



Training module on Parental responsibility in a cross-border context, including child abduction

Guide to the training module

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On behalf of DG JUSTICE



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TRAINING MODULE'S GUIDE

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I. Introduction

This self-standing training module on 'Parental responsibility in a cross-border context, including child abduction' developed by ERA on behalf of the European Commission is addressed to training institutes, networks of legal practitioners, trainers and end users of European Union Member States wishing to organise training sessions in the area of EU family law and, more concretely, on parental responsibility in a cross-border context.

In today's world, where people are increasingly mobile, the number of families made up of citizens of different EU countries, or of EU citizens and third-country nationals, is increasing – there are currently around 16 million international couples in the EU. The greater use of the rights of free movement of persons, goods and services results in an increase in the potential number of cross-border disputes and makes the provision of training in European family law progressively more relevant.

The training module is structured as a 'training package' and includes information on the programme and methodology to be employed and the training material necessary for setting up a workshop on parental responsibility in a cross-border context. It covers the EU *acquis* in this area of law and illustrates how this has been applied in the Member States.

1. Scope of the training module

More concretely, the training material of the training module covers the **EU *acquis*** in the following thematic units:

- **Cross-border parental responsibility** – rules on jurisdiction, provisional measures and applicable law, recognition and enforcement of judgments, including special rules on access rights and on cross-border child abduction within the EU
- **Procedure in family matters** – hearing of the child and taking of evidence, cross-border communication between courts and between central authorities
- **Preliminary ruling procedure in family matters**
- **Family mediation**

The varying training methods that can be used in future workshops based on this material will also be presented in the module, together with recommendations on how and in which part of the training they may be best employed. Face-to-face presentations can be combined with practical exercises requiring the active contribution of participants, IT-supported learning, allowing participants to familiarise themselves with available e-justice tools and interactive sessions promoting the exchange of good practice and experience.

2. Content of the training module

The training module includes training material to be further disseminated to the participants of an implementing workshop through the following means:

- **An E-learning course**, providing an overview of the key areas covered by the module is included. This could be made available to end users before the implementation of a workshop, in order to allow them to prepare for it.
- **Background material**, including the legislation and jurisprudence on parental responsibility in a cross-border context, as well as international conventions that are also applicable in this area of law.
- **Links to online tools and legal databases** facilitating cross-border cooperation in civil matters.
- **Workshop exercises** on the basis of case studies and a role play, which should be carried out during the workshop by participants.
- **Examples of trainers' contributions**, supporting the different presentations during an implementing workshop in the form of outlines, notes, written versions of their lecture, PowerPoint presentations etc.
(Material to be submitted in the framework of the initial implementing workshops)
- **National sections** covering all EU Member States (with the exception of Denmark), illustrating the application and implementation of European family law at national level and **a general bibliography**, including some of the most representative articles, books and publications on EU family law.

Further to this, **a guide to the training module** providing advice on how to set up a workshop implementing the training module is included. The above mentioned materials are presented in detail, so that their function and possible integration in future training programmes is effectively explained and trainers are able to use the potential to the full. Input on how to structure the programme of the workshop and which methodology to employ when dealing with each specific topic is provided, as well as organisational advice on how to bring together a group of participants, choose the workshop venue, identify the trainers and evaluate the event.

Last, **a trainers' manual**, centralising all information that would be of relevance for the trainers engaged in an implementing workshop, has been included in the materials.

3. Implementing the training module

A workshop implementing this training module will provide judges or legal practitioners attending with an in-depth analysis of cross-border parental responsibility and enable them to apply the relevant EU legal instruments and international conventions. Workshop participants will be able to identify which court has jurisdiction, what the rules for the recognition and enforcement of judgments issued in another Member State are, and will be able to familiarise themselves with the special rules and procedures in place when dealing with cross-border parental child abduction within the EU. End users will receive practical information on the preliminary ruling procedure and will understand the important role of mediation in cross-border family law cases.

A workshop implementing the training module would:

- provide **expert training** on Regulation Brussels IIbis and its interaction with other EU instruments in the area of civil justice,
- raise **awareness of the interrelation between EU, international and domestic legislation** on cross-border parental responsibility cases, including cross-border parental child abduction,
- provide participants with a practical introduction to the **preliminary ruling procedure**,
- allow participants to explore the possibilities offered by cross-border **family mediation**.

II. User's pack: function of the different elements of the training module

The 'user's pack' consists of all the material that will be made available to the implementing workshop participants. This will comprise mostly training material (the e-learning course, related legal documents, links to online sources, trainers' contributions and case studies), as well as supporting documents, such as the workshop programme, the list of participants, workshop evaluation forms etc.

It is of course at the discretion of the workshop organisers and trainers to use the material provided as they see fit and to also include additional documents. Details of all key EU legal instruments necessary for the provision of training on parental responsibility in a cross-border context are already part of the user's pack, but as implementing workshops may be structured with a specific focus, further material could be of use. Emphasis could for example be given to national legislation or some international conventions that are particularly relevant in certain Member States. The trainers may also wish to include articles going into greater detail on cross-border family law cases relating to parental responsibility, additional EU legislation providing a more comprehensive overview of European Family Law, more EU instruments in the area of civil justice etc.

The user's pack will be provided mainly electronically on a USB stick or by making the contents available online and giving access to it to all workshop participants. Where material needs to be regularly referred to during the workshop or is necessary to follow the programme better (the texts of the legal instruments to be analysed, the case studies that need to be prepared etc.), this should also be provided in hardcopy during the event.

➤ *When presenting the material that should accompany each sub-session, a distinction between 'necessary material' to be provided in hardcopy and 'additional material' that should be included in the electronic documentation will be made.*

More concretely, the user's pack will include:

1. The E-learning course

The training module has been structured to promote 'blended learning' as the methodological approach, given that it combines the interactivity of face-to-face training during the workshops with the flexibility provided by an e-learning course. As the e-learning course has different functions and can be of use to the workshop participants at several stages of their learning process, it is important that they have access to it at different times. Before the implementation of the workshop, in order to prepare for the meeting, while it takes place, in order to make best use of the available material with the help of the trainers, after the workshop, as a point of reference for finding information on EU cross-border parental responsibility issues.

The key function of this e-learning course is to introduce end users to the main EU legal instrument in the area of cross-border parental responsibility, namely the Brussels IIbis Regulation. The main features of the preliminary ruling procedure and of cross-border family

mediation will also be covered. For this reason, access to the e-learning course should be provided to workshop participants well in advance, ensuring that they have sufficient time to visit the course and go through its main elements. Once the group of participants has been selected, they should receive information on how to access the course and be encouraged to go through the contents. 10 -15 days before the implementation of the workshop they could be reminded again. In this way they will have the possibility to refresh or acquire some basic knowledge and thus a minimum level knowledge will be ensured.

The e-learning course on parental responsibility in a cross-border context, including child abduction is divided into three thematic units: the first thematic unit is dedicated to Regulation Brussels IIbis and its provisions regulating jurisdiction in cross-border parental responsibility matters (part 1), as well as the recognition and enforcement of the resulting judgments (part 3). The special rules and procedures applicable in cases of cross-border parental child abduction will also be introduced (part 2). An introduction to the complex interrelationship between Regulation Brussels IIbis and the 1980 Hague Convention on the Civil Aspects of International Child Abduction will be provided to end users at this point of the course. The second thematic unit deals with the preliminary ruling procedure and the course concludes with a presentation of the main features of cross-border family mediation.

The e-learning course provides a comprehensive overview of the applicable legal instruments, their interpretation and related case-law and their interaction with other legal sources. Links to the legal texts that will be discussed, further sources of information on the subject matter and other websites containing online tools and databases have also been integrated. The contents of the e-learning course have been devised by Dr Thalia Kruger, Lecturer at the University of Antwerp (Part 2 of Thematic unit 1), Dr Ruth Lamont, Lecturer in Law, University of Liverpool Law School (Parts 1 and 3 of Thematic unit 1, as well as Thematic unit 2) and Dr Jamie Walker, Freelance mediator, trainer and consultant (Thematic unit 3).

Raising end users' interest and motivating them to invest time and effort into learning more on European Family Law during the workshop is the next objective of the e-learning course. For this reason, the material has been structured in a concise, user-friendly and interactive way, exploiting the specific potential of new technologies. The course includes not just texts presenting the law, but examples from real practice, tables, charts, videos and other visual elements.

Before working through the course materials, end users can answer the introductory quiz questions, available on the front page of the course. In this way they will be able to better assess their knowledge and decide if there is a need to focus on some thematic units more than others and thus allocate their time accordingly. A self assessment exercise, in the form of quiz questions, has also been included at the end of each thematic unit. By working through the questions, end users will have the opportunity to compare their knowledge before and after using the e-learning course. As they will also have access to the e-learning course after the workshop, they will be in a position to go back to the questions and evaluate their progress after completing the training.

When relevant to the workshop programme, references to material included in the e-learning course could be made. Some of the visual elements could be helpful for clarifying a

technical point; links to certain online sources could be referred to, the quiz questions could be used at the end of a sub-session for ensuring that the main information has been transmitted effectively etc.

- It will be noted while analysing the specific sub-sessions of the workshop (part V) when references to the e-learning course would be particularly opportune.

The 27 national sections will also be provided in the e-learning course. End users seeking specific information on the application of these EU legal instruments in the Member States will thus be able to refer to the e-learning course as a starting point for their research.

The e-learning course is in HTML format, in order to be usable for blind or visually impaired persons. The course, available on the European E-Justice portal, has been encapsulated in a ZIP File as a package¹. This file includes not only the academic contents, but also all the files including the metadata, workflow and structure, to allow for full transfer to other e-learning platforms.

2. Background material

The main contents of the training material will consist of legal texts: treaty articles, Regulations, directives, case law of the Court of Justice of the European Union, international treaties etc. that constitute the background to the analysis that will be carried out in the workshop.

Links to the key materials are contained in the e-learning course; it would however be useful to also provide it independently to end users. A comprehensive collection of all background documents, to which reference will also be possible after the workshop, should be included in the electronic documentation. Participants are likely to come back to these texts in order to refresh their memory, find a specific provision or judgment and seek guidance or inspiration if confronted with a cross-border parental responsibility case at a later stage. This format could also support easy further dissemination of this material, which workshop participants could forward to their colleagues, thus achieving a multiplier effect.

All European legal instruments related to the issues that will be discussed during the workshop should be included in this collection of material, as well as international legal sources, e.g. the Conventions of the Hague Conference on Private International Law and – when the workshop is organised at national level – the related national provisions. The jurisprudence of the Court of Justice of the European Union interpreting the EU legal instruments to be discussed or shedding light on further issues that arise in the context of cross-border family disputes has to be included. The parts of the national sections which list domestic case law or any further national judgments providing links to the practice in a specific Member State may as well be of relevance here.

¹After the finalisation, the training module including the e-learning course will be published and available for download on the E-Justice portal.

In addition to legal texts, links to online databases, tools and sources, such as the E-Justice portal, the Judicial Atlas, Eur-Lex, Curia and other similar websites should as well be included as background material in the electronic documentation. When relevant to the target group of the seminar, online tools and sources included in the national sections could be referred to as well.

- *Proposals on which specific material to include in this part of the user's pack are included in Part V on the analysis of each sub-session of the workshop.*

The material should be provided in the language of the workshop. When international workshops are organised, links to the EU databases (e.g. www.eur-lex.europa.eu or www.curia.europa.eu) could be included, so that end users can access EU legal texts in the language of their choice.

In addition to including them in the electronic documentation, providing the few documents that are absolutely essential during the workshop in hardcopy is recommended. The Brussels IIbis Regulation, that constitutes the focal point of the analysis, the Mediation Directive and the 1980 Hague Convention on the Civil Aspects of International Child Abduction and other key documents should be available to the participants for consultation during the different sub-sessions of the workshop and for the preparation of the exercises. Being able to locate a provision quickly, see the structure of a legal instrument, make notes etc. could help end users to better follow the training and better familiarise themselves with the legal instruments.

- *The legal texts that are considered particularly useful in each specific sub-session are indicated in Part V of this guide.*

The background material necessary for the implementation of the training module on parental responsibility in a cross-border context, including child abduction is available in Annex 2.

3. Workshop exercises material

Three workshop exercises are proposed for the workshops in the training module on "Parental responsibility in a cross-border context, including child abduction": two exercises are structured on the basis of case studies and one is based on role play. Preparatory material supporting the workshop exercises, such as the facts of the different cases to be discussed, additional legal texts that will be needed for solving the cases or the different instructions for the role play groups should be provided in hardcopy for the workshop.

- *The case studies and the solutions suggested, as well as the materials for the implementation of the role play, currently available in Annex 3 could also be included in the electronic documentation.*

4. Trainers' contributions

In addition to the e-learning course and the background documents, every time an implementing workshop is organised the trainers involved should be asked to prepare their own supporting material, in the form of PowerPoint presentations, outlines, notes or full texts of their lectures.

Trainers should be free to structure the material supporting their presentations in their own way. The main objective would be to help end users to better follow the presentation and for this reason emphasis should be given to the provision of a clear structure. The trainers' contributions could also be used as reference documents for identifying the main points of the subject matter.

Examples of what would be expected in this context and some guidance for the trainers may be provided by reference to the PowerPoint presentations and outlines that will be used in the initial implementing workshops².

Speakers' contributions should also be included in the user's pack. They should be included in the electronic documentation and possibly also in hardcopy. The decision on whether to provide the presentation during the lecture will depend on the structure of the supporting material (an outline or PowerPoint presentation would be useful during the lecture, whereas a long text less so) and should be taken by the trainer responsible for the sub-session.

➤ Providing some kind of written support of the lectures is always recommended and for this reason always included under the 'necessary documents' of each sub-session. In particular, an outline of the PowerPoint presentation reflecting the structure of the sub-session allows participants to better understand the structure and follow the lecture.

5. National sections and general bibliography

The national sections on parental responsibility in a cross-border context, including child abduction constitute a further element of the training material. They aim at complementing the EU acquis, allowing end users to make the link with national practice in the 26 Member States and identify and access domestic measures and procedures in this area of law.

There are 27 national sections, corresponding to all Member States, with the exception of Denmark and – given the significant discrepancies in their applicable law – there are two different national sections for England and Scotland. The national sections were devised on the basis of various key questions, linking EU Family Law with national practice: special rules and procedures adopted to facilitate the application of the Brussels IIbis Regulation, links to domestic provisions on jurisdiction and applicable law in cross-border parental responsibility cases, information on the international Family Law conventions to which each Member State is a party, online legal databases etc. are included in the information provided by the

²Material to be added in Annex 6, after the completion of the initial implementing workshops.

national experts entrusted with the development of this part of the training module. Further to this, references to national jurisprudence applying the Brussels IIbis Regulation are also included.

The national experts have also provided a list of the most representative articles, books and publications on EU Family Law from their Member State and in their national language. The publications they recommend are included in each national section, as well as in a general bibliography. In this way, end users wishing to find additional information or acquire more comprehensive knowledge on a specific jurisdiction will have access to some key bibliographical references.

It will be up to the workshop leader and the trainers to decide how to integrate the national sections into the workshop. Depending on the target group and scope of the course, the national context of one or more Member States could be particularly relevant, in which case entire national sections could be discussed. Alternatively, references to the national sections can be made on an ad hoc basis when the topic discussed during the workshop is addressed in the national sections (e.g. hearing of the child in judicial proceedings).

- *Recommendations as to when references to the national sections may be most pertinent will be made during the analysis of the specific sub-sessions.*

Access to the national sections and the general bibliography will be provided as part of the e-learning course. This will allow participants not only to better identify the links between EU Family Law and their domestic practice, but more importantly to refer to this material on future occasions. When confronted with a cross-border parental responsibility case, end users will be able to look into the national section of the Member State that interests them and identify basic information and the relevant legal sources.

Depending on the specific implementing workshop, the workshop leader may decide that one or more national sections should also be available as part of the electronic documentation or even made available in hardcopy during the event – in a workshop organised for a purely national audience for example, having access to the national section of the Member State in question could be helpful.

- *The general bibliography is available in Annex 4 of this guide.*
- *The 27 national sections are available in the separate, accompanying document of the training module 'National sections'.*

6. Additional documents

In addition to the training material, a number of documents relating to the organisation of the workshop must be made available to participants. These would be of immediate use during the workshop and should therefore be provided in hardcopy.

The finalised workshop programme must be provided to participants at the start of training,

allowing them to plan accordingly and better understand the training flow, a list of all workshop participants should also be provided. This would facilitate interaction between the end users attending the workshop and, by including some contact details, also allow them to keep in touch after the workshop. Finally, in order to obtain an immediate evaluation of the workshop, a questionnaire asking participants for feedback on the workshop's content, organisation and overall effectiveness will be distributed.

III. Methodology

1. Time frame

The workshop is designed to last approximately two and a half days. The exact structure and length will of course be decided by the training providers, taking into account the number of participants, their specific training needs, the priorities of the training etc.

Elements that should in all cases be taken into account when finalising the workshop programme and deciding on the allocation of time for the different sub-sessions are the need to effectively cover all main elements of the subject matter and the provision of sufficient time for participants to ask questions and interact with the trainers and with each other. The fact that long sessions have proven to be less effective in adult education should as well be borne in mind. Frequent breaks or changes of teaching style should therefore be a feature.

➤ *An indicative time allocation by sub-session will be provided in Part V of the training module's guide.*

2. Trainers' profiles

Crucial for the success of the training workshop is the selection of trainers. It has been proven that trainers with a common professional background to that of the participants tend to have a better understanding of their training needs and be more effective in addressing them. For this reason, a factor to consider when selecting the trainers of a particular workshop would be the characteristics of the target group.

That said, it is also important to identify the right trainer for each session: in sub-sessions where emphasis is given to practical issues (e.g. hearing of the child and taking of evidence); the involvement of a practitioner, lawyer or judge with their own experience in this area would be ideal. When the focus of a presentation is the transmission of information or the introduction to concepts or an area of law, an academic could also be a good option.

➤ *More concrete input on the trainer's profile seemingly best fitting to each sub-session will be provided when presenting the workshop's breakdown in Part V.*

In addition to professional qualifications, the quality of an implementing workshop would also depend on trainers' didactic competence and pedagogical skills. The trainers selected should not only be knowledgeable, but also able to effectively transmit information, assist end users in developing new skills and motivate them to actively follow the training. They would have to provide the necessary information in a clear and structured manner, highlight the links between participants' daily work and the issues being discussed, retain some flexibility in order to adapt to the specific needs and interests of the end users attending the workshop and be open and encouraging in discussing and exchanging views with them in the course of the session.

Other skills that would also be useful to consider would be trainers' linguistic skills in the case of international workshops, their IT literacy, as the use of technology would be required in at least parts of the training (IT-training sessions, use of PowerPoint or other audio-visual material, the e-learning course, etc.).

For the successful implementation of the workshop and in order to better address participants' training needs, some diversity of trainers should be sought. Variety between speakers' professional backgrounds, gender and – in the context of cross-border training – nationality would enrich the event, offering different perspectives on the issues, employing different teaching methods and ensuring a more comprehensive analysis of cross-border Family Law in Europe.

Last, although not always easy to assess, the motivation of potential trainers could be a factor to consider. For the implementation of a workshop on the basis of the training module, significant flexibility and commitment, as well as the willingness to interact with end users is expected from the trainers.

Criteria for selecting the workshop's trainers:

- Subject and objectives of each sub-session
- Didactic competence and pedagogical skills
- Linguistic and IT skills
- Professional background similar to that of the workshop's participants
- Diversity in the group of trainers
- Motivation

In order to ensure the successful implementation of a workshop on the basis of the training module, the training organiser could provide the trainers selected with a 'trainer's manual'. This manual will include a brief presentation of the training module's structure and the materials included in it; a detailed explanation of the different sub-sessions, as well as advice on which methodology to employ in each part of the course. This preliminary information can assist trainers in better preparing for the implementing workshop.

- The 'trainer's manual' is available as a separate, supporting document of this guide.

3. Teaching methods

- **Front (face-to-face) presentation**

A significant part of the training will rely on the provision of information on different legal instruments and their application, as it is not possible to assume prior knowledge on EU activity in the area of Family Law among end users. The optimal method for the provision of a large amount of information in a limited period of time is face-to-face presentation, conducted in full sessions. This method provides the trainer with the necessary time and flexibility to structure and present the content of the sub-session as he or she sees fit.

Supporting material such as outlines and PowerPoint or other presentation tools could also be employed during the lecture. This would not only help participants to follow the presentation better, but constitute as well a reference document for the future, should end users wish to review the main issues of the sub-session.

One of the objectives of the workshop is to familiarise participants with existing legislation. In this context, reference to the material included in the user's pack should be made throughout the lecture and participants should be encouraged to go through the legal texts, identify the provisions and acquire a better understanding of their structure and applicability.

Enriching the lecture with practical examples could also be a means of emphasising the link between theory and practice and better illustrating the application of the various legal instruments. Brief exercises or questions could also be formulated by the trainers, requiring participants to reflect and discuss them before presenting the answer. Trainers would thus not only create an atmosphere of dialogue within the group, but also assess whether the concepts have been properly explained.

Time for discussion or Q&A sessions should in all cases be ensured for end users wishing to ask for clarification or further information. Depending on the content and structure of each lecture, questions may be raised during the presentation or in a subsequent discussion session moderated by the trainer or the workshop leader.

Although the key role in front presentations is played by the trainer, end users should also be encouraged to actively contribute to the different sub-sessions. Participants learn not only from the provision of training per se, but also from hearing questions and problems they have not yet found themselves confronted with. For this reason it is important that all end users attending the workshop are encouraged and feel comfortable enough to share thoughts and ideas and contribute their own experiences. This element is of particular importance in international workshops, where participants have the possibility to expand their knowledge with information on the application of EU Family Law in other Member States, learning from each other.

➤ **Workshop exercises**

In addition to information on the EU legal framework, however, the training also aims at providing participants with some practical experience in the particularities of cross-border parental responsibility cases, the procedures in place and the tools available.

In order to further highlight issues requiring special attention and allow participants to develop specific skills, it is important to ensure their involvement in this part of the training. For this reason, specially designed workshop exercises will complement each thematic unit. Another advantage of this method is that the preparation of an exercise constitutes an interactive way of learning. After having listened to face-to-face presentations or read background material, participants would appreciate a change of presentation technique.

The methodology to follow in each exercise will depend on the content and training

objectives of the various thematic units: for the workshop exercises on cross-border parental responsibility and the preliminary ruling procedure in family matters, the recommended option would be the preparation of case-studies and for the exercise on family mediation, the staging of a mock mediation.

➤ *The 3 workshop exercises of the training module are available in Annex 3.1 – 3.3.*

- *Case studies prepared in working groups*

During the workshop exercises, participants will be given the opportunity to use their skills and knowledge to solve case studies on parental responsibility and child abduction as well as on preparing a reference for a preliminary ruling.

The exercise should start with a brief session in plenary, with a presentation by the trainer or the workshop leader of the organisational aspects of the exercise. A brief introduction to the case studies and the main issues end users should deal with could also be included.

Participants should subsequently be divided into smaller working groups and working space provided for each of them. Working in smaller groups has significant advantages for participants: the possibility to focus on case-studies will enable them to deepen their recently acquired knowledge by applying it to concrete cases. This approximates a real-life scenario and can constitute valuable experience for the future. The working group format would allow participants to be actively involved in the debate and improve their communication skills.

As one of the key objectives of the exercise is the exchange of opinions between end users, it is important that the workshop leader allocates participants to the working groups to support this interaction: in international implementing workshops and as long as participants' working languages allows it, end users from different Member States or from jurisdictions with different legal traditions should be brought together in the working groups. If a workshop is organised as national judicial training, judges from different courts could be asked to work together; in workshops addressed to both lawyers and judges, the working groups should not be composed of only one of the professional groups etc. Further to solving the case, this diversity would allow participants to obtain better insights on how the questions would be dealt with and how the various EU legal instruments are applied in another country, by a different legal profession, in a different city or court.

➤ *As three exercises are recommended for the workshops implementing this training module, altering the composition of the working groups in each exercise would be a way to further increase participant interactivity.*

Depending on the time available, the trainer coordinating each exercise will have to decide whether all working groups should deal with all case studies or if specific case studies should be allocated to different groups in order to ensure that end users are able to thoroughly examine all issues.

Once the working groups have been set up, they should organise themselves, develop a working method and identify which member(s) of the group will be responsible for reporting the conclusions of their discussion to the other end users. The trainer leading the exercise should be present, following to a certain extent the interaction in each group, offer advice on time management, be available to provide clarification and answer questions and prepared to assist participants if they face major difficulties or their discussion is derailed.

When the groups have completed their work, all participants should come together again to discuss their conclusions. This will allow them to compare their solutions to the features of the case studies, get further ideas from their colleagues in the other groups and broaden their understanding of the subject matter.

To achieve the objectives of this closing discussion, it is important to ensure that all groups take the floor and present the results of their work. It would be most effective to discuss one case/task at a time, invite the rapporteur of one of the groups to present their conclusions and the main elements of their discussion and then ask the end users of the other groups for additional comments, different opinions etc. In conclusion, the trainer should summarise the main points raised in the discussion and give his own feedback, so that participants can confirm whether they successfully dealt with the case or whether there could be further improvement.

- **Role play**

End users will be also given the opportunity to participate in a mock mediation which will be based on a scenario of cross-border parental child abduction.

This exercise will allow participants to explore the possibilities and advantages of family mediation by taking on active roles. Participants will be invited to take the roles of the parties (in this case, the couple), the mediators and the observers. For an efficient implementation of the role play, smaller parallel groups of six players each should be created. Information and special role instructions will be given secretly to some of the players who will prepare their roles in a separate working space.

In order to give end users the possibility to explore different phases of a mediation process, two role play sessions will be organised. The role play groups should decide how the mediation process should develop and what agreement will be reached at the end. The trainer should be prepared to stop the role play when appropriate and open the floor for questions and discussion.

At the end of this workshop exercise the trainer should identify the key moments of the role play and discuss in plenary with end users the results of the mock mediation and the lessons learned.

- **IT-supported learning**

IT-supported learning can enhance the efficiency of the training and give end users the opportunity to gain practical experience by making use of the possibilities the internet offers

on cross-border cooperation in civil matters. This way end users will have the chance of becoming familiar with the various EU websites in the area (such as the E-Justice Portal, the EJN website, Eur-lex, the Curia Website and the Judicial Atlas), where they can acquire further information and advice on how to apply the EU instruments covered by the workshop. By efficiently using these websites, participants will actively learn how to find the relevant legal texts and cases and receive assistance on the practical problems they may face when applying EU law in this area. End users must therefore have access to a computer for online research. The use of IT-learning is recommended during the workshop sub-sessions on cross-border child abduction within the EU and on cross-border communication between courts and between central authorities, in which the principle training method will be front teaching.

➤ Additional subject-specific ideas and tips on how to improve a sub-session, better support end users' active participation and stimulate their interest will be included in Part V. Further discussion points that could be relevant if there is sufficient time during the workshop will also be proposed.

IV. Organising an implementing workshop: practical aspects

1. Defining the target group – bringing together a group of participants

One of the first elements to consider when organising an implementing workshop is defining the target group. A course on European family law may be structured in many different ways, as it can have a purely national perspective, be open to end users from a specific region in Europe, e.g. from neighbouring countries, or be open to participants from the whole Union. Different options are also available relating to end users' professional backgrounds, as workshops may be organised for a specific legal profession or to promote exchanges between judges, lawyers, officials etc. Finally, a decision on the level of the workshop should also be made, as a workshop may be addressed to participants without any prior knowledge on the subject matter, to legal professionals working on family law but with no experience in cross-border cases or to more experienced judges or lawyers who seek primarily to update their knowledge and the opportunity of discussions with colleagues and sharing experience.

- *The specific focus of each implementing workshop will depend on the nature, function, mission and objectives of the training provider.*
- *Information on how to adapt the workshop programme to the target group's specific training needs has been incorporated in the analysis of the different sub-sessions in Part V of the present guide.*

Once established, information on the organisation of the event should be disseminated to the target group and this circle of persons should be invited to attend. Depending on the interest expressed, the resources available and the training priorities, the workshop organiser should decide on an indicative number of participants. For an intensive, interactive workshop a fairly small and flexible group of 20 to 30 participants is recommended. In these circumstances, participants will more readily ask questions, raise additional issues of interest and interact with each other, whereas the trainers will be able to better assess and adapt to the group's rhythm and training needs.

As a factor influencing the success of a training programme is the coherence of the group of participants, it would be useful for the workshop organisers to have some information on end users' backgrounds and training priorities. An initial assessment questionnaire covering some key issues, included in the registration form, could constitute an effective means of doing this. End users of the designated target group could be invited to provide some information on their experience with family law, with European law, with the basic instruments that will be analysed during the workshop; they could indicate why they are interested in attending this training and what they primarily expect from a workshop. By evaluating this information, the workshop organisers will be able to assess which end users are in the target group and whose training priorities best match the objectives of the programme.

This same questionnaire could also be of use if the interest expressed in attending the workshop exceeds the number of places available. In such cases, certain registrations will have to be given priority over others and the information contained in the initial assessment

questionnaire could constitute a basis for selection. Elements to consider in this context would be the creation of a representative group of end users: if the event is open to more than one nationality, region or professional background or is to be held in more than one working language, ensuring some balance between nationalities, areas, professions, participants' gender and working languages should be sought. A further criterion that should be considered in such a selection would be the possibility that a participant would further disseminate the information he or she receives. If the number of places is limited and more than one person working together are interested in attending, one could attend the course and transmit the knowledge gained to his or her colleagues. Similarly, participants prepared to further disseminate the information acquired during the training could be prioritised, as this would increase the output of the workshop and make training accessible to an even greater number of legal professionals.

➤ *A template of the initial assessment questionnaire is available in Annex 6.*

After the completion of this procedure, a list of all workshop participants should be drawn up. Information on their professional background, their national or regional origin and possibly also their contact details could be included. It should be noted that before including and making publicly available end users' e-mail or postal addresses, their approval must always be sought. The list of participants should be included in the users' pack and possibly also in the preliminary information that should be provided before the beginning of the event.

➤ *A template list of participants is available in Annex 7.*

2. Venue and necessary equipment

In order to effectively set up a workshop implementing the training module, it will be necessary to find a venue that provides the premises and equipment that are required for the success of the course.

The option to use conference and working rooms of variable sizes could be explored, in order to allow some variations in participants' working space. A larger room could be used for front presentations in plenary and smaller areas, where participants could work in groups, used for the preparation of the exercises. Further factors to be taken into account are the setting, lighting and air-conditioning of the room, as the creation of a comfortable atmosphere is crucial to allow participants to follow the workshop successfully.

➤ *When only one room is available for the workshop, the possibility to rearrange the layout in order to better accommodate the needs of each workshop sub-session could be considered.*

Further to this, it is particularly important for the effective implementation of the course that media technology is available. Trainers should be able to use PowerPoint presentations, videos and other audio-visual material, also LCD beamers, video facilities, film screens and

audio equipment could be useful in this context. In workshops implemented in more than one language, interpreting equipment will also be needed.

As in a number of sub-sessions IT-supported learning is the recommended working method, it will be necessary to find a venue that provides work stations with computer and internet access for trainers and participants.

- If there are not enough work stations available in the workshop venue, the possibility to bring together groups of participants to share those provided should be explored as an alternative.
- End users' support could also be sought: participants could be invited to bring their own computer and use it during the event.

The area for coffee and lunch breaks should also be specified, as they play a significant role in encouraging participant interaction and familiarisation with each other. End users will be able to interact with each other in a less formal way during that time, which would most probably also impact on the working atmosphere, allow a more effective exchange of experience and opinions and increase their commitment to the course.

It is also important to ensure that the selected venue is easily accessible, e.g. by public transport in the case of local workshops or close to an airport in the case of international ones. A further element to consider is whether participants travelling to the workshop can easily arrange for accommodation in the area.

3. Preliminary information for end users

After setting up the workshop and taking a decision on the composition of the group of participants, the workshop organisers should ensure that all the information necessary for the effective implementation of the workshop is made available to the end users.

As already mentioned, it is important for the success of the workshop to ensure a level playing field for end users when they arrive at the event. For this reason, some background information on the subject matter should be made available to them in advance and considered as a prerequisite at the beginning of the course. The key legal instruments (Regulation Brussels IIbis, the 1980 Hague Convention on the Civil Aspects of International Child Abduction) could be sent to all participants and access to the e-learning course provided. End users should be encouraged to take some time to look at the material, particularly to look at the e-learning course and take part in the self assessment exercises (quiz questions) contained therein. As a result, all end users will have an initial acquaintance with the main instruments of parental responsibility in a cross-border context, and will be in a position to identify which aspects they are particularly interested in and expect to see analysed during the course and may even develop concrete questions to discuss during the meeting.

Sending one or more of the workshop exercises to participants before the beginning of the workshop could also be considered. The facts of the case studies together with the questions,

as well as the case scenario could be included and participants encouraged to start thinking of possible solutions.

- *In addition to increasing end users' interest in the e-learning course and the workshop in general, this could be a means of reducing the time needed for absorbing the facts of the case studies during the workshop.*

In addition to this, it would be helpful to ensure that participants are also prepared and informed of the organisational details of the workshop. The finalised workshop programme together with some basic information on the trainers' profiles and – provided that they have agreed to this– on the other participants should be given. Practical information concerning the venue, the services available during the course and, when participants need to travel, their accommodation and travel arrangements could also be provided.

Crucial in this context is the timescale for sending preliminary information to participants. Particularly as far as the e-learning course is concerned, it would be important to ensure that end users have sufficient time to go through the material it contains. Similarly, organisational information related to the workshop would be interesting and useful quite some time in advance, so that participants can take it into account for making their arrangements.

- *It is recommended that end users be given with access to the e-learning course approximately one month before the workshop.*

4. Evaluation of an implementing workshop

In addition to the information received during the closing session and the informal interaction throughout the event from trainers and participants on what they appreciated most in the workshop and where they still see room for improvement, feedback could be sought in a more systematic way.

A two-stage evaluation system is recommended, as this would allow not only immediate feedback but also an assessment of the results and impact of the workshop in the longer term.

All participants will be asked to complete a detailed questionnaire at the end of workshop, focusing on the quality of the workshop itself. End users could be asked:

- to give a general evaluation of the seminar content and methodology;
- to comment on trainers, giving their opinion on expert knowledge, contents of lectures, lecturing style, presentation and the discussion of each lecture;
- to give their opinion on whether the subject matter was dealt with according to their expectations, whether they gained new insights into the subject matter and finally whether they received useful advice on the application and implementation of EU family law;
- to comment on the suitability, usefulness and quality of the e-learning course;

- to assess the organisation, the preliminary information and the training material provided;
- to give their opinion on activities, topics and priorities they would like to see further developed.

- *A small incentive, e.g. a souvenir, could be offered in order to increase the number of assessment forms returned.*
- *A template of the immediate evaluation form is available in Annex 8.*

Participants will also be sent an additional evaluation questionnaire at a later stage (e.g. one month after the workshop), focusing on the impact of the training. End users could be asked:

- to assess the impact of the training on their professional life and identify the elements of the workshop that were particularly useful in that regard;
- to provide information on whether they had an opportunity to apply the EU family law instruments in their work;
- to comment on the usefulness of the material provided during the training for their work;
- to indicate whether they had been able to further disseminate the information and material they received in the workshop;
- to give input on how the workshop could be further improved and which other topics should be covered by training.

- *A template of the mid-term evaluation form is available in Annex 9.*

V. Organising an implementing workshop: structure, content and methodology

1. The breakdown of the training module into thematic units and sub-sessions

For the training module on 'Parental responsibility in a cross-border context, including child abduction' and the workshops implementing it, we propose a structure on the basis of thematic units, combining practical and more theoretical sub-sessions.

Each thematic unit will focus on a specific topic of parental responsibility in a cross-border context – this division will constitute the basis for structuring any future workshop implementing the training module. For the implementation of this training module, the following four thematic units are proposed: i) Cross-border parental responsibility, ii) Procedure in family matters iii) Preliminary rulings in family matters and iv) Family mediation.

In order to ensure a thorough understanding of the contents of the training module, each thematic unit should be split into sub-sessions, dealing with specific aspects of the subject matter. Each workshop will thus consist of several sub-sessions, ensuring alternation between theoretical and practical parts; its final structure will however have to be determined taking into consideration end users' prior knowledge and training priorities. With the addition of opening and closing sub-sessions, serving both pedagogical and organisational purposes, a workshop of two and a half days could be set up as detailed below:

Indicative programme for an implementing workshop

- A. Opening sub-session

First thematic unit: Cross-border parental responsibility

- B. Parental responsibility: rules on jurisdiction, provisional measures and applicable law
- C. Cross-border child abduction within the EU
- D. Recognition and enforcement of judgments, including rules on access rights and child abduction
- E. Exercise I: Case study on parental responsibility and child abduction

Second thematic unit: Procedure in family matters

- F. Hearing of the child and taking of evidence
- G. Cross-border communication between courts and between central authorities

Third thematic unit: Preliminary ruling procedure in family matters

- H. Preliminary rulings in family proceedings
- I. Exercise II: Case study on reference for a preliminary ruling

Fourth thematic unit: Family mediation

- J. An introduction to family mediation
- K. Exercise III: Role play on family mediation in a cross-border child abduction case (Sessions I and II)
- L. Closing sub-session

➤ A template of an indicative workshop programme is available in Annex 1.

The proposed structure currently consists of twelve different sub-sessions. The organiser of an implementing workshop could, however, always rearrange the thematic units, decide to go into greater detail in some of them, merge certain sub-sessions or decide to reallocate the time between exercises and more theoretical presentations.

The different sub-sessions could all be dealt with by different trainers or fewer people who would cover more than one topic. Four to six trainers would perhaps be an ideal number, as this option offers sufficient time for end users to adjust to the trainer's teaching style and for the trainer to better perceive their training needs and address them, while ensuring some variety between the different sub-sessions. The decision on how, concretely, the different sub-sessions should be allocated, belongs to the workshop organiser, the following elements could however be taken into account:

- A first idea would be to allocate thematic units to trainers in accordance with their expertise: a trainer specialised in family mediation could, for example, take over the presentations and the exercise dealing with this topic, another could deal with the preliminary ruling procedure in family matters etc.
- Another option would be to select the trainer for each presentation on the basis of professional background. An academic could take over the somewhat more theoretical presentations (such as 'Parental responsibility: rules on jurisdiction, provisional measures and applicable law', 'Preliminary rulings in family proceedings', etc), whereas a judge could deal with topics more closely linked to judicial practice (e.g. 'Cross-border communication between courts and between central authorities' or 'Hearing of the child and taking of evidence').
- A further possibility would be to identify an expert to deal with all the exercises in order to have a coherent approach and allow participants to develop a certain working method, whereas the more theoretical part could be covered by several trainers.

➤ More concrete input on the trainer's profile seemingly best fitting to each sub-session will be provided in the presentation of the workshop's breakdown below.

2. Detailed content of each sub-session: scope and objectives, training material, methodology

A. Opening sub-session

The main objective of this first session is to welcome trainers and participants to the workshop, to set the scene by reminding them of the framework of the training and to encourage their interaction and active participation in the course.

1. Introduction of participants and trainers

The opening session should also be used to allow participants to introduce themselves, present their national and professional background and explain their expectations from the workshop. This way, end users will familiarise themselves with addressing the group, which should facilitate their active participation in the following sessions and they will get to know a little more of their colleagues' backgrounds. Making trainers and participants aware of which nationalities and professional groups are represented in the workshop can be of great relevance in the discussion and an asset in ensuring an effective exchange of information and experience. The opportunity of hearing from participants what experience they already have in this area and what they are primarily seeking from the training could help the workshop leader to better adapt the programme to participants' specific needs, by emphasising certain aspects, making adjustments to the time allocated to the different sub-sessions, etc.

➤ This may be achieved by inviting participants to put a key question they expect to see addressed during the workshop or to indicate which element made them register to the course.

2. Presentation of the workshop's programme

The workshop should begin with a presentation of its programme, scope and objectives. The four thematic units should be outlined as well as their structure into sub-sessions. The focus of each sub-session will be indicated and the contribution expected from participants in each part of the programme emphasised. It is important that end users appreciate the goal of each sub-session and the flow of the workshop programme, in order to follow the discussions better and to make sure they do not miss the opportunity to raise questions or clarify any ambiguity.

3. Presentation of the training material

The opening session would also be the occasion to present the material contained in the user's pack and its function, so that end users may use it throughout the workshop. The e-learning course could be mentioned and its role as a reference tool following the workshop illustrated. The content of the electronic documentation should be outlined (all related legal texts, links to online sources, suggested solutions to the case studies, national sections and general bibliography, etc.) and explanations provided on the documents that will be made available to the participants in hardcopy during the workshop (e.g. trainers' presentations and outlines, key legal texts, the case scenarios for the workshop exercises, documents such as the list of participants, the workshop assessment tools etc.)

4. Presentation of the workshop's organisational aspects

Further to this, all logistical aspects of the workshop should be presented. Details will be given of the locations that will be used during the workshop for the different sessions, the exercises and the breaks, the possibility to use computers, Wi-Fi, a library, a business station etc. and information on the lunches, dinners or other social activities provided. It is important to ensure that end users are reminded of and able to profit from all measures taken to optimise their participation in the workshop and of the importance of the joint activities in allowing a less formal interaction between trainers and fellow participants.

Objectives of the sub-session:

- Introduction of trainers and participants.
- Guaranteeing end users' awareness of the workshop programme, scope and objectives.
- Ensuring the proper and effective use of the training material (user's pack).
- Provision of practical information necessary for the implementation of the workshop.

Training material

Necessary material

(to be made available in hardcopy during the sub-session)

a.	The final version of the workshop programme
b.	The list of trainers and the list of participants

In this sub-session, the workshop leader should demonstrate the entire user's pack, including the e-learning course and the electronic documentation, in order to inform participants of all the different features of the user's pack.

