



T.M.C. ASSER INSTITUUT

Comparative study on enforcement
procedures of family rights

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Introduction

This Synthesis Report was made at the request of the European Commission under contract No. JLS/C4/2005/06 and investigates the enforcement of family law decisions in the member states of the European Union.

The study contained in this Synthesis Report consists of a legal part and an empirical part. The legal part is based on national reports on the law of the member states that are an annex to this report. These reports have been drawn up by lawyers from the member states on the basis of a uniform legal questionnaire. The legal questionnaire was divided in two parts, the first dealing with substantive law, and the second dealing with cross-border legal aspects. This division will be maintained in this synthesis report, Part 1 of this report will set out an overview of the substantive law, and Part 2 will be devoted to the legal cross-border aspects.

The empirical part of this study also consists of two parts. The first part, Part 3 of this Synthesis Report, is based on interviews with practitioners and with persons who have been involved in the enforcement of family law decisions in a private capacity. The second part, Part 4 of this Synthesis Report, is based on the (limited) statistical information that is available in the member states.

The conclusions and recommendations are set out in Part 5 of the Synthesis.

Background of the research study

The European Union has set the objective of a common judicial area where decisions taken in one member state are recognized and enforced throughout the European Union. With respect to judgments in matrimonial matters (such as a divorce) and to judgments on parental responsibility' mutual recognition is provided by Council Regulation 2201/2003 (also 'Regulation Brussels 2A'. With respect to the enforcement of a decision on visiting rights or on the return of a child Regulation 2201/2003 provides that it is no longer necessary to follow the 'exequatur' procedure in order to enforce a decision emanating from the court of one member state in another member states (articles 40 and 41 Regulation 2201/2003). Under articles 40 and 41 of Regulation 2201/2003 enforcement in another member state of decisions on visiting rights and on the return of the child can take place on the basis of a certificate granted by the court that gave the decision. It should be noted that for other decisions in the area of parental responsibility, it is still necessary to obtain an 'exequatur' (a court order that allows enforcement of a judgment of another state) from the court of the member state where enforcement is to take place.

An aspect that is not covered by Regulation 2201/2003 is the actual enforcement procedure that takes place on the basis of the court decision. The enforcement procedure is in all circumstances still subject to the national law of the member state where the enforcement takes place, whether based on a judgment from a court of that member state, on an exequatur granted for a judgment rendered by a court in another member state or on a judgment from another member state for which a certificate has been granted.

This study will concentrate on the enforcement of judicial decisions in the area of family law. For the purpose of this study the term 'family law judgment' will be understood to mean judgments on parental responsibility, notably judicial decisions on the residence of the child, on access or contact rights and decisions and on the return of a child on the basis

of the 1980 Hague Convention ('return orders'). In this context, the term 'family law' may also be used to indicate this particular area of the law and not the usual, wider concept.

Family law judgments mostly concern the relation between a child and one or two adults; usually the parents of the child, sometimes the judgment will concern the relation between a child and an institution. Rapid handling of the proceedings in respect of parental responsibility is considered essential by the European Court of Human Rights as the passage of time can have irremediable consequences for the child. In particular such consequences may occur in the relation between the child and the parent with whom the child does not live. The need for rapid handling of proceedings in respect of parental responsibility also applies to what takes place after the court proceedings have led to a judgement that is to be enforced.

Purposes of the study

The aims of this study are to provide a legal and an empirical analysis. The legal analysis is to provide a comparative analysis of the law, organisation, procedure and practice of the 25 member states of the EU (Romania and Bulgaria are excluded) with respect to the enforcement of family law decisions. The empirical analysis is to identify practical difficulties that citizens encounter with respect to the enforcement of family law decisions. Such difficulties may take various forms and could include the exercise of parental responsibility.

Note: In the following, especially Parts 1 and 2, tables will be used to facilitate comparison of legal information. Sometimes cells in tables will be blank. This implies that on the specific issue for that particular member state no unequivocal response is possible.

1 Legal aspects of enforcement in domestic cases

The legal study is based on reports on the law of EU member states that have been drawn up by national experts. These experts, a full list of their names and functions can be found in Annex 1 of this Report 1, have been asked to answer a legal questionnaire. This legal questionnaire, which can be found in Annex 2 of this Report, consists of two parts. The first part of the legal questionnaire concentrates on the enforcement in domestic cases, i.e. cases where the enforcement takes place in the member state on the basis of a judgment on the merits (not an exequatur decision) rendered by a court of the same state. The second part of the legal questionnaire asked questions that relate to the enforcement in cross-border cases. In these cases the decision on the merits will have been decided in another state than the state where enforcement takes place. With respect to the enforcement in cross-border cases a distinction has been made between return orders and other judgments. It should be noted that return orders used to be based on an international convention, the Hague Abduction Convention 1980, but that in community cases Regulation 2201/2003 contains additional rules for these orders since 1 March 2005.

1.1 Enforcement in domestic cases

General remarks

Many national reports commence with a description of concepts that exist in national law, notably the concept of parental responsibility. An aspect that emerges is that to a large extent parents have and exercise rights in respect of parental responsibility without a court decision being necessary. The existence of marriage between the parents more and more plays no role for parental responsibility, which is often only dependent on parentage. The law will then provide that mother and father both have parental responsibility and that they are expected to jointly exercise their parental responsibility. Dissolution of the relation between the parents (whether this is a marital relation or an informal relation) does not necessarily lead to a court decision on parental responsibility.

Although this may have been different only one or two decades ago, there is a trend in the national systems that dissolution of the marriage does not change the situation with respect to parental responsibility. In a number of member states parents continue to have joint parental authority after the dissolution of the marriage. This situation may follow *de jure*, meaning that at the time of dissolution the courts do not have to take any measure with respect to parental responsibility. It appears that in at least 11 member states joint parental responsibility will continue after the marriage of the parents has been dissolved without the need for a court decision to that effect.

Continuation of joint parental responsibility following the dissolution of the marriage unless a court decides otherwise is the case in Austria, Belgium, Estonia, France, Germany, Italy, Latvia, Lithuania, Netherlands, Sweden, United Kingdom (England, Scotland, NI). Member states where dissolution of the marriage will also lead to a court decision on parental responsibility are: Cyprus, Spain, Greece, Hungary (Hungarian law in this respect is rather complex but it can be said that in Hungary it is customary that

following the dissolution of the relation between the parents only one parent will become holder of parental responsibility), Ireland, Luxembourg, Malta, Poland and Portugal.¹

In some member states parents are expected to try and deal with parental responsibility when they are dissolving their marriage or ending a non-marital relation. In Czech Republic, Slovenia and Slovak Republic parents are to agree on the custody and the upbringing of their children if they do not live together. This agreement is subject to court approval. If the parents cannot reach agreement the court will decide the matter. In Finland the divorce court will not deal with custody following divorce and parents usually agree on custody and residence in an agreement that is confirmed by the local social welfare board.

In the United Kingdom (England) upon the breakdown of the relationship of parents who had joint parental responsibility the court may award sole residency to one of the parents (this order will settle where the child will live after the breakdown). Unless the court orders otherwise, the parent with whom the child does not live retains parental responsibility and will continue to exercise it jointly.

Continuation of joint parental responsibility after the divorce does not exclude regulation of the modalities of parental responsibility. In some of the member states where parents retain joint parental responsibility following a divorce it is a precondition for divorce that parents agree on certain issues, notably the place of residence of the child. In absence of agreement the court will take a decision. But such court involvement is not necessary in all member states where parents retain joint parental responsibility after the divorce.

In Austria and France parents are to reach agreement on the place of residence of the child prior to the dissolution of the marriage. Their agreement is subject to court approval. It should be noted that recently French law accepted the concept of '*résidence alternée*' (alternating residence with each parent) of children, while in the past the child's residence had to be fixed with one of the parents. In Lithuania the involvement of the courts depends on the nature of the divorce. In case of divorce by mutual consent parents are required to enter into an agreement that sets out how they will deal with the consequences of the divorce, including the place of residence of the child. This agreement must be approved by the court. In case of divorce on application of one of the parents the court must resolve how parents fulfil their obligations towards the child. But some member states leave it, in principle, to the parents to reach an agreement on issues relating to the exercise of joint parental responsibility and the court need not be involved or informed. This applies to Estonia, where parents are expected to agree on the place of residence, which can be reached informally. The same appears to apply in Latvia. Under the systems adopted in the Netherlands, Sweden and the United Kingdom the divorce of the parents the courts need not be involved with the exercise of the joint parental responsibility (whether by way of court approval of an agreement between the parents or a court decision). Courts will only be involved if there is disaccord between the parents on the exercise of the joint parental responsibility.

¹ As the questionnaire did not explicitly require discussion of this aspect information on some member states was obtained from the website of the European Judicial Network.

It transpires that in a number of member states a court decision in respect of parental responsibility or in respect of the exercise of parental responsibility can be given in case of disagreement between the parents but that such decision will not necessarily or automatically be rendered during proceedings on dissolution of the marriage. In some member states a decision on the place of residence of the child will be part of the divorce proceedings, but the dissolution of the marital bond or ending of co-habitation between the parents need not lead to a formal court decision in respect of the parental responsibility as such or even in respect of the modalities of the exercise of parental responsibility.

This study only deals with the enforcement of 'family law rights' such as custody and contact rights that takes place on the basis of a court decision. In view of the development described above, the trend appears to be that more and more an enforceable court decision on family law issues will only be created once the parents can not agree on such issues and have instituted court proceedings to settle their dispute. The creation of an enforceable family law decision is not automatically linked to other legal events that have important effects on the life of the family, notably the dissolution of the marriage between the parents.

The obligation to include aspects of custody, contact or access in the divorce decision

As explained above, in the legal system of some member states it will be necessary to make a decision on parental responsibility in combination with divorce proceedings. In other member states the concept of parental responsibility is such that a decision on parental responsibility is not necessary in case of divorce, as parental responsibility will remain a joint responsibility after the divorce. Nevertheless in some of the latter member states issues connected to the exercise of parental responsibility must be discussed during or in connection with the divorce proceedings. There may be a condition to regulate these issues in a court decision or in a party document (which may have been approved by the court).

In the Slovak Republic a law reform of 2005 obliges the court to include the conditions for contacts in the divorce decree.

In the Netherlands a bill intends to create a situation wherein parents are obliged to face the consequences of the divorce for the children, especially with regard to contact rights.

1.2 General and more specific issues of enforcement of family law decisions

With regard to the enforcement of family law decisions a number of issues merit attention. It should be realized that although enforcement of court decisions is a concept that is directly understood by lawyers, it might be less clear which elements constitute the 'general law' of enforcement. Nevertheless a number of (possible) legal characteristics may be identified and those characteristics, in law or in practice, will be discussed hereunder.

