the Member State of origin shall be recognised in other Member States without any special procedure being required. Section 1 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.⁵⁹

⁵⁹ A Recital to be added along the following lines:

"Authentic instruments and agreements between parties on legal separation and divorce which have binding legal effect in one Member State should be treated as equivalent to 'decisions' for the purpose of the application of the rules on recognition. Authentic instruments and agreements between parties in matters of parental responsibility which are enforceable in one Member State should be treated as equivalent to 'decisions' for the purpose of the application of the rules on recognition and enforcement.

Although the obligation to provide the child with the opportunity to express his or her views under this Regulation does not apply to authentic instruments and agreements, the right of the child to express his or her views continues to apply pursuant to Article 24 of the Charter of Fundamental Rights of the European Union and in light of Article 12 of the UN Convention on the Rights of the Child as implemented by national law and procedure. The fact that the child was not given the opportunity to express his or her views should not automatically be a ground of refusal of recognition and enforcement of authentic instruments and agreements in matters of parental responsibility."

2. (...) Authentic instruments and agreements in matters of parental responsibility which have binding legal effect and are enforceable in (...) the Member State (...) of origin shall be recognised and enforced (...) in other Member States without any declaration of enforceability being required. Sections 1 and 3 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.

Article 56

Certificate

1. The court or competent authority of the Member State of origin as communicated to the Commission pursuant to Article 81 shall, (...) upon application by a party, issue (...) a certificate for an authentic instrument or agreement:

(a) in matrimonial matters using the form set out in Annex [III];

(b) in matters of parental responsibility using the form set out in Annex [IV].⁶⁰

The certificate referred to in point (b) shall contain a summary of the enforceable obligation (...) contained in the **authentic instrument or agreement** (...).

2. The certificate may only be issued if the Member State which empowered the public authority or other authority to formally draw up or register the authentic instrument or register the agreement had jurisdiction under Chapter II of this Regulation and the authentic instrument or agreement has binding legal effect in that Member State.

⁶⁰ The certificate should contain a tick box indicating whether the child was given the opportunity to express his or her views and if the child was not given such opportunity, the reasons for it.

3. Notwithstanding paragraph 2, in matters of parental responsibility the certificate may not be issued if there are indications that the content of the authentic instrument or agreement is against the best interests of the child.

4. The certificate shall be completed in the language of the authentic instrument or agreement. It may also be issued in another official language of the Union requested by the party. This does not create any obligation for the competent authority issuing the certificate to provide a translation or transliteration of [the relevant content].

(...)

5. If the certificate is not produced, an authentic instrument or agreement shall not be recognised or enforced in another Member State.

Article 56a

Rectification and withdrawal of the certificate

1. The court or competent authority of the Member State of origin as communicated to the Commission pursuant to Article 81 shall, upon application, and may, of its own motion, rectify the certificate where, due to a material error or omission, there is a discrepancy between the authentic instrument or agreement and the certificate.

2. The court or competent authority referred to in paragraph 1 shall, upon application or of its own motion, withdraw the certificate where it was wrongly granted, having regard to the requirements laid down in Article 56.

3. The procedure, including any appeal, with regard to the rectification or withdrawal of the certificate shall be governed by the law of the Member State of origin.

Article 56b

Grounds for refusal of recognition or enforcement

- 1. The recognition of an authentic instrument or agreement on legal separation or divorce shall be refused:**
 - (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;**
 - (b) if it is irreconcilable with a decision, an authentic instrument or agreement between the same parties in the Member State in which recognition is sought; or**
 - (c) if it is irreconcilable with an earlier decision, authentic instrument or agreement given in another Member State or in a non-Member State between the same parties, provided that the earlier decision, authentic instrument, agreement or decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.**
- 2. The recognition or enforcement of an authentic instrument or agreement in matters of parental responsibility shall be refused:**
 - (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought, taking into account the best interests of the child;**
 - (b) on the request of any person claiming that the authentic instrument or agreement infringes his or her parental responsibility, if the authentic instrument was drawn up or registered, or the agreement was concluded and registered, without that person having been involved;**
 - (c) if and to the extent that it is irreconcilable with a later decision, authentic instrument or agreement in matters of parental responsibility given in the Member State in which recognition is invoked or enforcement is sought;**

- (d) if and to the extent that it is irreconcilable with a later decision, authentic instrument or agreement in matters of parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later decision, authentic instrument or agreement fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked or enforcement is sought.

3. The recognition or enforcement of an authentic instrument or agreement in matters of parental responsibility may be refused if the authentic instrument was formally drawn up or registered, or the agreement was registered, without the child who is capable of forming his or her own views having been given an opportunity to express his or her views.

SECTION (...)5

(...) OTHER PROVISIONS

(...)

(...)

Article 50

Prohibition of review of jurisdiction of the (...) **court** of origin

The jurisdiction of the (...) **court** of the Member State of origin may not be reviewed. The test of public policy referred to in point (a) of Article 37 and point (a) of Article 38 may not be applied to the rules relating to jurisdiction set out in Articles 3 to (...)13.