Methodology

1. Timeframe

The time allocated to the opening session will depend on the number of participants attending the workshop. Given that ideally the workshop will be attended by 20 to 30 participants, the opening session should last approximately 45 minutes, to ensure sufficient time for all trainers and participants to present themselves and to provide all the necessary information.

2. Trainers' profiles

The opening session will be held in plenary and coordinated by the workshop leader, the person responsible for ensuring the coherent management of the workshop. There would be an added value in assigning the role of the 'workshop leader' to the person responsible for the organisation of the workshop. He or she would be the most suitable person to present the programme's structure and main objectives, having made all decisions and given priority to specific features of the training over others.

3. Teaching method

This sub-session should be held in plenary with the active cooperation of all participants and as far as possible also of the trainers.

The sub-session will consist of two parts: the first will be interactive with all participants

taking the floor and briefly introducing themselves and the second will focus on the provision of information on the workshop. The order in which the different items will be covered during the session will be decided by the workshop leader.

- End users' involvement being crucial for the successful implementation of the workshop, the opening sub-session could serve as a good opportunity for fostering discussion between trainers and participants from the beginning, making sure that everyone feels comfortable taking the floor and raising any issue.

B. Parental responsibility: rules on jurisdiction, provisional measures and applicable law

1. Setting the scene: parental responsibility and the protection of the child

As the concept of parental responsibility covers all rights and obligations towards a child and its assets, an illustration of child protection in the international setting could be the starting point of the presentation. All EU Member States have ratified the 1989 United Nations Convention on the Rights of the Child (UNCRC) which sets out general principles and puts the focus on the best interests of the child. The Council of Europe Treaties, including the 1950 European Convention on Human Rights and the 1996 European Convention on the exercise of children's rights, as well as the Conventions of the Hague Conference on Private International Law (HCCH) could be briefly presented in order to provide end users with a comprehensive view of the international status quo.

- Reference could be made to question B.3 of the national sections, providing an overview of the international and bilateral treaties to which the different Member States are contracting parties.

The European Union's (EU) obligation to protect the rights of the child is established in Article 3(3) of the Treaty on European Union (TEU). This primary obligation is underlined in the Charter of Fundamental Rights of the EU (Charter) which as of December 2009 is a legally binding instrument. In this context, it would be important to point out the Charter's historical background and role in the EU. Articles 24 and 32 of the Charter devoted to children's rights and protection should also be analysed.

- The European Commission's 'EU Agenda for the rights of the child' identifying concrete actions to be taken at EU level for ensuring the respect of the provisions of the Charter of Fundamental Rights of the EU could be referred to here. A revision of Regulation Brussels IIbis by 2013 with a view to ensuring, in the interest of the child, that decisions can be recognised and enforced as quickly as possible, is for example foreseen in this Agenda.

End users should be made aware that the EU has no competence to make substantive or procedural laws in relation to matters of parental responsibility and that this falls under the exclusive competence of the Member States. However, the EU is entitled to promote judicial

co-operation in civil matters which have a cross-border element. The evolution, importance and main objectives of judicial co-operation in the framework of cross-border family law cases could be explained here. The existing EU legal instruments, as well as recent legislative initiatives in the area of EU civil justice could be enumerated.

➤ *In question A.1 of the national sections the current source of law for parental responsibility matters in the different Member States is listed.*

2. The Brussels IIbis Regulation: basic elements

Council Regulation No 2201/2003 (Brussels IIbis) relating to jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility is the most significant EU instrument in the area of cross-border family disputes. It will thus be the focus of the first workshop day – to the extent in which it addresses matters of parental responsibility.

➤ *From the beginning of the analysis, reference should be made to the 'Practice Guide for the application of the new Brussels Regulation' drawn up by the European Commission. Participants should be encouraged to seek advice from this document.*

The history of the Regulation and its revision in 2005, introducing considerable changes in respect to parental responsibility matters, could be briefly sketched. Its territorial, temporal and material scope could then be presented. The Brussels IIbis Regulation is as of 1 March 2005 applicable in all EU Member States, with the exception of Denmark, as the United Kingdom and Ireland have both exercised their opt-in.

Ratione materiae, the Regulation covers 'all civil matters concerning the attribution, exercise, delegation, restriction or termination of parental responsibility' (Article 1(b)). It would be important to stress that the term 'parental responsibility' is a widely defined concept of EU law, covering all matters listed in Article 1, paragraph 2, which in no case is exhaustive. Issues that, although closely linked to matters of parental responsibility are excluded from the Regulation, could be mentioned – for example adoption, the name of the child or maintenance obligations.

➤ *Cases C-435/06 and C-523/07 providing that decisions on matters of parental responsibility adopted under public law rules are also covered by the term 'civil matters' could be referred to here.*

Crucial for the understanding of the Regulation and the effective implementation of the workshop is to also present and explain the definitions listed in Article 2. Terms relevant for the application of Brussels IIbis, such as 'holder of parental responsibility', 'rights of custody', and 'rights of access' are being defined autonomously and independent of the laws of the Member States. The fact that the Regulation does not establish a maximum age for minors and that it is applicable to all children independent of their family status should also be highlighted.

In order to comprehensively present the system introduced by the Regulation, it would be useful to also illustrate its relation to other international instruments as cited under Articles 59 to 63. In this context, the close interrelationship between Regulation Brussels IIbis and the Conventions of the HCCH, of which the EU became a member in 2007, should be stressed. The background and objectives of the Hague Convention of 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) and its relation to the Regulation (Article 61) should be explained since a clear parallelism between these two instruments is identifiable.

➤ *As many of the provisions of Regulation Brussels II bis mirror the provisions of the 1996 Hague Convention, reference could be made during the analysis to the relevant articles of the latter.*

3. Jurisdiction

The Regulation provides in Articles 8 to 14 a complete system of grounds of jurisdiction in cross-border family cases involving parental responsibility. The presentation should point out that the Regulation's system determines only international jurisdiction and that national procedural law will be applied in order to define the competent court in the Member State having international jurisdiction.

➤ *For workshops addressed to members of the judiciary, emphasis should be given to the role of the national judge in ex officio controlling whether a seised court has international jurisdiction (Article 17).*

➤ *Reference could be made here again to question A.1 of the national sections which provide the domestic procedural laws for disputes involving parental responsibility.*

Particular emphasis should be given to the main connecting factor established in the Regulation. According to Article 8, the court of the Member State of the 'habitual residence' of the child shall have jurisdiction. The term 'habitual residence' has been interpreted autonomously by the Court of Justice of the European Union (CJEU) to be the place 'where the centre of the child's interests is'. Following the Court's findings, the circumstances that should be considered by the national court when establishing the child's habitual residence in each individual case could be discussed. The difficulties that judges still face when determining the habitual residence of the child could also be included in the discussion.

➤ *Court Judgments in cases C-523/07 and C-497/10 PPU dealing with the interpretation of the term 'habitual residence' in parental responsibility matters should be presented here.*

The exceptions to this general ground for jurisdiction as laid down in Articles 9, 12 and 13 should be addressed next: the conditions for a continuing jurisdiction of the child's former habitual residence, for the prorogation of jurisdiction and for having jurisdiction based on the presence of the child could be outlined. End users should be made aware that since these

provisions constitute only exceptions to Article 8, they should be interpreted strictly. Finally, Article 14 providing the solution of applying national rules on private international law where no court has jurisdiction pursuant to Articles 8 to 13 could be mentioned.

➤ Question A.3 of the national sections which defines the competent court for hearing a cross-border parental responsibility case if no other court has jurisdiction according to Regulation Brussels IIbis could be referred to here.

Following this, the option of the court first seised of transferring the case to a court of another Member State better placed to hear the case could be indicated. The *forum non conveniens* mechanism introduced by Article 15 is available to the national judge only if the child has a particular connection with the other Member State and only if this transfer is in the best interests of the child. The cumulative requirements of Article 15 and the procedure that would be applied for transfer will be discussed.

➤ It should be noted that the possibility, under exceptional circumstances, to transfer the case to a court better placed is also foreseen in Article 8 of the 1996 Hague Convention.
➤ Reference could be made to the European Judicial Atlas website, where judges can find information on the territorially competent courts in the different Member States, as well as the contact details of the competent authorities.

Another usable principle for managing disputes over jurisdiction is foreseen in Article 19(2) of the Regulation and could be presented next. The 'lis pendens' principle regulates what happens if the same proceedings are brought in two Member States. Short practical examples could explain what the exact conditions and consequences of having a situation of 'lis pendens' are.

➤ Court's judgments in cases C-296/10 and C-195/08 PPU dealing with the 'lis pendens' principle in cross-border parental responsibility cases could be referred to here.

4. Provisional measures

Having presented the rules on jurisdiction, it would be interesting to complete the picture by addressing the 'emergency jurisdiction' of Article 20. In urgent cases, this new provision enables the court of a Member State to take provisional, including protective, measures with regard to persons or assets situated in that state even if this court has no jurisdiction to decide on the substance of the matter. The reasoning behind this exceptional provision and its importance for sensitive family proceedings involving parental responsibility could be illustrated by providing practical examples.

➤ An example of an urgent case suitable for the adoption of provisional measures is provided in the Practice Guide and could be presented here.

It should be made clear to participants that Article 20 is not a rule which confers jurisdiction

and that the provisional measures cease to have effect when the competent court takes its own measures. As an exception it has to be interpreted strictly and all the conditions that have to be met be fulfilled in each individual case.

- [Cases C-523/07 and C-403/09 PPU dealing with the interpretation of Article 20 of Regulation Brussels IIbis could be referred to here.](#)
- [In this context, the provisional measures under Articles 11 and 12 of the 1996 Hague Convention could also be presented.](#)

The Regulation does not refer to any concrete measures and therefore recourse to national provisions is necessary. The measures to be adopted are based on national laws which also prescribe the procedural rules for their implementation. The rather large differences between the legal systems of the Member States in this matter could be discussed.

- [Reference could be made to question A.4 of the national sections which provides the domestic legislation which lays down the provisional, including protective, measures to be adopted in urgent cases by the national authorities.](#)
- [In the framework of international workshops, participants could provide some input on the applicable provisional measures in their countries.](#)

5. Applicable law

To complete the picture, end users should be provided with information on how to identify the applicable law in parental responsibility matters. It should be made clear that Regulation Brussels IIbis does not contain any provisions on the applicable law and that recourse to international conventions and national law will be necessary.

In this context, it would be particularly useful to analyse the rules concerning the applicable law in cases of parental responsibility entailed in the 1996 Hague Convention which has been signed by all EU Member States. It should be noted that the Convention is currently in force for 24 Member States, and has not yet been ratified by Belgium, Italy and Sweden.

- [The up-to-date status table of the 1996 Hague Convention is available at the HCCH website.](#)

In contrast to the Brussels IIbis Regulation, the 1996 Hague Convention contains provisions on the conflict of laws. This difference and the relation between these two instruments should be highlighted (Article 61 of Regulation Brussels IIbis, Article 52 of the 1996 Hague Convention).

The next point of the analysis would then be Chapter III of the 1996 Hague Convention (Articles 15 to 22). The following distinction of rules on the applicable law should be made here: first, the rules on identifying the law to be applied when authorities exercise their jurisdiction by taking measures directed to the protection of the person or property of a child will be presented. Article 15 of the Convention stating that the authorities should apply their

own, internal law and the advantages of this rule should be mentioned. Secondly, the rules on determining the law applicable to parental responsibility where there has been no intervention by a judicial or administrative authority will be demonstrated. The main connecting factor for the attribution, extinction and exercise of parental responsibility is pursuant to Articles 16 and 18 the habitual residence of the child. Some reference could also be made to the general provisions on the applicable law as laid down in Articles 20 to 22 of the 1996 Hague Convention.

➤ The revised draft practical handbook on the operation of the 1996 Hague Convention including practical examples and diagrams could be a useful tool here.

Objectives of the sub-session:

- Provide an overview of child protection in the international setting.
- Familiarise participants with the Charter of Fundamental Rights of the EU.
- Illustrate EU activity in the area of judicial co-operation in civil matters.
- Allow participants to familiarise themselves with the structure and main elements of the Brussels IIbis Regulation.
- Ensure that participants learn how to identify the court that has international jurisdiction in a cross-border parental responsibility case.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Articles 24, 32 of the Charter of Fundamental Rights of the European Union
b.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Regulation Brussels II bis)
c.	The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
d.	Practice Guide for the application of the new Brussels II Regulation (up-dated version 1 June 2005)
d.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Article 3 of the Treaty on the European Union
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b.	Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and the enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses
c.	United Nations Convention on the Rights of the Child of 20 November 1989
d.	Council of Europe, European Convention on Human Rights of 4 November 1950
e.	Council of Europe, European Convention on contact concerning children of 15 May 2003
f.	Council of Europe, European Convention on the Exercise of Children's Rights of 25 January 1996
g.	Council of Europe, European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children of 1 September 1983
h.	The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
i.	The Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
j.	Hague Conference on Private International Law, Revised draft Practical Handbook on the operation of the 1996 Hague Protection of Children Convention (Prel. Doc. No 4 of May 2011)
k.	European Commission's Communication "An EU Agenda for the Rights of the Child" of 15 February 2011 (COM(2011) 60 final)
l.	Judgment of the Court of 27 November 2007, Case C-435/06 , reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland), in the proceedings C
m.	Judgment of the Court of 11 July 2008, Case C-195/08 PPU , reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania), proceedings brought by Inga Rinau
n.	Judgment of the Court of 2 April 2009, Case C-523/07 , reference for a preliminary ruling under Articles 68 EC and 234 EC from the Korkein hallinto-oikeus (Finland), in the proceedings brought by A
o.	Judgment of the Court of 23 December 2009, Case C-403/09 PPU , reference for a preliminary ruling from the Višje Sodišče v Mariboru (Slovenia), Jasna Detiček v Maurizio Sgueglia
p.	Judgment of the Court of 9 November 2010, Case C-296/10 , Bianca Purrucker v Guillermo Vallés Pérez
q.	Judgment of the Court of 22 December 2010, Case C-497/10 PPU , Barbara Mercredi v Richard Chaffe
r.	European Judicial Atlas in civil and commercial matters – Matrimonial

	matters and matters of parental responsibility
s.	European Judicial Network in civil and commercial matters – Parental responsibility
t.	E-Justice portal – Parental responsibility
u.	E-learning course: thematic Unit 1, Part 1, Parental responsibility: Jurisdiction under the Brussels IIbis Regulation
v.	National sections: Questions A.1, A.3, A.4, B.3, national jurisprudence and national bibliography on Regulation Brussels IIbis in matters of parental responsibility

Methodology

1. Timeframe

This introductory sub-session should last approximately 75 minutes and include sufficient time for discussion. It is important that open questions and problematic issues can be addressed and clarified at the very beginning of the workshop.

2. Trainers' profiles

The trainer for this session should have a sound knowledge of the developments at EU level in the area of family law and of the Brussels IIbis Regulation and have strong didactic competences. A professor of family law could therefore be a good option.

3. Teaching method

The focus of this part of the workshop will lie on the analysis of the Brussels IIbis Regulation. Organising it as a frontal presentation in plenary is therefore recommended.

The trainer should encourage participants to follow the presentation by closely reading and working on the text of the Regulation. Providing short practical examples could facilitate understanding of the different grounds for jurisdiction to be analysed in this sub-session.

- From the beginning of the workshop the trainer should stress the importance and practical relevance of frequently referring to judgments of the CJEU. It should be highlighted that the application of Regulation Brussels IIbis has given rise to extensive CJEU case law with which end users should become familiar.
- Links to the case law of other International Courts such as the European Court of Human Rights may also be of interest.

The introductory E-learning course of the training module on 'Parental responsibility in a cross-border context, including child abduction' could be employed by the trainers as a source of inspiration or as a guide for preparing, structuring or implementing the different sub-

sessions. The materials of the first part of the E-learning course dealing with jurisdiction under the Brussels IIbis Regulation, devised by Dr Ruth Lamont, Lecturer in Law, University of Liverpool, could here be a supporting tool. The practical examples and diagrams provided illustrating the different rules could be referred to when analysing the Regulation.

C. Cross-border child abduction within the EU

In recent years there has been a dramatic increase in the number of cases of cross-border parental child abduction within the EU by parents who have custody of the children concerned. Such cases not only constitute a violation of the principle of parental responsibility but also a violation of the fundamental right of the child to have regular contact with both parents (Article 24(3) of the Charter). This sub-session will familiarise end users with the rules and procedures in place seeking to effectively solve the problem of parental child abduction within the EU.

1. Legal instruments

In response to the growing number of parental child abductions, various international and bi-national instruments have been adopted. After enumerating the relevant international instruments, the focus of the presentation should lie on the complex interaction of Regulation Brussels IIbis and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Hague Convention), to which all EU Member States are party.

➤ Reference could be made to question B.3 in the nationals sections giving an overview of the international or bilateral treaties to which the different Member States are contracting parties.

It would be important to briefly illustrate the history, structure and objectives of the 1980 Hague Convention as this Convention established the system that is globally applicable in international parental child abduction cases. For cases involving only EU Member States, the Brussels IIbis Regulation has introduced a new system to complement the system of the 1980 Hague Convention. Recitals 17 to 20 of the Regulation and Article 60 could be employed to explain and discuss the main principles and objectives of the Regulation's new rules, as well as their relation to the already existing rules of the Hague Convention.

➤ A useful tool for explaining the legal framework on child abduction is the specialised child abduction section of the HCCH website. It includes inter alia explanatory documents, good practice guides, case law databases (INCADAT) and statistics (INCASTAT) and would thus be interesting here.

➤ Not only legal resources but all sorts of services available for the fight against child abduction could be mentioned. 116000, the European hotline number reserved by the European Commission for missing children, could for example be demonstrated.

2. Jurisdiction

Before analysing the jurisdictional rules, it would be important to recall that parental child abduction consists of the wrongful removal or retention of the child in breach of the rights of custody of the other parent. The problems resulting from the existence of different definitions of custody and access rights in Regulation Brussels IIbis (Article 2(9) and (11)), the 1980 Hague Convention (Articles 3 and 5) and the national laws of the Member States could be addressed here.

➤ It should be noted that if the removal of the child is not wrongful, Article 9 of Regulation Brussels IIbis may apply.

In the case of a child being abducted from the Member State where it was habitually resident ('the Member State of origin') to another ('the requested Member State'), Article 10 of Regulation Brussels IIbis ensures that despite the abduction the Member State of origin retains jurisdiction to decide on the question of custody. It would be useful to point out the reasoning behind this rule: deterring parental child abduction and impeding forum shopping. The possibility to attribute jurisdiction to the requested Member State under the strict conditions of Article 10 should also be explained. Finally, it would be important to note that the Regulation establishes only international jurisdiction and that recourse to national law is necessary for identifying the competent court.

To complete the picture a brief illustration of the decisions made by the Member States for improving the quality and efficiency of their court system when handling complex child abduction cases, e.g. concentrated jurisdiction in a limited number of courts or specialised judges, could be provided.

➤ Reference could be made again to question A.1 of the national sections which provide the applicable domestic procedural laws in matters involving parental responsibility.

➤ In international workshops addressed to members of the judiciary, participants could be invited to provide input on the organisation of the courts when dealing with cross-border child abduction cases in their countries.

3. Prompt return of the child

The child's best interests are served when the wrongfully removed or retained children promptly return to the Member State of their habitual residence. The rules and procedure to be applied in case of a return request will be the next point of the analysis.

Articles 12 and 13 of the 1980 Hague Convention and Article 11 of Regulation Brussels IIbis will be presented and the interrelation between these two legal instruments clearly demonstrated. It should be noted that the judgment on the return request will be delivered on the basis of the rules of the 1980 Hague Convention as complemented by Article 11 of the Regulation Brussels IIbis.

- The Model Application Form for the return of wrongfully removed or retained children under the 1980 Hague Convention available on the HCCH website could be presented here.

Although the main principle is that the court should order the immediate return of the child, Article 13 of the 1980 Hague Convention establishes some exceptions allowing for a non-return order to be issued. After presenting these exceptions, particular emphasis should be given to the rules introduced by Regulation Brussels IIbis which reinforce the main principle of ordering the return of the child. Article 11(4) of the Regulation restricting the 'grave risk' exception foreseen in Article 13(b) of the 1980 Hague Convention should be presented and the conditions to be met for its application clarified. Other provisions that could be referred to are Articles 11(2) and 11(5) of the Regulation which underline the importance of giving the child and the requesting party the opportunity to be heard during the proceedings.

Finally, the need for the court to apply the most expeditious procedures available under national law and to issue a decision within a six-week deadline pursuant to Article 11(3) of the Regulation should be emphasised. It would be important to point out that national laws which allow for appeal of a return order without any time limit imposed for the appeal procedure can undermine the objectives of this provision. A discussion with the participants on ways to ensure the issuing of an enforceable return order within a six weeks period could be of interest here.

- Reference could be made to question A.2 of the national sections, providing the applicable procedures in the different Member States. The same question indicates which Member States foresee the possibility of an appeal against a return order.

4. Non-return of the child

The next point to address would be the new procedure foreseen in Article 11(6) and (7) of the Regulation in the exceptional case where a court decides that a child shall not return pursuant to Article 13 of the 1980 Hague Convention. It should be stressed that this new mechanism allows the courts of the Member State of the child's habitual residence prior to the abduction the final say.

The procedure to be applied after the issuing of a non-return order should be sketched and the safeguards for ensuring swift and effective handling of the case highlighted. It would be important to clarify that the parties will decide whether the court of origin will examine the question of custody of the child or not, by making submissions pursuant to Article 11(7) of the Regulation. In this context, the time-limits set for transmitting the decision to the competent court, informing the parties and receiving their submissions could be mentioned.

In workshops addressed to members of the judiciary, it would be interesting to involve participants in a discussion on matters that could facilitate and enhance the cooperation between the courts of the Member States involved. The possibility of direct communication between judges, the involvement of the central authorities and more practical aspects, such as the exact documents that should be transmitted to the court of origin could be discussed

here.

- The European Judicial Atlas could be a useful tool for identifying the competent court in the Member State of origin and could be referred to here.
- Please note that the importance of direct judicial communication and the role of the central authorities of the Member States in family law cases involving parental responsibility will be the subject matter of sub-session G.

Objectives of the sub-session:

- Illustrate the interrelation between the Brussels IIbis Regulation and the 1980 Hague Convention in cross-border parental child abduction cases.
- Provide information on how to identify the court that has international jurisdiction in a cross-border parental child abduction case.
- Allow participants to familiarise themselves with the rules and procedure applicable in a return proceeding.
- Ensure that participants learn what happens if the court decides that the abducted child should not return to the Member State of origin.
- Familiarise participants with the online tools and databases available.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000
b.	The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
c.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Article 24 of the Charter of Fundamental Rights of the European Union
b.	Practice Guide for the application of the new Brussels II Regulation (updated version 1 June 2005)

c.	Model Application Form for the return of wrongfully removed or retained children under the 1980 Hague Convention
d.	Hague Conference on Private International Law, General Principles and Guide to Good Practice, Transfrontier Contact Concerning Children
e.	Hague Conference on Private International Law – Child Abduction Section
f.	Hague Conference on Private International Law - INCADAT
g.	Hague Conference on Private International Law - INCASTAT
h.	European Judicial Atlas in civil and commercial matters – Matrimonial matters and matters of parental responsibility
i.	European Judicial Network in civil and commercial matters – Parental responsibility
j.	E-Justice portal – Parental responsibility
k.	116000 – European hotline number for missing children
l.	E-learning course: Thematic Unit I, Part 2 dealing with cross-border child abduction within the EU
m.	National sections: Questions A.1, A.2 and B.3, national jurisprudence and national bibliography on Regulation Brussels II bis dealing with cross-border child abduction

Methodology

1. Time frame

The duration of this sub-session could be approximately 75 minutes and should include some time for discussion with participants. In principle, 40 to 45 minutes could be dedicated to providing the theoretical background on cross-border parental child abduction, approximately 15 minutes to presenting the different websites and online databases and a further 15 to 20 minutes to the plenary discussion.

2. Trainer's profile

When dealing with parental child abduction cases within the EU, the complex interrelationship between the Brussels IIbis Regulation and the 1980 Hague Convention must be introduced and explained in a clear and accessible way. The right trainer to be approached could therefore be a professor of family law with strong didactic competences. Alternatively, a representative of a national organisation dealing with cross-border child abduction cases and thus having practical experience with the application of the relevant legal instruments, could be a good option.

It would be an advantage to select a trainer with good IT-skills and experience with the tools and databases to be presented.

3. Teaching method

A large amount of information has to be transmitted during this sub-session and some rather complicated concepts will need to be explained. For this reason it is recommended to organise this part of the workshop as face-to-face training.

The frontal presentation of the theoretical background could be combined with IT-supported learning. The trainer could present the main features of relevant online tools and databases, such as the HCCH website and the 116000 EU hotline number for missing children. In this way end users will familiarise themselves with the available online instruments and will be able to employ them when dealing with cross-border child abduction cases in the future.

References to the Practice Guide for the application of the new Brussels II Regulation could be particularly useful in the context of this presentation. The possibility to use the flow charts and diagrams of the Guide related to cross-border parental child abduction during the actual training could be considered by the trainer selected. Finally, the related section of the E-learning course, devised by Dr Thalia Kruger, Lecturer at the University of Antwerp, consolidates the legal framework in a very accessible way and could also be employed for efficiently preparing this sub-session.

D. Recognition and enforcement of judgments, including rules on access rights and child abduction

Ensuring the free circulation of judgments on parental responsibility within the EU is crucial for the effective protection of the rights of family members and especially the rights of the children involved. This sub-session will introduce the rules on recognition and enforcement of judgments relating to parental responsibility as laid down in Chapter III of the Brussels IIbis Regulation.

1. Recognition and declaration of enforceability of a judgment on parental responsibility

The principle of mutual recognition of judgments is seen as the cornerstone for the creation of a genuine European judicial area and Regulation Brussels IIbis is based on this principle (Recitals 2 and 21). Article 21(1) stating that a judgment shall be recognised in any other Member State without any special procedure being required should be the starting point of the analysis. End users should be made aware that any interested party can apply for the recognition or non-recognition of a judgment and should receive information on the necessary documents to be produced (Articles 37 to 39) and the procedure to be applied for the issuing of the certificate.

➤ The standard form in Annex II for the certificate to be issued by the court of origin concerning judgments on parental responsibility could be made available.

The limited grounds for non-recognition of a judgment as listed in Article 23 of the Regulation should be explained next. The provisions of Articles 24 to 26 reinforcing the principle of mutual recognition could also be presented in this context.

The judgments on parental responsibility do not take effect automatically in another Member State and therefore the ‘exequatur procedure’ as laid down in Articles 28 to 36 will have to be analysed. The main features of this procedure and the fact that the competent court can only refuse to declare a judgment enforceable if one of the limited grounds of non-recognition is applicable should be stressed here. The procedural safeguards for ensuring the swift declaration of enforceability, such as the prohibition of submissions by the parties or of reviewing the substance of the judgment could be mentioned. It would be important to note that an appeal against the decision on the application for a declaration of enforceability is possible (Article 33).

To complete the picture, it would be useful to add that authentic instruments and agreements between parties that are enforceable in one Member State should be treated as equivalent to judgments for the purpose of application of the rules on recognition and enforcement (Recital 22). This could be of practical relevance where a mediation agreement has been reached by the parties on cross-border parental responsibility matters.

➤ Pursuant to Article 68 of the Regulation, the Member States have designated the courts competent for deciding on recognition and enforceability of judgments on parental responsibility. End users could be provided with the updated lists.

2. Special rules on access rights

An exception to the rules on recognition and enforcement of judgments on parental responsibility and the main novelty of Regulation Brussels IIbis will have to be presented next. For decisions granting access rights a new, fast track procedure has been introduced by Articles 40 and 41. The aim of this new system, namely to ensure the child’s right to maintain contact with both parents after a divorce or separation even if they live in different Member States, could be discussed.

In this context, a brief illustration of what exactly is meant by the term ‘access rights’ and who the beneficiaries are could be useful. Article 41 states that a judgment on access rights issued in one Member State is directly recognised and enforceable in another Member State. The consequences of the abolition of the ‘exequatur procedure’ and the exclusion of opposing the recognition of a judgment could be highlighted.

➤ The fact that pursuant to Article 40(2) holders of parental responsibility can decide to apply the regular rules on recognition and enforcement instead of the fast track procedure could be mentioned.

The only condition for using the fast track procedure is the issuing by the court of origin of a certificate. The presentation should point out the procedural safeguards that have to be respected by the court before this certificate (Article 41(2)) is issued. An appeal against the issuing of a certificate is not possible (Article 43).

➤ The standard form in Annex III to be used for issuing the certificate concerning rights of access could be presented here.

In workshops addressed to members of the judiciary, it would be useful to stress that when judges are handling a case with a cross-border situation, the certificate should be issued ‘ex officio’. The possibility to also issue the certificate as good practice in cases with only potentially cross-border character could be discussed with participants.

Finally, the option for the court of the Member State of enforcement to exceptionally make practical arrangements for the exercise of access rights could be presented (Article 48). It is important to note here that this provision does not confer jurisdiction as to the substance of the matter and only ensures the enforcement of the judgment should insufficient information be provided by the certificate.

3. Special rules on the return of the child following abduction

Following the system introduced for decisions granting access rights, end users should be made aware that the fast track procedure will also apply in sensitive cross-border child abduction cases. Regulation Brussels IIbis rules that the judgment of the court of origin entailing the return of the child following a non-return decision pursuant to Article 11(8) shall be directly recognised and enforceable in the requested Member State (Article 40). It should be pointed out that the only condition for the abolition of the ‘exequatur’ is the issuing of a certificate by the court of origin. The procedural requirements for granting the certificate as laid down in Article 42(2) should therefore be analysed next.

➤ *The standard form in Annex VI to be used for issuing the certificate concerning return of the child(ren) could be presented here.*

End users should be made aware that an appeal against the issuing of a certificate is not possible (Article 43). It would be interesting to stress that this additional safeguard may not always serve the best interests of the child, for example when the judgment certified under Article 42 of the Regulation was vitiated by a serious breach of fundamental rights.

➤ *In this context, the view taken by the Court in case C-491/10 PPU could be presented.*
➤ *The judgment of the CJEU in case C-195/08 PPU dealing with several aspects of the return order of the court of origin could also be referred to here.*

4. Enforcement procedure

The last aspect to be addressed is the enforcement of a judgment on parental responsibility in another Member State. Although the enforcement procedure is governed by national law, it could be useful to discuss how the objective of Regulation Brussels IIbis, namely to ensure the swift and adequate enforcement of decisions falling under its scope of application, could be better achieved. Especially in sensitive family law cases concerning access rights and the return of the child following abduction, the Member States will have to employ the most efficient and expeditious measures available. The discussion could include references to the case law of the European Court of Human Rights in cases relating to the return of the child following cross-border parental child abduction where a violation of Article 8 of the European Convention on Human Rights has been declared.

- Question A.5 of the national sections describing the system of enforcement, in particular with regard to access rights and the return of the child established in the different Member States could be referred to here.
- Reference could be made to the judgments of the European Court of Human Rights in the Case of Maire v. Portugal of 26 June 2003 and the Case of Ignaccolo-Zenidi v. Romania of 25 January 2000.

Objectives of the sub-session:

- Ensure that participants know how a judgment relating to cross-border parental responsibility can be recognised and enforced in a different Member State.
- Familiarise participants with the special rules applicable for the recognition and enforcement of a judgment on access rights and on the return of the child following abduction.
- Engage participants in a discussion on the enforcement procedure under national law in the different EU Member States.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000 (Regulation Brussels II bis)
b.	The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
c.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Article 8 of the European Convention on Human Rights of 4 November 1950
b.	Practice Guide for the application of the new Brussels II Regulation (updated version 1 June 2005)
c.	Certificates referred to in Articles 39, 41(1) 42(1) of Regulation Brussels IIbis, standard forms in Annexes II, III and IV

d.	List of competent courts in matters of parental responsibility pursuant to Article 68 of the Regulation published in OJ C040 of 17 February 2005
e.	Judgment of the Court of 11 July 2008, Case C-195/08 PPU , reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania), proceedings brought by Inga Rinau
f.	Judgment of the Court of 22 December 2010, Case C-491/10 PPU , reference for a preliminary ruling from the Oberlandesgericht Celle (Germany), in the proceedings Joseba Andoni Aguirre Zarraga v Simone Pelz
g.	Judgment of the ECHR of 26 June 2003, in the Case Maire v. Portugal , Application no. 48206/99
h.	Judgment of the ECHR of 25 January 2000, in the Case Ignaccolo-Zenide v. Romania , Application no. 31679/96
i.	European Judicial Atlas in civil and commercial matters – Matrimonial matters and matters of parental responsibility
j.	European Judicial Network in civil and commercial matters – Parental responsibility
k.	E-Justice portal – Parental responsibility
l.	Hague Conference on Private International Law – Child Abduction Section
m.	Hague Conference on Private International Law - INCADAT
n.	E-learning course: Thematic Unit I, Part 3 dealing with recognition and enforcement of judgments under Regulation Brussels IIbis
o.	National sections: Question A.5 and the relevant jurisprudence and national bibliography on Regulation Brussels IIbis in matters of parental responsibility

Methodology

1. Time frame

The time allocated to this sub-session could be approximately 60 minutes. In principle, 20 minutes could be dedicated to questions and discussion with participants.

2. Trainer's profile

Ideally, the trainer for this sub-session should have some experience with the application of the rules on jurisdiction and enforcement of judgments in matters of parental responsibility. Depending on the target group of the workshop, a judge working in a national court designated by the Member State for dealing with applications under Regulation Brussels IIbis or a lawyer with practical experience with cross-border family law cases could be a good option.

3. Teaching method

This sub-session should be held as a frontal presentation in plenary, whereas the last part on the enforcement procedure could be based on a more interactive discussion with participants. If a workshop is for an international audience, it may be necessary to discuss more the enforcement procedures applied in the different Member States and exchange good and bad practices, whereas in a purely domestic context the discussion could focus on analysis of domestic enforcement procedures.

The trainer should keep in mind that understanding the rules on jurisdiction and enforcement and especially the fast track procedure newly introduced by the Regulation could be significantly facilitated by providing practical examples or brief exercises. Participants could be given the opportunity to share their opinions, before the trainer provides the solution and continues with the presentation.

E. Exercise I – Case study on parental responsibility and child abduction

At the end of the first workshop day participants should get the opportunity to employ in practice what they have learned so far on cross-border family disputes involving parental responsibility.

The first workshop exercise, devised by Dr Thalia Kruger, Lecturer at the University of Antwerp, will allow participants to consolidate their knowledge by applying it to a concrete case scenario. The case study is based on a bi-national unmarried couple with two children who finds themselves, after the end of their relationship, confronted with regulating access rights and with a case of international child abduction. Participants will be invited to deal with the following problems:

- International jurisdiction in cross-border family proceedings
- Recognition and enforcement of a judgment in another Member State
- Cross-border parental child abduction and request for the return of the children

Participants will thus have the opportunity to practise on how to apply both the Brussels IIbis Regulation and the 1980 Hague Convention in a concrete case and to raise any unclear or further issues they want to discuss. This sub-session is equally important for the trainers so that they can identify any concepts or rules that have not been sufficiently explained and need to be clarified again in a more obvious way.

➤ *The case scenario and suggested solutions are available in Annex 3.1. of the training module's guide.*

Objectives of the sub-session:

- Consolidate the knowledge acquired during the previous three sub-sessions.

- Allow participants to apply Regulation Brussels IIbis and the 1980 Hague Convention in a cross-border family dispute.
- Identify any unclear points and address end users' remaining questions.
- Improve end users' communication skills.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000 (Regulation Brussels II bis)
b.	The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
c.	Workshop exercise I: Case study on parental responsibility and child abduction

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Practice Guide for the application of the new Brussels II Regulation (updated version 1 June 2005)
b.	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 (The Mediation Directive)
c.	Judgment of the Court of 2 April 2009, Case C-523/07 , reference for a preliminary ruling under Articles 68 EC and 234 EC from the Korkein hallinto-oikeus (Finland), in the proceedings brought by A
d.	Judgment of the Court of 22 December 2010, Case C-497/10 PPU , Barbara Mercredi v Richard Chaffe
e.	Certificate referred to in Article 42 of Regulation Brussels IIbis concerning return of the child(ren)
f.	Hague Conference on Private International Law – Child Abduction Section
g.	European Judicial Atlas in civil and commercial matters – Matrimonial matters and matters of parental responsibility
h.	National sections: Questions A.1, A.5, A.7, B.3 of the Belgian, French and German national sections could also be made available

Methodology

1. Time frame

For the first workshop exercise, approximately two hours should be allocated. The presentation of the facts of the case study could take up to 15 minutes. The different working groups would then have one hour to go through the questions of the exercise, before presenting their conclusions in plenary. The de-briefing discussion could then last another 45 minutes and allow participants to raise any remaining questions on the subject matter.

2. Trainer's profile

The trainer dealing with this sub-session should have a sound knowledge of the legal instruments applicable and ideally some practical experience with their implementation. A judicial trainer, a judge or a lawyer with experience in international family law cases could be approached.

The communication and interpersonal skills of the expert should also be considered, as motivating participants to actively participate in the exercise, assisting them during the solving of the case study and coordinating the de-briefing discussion will be the responsibility of the trainer selected.

3. Teaching method

After presenting the facts of the case study in plenary, participants should be divided into working groups of six to eight persons. Working in smaller groups will ensure that all participants will get the opportunity to express their opinion and effectively contribute to the solving of the case.

➤ In international workshops, the trainer should try to create groups with participants from different Member States and (if appropriate) with different professional backgrounds.

The different working groups should start discussing on the case after moving to the special working space allocated to them. A rapporteur could be appointed by each group with the task of summarising and presenting the team's conclusions to the plenary. The groups should work closely with the texts of the relevant legal instruments and seek advice from the trainer each time clarification is needed.

➤ The questions relevant to the case in the Belgian, French and German national sections could also be useful in this context.

Although each working group should go through all the questions raised in the exercise, the each group rapporteur could be asked to present in detail the conclusions to only one or some of the questions dealt with. The other rapporteurs will then have the chance to add any different conclusions drawn by their groups. At the end, the trainer should also provide some feedback on how the problems could be treated by taking into consideration the solutions suggested by Dr Thalia Kruger.

➤ If during the discussion the trainer realises that some of the issues that had been covered earlier are not clear enough, some time at the end of the first workshop day should be taken to explain them again in a more understandable manner.

F. Hearing of the child and taking of evidence

After analysing the rules on jurisdiction, recognition and enforcement of judgments in matters of parental responsibility, including the special provisions for parental child abduction, the workshop will focus on certain aspects of the procedure with a great practical importance. The starting point should be discussion on the child's participation in cross-border family proceedings and the challenges to be solved when it comes to the hearing of the child.

1. Setting the scene: the right of the child to be heard

According to Article 12 of the United Nations Convention on the Rights of the Child, the child shall have the 'right to express views freely in matters affecting it' and 'shall be provided the opportunity to be heard in judicial and administrative proceedings'. At EU level, Article 24(1) of the Charter also underlines the right of the child to be heard. It would be important to point out that this is a well-established right in the international, European as well as national setting.

➤ Reference could be made to question B.3 in the national sections, indicating to which international treaties in the area of family law the different Member States are party.

End users should be made aware that hearing the opinion of the child in civil proceedings relating, for example to custody rights, access rights or return following parental child abduction, is in the superior interest of the child and at the same time an essential tool for the judge to enable better assessment of the factual situation. The fact, however, that varying requirements and methods for hearing the child in judicial proceedings exist in the different national systems demonstrates that it is a particularly sensitive aspect of cross-border civil litigation. Before entering into a discussion with end users on the concrete challenges of hearing the child and how these could be best addressed in future, the safeguards established in different international instruments could be presented.

➤ In this context, the Council of Europe Guidelines on child friendly justice relating to the right of the child to be heard could be explained.

2. Hearing of the child and the Brussels IIbis Regulation

Regulation Brussels IIbis underlines the importance of hearing the child's opinion in cases relating to matters of parental responsibility (Recital 19). It would be important to recall the provisions which specifically address this subject matter. According to Article 23 of the Regulation, the recognition of a judgment on parental responsibility can be denied on the ground that the child has not been given the opportunity to be heard. Furthermore, hearing the child is one of the requirements for the abolition of the exequatur procedure on access rights (Article 41(2)(c)) and decisions involving the return of the child (Article 42(2)(a)). The next provision to address would be Article 11(2) of the Regulation, which complements the provisions of the 1980 Hague Convention on cross-border child abduction cases and which highlights once again the right of the child to express its views.

It would, however, be important to stress that these provisions foresee the possibility of not hearing the child if it 'was considered inappropriate having regard to the age or degree of maturity of the child'. As an exception to the principle of hearing the voice of the child in family proceedings, it should be interpreted restrictively and the judge should give specific reasons for applying this exception in each individual case. Reference could also be made to the Court's jurisprudence regarding the interpretation of the provisions.

➤ The findings of the Court in Case C-491/10 PPU pointing out that the possibility of hearing the child should be examined in each individual case could be mentioned here.

3. Methods of carrying out the hearing of a child

The presentation should point out that Regulation Brussels IIbis does not modify national procedures for the hearing of the child (Recital 19). End users should be made aware that new legislation has been introduced in many Member States on the child's right to be heard when matters of custody, residence or visitation rights are at stake, but no uniform approach is identifiable.

➤ Question A.6 of the national sections provides the procedures for the hearing of the child in the different Member States, so reference could be made to this part of the training material.

In order to strengthen mutual trust between EU countries, it is of utmost importance to improve knowledge of the different national systems. It would be therefore interesting to briefly illustrate the choices made by national legislators and identify good and bad practices on the methods of carrying out child hearings.