When discussing the enforcement of family law decisions, the one thing to keep in mind is that these decisions are aimed at regulating human behaviour at the level of family relations. Enforcing a decision that affects human behaviour at family level is not as abstract as the enforcement of a decision ordering to pay money or to perform a professional task. The other thing to keep in mind is that these decisions are usually relevant for at least three human beings, the parents and their child. Legal proceedings on parental responsibility usually involve the two parents as parties, often with opposing interests, resulting in a decision that has an impact on a third human being, the child. The fact that the enforce-

ment of the judicial decision made between the two parties has effects for a 'third party', the child, again makes that the enforcement is less abstract than most, if not all, other judicial decisions that order someone to do or not to do something.

General notions of enforcement will mean discussion of issues such as how will enforcement be initiated, to what extent are the courts involved in the enforcement process and which other persons or authorities are involved in that process. But in view of the specific nature of the 'performance' that is to be enforced, there are also other issues that require attention. One aspect that follows from the fact that the enforcement is dealing with family relations is to what extent the enforcement process is directed at voluntary compliance. Another aspect is to what extent a judicial decision regulating family relations is directly enforceable. As will transpire from the legal systems of the member states, to achieve (or attempt to achieve) actual compliance with the family law decision can be subject to specific court orders or court approval.

Following the description of general characteristics, some specific issues should be further investigated. These specific issues relevant for the enforcement may well be found in general provisions, which have not been developed for enforcement in particular. Thought can be had to the organization and regulation of the courts and other institutions, the time limit for appeal and other issues, the coercive measures that are available.

1.3 General legal characteristics of enforcement

When describing the general legal characteristics of enforcement, a number of aspects deserve consideration. There are a number of questions that surround the way the enforcement is handled, such as how enforcement is initiated (which procedure and by whom). Also there is the issue as to how a choice for a certain measure is made, whether this is fixed by law, primarily left to the initiative of the enforcing party or a choice only the court can decide. Related to this, there is the question to what extent the enforcement process leaves room for or is directed at gaining voluntary compliance.

The overview will also take into account the authorities or organisations that carry out or are otherwise involved in the enforcement process. Enforcement also raises a number of issues that relate to procedural law. Enforcement may not be possible as long as appeal is possible; appeal may mean that enforcement is stayed until the appeal is decided. There could also be other time limits that affect the possibilities for enforcement. The passing of time would – not as a legal time limit – mean that enforcement becomes impossible. As this study concerns the enforcement of court decisions that by their nature have an effect on children, who are the 'object' of the enforcement process, some specific issues require attention. The enforcement process may or may not allow for the special position of the child, e.g. to take into account the opinion and wishes of the child.

Preliminary remarks

Prior to addressing the general legal characteristics two issues should be looked into. These issues relate not so much to the technical legal aspects, the substantive and procedural regulation of enforcement, but to the target of the enforcement process and to the suitability of the legal options that are available.

Typical of the enforcement of family law decisions is that although the central figure in the enforcement is a third party, the child, the enforcement measures are often directed at others. Enforcement may be directed towards a person who is exerting influence over the child, e.g. the parent with whom the child resides. This form of enforcement is not aimed directly at the child. The child's situation as ordered by the court decision has to be achieved by taking steps towards an adult in the child's close environment. Although 'indirect' in the sense that this part of the enforcement process does not have a direct effect on the child, the enforcement measures may be experienced as direct by the adult concerned. Examples would be the threat of imprisonment or coercion. In the following, when the expression 'direct enforcement' is used this is meant to describe measures aimed directly at the person of someone. This may be the child who has to be taken from the adult who opposes the decision, or it may be the adult who is in breach of the decision. Another aspect that seems right to point out here is the legal debate that in some member states exists on the suitability of the enforcement measures that are available. This discussion not only concerns the choice of the appropriate enforcement measure and against whom the measure should be directed, but also raises the issue where the responsibility lies, to what extent this is a matter that should be resolved by the parents and under which circumstances state intervention is required. These two aspects will be discussed first hereunder. Following that the other aspects will receive attention.

1.4 Whether judicial enforcement takes place directly or indirectly

Whether the enforcement of a judgement will take place in the form of actual or direct enforcement or in the form of indirect measures depends on a number of factors. Between the legal systems of the member states, four main approaches appear to exist:

- 1 The legal system of some member states requires that an indirect method is used first before actual enforcement is applied;
- 2 In some member states various options for enforcement are available (direct or indirect) and there is no clear order for using these methods;
- 3 Actual enforcement is available for certain types of family law decisions only, usually custody decisions;
- 4 Direct enforcement is the main enforcement method available;

1. States that first require the use of indirect measures

In Austria direct enforcement (which is only possible for custody decisions) is seen as a method of last resort. First psychological coercion would be used.

In Belgium the procedure for enforcement of a family law decision offers the court the option to first try to reconcile parties or to propose mediation. The court may also order official inquiries. The court may however also decide to take other measures. One option is to review the arrangements with regard to the children; the other is to allow coercive measures. The coercive measures available are 'astreinte' or criminal prosecution. But both these coercive measures can not be effectuated if a mature child opposes enforcement. Criminal prosecution will also be excluded in case handing over the child would lead to great danger for the child.

In Denmark the court will first try to reconcile parties (parents) in a meeting and a large share of the cases is solved in that way. In Estonia as well indirect methods are preferred, which in Estonia means social workers are involved (who may call in the help of police forces if necessary).

In Finland the primary method for enforcement is enforcement mediation. Failing that a preference exists for indirect methods of enforcement over direct enforcement.

In Greece indirect coercion of custody, return and contact orders is acknowledged and regulated in procedural law. With respect to direct enforcement, its use in respect of orders to return or to hand over the child is questioned in Greek legal writing. Older legislation contained a special rule that explicitly allowed direct execution for these orders, but the legislation was repealed as it was considered in breach of the Greek Constitution and the European Convention on the Rights of Children. Legal writing now debates whether direct execution would be possible under general provisions of the Code of Civil Procedure.

In Latvia when a decision of the orphan's court is not complied with the court disposes of a number of options to promote compliance, by requesting assistance of other authorities, such as the police, health care, educational authorities, psychologists and social service authorities. If this is unsuccessful the orphan's court can take legal action to deprive the person who does not comply of care and/or custody rights or to place the child into care of an institution.

2. States that allow parties a choice of the enforcement method

In some member states various methods of enforcement (both direct and indirect) are available and there is no mandatory or usual order of the methods that are used. Examples are Czech Republic, Spain, France, Hungary (the court is bound to order the most effective way).

3. States that allow direct enforcement for certain decisions

In Austria direct enforcement (coercion) is not possible for decisions on contact rights. Direct enforcement (coercion) is available for custody but its use is considered as a final remedy.

In Lithuania decisions on transfer (return) of the child can be enforced by force. For other decisions the non-compliance has to be documented by the bailiff in a statement, which will be referred to the court and may lead to imposition of a fine in favour of the creditor and of a new dead-line for compliance

In the Netherlands judgements on custody may be enforced directly by the bailiff, who may call in the help of the public prosecutor. For other decisions parties can request various orders that support enforcement. In Luxembourg the bailiff, when enforcing a judgment, would be able to call in the help of the police. Indirect methods, such as 'astreinte' may be ordered by the court at request of a party.

4. States where direct enforcement is the only or main method available

In the common law jurisdictions (UK, Ireland, Malta, Cyprus) the enforcement of a family law decision is based on the concept that disobeying the decision constitutes contempt of court which leads to pseudo-criminal liability of the party who does not conform to the decision.

Compliance may be achieved through other means than judicial enforcement. Practice restrains the use of direct enforcement methods. In some of these member states, especially the UK (England) and Cyprus, legal practice would prefer to avoid the use of contempt orders. Legal practice in England would favour mediation to solve problems with the abidance of decisions and in Cyprus contempt orders would seldom be issued. In Ireland as well the threat of contempt would be the usual reason for parties to respect court decisions.

1.5 Legal debates on the suitability of the measures that are available

In some member states there appears to be a lack of suitable rules on the enforcement of family law judgements, or at least the suitability of the available measures is debated in legal writing or even in the political discussion. It appears that such debates concentrate on the question whether the general rules for enforcement of civil court decisions, which in these member states are also applicable to family law decisions, are suitable to enforce these decisions.

In Italy there are only general rules on the enforcement of judicial decisions. These rules are mainly directed at enforcement of judgments relating to goods and money and have provoked discussion on the possibility to introduce exceptions or adaptations suited to family law cases.

Latvian law does not contain special provisions for the enforcement of family law judgements. The enforcement of decisions of the Latvian ordinary civil courts is subject to the Code of Civil Procedure. This Code does not contain special provisions for the enforcement of family law decisions. Enforcement may be achieved by a specific order to perform a certain action (e.g. hand over the child) which can be enforced according to the general coercive measures. Decisions of the Latvian Orphan's Courts, which have jurisdiction in certain family law cases, are immediately enforceable but provisions on enforcement measures are lacking. The Orphan Courts do possess certain powers to ensure compliance with their decisions, such as assistance and co-operation with other authorities and/or specialists (recent legislation would favour involvement of a psychologist). When this is ineffective the Orphan Courts may take other measures.

In the Netherlands there has been a political debate on the suitability of the measures that are available to directly or indirectly enforce family law decisions. The outcome has been that the current enforcement measures available (in legislation and as developed in case-law) were sufficient; the suggestion of a criminal sanction to ensure that arrangements on contact would be carried out was rejected. The government did however propose to enact legislation that should promote that parents regulate the exercise of the joint parental responsibility after the dissolution of their marriage.

In Slovenia courts would favour indirect enforcement; practical experiences with direct enforcement (taking of the child) would demonstrate that this form of enforcement leads to unwanted situations.

In England the method for direct enforcement, contempt of court, threatens non-abidance with fine or imprisonment, but in practice other solutions would be favoured by the government, the courts and other authorities. Although certain statistics may demonstrate the increase of the use of committal, the government and other interested authorities would prefer the use of mediation. It should be noted that the statistics discussed in the political debate are open for interpretation. The family justice minister has

said that there are no figures on the number of people jailed for obstructing contact, but that there were figures on the number of people remanded in custody, on bail or for medical reports. These numbers would have increased significantly between 2001 and 2005. It is not certain whether the figures reported relate to enforcement of family law decisions as defined in this report or to other family (e.g. domestic violence) issues.

1.6 Initiating enforcement of a family law judgement

In a number of member states the court must be involved prior to the enforcement. The involvement of courts can roughly be divided in two types of situations. Firstly the involvement of a court may be necessary to commence enforcement of a judgement on family law. Secondly the court may be involved once the enforcement has been initiated and a dispute arises on the handling of the enforcement.

In most Member States the family law judgment that regulates the family law relations (e.g. setting out custody rights or an arrangement for contact) is enforceable without a new judicial decision being necessary. But in some member states a formal requirement must be fulfilled, as the family law judgement that is to be enforced must be declared enforceable by the court. This practice of a separate enforcement order is found in Czech Republic, Spain, Finland, Hungary and Latvia. In other states where the court must be involved prior to the enforcement such a formal requirement does not exist, but the court does have a role in the enforcement process.