Article 51

Differences in applicable law

The recognition of a decision in matrimonial matters may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

Article 52

Non-review as to substance

Under no circumstances may a decision given in another Member State be reviewed as to its substance.

Article 52a

Appeal in certain Member States

Where a decision was given in Ireland, Cyprus or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of this Chapter.

(...)

(...)

Article 57

Costs

This Chapter shall also apply to the determination of the amount of costs and expenses of proceedings under this Regulation and to the enforcement of any order concerning such costs and expenses.

Article 58

Legal aid

1. An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in (...) Articles (...) **27(3), 39, and 42/47q**, to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.
2. **An applicant who, in the Member State of origin, has benefited from free proceedings before an administrative authority communicated to the Commission pursuant to Article 81 shall be entitled, in any procedures listed in paragraph 1, to benefit from legal aid in accordance with paragraph 1. To that end, that party shall present a statement from the competent authority in the Member State of origin to the effect that he or she fulfils the financial requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.**

Article 59

Security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for the enforcement of a decision given in another Member State on the ground that he or she is a foreign national or that he or she is not (...) habitually resident in the Member State of enforcement.

CHAPTER V

COOPERATION (...) IN MATTERS OF PARENTAL RESPONSIBILITY⁶¹

⁶¹ A Recital to be added along the following lines:

"The provisions of this Regulation on cooperation in matters of parental responsibility should not apply to the processing of return applications under the 1980 Hague Convention which, in accordance with Article 19 of the 1980 Hague Convention and the established case law of the Court of Justice, are not proceedings on the substance of parental responsibility. The application of the 1980 Hague Convention should however be complemented by the provisions of this Regulation on international child abduction and by the general provisions."

See also the Recital proposed in footnote 3.

Article 60

Designation of Central Authorities⁶²

Each Member State shall designate one or more Central Authorities to assist with the application of this Regulation in matters of parental responsibility and shall specify the geographical or functional jurisdiction of each. Where a Member State has designated more than one Central Authority, communications shall normally be sent directly to the relevant Central Authority with jurisdiction. Where a communication is sent to a Central Authority without jurisdiction, the latter shall (...) **forward** it to the Central Authority with jurisdiction and inform(...) the sender accordingly.

(...)

Article 62

General tasks of (...) Central Authorities

1. (...) Central Authorities shall communicate information on national laws (...), procedures and **services available in matters of parental responsibility and take the measures that they consider** appropriate (...) for improving the application of this Regulation (...).
2. **Central Authorities shall cooperate and promote cooperation among the competent authorities in their Member States to achieve the purposes of this Regulation.**
3. For (...) **these** purposes the European Judicial Network in civil and commercial matters (...) **may** be used.

⁶² A Recital to be added along the following lines:

"In matters of parental responsibility, Central Authorities should be designated in all Member States. Member States should consider designating the same Central Authority for this Regulation and for the 1980 and 1996 Hague Conventions. They should ensure that Central Authorities have adequate financial and human resources to enable them to carry out the tasks assigned to them under this Regulation."

Article 62a

Requests through Central Authorities

- 1. Central Authorities shall, upon request from a Central Authority of another Member State, cooperate in individual cases to achieve the purposes of this Regulation.**
- 2. Requests pursuant to this Chapter may be made by a court or a competent authority. Requests pursuant to points (c) and (g) of Article 63 and point (c) of Article 64(1) may also be made by holders of parental responsibility.**
- 3. Except in urgent cases and without prejudice to Article 67a, requests pursuant to this Chapter shall be submitted to the Central Authority of the Member State of the requesting court or competent authority or of the applicant's habitual residence.⁶³**

⁶³ A Recital to be added along the following lines:

"Except in urgent cases, and without prejudice to the direct cooperation and communication between courts permitted under this Regulation, requests pursuant to this Regulation on cooperation in matters of parental responsibility could be made by courts and competent authorities and should be submitted to the Central Authority of the Member State of the requesting court or competent authority. Certain requests could also be made by holders of parental responsibility and should be submitted to the Central Authority of the applicant's habitual residence. Such requests should include requests to provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions in the territory of the requested Central Authority, in particular concerning rights of access and the return of the child, including, where necessary, information about how to obtain legal aid; requests to facilitate agreement between holders of parental responsibility through mediation or other means of alternative dispute resolution, and requests for a court or competent authority to consider the need to take measures for the protection of the person or property of the child.

An example for an urgent case permitting direct initial contact with the court or competent authority of the requested Member State could be a direct request to the competent authority of another Member State to consider the need to take measures for the protection of the child where the child is presumed to be at imminent risk.

The obligation to proceed through Central Authority channels should only be mandatory for initial requests; any subsequent communication with the court, competent authority or applicant might also take place directly."

4. This Article does not preclude Central Authorities or competent authorities from entering into or maintaining existing agreements or arrangements with Central Authorities or competent authorities⁶⁴ of one or more other Member States allowing direct communications in their mutual relations.
5. This Chapter does not preclude any holder of parental responsibility from applying directly to the courts of another Member State.
6. Nothing in Articles 63 and 64 shall impose an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested Member State.