The starting point could be to discuss the conditions and requirements for taking the decision to hear the child's views in judicial proceedings. The different approaches taken by the judges on necessary age and maturity of the child could for example be presented.

The next element would be to address the following practical questions: by whom, when, where and how will the child be heard. When it comes to hearing the voice of the child in

sensitive cross-border family law cases without causing more harm than good to the children involved, these questions can pose a major challenge. It is crucial for the effective implementation of the hearing that the person interviewing the child has received adequate training, irrespective if under national law this person is the judge, a social worker or any other competent authority. The correct time management and the arrangement of an adequate and friendly environment for the implementation of the hearing are equally important in this context. Experiences made while preparing the hearing and the questions to be posed to the child with the aim of minimising the risk of parental influences and of putting pressure on the child could also be mentioned here.

Although different methods of hearing the child may be applicable, a brief reminder that this procedure constitutes a right and not a duty and should therefore be in his or her best interests could complete the picture. It would be useful to underline the duty of the judge to inform the child about the conditions as well as possible consequences of the hearing.

- *In international workshops it would be important to motivate end users to participate in an exchange of national experiences with the hearing of children and to ensure discussion of the challenges.*
- *In the framework of workshops addressed to end users from the same country, greater focus could be given to analysis of the national system and a discussion on possible improvements.*
- *In this context, the General Comment on the 'The right of the child to be heard' of the UN Committee on the Rights of the Child aiming at supporting States parties in the effective implementation of the hearing of the child could be referred to.*

4. Taking of evidence in cross-border civil matters

In cross-border family proceedings, especially in sensitive child abduction cases, the presence of the child in court may not be possible, if for example the child is resident in another Member State, or even desirable. For this reason, Recital 20 of Regulation Brussels IIbis provides the possibility for hearing the child by using the means laid down in the Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (Regulation on the taking of evidence).

It would therefore be useful to include a presentation of the Regulation on the taking of evidence as far as it is relevant for the hearing of the child in this sub-session. The main objective of this EU legal instrument, namely to ensure an improved, simplified and accelerated cooperation in the taking of evidence in cases with a cross-border element could be discussed. From a practical point of view, it would be useful to refer to the concrete steps to follow when requesting taking of evidence – the transmission of the request, form and content of the request, language, etc. as described in Articles 4 to 9 of the Regulation. The next point to address could then be the different rules on the execution of the request and procedures applicable (Articles 10 to 17).

- The Practice Guide for the application of the Regulation on the taking of evidence drawn up by the Commission Services in consultation with the European Judicial Network in Civil and Commercial Matters could be referred to here.

What would be interesting to highlight is the possibility to employ communications technology during the taking of evidence, particularly by using videoconferencing or teleconferencing (Article 10(4)). The advantages, possibilities but also potential risks of making use of this technology when hearing the child in cross-border family law cases could be discussed with end users.

- In workshops addressed to members of the judiciary, reference could be made to the Practical Guide on using videoconferencing to obtain evidence in civil and commercial matters.
- The E-Justice Portal website containing information on the courts equipped with videoconferencing facilities in the different Member States could also be a useful online tool for judges.

In this context, a short introduction to Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters could provide end users with an overview of the Community's activity in the field of facilitating the taking of evidence and thus complete the picture.

Objectives of the sub-session:

- Highlight the importance of the hearing of the child in cross-border family law proceedings.
- Provide an overview of the right of the child to be heard in the international setting.
- Illustrate the role of the hearing of the child in the context of Regulation Brussels IIbis.
- Allow participants to share and explain national experiences in the hearing of the child and discuss proposals for future improvements.
- Ensure that participants are aware of the steps to be taken for the taking of evidence in cases with a cross-border element.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000 (Regulation Brussels II bis)
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b.	Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters
c.	Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
d.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Article 12 of the United Nations Convention on the Rights of the Child of 20 November 1989
b.	Article 24 of the Charter of Fundamental Rights of the European Union
c.	Judgment of the Court of 22 December 2010, Case C-491/10 PPU , reference for a preliminary ruling from the Oberlandesgericht Celle (Germany), in the proceedings Joseba Andoni Aguirre Zarraga v Simone Pelz
d.	General Comment No. 12 (2009) on the 'The right of the child to be heard' of the UN Committee on the Rights of the Child
e.	Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted on 17 November 2010
f.	Practice Guide for the application of the new Brussels II Regulation (updated version 1 June 2005)
g.	Practice Guide for the application of the Regulation on the taking of evidence
h.	Practical Guide on using videoconferencing to obtain evidence in civil and commercial matters
i.	European Judicial Atlas in civil and commercial matters – Taking evidence
j.	European Judicial Atlas in civil and commercial matters – Serving documents
k.	European Judicial Network in civil and commercial matters – Taking of evidence and mode of proof
l.	European Judicial Network in civil and commercial matters – Service of documents
m.	E-Justice portal – Tools for courts and practitioners
n.	National sections: questions A.6 and B.3 and national bibliography on participation of the child in judicial family proceedings

Methodology

1. Time frame

The duration of this sub-session should be approximately 1 hour and 30 minutes. The first half could be dedicated to a presentation of the legal framework on the hearing of the child and taking of evidence. In the second half participants should have sufficient time to discuss the various practical aspects of the hearing and also to elaborate proposals for future improvements.

If an implementing workshop is for an international audience, then some time in the second half could be allocated for so called 'country reports' - each of them should be maximally 5 to 10 minutes long.

2. Trainer's profile

A person with excellent communication skills and with experience in hearing the child in cross-border court proceedings is the key for the success of this interactive sub-session. An experienced family judge or an official of a national authority responsible for interviewing children in cross-border family law cases should therefore be approached.

As this sub-session is largely based on discussion and exchange of ideas, the trainer selected should be at the position to coordinate the plenary discussion and motivate end users to participate actively.

3. Teaching method

As this part of the workshop has a high practical relevance for end users, especially for members of the judiciary, and at the same time addresses a subject matter where no uniform approach has been adopted by the Member States and many questions remain open, the sub-session should be divided into parts with different teaching methods.

The first part should be organised as face-to-face training in plenary. The trainer should present the international status-quo of the child's right to be heard, the relevant provisions of Regulation Brussels IIbis as well as an introduction to the Regulation on the taking of evidence.

The second part will then consist of an interactive discussion with participants. Understanding the different methods adopted by the Member States and the challenges to be met when it comes to hearing the views of the child in cross-border court proceedings could be facilitated by giving participants the opportunity to share and exchange experiences, opinions and ideas. Before the plenary discussion and with the aim of further stimulating it, 'country reports' on the national systems represented in the workshop could be presented. These reports could either be presented by the trainer or by participants with experience in hearing the opinion of the child in cross-border court proceedings.

On the first workshop day the trainer should try to identify participants who could provide input on the procedures applicable for the child's hearing in their countries and invite them to share their knowledge and personal experiences. The trainer could provide them with a paper including some short key questions in order to help them prepare their 'country report'. Following questions could for example be given: starting at what age is the opinion

of a child heard? How are age and maturity being taken into account; in which way is the opinion of the child heard (who does it, is this person specially trained, when and where does the hearing take place, for how long, is it protocolled?); how do you try to avoid influence by adults; are there situations in which it is inappropriate to hear the child; what are the challenges from your point of view; do you want to share personal experiences with us; do you have ideas for a better approach to act child-friendly.

G. Cross-border communication between courts and between central authorities

1. Cross-border direct judicial communication in matters of parental responsibility

Direct judicial cooperation is one of the key concepts in the field of EU civil justice. End users should be made aware of the importance and scope for communication between courts in cross-border proceedings relating to parental responsibility. The differences between national and transfrontier judicial communication could also be illustrated briefly.

The domestic legislation of some Member States already formalises and regulates direct judicial communication. In the framework of Regulation Brussels IIbis it is expressly required in the context of a transfer of a case (Article 15(6)) and in the case of child abduction (Article 11(6) and (7)). It would be interesting to stress that cooperation can assist judges in better assessing whether the requirements for the transfer of a case are met, or in understanding the reasons for the issuing of a non-return order and thus ensure that a decision in the best interests of the child can be taken by the competent court. The need for and advantages of direct judicial communication in these concrete phases of the proceedings could be underlined by giving practical examples.

- Articles 8, 9 and 31 of the 1996 Hague Convention establishing the need for direct judicial cooperation when a case is transferred from one court to another could also be presented.
- The national legislation regulating judicial communication and cooperation between Member States which are represented in the workshop could be explained.

In implementing workshops targeted at members of the judiciary it would be useful to also address the practicalities of direct communication between courts in different Member States. The methods of communication, the use of new technologies, especially contact via e-mails or conference calls, as well as translation, time and data protection issues could be discussed. What is important to recall in this context is the fact that although communication will have to comply with the laws and procedures of the Member States concerned, cross-border judicial contacts should be as flexible as possible.

2. The role of central authorities in the application of Regulation Brussels IIbis

Pursuant to Article 55(c) of Regulation Brussels IIbis direct communication between courts should be facilitated by the central authorities designated by the Member States for the application of the Regulation. Following this, a presentation of the role and functions of the central authorities in cross-border parental responsibility proceedings could be given.

It should be pointed out that each Member State needs to designate at least one central authority (Article 53) which should have sufficient financial and human resources in order to be able to contribute to the improved application of the Regulation.

- Information on the designated central authorities in the different Member States is provided in question A.7. of the national sections.
- Reference could be made here to the relevant parts of the Practice Guide on the application of Regulation Brussels IIbis.

Article 55 of Regulation Brussels IIbis listing the tasks of the central authorities could be analysed next. In addition to acting as a link between the courts and the central authorities in other Member States, they are there to provide information and assistance to holders of parental responsibility who are able to directly submit requests. Practical information on the steps to be followed when applying to a central authority should be provided, to enable participants to employ this system in the future (Article 57). It would be important to highlight the duty of the central authorities to facilitate the resolution of cases of parental responsibility through mediation.

To complete the picture, the duties of the designated central authorities for the application of the 1996 Hague Convention and the 1980 Hague Convention could be illustrated. Practice and experiences of central authorities in handling cross-border child abduction cases could be of particular interest for end users, as ideally the same authorities should also be entrusted with the application of Regulation Brussels IIbis. The possibilities and advantages of creating synergies between the designated authorities of these closely interrelated instruments in matters of parental responsibility could be discussed.

- The HCCH website providing information on the designated central authorities could be referred to here.

3. Promoting and facilitating cross-border cooperation – The European Judicial Network (EJN) in civil and commercial matters

End users should be encouraged to make use of the cooperation system established for the proper and speedier resolution of cross-border family law cases. In workshops for members of the judiciary, practical ways to build and develop the transfrontier contacts necessary for fulfilling the tasks laid down in the relevant legal instruments should be presented.

The analysis should point out that mutual trust and thus effective judicial cooperation can be achieved if judges and central authorities have a platform for discussion and exchange of knowledge and experience. The creation and maintenance of specialised networks is therefore being promoted at national, regional as well as international level.

- Participants could be invited to provide input on any existing national or regional networks of family judges they are aware of in their countries.

At EU level, the European Judicial Network (EJN) in civil and commercial matters could be presented. It is a flexible, non-bureaucratic structure, which operates in an informal way and aims at simplifying judicial cooperation between the Member States and access to justice for persons engaged in cross-border litigation. The key role of the EJN contact points designated by all Member States (with the exception of Denmark) and the means employed for achieving the Network's objectives could be illustrated.

It would be interesting to point out that Regulation Brussels IIbis expressly refers to the EJN and the participation of the central authorities (Recital 25, Articles 54 and 58).

- The Council Decision of 18 June 2009 providing the new legal framework for the operation of the European Judicial Network in civil and commercial matters could be analysed.
- The EJN website and especially the section dedicated to parental responsibility including information on both EU and national provisions of the participating Member States could be referred to here.

The important work of the International Hague Network of Judges in the context of the 1980 Hague Convention should also be briefly touched on. The principles and practice guides on cross-border judicial communications drawn up by this network could be a further useful source of advice for end users.

4. European e-Justice – presentation of the available EU online tools

According to the European Commission's Communication 'Towards a European e-Justice Strategy', the use of information and communication technologies should be promoted in order to improve judicial cooperation, as well as citizens' access to justice. In the previous sub-sessions where the EU legal framework on cross-border parental responsibility is analysed, several references have been made to the online tools available. These instruments shall now be presented and their main features and elements demonstrated in order to ensure that end users will be in the position of employing them in the future.

A number of initiatives were developed at EU level in order to enhance judicial cooperation and provide citizens with easier access to legal information:

- The **European E-justice Portal** is the most recent initiative and is conceived as an electronic one stop shop. It not only includes information on the legislation and case law of the European Union and the Member States, but also provides an overview of Member State judicial systems, the various legal professions and their networks, advice on how to find lawyers, notaries, mediators, legal translators and interpreters in Europe.
- The **European Judicial Atlas in Civil Matters** is inter alia a useful tool for identifying the competent courts or authorities in other Member States, as well as for filling in and transmitting electronically any necessary forms for cross-border proceedings.
- The **EUR-Lex and N-Lex databases** including a search engine for accessing EU and national family legislation.

- Taking into account the importance of the CJEU’s jurisprudence for the uniform application of EU family law, **CURIA**, the official website of the Court of Justice of the European Union could also be presented.

Finally, in workshops organised for a purely domestic audience, electronic tools or databases available at national level could be demonstrated.

➤ Question B.4 of the national sections which provides information on such online sources could be referred to here.

Objectives of the sub-session:

- Promote awareness of the need for and advantages of direct judicial communication in cases relating to parental responsibility.
- Discuss the practicalities of direct judicial communication in a cross-border context.
- Describe the system of cooperation between national central authorities and ensure that participants are aware of the functions they perform in the application of Regulation Brussels IIbis.
- Present the online instruments available for improving judicial cooperation as well as citizens’ access to justice.
- Provide a context for the use of the various EU online tools, explaining how they can assist in the framework of cross-border proceedings.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000 (Regulation Brussels IIbis)
b.	Hague Conference on Private International Law
c.	European Judicial Network in civil and commercial matters
d.	European Judicial Network in civil and commercial matters – parental responsibility
e.	European E-justice portal
f.	European Judicial Atlas in civil and commercial matters
g.	European Judicial Atlas in civil and commercial matters – Family law
h.	EUR-Lex database

i.	N-Lex database
j.	CURIA website
k.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Information relating to central authorities, languages, courts and redress procedures pursuant to Article 68 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility – consolidated version
b.	Decision No 568/2009/EC of the European Parliament and of the Council of 18 June 2009 amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters
c.	Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 30 May 2008 – Towards a European e-Justice Strategy
d.	Practice Guide for the application of the new Brussels II Regulation (updated version 1 June 2005)
e.	The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
f.	The Hague Convention of 25 October 1980 on the civil aspects of international child abduction
g.	Conclusions and recommendations of the Joint Conference European Commission – Hague Conference on Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks (2009)
h.	Hague Conference on Private International Law, Report on Judicial Communications in Relation to International Child Protection, drawn up by Philippe Lortie (currently Doc. Prel. No.3 of April 2011)
i.	E-learning course: Thematic Unit I, Part 2 dealing with cross-border child abduction within the EU
j.	National sections: questions A.7 and B.4

Methodology

1. Time frame

The duration of this sub-session should be approximately 60 minutes. In principle, 20 to 30

minutes could be allocated for presenting the theoretical background and legal framework on direct judicial communication, as well as cooperation between central authorities in the context of cross-border cases relating to parental responsibility. The second half of the sub-session would then consist of a demonstration of the available online tools.

2. Trainer's profile

Experience in presenting online tools and good communication skills are important for the successful implementation of this part of the workshop. A judicial trainer could therefore be approached. An official of a central authority or a judge experienced in direct judicial communication would also be a good option.

3. Teaching method

For this sub-session two different training methods should be employed: face-to-face training and IT-supported learning.

In the first part, a front presentation will provide end users with information on the legal framework of cooperation between courts and between central authorities and will highlight the advantages and possibilities of establishing specialised networks. The practicalities and challenges to be met for direct judicial communications could be illustrated by practical examples.

The second part will then be based on an interactive presentation of the different online instruments that are available at EU level and which facilitate the cross-border judicial cooperation in relation to international child protection. For this reason, the trainer should have internet access and enough time to demonstrate the relevant websites. The main features and tools of each website can be better explained if participants also have access to computers and thus the opportunity to examine them.

➤ *Links to previous discussions in the workshops can be made when presenting the online tools in order to better highlight their functionality and allow participants to appreciate their added value in cross-border proceedings.*

H. Preliminary rulings in family proceedings

The preliminary ruling procedure is seen as an aspect of the fundamental right to effective judicial protection, a right guaranteed by Article 47 of the Charter. The preliminary rulings of the Court of Justice of the European Union (CJEU) are progressively becoming the governing case law. Several important principles of EU law, including the field of family law, have been laid down by the preliminary ruling procedure and an increasing number of sensitive cross-border family disputes are even being dealt with under the urgent preliminary ruling procedure (PPU). The focus of this sub-session will lie on presenting and familiarising end users with this fundamental mechanism.

1. Introduction to the preliminary ruling system

A brief illustration of the history of the European judicial system as well as the role, composition and jurisdiction of the CJEU could set the scene. The main characteristics of the types of cases that can be brought before the Court of Justice and the statistics concerning its judicial activity could also be touched on here.

Turning to the preliminary ruling procedure, the issues that have to be clarified first are the function and purposes of this EU mechanism as well as the role of the national courts and the CJEU. End users should be made aware that this is a co-operative procedure between equal judicial bodies that aims at ensuring the uniform interpretation and application of EU law in all Member States.

- The role of the preliminary ruling procedure was emphasised in Case 166/73, which could be referred to here.
- In workshops addressed to members of the judiciary, first input could be sought from participants on their experiences with the preliminary ruling procedure and the practice in their countries.

Providing the legal basis of the preliminary ruling procedure should be the next point of the analysis. Article 19(3)(b) of the Treaty on European Union (TEU) and Article 267 of the Treaty on the Functioning of the European Union (TFEU) should be presented. The alterations introduced to Article 267 TFEU by the Lisbon Treaty could be sketched briefly here. Reference could also be made to the relevant provisions of the Statute and the Rules of Procedure of the Court of Justice.

2. Jurisdiction of the CJEU and the decision to refer a question

Article 267(1) TFEU provides that the CJEU has the jurisdiction to give preliminary rulings on the interpretation of the Treaties and the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union. In this context, it is important to point out that 'acts' encompass the binding and non-binding acts provided for in Article 288 TFEU. In family law, any questions arising under the EU family law regulations, especially the Brussels IIbis Regulation can thus be referred to the CJEU. To complete the picture, matters that are excluded from the Court's jurisdiction, such as matters of national law or the application of EU law, could be mentioned.

- It should be noted that according to Article 256(3) TFEU the General Court is to have jurisdiction to hear and determine questions referred for a preliminary ruling in specific areas laid down by the Statute. Since no such provisions have been introduced into the Statute yet, the CJEU alone has jurisdiction.
- Elements of Brussels IIbis the interpretation of which was not clear to national judges and which have constituted the source of a preliminary reference, such as the concept of 'habitual residence', could be presented. A discussion on provisions of Brussels IIbis that remain unclear and could be referred to the CJEU in the future could also be attempted.

The initiator of the preliminary ruling procedure is the national court or tribunal of a Member State. It would be important to stress that the decision whether a body is a court or tribunal for the purposes of Article 267 TFEU is a matter of EU law. Since the entry into force of the Lisbon Treaty, the Court's jurisdiction has been substantially extended by virtue of the number of national courts and tribunals which may now refer questions.

➤ The criteria to be used for determining whether the body referring is a court or tribunal as confirmed in the Court's judgment in case C-54/96 could be explained.

The analysis should then continue with the distinction between discretionary and mandatory references. Paragraphs (2) and (3) of Article 267 TFEU should be presented and the criteria used for distinguishing between courts that *may* and courts that *shall* refer questions to the CJEU explained. The criteria by which a lower court could decide whether to use its discretionary power to refer a case to the Court could be analysed with participants. The Court's conclusions on the interpretation of Article 267 TFEU and the theories developed, such as the 'acte clair' doctrine, would be interesting to discuss next.

➤ The conclusions drawn by the Court in case C-283/81, *CILFIT*, are substantial in this context and could be presented.

3. Making a preliminary reference: process and procedure

Having decided to refer a question to the CJEU for a preliminary ruling, practical advice should be provided on the steps to follow. The first point to be clarified is the stage at which the national proceedings should be stayed and a question be submitted. The next element of great practical significance is the form and content of the reference. The provision of information and useful tips on how to draft a reference for a preliminary ruling and to structure the decision could be helpful. Good and bad examples of preliminary questions, the centerpiece of any reference, could be discussed with participants.

➤ The Information note on references from national courts for a preliminary ruling of the CJEU should be presented here, especially if the workshop is addressed to judges.
➤ In events targeting legal practitioners, the Notes for the guidance of Counsel in written and oral proceedings before the CJEU could also be a useful tool.

The procedure at the CJEU should also be briefly sketched. The main features of the two stages foreseen in Article 20 of the Statute of the Court, the written and the oral stage, could be illustrated. The role of the Advocate General's Opinion in preliminary rulings could complement this analysis.

4. The urgent preliminary ruling procedure (PPU) in family law disputes

The urgent preliminary ruling procedure (PPU) was introduced in March 2008. This procedure enables the immediate treatment of particularly urgent cases and the swift delivery of the ruling, in approximately two to four months.

The application of the PPU only to the areas covered by Title V of Part 3 of the TFEU, i.e.

references relating to the area of freedom, security and justice, should be stressed from the beginning. Cross-border family law disputes are covered by the PPU and reasonable requests for its application can be made by the national judge in exceptional situations. Although an exhaustive list of such exceptional situations does not exist, it should be emphasised that in practice requests in proceedings concerning parental authority or custody of children are likely to be accepted by the CJEU. To complete the picture, the possibility that the CJEU can decide of its own motion to apply this procedure could be mentioned.

- The Court's first ruling under the PPU in C-195/08 PPU dealing with the return of a child wrongfully retained in another Member State, could be presented here.
- Judgments such as C-403/09 PPU, C-211/10 PPU, C-497/10 PPU and C-155/11 PPU dealing with matters of parental responsibility could also be mentioned.

Article 23(a) of the Statute of the CJEU and Article 104(b) of the Rules of Procedure of the CJEU are the provisions governing the PPU and should be presented next. Illustrating the specific features distinguishing this procedure from the ordinary and accelerated preliminary procedure could also be helpful. It would be of practical relevance to point out next the conditions as well as the form and content of the request for the application of the PPU. Examples and practical advice on drafting and submitting such a request could be of interest for end users, especially if the workshop is addressed to members of the judiciary.

- Reference to the Information Note on references from national courts for a preliminary ruling of the CJEU could be made here again.
- As PPU documents are communicated electronically, the e-Curia CJEU application, which enables the exchange of procedural documents by virtue of the creation of 'functional mailboxes' could be presented here.

5. Effects of a preliminary ruling

Completing the analysis of the preliminary ruling procedure, the effects it has at European and national level should be illustrated. The CJEU provides a definitive interpretation of the provisions of EU law referred to it, but it will be for the referring national court or tribunal to revive the national proceedings and to draw the appropriate conclusions from that ruling for making the final decision on the merits of the case. End users should be made aware that the CJEU has the force of *res judicata* and that its decision is binding, not only for the referring body (*inter partes*) but also for all national courts of the Member States (*erga omnes*). Finally, the effects of a preliminary ruling concerning the validity of an act could be presented.

- Court judgment in C-206/01 showing the binding character of the preliminary ruling for the referring national court could be mentioned here.
- End users could be introduced to online databases that include the texts of preliminary rulings by the CJEU and other relevant documents (preliminary questions, Advocate General's opinions, etc.). CURIA, the official website of the Court and other useful case law databases, such as EUR-Lex, JURIFAST and JURE could be presented briefly.

Objectives of the sub-session:

- Allow participants to familiarise themselves with the preliminary ruling procedure.
- Ensure that participants are aware of the steps to be followed for requesting a preliminary ruling.
- Ensure that participants receive practical advice on drafting a preliminary question.
- Introduce the urgent preliminary ruling procedure and its importance in cross-border family disputes.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Article 19, Treaty on European Union (TEU) and Article 267 , Treaty on the Functioning of the European Union (consolidated version)
b.	Articles 103, 104, 104a and 104b of the Rules of Procedure of the Court of Justice of the EU
c.	Articles 20 and 23a of Protocol No. 3 on the Statute of the Court of Justice of the EU
d.	Information note on references from national courts for a preliminary ruling
e.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000
f.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Article 47 of the Charter of Fundamental Rights of the European Union
b.	Article 256 and Article 288 , Treaty on the Functioning of the European Union (consolidated version)
c.	Notes for the guidance of Counsel in written and oral proceedings before the Court of Justice of the European Communities <i>(when the workshop is addressed to legal practitioners)</i>
d.	Report on the use of the urgent preliminary ruling procedure by the Court of Justice of 31 January 2012

e.	Judgment of the Court of 16 January 1974, Case 166/73 , reference for a preliminary ruling requested by the Bundesfinanzhof (Germany), Consequences of judgments of appeal courts, Rheinmühlen-Düsseldorf v Einfuhr- und Vorratsstelle für Getreide und Futtermittel
f.	Judgment of the Court of 6 October 1982, Case 283/81 , reference for a preliminary ruling from the Corte suprema di Cassazione (Italy), obligation to request a preliminary ruling
g.	Judgment of the Court of 17 September 1997, Case C-54/96 , reference for a preliminary ruling by the Vergabeüberwachungsausschuß des Bundes (Germany), Dorsch Consult Ingenieurgesellschaft mbH v Bundesbaugesellschaft Berlin mbH
h.	Judgment of the Court of 12 November 2002, Case C-206/01 , reference for a preliminary ruling by the High Court of Justice of England and Wales, Arsenal Football Club plc v Matthew Reed
i.	Judgment of the Court of 11 July 2008, Case C-195/08 PPU , reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania), proceedings brought by Inga Rinau
j.	Judgment of the Court of 23 December 2009, Case C-403/09 PPU , reference for a preliminary ruling from the Višje Sodišče v Mariboru (Slovenia), Jasna Detiček v Maurizio Sgueglia
k.	Judgment of the Court of 1 July 2010, Case C-211/10 PPU , reference for a preliminary ruling from Oberster Gerichtshof (Austria), Doris Povse v Mauro Alpage
l.	Judgment of the Court of 5 October 2010, Case C-256/10 PPU , reference for a preliminary ruling from the Supreme Court (Ireland), J. McB. v L. E.
m.	Judgment of the Court of 22 December 2010, Case C-497/10 PPU , reference for a preliminary ruling from the Court of Appeal of England and Wales (Civil Division) (United Kingdom), Barbara Mercredi v Richard Chaffe
n.	Judgment of the Court of 10 June 2011, Case C-155/11 PPU , reference for a preliminary ruling from Rechtbank's-Gravenhage (Netherlands), Bibi Mohammad Imran v Minister van Buitenlandse Zaken
o.	Judgment of the Court of 26 April 2012, Case C-92/12 PPU , reference for a preliminary ruling from the High Court (Ireland), Health Service Executive v S.C., A.C.
p.	CURIA – Court of Justice of the European Union
q.	E-Justice portal – Case law
r.	EUR-Lex - EU case law
s.	JURIFAST - Preliminary rulings by the Court of Justice of the EU
t.	E-learning course: Thematic Unit II, dealing with the Preliminary reference procedure

u.	National sections: National jurisprudence on Regulation Brussels IIbis in matters of parental responsibility and national bibliography on the preliminary ruling system in family matters
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Methodology

1. Time frame

The duration of this sub-session should be 60 minutes, including time for discussion.

2. Trainer's profile

A member of the judiciary familiar with making references for a preliminary ruling in family proceedings would be a good option for dealing with this item of the workshop agenda. Alternatively, an academic or a judicial trainer with a good knowledge of this EU mechanism could be approached.

3. Teaching method

As a great amount of information needs to be provided, the best option would be to organise this sub-session as face-to-face training.

In order to increase the interactivity of this part of the training, the option of including practical examples (e.g. questions referred to the CJEU which constitute good and bad practice) or asking for participant's input (e.g. on the integration of the preliminary ruling procedure in their national judicial systems and the judicial practice of their Member States) should be considered. In workshops addressed to participants already experienced with the preliminary ruling system, the trainer could invite them to share their knowledge, thus creating an atmosphere of dialogue.

A supporting tool for the preparation of this sub-session could be the second thematic unit of the E-learning course, dedicated to the preliminary ruling procedure. This part of the E-learning course was devised by Dr Ruth Lamont, Lecturer in Law from the University of Liverpool. The material provided could be referred to when making the analysis or made directly available during the training.

I. Exercise II – Case study on reference for a preliminary ruling

Once the preliminary ruling system and its importance for family law cases have been presented, participants should get the opportunity to actually discuss a real-case scenario and explore the application of this system in practice.

A case study based on a cross-border family dispute that raises difficult issues of the interpretation of EU law will have a twofold benefit for end users: they will have to identify the legal issues which fall within the scope of Regulation Brussels IIbis and will thus consolidate the knowledge acquired during the first workshop day and will also be able to

prepare and formulate the questions for a reference to the CJEU.

This sub-session will allow trainers and workshop leader to identify which concepts and rules have not been sufficiently explained and give them the opportunity to remedy this during the preparation and discussion of the case study. Similarly, participants will have the opportunity to raise any remaining questions and seek further clarifications if necessary.

The case scenario, devised by Dr Ruth Lamont, Lecturer in Law from the University of Liverpool, concerns a family law dispute over the custody of the child where the parents and child are split across two different EU Member States. Two different tasks will have to be solved by the working groups:

Task 1 – Identifying and discussing the jurisdictional grounds of Regulation Brussels IIbis relevant to the case scenario. Different questions, requiring the analysis of the concept of ‘habitual residence’, the examination of the grounds for jurisdiction of Article 9 and of the possibility to transfer the jurisdiction under Article 15, will be given to the task groups.

Task 2 – Preparing and drafting the questions for a reference to the CJEU. End users will be also invited to discuss the general requirements for a preliminary reference and whether it is appropriate to seek an urgent reference under the specific circumstances.

➤ The case scenario and tasks as well as the suggested solutions are available in Annex 3.2.

Objectives of the sub-session:

- Consolidate the information provided on the role, purpose and function of the preliminary ruling procedure.
- Invite participants to analyse a problem of interpretation of EU law and formulate questions for a preliminary reference to the CJEU.
- Allow participants to gain some experience of the application of Regulation Brussels IIbis in a cross-border family dispute.
- Identify any remaining unclear points and address them within the sub-session.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	Article 267 , Treaty on the Functioning of the European Union (consolidated version)
b.	Information note on references from national courts for a preliminary ruling
c.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing

	Regulation (EC) No 1347/2000 (Regulation Brussels IIbis)
d.	Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters
e.	Judgment of the Court of 2 April 2009, Case C-523/07 , reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland), Proceedings brought by A
f.	Judgment of the Court of 22 December 2010, Case C-497/10 PPU , reference for a preliminary ruling from the Court of Appeal of England and Wales (Civil Division) (United Kingdom), Barbara Mercredi v Richard Chaffe
g.	Workshop exercise II: Case study on a reference for a preliminary ruling, Parts I to IV

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	Rules of Procedure of the Court of Justice of the EU
b.	Notes for the guidance of Counsel in written and oral proceedings before the Court of Justice of the European Communities
c.	National sections: question A.1 of the Austrian and Dutch national sections could also be made available

Methodology

1. Time frame

This workshop exercise should last approximately two and a half hours.

In order to save the time needed for setting up the different working groups, the division into groups by the trainer or the workshop leader as well as the identification of the elements of the two tasks to be performed by each of them, could take place during the lunch break of the second workshop day.

➤ *Creating new working groups with participants who did not work with each other in the previous exercise is recommended.*

As the case study is split into two tasks dealing with a different subject-matter, it is important to allocate half of the time foreseen for this exercise to each of them. The presentation of the facts and each task could take approximately 10 to 15 minutes. The working groups should then have 25 to 30 minutes to discuss and prepare their response to the task and another 15 minutes should be dedicated to presenting a short summary of their findings to the plenary. In the remaining time the trainer should summarise the points made by the participants and open the floor for a de-briefing discussion.

2. Trainer's profile

The trainer presenting this workshop exercise should have a sound knowledge of Regulation Brussels IIbis and the preliminary ruling procedure and ideally have some practical experience with their application in cross-border family disputes. A judge familiar with referring questions to the CJEU in this field of EU law would therefore be a good option.

Good interpersonal and communication skills are equally important, as the trainer will have to cooperate closely with the participants by motivating them to work together, by assisting and answering their questions and of course by stimulating the de-briefing discussions.

3. Teaching method

This interactive sub-session is based on a case study that is divided into two different tasks: the first one require the identification of the EU law problems arising in the case scenario, and the second one the preparation of the questions for a reference to the CJEU. Following a brief presentation of the facts in plenary, the participants should therefore be divided into smaller working groups. As each task splits into three, it is recommended that three separate task groups be created. These groups will remain the same throughout the case study so that they can work together as a team.

➤ *Stimulating participants to participate actively in this case study could be achieved by changing the working environment.*

The workflow will be improved by the designation of one rapporteur for each working group who will be responsible for summarising the findings of his or her group and presenting them in plenary. All task groups should also be supplied with a computer and have internet access, in order to consult any additional useful documents and summarise their responses in writing.

The trainer with the responsibility for the coordination of this exercise should encourage participants to express their opinions and be available to answer any questions that may arise during the consideration of the case study. Back in plenary and before closing the exercise, the trainer could summarise the main points made by the participants and provide some final conclusions.

➤ *If during the workshop exercise the trainer or the workshop leader realise that some of the issues that had been covered earlier are not clear to the participants, they should take some time at the end of this sub-session to explain them again.*

Useful advice on the preparation and organisation of this workshop exercise has also been provided by Dr Ruth Lamont. Information, inter alia, on the necessary material to be distributed to the participants, the learning outcomes and the legal issues that should be particularly considered and pointed out can be found in the 'Trainer's Materials Pack'. Finally, accompanying PowerPoint slides that could facilitate the structuring of this sub-session have

been prepared.

- The 'Trainer's Materials Pack' and the 'Trainer's PowerPoint slides' are included in the case study on a Reference for a preliminary ruling which is available in Annex 3.2. of this guide.

J. An introduction to family mediation

The fourth thematic unit is dedicated to mediation as a form of alternative dispute resolution that aims at the positive, amicable and swift management of conflicts. The use of mediation in family proceedings, especially in the context of disputes over parental responsibility and cross-border child abduction, is increasingly encouraged at national as well as at EU level. This sub-session will provide an introduction to family mediation in cross-border situations and illustrate the possibilities offered by this instrument.

1. Alternative dispute resolution and mediation

Before focusing on international family mediation, it would be helpful to provide a brief overview of alternative dispute resolution (ADR) in general and distinguish mediation from other types of ADR, such as arbitration, conciliation and structured negotiation. Mediation can be defined as a 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. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

- It is important to stress that each conflict should be evaluated individually in order to identify the best dispute resolution mechanism.

Turning to cross-border family proceedings, the presentation should point out that the flexibility of mediation in terms of timing and procedure, the confidentiality and the enforceability can offer parties the opportunity to reach a sustainable and creative solution which best fits the child's interests. At the same time, the various barriers which make parties and their lawyers reluctant to use family mediation, especially in cross-border disputes, should be mentioned. Challenges to be overcome are the different legal systems, the expertise of mediators and the lack of information and of cooperation between the different actors involved at all levels, including judges, central authorities, lawyers and mediators.

2. The EU legal framework for cross-border mediation

It would be important to note that both the Brussels IIbis Regulation (Article 55 (2)(e)) and the 1980 Hague Convention (Article 7 (2)(c)) foresee the possibility of mediation in family proceedings and encourage central authorities to work towards an amicable settlement. The significance of family mediation in cross-border child abduction cases is also underlined by the existence of an EU Parliament Mediator on International Parental Child Abduction.

At EU level, Directive No 2008/52/EC on certain aspects of mediation in civil and commercial matters (the Mediation Directive) provides a framework for cross-border mediation and should be presented. The first element to be clarified is the scope of application of the Mediation Directive (Articles 1 to 3). What would be interesting to highlight is the fact that although the Directive covers cross-border disputes only, the Member States can decide to enact laws that cover both cross-border and purely domestic cases.

➤ Question B.1 of the national sections dealing with the provisions on mediation in the different national systems could be referred to [here](#).

The main substantive rules of the Mediation Directive could be analysed, keeping in mind that these reflect the different regulatory approaches of the Member States. Article 6 ensures the enforceability of settlement agreements by leaving to the Member States the choice of the competent institution and form. It should be stressed that this will allow mutual recognition and enforcement throughout the EU under the same conditions as those established for the recognition and enforcement of court decisions in matters of parental responsibility.

➤ Information on the authorities authorised to receive requests asking that the content of a written agreement resulting from mediation is made enforceable can be found in the [European Judicial Atlas](#).

The procedural principles of confidentiality and of suspension of limitation and prescription periods during the mediation process could also be pointed out. In addition to these concrete rules, the Directive also contains softly expressed guidelines to be adopted by the Member States which could be discussed. In order to ensure the quality of mediation, for example Article 4 encourages Member States to support the training of mediators and to develop voluntary codes of conduct by mediators.

➤ As a good example the [European Code of Conduct for Mediators](#) could be referred to [here](#).

The relationship between court proceedings and mediation and the role of the judge in this process should also be addressed. Article 5 of the Mediation Directive gives every judge the right to invite the parties to try mediation first. Keeping in mind that mediation is not commonly used in the Member States, the fact that the Directive does not prevent the national legislator from making its use compulsory or from introducing incentives and sanctions in the domestic systems could be critically discussed.

➤ In the framework of international workshops, participants could provide some input on their national system on mediation and the practice in different EU countries.
➤ In events organised for purely domestic audiences, the trainer running this sub-session could provide more concrete information on the national system.

3. Pilot projects on family mediation

Having illustrated the main elements of the Directive it would be interesting to complete the picture by presenting pilot mediation projects in the EU. Raising awareness, establishing contacts between professionals and developing efficient mediation models are the main objectives of such projects. The German-Polish project which has led to the adoption of the Wroclaw Declaration on Mediation of Bi-national Disputes over Parents' and Children's Issues of 2007, and thus influenced the further development of international family mediation could inter alia be introduced here.

Reference could be made to the EU project 'Training for international family mediation' (TIM) with the aim of creating a pan-European network of experienced family mediators. The work of the European Association of judges for mediation (GEMME) could also be presented briefly.

➤ The revised draft *Guide to Good Practice under the 1980 Hague Convention, Part V - Mediation*, discussing in depth questions on mediation in international child abduction cases could also be presented here.

The presentation of these projects could be an incentive to participants to get involved in a discussion on the possibilities and limits of family mediation in cross-border disputes, the mediation procedure and the involvement and position of the child in this process.

Objectives of the sub-session:

- Raise awareness of mediation tools and promote the use of family mediation in cross-border disputes.
- Allow participants to familiarise themselves with the structure and main elements of the Mediation Directive.
- Discuss the possibilities and limits of family mediation.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	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 (The Mediation Directive)
b.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	European Code of Conduct for Mediators
b.	Wroclaw Declaration of 8 October 2007 on Mediation of Bi-national Disputes over Parents' and Children's Issues
c.	Hague Conference on Private International Law, Revised draft Guide to Good Practice under the Hague Child Abduction Convention, Part V – Mediation (2012)
d.	Council of Europe, Recommendation No. R (98)1 of the Committee of Ministers to Member States on family mediation adopted on 21 January 1998
e.	Council of Europe, European Commission for the Efficiency of Justice, Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters (CEPEJ (2007)14)
f.	European Judicial Atlas in civil and commercial matters – Mediation
g.	E-Justice Portal - Mediation
h.	European Judicial Network in civil and commercial matters – Alternative dispute resolution
i.	E-learning course: Thematic Unit III, dealing with family mediation
j.	National sections: Question B.1 and national bibliography on family mediation

Methodology

1. Time frame

The time allocated to this sub-session could be approximately 60 minutes and should include some time for discussion.

2. Trainer's profile

For the successful implementation of this sub-session, a mediator with practical experience in the area of cross-border family mediation and legal background should be identified.

3. Teaching method

This sub-session should be held as a frontal presentation in plenary. Giving participants the possibility to discuss the various aspects of family mediation and to exchange experience and best practices with this instrument in their Member States would bring added value to this part of the workshop.

A supporting tool for the preparation and implementation of this sub-session could be the third thematic unit of the E-learning course, dedicated to family mediation in cross-border parental child abduction cases. This part of the E-learning course was devised by Dr Jamie

Walker, trainer and mediator in cross-border child abduction cases. Practical elements, such as the case studies and tables provided could be incorporated in the trainer's presentation.

K. Exercise III - Role play on family mediation in a cross-border child abduction case

After introducing the alternative dispute resolution method of mediation, it would be good to give end users the opportunity to actively participate in a mediation process and to explore and evaluate the possibilities and limits of this instrument. To this end, after presenting the role play scenario to participants, a mock mediation will be staged.

The role play is based on a scenario of cross-border parental child abduction. In such a highly sensitive family dispute, mediation can lead to sustainable solutions, not only to the return question, but also on questions of parental custody, contact and other issues, for example of a financial nature. By becoming active players, either as the parties (in this case, the couple) or as the mediators, end users will be able to experience the voluntary, flexible and self-determining nature of mediation that allows international disputes over parents and children's issues to be settled in a way that is oriented toward the needs and interests of the persons concerned.

Two role play sessions are foreseen, giving end users the possibility to focus on different phases of the mediation process. Having defined the issues to be decided on in the first session, the role play groups will then attempt to reach an agreement. In the de-briefing discussion the different groups will report in plenary and share the insights acquired.