Procedure for initiating enforcement

In many member states it is necessary to apply to the court in order to enforce a family law decision.

An application to the court is necessary in Austria, Belgium, Cyprus, Germany, Czech Republic, Spain, Finland (except for decisions on the residence of the child, which were rendered less than three months before the enforcement: for these decisions an application can be made directly to a bailiff, the bailiff may however decide to involve the court for the imposition of a fine if this is considered more effective), Ireland, Hungary, Italy, Slovenia, Slovak Republic.

In Spain, a party seeking enforcement is to indicate the relief sought to the court.

In Greece the enforcement process depends on the nature of the judgement. For decisions on the handing over of the child the order on itself forms the basis for indirect enforcement. For decisions on personal relations between the child and the parent with whom the child does not live two stages are necessary and for each stage a judgment is necessary.

In Hungary for enforcement of a decision on residence an enforceable deed has to be issued on the basis of the judgment that determines the place of residence of the child. This deed may be issued in the form of an 'executory card' (végreshaytási lap) which will direct the enforcement of a certain action. There will be a short period for voluntary performance following which enforcement will be attempted firstly through indirect enforcement (pecuniary fine) and following that direct enforcement will be attempted.

In Hungary the enforcement of a contact order is always handled by a public guardianship authority following a request by the parent claiming contact. The law, the courts and the public guardianship authority however encourage agreement between the parents (see hereunder).

In Latvia the enforcement process is influenced by the origin of the judgement. Two types of courts are competent in respect of family law judgements, ordinary civil courts and 'Orphan's courts' (municipal (administrative) courts). The civil courts judge cases where there is a dispute between the parties (parents), whereas the Orphan's courts decide cases where there only is a 'disagreement' between the parties. Also custody cases involving at least one of the parents must be decided by the ordinary civil court, whereas custody cases involving others (e.g. grandparents) are decided by the Orphan's court.

An application to the court is also necessary in the member states that apply the common law and where enforcement is based on the concept of contempt of court (Malta, Cyprus, Ireland, UK (England)).

The involvement of the courts is however not required in all member states. In some member states the judgment that forms the basis of the enforcement allows a party to pursue enforcement without direct involvement of the courts. The enforcement is not handled actually by the party, but at the request of the party by public or court authorities, usually a bailiff or the public prosecutor ('Ministère Public'). Whether a court must be involved to commence the enforcement process and whether this means a further court decision is required may depend on the nature of the court decision that is to be enforced.

In Estonia an application for enforcement of a court judgement has to be made with the bailiff with a bureau in the same territory as the place of residence of the person against whom enforcement is sought.

In France, enforcement is commenced through service of the judgment on the other parent by a bailiff ('huissier de justice'). If the other parent does not conform to the judgment, the public ministry ('Ministère Public') can contribute to the enforcement, at the request of the bailiff. The State is then obliged to aid in enforcing the decision. The bailiff is in charge of the way the actual operation of the enforcement is handled. The bailiff may ask for aid of the public forces (the police) or may involve the court or the public ministry. Problems during the execution may be solved by court decision (by the 'juge d'exécution') following a 'procès-verbal' made by the bailiff.

In the Netherlands certain decisions on parental responsibility (on 'gezag', 'parental authority') are by law enforceable through the aid of the strong arm (police). The public prosecution service may assist in organising this aid and an application to the court is not needed. In the Netherlands other measures that are available to support enforcement could be ordered directly in the judgment that deals with the material issue, although this will not occur frequently.

The person who initiates enforcement

In many member states the initiative for enforcement, whether by application to the court or otherwise, is with those who are party to the decision that is to be enforced. As a consequence the initiative for enforcement measures in respect of custody remains mainly with the parents or custodians.

This is the case in Austria, Belgium, Cyprus, Czech Republic, Estonia, France, Finland, Hungary, Ireland, Italy, Lithuania, the Netherlands, Slovenia, United Kingdom (England).

But there are member states for which it can be said that the initiative for enforcement is less in the hands of the parties and more dependent on the judge. Although the parties to the decision may still need to take the first step, the actual handling and 'management' of the enforcement process is done by the court, not the parties.

In Germany in practice proceedings to determine enforcement measures are initiated by the party (parent) seeking enforcement. Technically there is a difference between enforcement of orders to hand over the child (to be brought by the person entitled) and contact orders (which are in theory instituted by the court *ex officio*, but in practice only commenced upon instigation of one of the parents). In Germany the court takes the central role in the actual enforcement, although an initiative of a party may be necessary to commence enforcement. But the court decides on the appropriate measures and has discretion to decide on the measure that is used.

In Belgium a party (a parent) can request the court to solve the dispute in case of refusal of one of the parents to observe the arrangements with regard to the children. Two approaches are then possible under recent legislation. In principle the court can order official inquiries, try to reconcile the parties or propose mediation. If absolutely necessary, the court can order coercive measures.

In Latvia the initiative for a decision given by the ordinary civil court will be with one of parties to the decision. But if the decision was given by the Latvian orphan's court, this court has certain powers to ensure that its decisions are complied with.

The need to indicate the measures for enforcement to the court

It appears that in many member states where an application to the court is necessary the function of this application is to draw the court's attention to the fact that a court judgment is not complied with. It may not be necessary for the application to set out the measures that the court is requested to order. The measures that are taken in order to further compliance are decided by the court and do not have to be mentioned in the application.

In Belgium a party (a parent) can request the court to solve the dispute in case of refusal of one of the parents to observe the arrangements with regard to the children. Two approaches are then possible under recent legislation. In principle the court can order official inquiries, try to reconcile the parties or propose mediation. If absolutely necessary, the court can order coercive measures.

In Germany enforcement commences with 'proceedings to determine the enforcement measures'. The German court has a central role in deciding the measures that are ordered to ensure enforcement. The report on Germany explains the dominant position of the court in German enforcement proceedings partly to the non-contentious character of the proceedings.

Again in Czech Republic the court determines the measures that are necessary to secure enforcement. This is also the case in Slovenia. Slovenian courts are not bound by a proposal for enforcement and prefer indirect enforcement.

In Finland, the character of the enforcement proceedings changes if the enforcement is disputed. Enforcement is initiated by a request, but proceedings will take place on the basis of the rules for litigation in civil cases when enforcement is disputed.

In Hungary the enforcement process can be divided in two clear phases: firstly voluntary compliance under control of the bailiff and if that is unsuccessful the bailiff will inform the court and the court may order indirect enforcement (through a fine) or direct enforcement (through police intervention). The court has to order the most effective method in view of the circumstances of the case. The parties may be heard and may appeal the court's decision.

In contrast, in other member states where an application to the court is necessary there is much less scope for the courts to determine the appropriate measure. Either the measures that the court can order will depend on the content of the application, or the law will only allow a limited number of measures. A clear example is found in member states that follow the common law tradition and where enforcement of the family law judgement takes place via contempt proceedings.

In common law jurisdictions (Cyprus, Ireland, Malta, England (for orders of the county court and High Court) a failure to abide by the court order on custody (residence), access or contact constitutes contempt of court.

On Cyprus, the aggrieved party seeking a contempt order will have to specify the relief sought (and the facts the petitioner relies upon).

In Ireland contempt of court can be remedied by an order for attachment and committal (arrest of the person in contempt, who has to appear before the court and explain why an order for imprisonment should not be made against him). The party seeking the order for attachment and committal will have to bring a motion against the defaulting party, which must be served on him before the hearing. The order for attachment and committal will be directed to the police (the *Gárda Síochána*) and will contain a warning that failure to abide may result in a fine or imprisonment. Usually the party not abiding to an original order will be committed to prison until he purges the contempt of the order. The threat of being committed to prison usually means that the order is complied with.

On Malta, failure to honour a court judgement in custody or access or a consensual contract sanctioned by a court is a violation of the criminal code which is punishable with imprisonment.

In England contempt of court is the general method of enforcement for orders of the county court and the High Court. If the order is endorsed by the court with a penal notice (which is usually requested by the party not in default) and has been served on the person in breach this person becomes liable to a fine or imprisonment. For decisions of the magistrate's courts section 63(3) Magistrates' Court Act 1980 is a legislative measure that gives in principle similar powers for enforcement for decisions of the Magistrates' Courts. Legal practice in England would however favour other solutions instead of the quasi criminalisation of the disobeying civil orders. Committal for non-compliance would be not normally appropriate in child cases and a rare order in last resort.

In Greece it follows by law from the custody or return order that the court shall ex officio order payment of a fine or physical coercion in case the order is not respected. For contact or access orders the threat of a fine or coercion may be included in the order or may be ordered in a later separate decision, in case the initial order is not respected. It is debated in Greek legal writing whether direct enforcement in accordance with the Code of Civil Procedure is possible (which then would be carried out by the bailiff) for an order to return or to hand over the child.

In other states the involvement of a court (or a judge) in the enforcement stage is not necessary as enforcement may take place on the basis of the family law decision by the designated authorities (usually bailiffs or other special court officers, the public prosecutor's office or the police). The involvement of the court during the enforcement is sometimes seen as contrary to legal principles. E.g. Luxembourg law is in this respect based on the principle of Roman law that the court is no longer involved once a decision has been given, subject to certain exceptions (e.g. that the court can be involved a second time, or that the court may take a preliminary decision).

1.7 Action towards voluntary compliance

When an application to the court is made, there is also the question to what extent the application will cause the court to order measures that are focused on actual enforcement, i.e. ensuring that the actual situation complies with the judgment that must be enforced, or that the court will first try to conciliate parties and induce 'voluntary' compliance. An example of the contrasting approaches that exist can be found in the differences between Greek and Belgian law. In Greece the court is bound to grant one out of two possible coercive measures (or a combination of these measures), whereas under recent Belgian legislation the court would in principle first try to reconcile the parties or propose mediation. Only if there is an absolute necessity would the Belgian court immediately order coercive measures.

In Belgium the new legislation encourages that the courts which oversee the enforcement process, will first seek mediation between parties.

In Estonia, special rules apply in case contact or access rights are breached. The other parent may ask the court to initiate a conciliation procedure, leading to an agreement between the parents to solve the dispute

In Finland enforcement mediation is a formal part of the enforcement procedure. A court is bound to transmit a petition for enforcement to an enforcement mediator, unless the enforceable decision was rendered earlier than three months ago. A mediation report is brought out to the court and on the basis of that the court may decide to continue mediation, if an agreement between parties is expected.

The Hungarian system is aimed at voluntary compliance to the order (including reaching agreement between the parents), both in respect of residence orders and in respect of contact orders. With respect to contact orders in Hungary there is an elaborate system that may involve public authorities and paves the way to mediation between the parents.