Article 63

(...) Specific tasks of requested Central Authorities

(...) **Requested** Central Authorities shall, (...) acting directly or through **courts, competent** authorities or other bodies, take all appropriate steps to:

- (a) provide (...) assistance, **in accordance with national law and procedure**, in discovering the whereabouts of a child where it appears that the child may be present within the territory of the requested Member State and (...) **that information** is necessary for carrying out an **application or** request under this Regulation;

⁶⁴ A Recital to be added along the following lines:

"Central Authorities or competent authorities should not be precluded from entering into or maintaining existing agreements or arrangements with Central Authorities or competent authorities of one or more other Member States allowing direct communications in their mutual relations. Competent authorities should inform their Central Authorities about such agreements or arrangements."

- (b) collect and exchange information **relevant in procedures in matters of parental responsibility** under Article 64;
- (c) provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions in (...) **the territory of the requested Central Authority**, in particular concerning rights of access and the return of the child, **including, where necessary, information about how to obtain legal aid**;
- (d) facilitate communication(...) between **courts, competent authorities and other bodies involved**,⁶⁵ in particular for the application of Article (...) **64a**;
- (e) **facilitate**⁶⁶ **communication between courts, where necessary, in particular for the application of Articles 12, 12a, 14 and 19**;

⁶⁵ A Recital to be added along the following lines:

"In specific cases in matters of parental responsibility which fall within the scope of this Regulation, Central Authorities should cooperate with each other in providing assistance to national courts, competent authorities and other bodies as well as to holders of parental responsibility. Such other bodies could include, for example, non-governmental organisations offering facilities for supervised contact to take place or a body generally referred to as Family Court Assistance existing in some Member States. The assistance provided by the requested Central Authority should in particular include locating the child, either directly or through courts, competent authorities or other bodies, where this is necessary for carrying out a request under this Regulation, and providing any other information relevant in proceedings in matters of parental responsibility."

⁶⁶ A Recital to be added along the following lines:

"Requested Central Authorities should also take all appropriate steps to facilitate communication between courts, where necessary, in particular for the application of the rules on transfer of jurisdiction, on provisional, including protective measures in urgent cases, in particular where they are related to international child abduction and aimed at minimising the risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention, and on *lis pendens* and dependent actions. To this effect, providing information for further direct communication may be sufficient in some cases (for example, providing contact details of child welfare authorities, network judges or the competent court)."

- (f) provide such information and assistance as is needed by **courts and competent** authorities to apply Article 65; **and**
 - (g) facilitate agreement between holders of parental responsibility through mediation or other means **of alternative dispute resolution**, and facilitate cross-border cooperation to this end (...).
- (...)

Article 64

Cooperation on collecting and exchanging information **relevant in procedures in matters of parental responsibility**

1. Upon a request made with supporting reasons (...), the Central Authority of the Member State where the child is **or was** habitually resident (...) **or** present (...), directly or through **courts, competent** authorities or other bodies:

(a) **shall, where available provide, or draw up and** provide a report on:

- (i) (...) the situation of the child;
- (ii) (...) any **ongoing** procedures (...) **in matters of parental responsibility** for the child; or
- (iii) (...) decisions taken (...) **in matters of parental responsibility for the child**;

- (b) shall provide any other information relevant in procedures in matters of parental responsibility in the requesting Member State, in particular about the situation of a parent, a relative or other person who may be suitable to care for the child, if the situation of the child so requires; or**
- (c) may request the court or competent authority of its Member State to consider the need to take measures for the protection of the person or property of the child.**

(...)

2. In any case where the child is exposed to a serious danger, the court or competent authority contemplating or having taken measures for the protection of the child, if it is aware that the child's residence has changed to, or that the child is present in, another Member State, shall inform the courts or competent authorities of that other Member State about the danger involved and the measures taken or under consideration. This information may be transmitted directly or through the Central Authorities.

3. The requests referred to in paragraphs 1 and 2 and any additional documents shall be accompanied by a translation into the official language of the requested Member State or, where there are several official languages in that Member State, into the official language or one of the official languages of the place where the request is to be carried out, or any other language that the requested Member State expressly accepts. Member States shall communicate such acceptance to the Commission in accordance with Article 81.

4. Except where exceptional circumstances make this impossible,⁶⁷ the information referred to in paragraph 1 shall be transmitted to the requesting Central Authority no later than three months following the receipt of the request.

⁶⁷ A Recital to be added along the following lines:

"As time is of the essence in parental responsibility matters, the information requested under the provisions of this Regulation on cooperation, including on collecting and exchanging information relevant in procedures in matters of parental responsibility, and the decision granting or refusing consent for the placement of a child in another Member State should be transmitted to the requesting Member State by the Central Authority of the requested Member State no later than three months following the receipt of the request, except where exceptional circumstances make this impossible. This should include the obligation of the competent national authority to provide the information, or explain why it cannot be provided, to the requested Central Authority in such time as to enable it to comply with this time frame. Nonetheless, all competent authorities involved should strive to provide the reply even more quickly than within this maximum timeframe."