- *The different phases of a mediation process could be briefly presented by the trainer before starting with mock mediation.*

The conditions for the role play are based on the Wroclaw Declaration on Mediation of Bi-national Disputes over Parents' and Children's Issues where particular attention was paid to making mediation proceedings conform to the framework of international agreements and conventions such as the 1980 Hague Convention and Regulation Brussels IIbis.

This workshop exercise was devised by Dr Jamie Walker, trainer and mediator in cross-border child abduction cases. Dr Walker has prepared a case scenario covering a cross-border parental child abduction dispute and the agreement to mediate, as well as instructions for both trainers and active players in the mock mediation. Two indicative Mediation Agreements have also been provided.

- *The case scenario, instructions (role instructions and instructions for trainers) as well as the indicative Mediation Agreements are available in Annex 3.3. of the training module's guide.*

Objectives of the sub-session:

- Invite end users to actively participate in a mediation process in a cross-border child abduction case.
- Allow participants to explore the possibilities offered by cross-border family mediation.
- Identify any unclear points and address end users' remaining questions.
- Improve end users' communication skills.

Training material

1. Necessary material

(to be made available in hardcopy during the sub-session)

a.	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 (The Mediation Directive)
b.	Wroclaw Declaration of 8 October 2007 on Mediation of Bi-national Disputes over Parents' and Children's Issues
c.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Regulation Brussels II bis)
d.	Hague Convention of 25 October 1980 on the civil aspects of international child abduction
e.	National sections: question B.1 of the German and Italian national section
f.	Workshop exercise III: Role play on family mediation in a cross-border parental child abduction case (Case scenario, Agreement to Mediate, Role instructions, Mediation Agreements I and II)

2. Additional material

(to be included in the electronic documentation – USB stick)

a.	E-learning course: Thematic Unit III, dealing with family mediation
b.	National sections: question B.1 and national bibliography on family mediation

Methodology

1. Time frame

A role play scenario needs sufficient time and therefore this workshop exercise will last approximately 3 hours. A 30 minutes break between the two sessions of the mediation process should be foreseen.

- It is advisable to invite and prepare participants to become active players beforehand, for example on the evening of the second workshop day.

The timeframe suggested by Dr Jamie Walker (under: 'Instructions for trainers') could be followed in order to ensure the correct allocation of time. According to this, one hour should be allocated for each of the two sessions/phases of the mediation process, whereby 10 minutes would be dedicated preparation, 35 minutes to the role play itself and 15 minutes for the de-briefing in the small role play groups. The de-briefing session in plenary with the reports from the different role play groups and the distribution of the indicative Mediation Agreements should then last approximately 45 minutes.

2. Trainer's profile

Identifying the right experts for this workshop exercise is extremely important, as the success of the role play depends very much on their guidance. The trainer needs to motivate and choose the active players of the mock mediation, to guide participants through the mediation process and stop the role play when appropriate and necessary, answer questions and analyse with participants the results in the de-briefing session.

It is recommended entrusting two trainers with the implementation of the mock mediation, thus ensuring that they are in a better position to lead and effectively support the work of the different role play groups. Mediators with experience in handling cross-border family disputes could be approached. The ideal trainer's team should have a legal and psychological/pedagogical professional background and strong communication skills.

3. Teaching method

This sub-session is structured on the basis of a role play scenario in which end users will be invited to participate by taking on active roles. In order to offer participants the chance to profit as much as possible from staging a mock mediation, the role play sessions will be carried out in smaller parallel groups of six. Two participants will be the parties (in this case, the couple), two the co-mediators (following the standards set in the Wroclaw Declaration on Mediation of Bi-national Disputes over Parents' and Children's Issues) and two will be observers. Although the persons playing the parties will stay the same until the end of the exercise, observers and mediators should change roles after the conclusion of the first session/phase of the mediation process.

- At the beginning of this sub-session, after presenting the case scenario to participants, the trainer(s) should stress that perfection is not the goal of the role play and thus encourage them to participate actively.
- Creating new working groups with participants who did not work with each other in the previous exercises is recommended.

Participants should move to the area provided for each of the role play groups and prepare their roles separately. Information and special instructions will be given secretly to some of the players. It is of particular importance that participants see how a solution develops. The role play groups should therefore be the ones deciding in the final session/phase of the mediation process which scenario they would like to play.

- *Role instructions for the parties (in this case, the couple) as well as input for the session on completing the mediation process are available in Annex 3.3.*

The trainer(s) should be prepared to interrupt the role play when appropriate and open the floor for questions and discussion. Sharing the results of the mock mediation in plenary at the end of this workshop exercise will require feedback from the trainer(s) who will need to identify quickly the key moments of this process. If there is time available to enter into a broader discussion after analysing the results, emphasis could be given to the role of mediation in cross-border child abduction cases under Regulation Brussels IIbis and the 1980 Hague Convention.

- *Useful advice on preparing and organising the mock mediation can also be found in the material prepared by Dr Jamie Walker (under: 'Instructions for trainers') available in Annex 3.3 of this guide.*
- *The possibility to film the role playing and using the material for the debriefing and final discussion could be considered here. Particularly in workshops organised for a small group of end users, this element could have an added value. The necessary equipment and personnel (video cameras, cameraman) must be available and some extra time for the selection of the films has also to be factored in. It is important to point out that the use of the video/film needs the express agreement of all the actors actively involved.*

L. Closing session

The closing sub-session aims at summarising the conclusions of the event and attempting an immediate evaluation of its flow and impact. It can also be an opportunity to refer again to the possible use of the training material in future occasions.

1. Conclusions of the workshop

The workshop leader will be responsible for recalling the main elements that were covered during the programme and for identifying some of the most interesting features of the discussions and the exchange of experience between end users. Participants' input on what they found most interesting during the workshop and what they will retain from the discussions with their colleagues and the trainers could also be sought.

2. Evaluation of the workshop

A first discussion as to whether the workshop met end users' training needs could also take place here. Participants should in any case be asked to provide their feedback in writing by completing the initial assessment questionnaire, engaging however in a dialogue with their colleagues and the trainers could be a further means to present their impressions in a more informal way.

- Depending on the structure of the opening sub-session, this part of the workshop could mirror some of the discussions which took place then. If, for example, participants were invited to raise specific questions to be addressed during the workshop, it would be interesting to see if this did indeed take place.

During this de-briefing sub-session, attempts could be made to identify what participants appreciated most during the seminar, which working methods they found more efficient and which of the discussed topics were most and least relevant for their work. It would also be useful to address whether they consider that further elements could have been included for the training to be more comprehensive or better adjusted to their learning priorities and interests. Feedback on the training material provided and its usefulness and accessibility could also be sought.

In addition to the discussion, the workshop leader should use the opportunity to refer to the evaluation of the workshop and measures to ensure the quality control of the work. Reference to the initial assessment and mid-term evaluation procedure could be made, in order to raise participants' awareness, explain the objectives of this procedure and encourage them to contribute by providing their genuine input on how future workshops could be improved.

- Some time during this sub-session could be dedicated to presenting the initial assessment questionnaires and indicating which concrete elements the workshop organisers wish to evaluate in each question.

3. End of the workshop

Before closing the workshop, a reminder could be given of how the material provided during the workshop (background material, electronic documentation, e-learning course) may also be used in the future. Information on any follow-up training programmes could also be provided and the event should close with the workshop leader thanking and saying a few farewell words to participants and trainers.

Objectives of the sub-session:

- Revisiting the key points of the workshop discussions.
- An initial evaluation of the course.
- Ensure effective use of the training material (user's pack).
- End the workshop.

Training material

Necessary material

(to be made available in hardcopy during the sub-session)

- | | |
|----|---------------------------|
| a. | Immediate evaluation form |
|----|---------------------------|

Methodology

1. Timeframe

Approximately 30 minutes should suffice for a brief summary of the workshop's main conclusions and an initial discussion on participants' feedback.

2. Trainers' profiles

The closing sub-session should in principle be coordinated by the workshop leader. A further added value would be provided if this role is assigned to the workshop organiser, as he or she would then have the possibility to acquire direct feedback on the various choices made when structuring the course.

3. Teaching method

This sub-session should be held in plenary with the contribution of all participants and, as far as possible, of the trainers.

After the launch of the discussion by the workshop leader, the floor should be given to participants and trainers who should be encouraged to openly share their thoughts and ideas on the training.

- Drawing end users' attention to the importance of evaluation is crucial for its success. Involving them and ensuring that they provide genuine and constructive feedback not only immediately after the seminar but also later, in the framework of the mid-term evaluation, is necessary for an effective assessment of the workshop's impact.

Annex 1 - Template indicative workshop programme

Content

With an estimated one million divorces involving international couples in the EU every year, children often end up living in a different country than one of the parents, a situation which is fraught with difficulties from a family law point of view. These difficulties include, for example, knowing which courts have jurisdiction to hear a case on matters of parental responsibility, how a judgment will be recognised and enforced in another Member State and how cross-border parental child abduction can be prevented.

The workshop will:

- provide expert training on Regulation Brussels IIbis and its interaction with other EU instruments in the area of civil justice
- raise awareness of the interrelation between EU, international and domestic legislation on cross-border parental responsibility cases, including cross-border parental child abduction
- provide participants with a practical introduction to the preliminary ruling procedure
- allow participants to explore the possibilities offered by cross-border family mediation

Trainers

PARENTAL RESPONSIBILITY IN A CROSS-BORDER CONTEXT, INCLUDING CHILD ABDUCTION

Location

Venue

Workshop organiser

Language

Annex 1 - Template indicative workshop programme

Day I	Day II	Day III
08:45		
Arrival and registration of participants	II. Procedure in family matters	IV. Family mediation
I. Cross-border parental responsibility	09:00	09:00
	Hearing of the child and taking of evidence	An introduction to family mediation
09:10	10:45	10:00
I. Opening session	Coffee break	Role play – Session I: Family mediation in a cross-border child abduction case
09:30	11:15	11:00
Parental responsibility: rules on jurisdiction, provisional measures and applicable law	Cross-border communication between courts and between central authorities	Coffee break
11:00	12:00	11:30
Coffee break	III. Preliminary ruling procedure in family matters	Role play – Session II: Family mediation in a cross-border child abduction case
11:30	13:30	13:00
Cross-border child abduction within the EU	Preliminary rulings in family proceedings	Closing session
12:45	14:30	13:30
Lunch break	Coffee break	Lunch and end of the workshop
14:15	15:00	
Recognition and enforcement of judgments, including rules on access rights and child abduction	Case study II: Reference for a preliminary ruling	
15:15	17:30	
Coffee break	End of the second workshop day	
15:45		
Case study I: Parental responsibility and child abduction		
17:45		
End of the first workshop day		

Annex 2.1. – Background material – User’s pack

Background material - User’s pack

To be provided electronically

1. General information

1.	Final version of the workshop programme
2.	List of trainers
3.	List of participants
4.	Immediate evaluation form

2. E-learning course

1.	E-learning course on Parental responsibility in a cross-border context, including child abduction – HTML version (accessible)
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3. Trainers’ contributions

Notes, outlines, PowerPoint presentations and written texts provided by the trainers

4. Legislation

	Primary legislation
1.	Articles 24, 32, 47 of the Charter of Fundamental Rights of the European Union
2.	Article 3, 19 of the Treaty on European Union (TEU)
3.	Articles 256, 267, 288 of the Treaty on the Functioning of the European Union (consolidated version)
4.	Articles 103, 104, 104a and 104b of the Rules of Procedure of the Court of Justice of the EU
5.	Articles 20 and 23a of Protocol No3 on the Statute of the Court of Justice of the EU

	Secondary legislation
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Annex 2.1. – Background material – User’s pack

6.	<u>Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and the enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses</u>
7.	<u>Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters</u>
8.	<u>Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes</u>
9.	<u>Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIbis)</u>
10.	<u>Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the Service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) , and repealing Council Regulation (EC) No 1348/2000</u>
11.	<u>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</u>
12.	<u>Practice Guide for the application of the new Brussels II Regulation, European Commission, updated version, October 2005</u>
13.	<u>Practice Guide for the application of the Regulation on the taking of evidence</u>
14.	<u>Practical Guide on using videoconferencing to obtain evidence in civil and commercial matters</u>
15.	<u>Information relating to courts and redress procedures pursuant to Article 68 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 – consolidated version</u>
16.	<u>List of competent courts in matters of parental responsibility pursuant to Article 68 of the Regulation published in OJ C040 of 17 February 2005</u>
17.	<u>Certificates referred to in Articles 39, 41(1) 42(1) of Regulation Brussels IIbis, standard forms of Annex II. III and IV</u>
18.	<u>Certificate referred to in Article 42 of Regulation Brussels IIbis concerning return of the child(ren)</u>
	Decisions
19.	<u>Decision No 568/2009/EC of the European Parliament and of the Council of 18 June 2009 amending Council Decision 2001/470/EC establishing a European</u>

Annex 2.1. – Background material – User’s pack

	Judicial Network in civil and commercial matters
	Documents from the European Commission
20.	Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 30 May 2008 – Towards a European e-Justice Strategy
21.	European Commission’s Communication “An EU Agenda for the Rights of the Child” of 15 February 2011 (COM(2011) 60 final)
	Notices and reports from European Union institutions and bodies
22.	Notes for the guidance of Counsel Notes for the guidance of Counsel in written and oral proceedings before the Court of Justice of the European Communities <i>(most relevant for workshops addressed to legal practitioners)</i>
23.	Information note on references from national courts for a preliminary ruling <i>(most relevant for workshops addressed to members of the judiciary)</i>
24.	Report on the use of the urgent preliminary ruling procedure by the Court of Justice of 31 January 2012

5. International Conventions

1.	United Nations Convention on the Rights of the Child of 20 November 1989
2.	Council of Europe, European Convention on Human Rights of 4 November 1950
3.	Council of Europe, European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children of 1 September 1983
4.	Council of Europe, European Convention on the Exercise of Children’s Rights of 25 January 1996
5.	Council of Europe, European Convention on contact concerning children of 15 May 2003
6.	The Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
7.	The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
8.	The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Annex 2.1. – Background material – User’s pack

6. CJEU case law

1.	Judgment of the Court of 16 January 1974, Case 166/73 , reference for a preliminary ruling requested by the Bundesfinanzhof (Germany), Consequences of judgments of appeal courts, Rheinmühlen-Düsseldorf v Einfuhr- und Vorratsstelle für Getreide und Futtermittel
2.	Judgment of the Court of 6 October 1982, Case 283/81 , reference for a preliminary ruling from the Corte suprema di Cassazione (Italy), obligation to request a preliminary ruling
3.	Judgment of the Court of 17 September 1997, Case C-54/96 , reference for a preliminary ruling by the Vergabeüberwachungsausschuß des Bundes (Germany), Dorsch Consult Ingenieurgesellschaft mbH v Bundesbaugesellschaft Berlin mbH
4.	Judgment of the Court of 12 November 2002, Case C-206/01 , reference for a preliminary ruling by the High Court of Justice of England and Wales, Arsenal Football Club plc v Matthew Reed
5.	Judgment of the Court of 27 November 2007, Case C-435/06 , reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland), in the proceedings C
6.	Judgment of the Court of 11 July 2008, Case C-195/08 PPU , reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania), proceedings brought by Inga Rinau
7.	Judgment of the Court of 2 April 2009, Case C-523/07 , reference for a preliminary ruling under Articles 68 EC and 234 EC from the Korkein hallinto-oikeus (Finland), in the proceedings brought by A
8.	Judgment of the Court of 23 December 2009, Case C-403/09 PPU , reference for a preliminary ruling from the Višje Sodišče v Mariboru (Slovenia), Jasna Detiček v Maurizio Sgueglia
9.	Judgment of the Court of 1 July 2010, Case C-211/10 PPU , reference for a preliminary ruling from Oberster Gerichtshof (Austria), Doris Povse v Mauro Alpago
10.	Judgment of the Court of 5 October 2010, Case C-400/10 PPU , reference for a preliminary ruling from the Supreme Court (Ireland), J. McB. v L. E.
11.	Judgment of the Court of 9 November 2010, Case C-296/10 , Bianca Purrucker v Guillermo Vallés Pérez
12.	Judgment of the Court of 22 December 2010, Case C-497/10 PPU , Barbara Mercredi v Richard Chaffe
13.	Judgment of the Court of 22 December 2010, Case C-491/10 PPU , reference for a preliminary ruling from the Oberlandesgericht Celle (Germany), in the proceedings Joseba Andoni Aguirre Zarraga v Simone Pelz
14.	Judgment of the Court of 10 June 2011, Case C-155/11 PPU , reference for a preliminary ruling from Rechtbank's-Gravenhage (Netherlands), Bibi Mohammad Imran v Minister van Buitenlandse Zaken

Annex 2.1. – Background material – User’s pack

15.	Judgment of the Court of 26 April 2012, Case C-92/12 PPU , reference for a preliminary ruling from the High Court (Ireland), <i>Health Service Executive v S.C., A.C.</i>
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7. ECHR case law

1.	Judgment of the ECHR of 26 June 2003, in the Case Maire v. Portugal , Application no. 48206/99
2.	Judgment of the ECHR of 25 January 2000, in the Case Ignacolo-Zenide v. Romania , Application no. 31679/96

8. Other documents

	United Nations
1.	General Comment No. 12 (2009) on the ‘The right of the child to be heard’ of the UN Committee on the Rights of the Child
	Council of Europe
2.	Council of Europe, Recommendation No. R (98)1 of the Committee of Ministers to Member States on family mediation adopted on 21 January 1998
3.	Council of Europe, European Commission for the Efficiency of Justice, Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters (CEPEJ (2007)14)
4.	Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted on 17 November 2010
	Hague Conference on Private International Law
5.	Hague Conference on Private International Law, General Principles and Guide to Good Practice, Transfrontier Contact Concerning Children (2008)
6.	Conclusions and recommendations of the Joint Conference European Commission – Hague Conference on Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks (2009))
7.	Hague Conference on Private International Law, Report on Judicial Communications in Relation to International Child Protection, drawn up by Philippe Lortie (currently Doc. Prel. No.3 of April 2011)
8.	Hague Conference on Private International Law, Revised draft Practical Handbook on the operation of the 1996 Hague Protection of Children Convention (Prel. Doc. No 4 of May 2011)
9.	Hague Conference on Private International Law, Revised draft Guide to Good Practice under the Hague Child Abduction Convention, Part V – Mediation

Annex 2.1. – Background material – User’s pack

	(2012)
10.	Model Application Form for the return of wrongfully removed or retained children under the 1980 Hague Convention
	Documents on mediation
11.	European Code of Conduct for Mediators of July 2004
12.	Wroclaw Declaration of 8 October 2007 on Mediation of Bi-national Disputes over Parents’ and Children’s Issues

9. Useful links

1.	CURIA website
2.	European E-justice portal
3.	E-Justice portal – Case law
4.	E-Justice Portal - Mediation
5.	E-Justice portal – Parental responsibility
6.	E-Justice portal – Tools for courts and practitioners
7.	EUR-Lex database
8.	European Judicial Atlas in civil and commercial matters – Family law
9.	European Judicial Atlas in civil and commercial matters – Matrimonial matters and matters of parental responsibility
10.	European Judicial Atlas in civil and commercial matters – Mediation
11.	European Judicial Atlas in civil and commercial matters – Serving documents
12.	European Judicial Atlas in civil and commercial matters – Taking evidence
13.	European Judicial Network in civil and commercial matters – Alternative dispute resolution
14.	European Judicial Network in civil and commercial matters – Parental responsibility
15.	European Judicial Network in civil and commercial matters – Service of documents
16.	European Judicial Network in civil and commercial matters – Taking of evidence and mode of proof
17.	Hague Conference on Private International Law website
18.	Hague Conference on Private International Law – Child Abduction Section

Annex 2.1. – Background material – User’s pack

19.	Hague Conference on Private International Law - INCADAT
20.	JURIFAST - Preliminary rulings by the Court of Justice of the EU
21.	N-Lex database
22.	116000 – European hotline number for missing children

10. National sections

27 national sections

11. General bibliography

Compiled general bibliography
(on the basis of the information contained in the national sections)

Annex 2.2. – Background material to be provided in hardcopy

Background material

Necessary material to be made available in hardcopy during the workshop

1. General information

1.	Final version of the workshop programme
2.	List of trainers
3.	List of participants
4.	Immediate evaluation form

2. Trainers' contributions

Notes, outlines, PowerPoint presentations and written texts provided by the trainers

3. EU Legislation

	Primary legislation
1.	Article 19, Treaty on European Union (TEU)
2.	Article 267 , Treaty on the Functioning of the European Union (consolidated version)
3.	The Charter of Fundamental Rights of the European Union
4.	Articles 103, 104, 104a and 104b of the Rules of Procedure of the Court of Justice of the EU
5.	Articles 20 and 23a of Protocol No3 on the Statute of the Court of Justice of the EU
	Secondary legislation
6.	Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters
7.	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIbis)
8.	Regulation (EC) No 1393/2007 of the European Parliament and of the Council

Annex 2.2. – Background material to be provided in hardcopy

	of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
9.	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
	Documents from the European Commission
10.	Practice Guide for the application of the new Brussels II Regulation (up-dated version 1 June 2005)
	Notices from European Union institutions and bodies
11.	Information note on references from national courts for a preliminary ruling

4. International Conventions and Declarations

1.	The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
2.	The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
3.	Wroclaw Declaration of 8 October 2007 on Mediation of Bi-national Disputes over Parents' and Children's Issues

5. CJEU case law

1.	Judgment of the Court of 2 April 2009, Case C-523/07 , reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland), Proceedings brought by A
2.	Judgment of the Court of 22 December 2010, Case C-497/10 PPU , reference for a preliminary ruling from the Court of Appeal of England and Wales (Civil Division) (United Kingdom), Barbara Mercredi v Richard Chaffe

6. Workshop exercises

1.	Workshop exercise I: Case study on parental responsibility and child abduction
2.	Workshop exercise II: Case study on a reference for a preliminary ruling (Parts I to IV)
3.	Workshop exercise III: Role play on family mediation in a cross-border parental child abduction case (Case scenario, Agreement to Mediate, Role instructions, Mediation Agreements I and II)

Annex 2.2. – Background material to be provided in hardcopy

7. Links

1.	CURIA website
2.	European E-justice portal
3.	European Judicial Atlas in civil and commercial matters
4.	European Judicial Atlas in civil and commercial matters – Family law
5.	European Judicial Network in civil and commercial matters
6.	European Judicial Network in civil and commercial matters – parental responsibility
7.	EUR-Lex database
8.	Hague Conference on Private International Law website
9.	N-Lex database

8. National Sections

1.	Question B.1 of the German and Italian national sections
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Annex 3.1. – Workshop exercise I

Case Study: Parental Responsibility and Child Abduction³

Case

Heidi (a German national) and Paul (a French national) have since 2003 been living together as a couple in Brussels, where they both worked. They were never married. In October 2006 their daughter, Laura, is born and in November 2008 their son, Nicolas. Paul has formally (in the presence of a civil servant) acknowledged that he is the father of the children and he is mentioned as such on the birth certificates. Under Belgian law this has the result that Heidi and Paul share parental responsibility for the children.

In February 2010 Paul gets an unexpected opportunity to work in Paris on secondment for two years. He takes this up in March 2010. He commutes between Brussels and Paris and also rents an apartment in Paris where he stays over two or three nights every week. The change in lifestyle puts strain on the family and Heidi and Paul's relationship deteriorates and eventually breaks up by the summer of 2010. Paul moves into his apartment in Paris. Both parents want the children to live with them.

- Where can Paul institute court proceedings to request that the children reside principally with him in Paris?

Suggested solution:

In an action on parental responsibility jurisdiction lies with the court of the place of habitual residence of the children (Art. 8 Brussels IIbis Regulation). According to the facts given, this is Brussels.

NB: the European Court of Justice has ruled on the determination of the habitual residence of the child.

See case C-523/07, A, ECR 2009, I-2805, paras 37-39:

"(37) The 'habitual residence' of a child, within the meaning of Article 8(1) of the Regulation, must be established on the basis of all the circumstances specific to each individual case.

(38) In addition to the physical presence of the child in a Member State other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of integration in a social and family environment.

(39) In particular, the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration."

Regarding the habitual residence of an infant, see C-497/10PPU, *Mercredi v. Chaffe*, not yet reported in ECR, www.curia.eu. The court considers the criteria it has established in the case A, but states *"As a general rule, the environment of a young child is essentially a family environment, determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of."* (para 54) and *"That is even more true where the child concerned is an infant. An infant necessarily shares the social and family environment of the circle of people on whom he or she is dependent. Consequently, where,*

³ Developed by Thalia Kruger, Lecturer, University of Antwerp and Honorary Research Associate, University of Cape Town.

Annex 3.1. – Workshop exercise I

as in the main proceedings, the infant is in fact looked after by her mother, it is necessary to assess the mother's integration in her social and family environment. In that regard, the tests stated in the Court's case-law, such as the reasons for the move by the child's mother to another Member State, the languages known to the mother or again her geographic and family origins may become relevant." (para 55).

Extra question the trainer can ask: Are there exceptions or alternatives to the general rule of the habitual residence of the child?

The parents can agree to have the case heard in France, a State with which the children have a close connection (Art. 12(3) Brussels IIbis Regulation).

If the habitual residence of the child cannot be established, a court may take jurisdiction on the basis of the presence of the child (Art. 13 Brussels IIbis Regulation).

It is also possible for a court that has jurisdiction under the Regulation to refer the case to another court (Art. 15 Brussels IIbis Regulation). This rule allows a court to directly contact a court in another EU Member State, with which the child has a close connection. The referral can take place on the initiative of the court where the case is pending, another court (claiming a close connection with the child), or one of the parties. If one of the courts takes the initiative, at least one of the parties must agree with the referral before it can take place.

➤ **If the parties mediate their dispute in Belgium and reach an agreement, does this agreement have legal effect in France?**

Suggested solution:

If the agreement takes the form of an authentic instrument, it can be recognised under the Brussels IIbis Regulation, under the same conditions as a judgment. Art. 46 of the Regulation provides for recognition of authentic acts. If the authentic act is enforceable in the State in which it was granted, it is also enforceable under the Regulation.

What is an authentic instrument?

Can be a notarial act in the civil law countries.

Can be a court settlement (one must look at the national mediation legislation). Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (Official Journal L 136, 24/05/2008, 3) places an obligation on Member States to ensure enforceability of mediation agreements (Art. 6).

Annex 3.1. – Workshop exercise I

Same Case, but:

Let us assume that the Brussels court ruled in November 2010 that the children must live with Heidi in Brussels every Saturday evening from 6.00pm until Wednesday 4.00pm and with Paul from Wednesday 4.00pm until Saturday 6.00pm. Heidi is responsible for taking the children to Paris on Wednesday afternoons. (She has the day off as she works 4 days a week.) Paul is responsible for taking the children back to Brussels on Saturday evenings. This arrangement works well for the first month. By mid-December, Paul starts to bring the children late and then takes up the habit of bringing them only on Sundays. Heidi is unsatisfied, as she wants to spend Sundays with her children.

- Can Heidi enforce the Belgian court order in France? What are the possible grounds for refusal?

Suggested solution:

In order to be enforced in another Member State (in this case France), the court order must be enforceable in the State of origin (in this case Belgium) (Art. 28).

If this condition is met, there are two possibilities for this case:

- Direct enforcement (no exequatur procedure required) if one obtains the certificate in Annex III from the Belgian Court (Art. 41: Rights of Access). In this case, enforcement cannot be refused. By this certificate, the Belgian court order becomes equivalent to a French order, and it can be enforced in France in the same way as a French decision.
- Enforcement through the exequatur procedure (Art. 28). The exact form of this procedure is determined by national law (Art. 30). In essence, Heidi would have to approach the French court to request enforcement. Only after the enforcement is granted can the court order be enforced in France. In this case, the grounds for refusal are determined by Art. 23 Brussels IIbis Regulation. They are:
 - If the recognition would be manifestly contrary to public policy;
 - If the child was not heard, in violation of the fundamental principles of the State where enforcement is sought, except in an urgent matter;
 - If the judgment was given in default of appearance and the defendant was not served in a timely manner so as to organise his or her defence, unless he or she has unequivocally accepted the decision;
 - If a person claims that the judgment infringes his or her parental responsibility and this person was not heard in the proceedings and this person applies for the refusal of the enforcement;
 - If the judgment is irreconcilable with a later judgment of a court in the State where enforcement is sought;
 - If the judgment is irreconcilable with a later judgment of another Member State or a non-Member State where the child was habitually resident and this judgment can be enforced in the State where enforcement is sought.

Annex 3.1. – Workshop exercise I

Same Case :

From June 2011 on Heidi becomes very unhappy in Brussels. She starts looking for a new job in Cologne, where her parents and sister live. She does not tell Paul of her plans. In March 2012 Paul moves back to Brussels (his secondment having come to an end), into a new apartment. The arrangement concerning the children carries on as before.

In May 2012 Heidi moves to Cologne without a word to Paul. On the first Wednesday after the move she does not take the children to Paul's place. He calls her mobile phone, but she has cancelled her contract and he is unable to reach her. After phoning several mutual friends, he learns that Heidi is in Germany, presumably with the children. He phones Heidi's parents, but they refuse to give him any information about where Heidi and the children are. They blame him for having broken up the family and tell him that he has no say over what Heidi can and must do. As an unmarried father, their view is that he has no right to have the children living with him.

Paul is devastated. He has no idea what to do.

- Can you help Paul? Explain the steps he must take and the course of the procedure that will follow.

Suggested solution:

This is a case of international child abduction. This is defined as wrongful removal of the children, i.e. in breach of custody rights of Paul, which he has pursuant to the Belgian court decision (Art. 3 Hague Child Abduction Convention). The Brussels IIbis Regulation applies in conjunction with the Hague Child Abduction Convention of 1980 (which is applicable in all EU Member States).

The first step that Paul must take, is contact the Central Authority in the country where he lives. Contact details are available at:

- The European Judicial Atlas in Civil Matters: http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_jmm_centralauthorities_en.htm, or
- The website of the Hague Conference on Private International Law: http://www.hcch.net/index_en.php?act=conventions.authorities&cid=24,

That Central Authority will tell him which documents he needs and contact the Central Authority of the country where the children are. Where necessary, the Central Authority will help to discover the whereabouts of the children (Art. 7 of the Hague Convention).

The Central Authorities will try to establish the return of the children.

If the return of the children cannot be established (for instance voluntarily or through mediation), the Central Authority of the country where the children are, will assist in the institution of legal proceedings in that country (Germany in this case).

The German court will only rule on the return, and not on the merits of the dispute about where the children will reside in future. In principle the court has to order the return of the children, unless one of the limited grounds for refusal can be applied (Arts. 12, 13 and 20 of the Hague Convention). Note that the Brussels IIbis Regulation further limits these grounds for refusal (Art. 11). Read together, the court has to consider the following grounds for refusal:

1. The child has been in the country to which he or she was abducted for more than a year and the child is settled in his or her new environment;

Annex 3.1. – Workshop exercise I

2. The person requesting the return was not actually exercising the custody rights at the time of the abduction, or had subsequently consented in the abduction;
3. There is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation, except if adequate measures to protect the child are taken in the Member State to which the child is to be returned;
4. The child was given the opportunity to be heard, unless this is inappropriate given the child's age and degree of maturity, and he or she objects to the return while it is appropriate to take account of his or her views;
5. Returning the child would be contrary to the fundamental principles (of human rights and fundamental freedoms) of the State where the return is requested.

After the return of the children, the Belgian court has jurisdiction to hear the dispute on parental responsibility, i.e. the dispute about where the children will reside.

Thus, the Belgian court has retained its jurisdiction. This jurisdiction is not altered by the wrongful removal of the children (Art. 10 Brussels IIbis Regulation).

Same Case :

Let us assume that the German court has refused Paul's application.

➤ What can he do?

Suggested solution:

This depends on the ground for refusal that the German court has used.

If the court has used Art. 13 of the Hague Convention (numbers 2-4 above), Paul has a second chance in Belgium, where the case on parental responsibility will be heard (Art. 11(6) and (7) Brussels IIbis Regulation).

A subsequent decision by the Belgian court that requires the return of the children, is enforceable (Art. 11(8)), notwithstanding the German refusal. For this situation, the exequatur procedure has been abolished (Art. 42 and Annex IV). This means that the judgment is immediately enforceable in all other Member States, without the requirement of any approval by a court of these States.

If the refusal was based on Article 12 or 20 of the Hague Convention (numbers 1 and 5 above), the so-called second chance does not exist. In these cases Germany becomes the new habitual residence of the children and proceedings on parental responsibility must be conducted there.

Appeal possibilities against the refusal in Germany are determined by German national law.

Legislation:

Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIbis Regulation)

Convention on the Civil Aspects of International Child Abduction, concluded in The Hague on 25 October 1980 (All EU Member States are party to this Convention.)

Annex 3.2. – Workshop exercise II

Case Study: Reference for a Preliminary Ruling⁴

Contents

- I. Case scenario – The facts
- II. Task 1
- III. Case scenario – Continuation (Requirements for a preliminary reference)
- IV. Task 2
- V. Trainer’s Materials Pack (including: learning outcomes, timing and material delivery and problem answers)
- V. Trainer’s PowerPoint Slides

I. Case scenario – the facts

Sara, a 26 year old Dutch national, and Jacques, a 30 year old French national, met in Austria where they were both working. They have been in a relationship since 2009 and were married in Austria in 2010.

Sara and Jacques have a daughter, Marie, who was born in 2010 and is now two years old. Marie was born in Austria and is a Dutch national. She has lived in Austria but has spent extended holidays with her maternal grandparents in Holland. She speaks German and some French and her language skills are quite developed. She has attended a day nursery in Austria where staff are positive about her language skills and learning development and say that she is a generally happy child.

In 2011, Jacques and Sara’s relationship ended and they divorced in Austria. Following the divorce, the Austrian court granted Sara custody of Marie. Jacques has extensive rights of access to Marie at weekends. These arrangements had been in place for six months and were been carried out successfully with the cooperation of both parents and Marie enjoys a very strong on going relationship with both her father.

Jacques is employed in a high-status role at an accountancy firm in Austria and has a two bedroom apartment to live in which has space for Marie to visit. Sara gave up work when Marie was born and had not re-entered the labour market because she could not find work in Austria. Marie found it increasingly difficult to manage financially in Austria and decided to relocate back to Holland to find work and seek help in caring for Marie from her parents. She approaches Jacques who agrees that Sara and Marie can relocate to Holland.

Sara and Marie moved back to Holland in February 2012. Sara has since found work in Holland. Marie is attending a day nursery 3 days a week and spends 2 days a week in the care of her maternal grandparents. She spends the rest of the time with Sara.

It is now July 2012 and Jacques is concerned about his access rights in relation to Marie. Jacques has not had contact at weekends with Marie since she moved. He has spoken to her on the phone, but the informal agreement between Sara and Jacques, that he would have

⁴ Developed by Dr Ruth Lamont, Lecturer in Law, University of Liverpool.

Annex 3.2. – Workshop exercise II

contact with Marie during the summer once they had moved, has not been carried out. He petitions the Austrian court for an amendment to the access rights he was granted following the divorce to give access for extended periods of time, rather than weekends, or alternatively to transfer primary custody of Marie to Jacques, in Austria.

Jacques makes an application to the Austrian court based on Article 9, Brussels IIbis on 10th July 2012. The application is heard by the Family Court in Austria, from which there is a right of appeal to a higher court.

Jacques argues that the Austrian court has jurisdiction under Article 9, Brussels IIbis because:

- Sara and Marie have lawfully relocated and Marie has been habitually resident in Holland for less than three months
- The Austrian courts took the decision about custody and access following the divorce and would be the most appropriate jurisdiction to hear the later dispute over her welfare

Sara argues that the Austrian court does not have jurisdiction because:

- Marie is now habitually resident in Holland and jurisdiction should be founded on Article 8, Brussels IIbis
- That Jacques' application to the Austrian court must fail under Article 9 because it was issued more than three months after Marie moved to Holland.
- Sara applies to the Austrian court for the case to be transferred to Holland under Article 15, Brussels IIbis

II. Task 1

From the perspective of the Austrian court, it is necessary to establish:

- a) Where is M habitually resident?
- b) Does Article 9, Brussels IIbis found jurisdiction of the Austrian court?
- c) Should the Austrian court grant an application under Article 15, Brussels IIbis?

Each group should examine the factual circumstances and identify the relevant provisions and cases for their task.

- Discuss the jurisdictional grounds of Brussels IIbis relevant to the circumstances
- Prepare a short (max 10 minutes) presentation as a group on the questions posed for the group task.

Group (a)

Where is M habitually resident?

Using the following materials:

- Regulation 2201/2003
- Regulation 1206/2001

Annex 3.2. – Workshop exercise II

- Case C-523/07 A [2009] E.C.R. I-02805
- Case 497/10 PPU *Mercredi nyr* judgment of 22nd December 2010

Consider:

- What is meant by 'habitual residence' for a child under Brussels IIbis? Which grounds of jurisdiction is it relevant to under the Regulation?
- Identify what the key issues are, what issues and evidence the court will consider when establishing where M is habitually resident
- Where you think M is currently habitually resident and the reasons for this decision
- How the court can obtain evidence about M's current habitual residence

Group (b)

Does Article 9, Brussels IIbis found the jurisdiction of the Austrian court?

Using the following materials:

- Regulation 2201/2003
- Regulation 1206/2001
- Case C-523/07 A [2009] E.C.R. I-02805
- Case 497/10 PPU *Mercredi nyr* judgment of 22nd December 2010

Consider:

- What are the requirements of Article 9, Brussels IIbis? What must be demonstrated for jurisdiction to be established under Article 9?
- Identify what the key issues are, what issues and evidence the court will consider when establishing whether the requirements of Article 9 are made out
- Do you think that the Austrian court will have jurisdiction under Article 9 and identify your reasons for that decision
- In your opinion, is the Austrian court the most appropriate jurisdiction to hear the case? What are the reasons for your opinion?

Group (c)

Should the Austrian court grant an application under Article 15, Brussels IIbis?

Using the following materials:

- Regulation 2201/2003
- Regulation 1206/2001
- Case C-523/07 A [2009] E.C.R. I-02805
- Case 497/10 PPU *Mercredi nyr* judgment of 22nd December 2010

Consider:

- What are the requirements of Article 15, Brussels IIbis? What is its purpose within the Regulation and why is it relevant to Sara's case?

Annex 3.2. – Workshop exercise II

- Identify what the key issues are, what issues and evidence the court will consider when establishing whether the requirements of Article 15 are made out
- Do you think that the Austrian court will grant a transfer of jurisdiction to the Dutch courts under Article 15? Identify the reasons for your decision
- In your opinion, is the Dutch court the most appropriate jurisdiction to hear the case? What are the reasons for your opinion?

III. Case scenario - continuation

Requirements for a Preliminary Reference

The preliminary reference procedure is established by Article 267 of the Treaty on the Functioning of European Union [2010] OJ C83/01:

Article 267(1) TFEU – *The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the **interpretation of the treaties**; (b) the **validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union**. Where such a question is raised before any court or tribunal of a Member State, that **court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.***

*Where any such question is raised in a **case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the court.***

A national court may make a preliminary reference to the European Court of Justice on the interpretation of any of the provisions of Brussels IIbis. Courts from which there is no judicial remedy must make a reference if there is a question of interpretation of EU law necessary for the national court to give judgment. Lower courts may make a reference if it necessary for the national court to give judgment.

The national court still decides questions of national family law and applies the law once the European Court of Justice has issued a ruling on the meaning of European law.

If it is necessary to resolve a case quickly, the national court may request that the European Court of Justice deals with the questions under the urgent preliminary reference procedure, so that a ruling from the Court is obtained more quickly. This may be appropriate in family law cases, for example where the welfare of the child is at risk if the judgment is delayed. The European Court of Justice will decide whether the urgent preliminary reference procedure will be used, even if the national court requests it.

The Austrian court may refer questions of interpretation of Brussels IIbis to the European Court of Justice for a definitive ruling on its meaning and operation.

IV. Task 2

From the perspective of the Austrian court, there are questions of interpretation arising from Jacques application under Article 9, Brussels IIbis:

Annex 3.2. – Workshop exercise II

- a) For the purposes of Article 9, when did Marie become habitually resident in Holland and when does time start to run under the three month deadline?
- b) Whether an application to amend rights of access under Article 9 also includes jurisdiction over an application for a transfer of custody of Marie from Sara in Holland to Jacques in Austria?
- c) Whether the transfer of jurisdiction under Article 15, requested by Sara, is necessary and in Marie's best interests?

Each group should examine the question of interpretation arising out of Jacques application to the Austrian court, identify the principles for formulating a question for a preliminary reference and use these principles to draft a question.

- Discuss the requirements for a preliminary reference and whether it is appropriate to seek an urgent reference in the circumstances (15 minutes)
- Formulate a question which would identify the question of interpretation of Brussels IIbis for the European Court of Justice (15 minutes)

Group (a)

For the purposes of Article 9, when did Marie become habitually resident in Holland and when does time start to run under the three month deadline?

Using the following materials:

- Consolidated Rules of Procedure of the European Court of Justice
- Information Note on Preliminary Reference Procedure
- Guidance to Counsel
- Article 267 TFEU (above)

Consider:

- Whether the Austrian family court is *required* to make a reference, or may choose to make a reference to the European Court of Justice under Article 267 TFEU
- Whether there is a time pressure in the case and the requirements for requesting the urgent preliminary reference procedure

Draft a question which identifies the problem of interpretation under Article 9 for the European Court of Justice, following the guidance in the Court's materials.

- You should focus on formulating a question which can be understood without any insight into the factual background to the case
- The questions should refer directly to the key terms and provisions of Brussels IIbis and should be focussed on the key legal questions arising out of the Articles of the Regulation.