In Latvia, for cases where the enforcement takes place under the law of civil procedure (i.e. for cases decided by the civil courts) a settlement between the parties is possible even if the decision is already subject to enforcement. In case the court approves a settlement the enforcement would be terminated. A settlement during enforcement may not affect the substance of the decision that is to be enforced. In Latvia, for cases decided by the orphan's court, this court has certain powers to involve specialists.

In Lithuania the bailiff has a central function in the enforcement process, but bailiffs would in practice try to settle the case amicably. During enforcement bailiffs would arrange settlement meetings and ask social workers and child protection services to enter into a dialogue with the parties.

In the Slovak Republic, when enforcing a decision 'on the upbringing of minors' the court will first invite the party who is not observing the decision to act in accordance with the decision, before ordering coercive measures.

1.8 The person/authority that carries out actual enforcement

In general the actual enforcement of a family law decision is the task of a bailiff, the public prosecutor's office (*'ministère public'*) or of specialist court officials. In a few member states the actual enforcement, or at least the responsibility for actual enforcement, rests with the courts. The person or authority that carries out the actual enforcement may be different according to the nature of the decision. If different persons or authorities are responsible for the actual enforcement a rough division can be made between decisions on custody (and especially those involving the handing over of the child) and decisions on contact and/or access.

In a number of member states a central role in the actual enforcement is left to the bailiff: Belgium, Cyprus, Denmark (the 'Bailiffs Court'), Estonia, Finland (although there is a certain distribution of tasks between court and bailiff), France, Germany (with exceptions, see hereunder), Greece, Hungary (for custody issues), Italy, Latvia, Lithuania, Luxembourg and the Netherlands.

In Finland (and Estonia) the organisation of the bailiffs is such that per district there is one 'District' or 'City' bailiff. In other member states bailiffs are organised differently and there would not be a specific bailiff who can be approached for a certain area.

In some member states in addition to the bailiff the public prosecutor is involved ex officio in the actual enforcement: Belgium, France, and Luxembourg. In the Netherlands the bailiff will have to involve the public prosecutor for the taking of certain measures.

In Germany, Finland, Latvia and in Hungary the bailiff is not responsible for the actual enforcement of all family law decisions.

In Germany difference is made between enforcement of money payments (*'Zwangsgeld'*) and physical coercion or measures to hand over the child. Money payments are enforced by the court, which makes use of *'Rechtspfleger'*, who are government officials. Physical coercion and measures to hand over the child are enforced by the

'Gerichtsvollzieher' ('bailiff'), who may involve the police. Internal regulations for the 'Gerichtsvollzieher' further provide that in order to enforce the handing over of the child, when appropriate, support of the 'Jugendamt' can be drawn in. The 'Jugendamt' then prepares the child and/or the parent on the imminent handing over to the other parent and may be present at that moment.

In Finland an application to the bailiff can only be made for decisions on the residence of the child, which were rendered less than three months before the enforcement was requested. The bailiff may however decide to involve the court for the imposition of a fine if this is considered more effective. For other decisions, or residence decisions that are older than three months, application must be made to the court and enforcement mediation will be a formal part of the enforcement process.

In Hungary the enforcement of a contact order is always handled by public guardianship authority following a request by the parent claiming contact.

In Latvia it will make a difference whether the decision was given by an ordinary civil court or by an orphan's court. Decisions of the civil court will be enforced by a bailiff, decisions by the orphan's court will be monitored by the orphan's court and this court can take several measures, either by involving other authorities or specialists or by legal action, to ensure compliance.

In a few member states there is a specialist court officer who is in charge of enforcement.

In Malta and Poland the actual enforcement is handled by specialist court officers (the Court Marshal in Malta, the Court probation and supervision officer in Poland).

In Austria, the Czech Republic and the Slovak Republic the actual enforcement is a task of the court.

In the Slovak Republic the enforcement of decisions on the exercise of parental rights and duties (which are family law decisions in the context of this study) must take place on the basis of a motion to the court. This is an exception to the general rules for enforcement, as normally enforcement of civil decisions takes place through the aid of an 'executor' (a 'bailiff'). The court will first try to obtain voluntary compliance and may consequently order indirect coercive measures.

1.9 Other persons/authorities involved in the enforcement process

The enforcement process will lead to the involvement of the court or of another judicial officer or authority, such as a bailiff or the public prosecutor. Apart from these authorities or officers that are part of the judicial organisation of the member state, some member states require the involvement of other authorities or specialists. Such authorities or specialists tend to belong to the social or juvenile care sector. Their function is to assist in the actual enforcement, not to bear responsibility for the enforcement as representative of the judicial organisation of the member state.

Not all Member States have special organs or institutions for the enforcement of family law decisions; the organs and institutions involved in regular enforcement proceedings are involved in family law proceedings as well. However, most Member States (Austria, Belgium, Czech Republic, Estonia, Germany, Hungary, Italy, Lithuania, Malta, The Netherlands, Poland and Slovakia) do have special organs or institutions involved in the enforcement of family law decision so as to guard the interests of the child.

In Estonian law the performance of handing over the child or granting access to the child must take place in the presence of a representative of the local government agency.

In Finland enforcement mediation is a formal part of the enforcement procedure. A court is bound to transmit a petition for enforcement to an enforcement mediator, unless the enforceable decision was rendered earlier than three months ago. A mediation report is brought out to the court and on the basis of that the court may decide to continue mediation, if an agreement between parties is expected.

In Germany the 'Jugendamt' must be involved in proceedings for determining coercive measures (the 'Jugendamt' will also have been involved in the proceedings that led to the enforceable decision). The 'Jugendamt' is organised per community ('Gemeinde') and has a counselling and supporting role.

In Germany it is further possible that in contact orders the presence of a third person is ordained during visits. Such a third person can be a representative of the 'Jugendamt'. Furthermore, German law requires the appointment of a legal representative of the child in legal proceedings (the 'Verfahrenspfleger') when there is a risk that the interests of the parents may conflict with those of the child. The Verfahrenspfleger's qualifications must be suited to the legal dispute, there are no clear professional requirements (the legal representative could be e.g. a lawyer or a child psychologist).

In Lithuania the law assumes that the Child Protection Service participates in all questions concerning children. In the enforcement stage legislation stipulates that the CPS will be present during the enforcement of a decision on transfer (return) of children. This cooperation does not always function well in practice and the government has been organising meetings between the bailiffs and CPS officials in order to improve the situation.

In the Slovak Republic, when the child participates in proceedings for a motion for the enforcement of decisions on 'the upbringing of minors' (which in the context of this study would be family law decisions), the child will be represented by a 'collision custodian'. The collision custodian is part of Labour, Social Affairs and Family Authority and may also be involved by the court in attempts for voluntary compliance with the decision.

Distribution of tasks between organs and institutions involved in the enforcement of family law judgments

	Enforcement orders	Actual enforcement	Assistance	Other
AUT	n.a.	District Court in non-contentious procedures		Youth Welfare Work and Child- and youth lawyers have tasks in advising and supporting the family in the fulfilment of their responsibilities.
BEL	Competent court may allow specified coercive measures	Bailiffs, Public Prosecutor <i>ex officio</i>	Public welfare services Persons designated by the court	Courts in the determination of coercive measures.
CYP		Bailiffs		
CZE	District Court	District Court	Authorities of socio-legal protection of children, Bailiffs	The Ombudsman fulfils a very important role in the enforcement of family law judgments.
DEN		Bailiffs Court	Police authorities	The local public child authorities protect the child during the case.
ESP	Civil Court		Police	
EST		Bailiffs	Representative of the local government authority, court police forces	
FIN	District Court	District enforcement offices/bailiffs	Police	District court in settlement of coercive measures. Enforcement mediators improve the co-operation of the parties and help them to obey the court order voluntarily.
FRA		Public Prosecutor/Bailiffs	Police	The Executive Judge solves difficulties following from the execution of judicial decisions. Family mediators facilitate enforcement of judicial decisions and prevent problems of enforcement by trying to reach consensus.
GER		Bailiffs	Police	Family law courts in the determination of coercive measures. A procedural caretaker represents the interests of the child. The Child Welfare Council participates in the proceedings on the settlement of coercive measures.
GRE		Bailiffs		Courts control the enforcement proceeding.
HON	Custody: Courts Contact rights: Public guardianship authority	Custody: Bailiffs Contact rights: Public guardianship authority	Custody: Public guardianship authority, Police	The child welfare centre takes care of contact inspection: agreement between parents on manners of contact, preparation of the meeting between the parent and the child and guarantee of neutral meeting place.
IRL			Police	

	Enforcement orders	Actual enforcement	Assistance	Other
ITA	Juvenile Court, Executive Judge	Bailiffs	Public Order Forces	The Child Protection Services clear away and resolve the needs of the person, the family and children in particular, as well as guarantee solutions within the judiciary system.
LAT	Courts	Sworn bailiffs	State Police	The Orphan's Court monitors problematic families in the interest of the child, supervising how their decisions or directions are followed and bringing proceedings to court upon their own initiative.
LTU		Bailiffs	Police, Specialized Children's Rights' Protection Services	Ombudsman of Child's Rights controls the activities of state, municipalities and non-governmental institutions and organisation in the sphere of family law enforcement.
LUX		Bailiffs, Public Prosecutor <i>ex officio</i>	Police authorities	
MLT		Court Marshal	Police, Social workers, Prosecutors	The Child Welfare Agency is responsible for arrangements of access under supervision.
NED		Bailiffs	Police, Public Prosecutor	Bureau Juvenile Care carries out granted youth protection measures.
POL		Court probation and supervision officers, Starosty Centre of Family Assistance	Police, Prosecutors	The Guardianship Court helps parents, if needed, to exercise parental authority properly.
POR	Family and Juvenile Court		Police	The Child Protection Services, psychologists and social assistants may contribute to the enforcement of the judgement.
SLO	Court of Justice	Executor ('bailiff') in presence of a 'professionally capable employee' (of the Centre for Social Work)	Police	
SVK	Court of First Instance	Court of First Instance	Authorities of socio-legal protection of children and social tutorship	
SWE	Public courts: district court (1 st instance), court of appeal 2 nd instance	Police Authority to collect child Social services to take child into (immediate) care, in which case the police should in principle not assist)	During collection by police or when social services take child into care someone will be present who can be a support to the child (civil servant, relative, other). In urgent situations a specialist (paediatrician, child psychiatrist or psychologist will in principle assist instead	
UK	Various authorities may have jurisdiction for a decision that is enforceable : Magistrates Magistrates' Court County Court High Court			

1.10 Coercive measures

Overview of the use and nature of the coercive measures available

There are various approaches as to the availability of coercive measures. From the discussion above it already came to light that in the national legal systems the possibility to use coercive measures to enforce a family judgment depends of a number of circumstances. The following considerations come up when looking at the formal aspects that must be fulfilled before enforcement becomes possible:

- Whether enforcement may take place on the basis of the actual family judgement or only on the basis of a separate decision subsequent to the actual family judgement that allows the enforcement;
- Whether by the law of the court the family law judgement implies that certain coercive measures are allowed, without the need for stipulating so in the judgement;
- Whether the court will have to allow and specify the use of coercive measures in the actual family law judgement (or in a subsequent judgement);
- Whether alternative solutions (mediation, settlement) are still an option prior to actual enforcement;

Once the use of a coercive measure is possible, the nature of the coercive measure that is used is again dependent on a number of considerations:

- Coercive measures may be directed against the child or against an adult;
- Coercive measures can be directed at the person (actual enforcement, e.g. taking away the child, or taking into custody of an adult) or against property
- Coercive measures may be directed at obtaining a direct result (e.g. the taking of the child) or indirect (through measures that support enforcement, e.g. 'astre-inte');
- The nature of the coercive measure may have been determined by the court or can be determined by the parties;
- Whether alternative solutions (mediation, settlement) are possible even during the actual enforcement stage;

The considerations mentioned above greatly influence the coercive measures that can be used. The schedule hereunder emphasizes the options that are available **and** used in practice within the Member States.