Article 64a

Implementation of decisions in matters of parental responsibility in another Member State

- 1. A court of a Member State may request the courts or competent authorities of another Member State to assist in the implementation⁶⁸ of decisions in matters of parental responsibility given under this Regulation, in particular in securing the effective exercise of rights of access.**
- 2. The request referred to in paragraph 1 and any accompanying documents shall be accompanied by a translation into the official language of the requested Member State or, where there are several official languages in that Member State, into the official language or one of the official languages of the place where the request is to be carried out or any other language that the requested Member State expressly accepts. Member States shall communicate such acceptance to the Commission in accordance with Article 81.**

⁶⁸ A Recital to be added along the following lines:

"Where a court of a Member State has already given a decision in matters of parental responsibility or is contemplating such a decision and the implementation is to take place in another Member State, the court should be able to request that the courts or competent authorities of that other Member State assist in the implementation of the decision. This should apply, for instance, to decisions granting supervised access to be exercised in a Member State other than the Member State where the court ordering access is located or involving any other accompanying measures of the courts or competent authorities in the Member State where the decision is to be implemented."

Article 65

Placement of a child in another Member State⁶⁹

⁶⁹ A Recital to be added along the following lines:

"Where a decision on the placement of a child in institutional or foster care is being contemplated in the Member State of the child's habitual residence, the court should consider, at the earliest stage of the proceedings, appropriate measures to ensure respect of the rights of the child, in particular the right to preserve his or her identity and maintain contact with the parents, or, where appropriate, with other relatives, in light of Articles 8, 9 and 20 of the UN Convention on the Rights of the Child. Where the court is aware of a close connection of the child with another Member State, appropriate measures could in particular include, where point (b) of Article 37 of the Vienna Convention on Consular Relations is applicable, a notification to the Consular body of that Member State. Such awareness might also be raised by information provided by the Central Authority of that other Member State. Appropriate measures might also include a request pursuant to this Regulation to that Member State for information about a parent, a relative or other persons who may be suitable to care for the child. Moreover, depending on the circumstances, the court might also request information on proceedings and decisions concerning a parent or siblings of the child. The best interests of the child should remain the paramount consideration. In particular, none of these provisions should affect national law or procedure applicable to any placement decision made by the court or competent authority in the Member State contemplating the placement. In particular, this would place no obligation on the authorities of the Member State having jurisdiction to place the child in the other Member State or further involve that Member State in the placement decision or proceedings."

1. Where (...) **a court or a competent** authority (...) contemplates the placement of a child in (...) another Member State,⁷⁰ it shall first obtain the consent of the competent authority in that other Member State. To that effect (...) the Central Authority of (...) **the requesting** Member State **shall** transmit to the Central Authority of the **requested** Member State where the child is to be placed a request for consent which includes a report on the child together with the reasons for the proposed placement or provision of care, **information on any contemplated funding and any other information it considers relevant, such as the expected duration of the placement.**⁷¹

⁷⁰ A Recital to be added along the following lines:

"Any type of placement of a child in foster care – that is, according to national law and procedure, with one or more individuals – or institutional care, for example in an orphanage or a children's home, in another Member State should fall within the scope of this Regulation, unless expressly excluded, such as is placement with a view to adoption, placement with a parent or, where applicable, with any other close relative as declared by the receiving Member State. As a result, also 'educational placements' ordered by a court or arranged by a competent authority with the agreement of the parents or the child or upon their request following deviant behaviour of the child should be included. Only a placement – be it educational or punitive – ordered or arranged following an act of the child which could amount to a punishable act under national criminal law, if committed by an adult regardless of whether in the particular case this could lead to a conviction, should be excluded."

⁷¹ A Recital to be added along the following lines:

"Where a court or competent authority of a Member State considers the placement of a child in another Member State, a consultation procedure for obtaining consent should be carried out prior to the placement. The court or competent authority considering the placement should obtain the consent of the competent authority of the Member State in which the child would be placed before ordering or arranging the placement. Lack of reply within three months should not be understood as consent and without consent the placement should not take place. The request for consent should include at least a report on the child together with the reasons for the proposed placement or provision of care, the expected duration of the placement, information on any contemplated funding, supplemented by any other information which the requested Member State might consider pertinent such as any envisaged supervision of the measure, arrangements for contact with the parents, other relatives or other persons with whom the child has a close relation, or the reasons why such contact is not contemplated in light of Article 8 of the European Convention on Human Rights.

Taking into consideration the case law of the Court of Justice, where consent to placement has been given for a specified period of time, that consent should not apply to decisions or arrangements extending the duration of the placement. In such circumstances, a new request for consent should be made."

1a. Paragraph 1 shall not apply where the child is to be placed with a parent.

Member States may decide that their consent pursuant to paragraph 1 is not required for placements within their own territory with certain categories of close relatives in addition to parents. These categories shall be communicated to the Commission pursuant to Article 81.

1b. The Central Authority of another Member State may inform a court or competent authority which contemplates a placement of a child of a close connection of the child with that Member State. This shall not affect the national law and procedure of the Member State contemplating the placement.