Group (b)

Annex 3.2. – Workshop exercise II

Does an application to amend rights of access under Article 9 also include jurisdiction over an application for a transfer of custody of Marie from Sara in Holland to Jacques in Austria?

Using the following materials:

- Consolidated Rules of Procedure of the European Court of Justice
- Information Note on Preliminary Reference Procedure
- Guidance to Counsel
- Article 267 TFEU (above)

Consider:

- Whether the Austrian family court is *required* to make a reference, or may choose to make a reference to the European Court of Justice under Article 267 TFEU
- Whether there is a time pressure in the case and the requirements for requesting the urgent preliminary reference procedure

Draft a question which identifies the problem of interpretation under Article 9 for the European Court of Justice, following the guidance in the Court's materials.

- You should focus on formulating a question which can be understood without any insight into the factual background to the case
- The questions should refer directly to the key terms and provisions of Brussels IIbis and should be focussed on the key legal questions arising out of the Articles of the Regulation.

Group (c)

Is the transfer of jurisdiction under Article 15, requested by Sara, necessary and in Marie's best interests?

Using the following materials:

- Consolidated Rules of Procedure of the European Court of Justice
- Information Note on Preliminary Reference Procedure
- Guidance to Counsel
- Article 267 TFEU (above)

Consider:

- Whether the Austrian family court is *required* to make a reference, or may choose to make a reference to the European Court of Justice under Article 267 TFEU
- Whether there is a time pressure in the case and the requirements for requesting the urgent preliminary reference procedure

Draft a question which identifies the problem of interpretation under Article 9 for the European Court of Justice, following the guidance in the Court's materials.

Annex 3.2. – Workshop exercise II

- You should focus on formulating a question which can be understood without any insight into the factual background to the case
- The questions should refer directly to the key terms and provisions of Brussels IIbis and should be focussed on the key legal questions arising out of the Articles of the Regulation.

V. Trainer's Materials Pack

Learning Outcomes

The material which is the focus of this training module concerns a family law dispute over the custody of the child where the parents and child are split across two different European Member States. This raises questions of European law under Regulation 2201/2003 (Brussels IIbis) in identifying the courts of which country should hear the case (which court has jurisdiction), and how to protect the welfare of the child concerned.

By the end of the session, end users should be able to:

- Identify legal issues in cross-border family law cases which fall within the scope of Brussels IIbis and demonstrate familiarity with the terminology of the legislation and its role in resolving disputes
- Identify problems in the drafting of Brussels IIbis and analyse their implications in cross-border family law
- Explain the role and purpose of the preliminary reference procedure and the roles of the national court and the European Court of Justice in this procedure
- Analyse a problem of interpretation of EU law and formulate questions for a preliminary reference to the European Court of Justice

The training session is split into two sections:

Task 1: Identifying the European law issues arising in a factual scenario

Task 2: Preparing the questions for a reference to the European Court of Justice

For each section, the group should be divided into three separate task groups as the problem breaks down into three questions. The groups can remain stable throughout the session so that the individuals can work together as a team.

Timing and Material Delivery

Task 1: Identifying the European law issues arising in a factual scenario

Material - all participants should receive a copy of:

Annex 3.2. – Workshop exercise II

- The factual outline and legal arguments
- A question sheet appropriate to the group and their task (a), (b) or (c)
- A copy of Regulation 2201/2003 (Brussels IIbis)
- A copy of Regulation 1206/2001 (cross-border evidence Regulation)
- A copy of Case C-523/07 A [2009] E.C.R. I-02805
- Case 497/10 PPU *Mercredi nyr* judgment of 22nd December 2010

Introducing the problem

- Break the group into three and identify for each group which element of the task they are to complete (a), (b) or (c)
- Hand out the materials relevant to task 1.
- The end users should be asked to consider the facts presented and the particular problems arising in it. Each group should consider the issues raised by their section of the task and prepare a summary of the key issues for the rest of the group.
- Considering the facts and the associated legal issues can take between 15-20 minutes. Participants should spend another 15-20 minutes considering and summarising their response to the task.
- Ask the end users to elect a member of the group to present a short summary of their findings (max 10 minutes).
- Summarise the points made by the participants and the key issues raised by the facts (see *Problem 'Answers'* and PowerPoint)

Problem 'Answers'

From the perspective of the Austrian court, it is necessary to establish:

- a) Where is M habitually resident?
- b) Does Article 9, Brussels IIbis found jurisdiction of the Austrian court?
- c) Should the Austrian court grant an application under Article 15, Brussels IIbis?

Group (a)

Where is M habitually resident?

Consider:

- What is meant by 'habitual residence' for a child under Brussels IIbis? Which grounds of jurisdiction is it relevant to under the Regulation?
- Identify what the key issues are, what issues and evidence the court will consider when establishing where M is habitually resident
- Where you think M is currently habitually resident and the reasons for this decision
- How the court can obtain evidence about M's current habitual residence

Annex 3.2. – Workshop exercise II

Habitual residence is the key connecting factor of the Regulation, which tries to identify a factual link between the child and a particular jurisdiction. In *A* and *Mercredi* the European Court of Justice was asked to identify the factors which would identify where a child was habitually resident. The Court makes it clear that the national court decides where a child is habitually resident and that the court must look for the place which is the 'centre of the child's interests'. The court should consider a number of things including:

- duration and regularity of residence in a Member State;
- conditions and reasons for stay on the territory and the family's move;
- child's nationality;
- place of attendance at school; family and social relationships of the child
- linguistic knowledge;

M is very young and many of her family and social relationships will be affected by her primary carer, in this case her mother, S. In M's case, she has only been in Holland for 5 months but it is a permanent move to Holland and she is familiar with Holland having been on extended visits there previously. She is of Dutch nationality and her nursery and primary caring relationships are in Holland, with the exception of her father, with whom she has previously enjoyed a very good relationship. Her linguistic knowledge is fluid and she is very young.

The likelihood is that she is now habitually resident in Holland because this is the 'centre of her interests'. The centre of a younger child's interests is likely to be narrower than an older child and centred on her immediate family. This does not mean that she should lose contact with her father.

End users should appreciate the factual, contextual nature of habitual residence and its intended flexibility – as M moves around different countries, her habitual residence should also change. Her habitual residence may not change *immediately* from Austria to Holland as this may depend on the circumstances of the case and her integration into her new environment.

Habitual residence is the central connecting factor in the Regulation and the general ground of jurisdiction under Article 8 is the place of the child's habitual residence. Unless there are other circumstances, litigation in relation to the child and their circumstances should take place in the child's habitual residence.

Group (b)

Does Article 9, Brussels IIbis found the jurisdiction of the Austrian court?

Consider:

- What are the requirements of Article 9, Brussels IIbis? What must be demonstrated for jurisdiction to be established under Article 9?
- Identify what the key issues are, what issues and evidence the court will consider when establishing whether the requirements of Article 9 are made out
- Do you think that the Austrian court will have jurisdiction under Article 9 and identify your reasons for that decision

Annex 3.2. – Workshop exercise II

- In your opinion, is the Austrian court the most appropriate jurisdiction to hear the case? What are the reasons for your opinion?

Article 9 is an exception to the Article 8 general ground of jurisdiction:

Article 9(1) – Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the court of the member State of the child's former habitual residence shall, by way of exception to Article 8, retain jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights, issued before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child's former habitual residence'.

For jurisdiction under Article 9 to be established, there must be: 1. A lawful move between two EU Member States 2. A judgment on access rights and the holder of access rights must remain in the child's former habitual residence 3. The child must now be habitually resident in the State to which they have relocated.

If these criteria are made out, the former habitual residence (here Austria) retains jurisdiction for three months following the relocation to another Member State (here Holland).

In the circumstances this means that the Austrian courts could retain jurisdiction to modify J's judgment on access rights to M for three months after the relocation. It is not clear whether this will apply in the circumstances because:

- It depends on where M is habitually resident. Article 9 assumes that the child becomes habitually resident in their new place of residence immediately, but this is not necessarily the case.
- M has been in Holland for 5 months. If she was habitually resident in the Netherlands immediately, the application under Article 9 will fail because it is out of time. If the time runs from the point at which M becomes habitually residence in Holland, the application may be out of time, depending on when M became habitually resident in Holland.
- J has petitioned the Austrian court to amend the judgment on access rights, or alternatively to gain custody of M. It is not clear whether Article 9 would cover an additional claim to amend the arrangements for custody, as well as a claim to amend access rights.

End users should identify that the requirements of Article 9 are not clear as they apply to J, S and M and the particular problems of application in the factual circumstances identified.

Article 9 is an attempt to ensure that access rights are amended in the former habitual residence so that arrangements are in place as soon as the child relocates to another Member State. There is an argument that Austria is the most appropriate forum for this dispute as this jurisdiction has previously given judgment on the family arrangements between the parties. However, the longer M is in Holland, the more likely it is Holland is the more appropriate jurisdiction as this is her habitual residence and the general ground of jurisdiction under the Regulation, Article 8, should apply.

Annex 3.2. – Workshop exercise II

Group (c)

Should the Austrian court grant an application under Article 15, Brussels IIbis?

Consider:

- What are the requirements of Article 15, Brussels IIbis? What is its purpose within the Regulation and why is it relevant to Sara's case?
- Identify what the key issues are, what issues and evidence the court will consider when establishing whether the requirements of Article 15 are made out
- Do you think that the Austrian court will grant a transfer of jurisdiction to the Dutch courts under Article 15? Identify the reasons for your decision
- In your opinion, is the Dutch court the most appropriate jurisdiction to hear the case? What are the reasons for your opinion?

Article 15(1) – *By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case... and where this is in the best interests of the child: (a) stay the case... and invite the parties to introduce a request before the court of that other Member State OR (b) request a court of another Member State to assume jurisdiction.*

It must be demonstrated that:

- The case should be transferred to another EU Member State court which must be *better placed* to hear the case
- That the child has a particular connection to the alternative Member State, either:
 - The child's habitual residence which has changed, subsequent to the court being seised
 - It is the former habitual residence of the child
 - It is the place of the child's nationality
 - It is the habitual residence of a holder of parental responsibility
 - Or in cases concerning the child's property, the place of the location of the property
- That the transfer is in the child's best interests

In M's case, the transfer would be to Holland, which would have jurisdiction under Article 8 as the court of the child's habitual residence. There are arguments to suggest that this court is best placed to hear the case: it is M's current habitual residence; it is doubtful whether the Austrian courts have jurisdiction; most of the current information about M's health and welfare will be in Holland and it will be easier to gather information in the child's habitual residence.

Holland is the place of M's nationality, so the connection necessary to hear the case is demonstrable.

The question of whether it is in the child's best interests to hear the case in Holland is relatively undefined; this will depend on the judgment of the Austrian court.

Annex 3.2. – Workshop exercise II

The purpose of Article 15 is to try and ensure that cases are heard where M's interests and welfare will best be protected. That court must be best placed to hear the case. Since the Dutch court would have jurisdiction under Article 8 and is M's habitual residence, this court should be better placed to hear the case, but the question of M's best interests in this circumstances is relatively undefined. It cannot be a full assessment of best interests, but rather identifying litigation in which jurisdiction is most likely to be in her best interests.

Task 2: Preparing the questions for a reference to the European Court of Justice

Introducing the problem

- Hand out the materials relevant to task 2.
- The participants will now use the issues identified in Task 1 to consider how they would present the legal issues identified as a question for a preliminary reference to the European Court of Justice.
- The end users must identify the purpose of a preliminary reference and the process, but should focus on drafting the questions for reference to the European Court of Justice.
- Using the European Court of Justice guidance, the end users should be asked to consider the facts and legal problems identified in Task 1 and think about formulating a question. Each group should consider the issues raised by their section of the task and prepare a summary of the question they would ask for the rest of the group.
- Considering the facts and the associated guidance can take between 10-15 minutes. Participants should spend another 15-20 minutes drafting their questions.
- Ask the end users to elect a member of the group to summarise the question they formulated for the European Court of Justice (max 5 minutes).
- Summarise the points made by the participants and the key issues raised by the facts (see *Problem 'Answers'* and PowerPoint)

Problem 'Answers'

From the perspective of the Austrian court, there are questions of interpretation arising from Jacques application under Article 9, Brussels IIbis:

- (a) For the purposes of Article 9, when did Marie become habitually resident in Holland and when does time start to run under the three month deadline?
- (b) Whether an application to amend rights of access under Article 9 also includes jurisdiction over an application for a transfer of custody of Marie from Sara in Holland to Jacques in Austria?
- (c) Whether the transfer of jurisdiction under Article 15, requested by Sara, is necessary and in Marie's best interests?

The point of this question is to get end users to consider the role of the European Court of Justice under the preliminary reference procedure and how to draft a question which is useful to the Court. The Court provides specific guidance on how to draft a full reference, but participants should focus on the actual questions to be referred.

Annex 3.2. – Workshop exercise II

The national court can only refer questions of interpretation of EU law, so any questions arising about the interpretation of Brussels IIbis can be sent to the Court for a ruling on how the national court should interpret the relevant provisions.

Generic issues considered by all groups:

- Whether the Austrian family court is *required* to make a reference, or may choose to make a reference to the European Court of Justice under Article 267 TFEU

Only courts from which there is no further appeal are *required* to make a reference under Article 267 TFEU where it is necessary for the national court to give judgment. The facts state that the Austrian family court is a court from which there is a possibility of further appeal. This court may choose to make a reference where it is necessary to give judgment.

- Whether there is a time pressure in the case and the requirements for requesting the urgent preliminary reference procedure

The urgent preliminary reference procedure is reserved to those cases where there is some element of time pressure and the parties' legal position will be significantly affected by time-delay. It can be used in family law cases but even if a national court requests an urgent preliminary reference, the European Court of Justice can refuse to use the procedure if the urgency is not clearly demonstrated.

If the national court believes that the urgent preliminary reference procedure is appropriate, it must identify the reasons for the use of the procedure on the face of the application to the Court and clearly identify the reasons for the application. If a child's welfare is at risk, or the delay is likely to affect the legal position of the parties, the urgent preliminary reference procedure may be appropriate.

In the circumstances, further delay would be unhelpful as M settles into life in Holland. The Austrian proceedings will be stayed whilst the reference is heard in the European Court of Justice, but the delay may further affect the situation under Article 15, making it more likely that it will be appropriate to transfer the case to the Dutch courts, where M is based.

Drafting the Questions

Each group should have drafted a question in response to the problem of legal interpretation outlined. It may be useful for the tutor to write the questions formulated by the groups down on a whiteboard for the whole class to see and discuss whether the drafting is clear and can be understood without the factual context. To be a good question, the questions should:

- The question(s) be separate from the factual basis and description of national law and be clearly identified. It must be possible to understand them without referring to the grounds for the reference.
- Be drafted simply, clearly and precisely, avoiding superfluous detail

Annex 3.2. – Workshop exercise II

- It is possible to refer more than one question to the Court and questions which are dependent on the answer to other questions i.e. if the answer to question 1 is x, then what would be the effect on y?

Use the PowerPoint to help the end users discuss whether the drafted questions would be suitably clear and concise and how they would change the drafting if necessary.

- (a) For the purposes of Article 9, when did Marie become habitually resident in Holland and when does time start to run under the three month deadline?

Sample Questions

These are not definitive and are only suggested formulations. Participants may have their own formulations which are more successful and these can be critiqued by the participants if necessary e.g. if one group does not successfully complete the task.

For the purposes of Article 9, Regulation 2201/2003 does the child become habitually resident in the state to which they lawfully relocate from the date on which they relocated? If not, when does the child become habitually resident in the State to which they lawfully relocated for the purposes of the three month period in Article 9?

- (b) Whether an application to amend rights of access under Article 9 also includes jurisdiction over an application for a transfer of custody of Marie from Sara in Holland to Jacques in Austria?

For the purposes of Article 9, Regulation 2201/2003 does an application to amend a judgment on rights of access include an application to amend the custody rights of the parent remaining in the State of the child's former habitual residence?

- (c) Whether the transfer of jurisdiction under Article 15, requested by Sara, is necessary and in Marie's best interests?

For the purposes of Article 15, Regulation 2201/2003, is a court 'better placed' to hear a case when it has jurisdiction under Article 8, Regulation 2201/2003? If a court is seised under Article 9, Regulation 2201/2003, can a transfer in the best interests of the child be permitted under Article 15, Regulation 2201/2003?

- Once the questions have been discussed, outline responsibility of national court once reference is complete and the European Court of Justice has delivered its ruling (see PowerPoint)

V. Trainer's PowerPoint Slides

Reference for a Preliminary Ruling in Family Matters

Task 1: Identifying the European Law Issues

- Regulation 2201/2003 – identifying the court with jurisdiction over a case
 - a) Where is M habitually resident?
 - b) Does Article 9 of Regulation 2201/2003 found the jurisdiction of the Austrian court?
 - c) Should the Austrian court grant an application from S under Article 15 of Regulation 2201/2003?

INSTRUCTION – Task 1

- Consider the facts in the light of the task your group has been allocated and summarise the legal issues arising
- Identify the key factors in the Austrian court's decisions under Regulation 2201/2003
- Consider how the Austrian court could take evidence on these issues

LEGAL PROBLEMS - Task 1

- a) Where is M habitually resident?
- b) Does Article 9, Brussels II Revised found the jurisdiction of the Austrian court?
- c) Should the Austrian court grant an application under Article 15, Brussels II Revised?

Task 1(a) – M’s habitual residence

- Habitual residence of the child is central to the jurisdiction grounds in Brussels II Revised and is the general ground of jurisdiction under Article 8
- In Case C-523/07 A and Case 497/10 PPU *Mercredi* the Court defined ‘habitual residence’ as the ‘centre of the child’s interests’ looking at all the factual circumstances
- M is likely to now be habitually resident in Holland, but when did she become habitually resident there?

Task 1(b) – Requirements of Article 9

- Article 9 provides an exception to Article 8 for the amendment of a judgment on rights of access where the child has lawfully moved to another Member State and is habitually resident there
- J’s application is 5 months after M’s relocation. Is it out of time? – does M have to be habitually resident in Holland for time to begin to run? When did M become habitually resident in Holland?
- Does Article 9 cover J’s alternative petition for custody of M in Austria?

Task 1(c) – Requirements of Article 15

- Article 15 allows a transfer of jurisdiction to another court ‘best placed’ to hear the case, where there is a particular connection between the child and the jurisdiction, and the transfer is in the best interests of the child
- Dutch courts will have jurisdiction under Article 8 (M’s habitual residence)
- M is a national of Holland
- Is the transfer from Austria to Holland in M’s best interests?

Task 2 – Making a Preliminary Reference

Legal issues for a preliminary reference to the European Court of Justice:

- a) For the purposes of Article 9, when did Marie become habitually resident in Holland and when does time start to run under the three month deadline?
- b) Whether an application to amend rights of access under Article 9 also includes jurisdiction over an application for a transfer of custody of Marie from Sara in Holland to Jacques in Austria?
- c) Whether the transfer of jurisdiction under Article 15, requested by Sara, is necessary and in Marie’s best interests?

INSTRUCTION: Task 2

- Identify the purpose and role of a preliminary reference to the European Court of Justice
- Consider whether the Austrian court should make the application under the urgent preliminary reference procedure
- Draft a question for the European Court of Justice for the interpretation of Brussels II Revised

Generic Factors in Making the Preliminary Reference

- Article 267 TFEU: a court from which there is no further appeal is required to make a reference if the interpretation of EU law is necessary to resolve the case. A court from which there is further appeal *may choose* to make a preliminary reference
- Urgent preliminary reference procedure:
 - The urgent procedure should only be requested where *absolutely necessary* and is used exceptionally
 - The request must set out the *matters of fact and law which establish the urgency and the risks involved in following the normal procedure*

Drafting a Question for a Preliminary Reference

A preliminary reference question should be drafted:

- Simply, clearly and precisely, avoiding superfluous detail
- Be capable of being understood without reference to the factual basis for the reference
- With direct reference to the provisions of European family law that require interpretation for the resolution of the dispute
- Be separate and clearly identified. More than one question can be referred and alternative questions posited if necessary

The national court and the preliminary reference procedure

- Once the national court has decided to make a preliminary reference, it must stay the national proceedings whilst it waits for the ruling from the European Court of Justice
- The national court will be notified of the ruling by the European Court of Justice
- Once the ruling has been received by the national court, it will revive proceedings to decide the case in accordance with the Court's ruling and the provisions of national family law

Annex 3.3. – Workshop exercise III

Role play: Family mediation in cross-border parental child abduction cases⁵

Contents

- I. Case scenario
- II. Agreement to Mediate
- III. Instructions for trainers
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- V. Role instructions
- VI. Input for session on ending the mediation
- VII. Mediation Agreement I (Child is returned to the country of habitual residence)
- VIII. Mediation Agreement II (Child stays in the country to which it was abducted)

I. Case scenario “Carla and Thomas”

Carla, Italian, 27 years old (speaks German fairly well)

Thomas, German, 35 years old (speaks a little Italian)

Daughter Elisa, age 4 ½, born February 27, 2008 (is bilingual Italian-German)

Carla and Thomas met six years ago in the fall of 2006 when Carla had just finished her Bachelor’s Degree in Social Sciences at the University of Milan and was working as a student intern at the Max Planck Institute for Demographic Research in Rostock. Carla was attracted to the older Thomas, who came from a well-educated traditional Protestant family in Greifswald and was just finishing his PhD thesis in mathematics. Thomas had little experience with women and felt very drawn to the younger and more spontaneous Carla, who was very up-beat and a lot of fun to be with. Since Carla was not sure as to her future plans she decided to stay on in Germany for awhile to learn the language. After that she was planning to obtain her Master’s Degree and find a qualified job.

Just when it came time for Carla to return to Italy in summer of 2007 she found out she was pregnant. While the two of them had spent almost all their free time together over the past year they had not been living together and had not yet committed to a long-term relationship. Carla’s pregnancy changed all of this. She was somewhat ambivalent but Thomas was elated and immediately proposed that they get married. He had just been offered a very good tenure position with the Max Planck Institute and was sure that Carla would be able to resume her studies in Rostock when the time came. Besides, his family would not be so far away and could give them any help they might need. Despite the skepticism of her family in Milan, her doctor mother and her civil servant father, the couple married and Elisa was born on February 27, 2008.

For the first few years the marriage worked out well. Elisa was a beautiful, intelligent girl very much loved by both of her parents and doted on by her German family which she saw frequently at family gatherings; she only saw her maternal grandparents once or twice a year. Carla worked part-time as an Italian teacher at a private language school but she felt

⁵ Developed by Dr. Jamie Walker, Mediator, trainer and consultant, Berlin.

Annex 3.3. – Workshop exercise III

more and more unhappy and lost in Rostock. She experienced the city as provincial compared to Milano and never got close to Thomas' family, who she felt acted very distant towards her. Besides that, she hated the weather and longed to be closer to her own family and to continue her studies in Italy, where she felt she could get a qualified job with a Masters' Degree in sociology.

Finally, in the summer of 2012, Carla decided to go to Milan for a break and an extended visit with her parents. She planned to stay for a month and Thomas agreed to this. When she got to Milan, which she saw as being much more cosmopolitan than Rostock, Carla felt completely free – finally she could enjoy life and she found a direction: She could enroll in the Masters' Program at the Sociology Department at her old university starting at the beginning of October and her parents were willing to support her financially and help out with Elisa. By this time, her sister and many of her old friends also had children, so finding social contacts and childcare would not be a problem. Carla was somewhat apprehensive of Thomas' reaction but hoped that he would come to see this solution as the best for all of them. When it came time to fly back to Germany she called him and told him that she was planning to stay in Italy with Elisa. Thomas was beside himself and insisted that she return. When she refused, he filed a 1980 Hague Convention case. The court encouraged the couple to try mediation. The court hearing is scheduled for September 25, 2012 in Milan and the mediation is to take place on Sept. 20 – 22, 2012.

II. Agreement to Mediate

Between Carla Rossi and Thomas Reiter and the

Mediators xxx (Italian female mediator with a legal background) and yyy (German male mediator with a psychosocial background)

We, the mediators, are glad you have decided to come to mediation. We hope that we can help the two of you settle the questions that need to be sorted out in a way that you both find acceptable and manageable. Our role as mediators is to help you consider the options that are available to you and possible terms of agreement, without putting you under pressure to reach an agreement. Any arrangements you work out for the present or the future need to be based on full consideration of both party's positions and needs. Mediation also helps parents give full consideration to their children's needs as well.

We would like to explain the basis on which we work as family mediators:

1. Our role as mediators

(a) As mediators, we are impartial. We do not make judgments or take sides. We seek to help you both jointly, as equally as possible.

(b) Our goal is to help you both gain clarity about the issues that need to be settled, to deal with these questions according to the priority you choose to give them, to collect all the financial information that is needed and to consider the options open to you both.

(c) We can provide legal information about relevant aspects of the law and we can explain the ways in which a settlement could be made legally binding, but we will not advise you as to the course of action you should take.

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(d) The decisions remain yours. We seek to help you find a common basis on which to make your decisions without urging you in one direction or another.

(e) At the end of the mediation, we normally draw up a summary of the proposals or provisional arrangements that have been worked out. This summary is intended to help you in obtaining counsel from your legal adviser on the proposed terms of any agreement before you make it legally binding.

2. Willingness to take part in mediation

(a) As you know, both parties need to be willing to take part in mediation. Its progress depends greatly on your efforts to work out arrangements in a co-operative way.

(b) Either or both of you can decide to call a temporary halt to mediation. This may happen for a number of reasons. You may also withdraw from mediation at any stage, although we hope that before doing so, you would be willing to explain your reasons or concerns in the course of a mediation session so that every effort can be made to address these concerns more satisfactorily.

(c) If it appears to us that mediation is not appropriate under the given circumstances or that no further progress can be made, we would explain that mediation should be ended at the earliest opportunity.

3. Full financial information

If the mediation includes financial aspects, the discussions that take place need to be based on both of you having full knowledge and understanding of your financial and other circumstances.

4. Confidentiality

(a) All information and correspondence from either of you is shared with you both. As mediators, we cannot receive any information or correspondence on a confidential basis from one of you without sharing it with the other party.

(b) We ask you to agree that – in the event of contested court proceedings taking place – neither of you would call on us to give evidence in court.

(c) We treat the content of our discussions and the information you provide as confidential. We will not provide information to legal advisers or to any other third party, except at the written request of both parties.

5. No prejudice

It is declared that, if prior to the substantive court hearing of the application, the parties agree to attempt to resolve the issues between them (or some of those issues) through mediation, nothing said or done by either party agreeing to make such an attempt or in the course of the mediation will be admissible in evidence herein (whether as evidence of acquiescence on the part of the plaintiff or otherwise); and that the court will draw no inference about the strength or otherwise of a party's case in the proceedings from his or her agreement to make such an attempt.

6. Mediation appointments and fees

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(a) Mediation appointments are scheduled ahead of time and are binding. Mediation sessions have been arranged for Sept. 20 – 22 in Milan. Maximum times for the mediation will be Thursday and Friday from 10 am to 7 pm and Saturday from 10 am to 5 pm.

(b) Since yyy will be travelling from Frankfurt to Milan for the mediation he must charge for travel and hotel expenses.

(c) The cost of the mediation will be paid by the parents on a 50/50 basis. In addition to the time spent in the actual mediation we charge 2 hours preparation time. The cost of the mediation is \$ 100 per hour per mediator. We will bill you after the end of the mediation.

Family mediator Family mediator

I have read the above and I accept the terms of the mediation:

Signed: Signed:

Date: Date:

III. Phases of Mediation

Phase 1: Setting the stage: The Agreement to Mediate

The Agreement to Mediate, which was sent to the parties ahead of time, is finalized and signed by the parties and the mediators. The mediators clarify the framework of the mediation, including any rules they wish to establish.

Phase 2: Defining the issues

The parties each relate what has happened from their perspective and the mediators active listen, reframing when necessary and pointing out similarities and differences. Finally, the parties agree on an agenda for the mediation, i.e. which issues are to be discussed and settled?

Phase 3: Understanding the conflict

The mediators help the parties explore their needs and interests and those of their child or children.

Phase 4: Examining and clarifying options

The parties explore the options (e.g. child returns to its country of habitual residence, child stays where it is), develop different scenarios and negotiate towards a settlement.

Phase 5: Formulating the agreement

The agreement is formulated by the mediators with the support of the parties, checked by their attorneys and then finalized.

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IV. Instructions for trainers

The role play sessions are carried out in small parallel groups of 6 players each.

The participants who play the parties stay in their roles for both sessions. The co-mediators and observers in the first session change roles in the second session to give a maximum number of participants the opportunity to mediate. If there are participants in the group who are (experienced) mediators or have had mediation training they should take on the role as mediators.

Everyone receives the case scenario (I) and the Agreement to Mediate (II) at the outset.

Feedback rules

- No one is looking for perfection in the role play!
- When the role play is over all the players say one word to one sentence about how they felt in the role – not more!
- Everyone changes places and takes off their nametags if they had one (getting out of role)
- First the players and observers give the mediators positive feedback: What went well?
- Then say what was difficult: What could have gone better?
- General evaluation

Timeframe and goals

- Session I: 1 hour
 - o Goal of the session: To get a feeling for Phase 2 of the mediation process “Defining the issues”
 - o 10 min to prepare the role play
 - co-mediators together
 - observers together decide on what aspects to observe
 - parties separately (all those playing Carla and Thomas get a special role description and prepare with those playing the same role in another role play group)
 - o 35 min. for the role play itself
 - o 15 min. for debriefing in the small groups
- Session II: 1 hour
 - o Goal: To get a feeling for Phase 5 of the mediation process “Formulating the agreement”
 - o 10 min to prepare the role play – half of the groups get Scenario I and half get Scenario II (let the groups decide which scenario they want to play)
 - co-mediators together
 - observers together decide on what aspects to observe
 - parties as couples (Carla and Thomas)
 - o 35 min. for the role play itself
 - o 15 min. for debriefing in the small groups
- Sharing back in plenary (45 min.)
 - o Reports from the role play groups: What did we learn?
 - o What was important for the different phases of the mediation?
 - o Questions and general discussion on mediation in 1980 Hague Convention cases

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- **Mediation Agreement:** Distribute and briefly discuss the two mediation agreements as examples of how a solution can be reached.

V. Role instructions

Carla

You didn't realize until you got back to Milan in the summer how bad things has become in Rostock. Thomas is completely tied up with his job. He is a good provider and a good father but he doesn't understand that you also have needs. You want to spend more time with people your own age who have a lighter outlook on life. The Germans are always so serious about everything and Thomas and his family are no exception! But most importantly, you want to get out of this dead-end job teaching Italian and finally devote yourself to your own career. You have made enough sacrifices for Thomas' career – now it is your turn! Theoretically you could get your Master's Degree at the University of Rostock but you are not sure if your German is good enough and what would your chances be of getting a really qualified job afterwards? Rostock is not Berlin or Milano.

When you got home for an extended visit everything suddenly fell into place. It was so great being back with your sister and your friends, who also have children now. You talked to your old professor at the Sociology Department and he encouraged you to continue your studies. Your parents are willing to support you financially until you get everything figured out so you can live on your own and they will help out with childcare. Elisa will be just fine. She is already starting to make new friends and there is a childcare center at the university you can enroll her in. Thomas can come and visit any time he wants. And if he promises to bring Elisa back he can even take her to see his family and her old home in Germany – no problem.

Unfortunately, you seem to have underestimated Thomas' response to your decision. He is more angry and upset than you have ever seen him and he is insisting that you return home with Elisa. Just to make sure you will he has put in a return application under the 1980 Hague Convention.

Your lawyer has told you that your chances of winning the Hague case are not very good.

Thomas

You love your wife and cannot believe what she has done to you! Uprooting your child and making decisions on her own that you can only make together! Elisa is not her possession – she has two parents who are equally responsible for her. You cannot imagine living without your daughter. Carla should come back and you will find a way to patch things up. Maybe you had neglected the marriage a bit but in no way did you deserve this. You have a very demanding job and parents who are getting older and needing more attention. You are completely attached to your job and you would never find such a good position anywhere else. Carla has made you look like an idiot to your family, friends and colleagues. The fact that she intends to stay in Italy is not exactly something you can hide. Moving to Italy is absolutely not an option for you. First there is the job situation, second you don't speak that much Italian and third you feel oppressed by Carla's family: There is always some kind of drama going on and they never liked you in the first place.

Of course you know that Carla wasn't having an easy time in Rostock but sometimes you just didn't understand what her problem was. If she would improve her German she could get another degree at the university and then find a more qualified job. She needs to grow up and make more of an effort. Marriage is a commitment that one does not give up on a whim. Your lawyer has told you that your chances of winning the Hague case are very good.

VI. Input for session on ending the mediation

Annex 3.3. – Workshop exercise III

Scenario I: Elisa returns to Germany

In the course of the first two days of mediation Carla and Thomas have agreed to the following:

1. Carla will return to Rostock with Elisa.
2. Thomas will move out of the apartment they lived in together up until now.
3. Elisa will live in the old apartment with Carla and spend as much time with her father as possible.
4. Thomas will pay child support for Elisa and spousal support for Carla until she has finished her Master's Degree.
5. The Hague case shall not be continued.

Scenario II: Elisa stays in Italy

In the course of the first two days of mediation Carla and Thomas have agreed to the following:

1. Carla will stay in Milan with Elisa.
2. Elisa and Thomas will see each other as often as possible and will have regular contact between visits.
3. Carla and Thomas will retain joint custody and Thomas will be involved in all important decisions concerning Elisa in advance.
4. Thomas will pay child support for Elisa.
5. The Hague case shall not be continued.

VII. Mediation Agreement I (Child is returned to the country of habitual residence)

We, Carla Rossi and Thomas Reiter, are the parents of Elisa Reiter, born February 27, 2008 in Rostock. In the context of mediation sessions with xxx and yyy held in September 2012 in Milan we considered our own interests and those of our daughter and came to the following agreements.

1. Return to Rostock and habitual residence

Carla will return to Rostock with Elisa by October 15, 2012 – assuming that this agreement has become legally binding in Italy and in Germany by then.

All three of us will remain living in Germany for at least the next three years.

2. Living arrangements in Rostock

Thomas will move out of the apartment we lived in together up to now to somewhere close by where Elisa can visit him. Carla and Elisa will live in the old apartment by themselves.

3. Support

Thomas will pay child support and will support Carla financially for a period of up to 3 years or until she has finished her Master's Degree and found a qualified job.

4. Childcare and parenting plan

We will put Elisa in all-day childcare starting immediately so that Carla can improve her German and then concentrate on her studies. We will attend a parenting class and work out a parenting plan that meets our needs and those of Elisa.

Annex 3.3. – Workshop exercise III

5. Joint custody

We will continue to exercise joint parental responsibility (custody) for Elisa.

6. Bilingual and bicultural upbringing

We want Elisa to benefit from the fact that she has parents from two different cultures and agree to continue to raise her speaking both of our mother tongues. If possible, we will enroll her in an international daycare program and later in an international school.

7. Travel to Italy

Carla is free to travel to Italy with Elisa three times a year for up to four weeks at a time. Elisa will spend every other Christmas and Easter in Italy and every other Christmas and Easter in Germany, alternating Christmas with Easter. This Christmas she will be in Germany and next Easter she will be in Italy. We will work out a detailed schedule that allows us both ample time for vacations with our daughter. Carla will pay for flights to and from Italy and Thomas will pay for his vacations with Elisa.

8. Repeal of the 1980 Hague Convention case

We agree to end the pending Hague Convention case by way of a court settlement on the basis of this mediation agreement.

9. Legal status of this agreement

We regard this as a binding agreement.

We are aware of the fact that this agreement must be checked by our lawyers under German and Italian law. If our lawyers are of the opinion that anything should be added, we will seek a fair solution on the basis of this agreement. If need be, we or our lawyers will consult the mediators in this process.

We request that our lawyers shall turn this agreement into a legally binding agreement (e.g. by mirror orders) within Italian and German jurisdiction as quickly as possible.

10. Costs

We will each pay for half of the court costs in both countries. Each of us will cover the expenses for our attorneys by ourselves.

11. Mediation clause

If we have any problems communicating or making joint decisions in the future we will try to solve them through mediation before going to court.

Date, Signature

Date, Signature

VIII. Mediation Agreement II (Child stays in the country to which it was abducted)

Annex 3.3. – Workshop exercise III

We, Carla Rossi and Thomas Reiter, are the parents of Elisa Reiter, born February 27, 2008 in Rostock. In the context of mediation sessions with xxx and yyy held in September 2012 in Milan we considered our own interests and those of our daughter and came to the following agreements.

1. Habitual residence

Carla will remain in Milan with Elisa. Thomas will remain in Rostock and continue to live in the apartment they have occupied together up to now. Elisa's room will be kept basically the same as it is now.

Carla will pick up her personal belongings on her first visit back to Rostock.

2. Visits to Germany

Elisa will visit her father twice a year for at least three weeks during the German summer vacation, over Christmas and/or over Easter holidays. Once she starts to school we will work out a new visitation schedule. Until she is old enough to fly by herself, Carla or one of Carla's parents will accompany Elisa to Rostock and pay for their own flights. Thomas will pick Elisa up at the airport and Elisa and Carla will only be in contact by phone while Elisa is with her father. Thomas will visit Elisa once a year in Italy and pay for his own flights. During these visits he can spend time on his own with Elisa and travel with her. We will share the cost of Elisa's flights on a 50/50 basis.

Elisa's first visit back to Rostock will be over Christmas and New Years from Dec. 16, 2012 to Jan. 11, 2013. She will return in July 2013 for three weeks. Thomas is free to travel wherever he wants with Elisa. Carla is also free to travel with Elisa.

Every year in October we will agree on a visitation schedule for Elisa for the next year – recognizing school and work schedules and the fact that both of us wish to spend quality time with our daughter.

3. Contact between visits

Elisa will have regular contact with her father between visits. They will skype at least two times a week on Wednesdays and Saturdays at 4 pm (or another time if agreed on ahead of time). If there is a problem with this schedule we will let each other know at least 24 hours ahead of time and agree to postpone the appointment.

In addition, Carla agrees to write a detailed email to Thomas every weekend reporting on how Elisa is doing and passing on any important information or news.

4. Passports

Thomas will keep Elisa's German passport and Carla will keep her Italian passport. We agree to cooperate in providing documentation, signatures or whatever is required when a passport must be renewed.

5. Bilingual upbringing

Carla agrees to put Elisa in a German playgroup and later to get her German tutoring to ensure that she keeps up her German language skills between visits to her father.

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6. Support

Thomas will pay child support for Elisa and will finance 50% of the cost to support Elisa keeping up her German.

7. Joint custody

We will continue to exercise joint parental responsibility (custody) for Elisa and Carla will involve Thomas in all important decisions concerning Elisa in advance.

8. Repeal of the 1980 Hague Convention case

We agree to terminate the pending Hague Convention case by way of a court settlement on the basis of this mediation agreement.

9. Legal status of this agreement

We regard this arrangement as a binding agreement.

We are aware of the fact that this agreement must be checked by our lawyers under German and Italian law. If our lawyers are of the opinion that anything should be added, we will seek a fair solution on the basis of this agreement. If need be, we or our lawyers will consult the mediators in this process.

We request that our lawyers shall turn this agreement into a legally binding agreement (e.g. by mirror orders) within Italian and German jurisdiction as quickly as possible.

10. Costs

We will each pay for half of the court costs in both countries. Each of us will cover the expenses for our attorneys by ourselves.

11. Mediation clause

If we have any problems communicating or making joint decisions in the future we will try to solve them through mediation before going to court.

Date, Signature

Date, Signature

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Parental responsibility:
rules on jurisdiction, provisional
measures and applicable law

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Outline

- ▶ Parental responsibility and the protection of the child
- ▶ Basic elements of Brussels IIbis Regulation
- ▶ Jurisdiction
- ▶ Provisional measures
- ▶ Applicable law



Parental responsibility and the protection of the child – outline

- ▶ International background
 - ▶ UN – UNCRC
 - ▶ Council of Europe – ECHR and Convention on the exercise of children’s rights
 - ▶ HCCH – 1980, 1996 Hague Conventions
 - ▶ MSs’ international and bilateral treaties
- ▶ European Union
 - ▶ TEU
 - ▶ Charter of Fundamental Rights of the EU
 - ▶ European Commission’s ‘EU Agenda for the rights of the child’
 - ▶ Judicial co-operation in cross-border family law cases
- ▶ National law of MSs
 - ▶ Sources of law on parental responsibility matters



Parental responsibility and the protection of the child 1.

▶ *UN Convention on the Rights of the Child*

- ▶ All EU MSs have ratified

- ▶ Significant articles

- ▶ Protection against all forms of discrimination [Art. 2]

- ▶ Primary consideration: best interest of the child [Art. 3 (1)]

- ▶ States and parents/relatives are responsible for the well-being of the child [Art. 3(2)]

- ▶ States should respect the parents' responsibilities [Art. 5]

- ▶ Right of the child to be cared by his/her parents [Art. 7(1)]

- ▶ Right of the child to preserve the family relations [Art. 8(1)]

- ▶ Child should not be separated from his/her parents against their will except for the case if it is in the best interest of the child

- Neglect

- Parents living separately [Art. 9(1)]



Parental responsibility and the protection of the child 2.

▶ *UN Convention on the Rights of the Child*

▶ Significant articles

- ▶ Right of the child to maintain personal relations and direct contact with parents living separately from him/her [Art. 9(3)]
- ▶ Even if living in different states [Art. 10(2)]
- ▶ States should combat against illegal transfer of the child and non-return from abroad [Art. 11(1)]
- ▶ Right of the child to express his/her views [Art. 12(1)]
- ▶ Child is provided the opportunity to be heard [Art. 12(2)]
- ▶ Prohibition of unlawful interference with the child's family [Art. 16(1)]
- ▶ The parents in principle have common parental responsibilities [Art. 18(1)]
- ▶ Right of the child for alternative care if it is needed [Art. 20(2)]



Parental responsibility and the protection of the child 3.