	Coercive Measures used in practice	Pecuniary fines	Physical Force	Detention	Contempt of Court	Other
AUT	In principle coercive measures are an <i>ultimum remedium</i> . In general, psychological coercion is used in practice, if necessary by taking away the child. Judgments on contact rights cannot be enforced coercively. Only the enforcement of judgments on custody can take place by coercion.	Can also be ordered against the "abductor"		Not used in practice.		
BEL	The current Belgian law on coercive measures entered into force in 2006. It is yet too early to give a good overview of the practice.	Only as an <i>ultimum remedium</i> .	No physical coercion may be used against the person who has the child under his care (<i>Nemo praecise ad factum cogi potest</i>).			
CYP	No information available					
CZE	The mentioned measures are all used in practice.					The presiding judge invites a person in writing to observe the judicial decision.
DEN	Usually, when the judge in the Bailiff's court receives the case he calls the parents for a meeting and tries to reconcile them. A large share of the cases is reconciled. Enforcement cannot be levied if it would expose the child to serious physical or psychological harm (art. 536 AJA)		The use of force takes place in enforcement of custody rights, but not for enforcement of contact rights.			
ESP	The mentioned measures are all used in practice.					
EST	It is general principle that in family law cases, in particular regarding cases on the access rights and handing over of the child, usage of coercive measures is not in line with the aims of the enforcement procedure. The usual practice is enforcement of family law judgements by social workers using the help of police forces if necessary.					

	Coercive Measures used in practice	Pecuniary fines	Physical Force	Detention	Contempt of Court	Other
FIN	When enforcing family judgments one should always have other primary methods than using coercive measures. Such primary method is the enforcement mediation. In case of using coercive measures for enforcement of decision on custody, including orders on the residence of the child, one should avoid excessive use of any coercive measure.	The conditional imposition of a fine is preferred over the fetching of the child. As far as contact and/or access orders are concerned the conditional imposition of a fine is clearly the primary measure to use.				The conditional imposition of a fine is preferred over the fetching of the child.
FRA	The mentioned measures are all used in practice.					The criminal sanctions of art. 227-5 - 227-10 of the Penal Code are used in practice.
GER		Used in practice.	Only as an <i>ultimum remedium</i> when other coercive measures do not have any effect.	Only used in practice in case of child abduction by the parent who is not responsible for the care of the child.		Mediation proceedings of § 52a FGG are not used very often in practice.
GRE	The mentioned measures are all used in practice.					The payment of a deposit is also used in practice.
HON	According to § 177 Enforcement Act the court is obliged to order the most effective way of enforcement taking into attention the circumstances of the concrete case.					In case of contact rights enforcement with the assistance of the police is not really used. In practice the bailiff opens the place (e.g. flat) where the child, who has to be handed over to the claimer according to the custody decision, has hidden or has been hidden by the parent or the relatives.

	Coercive Measures used in practice	Pecuniary fines	Physical Force	Detention	Contempt of Court	Other
IRL	The measure most commonly resorted to enforce a family law judgment relating to custody, access and contact is an application for attachment and committal. It is often very common when obtaining orders or judgments in relation to custody, access or contact to seek "liberty to apply"; this entitles either party to bring the matter back before the court in the event of some difficulty arising with the judgment as made.				The sanctions available are usually contempt of court proceedings where the person failing to adhere to the order made will be imprisoned until they purge the contempt (promise to abide by the order).	
ITA	In most cases, left at the discretion of the bailiff, the practical performance is significantly reduced due to the intense emotional impact and extreme stress that is felt by the child involved in the process. It is impossible to enforce the decision on visiting orders against parent's cooperation. There is no legal instrument to compel the parent to visit and to participate in the child's life against his/her will. On the other hand there is a possible remedy to enforce visiting rights against the parent refusing access.					
LAT	In practice the Court fines the person who does not comply with the decision of the court.	Used in practice.			Not used in practice.	Not used in practice.
LTU	Bailiffs may use coercive measures to execute family law judgments. These measures are not described in detail and are left to bailiff's discretion. Bailiff should take into account the circumstances of the concrete situation. Nevertheless the guiding principles are that coercive measures should be rational, proportionate and may not do harm to child's rights, as well as main not be in breach of the general public order.		Force is used only in situations of transfer (return) of the child. In other cases resistance is tried to be overcome together with psychologists and social workers.			No data available on the number of cases relating to family law heard under article 245 of the Penal Code. Articles 156 and 163 on child abduction and abuse of parental or custodial rights are not applied in practice.

	Coercive Measures used in practice	Pecuniary fines	Physical Force	Detention	Contempt of Court	Other
LUX	The principle "una via electa" applies; this means that a choice has to be made between the measures of civil law and those of penal law.	Not used, in practice the measures of penal law are chosen, because it avoids procedural costs.				In practice, the measures of penal law are chosen, because it avoids procedural costs. The possibility of the payment of a deposit is rarely used in practice (art. 650 CCP).
MLT	In practice, attempts are made to reach an amicable solution through mediation. In family law there is compulsory mediation (art. 4 (3)-(13) Subsidiary legislation 12.20).					
NED	In practice, the measure used to promote enforcement is the 'astreinte'. The other possible measures would in practice not lead to the desired effect and would also not serve the interest of the child.	Used in practice.		The use of coercion by detention in family law cases, especially when the coercion concerns the parent with whom the child resides, is not regarded as a fitting solution.		The prevailing view is that the use of police force to induce contact between the child and the non-caring parent has a severe impact on the environment of the child. The possibility of the use of force would mainly serve as a deterrent.
POL	The described measures are all used in practice	Used in practice.		Used in practice.		Criminal sanctions and notification of a persecutor in case of child abduction are both used in practice.
POR	All coercive measures that the Court considers reasonable can be adopted to enforce the judgement (article 181º/1 OTM). However, in practice, the use of force to induce contact between the child and the non-caring parent is considered not to serve the interest of the child. Therefore there are no legal measures to force the non-caring parent to visit the child.	The most common measure used in practice	Not used in practice	Not used in practice	Not used in practice	The assistance of a technical team of psychologists can be ordered to improve the relationship between the child and the non-caring parent, provided that the non-caring parent agrees with the measure.

	Coercive Measures used in practice	Pecuniary fines	Physical Force	Detention	Contempt of Court	Other
SLO	In general, the use of coercive measures to ensure enforcement is very rare. Usually, the determined penalties are sufficient to make the personal contacts run.					Immediate execution is applied very rarely.
SVK	All the mentioned measures are taken in practice with the cooperation of the police, the authority of the socio-legal protection of children and the social tutorship.	Used in practice.			Used in practice.	§ 349 of the Penal Code proves to be a really effective coercive measure.
SWE	Coercive measures are used once voluntary compliance fails	Used in practice as first measure (custody and contact decisions)	Police intervention for collection in custody and residence cases and in exceptional cases for contact orders Taking the child into care is executed by social services	No	No	
UK	The only methods of direct enforcement available are those that serve for breach of any type of court order (contempt of court). They are unsuitable for orders involving residence and contact because the end result is unlikely to be achieved by the fining or committal of the defaulter and, on technical and procedural grounds, the orders are often not susceptible to being enforced in these ways. The practice of the government, courts and professional agencies is to deal with such problems by other means. Not clear which means are used.				Normally, a person for breach of an order cannot be dealt with for contempt of court unless the order is endorsed with a penal notice and served on the person in breach.	

1.11 Taking of coercive measures when the child opposes enforcement

During the enforcement stage, the nature of the rights that are to be enforced gives rise to a particular problem. Family rights such as custody or contact rights are not absolute in the way that rights to property are absolute. The enforcement of family rights is inescapably linked to the person who is central to these rights, the child. Whereas a young child may undergo the exercise of family rights unconsciously, the older the child becomes, the more the will of the child will determine the exercise of these rights. From a certain age the child may even be in a position to effectively undermine the enforcement.

In a situation where the child opposes enforcement, the question arises whether measures are possible to remedy the situation. Would it be possible to take measures with respect to the child or, possibly, against the adult who has sufficient influence on the child to make the child abide to the judgment?

None of the Member States arranges for this matter explicitly by law. It appears necessary to draw a distinction between the enforcement of judgments on custody which have led to a case of abduction and other family law decisions. In most Member States it would be difficult to take coercive measures directed against the child in case of opposition of the child. This would apply especially with regard to the enforcement of judgments on contact rights. In some Member States (Austria, Spain, Estonia, and Germany) it is, however, possible to force 'immature' children (definition differs from country to country) to undergo the enforcement of the judgment on contact rights with the parent with whom he/she does not live.