2. The request and (...) **any additional** documents referred to in paragraph 1 shall be accompanied by a translation into the official language **of the requested Member State or, where there are several official languages in that Member State, into the official language** or one of the official languages of the (...) **place where the request is to be carried out, or** any other language that the requested Member State expressly accepts. Member States shall communicate such acceptance to the Commission in accordance with Article 81.

3. The (...) placement referred to in paragraph 1 (...) **shall only** be (...) **ordered or arranged by** the requesting Member State (...) **after** the competent authority of the requested Member State has consented to the placement.

4. Except where exceptional circumstances make this impossible, the (...) decision granting or refusing consent **shall be transmitted** to the requesting Central Authority no later than (...) **three** months following the receipt of the request.⁷²

⁷² See the proposed Recital in footnote 67 above.

5. The procedure for obtaining consent shall be governed by the national law of the requested Member State.⁷³

6. This Article does not preclude Central Authorities or competent authorities from entering into or maintaining existing agreements or arrangements with Central Authorities or competent authorities of one or more other Member States simplifying the consultation procedure for obtaining consent in their mutual relations.

Article 66

(...) Costs of Central Authorities

(...) **1.** The assistance provided by the Central Authorities pursuant to this Regulation shall be free of charge.

2. Each Central Authority shall bear its own costs **in applying this Regulation.**

Article 67

Meetings of Central Authorities

1. In order to facilitate the application of this Regulation, Central Authorities shall meet regularly.

⁷³ A Recital to be added along the following lines:

"Moreover, in line with the case law of the Court of Justice, Member States should establish clear rules and procedures for the purposes of the consent referred to in this Regulation, in order to ensure legal certainty and expedition. The procedures should, *inter alia*, enable the competent authority to grant or refuse its consent promptly."

2. The meetings of Central Authorities shall be convened, **in particular, by the Commission**⁷⁴ within the framework of the European Judicial Network in civil and commercial matters in compliance with Decision No 2001/470/EC.

CHAPTER VI

GENERAL PROVISIONS

Article 67a0

Scope

This Chapter shall apply to the processing of requests and applications under Chapters III to V of this Regulation.

Article 67a

Cooperation and communication between courts

1. For the purposes of this Regulation, the courts may cooperate and communicate directly with, or request information directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

⁷⁴ A Recital to be added along the following lines:

"The fact that the meetings of Central Authorities shall be convened, in particular, by the Commission within the framework of the European Judicial Network in civil and commercial matters in compliance with Decision No 2001/470/EC, should not preclude other meetings of the Central Authorities from being organised."

2. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

- (a) communication for the purposes of Articles 12 and 12a;**
- (b) information in accordance with Article 14;**
- (c) information on pending proceedings for the purposes of Article 19;**
- (d) communication for the purposes of Chapters III to V.**

Article 65a

Collection and transmission of information⁷⁵

⁷⁵ Two Recitals to be added along the following lines:

- (R1) "Unless this Regulation provides otherwise, Regulation (EU) No 2016/679 should apply to the processing of personal data by the Member States carried out in application of this Regulation. In particular, in order not to jeopardise the carrying out of a request under this Regulation, for example for the return of the child in accordance with the 1980 Hague Child Abduction Convention or for a court to consider the need to take measures for the protection of the person or property of the child, the notification of the data subject as required by Article 14(1)-(4) of Regulation (EU) No 2016/679, for example about data requested for locating the child, may be deferred until the request for which this information is required has been carried out. This exception is made in accordance with Article 14(5) as well as points (f), (g), (i) and (j) of Article 23(1) of Regulation (EU) No 2016/679."
- (R2) "This does not preclude an intermediary, court or competent authority to which the information referred to in paragraph 1 has been transmitted, from taking measures for the protection of the child, or causing such measures to be taken, where the child is at risk of harm or there are indications for such a risk."

- 1. The requested Central Authority shall transmit any application, request or the information contained therein in matters of parental responsibility or international child abduction, as appropriate, pursuant to this Regulation to the court, competent authority within its Member State or other intermediary as appropriate under national law and procedure.**
- 2. Any intermediary, court or competent authority to which the information referred to in paragraph 1 has been transmitted under this Regulation may only use it for the purposes of this Regulation.**
- 3. The intermediary, court or competent authority which holds or is competent to collect, within the requested State, information required to carry out a request or an application pursuant to this Regulation, shall provide this information to the requested Central Authority at its request in cases where the requested Central Authority does not have direct access to it.**
- 4. The requested Central Authority shall, as necessary, transmit the information thus obtained to the requesting Central Authority in accordance with national law and procedure.**

Article 67b

Notification of the data subject

Where there is a risk that it may prejudice the effective carrying out of the request under this Regulation for which the information was transmitted, the obligation to notify the data subject pursuant to Article 14(1) to (4) of Regulation (EU) 2016/679 may be deferred until the request has been carried out.⁷⁶

Article 67c

Non-disclosure of information⁷⁷

⁷⁶ See the proposed Recital in footnote 75.