- ▶ *Council of Europe Treaties* – several
 - ▶ *European Convention of Human Rights of 1950*
 - ▶ Main point: Article 8(1) on right to respect for private and family life: everyone has the right to respect for his private and family life, his home and his correspondence. [Strict exceptions in Art. 8(2)].
 - ▶ *European Convention on the Exercise of Children's Rights of 1996*
 - ▶ Grants procedural rights to the child and facilitates the exercise of these rights [Art. 1(2)]
 - ▶ Right of the child to receive all relevant information [Art. 3]
 - ▶ Right of the child to be consulted and express his/her views
 - ▶ Responsibility of judicial authorities (also to act speedily [Art. 6-7])
-



Parental responsibility and the protection of the child 4.

- ▶ *Conventions of the Hague Conference on Private International Law* – several
 - ▶ *HC of 1980* on the Civil Aspects of International Child Abduction
 - ▶ *HC of 1996* on Protection of Children
 - ▶ Close link between the Brussels IIA and the 1996 Convention
 - ▶ Some coherence between their provisions
 - ▶ The commentaries of the EU law and HCCH law provide mutual assistance in interpretation
- ▶ International and bilateral treaties (MSs are parties)



Parental responsibility and the protection of the child 5.

▶ *Treaty of the European Union*

- ▶ Art. 3(3) commitment: the EU promotes – among others – the rights of the child.
- ▶ Art. 19 on effective legal protection

▶ *Charter*

- ▶ binding force since December 2009
 - ▶ establishes the citizenship of the Union
 - ▶ creates an area of freedom, security and justice
 - ▶ first EU document declaring the fundamental rights
 - ▶ strengthens the protection of fundamental rights
 - ▶ first recognition of children's special status
 - ▶ move towards the self-standing rights of children
 - ▶ the CJEU and national courts have to observe it
-



Parental responsibility and the protection of the child 6.

▶ *Charter*

- ▶ (Chapter on Equality) Art. 24 The rights of the child (based on UN CRC)
- ▶ Child-focused provisions
 - ▶ right to protection and care for their well-being
 - ▶ right to express their views freely
 - ▶ expressed views have to be taken into attention
 - (age, maturity)
 - ▶ child's best interest has priority
 - ▶ right to maintain on a regular basis a personal relationship and direct contact with both parents unless that is contrary to the best interest
- ▶ (Chapter on Solidarity) Art. 32 Prohibition of child labour and protection of young people at work



Parental responsibility and the protection of the child 7.

▶ *Charter*

- ▶ (Chapter on Justice) Art. 47. Right to an effective remedy and a fair trial
 - ▶ right to fair and public hearing within reasonable time
 - ▶ right to have the possibility of being advised and represented
 - ▶ right to available legal aid

- ▶ *EU Commission's 'EU Agenda for the rights of the child'*
 - ▶ commitment to protect and fulfil the children's rights
 - ▶ child-friendly system of justice
 - ▶ promotes the recognition and enforcement of decisions on parental responsibilities
 - ▶ development of training activities for judges



Parental responsibility and the protection of the child 8.

- ▶ EU promotes *judicial co-operation* in civil matters with cross-border elements
 - ▶ Amsterdam Treaty – Community competence in matters of judicial co-operation in order to establish an area of freedom, security and justice [Art. 61(c), 65, 67]
 - civil measures with cross-border implications and necessary for proper functioning of the internal market
 - ▶ Nice Treaty – amended Art 67 to provide for a co-decision procedure for measures provided in Art. 65 with the exception of aspects relating to family law
 - ▶ Lisbon Treaty – TFEU – Art. 81
 - Aim of developing judicial co-operation in civil matters having cross-border implications based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases
-



Basic elements in the Brussels IIbis Regulation – outline

- ▶ Significance
- ▶ History
- ▶ Material scope and definitions
- ▶ Relation to other international instruments
 - ▶ Conventions of HCCH
 - ▶ Hague Convention of 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; Convention on Child Protection)



Basic elements in the Brussels Ibis Regulation 1.

- ▶ Council Regulation No 2201/2003 – matters of parental responsibilities (Practice Guide)
- ▶ Motivation: different systems of PIL rules may hinder the free movement and the proper functioning of the internal market – 1347/2000/EC Regulation
 - ▶ for parental responsibility matters in marital or after-marital crisis
 - ▶ limited to children born within wedlock
- ▶ Change – 2201/2003/EC Regulation
 - ▶ Territorial and temporal scope – 03/01/2005; with the exception for Denmark
 - ▶ Personal scope – cross-border case in parental responsibility matters



Basic elements in the Brussels IIbis Regulation 2.

- ▶ Material scope – ‘*in civil matters relating to the attribution, exercise, delegation, restriction or termination of parental responsibility*’ [Art. 1(1)(b)]
 - ▶ Art. 1(2) non-exhaustive list of these matters
 - ▶ Art. 1(3) excluded from the Regulation
 - ▶ Art. 2 Definitions
 - ▶ ‘*civil matters*’
 - ▶ *Case C-435/06 [2007] ‘C’; Case C-523/07 [2009] ‘A’*
 - ▶ Decision on the child’s taking into care and placement in a foster family adopted in public law context relating to child protection?
 - ▶ CJEU – Yes
-



Basic elements in the Brussels IIbis Regulation 3.

- ▶ Reasons:
 - ▶ - 'civil matters' is not defined
 - ▶ - independent concept (by analogy)
 - ▶ - decision to take a child into care is not excluded [Art. 1(3)]
 - ▶ - albeit not included in the list [Art. 1(2)]
 - ▶ - Recital 5 in the preamble – ensuring equality for all children even in cases of child protection
 - ▶ - Recital 10 in the preamble – some public measures are excluded
 - ▶ - taking into care and placement are closely linked
 - ▶ - exclusion would be in contrast to the goal of Regulation
 - ▶ - *autonomous interpretation is needed*
 - ▶ - *objectives can be attained by Community law definitions*
-



Basic elements in the Brussels IIbis Regulation 4.

- ▶ *‘parental responsibility’ – all rights and duties relating to the person or the property of a child which are given to a natural or a legal person by judgment, by operation of law or by an agreement having legal effect (includes right of custody and rights of access) [Art. 2.7]*
 - ▶ independent and autonomous interpretation is needed
 - ▶ *Case C-435/06 [2007] ‘C’; Case C-523/07 [2009] ‘A’*
 - ▶ placement is in Art 1(2)(d) – taking into care and placement are closely linked to each other
 - ▶ *‘holder of parental responsibility’ [Art. 2.8], ‘rights of custody’ [Art. 2.9], ‘rights of access’ [Art. 2.10]*
 - ▶ independent and autonomous interpretation is needed
 - ▶ equal and uniform application is needed
 - ▶ that means: context of the provision, objective pursued by that legislation
-



Basic elements in the Brussels IIbis Regulation 5.

- ▶ Relations with other legal instruments [Art. 59]
 - ▶ Regulation supersedes conventions existing at the time of entry into force of the Regulation [Art. 59(1)]
- ▶ Relations with other international conventions [Art. 60]
 - ▶ enumerates concrete conventions over which this Regulation has precedence
- ▶ Relations with the 1996 Hague Convention [Art. 61]
- ▶ The Regulation applies
 - ▶ the child has his/her habitual residence in a MS
 - ▶ the recognition and enforcement of a judgment given in a court of a MS on the territory of another MS, even if the child's habitual residence is on the territory of a third State (being contracting Party to the Convention)



Jurisdiction in cross-border family cases involving parental responsibility – outline

- ▶ Complete system of jurisdiction in the child's best interest and the proximity
- ▶ Judicial co-operation and mutual trust is emphasized
- ▶ System:
 - ▶ general ground: habitual residence [Art. 8]
 - ▶ exceptional grounds (no habitual residence) [Art. 9,10, 12,13]
 - ▶ no jurisdiction under Art. 8-13 and another MS has jurisdiction under the Regulation [Art. 17]
 - ▶ no court is competent - residual jurisdiction [Art. 14]
 - ▶ transfer to the better placed court [Art. 15]
 - ▶ *lis pendens* [Art. 19(2)]



Jurisdiction in cross-border family cases involving parental responsibility 1.

- ▶ Complete system of jurisdiction in the child's best interest
 - ▶ Jurisdiction in cross-border case – points out the MS
 - ▶ National procedural rules – competent court, dispute
 - ▶ Conflict law rules and at last national substantial law – dispute
 - ▶ Seized court has to control ex officio the jurisdiction – **Art.17**
 - ▶ if it doesn't have jurisdiction and other MS has – declares that it has no jurisdiction
 - ▶ What about transferring the case?
 - *Case C-523/07 [2009] 'A'*
 - no explicit provision BUT in the best interest of the child
 - has to inform – directly or through the central authority – the court having jurisdiction
-



Jurisdiction in cross-border family cases involving parental responsibility 2.

- ▶ *MS where the child is habitually resident at the time the court is seized* **Art. 8.**
 - ▶ main connecting factor
 - ▶ principle of geographical proximity
 - ▶ most appropriate forum in best interest of the child
 - ▶ factual concept – deliberately no definition
 - ▶ circumstances of each case
 - ▶ burden on the court – great difficulties
 - ▶ *Case C-523/07 [2009] ‘A’ ; Case C-497/10 PPU ‘2010] ‘Mercredi’*
 - ▶ autonomous interpretation
 - ▶ attitude of national law has no relevance
 - ▶ habitual residence based connecting factors in other areas of European law has no direct relevance, cannot be transposed
-



Jurisdiction in cross-border family cases involving parental responsibility 3.

- ▶ *Case C-523/07 [2009] ‘A’; Case C-497/10 PPU [2010] ‘Mercredi’*
 - ▶ actual presence in a MS – physical presence is enough?
 - ▶ not in any way temporary or intermittent presence
 - ▶ length is not defined – certain duration
 - ▶ no minimum duration is established
 - ▶ but not mere temporary presence
 - ▶ some degree of integration by the child in a social and family environment
 - ▶ ‘actual centre of interest’
 - ▶ relevant factors are: duration, regularity, conditions and reasons for the move in and stay, nationality, place and conditions of attendance at school, linguistic knowledge, family and social relationships of the child
 - ▶ intention of the parents to settle with the child in a MS
 - ▶ practical steps: purchase or lease a property in a MS
- ▶ short stay, peripatetic life don’t indicate habitual residence

Jurisdiction in cross-border family cases involving parental responsibility 4.

- ▶ *Case C-523/07 [2009] ‘A’ ; Case C-497/10 PPU [2010] ‘Mercredi’*
 - ▶ age of child determines the factors – those can vary
 - (infants, young children, school age children, who had left school)
 - young child – family environment = circle of people on whom the child is dependent
 - ▶ age may have particular importance
 - ▶ parental intention, duration, child’s factual connections – may vary – balancing?
 - - depends on age of the child
- ▶ Independent, autonomous and uniform interpretation throughout the EU , having regard to the context of the provision and objective of that legislation - settled case-law of the CJEU



Jurisdiction in cross-border family cases involving parental responsibility 5.

- ▶ *Exceptions to the general rule Art. 9, 10, 12, 13*
 - ▶ jurisdiction of a MS where the child is not habitually resident
 - ▶ strict interpretation is demanded
- ▶ **Art. 9** *Continuing jurisdiction of the child's former habitual residence*
 - ▶ Conjunctive requirements:
 - ▶ child moves lawfully from one MS to another MS
 - ▶ acquires a new habitual residence there
 - ▶ there is a judgment on access rights
 - ▶ they are within three months from the move
 - ▶ the holder of access rights has his/her habitual residence in the former MS (MS of the child's former habitual residence)
 - ▶ the holder of access rights does not accept the change of jurisdiction

Jurisdiction in cross-border family cases involving parental responsibility 6.

- ▶ **Art. 10** *Wrongful removal*
- ▶ **Art. 12** *Prorogation of jurisdiction*
 - ▶ Two different situations:
 - ▶ court of a MS exercising jurisdiction by virtue of Art. 3 and
 - one of the spouses has parental responsibility
 - this has been accepted
 - this is in the superior interest of the child
 - ▶ court of a MS to which the child has substantial connection
 - in particular because one parent has habitual residence there /child's nationality - other ground is also possible
 - this has been accepted
 - this is in the best interest of the child
 - ▶ (best interest = superior interest)



Jurisdiction in cross-border family cases involving parental responsibility 7.

- ▶ **Art. 13** *Jurisdiction based on the child's presence*
 - ▶ Court of the MS where the child is present
 - ▶ Requirements:
 - ▶ it is impossible to determine the habitual residence
 - ▶ Art 12 cannot be applied
 - ▶ 'habitual residence' is not equal to 'presence'
- ▶ **Art. 14** *Residual jurisdiction*
 - ▶ No court has jurisdiction upon Art. 8-13 – jurisdiction has to be determined by the own rules (national PIL rules)



Jurisdiction in cross-border family cases involving parental responsibility 8.

- ▶ **Art. 15** *Transfer to a court which is better placed to hear the case*
 - ▶ in exceptional circumstances
 - ▶ there is no transfer to a third court
 - ▶ child must have particular connection to another court
 - ▶ (five situations are enumerated)
 - ▶ cumulative requirements
 - ▶ technically -
 - ▶ seized court can invite the parties to introduce a request at another court
 - ▶ directly requests the another court to take over the case
 - European Judicial Atlas in Civil matters on competent courts
 - co-operation directly or through the central authorities
- ▶ Transfer is foreseen in 1996 Hague Convention

Jurisdiction in cross-border family cases involving parental responsibility 9.

▶ **Art. 15**

▶ Cumulative requirements of transfer:

- ▶ the child has one of the enumerated 'particular connections'
- ▶ the court received a request of transfer from other court or one party or the court wishes of its own motion
- ▶ it is in the best interest of the child
- ▶ at least one party accepts it

▶ If all 'yes' the court has two alternatives: requests the court or invites the parties.

▶ If the another court declines jurisdiction or the invited parties do not seize the another court within the time-limit, this court has to exercise its jurisdiction.



Jurisdiction in cross-border family cases involving parental responsibility 10.

- ▶ **Art. 19(2)** '*Lis pendens*' – the same proceedings are brought in two MSs
 - ▶ same proceedings: same child and same cause of action
 - ▶ parallel actions – irreconcilable judgments – occurs
 - ▶ court first seized has to examine its jurisdiction
 - ▶ court second seized has to stay the proceeding and wait
 - ▶ if court first seized considers itself competent – the court second seized declines jurisdiction
 - ▶ if court first seized does not have jurisdiction – the court second seized can continue proceeding
 - ▶ generally there is only one habitual residence
-



Jurisdiction in cross-border family cases involving parental responsibility 11.

- ▶ **Art. 19(2)** '*Lis pendens*' – the same proceedings are brought in two MSs
- ▶ Case 296/10 [2010] 'Purrucker'
 - ▶ there is no requirement that the parties to the proceeding should be the same
 - ▶ the terms used in 19(2) are to be interpreted in an autonomous way
 - ▶ problematic whether there can be *lis pendens* between an action for provisional measure and an action initiating substantive proceeding if the claims are directed to receive judgment which is enforceable in another MS
 - ▶ there is no *lis pendens* if the action brought before the court first seized contains no ground justifying the jurisdiction as to the substance of the matter
 - ▶ if it is evident that the court first seized might have such jurisdiction, the court second seized has to stay the proceeding

Jurisdiction in cross-border family cases involving parental responsibility 12.

- ▶ **Art. 19(2)** *‘Lis pendens’* – the same proceedings are brought in two MSs
 - ▶ *Case 296/10 [2010] ‘Purrucker’*
 - ▶ the court second seized has to examine whether the judgment of the court first seized was a preliminary step or a provisional measure
 - ▶ co-operation is emphasized: the court second seized has to seek information, communicate with the court first seized (upon the judicial cooperation and mutual trust)
 - ▶ ‘Ultima ratio’ is the approachment of the central authority
-



Provisional measures 1.

- ▶ **Art. 20** *Provisional (protective) measures*
 - ▶ MS can take provisional, including protective measures in respect of persons or assets in that State in accordance with the national law even if court of another MS has jurisdiction as to the substance of the case.
 - ▶ Cease to apply when that court has taken measures it considers appropriate – jurisdiction is not conferred

- ▶ **Example from the Practice Guide -**
- ▶ A family is travelling by car on their summer holiday. In the other MS they are victims of a traffic accident, where they are all injured. The child is only slightly injured, but both parents arrive at the hospital in a state of coma. The authorities of this MS urgently need to take certain provisional measures to protect the child who has no relatives in that MS. They can decide on a provisional basis, to take measures to protect the child. These measures cease to apply once the courts of Member State having jurisdiction have taken a decision.



Provisional measures 2.

- ▶ **Art. 20** *Provisional (protective) measures*
 - ▶ *Case C-523/07 [2009] 'A'; Case C-403/09 PPU [2010] 'Detiček'*
 - ▶ exceptional measure – strict interpretation is needed
 - ▶ Three cumulative conditions:
 - ▶ urgency
 - ▶ in respect of persons or assets in the MS where those courts are situated
 - ▶ provisional
 - ▶ Urgency
 - ▶ relates to the situation of the child and
 - ▶ to the impossibility of bringing it before the court having jurisdiction as to the substance
 - ▶ change of circumstances as the child settled well into the new circumstances (after wrongful removal)?
-



Provisional measures 3.

- ▶ **Art. 20** *Provisional (protective) measures*
 - ▶ *Case C-523/07 [2009] ‘A’ ; Case C-403/09 PPU [2010] ‘Detiček’*
 - ▶ In respect of persons/assets located in that MS
 - ▶ provisional measure on custody affects not only the child but also the parent being in another MS
 - ▶ National provisional measure cannot be interpreted in conflict with the Community law and the fundamental rights of the Charter
 - ▶ Provisional measure cannot be in contrast to the fundamental right, e.g. right to direct personal contact with the other parent
 - ▶ National procedural rules are different
 - ▶ Art. 11-12 of 1996 Hague Convention
-



Provisional measures 4.

▶ **Art. 20** *Provisional (protective) measures*

▶ *Case C-403/09 PPU ‘Detiček’ [2010]*

- ▶ Provisional measure cannot be in contrast to the fundamental right, e.g. right to direct personal contact with the other parent
- ▶ Art. 20 cannot be interpreted in such a way that it is used as an instrument for prolonging the factual situation caused by the wrongful conduct

▶ *Case C-523/07 ‘A’ [2009];*

- ▶ provisional measure may (has to be) applied if the situation endangers the child’s welfare, health, development
- ▶ immediate adoption
- ▶ effectiveness of these measures have to be examined
- ▶ best interest of the child demands that this court should inform the court having jurisdiction about these provisional

▶ measures

Applicable law 1.

- ▶ Brussels Ibis does not contain any regulation on applicable law
- ▶ Conflict of law rules – international (bilateral) conventions and national law
- ▶ 1996 Hague Convention
 - ▶ all EU MSs have signed
 - ▶ in force (now) in 24 MSs, in three countries it has not been ratified yet
 - ▶ Art. 52 – it does not affect any international instrument to which Contracting States are Parties and contains provisions on matters covered by the Convention
 - ▶ contains conflict of law rules
 - universal application
 - public policy clause



Applicable law 2.

- ▶ Main distinction: judicial or administrative authorities exercise their jurisdiction/no intervention by those authorities
- ▶ *Judicial or administrative authorities take measures directed to the protection of the child's person or property [Art. 15]*
 - ▶ 'lex fori' – the authorities apply their own law
 - ▶ exceptionally, in case of substantial connection and if the child's interest requires – this law may be applied
 - ▶ solution with advances
 - ▶ proximity (child's habitual residence)
 - ▶ best known rules
 - ▶ no extra information is needed
 - ▶ low costs
 - ▶ enforcement



Applicable law 3.

- ▶ *Attribution or extinction of parental responsibility*
- ▶ *by operation of law without the intervention of authority [Art. 16(1)]*
 - ▶ law of the State of the child's habitual residence
- ▶ *By an agreement or unilateral act [Art. 16(2)]*
 - ▶ law of the State of the child's habitual residence at the time when that agreement/unilateral act takes effect
 - ▶ If the habitual residence changes, the law of the State of the new habitual residence will govern the attribution of parental responsibility by the operation of law
 - ▶ Changeability or continuity?
- ▶ *The exercise of parental responsibility [Art. 17]*
 - ▶ law of the State of the child's habitual residence



Learning priorities in European Family Law from a judicial training perspective



Brussels, 3rd December 2012

Simona Bacsin, judge



Outline



- ❖ Child protection in the international instruments;
- ❖ Brussels II bis Regulation- basic elements;
- ❖ Jurisdiction;
- ❖ Recognition and enforcement of judgments;
- ❖ Applicable law;



General legislative Framework



- ∞ 1989 United Nation Convention on the Rights of the Child (UNCRC)- general principles;
- ∞ 1950 European Convention on Human Rights;
- ∞ 1996 European Convention on the Exercise of Children's Rights;
- ∞ Convention of the Hague Conference on Private International Law(HCCH);
- ∞ Article 24 and 32 of **the Charter of Fundamental Rights of the EU**

Why does the EU need common rules on Private International Law?



- ∞ Foreseeability;
- ∞ Existence of ‘exorbitant’ rules of jurisdiction;
- ∞ Prevention of ‘**rush to a court**’ and ‘**forum shopping**’;
- ∞ Necessity of free movement of court decisions.



EU legal instruments in the family matters



- ☞ **Brussels II bis Regulation**- matrimonial matters and matters of parental responsibility ;
- ☞ **Rome III Regulation** -matrimonial matters;
- ☞ **Council Regulation(EC) 4/2009**- Maintenance obligation
- ☞ Ongoing projects: **Matrimonial property regimes;**
Registered partnership;
Regulation (CE)650/2012;



Other useful instruments



∞ **Legal Aid** (Directive 2003/8/EC)

∞ **Mediation**(Directive 2008/52/EC)

∞ **Serving Documents**
(Regulation 1393/2007)

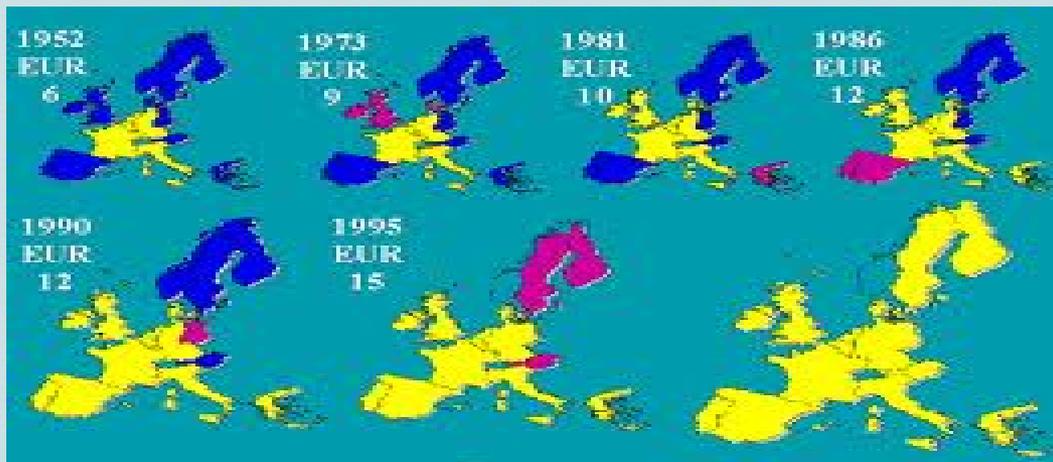
∞ **Taking evidence**
(Regulation 1206/2001)



Area distinction



- Regulations on the jurisdiction, recognition and enforcement of the judgments;
- Regulations on the applicable law;
- Two in one regulations;





Jurisdiction, recognition and enforcement of the judgments

Applicable law

- ✓ Regulation 2201/2003-
Brussels II bis-
(Matrimonial matters and matters of parental responsibility)

- ✓ Regulation 1259/2010-
Rome III(matrimonial matters);
- ✓ No E.U. instruments on applicable law in the matters of parental responsibility

Jurisdiction, **applicable law**, recognition and enforcement of the judgments/ two in one Regulation



Council Regulation (EC) No 4/2009

on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to **maintenance obligations/ 18.06.2011**



Brussels II bis Regulation-Council Regulation(EC) 2201/2003;



- is the most significant EU instrument in the area of cross-border family disputes;
- Rationale - Free movement of person has increased the number of international couples in the EU (about 16 million) and the potential number of cross-border disputes;
- When these disputes arise, the parents should know in which court case should be heard and what cross-border effects the judgment may have.

The historical background



- ☞ Council Regulation no.1347/2000 on jurisdiction, recognition and enforcement of judgments on matrimonial matters and matters of parental responsibility for children of both spouses- Brussels II Regulation;
- ☞ Council Regulation no.2201/2003- **Brussels II bis Regulation;**

Provisions meant to improve the Regulation



- ∞ Extend the provisions to **all children** involved in proceedings;
- ∞ Have created a helpful **hierarchy of jurisdiction rules** on children matters, especially based on habitual residence;
- ∞ Have improved the system of recognition and enforcement **of access orders**;
- ∞ Strengthening return provision in child abduction cases;

Helpful, but not compulsory. Useful?



☞ **Practice Guide for the application of the new Brussels II bis Regulation** –drawn up by the European Commission

☞ http://ec.europa.eu/civiljustice/publications/docs/guide_new_brussels_ii_en.pdf



Brussels II bis



Time applicability

 From 1 March 2005 for all EU Member States, with the exception of Denmark;

 From 1st January 2007 for Romania and Bulgaria;

Matters covered by Regulation



☞ Matrimonial matters;

☞ Parental responsibility;

Questions (1)



- Are there sufficient grounds to justify a joint regulatory framework for parental responsibility and divorce, only because matters of parental responsibility arise in a certain number of legal separation or divorce cases?

Instruments to be considered



- ✓ Rome III Regulation contain rules on applicable law in matters of divorce and separation, but not on parental responsibility;
- ✓ Maintenance obligation has a separate regulatory frameworks -Council Regulation(EC) 4/2009;

Parental responsibility - a definition



- ☞ All civil matters concerning “the attribution, exercise, delegation, restriction or termination of parental responsibility”- article 1(b) ; similar to 1996 Hague Convention
- ☞ **Term with wider range of meaning** than ‘parental custody’

Parental responsibility-article 1(2)- not exhaustive, merely illustrative



- ❧ Rights of custody and rights of access;
- ❧ Guardianship, curatorship and other institution;
- ❧ The designation and function of any person having charge of the child's person or property;
- ❧ Placement of the child in a foster family or in institutional care;
- ❧ Measures relating to the administration, conservation or disposal of the child's property, meant for child protection;

Parental responsibility- matters excluded-1(3)



- ❧ the establishment or contesting of a parent-child relationship;
- ❧ adoption (international regulated by **1993 Hague Intercountry Adoption Convention**);
- ❧ the name and forenames of the child;
- ❧ emancipation;
- ❧ maintenance obligations (**Regulation 4/2009**);
- ❧ trusts or succession (just regulated by **Regulation 650/2012**);
- ❧ measures taken as a result of criminal offences committed by children;

‘Parental responsibility ‘ illustrated by C-435/06



- ∞ The terms in the Regulation must be defined autonomously /independent from national law by the European Court of Justice to ensure equal treatment of children throughout the EU;
- ∞ “Parental responsibility” is a broad term including *“..all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect”* ;
- ∞ **C-435/06** and **C-523/07**;

Relevant terms-article 2



- ☞ Relevant terms are being defined autonomously and independent of the laws of the MS
- ☞ **'holder of parental responsibility'** -means any person having parental responsibility over a child;
- ☞ **'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 child's place of residence;
- ☞ **'rights of access'** -includes in particular the right to take a child to a place other than his or her habitual residence for a limited period of time;

Is there a definition of the child/ minor's age limit?



- ❧ Brussels II bis does not establish a maximum age for minors and leaves this question to national law;
- ❧ 1996 Hague Convention on child protection-18 years;
- ❧ 1980 Hague Convention-16 years;

Jurisdiction



∞ General rule- Article 8- **habitual residence of the child;**

∞ Exception to the general rule- articles 9, 10, 12, 13;

Article 8- possible shortcomings



- ☞ EU Regulations do not base their provisions on the same rule of jurisdiction;
- ☞ The difficulties of interpretation,

Differences



- ☞ Brussels I Regulation- Domicile- legal sense;
- ☞ Brussels II bis Regulation- Habitual residence- factual relationship between a person and a place;

Habitual residence -The term is a key concept that is not defined in the Regulation



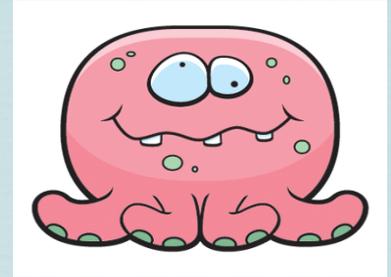
☞ C-523/07-

The term “habitual residence” shall be interpreted autonomously and it can be understood as “permanent and usual centre of interests of person chosen with the intention to live there permanently”

Criteria:

- ☞ duration, regularity,
- ☞ conditions and reasons for the stay on the territory of a MS and the family’s move;
- ☞ the child’s nationality;
- ☞ the place and conditions of attendance at school;
- ☞ linguistic knowledge ;
- ☞ the family and social relationships of the child.

Difficulties of interpretation



- ❧ The national court establish the habitual residence of the child, taking into account of all circumstances specific to each individual case.

Criteria:

- ❧ duration, regularity,
 - ❧ conditions and reasons for the stay on the territory of a MS and the family's move;
 - ❧ the child's nationality;
 - ❧ the place and conditions of attendance at school;
 - ❧ linguistic knowledge ;
 - ❧ the family and social relationships of the child.
-
- ❧ Differences between 'mere presence'(article 13) and 'habitual residence'(article 8)

Habitual residence-**Exceptions-**



- ❧ Rights of access- exceptional cases- article 9;
- ❧ Forum of matrimonial action-article 12 (1);
- ❧ The child close ties - Forum of jurisdiction -article12(3);
- ❧ Jurisdiction of the state where the child is presently located- article 13;
- ❧ Transferring the case -article 15;
- ❧ Residual jurisdiction- article 14;

1) Special grounds of jurisdiction- article 9



- ☞ Favours the holder of access(exclusive for visitation rights);
- ☞ Applies when the child moves lawfully from one Member State to another and acquires a new habitual residence there;
- ☞ The first MS retains competence for a period of three months following the relocation;

2)The forum of matrimonial case-article 12 (1);



☞ **Applicable conditions:**

- ☞ at least one of the spouses has parental responsibility;
- ☞ the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility and it is in the superior interests of the child;

The child close ties - Forum of jurisdiction - article 12(3)



☞ **Applicable conditions:**

☞ The child has a close link to a state (one of the holders of parental responsibility is habitually resident there or because the child is a national of that MS);

☞ Jurisdiction is consented by all parties and it is in the best interests of the child;

Jurisdiction of the state where the child is presently located-article 13



Conditions

- If no habitual residence can be established and there is no jurisdiction on the basis of article 12, the courts of the Member State where the child is present have jurisdiction.

Transferring the case to a **better placed court**-article 15;



☞ **Applicable conditions:**

- ☞ The EU MS court must be better placed to hear the case
- ☞ The child has a particular connection with that MS;
- ☞ The transfer is in the best interests of the child;

Transferring the case to a better placed court- article



Connectors - article 15 (3) :

- ∞ the new habitual residence of the child after the court has been seised;
- ∞ the former habitual residence of the child;
- ∞ the place of the child's nationality;
- ∞ the habitual residence of a holder of parental responsibility;
- ∞ the place of the property of the child, in cases concerning the child's property;

Forum non-convenience mechanism



The transfer may take place:

- ☞ on application from a party;
- ☞ of the court's own motion, if at least one of the parties agrees;
- ☞ on application of a court of another Member State, if at least one of the parties agrees;

Two options for the court



- It may stay the case and invite the parties to introduce a request before the court of the other Member State,
- The other MS court may be directly requested;

“Lis pendens” principle



- ☞ Two cases concerning the same child and the same cause of action brought in different Member States;
- ☞ The second court must stay proceedings until the jurisdiction of the court first seised is established.
- ☞ Where the jurisdiction of the court first seised is established, the second seised court must decline jurisdiction in favour of first court.

Examples

“Lis pendens” principle



☞ C-296/2010;

☞ C-195/08 PPU;

Emergency jurisdiction – Provisional measures under Article 20



Article 20 enables a court to take provisional, protective measures where a child in the territory is at risk but there is no jurisdictional ground available under the Regulation for the court to take action.

Emergency jurisdiction – Provisional measures under Article 20



- ☞ Case C-523/07 ;
- ☞ Case C-403/09;
- ☞ Provisional measures under article 11 and 12 of the 1996 Hague Convention;
- ☞ Differences between the legal national systems of the MS;

Applicable law



- ❧ Brussels II bis Regulation does not contain any provision on applicable law;
- ❧ The Hague Convention of 1996 on the International Protection of Children- signed by all MS;
- ❧ Has not been ratified yet by Belgium, Italy and Sweden;
- ❧ Differences and relationship between instruments;

The recognition and enforcement of judgments- historical background



- ❧ The 1961 Hague Convention-absence of provision;
- ❧ The 1980 Luxembourg Convention- too many grounds for refusing recognition and no enforcement provision;
- ❧ The 1996 Hague Convention- no provision on exequatur proceeding;
- ❧ The 1980 Hague Convention;

The recognition and enforcement of judgments



- Based on the principle of mutual trust and minimum grounds for non-recognition;
- Accelerated procedure on **rights of access**(article 41) and **return of the child**(article 42)
- Free circulation of parental responsibility judgments throughout the EU, strongly supported by the European Court of Justice jurisprudence.

Recognition and enforcement of judgments



3 steps required:

- ∞ Recognition;
- ∞ Exequatur proceeding- the declaration of enforceability;
- ∞ Enforcement of the decision-regulated by the national law;

Recognition and enforcement of judgments



- ∞ **No** review of jurisdiction of the court of origin (article 24); progress to Brussels I;
- ∞ **No** review of the substance of the judgment (article 26);

Grounds of non-recognition for judgments relating to parental responsibility



- ❧ Contrary to public policy taking into account the best interests of the child;
- ❧ Without granting the child opportunity to a hearing;
- ❧ Infringement of any holder of parental responsibility rights (the person did not have the opportunity to be heard);
- ❧ Default of appearance;
- ❧ Irreconcilable judgments;

Enforcement proceedings



- ∞ 2 steps
- ∞ 1) Strictly formal procedure (without any possibility of opposing recognition);
- ∞ 2) Possibility of an appeal within one month period(article 33);

Special procedures- accelerated procedures



∞ Rights of access(article 41);

∞ Return of the child(article 42);

Rights of access(article 41);



☞ “The rights of access granted in an enforceable judgment given in a MS is recognised and enforceable in another MS without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin.”

Certificate-Annex III



- ☞ “The judge of origin shall issue the certificate using the standard form in Annex III
(certificate concerning rights of access) only if:
 - ☞ (a) where the judgment was given in default, 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 defense, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally;
 - ☞ (b) all parties concerned were given an opportunity to be heard;
 - ☞ (c) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his/her age or degree of maturity;
- ☞ The certificate shall be issued ex officio whether there is a cross-border situation



☞ Thank you!



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CROSS-BORDER CHILD ABDUCTION WITHIN THE EU

Brussels, 20.11.2012

Dr. Kerstin Niethammer-Jürgens

Rechtanwältin/ Attorney at Law, Potsdam, Germany

I. THE HAGUE CONVENTION 1980 ON INTERNATIONAL CHILD ABDUCTION

o 1. History

- o concluded 25.10.1980, entered into force on 1.12.1983
- o as for November 2012: 88 Contracting States see status table on the Website of the Hague Conference on Private International Law: <http://www.hcch.net>
- o all EU Member States are Contracting States



I. THE HAGUE CONVENTION 1980 ON INTERNATIONAL CHILD ABDUCTION

○ 2. Aim and basic principles

- it is in the interest of a child not to be wrongfully retained or removed from the country of its habitual residence, Art. 1
- status quo ante shall be secured
- prompt return of the child is the best way to secure the status ante
- protection of the custody rights of the left behind parent
- fast proceedings, Art. 2



I. THE HAGUE CONVENTION 1980 ON INTERNATIONAL CHILD ABDUCTION

o 3. Helpful Tools

- o specialized child abduction section of the HCCH website
- o explanatory documents, good practice guides
- o case law databases (INCADAT)
- o statistics (INCASTAT)
- o European Hotline Number: 116000 reserved by the European Commission for missing children



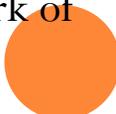
I. THE HAGUE CONVENTION 1980 ON INTERNATIONAL CHILD ABDUCTION

- **4. Application of the Convention, Art. 4 and Art. 3**
 - child under the age of 16 at the time of the breach of custody
 - wrongful removal or retention according, Art. 3 lit. a)
 - breach of rights of custody, Art. 3, Art. 3 lit. a)
 - habitual residence, Art. 3 lit. a)
 - exercise of rights of custody, Art. 3 lit. b)



I. THE HAGUE CONVENTION 1980 ON INTERNATIONAL CHILD ABDUCTION

○ 5. Rights of Custody

- autonomous meaning of Rights of Custody according to the law of the state of habitual residence of the child
 - but in accordance with Art. 5 > right to determine residence
 - under the law of the state of habitual residence or
 - granted by a court of the state of habitual residence or
 - granted by agreement having legal binding effect
 - to find out which is the applicable law on custody in the country of habitual residence of the child:
 - Art. 15 Declaration and/or communication via the International Hague Network of Judges
- 

I. THE HAGUE CONVENTION ON 1980 INTERNATIONAL CHILD ABDUCTION

○ 6. Exercise of Custody

- Actual exercise of custody, Art. 3 lit b)
- can be held by public authorities or by courts
- can be held by foster families based on a placement order
- only complete abandonment of custody rights indicates that rights of custody have not been exercised at the time of removal or retention of the child



I. THE HAGUE CONVENTION 1980 ON INTERNATIONAL CHILD ABDUCTION

○ 7. Habitual Residence

- no definition in the Hague Convention 1980, definition has been avoided
- factual concept: individual's actual connection to a place
- not only a question of time to become habitual resident in a Contracting State
- time, housing, schooling, health care, social and cultural activities, language skills
- centre of gravity
- intention of parent/s to move? vs. intention of child to move?
- more than one centre of gravity?
- does the interpretation of the ECJ in “Mercredi” and “A” also apply to habitual residence in Art. 3 of the convention?



I. THE HAGUE CONVENTION 1980 ON INTERNATIONAL CHILD ABDUCTION

o 8. Return of the Child to the state of Habitual Residence

- o if there is an unlawful removal or retention of the child the child is going to be returned to the State of Habitual Residence, Art. 12 lit. a)
- o if there is no agreement on return the court **MUST** order the return
- o unless an exception applies



I. THE HAGUE CONVENTION 1980 ON INTERNATIONAL CHILD ABDUCTION

- **9. Exceptions according to Art. 13**
- no actual exercise of the custody rights at the time of removal or retention, Art. 13 (1) lit a)
- consent to or subsequently acquisition in the removal or retention, Art. 13 (1) lit a)
- grave risk that would expose the child to physical or psychological harm, Art. 13 (1) lit b)
- grave risk that would otherwise place the child in an intolerable situation, Art. 13 (1) lit b)
- Child's objection to being returned, if it has attained an age and degree of maturity at which it is appropriate to take account of its views, Art. 13 (2)



I. THE HAGUE CONVENTION 1980 ON INTERNATIONAL CHILD ABDUCTION

- **10. Exceptions according to Art. 12 and 20**
 - expiration of a period of one year after the commencement of return proceedings, Art. 12
 - Return order would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms, Art. 20



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **1. Aim and basic principles**
 - cases involving only Member States
 - new and modified system as a complement to the Hague Convention 1980
 - EU country in which the child was habitually resident (“Member State of origin) immediately before the abduction continues to have jurisdiction until the child is habitually resident in another EU country (“requested Member State”)
 - even more expeditious proceedings
 - the child is giving the opportunity to be heard during the proceedings, unless this appears inappropriate due to his or her age and degree of maturity.



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

○ 2. Aim and basic principles II

- the judge must order the child's return if it is established that adequate arrangements have been made to ensure the protection of the child after his or her return, Art. 11 (4)
- If a court rules that a child is not to be returned, it must transfer the case file to the competent court of the EU country in which the child was habitually resident prior to removal. This court takes the final decision as to whether or not the child is to be returned, Art. 11 (4)-(8)



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **3. Aim and basic principles III**
 - Regulation as international agreement on jurisdiction
 - National law applying for procedures and to identify courts
 - Concentration of courts in some Member States



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **4. Definitions, Art. 2 Regulation Brussels Ibis**
 - definitions of custody and access rights, Art 2 (9) and (10)
 - wrongful removal or retention, Art. 2 (11) – according Art. 3 and 5 of the Hague Convention 1980



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **5. Art. 9 and 10 Regulation Brussels Ibis**
 - Concept of Art. 9 and 10 of the Regulation: to avoid “forum shopping” and to secure that only under strict conditions of Art. 10 the requested MS has jurisdiction after an unlawful removal or retention of the child
 - Art. 9 applies, if a child is lawfully removed from a Member State: MS of the child’s former residence retains jurisdiction for a period of three months referring to access rights of the left behind parent



II. THE MODIFICATION WITHIN THE BRUSSELS IIBIS REGULATION

○ 6. Art. 10 Regulation Brussels Ibis

- Art. 10 applies, if a child is unlawfully removed from a Member State: despite the abduction the Member State of origin retains jurisdiction to decide on the question of custody.
- Jurisdiction only changes, if
 - acquiescing in the removal or retention
 - child is residing in the new MS for more than one year, is settled and the whereabouts of the child are known
 - no request for return is lodged



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **7. Art. 11 Regulation Brussels Ibis**
 - Interrelation of Art. 11 of the Regulation and Art. 12 and 13 of the Hague Convention 1980
 - Judgment of return will be based on the rules of Art. 12 and Art. 3 Hague Convention 1980 complemented by Art. 11 Regulation Brussels Ibis
 - Model Application Form
<http://www.hcch.net/upload/recomm28e.pdf>



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

Request for return

Hague Convention of on the Civil Aspects of International Child Abduction

REQUESTING CENTRAL AUTHORITY OR APPLICANT	REQUESTED AUTHORITY
---	---------------------

Concerns the following child: who will attain the age of 16 on 19.....