Taking of coercive measures when the child opposes enforcement

		Coercive measures against the child	Coercive measures against one of the parents
AUT	If a mature minor, or the parent with whom the child does not reside explicitly refuses to have contact and if attempts at conciliation fail, the enforcement of contact rights has to be stopped (§ 180 AußStrG). 'Immature' children can be forced against their will to have contact with one of their parents (§ 185b AußStrG idF KindRÄG 2001).	Only children under 14 years old can be forced (§ 185b AußStrG idF KindRÄG 2001 in conjunction with § 180 AußStrG).	If the refusal of the child of contact with his parent is based on the influencing of the other parent, the court can take the coercive measures of § 179 or subsidiary 145b ABGB (reprimand, pecuniary fine or partial or full withdrawal of custody) against the influencing parent.
BEL	No physical coercion may be used against mature children. The opposition of the child is also relevant with regard to enforcement of the penalty payment and the criminal prosecution of a parent or other person in case of non-observance of a Court decision.	Physical coercion against immature children can be justified so as to avoid parental alienation.	Art. 387ter (1(4)) CC provides that the Court may allow a victim of non-observance of the arrangements regarding children to make an appeal on specified coercive measures.
CYP	The Court may order supervised access in case of opposition of the child against the enforcement. However, this is not a matter of taking coercive measures	Supervised access may be ordered.	Supervised access may be ordered.
CZE	Regarding the taking of coercive measures when the child opposes enforcement of the judgment, the child is party to the execution proceedings and has the right to express his or her opinion. The Court may order a hearing within the execution proceedings and the child's opinion should be respected.	The child is party to the execution proceedings and has the right to express his/her opinion.	
DEN	No information available		
ESP	In case of opposition of the child, coercive measures might prove difficult to be taken. In case of opposition against visiting rights by children over 14, there will not be any possibility for coercive enforcement against his or her will. Coercive measures however can be directed against the other parent, usually in the form of a monthly pecuniary fine. If the custodian parent is not responsible for the child's refusal to comply with the judicial order, the assistance of a technical team of psychologists is possible in order to determine the reasons for refusal and to make proposals for the exercise of visiting rights in family meeting points judicially established and under the supervision of the technical team.	Only for children under 14 years old, if the opposition is considered unreasonable.	Coercive measures however can be directed against the other parent, usually in the form of a monthly pecuniary fine. If the custodian parent is not responsible for the child's refusal to comply with the judicial order, the assistance of a technical team of psychologists is possible.
EST	Employment of coercive measures in the enforcement proceedings of family law judgments is not considered to be in line with the aims of the enforcement procedure.	No	No
FIN	When the child is twelve years old, or even if the child is less than twelve years but the child is so mature that his or her opinion may be taken into consideration and the child opposes the fetching, one shall have to withdraw from the fetching of a child.	Only for immature children	

		Coercive measures against the child	Coercive measures against one of the parents
FRA	It is stable case-law that opposition of a child against enforcement does not constitute breach of the judgment by one of the parents. However, there is a responsibility for the parent with whom the child lives to persuade the child to enforce the judgement.	No	Opposition of a child against enforcement does not constitute breach of the judgment by one of the parents. The parent with whom the child lives has a responsibility to persuade the child to comply with the judgment.
GER	Principle: coercive measures are an <i>ultimum remedium</i> , especially the use of force. 'Mature' minors can oppose enforcement; their will is to be taken into account. 'Immature' children can be forced against their will to have contact with one of their parents. The age limit of 14 years is to be applied flexibly.	Only for children under 14 years old, if the opposition is considered unreasonable	
GRE	It is stable case-law that opposition of a child against enforcement does not constitute breach of the judgment by one of the parents. However, there is a responsibility for the parent with whom the child lives to persuade the child to comply with the judgement.	The child is never forced.	Coercive measures of art. 950 CCP in case of intentional hindrance of personal contacts between the child and the parent with whom the child does not live.
HON	No coercive measures may be taken against the child. If the child opposes enforcement the persons involved in the enforcement proceeding are incapable to compel the child to go away with the other parent neither to keep contact, neither to reside with him/her. If the contact cannot be enforced because the child over 14 declares his/her uninfluenced and independent will, the public guardianship authority suspends the proceeding provided that the parties turn to the child welfare mediation or either of them requests the re-regulation or the withdrawal of contact.	No, not allowed	
IRL	There are no reported decisions where the objection of a child has affected the taking of enforcement proceedings		
ITA	Under article 147 CC the parents must take into account the hopes and wishes of the child. In Court, the preference of the child is only overruled if there are concrete and specific reasons indicating the incapacity of the child to understand the consequences of the opinion expressed.	The preference of the child is only overruled if there are concrete and specific reasons indicating the incapacity of the child to understand the consequences of the opinion expressed.	
LAT	The interests of the child are considered, clarified and examined during the court proceedings on the substance of the matter. The Civil Procedure Law does not provide for a direct solution for the situation where the child opposes enforcement, tending to exclude the opposition of a child during the court proceedings or giving a decision, which, although may be faced by opposition of a child also during the enforcement, still is in his/her best interests. The opposition of a child certainly is no reason for applying any new additional coercive measures.	Courts tend to exclude the opposition of a child during the court proceedings and to give a decision, which, although may be faced by opposition of a child also during the enforcement, still is in his/her best interests.	

		Coercive measures against the child	Coercive measures against one of the parents
LTU	When the child opposes enforcement the coercive measures may not be applied against the parent. The resistance of the child is tried to be overcome with the help social workers and/or psychologists from the Municipal Children Rights' Protection Service.	Resistance of the child is tried to be overcome with the help social workers and/or psychologists	Resistance of the child is tried to be overcome with the help social workers and/or psychologists
LUX	In principle the child has to comply with the judgment. It is stable case-law that opposition of a child against enforcement does not constitute breach of the judgment by one of the parents. However, there is a responsibility for the parent with whom the child lives to persuade the child to comply with the judgement. When the child still refuses a team of professionals will try to convince the child and in extreme situations the police can take the child away to the parent charged with parental responsibility.	In principle the child has to comply with the judgment. When the child still refuses a team of professionals will try to convince the child and in extreme situations the police can take the child away to the parent charged with parental responsibility.	Opposition of a child against enforcement does not constitute breach of the judgment by one of the parents. The parent with whom the child lives has a responsibility to persuade the child to comply with the judgment.
MLT	A child may forcibly be taken to a supervised access session, particularly in view of the repercussions the custodial parent faces for withholding access (art. 338 (ii) Penal Code). In cases where the child opposes enforcement, it is up to the court to determine whether this constitutes reasonable cause.	Yes, the child may forcibly be taken to a supervised access sessions	It is up to the court to determine whether the opposition of the child constitutes reasonable cause, as required by art. 338(ii) Penal Code.
NED	No information available		
POL	If a child opposes to return, a court probation and supervision officer suspends the enforcement and tries to remove a child later – and there is no reason to apply any coercive measure. In a case of a decision on contact rights a court is competent to apply pecuniary fines against a person (debtor) who is obliged to act in specific way or against a person who is obliged not to act in a specific way or not to interfere in other party's activities (art. 1050-1051 KPC). In the first case a court has to decide about the date the obligation should be fulfilled at. In both cases there should be a request of the creditor.	No	Return orders: no reason to apply any coercive measure. Contact rights: possible to apply a pecuniary fine; it does not matter who opposes enforcement (the child or an obliged parent).
POR	If the child opposes enforcement, coercive measures can be directed against the custodian parent, usually in the form of a pecuniary fine, as he is considered responsible to persuade the child to enforce the judgement. If the custodian parent proves not to be responsible for the child's refusal to comply with the judicial order, the assistance of a technical team of psychologists can be ordered to determine the reasons for refusal and to make proposals for the improvement of the relationship between the child and the non-caring parent, in order to enforce the decision in what visiting rights are concerned.	No	All coercive measures that the Court considers reasonable can be adopted to enforce the judgement. The most common measure is a pecuniary fine with the limit of € 249, 00 and compensation to the other parent, to the minor, or to both in case of damages (article 181º/1 O.T.M.)

		Coercive measures against the child	Coercive measures against one of the parents
SLO	If the parent where the child lives disables contact between the child and the other parent and the contacts cannot be carried out neither by the professional help from the centre for social work, the Court of justice can, on demand of the parent who has the right to personal contact, decide that the parent, who disables contacts, is deprived from the custody and upbringing and the child is trusted to the other parent, if it is of the opinion that this parent will enable contacts and if this is the only way to protect the interest of the child.		The Court of Justice can deprive a parent who disables contact between the child and the other parent from custody and upbringing (article 105(6) MFRA).
SVK	It is commonly accepted that the minor child is obliged to contact with his/her parent and such a decision must be enforceable by a court in the interest of a parent. It is also accepted that the parent is not obliged to contact his/her minor child and the court is not competent to determinate such a decision to him/her by any decision.	Yes	No
SWE	A court cannot decide on enforcement before taking into account the wishes of the child whose age and maturity are such that its wishes should be taken into account.	Enforcement will not continue against the wish of the child (of an age and maturity that its wishes should be taken into account, unless the court has already taken on this. Coercive enforcement (with police intervention) should be in the best interest of the child and is exceptional.	A fine is the only possible penalty against the obstructing parent. Application would take into account financial position of the parent. When a parent systematically obstructs a visiting arrangement, this is usually not seen as sufficient reason for coercive measures against the child (i.e. collection). An assignment for mediation could still be given under these circumstances. Physical coercion is unknown
UK	Where the child opposes contact the solicitor for the estranged parent would often involve social services (social workers) to ascertain whether it really is the child who is opposed. If the custodial parent is in breach application (as a last resort) might be made to the court for a committal based on contempt of court. If it transpires that the child is really opposed to contact, courts will be reluctant to make any order. This will depend on the child's age/understanding.	No	If the custodial parent is in breach application might be made to the court for a committal based on contempt of court.

1.12 Time limits for appeal against family law decisions and for appeal against decisions supporting their enforcement

The enforceability of a family judgement will depend on its finality. Leaving aside judgments which under the law of the court are enforceable immediately (see the following paragraph), enforcement may only be possible once the judgement has become final. The time limits for filing an appeal against a family law decision highly differ between the Member States of the European Union. The differences range from 5 days (Spain) to 3 months (The Netherlands). The majority of the Member States though have a time limit for filing an appeal against family law decisions between 14 and 30 days.

The time limits for filing an appeal against decisions supporting the enforcement of family law decisions are often the same as those which concern filing an appeal against a family law judgment. In some Member States it is not possible to file an appeal against decisions supporting the enforcement of family law decisions (Greece, Slovak Republic).

Time limits for appeal against family law decisions

		Time limits for appeal	Time limits for other appeal	Time limits for appeal at the Supreme Court
AUT	In principle decisions of courts of first instance can be appealed in second instance. The delay for appeal is 14 days after notification of the judgment.	14 days (§ 46 AußStrG.)		
BEL	The time limit for appeal against all decisions of family law is one month after the decision has been served or, exceptionally, notified. The time limit for an appeal at the Supreme Court is three months after service or notification of the final decision.	1 month (art. 1051 CCP)		3 months (art. 1073 CCP)
CYP	The time limit for appeal is 14 days for orders, whether final or interlocutory, in any matter not being an action. Other appeals have a time limit of 6 weeks. The Court has determined that for any petition filed under the 1990 Rules of the Family Court is not an action, and therefore the time limit of 14 days is applicable. The Court or Judge can at the time of the making of the order or at any time subsequently, or the Court of Appeal, can enlarge this time limit.	14 days for orders in any matter not being an action (rule 35(2) Rules of Civil Procedure)	6 weeks (rule 35(2) Rules of Civil Procedure)	
CZE	An appeal may be filed within 15 days of service of the decision of the court whose decision is contested. An appeal shall be considered as having been filed in time if it is filed after the 15 day time limit, because the appellant followed the erroneous advice given by the court regarding an appeal. If a decision does not include any advice on an appeal or if it contains an erroneous advice the appeal may be filed within 3 months of the day when the decision was delivered.	15 days (§ 204(1) CCP)	3 months (§ 204(2) CCP)	
DEN	The time limit for appeal against family law decisions is in general 4 weeks, but 8 weeks for appeal to the Supreme Court.	4 weeks (art. 372 (1.p1) AJA)	Not applicable	8 weeks (art. 372 (1.p2) AJA)
ESP	Appeal against a family decision can be made within five days after notification. Family law decisions from the Provincial Court (Court of Appeal) may be subject to further appeal before the First Division of the Supreme Court within 5 days of notification. The enforcement order can also be challenged on appeal and the time limit for this appeal is also 5 days. There is no second appeal possible in this respect.	5 days (art. 455 and 457 CCP)		5 days (art. 477, 478 CCP)