⁷⁷ The following text to be added after the Recital proposed in footnote 75:

"In cases where a disclosure or confirmation of the relevant information could jeopardise the best interests of the child, for example where domestic violence has occurred and a court ordered the new address of the child not to be disclosed to the applicant, this Regulation strives to strike a delicate balance. While this Regulation provides that a Central Authority, court or competent authority should not disclose or confirm to the applicant or to a third party any information gathered or transmitted for the purposes of this Regulation if it determines that to do so could jeopardise the health, safety or liberty of the child or another person, the Regulation nonetheless underlines that this should not impede the gathering and transmitting of information by and between Central Authorities, courts and competent authorities in so far as necessary to carry out the obligations under this Regulation. This means that where possible and appropriate, an application might be processed under this Regulation without the applicant being provided with all information necessary to process it. For example, where national law so provides, a Central Authority might institute proceedings on behalf of an applicant without passing on the information about the child's whereabouts to the applicant. However, in cases where merely making the request could already jeopardise the health, safety or liberty of the child or another person, there should not be an obligation under this Regulation to make such request."

1. A Central Authority, court or competent authority shall not disclose or confirm information gathered or transmitted for the purposes of Chapters III to VI if it determines that to do so could jeopardise the health, safety or liberty of the child or another person.
2. A determination to this effect made in one Member State shall be taken into account by the Central Authorities, courts and competent authorities of the other Member States, in particular in cases of domestic violence.
3. Nothing in this Article shall impede the gathering and transmitting of information by and between Central Authorities, courts and competent authorities in so far as necessary to carry out the obligations under Chapters III to VI.

Article 68

Legalisation or other similar formality

No legalisation or other similar formality shall be required in (...) **the context of this Regulation.**

Article 69

(...) Languages

1. Without prejudice to point (a) of Article 35/47j(2), where a translation or a transliteration is required under this Regulation, such translation or transliteration shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where a decision given in another Member State is invoked or an application is made, in accordance with the law of that Member State.

2. The translations or transliterations of the relevant content of the certificates referred to in Articles (...) **36a, 47l** and 56 may be into any other official language or languages of the institutions of the Union that the Member State concerned has communicated in accordance with Article 81 it can accept.

3. (...) **Member States shall communicate to the Commission the official language or languages of the Union institutions other than their own in which communications to the Central Authorities can be accepted.**

4. Any translation required for the purposes of Chapters **III and IV** of this Regulation shall be done by a person qualified to do translations in one of the Member States.

CHAPTER VII

DELEGATED ACTS

Article 70

Amendments to the Annexes

The Commission is empowered to adopt delegated acts in accordance with Article 71 concerning the amendment of (...) **[the relevant]**⁷⁸ **Annexes in order to update or to make technical changes to those Annexes.**

⁷⁸ The references to the Annexes will be inserted later.

Article 71

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 70 shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Regulation].
3. The delegation of power referred to in Article 70 may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.
6. A delegated act adopted pursuant to Article 70 shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.
7. The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.

CHAPTER VIII
RELATIONS WITH OTHER INSTRUMENTS

Article 72

Relations with other instruments⁷⁹

1. Subject to the provisions of **paragraph 2 of this Article and Articles 73 (...) to 78**, this Regulation shall, for the Member States, supersede conventions existing at the time of entry into force of Regulation (EC) No 2201/2003 which have been concluded between two or more Member States and relate to matters governed by this Regulation.
2. **Finland and Sweden were provided with the option of declaring in accordance with Article 59(2) of Regulation (EC) No 2201/2003 and subject to the conditions set out in points (b) and (c) of that provision that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply, in whole or in part, in their mutual relations, in place of the rules of that Regulation. Their respective declarations have been published in the Official Journal of the European Union as an annex to Regulation (EC) No 2201/2003. They may be withdrawn, in whole or in part, at any moment by the said Member States.**
3. **The rules of jurisdiction in any future agreement to be concluded between the Member States referred to in paragraph 2 which relate to matters governed by this Regulation shall be in line with those laid down in this Regulation.**

⁷⁹ A Recital to be added along the following lines:

"It is recalled that for agreements with one or more third States concluded by a Member State before the date of its accession to the Union, Article 351 of the Treaty on the Functioning of the European Union applies."

4. The principle of non-discrimination on the grounds of nationality between citizens of the Union shall be respected.

5. Decisions handed down in any of the Nordic States which have made the declaration provided for in paragraph 2 under a forum of jurisdiction corresponding to one of those laid down in Chapter II of this Regulation, shall be recognised and enforced in the other Member States under the rules laid down in Section 1 of Chapter IV of this Regulation.

6. Member States shall send to the Commission:

- (a) a copy of the agreements and uniform laws implementing these agreements referred to in paragraph 3;**
- (b) any denunciations of, or amendments to, the agreements and uniform laws referred to in paragraphs 2 and 3.**

Such information shall be published in the *Official Journal* of the European Union.