NOTE: The following particulars should be completed insofar as possible.

I - IDENTITY OF THE CHILD AND ITS PARENTS

1 *Child*

name and first names

date and place of birth

habitual residence before removal or retention

passport or identity card No, if any

description and photo, if possible (see annexes)

2 *Parents*

2.1 *Mother:* name and first names

date and place of birth

nationality

occupation

habitual residence

passport or identity card No, if any

2.2 *Father:* name and first names

date and place of birth

nationality

occupation

habitual residence

passport or identity card No, if any

2.3 *Date and place of marriage*

II - REQUESTING INDIVIDUAL OR INSTITUTION (who actually exercised custody before the removal or retention)

3 name and first names

nationality of individual applicant

occupation of individual applicant

address

passport or identity card No, if any

relation to the child

name and address of legal adviser, if any

III - PLACE WHERE THE CHILD IS THOUGHT TO BE

4.1 *Information concerning the person alleged to have removed or retained the child*

name and first names

date and place of birth, if known

nationality, if known

occupation

last known address

passport or identity card No, if any

description and photo, if possible (see annexes)

4.2 *Address of the child*

4.3 *Other persons who might be able to supply additional information relating to the whereabouts of the child*



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

IV - TIME, PLACE, DATE AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

.....
.....
.....

V - FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

.....
.....
.....

VI - CIVIL PROCEEDINGS IN PROGRESS

.....
.....
.....

VII - CHILD IS TO BE RETURNED TO:

- a name and first names
date and place of birth
address
telephone number
- b proposed arrangements for return of the child
.....
.....

VIII - OTHER REMARKS

.....
.....
.....

IX - LIST OF DOCUMENTS ATTACHED*

.....
.....
.....

Date

Place

Signature and/or stamp of the requesting Central Authority
or applicant

.....

* e.g. - Certified copy of relevant decision or agreement concerning custody or access; certificate or affidavit as to the applicable law; information relating to the social background of the child; authorization empowering the Central Authority to act on behalf of applicant.



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **8. Art. 11 (3) Regulation Brussels Ibis**
 - courts must use most expeditious procedures under national law, Art. 11 (3), the judgment has to be issued not later than six weeks after the application is lodged
 - to guarantee this is a question of national procedural law
 - does this timeframe include appeal proceedings according to national law? How to make sure that national procedural laws do not undermine the aim of Art. 11 (3)?



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **9. Art. 11 (2) and (5) Regulation Brussels Ibis**
 - child has the opportunity to be heard unless this appears inappropriate in regard to his age or degree of maturity, Art. 11 (2)
 - the way how the child is heard is a question of national procedural law
 - a court can not refuse a return unless the requesting party did not have the opportunity to be heard, Art. 11 (5)



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **10. Art. 11 (4) Regulation Brussels Ibis**
 - Art. 11 (4) of the Regulation and Art. 13 lit. b) of the Hague Convention – grave risk
 - the court of the “requested MS” can not refuse the return of the child on the basis of Art.13 b) Hague Convention 1980 if precautions were taken to protect the child in the “state of origin”
 - This involves
 - Direct juridical communication via The International Hague Network of Judges > www.hcch.net and the European Network of Judges (EJN)



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **11. Art. 11 (6) and (7) Regulation Brussels Ibis**
 - new procedure foreseen in the exceptional case that the court of the requested Member States decides that the child is not returned
 - procedure allows the court of the MS of the habitual residence of the child prior to the abduction to have the final say
 - procedure regulates in detail what has to happen when a court decides that a child is not returned



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **12. Art. 11 (6) Regulation Brussels Ibis**
 - court must transmit a copy of the order, all documents, esp. the protocol of the hearing to the Central Authority (CA) or the court of the MS where the child was habitually resident before the abduction (“state of origin”)
 - the court of the state of origin shall receive all documents within **one month** of the date the non-return order was entered
 - European Judicial Atlas in Civil Matters
http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm
 - Central Authorities in every MS
http://www.hcch.net/index_en.php?act=conventions.authorities&cid=24
 - European Network of Judges (EJN): <http://www.hcch.net>



II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **13. Art. 11 (7) Regulation Brussels Ibis**
 - unless there are not already custody proceedings pending in the “state of origin” the court of the “state of origin” must invite the parties to make submissions to the court according to national law **within three months** of notification so that question of custody of the child can be examined before the court of the “state of origin”
 - if this timeframe elapses and no submission is lodged the court can close the file

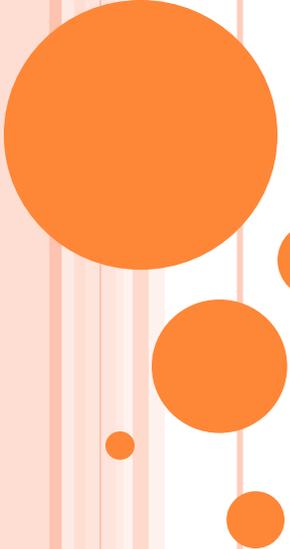


II. THE MODIFICATIONS WITHIN THE BRUSSELS IIBIS REGULATION

- **14. Art. 11 (8) Regulation Brussels Ibis**
- even if there is a judgment of non-return issued by the court of the “requested MS” pursuant to Art. 13 Hague Convention 1980 any subsequent judgment which requires the return of the child issued by a court of the “MS state of origin” is enforceable;
- Section 4 of Chapter III (Art. 21ff. – recognition and enforcement) Brussels Ibis applies to secure the safe return of the child
- underlines the “last say” of the courts of the state of habitual residence of the child



CROSS-BORDER CHILD ABDUCTION WITHIN THE EU



THANK YOU – let's discuss !



Trainers workshop: International child abduction

Brussels, 3 December 2012

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Universiteit Antwerpen



Structure of presentation

- Figures
- Definitions
- Legal texts
- Legal procedures



International child abduction

FIGURES



Figures

- Research in Belgium
- 2009-2010
- Figures 2007 & 2008



Université catholique de Louvain



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European
Union





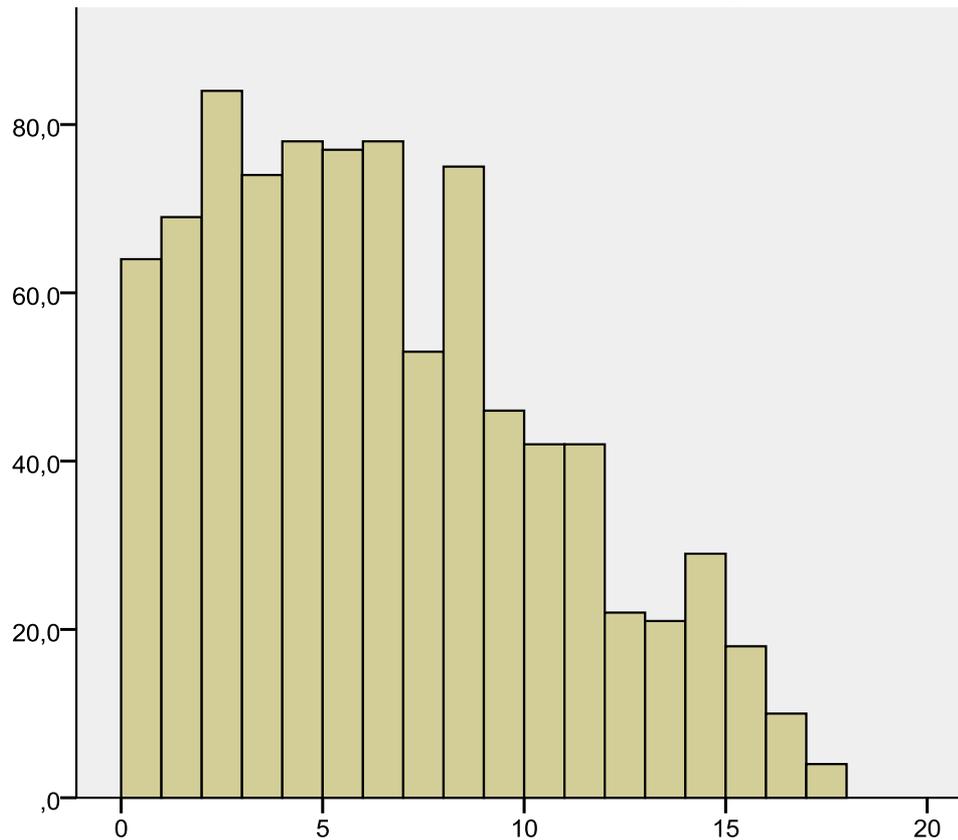
Figures

- **2007:**
 - 225 children
 - 164 files
 - **2008:**
 - 188 children
 - 133 files
- +/- 4 children per week



Figures

Age of children: 65% = 7 years or younger



n=886



Figures

Duration of abductions: 11,87 months
(n= 215)

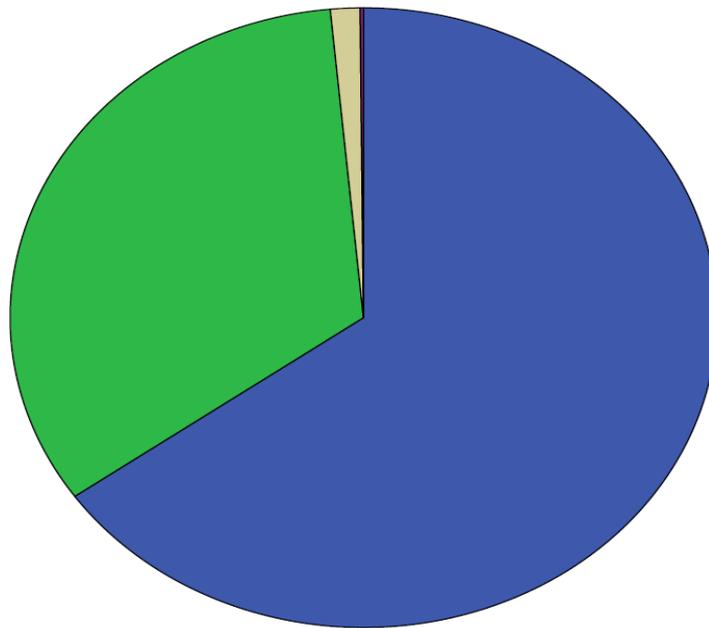
- From Belgium: 12,1 months
- To Belgium: 10,9 months



Figures

Relationship between abducting parent and child

n= 667

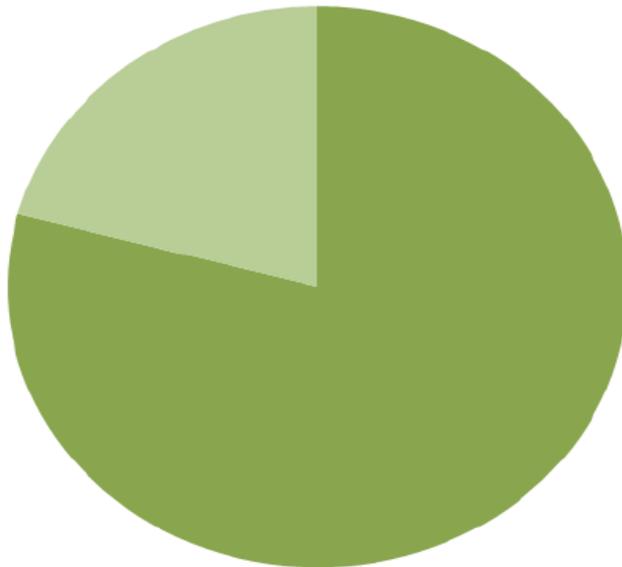


- mother (65,2%)
- father (33,4%)
- grandparent/other family (1,3%)
- mother and father (0,1%)



Figures

Abduction by primary caretaker



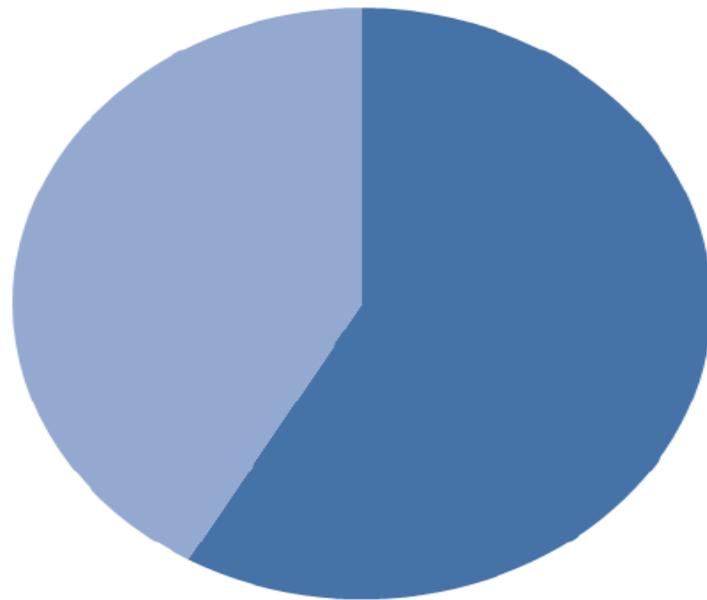
n= 667

- Primary caretaker
- Other parent (24,6%)



Figures

Destination of abduction



n= 667

- Abduction to country of nationality or of birth of abducting parent (58,3%)
- Other destination



Figures

- Destination of abductions from Belgium
 - EU: 52,7%
 - North Africa: 12,6%
 - Other Europe: 7,6%
 - Asia: 5,6%
 - Middle-East: 5,4%
 - Latin America: 5%





International child abduction

DEFINITIONS



Definitions

- Child abduction =
 - Wrongful removal or retention of child
 - Wrongful = breaching custody rights of other parent
 - Custody (broad)
 - By operation of law
 - Judicial or administrative decision
 - Agreement with legal effect
- If these rights are in effect exercised



Definitions

- Rights of custody
 - ECJ C-400/10PPU, *McB*
 - Definition of “rights of custody”: *rights and duties relating to the care of the person of a child, and in particular the right to determine the child’s place of residence (art. 2,9 Brussels II bis)*
 - Who has “rights of custody”: reference to the law of the Member State of the habitual residence of the child



Definitions

- Habitual residence of a child
 - ECJ C-523/07, A
 - *All the circumstance of each individual case*
 - *Physical presence that is not temporary or intermittent, but reflects some degree of integration in a social and family environment*
 - Factors:
 - Duration,
 - Regularity,
 - Conditions and reasons for stay,
 - Nationality
 - School
 - Linguistic knowledge
 - Family and social relationships



Definitions

- Habitual residence of an infant
 - ECJ C-497/10, *Mercredi v. Chaffe*
 - *Physical presence that is not temporary*
 - *Family and social environment: depends on age*
 - *Infant: family and social environment determined by persons on whom he/she dependent*
 - *Assess mother's custody and apply factors to her.*



International child abduction

LEGAL TEXTS



Legal texts

Consider origin and destination of abduction

- If from one EU MS to another:
 - Brussels II bis
- If from EU MS to HC State
 - Hague Convention 1980
- If from HC State to EU MS
 - Hague Convention 1980
- For other States
 - Bilateral conventions
 - Diplomatic solutions



Legal texts

Hague Convention 1980

- Goals =
 - Immediate return of the child
 - Jurisdiction remains in country of habitual residence
- * See information on www.hcch.net
 - INCADAT, INCASTAT, guides and preliminary documents



Legal texts

Brussels II bis

- Broader than 1980 Convention: not only child abduction
- Supplement to 1980 Convention
 - > Enhancing goal of return of child
 - > Restricting grounds for refusal even further
- Abduction may not change child's habitual residence (Arts 8-10)



Legal texts

Brussels II bis & 1980 Convention

Recital 17:

- “Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11”
- Limited grounds for refusal
- If refusal: second chance for return



Legal texts

Brussels II bis & 1980 Convention

Article 60

- Regulation takes precedence over Convention in relations between Member States



International child abduction

LEGAL PROCEDURES



Legal procedures

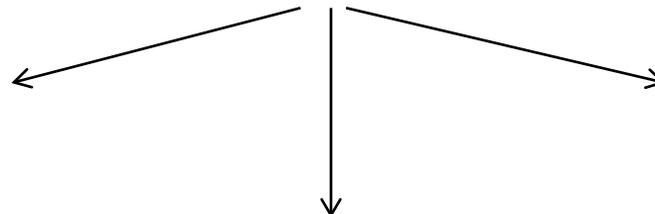
Hague Convention 1980

Central Authority in country from where abducted (116000 / hcch.net / judicial atlas)



Central Authority in country where child is

Voluntary return
land



Mediation

Legal procedure in
country where child
is





Legal procedures

Hague Convention 1980

- Rule (Art 12)
 - < 1 year between abduction and application:
Child must return
 - > 1 year between abduction and application:
Child must return unless child settled in new environment

- Model form:

http://www.hcch.net/index_en.php?act=publications.details&pid=2778&dtid=28

* Court must decide in six weeks



Legal procedures

Hague Convention 1980

- Exceptions
 - Applicant was not exercising custody or consented (Art 13)
 - Grave risk for child of physical or psychological harm or intollerable situation (Art 13)
 - Child objects + age and degree of maturity (Art 13)
 - Fundamental principles: human rights and fundamental freedoms (Art 20)



Legal procedures

Brussels II bis

- Complements Convention
- Two instruments must be read together



Legal procedures

Brussels II bis

- Rule of Convention = return
- **Supplements (Art 11):**
 - Child must be heard, except if \neq age / degree of maturity
 - Most expeditious national procedures
 - Six weeks: compulsory



Legal procedures

Brussel II bis

- Convention's exceptions
- Supplements (Art 11)
 - Risk for child: may not be used if adequate arrangements in country of return
 - No refusal if applicant not heard



Legal procedures

Brussel II bis

After return

- Case on substance (parental responsibility)
 - Jurisdiction
 - Brussels II bis
 - Applicable law
 - Hague Convention 1996



Legal procedures

Brussel II bis

If return is refused

- Brussels II bis grants second chance to obtain return (Art 11)
- Court that issued non-return order under Art 13
 - Transmit to court of former habitual residence/CA
 - Jurisdiction remains with this court
 - Court and CA active role: 3 months
 - Return still possible
 - Certificate:
http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_jm_m_filling_be_en.htm



Legal procedures

Brussel II bis

- Certificate
 - Enforceable throughout EU
 - No consideration of grounds for refusal
 - ECJ C-195/08PPU, *Rinau*
 - Irrespective of what has happened in the mean time, as long as child has not returned
 - ECJ C-211/10PPU, *Povse v. Alpago*
 - Also when there is a later contradictory judgment of State of enforcement
 - ECJ C-491/10PPU *Aguirre Zarraga t. Pelz*
 - No questioning of certificate's truth

Recognition and enforcement of
judgments, including rules on
access rights and child abduction

Orsolya Szeibert

11/20/2012

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Outline

- ▶ Recognition and declaration of enforceability of a judgment on parental responsibility
- ▶ Special rules on access rights
- ▶ Special rules on the return of the child following abduction
- ▶ Enforcement procedure



Recognition and declaration of enforceability of a judgment on parental responsibility 1.

▶ Art. 2 Definitions

▶ *‘court ‘ – all authorities in the MSs with jurisdiction in the matters falling within the scope of the Regulation [Art. 2(1)]*

□ e.g. social authorities

▶ *‘judgment’ – whatever the judgment may be called concerning the matters of parental responsibilities [Art. 2(4)]*

□ e.g. decision, decree, order

▶ Recognition of judgments – without any special procedure BUT

▶ Enforcement – exequatur procedure is needed – judgments has to be declared enforceable

▶ Exceptions under exequatur proceedings in two cases



Recognition and declaration of enforceability of a judgment on parental responsibility 2.

- ▶ Free circulation of judgments
- ▶ Mutual recognition
 - ▶ Rec. 2 in the preamble – this a cornerstone for the genuine European judicial area
 - ▶ Rec. 21 in the preamble – non-recognition should be kept to the minimum
- ▶ **Art. 21** *Recognition of a judgment*
 - ▶ Without any special procedure [Art. 21(1)]
 - ▶ Any interested party may apply for a decision that the judgment be or not be recognized [Art. 21(3)]
 - ▶ There is – according to Art. 68 – a list of courts being competent for deciding on recognition and enforceability of judgments on parental responsibility.
 - ▶ Updated list is important
 - ▶ When seeking or contesting recognition – a copy of the judgment and a certificate (Annex II) is needed [Art. 37]

▶ Procedural rules

Recognition and declaration of enforceability of a judgment on parental responsibility 3.

▶ *Recognition of a judgment*

- ▶ Grounds of non-recognition [Art. 23]
 - ▶ contrary to public policy + child's best interest
 - ▶ no opportunity for the child to be heard
 - ▶ absence of a person who was not given document/no time to arrange for defence – requirement of fair trial
 - ▶ no opportunity for the person who refers to the infringement of the parental responsibilities to be heard – requirement of fair trial
 - ▶ irreconcilable with another judgment (conditional)
 - ▶ placement of child and procedural conditions according to § 56 have not been complied with
-



Recognition and declaration of enforceability of a judgment on parental responsibility 4.

- ▶ *Reinforcing the principle of mutual recognition* [Art. 24-26]
 - ▶ Prohibition of review as to the substance
 - ▶ The jurisdiction of the court of the MS of origin may not be reviewed. The test of public policy may not be applied to the rules of jurisdiction. [Art. 24]
 - ▶ *Case C-296/10 [2010] ‘Purrucker’*
 - ▶ jurisdiction may not be reviewed but the court second seized may identify the ground of jurisdiction (in case of *lis pendens*)
 - ▶ Under no circumstances may a judgment be reviewed as to its substance. [Art. 26]
-



Recognition and declaration of enforceability of a judgment on parental responsibility 5.

- ▶ *Exequatur procedure is needed – no automatic effect*
- ▶ Any interested party may request that a judgment on parental responsibility be declared enforceable in another MS.
 - ▶ There is – according to Art. 68 – a list of courts being competent for deciding on (recognition and) enforceability of judgments on parental responsibility.
 - ▶ Updated list is important
- ▶ When seeking or contesting recognition – a copy of the judgment and a certificate (Annex II) is needed [Art. 37]
- ▶ Certificate is issued at the request of any interested party [Art. 39]
 - ▶ Special rules for the case of a judgment given in default [Art. 39]



Recognition and declaration of enforceability of a judgment on parental responsibility 6.

- ▶ *Exequatur procedure is needed – no automatic effect*
 - ▶ The court gives its decision without delay [Art. 31]
 - ▶ Neither the person against whom the enforcement is sought, nor the child can submit observations – one-sided procedure
 - ▶ The court may refuse the application only upon special grounds
 - ▶ grounds of non-recognition [Art. 23]
 - ▶ Recognition and declaration of enforceability are linked
 - ▶ Under no circumstances may the judgment be reviewed as to its substance [Art. 31(3)]
 - ▶ Right to defend – right to appeal
 - ▶ The decision on the application for a declaration of enforceability may be appealed against by either party. [Art. 33 (1)]
 - ▶ According to Art. 68 – a list of courts where the appeals can be lodged – comments may be submitted now
-



Recognition and declaration of enforceability of a judgment on parental responsibility 7.

- ▶ *Exequatur procedure is needed – no automatic effect*
 - ▶ Rec. 22 in the preamble – authentic instruments and agreements between parties that are enforceable in a MS are treated as equivalent to judgments for the purpose of the application of the rules on recognition and enforcement
 - ▶ Art. 46 – recognition and enforcement under the same conditions as judgments
 - ▶ During the exequatur procedure legal aid may be provided [Art. 50]
 - ▶ One task of the central authorities is to facilitate agreements between the holders of parental responsibility [Art. 55]
 - ▶ Mediation is emphasized - mediation agreements
-



Special rules to access rights 1.

- ▶ *Exequatur procedure is no longer necessary*
- ▶ Cross-border access rights
- ▶ Aim: to ensure the child's right to maintain contact with both parents after divorce/separation even if they live in different MSs
 - ▶ Art. 24 of Charter – 'right to maintain on a regular basis a personal relationship and direct contact with both parents unless that is contrary to the best interest'
- ▶ Access rights – in particular to take a child to a place other than his/her habitual residence for a limited period of time [Art. 2(10)]
 - ▶ means all forms of contact
 - ▶ contact with other family members, third persons



Special rules to access rights 2.

- ▶ Judgments on access rights are recognized and directly enforceable if there is a certificate
 - ▶ no (intermediate) exequatur procedure (declaration of enforceability) is required
 - ▶ other party may not oppose the recognition
 - ▶ only judgments granting access (not refusing)
 - ▶ the grounds of non-recognition cannot be applied
- ▶ The holder of the parental responsibility is not prevented to require for recognition and enforceability according to the exequatur procedure [Art. 40(2)]



Special rules to access rights 3.

- ▶ Certificate has extreme importance -
 - ▶ issued ex officio if the cross-border situation is involved at the time of delivering the judgment
 - ▶ Issuing even in case of potential cross-border element?
 - ▶ according to the standard form in Annex III
 - ▶ Conditions [Art. 41(2)] – procedural safeguards
 - ▶ all parties have been given the opportunity to be heard
 - ▶ the child has been given the opportunity to be heard
 - ▶ if the judgment was given in default, requirements concerning the defaulting party has been fulfilled
 - ▶ No appeal is possible against the issuing of a certificate [Art. 43(2)]
 - ▶ If the court has committed an error in filling the certificate, a request for rectification can be made by that court [Art. 43]



Special rules to access rights 4.

- ▶ Practical arrangements for exercising the rights of access
 - ▶ the court of the MS of enforcement may make that arrangements if there is insufficient information in the judgment
 - ▶ organization of contact: in which country, exactly when, what period, how the access can happen
 - ▶ jurisdiction as to the substance is not transferred by that way
- ▶ No appeal is possible against the issuing of a certificate [Art. 43(2)] (?)
 - ▶ If the court has committed an error in filling the certificate, a request for rectification can be made by that court [Art. 43]



Special rules on the return of the child following abduction 1.

- ▶ *Exequatur procedure is no longer necessary*
 - ▶ In cross-border child abduction cases there is a special case when enforcement is possible without exequatur [Art. 11(8) – Art. 40(1)(b)]
 - ▶ Child is abducted from MS ‘A’ to MS ‘B’. The return of the child was requested in MS ‘B’ but it was refused (and the copy of judgment about the non-return of the child was transmitted to the MS ‘A’ which MS retained its jurisdiction as to the custody). MS ‘A’ invites the parties to submit comments within time-limit. If there is no comment, the case is closed. If the parties submit their comments, the court (in MS ‘A’) observes the custody. If the custody is granted to the other parent, then the return of the child is decided.
 - ▶ This return can be enforced directly.
-



Special rules on the return of the child following abduction 2.

- ▶ Judgments on return of the child [Art. 11(8)] are recognized and directly enforceable if there is a certificate
 - ▶ no (intermediate) exequatur procedure (declaration of enforceability) is required
 - ▶ other party may not oppose the recognition
- ▶ the grounds of non-recognition cannot be applied
- ▶ Certificate
 - ▶ according to the standard form in Annex IV
 - ▶ Conditions [Art. 42(2)] – procedural safeguards
 - ▶ all parties have been given the opportunity to be heard
 - ▶ the child has been given the opportunity to be heard, unless a hearing was inappropriate (age, mature)
 - ▶ the court when deciding took into attention the reasons and evidence of the order which was issued under Art § of 1980 HC



Special rules on the return of the child following abduction 3.

- ▶ Certificate is issued ex officio
 - ▶ the court delivers the certificate
- ▶ No appeal is possible against the issuing of a certificate [Art. 43(2)] (?)
 - ▶ If the court has committed an error in filling the certificate, a request for rectification can be made by that court [Art. 43]
- ▶ *Case 491/10 PPU [2010] ‘Zarraga’*
 - ▶ the court of enforcement may not review the decision of the other MS’s court according to Art. 21. Is it the case if the certificate issued by the court having jurisdiction contains a manifestly false declaration?
 - ▶ The certificate contained the declaration that the child was heard, whereas she was not at all.



Special rules on the return of the child following abduction 4.

▶ *Case 491/10 PPU 'Zarraga'*

- ▶ according to the case law, the Regulation does not empower the court of the MS of enforcement to oppose either the recognition or the enforceability of that judgment
- ▶ CJEU reinforced that the rectification of the certificate issued by the MS of origin only according to the legal rules of that MS
- ▶ mutual trust and the requirement of rapidity are significant factors
- ▶ Regulation clearly divide the jurisdiction between the court of the MS of origin and that of the MS of enforcement upon the premiss that the court respect the obligations imposed by the Charter
- ▶ provisions of the Regulation refer to the child's having the opportunity to be heard and not to the right to be heard
- ▶ the court has to assess whether it is appropriate to hear the child



Enforcement procedure 1.

- ▶ Sensitive cases
- ▶ Adequate enforcement is required
- ▶ How appropriate are the national enforcement regulations?
- ▶ *CJEU*
 - ▶ *Case C-195/08 PPU [2008] ‘Rinau’*
 - ▶ the application of national rules should not prejudice the Regulation’s useful effect
 - ▶ the number of decisions and their diverse nature (set aside, overturn, reopen, suspend) are evidence that the periods of time elapsed are in manifest contradiction to the requirements of the Regulation



Enforcement procedure 2.

- ▶ *European Court of Human Rights*
 - ▶ Breach of Article 8
 - ▶ *Case of Ignaccolo-Zenidi v. Romania of 2000*
 - ▶ Complaint: the Romanian authorities had not taken sufficient steps to ensure the enforcement of access rights
 - ▶ Romanian Government: father is responsible, and the children constantly refused to meet their mother
 - ▶ Proceedings concerning parental responsibility requires urgent handling
 - ▶ Passage of time can cause irremediable consequences for the relations between children and the parent living separately
 - ▶ Coercive measures against children are not desirable
 - ▶ The use of sanctions must not be ruled out in case of the parent's unlawful behaviour
-



Enforcement procedure 3.

- ▶ *European Court of Human Rights*
 - ▶ Breach of Article 8
 - ▶ *Case of Maire v Portugal of 2003*
 - ▶ Complaint: failure to act and negligence on the part of the Portuguese authorities in enforcing the decisions awarding the custody
 - ▶ Government: States have margin of appreciation to choose the action with the aim of fulfilling their obligations; mother was in lack of co-operation in locating the minor
 - ▶ State has to take positive measures
 - ▶ A fair balance should be made between the contrasting interests
 - ▶ Adequate sanctions should be made
-



Procedure in Family matters Hearing of the Child and Taking of Evidence



Martina Erb-Klünemann
Workshop

on parental responsibility in a cross-border context

Academy of European Law

on behalf of the European Commission

Brussels, 20-22 November, 2012

THE RIGHT OF THE CHILD TO BE HEARD

Art. 12 UN Convention on the Rights of the Child of 20 November 1989 (UNCRC)

- 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

THE RIGHT OF THE CHILD TO BE HEARD (2)

Art. 24 (1) Charta of Fundamental Rights of the European Union

Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

national law

see B.3 in the national sections

> well-established right in the international, European and national setting

Why- Hearing the opinion of a child

- is in the superior interest of the child
- is an essential tool to enable better assessment of the factual situation

How -Hearing the opinion of a child

- Different national systems with varying requirements and methods

- Safeguards in international instruments:

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (17 November 2010)

see IV.D.3.-6.:

Respect of right to be heard when sufficient understanding

Means adapted to level of understanding and wishes

Information about the right to be heard

Child-friendly organisation, environment and language

Trained professionals

Hearing of the child and Brussels II bis

- Recital 19
- Art. 23ptio
- Art. 41 (2)(c)
- Art. 42 (2)(a)
- Art. 11 (2)
- **Principle of hearing** the voice of the child in family proceedings
- **Exception: not hearing** the child if it was considered inappropriate having regard to age or degree of maturity,
must be interpreted **restrictively** having regard to
the individual case

Excursion: European Courts

- **European Court of Justice (ECJ)**
 - highest court in the EU in matters of European Union law
 - interprets EU law and ensures its equal application across all EU member states
 - based in Luxembourg
 - www.Curia.europa.eu
- **European Court of Human Rights (ECtHR)**
 - Court of the Council of Europe, is not part of the EU
 - hears complains that a contracting state has violated the European Convention of Human Rights
 - based in Strasbourg
 - www.echr.coe.int

Hearing of the child and Brussels II bis (2)

■ ECJ Case C-491/10 PPU (Aguirre Zarraga v Pelz)

After separation in Spain custody to father with whom child lives

15.8.2008 retention by mother after holiday in Germany

1.7.2009 German Court rejects application for return after hearing the child (Art. 13 (2) 1980 HC)

16.12.2009 Spanish Court grants custody to father without hearing the child, mother didn't bring the child, no permission to leave Spain freely, no videoconference

5.2.2010 Spanish Art. 42 certificate stating that the child was given the opportunity to be heard

German Court ask the ECJ for a preliminary ruling:

Is there a duty to enforce in case of a manifestly inaccurate declaration which means a serious infringement of fundamental rights? Or has the enforcement court an exceptional power to review?

Hearing of the child and Brussels II bis (3)

■ ECJ Case C-491/10 PPU (Aguirre Zarraga v Pelz)

22.12.2010 ECJ Judgment:

Art. 42 (2) Brussels II bis doesn't refer to the hearing of the child per se, but to the child's having the opportunity to be heard.

"The ruling court assesses whether a hearing is appropriate. Conflicts create situations on which the hearing of the child ... may prove to be inappropriate, and even harmful to the psychological health of the child....**hearing of the child cannot constitute an absolute obligation, but must be assessed having regard to what is required in the best interests of the child in each individual case...**

...it is not a necessary consequence of the right of the child to be heard that a hearing before the court of the Member State of origin takes place, but that **right does require that there are made available to the child legal procedures and conditions which enable the child to express his or her views freely and that those views are obtained by the court** ...where the court decides to hear the child , those provisions require the court to take all measures which are appropriate to the arrangement of such a hearing, having regard to the child's best interests and 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 enforcement is obliged to enforce, has no power to oppose.

How- Methods of carrying out the hearing of a child

- Recital 19 Brussels II bis: no modification of the national procedures for the hearing of the child
- Different approaches in different States
- Various models: child psychiatrist, trained court officer, social worker, trial judge – in court / in private?
- Many Member States have introduced new legislation on the child's right to be heard, see A.6. of the national sections
- Still no uniform approach

Best Practice

What are the conditions and requirements for taking the decision to hear the child's views in judicial proceedings?

- necessary age and maturity of the child?
- By whom?
- When?
- Where?
- How to hear the child?

Examples of Children's rooms in courts



Practical questions

- can pose a major challenge in order not to cause more harm than good to the child in these sensitive cross-border family cases
- are important to reach the aim of minimising the risk of parental influences and of putting pressure in the child

Requirements

- Person interviewing must have received adequate training
- Correct time management
- Arrangement of an adequate and friendly environment
- Preparation of the hearing and questions
- Duty of the judge to inform the child about the conditions and possible consequences of the hearing

Reminder

- Right of the child to be heard, not duty
- Procedure should be in the child's best interest

General Comment on "The right of the child to be heard" of the UN Committee on the Rights of the Child

- Aim: supporting States parties in the effective implementation of the hearing of the child
- Art. 12 UNCRC is a right of the individual child and a right of groups of children
- Steps for the implementation of the child's right to be heard
- Obligations of States parties
- The implementation of the right to be heard in different settings and situations
- Basic requirements for the implementation of the right of the child to be heard

Taking of evidence on cross-border civil matters

- Problem: sometimes the presence of the child in the court may not be possible, for example custody proceedings concerning an abducted child not being present
- Recital 20 Brussels II bis: possibility for hearing the child by using the means laid down in the Council Regulation (EC) No 1206/2001 on the taking of evidence

Hearing the child by using the means of the Regulation on the taking of evidence

- Main objective: to ensure an improved, simplified and accelerated cooperation in the taking of evidence in cases with a cross-border element
- Possibility to employ communications technology, in particular videoconference, Art. 10 (4)

Hearing the child by using the means of the Regulation on the taking of evidence (2)

- Concrete steps when requesting:
 - (1) Form and content of the request, Art. 4: Form A or I in the Annex, accompanying documents
 - (2) Language, Art. 5
 - (3) Transmission of the request, Art. 6 - 9
- Rules on the execution of the request and procedures applicable, Art. 10 - 17
- Practice Guide for the application of the Regulation on the taking of evidence

The use of communications technology when hearing the child

- Advantages?
- Possibilities?
- Potential risks?

Videoconferencing



- Practical Guide on using videoconferencing
- Information on national facilities:
https://e-justice.europa.eu/content_information_on_national_facilities-151-EU-en.do

Council Regulation (EC) No 1393/2007 on the service on the Member States of judicial and extrajudicial documents in civil or commercial matter

- Aim: facilitating the service of documents
- Designation of transmitting and receiving agencies
- Designation of central bodies
- Transmission and service of documents via agencies by using standard forms
- Translation of documents
- Receipt and service of documents
- Certificate of service

ANY QUESTIONS ???

Martina Erb-Klünemann

Cross-border communication between courts and between central authorities

Martina Erb-Klünemann

Network judge: European Judicial Network and
International Hague Network of Judges

Parental Responsibility in a cross-border Context
Workshop organized by the Academy of European Law
(ERA) on behalf of the European Commission
Brussels 20- 22 November 2012

Cross-border judicial communication in matters of parental responsibility

- Direct judicial cooperation is one of the key concepts in the field of EU civil justice
- Globalisation
- Increase of cross-border family cases
- Applicability of international and European provisions
- Need for information and coordination between courts in different Member States
- Direct transfrontier judicial cooperation and communication

Direct Judicial Communication

Expressly required in

- Art. 15 (6) Brussels II bis: transfer of jurisdiction
- Art. 11 (6) and (7) Brussels II bis: information about a refusal of return
- Articles 8,9,31 of the 1996 Hague Convention
- the domestic legislation of some Member States

Practicalities of direct communication

- Methods
- Use of new technologies, especially e-mails and conference calls
- Translation
- Time
- Data protection issues
- **Direct judicial communication must comply with the laws and procedures of the Member States concerned.**
- **Direct judicial communication should be as flexible as possible.**

The role of Central Authorities in the application of Brussels II bis

- Facilitate direct communication between courts in cross-border parental responsibility proceedings, Art. 55 (c) Brussels II bis
- Are designated by the Member States for the application of Brussels II bis, Art. 53 Brussels II bis
- See A.7. of the national sections

The role of Central Authorities in the application of Brussels II bis (2)

Art. 54 general functions: communicate information on national laws and procedures and take measures to improve the application of Brussels II bis and strengthening their cooperation,

Art. 55 Cooperation on cases specific to parental responsibility:

> Cooperate, upon request from another central authority or from a holder of parental responsibility, on specific cases to achieve the purposes of Brussels II bis.

> take all appropriate steps to:

(a) collect and exchange information on the situation of the child, on any procedures under way and on decisions taken concerning the child;

(b) provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory;

(c) facilitate communications between courts;

(d) provide information and assistance to apply Article 56;

(e) facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end.

The role of Central Authorities in the application of Brussels II bis (3)

- Act as a link between courts and central authorities in other Member States
 - Provide information and assistance to holders of parental responsibility on request for assistance, Art. 57
 - Facilitate the resolution of cases of parental responsibility through mediation
-
- Play a vital role in the application of Brussels II bis
 - Need sufficient financial and human resources in order to be able to contribute to the improved application of Brussels II bis

CA for
the application
of Brussels II
bis

CA for
the application
of the 1996
HC

CA for
the application
of the 1980
HC

Central Authorities

- For the application of the 1996 HC: Art. 29-39 1996 HC
- For the application of the 1980 HC: Art. 6-10, 21, 24, 26-28, 30 1980 HC
- See http://www.hcch.net/index_en.php
“Authorities per State/ per Convention“
- Brussels II bis, the 1996 HC and the 1980 HC are closely interrelated instruments in matters of parental responsibility
- Possibilities and advantages of creating synergies
- Ideally the same authority is entrusted with the application of Brussels II bis, the 1996 HC and the 1980 HC

Judicial Networks in civil matters

European
Judicial
Network
(EJN)

International
Hague
Network of
Judges (IHNJ)

Ibero-American
Legal Assistance
Network
(Iberred)

National/
Regional
Networks

The European Judicial Network in civil and commercial matters (EJN)

- Established by the Council Decision No 2001/470/EC of 28 May 2001
- Amended by the Council Decision No 568/2009/EC of 18 June 2009
- Cooperation system established for the proper and speedier resolution of cross-border family law cases
- Helps to achieve mutual trust and thus effective judicial cooperation by giving a platform for discussion and exchange of knowledge and experience to judges and CA's
- Network including all Member States except Denmark

The European Judicial Network in civil and commercial matters (EJN) (2)

- Creation of
 - national contact points
 - Central bodies and central authorities
 - Liaison magistrates
 - Any other appropriate judicial and administrative authority such as network judges
 - Professional associations
- Tasks:
 - facilitating judicial cooperation
 - Building up an information system:

http://ec.europa.eu/civiljustice/network/network_en.htm

The International Hague Network of Judges (IHNJ)

- Established in 1999
- International Network of Judges
- Task: To facilitate communication and cooperation between judges in international child protection cases in the context of the 1980 HC
 - > By collection and dissemination of general information
 - > By facilitating direct judicial communication with regard to specific cases
- Including at present 72 judges from 48 countries all over the world
- <http://www.hcch.net/upload/haguenetwork.pdf>



The World Organisation for Cross-border
Co-operation in Civil and Commercial Matters

Welcome | Bienvenue

*L'Organisation mondiale pour la
transfrontalière en matière civile*



Principles of the EJN and IHNJ
as concluded on the Joint EC-HCCH Conference
15-16 January 2009

- Sitting judges with experience should be nominated
- Coordination with other networks
- Development of national networks
- Cooperation with CA's
- Development of general principles on direct judicial communication

General principles for judicial communication including commonly accepted safeguards for the IHNJ

- Channel incoming and facilitate outgoing communication
- Respect of the law of the judge's jurisdiction
- Respect of the judge's independence in reaching the decision
- Not going into the merits
- Notification of the parties
- Information needed:
 - a) the name and contact details of the initiating judge;
 - b) the nature of the case;
 - c) the issue on which communication is sought;
 - d) whether the parties have consented;
 - e) when the communication may occur;
 - f) any specific questions of the judge;
 - g) any other pertinent matters.
- Opportunity of presence of the parties
- Record kept of communication
- Conclusions should be in writing
- Information of the parties

EU online tools

- “Toward a European e-Justice Strategy“
- In order to improve judicial cooperation and citizen’s access to justice

- **European E-justice Portal:**

<https://e-justice.europa.eu/home.do?action=home>

- **European Judicial Atlas in Civil Matters**

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

- **EUR-Lex**

<http://eur-lex.europa.eu>

- **N-Lex databases**

http://eur-lex.europa.eu/n-lex-s/index_en.htm

- **CURIA**

<http://curia.europa.eu>

- **E-tools and databases at national level**

See B.4 of the national sections



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The European e-Justice Portal is conceived as a future electronic one-stop-shop in the area of justice.