		Time limits for appeal	Time limits for other appeal	Time limits for appeal at the Supreme Court
EST	The general time limit for appeal is 30 days from the day the person concerned was notified of the judgment. The person has the right to appeal from decisions of the Court of second instance to the court of cassation in 10 days from the time of notification of the order to the person concerned. However, in family law cases the time limit for appeal is 15 days from the day of delivery of the court order to the person concerned. Should the court of appeal not satisfy the appeal, the person concerned may submit a further appeal to the court of cassation in 15 days from the day of delivery of the judgment of the court of second instance. However, if the issue of parental rights and custody is decided in connection with divorce, then the general time limits on appeal shall be applied.	General proceedings: 15 days In divorce proceeding: 30 days		General proceedings: 15 days In divorce proceedings: 10 days
FIN	One who wishes to appeal a decision of the district court shall declare the intent to appeal, at the latest, on the seventh day when the decision of the District Court was handed down or made available to the parties. The deadline date for the lodging of the appeal shall be thirty days from the day when the decision of the District Court was handed down or made available to the parties. From the Court of Appeal one may apply to the Supreme Court; the deadline for leaving a leave to appeal and lodging the appeal shall be 60 days from the date on which the decision of the Court of Appeal was made available to the parties.	Intent: 7 days (section 5 Code of Judicial Procedure) Lodging of appeal: 30 days (Chapter 25 Code of Judicial Procedure)		60 days (Chapter 30 Code of Judicial Procedure)
FRA	In general, the time limit for appeal is one month for contentious procedures and 15 days for non-contentious procedures after notification of the judgment. In case of delegation of parental responsibility, the time limit for appeal is 15 days. All decisions rendered in last resort can be appealed in the court of cassation within 2 months after their notification.	Contentious procedure: 1 month Non-contentious procedure: 15 days (art. 538 CCP) Delegation of parental responsibility: 15 days (art.1191 CCP)		2 months (art. 612 NCPC)
GER	The time limit for appeal against family law decisions is one month. There is a possibility for a second appeal, but only on grounds of wrong application of the law. The time limit for such an appeal is one month.	1 month (§ 1632(1) CC and § 621e(3) in conjunction with § 517 CPC)	1 month (§ 621e(3) in conjunction with § 548 CPC)	
GRE	The time limit for appeal of family law judgments to the Court of Appeal or the Court of Cassation is 30 days after notification of the judgment. If the judgment has not been notified the time limit for appeal is three years from the moment the judgment has been pronounced.	Judgement is notified: 30 days Judgment is not notified: 3 years. (art. 518 and 564 CCP)		Judgement is notified: 30 days Judgment is not notified: 3 years (art. 518 and 564 CCP)

		Time limits for appeal	Time limits for other appeal	Time limits for appeal at the Supreme Court
HON	The time limit for appeal is 15 days from the disclosure of the judgment.	15 days (§ 234(1) CCP)		
IRL	An appeal of family law decisions must be brought from the District Court to the Circuit Court within 14 days of the District Court decision. An appeal of family law decision from the Circuit Court to the High Court must be brought within 10 days of the Circuit Court decision. An appeal of family law decisions from the High Court to the Supreme Court must be brought within 21 days from the passing of the judgment of the High Court.	14 days (Order 101 Rule 1 of the District Court Rules)	High Court 10 days (Order 61 Rule 2 of the Rules of the Circuit Court)	21 days (Order 58 Rule 3(1) of the Rules of the Superior Court)
ITA	In general the time limits are thirty days to file an appeal against the sentence of the tribunal and the justice of Peace and 60 days to file a request for a reversal from the day of notification of the judgment. In cases in which the sentence has not been notified, the time limit is one year running from the publication of the decision. If a party seeks modification of the judgment, the only method open to a party is filing the complaint within 10 days of notification of the judgment.	30 days (art. 325 CCP) No notification: 1 year Modification: 10 days		60 days (art. 325 CCP)
LAT	Judgments of courts of first instance may be appealed within 20 days from the date the judgment has been pronounced. The judgments of the court of appeal may be challenged in cassation; the time limit is 30 days from the date the judgment has been pronounced.	20 days		30 days
LTU	The time limit for appeal against a judgment must be brought within 30 days of the judgment of the court of first instance was passed. An appeal in cassation must be brought within 3 months.	30 days (art. 307 CCP)		3 months (art. 345 CCP)
LUX	Opposition in case of a defect of the Juvenile Court has to be brought within 15 days from the day of notification of the judgment. The general time limit for appeal against judgments is 40 days from the day of notification. In case of issues on custody and on full or partial rescue of parental responsibility the time limit for appeal is also 40 days from the day of notification. In case of issues on child protection the time limit for appeal is one month. An appeal in cassation must be brought within 2 month after notification.	General: 40 days (art. 571 CCP) Custody: 40 days (art. 1049 in conjunction with art. 1066 and 1075 CCP) Child protection: 1 month (art. 10(2) of the R.Gr.D. of 31 July 1979)	Opposition in case of a defect of the Juvenile Court: 15 days (art. 9(2) of the R.Gr.D. of 31 July 1979)	2 months (art. 7 of the law of 6 April 2004)

		Time limits for appeal	Time limits for other appeal	Time limits for appeal at the Supreme Court
MLT	Appeal against any judgment is entered by means of application filed in the registry of the Court of Appeal within 20 days from the date of the judgment. In case of separate judgments in an action, appeal from any such judgment may only be entered after the final judgment. However, it is possible to enter an appeal from such separate judgment before the final judgment, although this is only possible by leave of the court to be read out in open court. Such a request for leave to appeal shall be made either orally immediately after the delivery of such judgment, or by application within 6 days from such judgment. When a leave to appeal from such separate judgment is granted the time for the filing of the appeal in respect thereof shall commence to run from the day on which the said leave is read out in open court.	20 days (art. 226 Code of Organisation and Civil Procedure)	Leave of court to appeal for separate judgments: 6 days (art. 231(1) Code of Organisation and Civil Procedure)	
NED	The time limit for appeal of judgments of cases commenced by writ is three months from the date of the judgement. An appeal in cassation in cases commenced by writ must be lodged within three months from the date of the judgment in appeal. The time limit for appeal of judgments of cases commenced by petition is three months from the date of the judgment or from the moment of notification. An appeal in cassation in these cases must be lodged within three month from the date of the judgment in appeal. In summary proceeding the period of appeal is 4 weeks, this period is in appeal in cassation eight weeks. In case of absence of the defendant there is the possibility to oppose the judgement; the defendant has a time limit of four weeks from the moment of notification to oppose.	Cases commenced by writ: 3 months (art. 339(1) CCP) Cases commenced by petition: 3 months (art. 358(2) CCP)	Summary proceedings: 4 weeks (art. 339 (2) CCP) Opposition in case of absence defendant: 4 weeks (art. 143(2) CCP)	Cases commenced by writ: 3 months (art. 402 CCP) Cases commenced by petition: 3 months (art. 462(2) CCP) Summary proceedings: 8 weeks (art. 402(2) CCP)
POL	The general procedure is appeal against judgments within two weeks after the decision with a motive was delivered. If the party hasn't requested for a motive of a decision in a time of two weeks from the moment the judgment was announced, from the day, when the time for this request has passed by. A party can also make a complaint. The time limit for a complaint is one week from the moment a decision of the court was delivered to the party. If the party hasn't requested deliverance of the decision, from the moment a decision was announced.	2 weeks	Complaint: 1 week	

		Time limits for appeal	Time limits for other appeal	Time limits for appeal at the Supreme Court
POR	The time limit for an appeal against family law judgments is 10 days after the notification of the judgement.	10 days (Article 685 ^o /1 C.P.C. and article 161 ^o O.T.M.)		Family law proceedings are considered probation jurisdiction, based on equity, and therefore it is not possible to appeal to the Supreme Court (articles 150 ^o O.T.M., 1410 ^o and 1411 ^o /2 C.P.C.)
SLO	The time limit for filing a complaint regarding the regulation of custody, the up-bringing and personal contacts is 15 days.	Complaint: 15 days		
SVK	The time limit for appeal is 15 days from delivering of the judgment of the decision to the party. An appeal shall be considered as having been filed in time if it is filed after the 15 day time limit, because the appellant followed the erroneous advice given by the court regarding an appeal. If a decision does not include any advice on an appeal or if it contains an erroneous advice the appeal may be filed within 3 months of the day when the decision was delivered.	15 days (§ 204(1) CCP)	3 months (§ 204(2) CCP)	
SWE		3 weeks	3 weeks	3 weeks
UK	The normal time limit for an appeal under the Children Act 1989 is within 14 days after the determination against which the appeal is brought, or (b) in the case of an appeal against an order under section 38(1), within 7 days after the making of the order, or (c) with the leave of the court to which, or judge to whom, the appeal is to be brought, within such other time as that court or judge may direct.	14 days (Family Proceedings Rules 1991 clause 4.22	14 days	[Rules of the Supreme Court 52.4 Appellant's notice] [(1) Where the appellant seeks permission from the appeal court it must be requested in the appellant's notice. (2) The appellant must file the appellant's notice at the appeal court within— (a) such period as may be directed by the lower court [(which may be longer or shorter than the period referred to in sub-paragraph (b))]; or (b) where the court makes no such direction, [21] days after the date of the decision of the lower court that the appellant wishes to appeal.

1.13 The effect of appeal on enforceability

One can notice a clear division between the Member States in this respect.

On the one hand are the Member States in which judgments are normally enforceable notwithstanding appeal. These Member States are Austria, Cyprus, Spain, Estonia, Finland, Germany, Greece, Italy, Malta, Poland and Slovenia. In most of these Member States there are exceptions to this enforceability of judgements during appeal, e.g. the judge can suspend the enforcement on demand.

On the other hand are the Member States in which judgments are not enforceable during appeal. These Member States are Belgium, Czech Republic, France, Latvia, Lithuania, Luxembourg, The Netherlands and Slovak Republic. Also, in most of these Member States there are exceptions possible to the non-enforceability of judgments during appeal, e.g. provisions on the preliminary enforceability of judgments.