Article 73

Relations with certain multilateral conventions

In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

- (a) the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors;
- (b) the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages;
- (c) the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations;
- (d) the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

Article 74

Relation with the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Where a child has been wrongfully removed to, or is being wrongfully retained in, a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, the provisions of the 1980 Hague Convention shall (...) **continue to apply as complemented by the provisions of Chapters III and VI of this Regulation. Where a decision ordering the return of the child pursuant to the 1980 Hague Convention which was given in a Member State has to be recognised and enforced in another Member State following a further wrongful removal or retention of the child, Chapter IV shall apply.**

Article 75

Relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children

1. As concerns the relation with the 1996 Hague Convention, this Regulation shall apply:
 - (a) subject to paragraph 2, where the child concerned has his or her habitual residence in the territory of a Member State;
 - (b) as concerns the recognition and enforcement of a decision given by (...) **a court** of a Member State in the territory of another Member State, even if the child concerned has his or her habitual residence in the territory of a State which is a contracting Party to the said Convention and in which this Regulation does not apply.

2. Notwithstanding paragraph 1,

- (a) where the parties have agreed upon the jurisdiction of (...) **a court** of a State Party to the 1996 Hague Convention in which this Regulation does not apply, Article 10 of that Convention shall apply;
- (b) with respect to the transfer of jurisdiction between (...) **a court** of a Member State and a court of a State Party to the 1996 Hague Convention in which this Regulation does not apply, Articles 8 and 9 of that Convention shall apply;
- (c) where proceedings relating to parental responsibility are pending before (...) **a court** of a State Party to the 1996 Hague Convention in which this Regulation does not apply at the time when (...) **a court** of a Member State is seised of proceedings relating to the same child and involving the same cause of action, Article 13 of that Convention shall apply.⁸⁰

(...)

Article 76

Scope of effect(...)

- 1. The agreements and conventions referred to in Articles 72 to 75 shall continue to have effect in relation to matters not governed by this Regulation.
- 2. The conventions referred to in Articles 73 (...) **to** 75, in particular the 1980 and 1996 Hague Conventions, **shall** continue to (...) **have effect** between the Member States which are Party thereto, in compliance with Articles 73 (...) **to** 75.

⁸⁰ A Recital to be added along the following lines:

"The law applicable in matters of parental responsibility should be determined in accordance with the provisions of Chapter III of the 1996 Hague Convention. When applying that Convention in proceedings before a court of a Member State in which this Regulation applies, the reference in Article 15(1) of that Convention to 'the provisions of Chapter II' of that Convention should be understood as referring to 'the provisions of this Regulation'."

Article 77

Treaties with the Holy See

1. This Regulation shall apply without prejudice to the International Treaty (Concordat) between the Holy See and Portugal, signed at the Vatican City on (...) **18 May (...) 2004**.
2. Any decision as to the invalidity of a marriage taken under the Treaty referred to in paragraph 1 shall be recognised in the Member States on the conditions laid down in **Subsection 1 of** Section 1 of Chapter IV.
3. The provisions laid down in paragraphs 1 and 2 shall also apply to the following international treaties (...) with the Holy See:
 - (a) 'Concordato lateranense' of 11 February 1929 between Italy and the Holy See, modified by the agreement with additional Protocol signed in Rome on 18 February 1984;
 - (b) Agreement between the Holy See and Spain on legal affairs of 3 January 1979;
 - (c) Agreement between the Holy See and Malta on the recognition of civil effects to canonical marriages and to decisions of ecclesiastical authorities and tribunals on those marriages of 3 February 1993, including the Protocol of application of the same date, with the (...) **third** Additional Protocol of (...) **27 January (...) 2014**.
4. Recognition of the decisions provided for in paragraph 2 may, in Spain, Italy or Malta, be subject to the same procedures and the same checks as are applicable to decisions of the ecclesiastical courts handed down in accordance with the international treaties concluded with the Holy See referred to in paragraph 3.

5. Member States shall send to the Commission:
- (a) a copy of the Treaties referred to in paragraphs 1 and 3;
 - (b) any denunciations of or amendments to those Treaties.

CHAPTER IX

FINAL PROVISIONS

Article 78

Transitional provisions

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements (...) **registered** on or after [*the date of application of this Regulation*].
2. Regulation (EC) No 2201/2003 shall continue to apply to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements (...) **which have become enforceable in the Member State where they were** concluded before [*the date of application of this Regulation*] **and** which fall within the scope of that Regulation.

Article 79

Monitoring and Evaluation

1. By [*10 years after the date of application*], the Commission shall present to the European Parliament, to the Council and to the European Economic and Social Committee a report on the ex post evaluation of this Regulation supported by information supplied by the Member States. The report shall be accompanied, where necessary, by a legislative proposal.

2. **As of [3 years after the date of application],** the Member States shall (...) **provide** the Commission upon request, (...) **where available, with** information (...) **relevant for the evaluation of the operation and application of this Regulation** on:

- (a) the number of decisions in matrimonial matters or in matters of parental responsibility in which jurisdiction was based on the grounds laid down in this Regulation;
- (b) with regard to applications for enforcement pursuant to Article 32, the number of cases where enforcement has not occurred within six weeks from the moment the enforcement proceedings were initiated;
- (c) the number of applications for refusal of recognition of a decision pursuant to Article 39 and (...) the number of cases in which the refusal of recognition was granted;
- (d) the number of applications for refusal of enforcement of a decision pursuant to Article 41/**47p** and (...) the number of cases in which the refusal of enforcement was granted;
- (e) the number of appeals lodged pursuant to Articles 44/**47r** and 45/**47r**, respectively.