As a first step it strives to make your life easier by providing information on justice systems and improving access to justice throughout the EU, in 22 languages.



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- ▶ The new European Payment Order forms are now available on the European e-Justice Portal!
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EUROPEAN JUDICIAL ATLAS IN CIVIL MATTERS

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Member States' Courts

Legal Aid (Directive 2003/8/EC)

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Serving Documents (Regulation 1393/2007)

European Cross-border Procedures

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- Small Claims (Regulation 861/2007)

Taking Evidence (Regulation 1206/2001)

Recognising and Enforcing Judgements

- Judgements in civil and commercial matters (Regulation 44/2001)
- European Enforcement Order (Regulation 805/2004)

Family law

- Matrimonial matters and matters of parental responsibility (Regulation 2201/2003)
- Maintenance obligations (Regulation 4/2009)

Compensation to Crime Victims (Directive 2004/80/EC)

EUROPEAN JUDICIAL ATLAS

Welcome to the European Judicial Atlas

This Atlas provides you with a user-friendly interface to access information on civil matters. With the Atlas you can easily find the forms you may apply for certain purposes. Furthermore, you can, for these purposes, change the language of the forms and the person receiving the form can receive the forms electronically.



EUR-Lex.europa.eu

- BG** Достъп до правото на Европейския съюз
- ES** El acceso al Derecho de la Unión Europea
- CS** Přístup k právu Evropské unie
- DA** Adgang til EU-lovgivningen
- DE** Der Zugang zum EU-Recht
- ET** Juurdepääs Euroopa Liidu õigusaktidele
- EL** Η πρόσβαση στο δίκαιο της Ευρωπαϊκής Ένωσης
- EN** Access to European Union law
- FR** L'accès au droit de l'Union européenne
- GA** Rochtain ar dhlí an Aontais Eorpaigh
- IT** L'accesso al diritto dell'Unione europea
- LV** Piekļuve Eiropas Savienības tiesību aktiem
- LT** Prieiga prie Europos Sąjungos teisės
- HU** Hozzáférés az európai unió joghoz
- MT** Aċċess għal-liġi tal-Unjoni Ewropea
- NL** De toegang tot het recht van de Europese Unie
- PL** Dostęp do aktów prawnych Unii Europejskiej
- PT** Acesso ao direito da União Europeia
- RO** Accesul la dreptul Uniunii Europene
- SK** Prístup k právu Európskej únie
- SL** Dostop do zakonodaje Evropske unije
- FI** Euroopan unionin oikeus ulottuvillasi
- SV** Ingång till EU-rätten

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News



Looking ahead: the European Council priorities up to 2014

Over the past couple of years, much of the European Council's and the Council's time has been devoted to **fighting the crisis**. While this task is "far from over", European Council President Van Rompuy stated on 29 June that **"we need to focus more on building a positive agenda"**.



Renforcement de la zone euro: vers une véritable Union économique et monétaire



THANKS A LOT FOR YOUR ATTENTION!
ANY COMMENTS OR QUESTIONS?

Martina Erb-Klünemann

**Cross-border communication
between courts
&
Taking of evidence in cross-border
cases**

*Zuzana Fiserova
Ministry of Justice
Czech Republic*

Cross-border communication between courts (in cases of parental responsibility, including child abduction)

Means of cross-border communication between courts envisaged by Brussels IIa Regulation

- Communication through the Central Authorities
- Direct communication

Other ways of communication

- Liaison judges (Network of The Hague judges)

Legal basis

Brussels IIa Regulation

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

Decision on EJM

Decision No 2001/470/EC establishing a European Judicial Network in civil and commercial matters (amended by Decision No 568/2009/EC)

Legal basis for cross-border communication between courts in Brussels IIa Regulation

Article 11 Return of the child

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

Article 15 - Transfer to a court better placed to hear the case

1. *By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:*

(a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. *Paragraph 1 shall apply:*

(a) upon application from a party; or

(b) of the court's own motion; or

(c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3. *The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State...*

Article 15

Transfer to a court better placed to hear the case (continuation)

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that 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 of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.

Communication through the central authorities

Legal basis in Brussels IIa Regulation)

□ Article 53 Designation

Each Member State shall designate one or more central authorities to assist with the application of this Regulation 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 direct to the relevant central authority with jurisdiction. Where a communication is sent to a central authority without jurisdiction, the latter shall be responsible for forwarding it to the central authority with jurisdiction and informing the sender accordingly.

□ Article 54 General functions

The central authorities shall communicate information on national laws and procedures and take measures to improve the application of this Regulation and strengthening their cooperation. For this purpose the European Judicial Network in civil and commercial matters created by Decision No 2001/470/EC shall be used.

Communication through the central authorities (continuation)

□ Article 55 Cooperation on cases specific to parental responsibility

The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to:

(a), (b) ...

(c) facilitate communications between courts, in particular for the application of Article 11(6) and (7) and Article 15;

(d), (e) ...

□ Article 58 Meetings

1. In order to facilitate the application of this Regulation, central authorities shall meet regularly.

2. These meetings shall be convened in compliance with Decision No 2001/470/EC establishing a European Judicial Network in civil and commercial matters.

Communication between judges in practice

- ❑ **European judicial Network in civil and commercial matters**

http://ec.europa.eu/civiljustice/homepage/homepage_ec_en.htm

- ❑ **Hague Conference on Private international Law**

<http://www.hcch.net/>

- ❑ **European Judicial Atlas in Civil and Commercial matters**

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

- ❑ **E-Justice Portal**

<https://e-justice.europa.eu/home.do?action=home&plang=en&init=true>

Taking of Evidence

□ Legal basis

Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

□ Scope

- civil or commercial matters
- to take evidence in another Member State.
- request shall not be made to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated

□ Direct transmission between the courts

Taking of Evidence (cont.)

□ Courts and authorities

- requesting court
- requested court
- central body
- competent authority

□ The Central body shall be

- supplying information to the courts;
- seeking solutions to any difficulties which may arise in respect of a request;
- forwarding, in exceptional cases, at the request of a requesting court, a request to the competent court.

Taking of Evidence (cont.)

□ Methods of Taking of Evidence

- a) the taking of evidence by the requested court, following a request transmitted directly from the requesting court to the requested court

- a) the direct taking of evidence by the requesting court

Taking of Evidence (cont.)

Request by the requesting court to the competent court

a) Transmission of requests

- Form and content
- Special requests
- Expeditious means of transmission of requests and other communications
- Languages
- Exemption of the requests from authentication

Taking of Evidence (cont.)

b) Receipt of requests

- Acknowledgement
- Incomplete request

c) Taking of evidence by the requested court

- Time limits
- Law applicable to the performance of the requests
- Coercive measures
- Performance of the request with the presence and participation of the parties or of representatives of the requesting court

Taking of Evidence (cont.)

Refusal of execution of a request

- Right or duty of a person to refuse to give evidence
- Grounds for refusal
- No public policy exception
- Consequences of refusal

Notification of delay or of refusal by the requested court

Procedure after the execution of the request

Taking of Evidence (cont.)

Direct taking of evidence by the requesting court

Rules on the application of modern means of communication

Practical examples – use of European Judicial atlas in civil and commercial matters

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm



Preliminary reference procedure in family matters

**Workshop on parental responsibility in a cross-border
context, including child abduction**

Brussels, 20-22 November 2012

Speaker: Aleksandra Melesko

Preliminary remarks

- Most of the cases submitted to the Court of Justice are now references for a preliminary ruling from the courts and tribunals of the Member States of the EU (in 2011, 423 out of total 688 new cases)
- New Rules of Procedure (entry into force on 1 November 2012) make the rules that apply to preliminary references clearer and more comprehensive, for litigants and national courts
- Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (replacing the Information note)

Court of Justice of the EU: structure, composition, jurisdiction

- Civil Service Tribunal
- General Court
- Court of Justice

Court of Justice **alone** has jurisdiction to give preliminary rulings (Article 256(3) TFEU grants the General Court jurisdiction to hear questions referred for a preliminary ruling in specific areas laid down by the Statute, but **no** such transfer has taken place yet)

Statistics of judicial activity (2011)

688 new cases – 423 references

638 completed cases – 388 references

Average duration of proceedings – 16,4 months
(19,3 months in 2007)

849 pending cases – 519 references

Preliminary reference procedure: legal basis, nature & purpose

- Articles 19 TEU, 267 TFEU
- The preliminary reference procedure is a form of judicial cooperation through which courts of EU Member states seek guidance from the Court of Justice of EU on the interpretation of the Treaties and the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union
- Ensures that EU law is applied in a uniform manner
- A cooperation, rather than a hierarchical relationship
- Plays decisive role in the development of EU law and its integration into national legal systems
- Ensures uniform application and interpretation of EU law in order to achieve a successful single market / Safeguard against diverging interpretations of EU law
- Indirect access of EU citizens to justice at this level / possibility to challenge the validity of certain acts, thus allowing parties who otherwise have no standing to bring judicial review proceedings to obtain a review of legality of Union acts (pending case Pringle)

Preliminary reference procedure: the nature of cooperation

- Court of Justice **does not**:
 - establish the facts/apply the law to those facts,
 - invalidate or interpret provisions of national law,
 - set aside judgments of national courts and tribunals.
- Respective tasks: the national court establishes the facts --> the Court of Justice interprets provisions of EU law --> the national court applies that interpretation to the facts of the case pending before it

In order to ensure effective cooperation, it is important for the national courts to provide the Court with the necessary tools enabling it to deliver a useful judgment

Which courts and tribunals?

Any national court or tribunal which considers a decision by ECJ necessary to enable it to give judgment

The term “court” is an autonomous concept of EU law

- A body established by law
- Permanent
- Compulsory jurisdiction
- Procedure *inter partes*
- Applies rules of law
- Independent

Examples:

The Complaints Board of the European schools (C-196/09 Miles and Others)

Greek Competition authority (Syfait C-53/03)

Commission for protection against discrimination (C-394/11 Below)

Right vs. Obligation?

References on interpretation

Broad discretion: any court or tribunal **may** submit a request for a preliminary ruling to the Court of Justice on the interpretation of a rule of EU law if it considers it necessary to do so in order to resolve the dispute brought before it.

But

Courts or tribunals against whose decisions there is no judicial remedy **must** bring such a request before the Court unless the answer can be easily deduced from the existing case-law (*acte éclairé*) or is obvious (*acte clair*)

References on validity

All national courts or tribunals must submit a request for preliminary ruling when they have doubts about the validity of an act (acts of an institution, body, office or agency of the Union)

Whether and when to make a reference?

- Referring court's discretion (different approaches depending on the Member state: in case of doubt, decide or refer?)
- The necessity criterion: as soon as it finds that a ruling on the interpretation or validity of European Union law is **necessary** to enable it to give judgment (the Court should not act in vain! No general or hypothetical questions)
- Desirable that a reference should be made when the referring court is able to define the legal and factual context of the case so that the Court of Justice has all the necessary information (see Recommendations)

Drafting the order for reference

- Any form allowed by national law
- «Owing to the need to translate it into all the official languages of the European Union, the request should therefore be drafted simply; clearly and precisely, avoiding superfluous detail» (Recommendations, point 21)
- About 10 pages is often sufficient (anything exceeding 20 pages will be automatically summarised!)

Rules of Procedure, article 94:

- A summary of the subject-matter and the relevant findings of fact, as determined by the referring court
- The tenor of any national provisions applicable + relevant national case-law
- Statement of the reasons which prompted the national court to refer a question
- + The relevant EU law provisions, brief description of parties' main arguments, brief statement of national judge's own views on the answer to be given (remember, it's a dialogue!)

Drafting the order for reference

Questions should appear in a separate and clearly identified section
(Recommendations, point 26)

The «Lost in Translation» effect! (translation into all the official languages + sent to the Member states to enable them to submit observations)

Requests for clarification (Rules of Procedure, article 101)

Procedure at the Court of Justice

- Case registered & submissions translated into French
- Juge rapporteur
- Preliminary report (report for the hearing abolished!)
- **Reply by reasoned order** where a question referred is **identical** to a question on which the Court has already ruled, where the reply may be clearly **deduced from the existing case-law** or where the answer admits of **no reasonable doubt** (Rules of procedure, article 99)
- Hearing?
- Advocate General's Opinion?
- Deliberations – **judgment** – translated back into the language of the case

Peculiarities of the preliminary reference procedure: practitioners' point of view

- Written observations all arrive at the same time
- Notification to Member states and EU institutions
- No exchange of written observations --> Importance of the hearing
- Limited speaking time
- Need for interpretation (the “Lost in Translation” effect)
- Limited questions from the bench
- No procedure for fact-finding

Special forms of procedure

Article 23a of the Statute, Articles 105 to 114 of the Rules of procedure

- Expedited procedure
- Urgent preliminary reference procedure

Generally, the application of those special procedures is made pursuant to a **reasoned request** from the referring court.

Exceptionally, the Court of Justice may decide of its own motion to use these procedures if the nature or the particular circumstances of the case so require.

- ! Should only be used when absolutely necessary and in particular circumstances (significant constraints on all those involved)

Expedited procedure

- Any area / where the nature of the case requires that it be dealt with within a short time / a matter of exceptional urgency
- The President immediately fixes the date for the hearing + Written observations lodged within a time-limit prescribed by the President

Recent example – case C-370/12 Pringle (pending, reference lodged on 3 August, the hearing took place on 22 October, judgment expected on 27 November 2012):

Reference from the Irish Supreme Court concerning, first, the validity of the European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro, and, secondly, the interpretation of various provisions of the EU and FEU Treaties in order to enable the referring court to assess whether Ireland, by adopting and ratifying the Treaty establishing the European Stability Mechanism done at Brussels on 2 February 2012 (‘the EMS Treaty’), would undertake obligations incompatible with the Treaties on which the European Union is founded.

Expedited procedure: Pringle case

Order of the Court of 4 October 2012 :

“5 In support of its request, the referring court observes that the timely ratification by Ireland of the EMS Treaty is of the utmost importance for other members of the European Stability Mechanism and, in particular, for those who are in need of financial assistance.

6 While, in the interim, Ireland and all other Member States which are signatories of the EMS Treaty have ratified that treaty, it is nonetheless apparent from the questions referred to the Court in this case that there is uncertainty as to the validity of that treaty.

7 The use of the accelerated procedure in this case is necessary in order to remove as soon as possible that uncertainty, which adversely affects the objective of the EMS Treaty, namely to maintain the financial stability of the euro area.

8 Accordingly, in the light of the exceptional circumstances of the financial crisis surrounding the conclusion of the EMS Treaty, the request of the referring court that the accelerated procedure be applied to Case C-370/12 should be granted.”

Urgent preliminary reference procedure

- Areas covered by Title V of Part Three of the TFEU, relating to the area of freedom, security and justice
- For example in cases where a person in custody or deprived of his liberty, where the answer to the question raised is decisive as to the assessment of that person's legal situation, or **in proceedings concerning parental authority or custody of children, where the identity of the court having jurisdiction under EU law depends on the answer to the question referred for a preliminary ruling** (Recommendations, point 40)
- The number of requests has remained modest: 126 (from 1 March 2008 to 6 October 2011). More than half of those was successful (Report on the use of the urgent preliminary ruling procedure by the Court of Justice)

Urgent preliminary reference procedure

Specific features distinguishing it from the ordinary procedure, allowing to achieve substantial savings in terms of the duration of proceedings:

- Only parties to the main proceedings, the Member state of the referring court, the Commission (and the other institutions if one of their measures is at issue) may participate in the written procedure (no need to await the translations into all the official languages) (Rules of procedure, article 109)
- Specifically designated chamber
- In cases of extreme urgency, a possibility to omit the written part of the procedure (Rules of procedure, article 111)
- Entirely electronic communications

On average, the cases dealt with under the urgent preliminary reference procedure were completed within **66 days!** In no case did proceedings exceed **three months** (Report on the use of the urgent preliminary ruling procedure by the Court of Justice)

Urgent preliminary reference procedure: the Court's practice

Two types of situation which have resulted in the Court delivering a ruling in the shortest possible time:

- Where there is a risk of irreparable change for the worse in the parent/child relationship

Case C-497/10 PPU Mercredi, judgment of 22 December 2010:

“39 ...the present case concerns a child who is 16 months old and who has been separated from her father for more than a year. Given that the child concerned is at a developmentally sensitive age, the continuation of the current situation, an additional feature of which is the considerable distance between where the father and the child are living, might seriously harm her future relationship with her father”

In those circumstances, the Court decided to deal with the case under the urgent procedure

Urgent preliminary reference procedure: the Court's practice

- Where a person is being detained and further detention depends on the answer to be given by the Court (see cases C-296/08 PPU Santesteban Goicoechea; C-388/08 PPU Leymann and Pustovarov; C-357/09 PPU Kadzoev)

Effects of a preliminary ruling

- Binding nature (upon all courts)
- However, national courts are entitled to make a new reference to the Court of Justice, even on an issue which has already been subject of a judgment. On limited occasions, the Court has in the past reconsidered its previous case-law



Workshop exercise: Case study

Two tasks

Task 1 – identifying the EU law issues arising in a factual scenario

Task 2 – drafting the questions for a reference to the Court

Task 1

From the perspective of the Austrian court, it is necessary to establish:

- A. Where is Marie habitually resident?
- B. Does Article 9 of Brussels IIbis found jurisdiction of the Austrian court?
- C. Should the Austrian court grant an application under Article 15 of Brussels IIbis?

Task 2

Consider the following questions arising from Jacques' application under Article 9:

- A. For the purposes of Article 9, when did Marie become habitually resident in Holland and when does time start to run under the three months deadline?
- B. Does an application to amend rights of access under Article 9 also include an application for a transfer of custody of Marie from Sara in Holland to Jacques in Austria?
- C. Is the transfer of jurisdiction under Article 15, requested by Sara, necessary and in Marie's best interests?

Task 2

Consider:

- Whether the Austrian family court is required to make a reference?
- Is there a time pressure justifying the application of the urgent preliminary reference procedure?

Good luck with the questions!



UNIVERSITY OF
LIVERPOOL

The Preliminary Ruling Procedure

Dr Ruth Lamont

Aims of the Session

- To identify the role of the Court of Justice of the European Union (CJEU)
- To discuss the role of the preliminary reference procedure in the European Union
- To analyse the process of making a preliminary reference in cross-border family law cases and the requirements of the urgent preliminary reference procedure



The Court of Justice of the European Union

- The Court consists of one judge per Member State (Article 19(1) TFEU)
- It is assisted by Advocates-General who ‘make in open court reasoned submissions on cases’ (Article 252 TFEU)
- The Court provides definitive interpretations of European law for use by national courts, but it can also rule on the legality of acts of the Union, and the compliance of the Member States with EU law (Article 19(3) TEU)
- Preliminary references from national courts form the majority of the Court’s case load. In 2011, the Court decided 388 preliminary references, up from 339 in 2010

The Preliminary Reference Procedure

- Article 267 TFEU:

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) The interpretation of the Treaties*
- (b) The validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union*

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

Role of the Preliminary Reference Procedure

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning...

(b) The validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union

- The Court has exclusive jurisdiction to provide a definitive interpretation of acts created under the Treaties, including legislation. The interpretation of Brussels II *bis* is therefore within the jurisdiction of the Court.
- By providing a definitive interpretation of the legal measure, the Court maintains the uniformity and consistency of European law across the Member States

Relationship with the National Court

- Case C-166/73 *Rheinmühlen-Düsseldorf*

'Whilst it aims to avoid divergences in the interpretation of Community law which the national courts have to apply, it likewise tends to ensure this application by making available to the national judge a means of eliminating difficulties which may be occasioned by the requirement of giving Community law its full effect within the framework of the judicial systems of the Member States.' [1974] E.C.R 00033 para 2:

- Where there is a dispute over the meaning of Brussels II *bis* the national court can request a preliminary reference from the Court to provide an appropriate interpretation.
- The national court will subsequently use this interpretation to decide the case.

The Limits of the Preliminary Reference Procedure

- The Court only has jurisdiction over acts of the European Union and the Treaties
- The Court will not apply the law to the facts of the case to decide the outcome
- The preliminary reference procedure is *not* an appeals procedure
- The Court will not decide matters of national family law

An Example: Case C-497/10 PPU *Mercredi* [2010] E.C.R. I-14309

- *Mercredi* - The mother of a six month old child had relocated to Reunion (French territory)
 - Where was the one year old child 'habitually resident' for the purposes of Brussels II *bis*?
- The English court referred questions to the Court on the interpretation of 'habitual residence' and the Court gave judgment
- The English court then used this interpretation to resolve the case: *Mercredi v Chaffe* [2011] EWCA Civ 272

Which national courts can make a preliminary reference?

Discretionary References

- Article 267 TFEU: *‘Where such a question is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on the question is **necessary to enable it to give judgment**, request the Court to give a ruling thereon.’*
- If a question of interpretation of EU law is raised in a lower court can choose to make a preliminary reference to the Court
- The question for interpretation must be critical to resolve the legal issues arising in the case before a reference may be made

Which national courts can make a preliminary reference?

Mandatory References

- Article 267 TFEU: ‘*Where any such question is raised in a case pending before a court or tribunal of a Member State **against whose decisions there is no judicial remedy under national law**, that court or tribunal **shall** bring the matter before the Court.*’
- If a question of interpretation of EU law is raised in court from which there is no judicial remedy, i.e. no further appeal, the national court is *required* to make a preliminary reference
- It is clear that the court of final appeal in any Member State is a court against which there is no further judicial remedy.

Is it *always* necessary to make a preliminary reference?

- In limited circumstances, a question of interpretation may not need to be referred to the Court, if :
 - already been decided by the Court, or
 - does not need to be decided for judgment by the national court, or
 - the point of interpretation is clear
- For a point of interpretation of EU law to be clear:
 - *‘...the correct application of [EU] law may be **so obvious** as to leave **no scope for any reasonable doubt** as to the manner in which the question raised is to be resolved. Before it comes to the conclusion that such is the case, the national court or tribunal must be **convinced that the matter is equally obvious to the courts of the other Member States and to the Court of Justice.**’* Case 283/81 *CILFIT* [1982] E.C.R 3481, paragraph 16.

Process in the National Court

- The national court will be seised of a case where European law is engaged, e.g. a family law case with a question of jurisdiction under Brussels II *bis*
- It is the national court which takes the decision whether to refer a case to the Court under the preliminary reference procedure
- The national court decides the stage at which it is appropriate to seek a preliminary reference, but the factual context should be clear, and the legal arguments should have been outlined
- Once the preliminary reference has been lodged at the Court's registry, the national proceedings should be stayed until the Court gives judgment

Form of the Reference

- The reference takes the form of a question, or a series of questions, on the interpretation of the legislation addressed to the Court.
- The Court will answer the questions in its judgment, which will then form the basis of the decision of the national court when it applies the law to the facts of the case
- The Court provides guidance to national courts on the process of making a reference, and the formulation of questions
- There is no limit on the number of questions that can be asked and a question may be dependent on the outcome of a preceding question.

Developing the Questions

- The questions are the *central aspect* of the reference and should refer directly to the provisions of European law
- The reference should be drafted:
‘Simply, clearly and precisely, avoiding superfluous detail’
- The questions should appear in a separate and clearly identified section. It must be possible to understand them without referring to the grounds for the reference.
- A good reference should include:
 - A brief account of the subject-matter of the dispute and the factual situation
 - Set out any relevant national law and identify the EU law provisions relevant to the case

Examples of Family Law Questions

Case C-523/07 A, para 20:

2. How is the concept of habitual residence in Article 8(1) of the regulation, like the associated Article 13(1), to be interpreted in Community law, bearing in mind in particular the situation in which a child has a permanent residence in one Member State but is staying in another Member State, carrying on a peripatetic life there?

Examples of Family Law Questions

Case C-195/08 PPU *Rinau*, para 42:

1. Can an interested party within the meaning of Article 21 of [the Regulation] apply for non-recognition of a judicial decision if no application has been submitted for recognition of that decision?
2. If the answer to Question 1 is in the affirmative: how is a national court, when examining an application for non-recognition of a decision brought by a person against whom that decision is to be enforced, to apply Article 31(1) of [the Regulation], which states that ‘... [n]either the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application’?

At the Court of Justice

- Procedure at the Court of Justice is governed by the Rules of Procedure and the Statute of the Court of Justice
- There are two stages in the procedure:
 - The written procedure: requires the communication of the statements of case to the parties, the institutions and the Member States
 - The oral procedure: hearing counsel, experts and the hearing of the Advocate-General
- The Advocate-General's Opinion is only persuasive, the Court is not obliged to follow it, but it can elucidate the Court's reasoning
- The Court gives a single judgment, responding to the questions submitted by the national court



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- The Court gives a single judgment, responding to the questions submitted by the national court

The Urgent Preliminary Reference Procedure

- The average time taken for a preliminary reference to be heard by the Court in 2011 was 16 months – *too slow* for some types of cases, especially family law cases
- The Court now has an *urgent preliminary ruling procedure* to ensure that a ruling is issued swiftly for cases which have an element of time pressure.
- International family law cases are covered by this urgent procedure under Article 104(b) of the Rules of Procedure of the Court of Justice
- To be heard under the urgent procedure, a case must be deemed eligible and accepted by Court



Seeking an Urgent Procedure

- The national court may make a request for a case under Title V TFEU to be heard under the urgent procedure or, exceptionally, the Court may decide of its own motion to hear a case under the urgent preliminary reference procedure
- The Court decides whether a case will be heard under the urgent procedure
 - Since the adoption of the procedure 10 urgent references in the Area of Freedom, Security and Justice have been accepted by the Court, and 4 have been refused
 - The need for the urgent procedure must be clearly demonstrated. It is used in *exceptional* cases only, but this includes family law cases, especially those affecting children.

Seeking an Urgent Procedure

- The urgency of the request must be *clearly set out* on the face of the reference
- The request must set out the matters of fact and law which establish the urgency and the risks involved in following the normal procedure
- The questions referred should be as succinct as possible
- The referring court should state its view on the answer to the questions referred

The Effect of the Urgent Procedure

- All the interested parties, including the institutions and the Member States will be notified of the decision to hear the case under the urgent procedure.
- If the case is to be heard under the urgent procedure under Article 104(b), Rules of Procedure:
 - There is a shorter time limit on the written submissions to the Court and there may be restrictions on the parties' and interested persons' written submissions.
 - In cases of extreme urgency, the written stage of the procedure may be omitted
 - The case may be determined without a submission from the Advocate-General

The Effect of the Court's Judgment

- The Court's judgment is binding on the national court referring the question, but also the national courts of all other Member States
- The Court's interpretation is a definitive statement of the interpretation of European law
- Once judgment has been given, the national court will revive the proceedings and, using the interpretation of European law provided by the Court in judgment on the preliminary reference, will make a decision on the merits
- Nature of the relationship between the national court and the CJEU

Useful Resources

- Court of Justice of the European Union website, including case law, statutes and procedural rules and guidance
 - www.curia.eu
 - Searchable case lists
 - Numbered list of the Court's case law
- Official Journal of the European Union, including legislative acts:
 - www.eur-lex.com
- European Judicial Network
 - http://ec.europa.eu/civiljustice/index_en.htm

Introduction to cross-border family mediation



Dr. Jamie Walker, ERA Brussels, Nov. 2012

Overview

- Legal framework within the EU
- Principles, goals and setting of mediation
- Phases of mediation, understanding the conflict
- Dynamics of international cases involving child abduction
- Issues settled in mediation
- Framework of the mediation
- How and when we mediate
- Role of the lawyers and the court
- What mediation can and cannot achieve
- Finding qualified mediators

Legal framework within the EU

- Brussels II bis Regulation (Art. 55 (2)(e)) and the 1980 Hague Convention (Art. 7 (2)(c)) foresee the possibility of mediation in family proceedings and encourage central authorities to work towards an amicable settlement
- EU Parliament Mediator on International Child Abduction
- EU Directive No. 2008/52/EC - the Mediation Directive (Art. 5 gives judges the right to invite parties to try mediation first, Art. 6 ensures the enforceability of settlement agreements)
- European Code of Conduct for Mediators

Principles, goals and setting of mediation

- Mediation enables parties to negotiate a mutually acceptable agreement
- The mediator is an impartial, neutral third party who acts as a bridge in the communication between the parties and structures the process
- Mediation is confidential and voluntary
- The parties themselves find the solutions
- Mediation requires a conducive setting and multiple sessions

Phases of mediation

1. Setting the stage: Agreement to Mediate
2. Defining the issues
3. Understanding the conflict
4. Examining and clarifying options
5. Formulating the agreement

Dynamics of international cases involving child abduction

- Cultural differences become threatening during breakdown
- Both parents want to be active in their children's lives
- One parent feels trapped and wishes to return home after a separation or divorce
- Illegal retainment or abduction (of young children)
- Reaction of left-behind parent: anger, disbelief, feelings of helplessness and powerlessness
- Danger of re-abduction
- Both parents are afraid of losing their children
- The children are caught in the middle

Issues settled in mediation

- Return of the child, future living arrangements
- Custody, visitation, contact to absent parent
- Holidays and birthdays
- Religious and cultural / bilingual upbringing
- Child support, alimony, division of assets
- Separation and divorce
- Contact to absent parent during mediation

Framework of the mediation

- Can be initiated by parties, lawyers, judge, Central Authority, Ministry of Justice or consular staff
- Timeframe: short notice, often just before court hearing
- Characteristics of child abduction cases:
 - Time-consuming preparation, travel, contact to lawyers
 - Long, sometimes open-ended sessions, usually 2 to 3 days
 - Highly escalated conflict dynamics, lack of trust, fear of losing child, feelings of anger and betrayal, pressure to make far-reaching decisions at short notice, influence of likely outcome of court case, high level of insecurity, very intense

HOW we mediate

- Co-mediation according to Wroclaw Declaration by mediators from:
 - both cultures
 - both languages
 - both genders
 - the legal and the psychosocial professions
- Focus on the child, facilitate contact to absent parent, separate sessions, reflecting team, developing scenarios for possible solutions

WHEN we mediate

- The sooner the better!
- Before a case is brought to court
- When a case is pending
- After first hearing but before decision
- Between court cases, e.g. first instance and appellate court hearing
- After court decision, e.g. return of the child

Role of lawyers and the court

- **LAWYERS:** support the parties' effort to resolve the conflict in mediation, give partial legal advice, check the proposed agreement, assure that the agreement becomes binding in both jurisdictions
- **COURT:** is informed if mediation was successful and renders agreement legally binding (in both jurisdictions)

What mediation can and cannot achieve

- Mediation CAN provide a useful framework to enable parties to explore the issues and the underlying conflicts, develop realistic and fair options and make sustainable agreements if they are able and willing to do so.
- Mediation is NOT magic – it is hard work for all involved!

Finding qualified mediators



Finding qualified mediators



www.crossbordermediator.eu

www.mikk-ev.de

**Enabling parents to
remain partners!**



INITIAL NEEDS ASSESSMENT QUESTIONNAIRE

The purpose of this questionnaire is to assess your existing knowledge of European legislative instruments for cross-border cooperation in civil matters in order to ensure that the training module you will follow corresponds to your training needs.

About you

Your profession:

- Judge Lawyer in private practice
- Other (please specify): _____

- What is your age group? Under 30 30-39 40-49
 50-60 Over 60

- What is your gender? Female Male

From which EU member state / region do you come from? _____

Which is your preferred workshop language? _____

About your knowledge of European family law

- | | | |
|--|-----------------------|-----------------------|
| | Yes | No |
| Do you apply European law in your present function? | <input type="radio"/> | <input type="radio"/> |
| Do you apply family law in your present function? | <input type="radio"/> | <input type="radio"/> |
| Do you apply European family law in your present function? | <input type="radio"/> | <input type="radio"/> |

What is your knowledge of European family law?

- | | | | | |
|---|-------------|-----------------------|-------------------------------|-------------------|
| | <i>Very</i> | <i>To some extent</i> | <i>Only to a minor extent</i> | <i>Not at all</i> |
| I have heard of Regulation Brussels IIbis | (1) | (2) | (3) | (4) |
| I have good knowledge of Regulation Brussels IIbis | (1) | (2) | (3) | (4) |
| I have practical experience with the application of Reg. Brussels IIbis | (1) | (2) | (3) | (4) |
| I have heard of the preliminary ruling procedure | (1) | (2) | (3) | (4) |
| I have good knowledge of the preliminary ruling procedure | (1) | (2) | (3) | (4) |
| I have made use of the preliminary ruling procedure | (1) | (2) | (3) | (4) |
| I have heard of the EU Mediation Directive | (1) | (2) | (3) | (4) |
| I have good knowledge of the EU Mediation Directive | (1) | (2) | (3) | (4) |
| I have experience with cross-border family mediation | (1) | (2) | (3) | (4) |

Annex 6 – Template initial needs assessment questionnaire

Do you have experience with the use of European Union’s websites? If yes, with which?

- Curia E-justice Portal European Judicial atlas
 Eur-lex EJM website N-lex

What is most important for you when choosing a conference or training programme?

- Need for training Networking opportunity Practical applicability
 High-level speakers Location International exchange

Why did you register to this programme?

Are you looking for a more general introduction to the subject or a deeper analysis?

- General introduction Mid-level Deeper analysis

On which other matters would you like more training?

Which possibilities do you have to disseminate the information received during this workshop to other members of your profession?

Thank you for your input

Workshop organiser

**Parental responsibility in a cross-border context,
including child abduction**

List of participants

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
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«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

Annex 8 - Initial immediate evaluation form

PARTICIPANT EVALUATION (INITIAL)

Your opinion matters to us: for the benefit of future participants, we should be grateful if you would reply briefly to the following questions about the training module you have just followed. We will re-contact you in one month to evaluate the impact of the training on your daily work.

About you

Your profession:

- Judiciary Lawyer in private practice
 Notary Other (please specify): _____

About this training module

How did you hear about this training module?

- E-Mailing Postal mailing of the programme
 EU e-Justice portal From my Ministry of Justice
 From my bar association From my national judicial training institution
 Word-of-mouth Other _____

What particularly met with your approval in this training module?

What did not meet with your approval?

What is your assessment of ...?

Very good
Good
Satisfactory
Adequate
Poor

the training content:

- Was the subject matter dealt with as you expected? (1) (2) (3) (4) (5)
Did you gain new insights into the subject matter? (1) (2) (3) (4) (5)
Did you receive useful advice on application and implementation? (1) (2) (3) (4) (5)

the workshop structure:

- Was information transmitted in a clear and understandable way? (1) (2) (3) (4) (5)
Was the content of the workshop analysed effectively? (1) (2) (3) (4) (5)
Was the duration of the workshop satisfactory? (1) (2) (3) (4) (5)

the training methodology:

- Did the training methods employed support the training? (1) (2) (3) (4) (5)
Which in particular? _____
Was there sufficient alteration of training methodologies? (1) (2) (3) (4) (5)
If not, why (too many, too few)? _____
Was the balance between theory and practice effective? (1) (2) (3) (4) (5)
If not, why (too theoretical, too many exercises)? _____

Annex 8 - Initial immediate evaluation form

Was the workshop interactive enough? 1 2 3 4 5
If not, why (too much discussion, too little)? _____

the E-learning course:

Did you find the E-learning course useful? 1 2 3 4 5

Did the E-learning course help you better follow the workshop? 1 2 3 4 5

Was the content of the course explained in a clear manner? 1 2 3 4 5

Was the E-learning course easy to use? 1 2 3 4 5

Did you go through all thematic units (Yes, No)? _____

If yes, which did you consider best for preparing for the workshop? _____

What do you think of the overall layout? 1 2 3 4 5

What do you think of the navigation structure? 1 2 3 4 5

How do you evaluate the part on parental responsibility in a cross-border context? 1 2 3 4 5

Why? _____

How do you evaluate the part on the preliminary ruling procedure? 1 2 3 4 5

Why? _____

How do you evaluate the part on family mediation? 1 2 3 4 5

Why? _____

Did the quizzes help you test your knowledge? 1 2 3 4 5

If yes, which in particular (initial, Unit I, Unit II, Unit III)? _____

Were the answers to the quiz questions helpful? 1 2 3 4 5

the user's pack:

Was the documentation received during the workshop of help? 1 2 3 4 5

Was the electronic documentation received on USB of help? 1 2 3 4 5

the national sections:

Were the national sections a helpful tool? 1 2 3 4 5

Did you find the information included of relevance? 1 2 3 4 5

Was the material easy to navigate? 1 2 3 4 5

the online tools:

Did you gain new information on available online tools? 1 2 3 4 5

Were the online tools effectively presented? 1 2 3 4 5

Will you be using them in the future (Yes, No, Why)? _____

the organisational aspects:

Preliminary practical information 1 2 3 4 5

Execution of the programme 1 2 3 4 5

Assistance during the seminar 1 2 3 4 5

Training venue 1 2 3 4 5

Would you recommend this workshop to colleagues? Yes No

Why?

Annex 8 - Initial immediate evaluation form

About the sessions' structure and trainers					Comment	
	<i>Very good</i>	<i>Good</i>	<i>Satisfactory</i>	<i>Adequate</i>	<i>Poor</i>	
Cross-border parental responsibility	①	②	③	④	⑤	_____
Trainer name	①	②	③	④	⑤	_____
Trainer name	①	②	③	④	⑤	_____
Procedure in family matters	①	②	③	④	⑤	_____
Trainer name	①	②	③	④	⑤	_____
Trainer name	①	②	③	④	⑤	_____
Preliminary ruling procedure in family matters	①	②	③	④	⑤	_____
Trainer name	①	②	③	④	⑤	_____
Trainer name	①	②	③	④	⑤	_____
Family mediation	①	②	③	④	⑤	_____
Trainer name	①	②	③	④	⑤	_____
Trainer name	①	②	③	④	⑤	_____

Thank you for your feedback

PARTICIPANT EVALUATION (MID-TERM)

You recently participated in a training module on European instruments for judicial cooperation in civil matters. We should be grateful if you would reply briefly to the following questions about the impact of that training on your daily work.

About you

- Your profession:
- Judiciary
 - Notary
 - Lawyer in private practice
 - Other (please specify): _____

About the workshop: To what extent ...?

Very
To some extent
Only to a minor extent
Not at all

- | | | | | |
|--|-----|-----------------------|-----------------------|-----|
| has the knowledge acquired during the workshop helped you to better understand the problems you encounter in practice? | (1) | (2) | (3) | (4) |
| was the training on European instruments for cross-border judicial cooperation in family matters useful? | (1) | (2) | (3) | (4) |
| was the training on the preliminary reference procedure useful? | (1) | (2) | (3) | (4) |
| was the training on cross-border family mediation useful? | (1) | (2) | (3) | (4) |
| were the workshop exercises useful? | (1) | (2) | (3) | (4) |
| | | Yes | No | |
| have you dealt with cases of cross-border judicial cooperation in family matters since you attended the training module? | | <input type="radio"/> | <input type="radio"/> | |
| have you used the user’s pack in your work? | | <input type="radio"/> | <input type="radio"/> | |
| have you used the e-learning course in your work? | | <input type="radio"/> | <input type="radio"/> | |
| have you trained other colleagues on cross-border judicial cooperation in civil matters since attending the training? | | <input type="radio"/> | <input type="radio"/> | |
| have you maintained contact with the other workshop participants? | | <input type="radio"/> | <input type="radio"/> | |

Comments:

Annex 9 – Template mid-term evaluation questionnaire

Have you made use of European Union’s websites since the workshop? If yes, which one?

- curia E-justice Portal European Judicial atlas
 eur-lex European Judicial Network website N-lex

Future training workshops

On which topics should such future training workshops be organised?

- Jurisdiction and recognition & enforcement of judgments in civil and commercial matters (“Brussels I”), service of documents, evidence, European payment order, small claims procedure and other civil justice instruments
- Family law: Cross-border divorce: jurisdiction and applicable law, maintenance obligations and other family law matters
- Regulations on the law applicable in contractual (“Rome I”) and non-contractual (“Rome II”) obligations
- Preliminary reference procedure
- Other: _____

Thank you for your feedback