Article 80

Member States with two or more legal systems

With regard to a Member State in which two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units:

- (a) any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit;
- (b) any reference to nationality (...) shall refer to the territorial unit designated by the law of that Member State;
- (c) any reference to the authority of a Member State shall refer to the authority of a territorial unit within that Member State which is concerned;
- (d) any reference to the rules of the requested Member State shall refer to the rules of the territorial unit in which jurisdiction, recognition or enforcement is invoked.

Article 81

Information to be communicated to the Commission

1. The Member States shall communicate to the Commission the following:
 - (a) **any authorities referred to in Article 2(1)(b1) and (b2) and Article 58(2);**
 - (b) **the courts and authorities competent to issue certificates as referred to in Article 36a(1), Article 56 and the courts competent to rectify certificates as referred to in Article 36b(1), Article 47m(1), 47m1, and Article 56(3) in connection with Article 36b(1);**
 - (c) **the courts referred to in Article 27(3), Article 32/47f, Article 39(1), Article 41/47p(1), Article 44/47r(2) and Article 45/47r;**
 - (d) **the authorities competent for enforcement referred to in Article 32/47f;**
 - (e) **the redress procedures referred to in Articles 44/47r and 45/47r;**
 - (f) the names, addresses and means of communication for the Central Authorities designated pursuant to Article 60;
 - (f1) **the categories of close relatives referred to in Article 65(1a), where applicable;**
 - (g) the languages accepted for communications to Central Authorities pursuant to Article (...)69(2);
 - (h) the languages accepted for the translations pursuant to (...) **Article 64(3), Article 64a(2), Article 65(2) and Article 69(2).**

(...)

(...)
2. The Member States shall communicate the information referred to in paragraph 1 to the Commission by [(...) *twenty-one months following the entry into force of this Regulation* (...)].
3. The Member States shall communicate to the Commission any changes to (...) **the information referred to in paragraph 1.**
4. The Commission shall make the information **referred to in paragraph 1** publicly available through appropriate means, including through the European e-Justice Portal.

Article 82

Repeal

1. Subject to Article 78(2) **of this Regulation**, Regulation (EC) No 2201/2003 is repealed from *[the date of application of this Regulation]*.
2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex [V].

Article 83

Entry into force

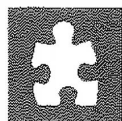
1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. (...) **This** Regulation shall apply from (...) ***[the first day of the month following the expiry of three years from the date of publication of this Regulation]***, with the exception of Articles 70, 71 and 81, which shall apply from *[date of entry into force of this Regulation]*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the Council

The President



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European Commission
Justice and Fundamental Rights



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MKK - International Mediators' Forum for Europe, Africa and Latin America

Training: The well-being of children in international child abduction proceedings

University of Antwerp, 6-7 December 2018

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Brophy	Grainne	Lawyer	Legal Aid Board, Ireland		
Buttigieg	Carmen	Central Authority	Department for Social Welfare Standards, Malta		
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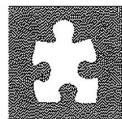
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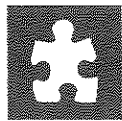


MKK is a non-profit organization for the protection of children's rights and the promotion of their well-being.

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Uwimpuhwe	Katie Leocadie	Child's psychologist			
Vandecasteele	Femke	Social worker	CAW Oost-Vlaanderen		



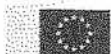
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Training: the well-being of children in international child abduction proceedings

Thursday 6 December 2018

10:00	Registration	
10:30	Questionnaire	
	Plenary session	
11:00	Presentation on EWELL – The wellbeing of children in international child abduction cases (statistical analysis)	Koen Ponnet Professor social psychology UGent
	Presentation on Conclusions and recommendations from children and judges to improve children's position in child abduction proceedings	Sara Lembrechts and Kim Van Hoorde Marieke Putters (TBC) Researchers EWELL
13:00	Lunch	
14:00	Possibility to network	
14:30	Parallel sessions	
	Session 1: Guide parents to mediation	Ishtar Khalaf-Newsome and Michael Ford Experts from Mikk
	Session 2: Inspiration from the Netherlands – The role of the special curator	Anneke van Teylingen and Lillian van Wesemael Special curators from the Netherlands
16:00	Coffee break	
16:15	Plenary session	
	Linking the output from the parallel sessions to child psychology	Nicole Vliegen Professor psychology KULeuven
16:45	Concluding remarks	
17:00	End of day 1	



Friday 7 December 2018

09:00	Plenary session	
	The importance of transparency and feedback	Peter Jackson (TBC) Court of Appeal judge from the United Kingdom
10:00	Coffee break	
10:30	Parallel sessions	
	Goal of both sessions: development of concrete strategies / solutions on how to inform the child in international child abduction proceedings	<i>Moderated by Sara Lembrechts / Tine Van Hof</i> Researchers VOICE
12:00	Plenary session	
	Reporting on the parallel sessions	
12:45	Concluding remarks	
13:00	End of the training	