The effect of appeal on enforceability

	Normally enforceable	Not enforceable	Exception	Other
AUT	X (§ 43 AußStrG.)		When the interests of the child are in danger (§ 110 (3) AußStrG).	
BEL		X (art. 1388 and 1495 CCP)	A decision can be immediately enforceable <i>ex lege</i> or on the ground of a Court order (art. 1388 and 1495 CCP). Court decisions on the enforcement of family law decisions are immediately enforceable <i>ex lege</i> (art. 387ter CC).	Enforcement is not suspended pending an appeal at the Supreme Court, though the creditor will bear the risk of enforcement.
CYP	X		The appellant may ask the court of appeal to issue an order of stay.	
CZE		X (§160 CCP)	The enforcement of judgments is suspended. There are exceptions, for instance for judgments accompanied by the verdict of interlocutory enforceability. Enforcement of rulings is not suspended, only in special cases (see § 171(3), 151(4) CCP).	It is also possible that the power to decide on suspension of the enforceability is devolved to the court.
DEN		X (art. 480(2) AJA)	In case of appeal within 14 days it may be decided by the judge that enforcement should be allowed with no regards to the appeal (art. 480(2) AJA).	
ESP	X (art. 774(5) CCP)		Unless the appeal is directed against the order in the appealed decision. Only the appealed order shall be subject to a stay of execution.	The appeal against the enforcement order will not stay the enforcement of the order either (art. 561 CCP).
EST	X		The court of appeal may suspend the enforcement procedure (art. 472 CCP). The general rule is that in order to grant the application for suspending or stopping the enforcement procedure the person making such application must provide a sufficient security.	
FIN	X (§ 43 of the Child Custody and the Right of Access Act)		The court of first instance may decide in its decision, that it shall not be enforced in case of appeal. The court of appeal can also decide that the enforcement shall be interrupted (Enforcement Act Chapter 2 section 13).	
FRA		X (art. 539 CCP)	The judge can decide on preliminary enforcement (l'exécution provisoire) of the judgment. Some decisions are by law preliminarily enforceable (art. 514 CCP). For example, decisions on the exercise of parental responsibility are preliminarily enforceable (art. 1074-1 CCP).	The time limit of appeal in cassation stays the execution of the divorce order as well as the actual appeal in cassation (art. 1086 CCP). However, this suspending effect does not apply to the exercise of parental responsibility (art. 1087 CCP).

	Normally enforceable	Not enforceable	Exception	Other
GER	X (§ 24(1) FGG)		The court of appeal may suspend the enforcement procedure (§ 24(3) FGG).	Appeal against the settlement of coercive measures stays the enforcement (§ 24(1 S.1) FGG). This does not apply however to the appeal against the use of coercive measures (§ 24(1 S.2) FGG).
GRE	X (art. 950(2) CCP)			
HON		X (§ 236 Civil Procedure Code)	The main rule is that the appeal has delaying force on the enforceability. Exception is the injunction (upon application or ex officio) which is to be preliminarily enforced (156 § and § 287 a.), c.) CPC)	Some remedies during the enforcement proceeding itself do not have delaying force.
IRL	x		The party appealing the decision must request the court making the decision to stay the effect of the decision pending the hearing of the appeal. The party appealing may also request the court that will hear the appeal to stay the effect of the decision of the lower court.	
ITA	X (art. 282, 337 and 474 CCP)		Upon request of one of the parties, the judge may suspend the effective enforcement of the appealed decision when there are serious and well-founded reasons (art. 282 CCP).	
LAT		x	Upon request of one of the parties, the judge may declare the whole judgment or a specific part of it as immediately enforceable (art. 205 CCP). The law exhaustively lists which judgments or decisions may be declared immediately enforceable.	The submission of an appeal in cassation does not suspend the enforcement of a decision of the Court of Appeal.
LTU		x	It is to the discretion of the court to grant urgent enforcement (art. 283 CCP).	Lodging appeal in cassation does not suspend enforcement, but on application the Court of Cassation may grant a stay if reasonable and well-grounded.
LUX		x	The judge may decide on preliminary enforcement of the judgement, either upon request when it is justified by urgency or immediate danger, or <i>ex officio</i> .	
MLT	X (art. 265 Code of Organisation and Civil Procedure)		In family law judgments, an award rectifying the appealed judgment may be made at the appeal stage.	

	Normally enforceable	Not enforceable	Exception	Other
NED		X (art. 350(1) CCP for appeal and art. 404 CCP for cassation)	The judge can allow preliminary enforcement of its judgment (art.233-235 CCP in conjunction with art. 350(1) CCP). The court of appeal may also allow preliminary enforcement (art. 630(2) CCP) or suspend preliminary enforcement (art. 351 CCP).	
POL	x		The Court dealing with the case is competent to suspend the enforcement proceeding.	
POR	x		Decisions in matters of parental responsibility, custody, visits and maintenance are always enforceable – article 185º and 188º/4 O.T.M. There are no exceptions.	
SLO	x		"Unless there is another legal regulation."	
SVK		X (§ 159 CCP)	There is a possibility for preliminary enforceability; the law strictly enumerates in which cases judgments can be enforced preliminarily (§ 162(2) CCP). Upon request, the court may also decide on preliminary enforceability in any judgment on the merits, but only if the respective party would otherwise be at risk from a detriment which would be reparable only with difficulty or considerable effort.	It is also possible that the power to decide on suspension of the enforceability is devolved to the court.
SWE	Court may allow immediate enforcement	Court may provide that enforcement is only possible once the decision is final	The appeal Court may allow a stay of enforcement of the judgement that is appealed	
UK	General rule is that unless the court orders otherwise an appeal does not operate as a stay Civil procedure Rules 52.7		Children Act 1989 s11(7) provides that any appeals against orders for residence or contact operates as a halt	

1.14 Other time limits which may have an effect on enforceability

The subject of other time limits which may have an effect on enforceability shows a variety of time limits within the Member States.

In some Member States there is a fixed time limit for actions to be enforced. This time limit differs from 5 years (Malta, Spain) to 30 years (Estonia).

Also in a number of Member States there is a time limit to be respected between the moment the judgment has been rendered and the moment this judgment can be enforced. In the intervening period parties get the chance to voluntarily perform the action(s) set in the judgment (Czech Republic, Spain, Greece, and Slovak Republic).

Other time limits which may have an effect on enforceability

AUT	None	
BEL	The general time limit of 10 years applies to the action <i>judicata</i> or action to enforce Court decisions (art. 387ter CC).	A limitation of 6 months applies to the enforcement of a penalty sum (art. 1385octies CCP)
CYP	Under art. 93 (6) CCP an interlocutory order remains in effect for as long as it is necessary for its service on the affected and to give him an opportunity to appear and to be heard. An interlocutory order which is to remain in effect for a longer time is therefore void.	
CZE	The court decision in general shall become enforceable as soon as the time limit fixed for the respective fulfilment (performance) has lapsed. If the judgment does not stipulate any duty which has to be performed (fulfilled), it shall become enforceable as soon as it becomes final (§ 161 CCP). A judgment which has been duly served and which can no longer be appealed against becomes final (§ 159 CCP).	
DEN	Decisions on visitation rights always include a certain date, a certain hour and an explicit decision on transportation. Decisions are not enforceable before this moment.	A court decision on custody is enforceable after 14 days, unless the decision is appealed before that time (art. 480(1) AJA).
ESP	Article 548 CCP sets a period of 20 days for voluntary enforcement of judicial decisions (waiting period). Only after the judicial decision is final (no appeal has been made or the appeal has been rejected) and 20 days have passed for voluntary enforcement, can the claimant file an enforcement petition.	A limitation period (caducity) of five years is applicable to the enforcement of a judicial decision (art. 518 CCP). This period is to be calculated from the date of finality of the judgment and should be applied <i>ex officio</i> by the Court.

EST	There are time-bars in substantive law regarding the expiry terms of claims to be submitted to the court, which in family related matters is 30 years (section 155 General Part Civil Code Act). This term is suspended from the moment the claim is submitted to the court.	If a court order or a judgment has been issued and the court order or judgment has entered into force then the claim arising there from only expires in 30 years since the making of the order or judgment (section 157 General Part Civil Code Act). This term is suspended from the moment enforcement proceedings based on the respective court order or judgment have been initiated.
FIN	One may appeal for nullification in case of injunctions of appeal are at stake as stated in section 30§ Act on the Enforcement of a Decision on Child Custody and Right of Access. There is no time limit for such an appeal for nullification	
FRA	None	
GER	The general condition for enforcement of coercive measures according to § 33 FGG is that the party involved has become acquainted with the decision to be enforced (§ 16(1) FGG), while the setting in of legal force is not necessary (§ 24(1) FGG)	
GRE	The measures of indirect enforcement can only be realised after the passage of 3 days without effect from the moment of pronouncement of a copy of the counterpart original with the order of enforcement to the person at whom the execution is aimed (art. 926 CCP in conjunction with art. 924 CCP).	
HON	The deadline for the voluntary performance has to be over.	
IRL	In case of family law judgments breach of which amounts to a criminal offence a delay for a period of 6 months affects the prosecution of the offence (Section 5 of the Courts (No. 2) Act 1986, Section 16 of the Non Fatal Offences Against the Person Act 1997, Section 17 of the Non Fatal Offences Against the Person Act 1997).	
ITA	Opposition against enforcement must be cleared within 5 days from the moment in which the act has been carried out (art. 617 CCP).	The Civil Code states that a rights which is not exercised is debarred after 10 years, except for cases set out with a shorter limitation period when strictly stated (art. 2947 CC). Such limitation periods are suspended in the course of a possible hearing and begin to run again from the final judgment of the decision and during the executive proceedings.

LAT	Documents for enforcement may be submitted for enforcement within 10 years of the day when the court decision or judgment comes into effect, unless the law determines other limitation periods (art. 546 CCP).	A person requesting enforcement and a person against whom enforcement is sought may appeal the measures or actions of a bailiff taken during enforcement or the bailiff's refusal to perform certain actions to the district (city) court according to the official appointment location of the bailiff within 10 days from the day when the actions appealed from are taken or the day when a complainant, who has not been notified of the time and place of actions to be taken, becomes informed of such actions (art. 632 CCP).
LTU	Execution writs based on court judgments may be submitted for execution within 10 years from the date of standing up of the court judgment (art. 606 CPC).	All mentioned time limits are renewable by court decision if the claimant proves that he/she passed it because of serious reasons.
LUX	In matters of custody, child protection and parental responsibility there is no time limit for prescription of judicial decisions. The only time limit consists of the acquisition of majority of the minor.	
MLT	In family law, judgments, other than those where a demand is made for maintenance (art. 255 Laws of Malta, Chapter 12, which are enforceable after 24 from the delivery), may be enforced after 2 days from the day of its delivery (art. 256 (1) Laws of Malta, Chapter 12).	Where a period of 5 years has expired since the day on which according to law any executive title could have been enforced, the enforcement may only be proceeded with upon demand to be made by an application filed before the competent court (art. 258 Laws of Malta, Chapter 12).
NED	No clear limit but passing of time (and change of circumstances) may be a ground to stay or suspend enforcement.	
POL	None	
POR	The judicial decision is enforceable after a period of 10 days, which is the period for the decision to transit in rem judicatam. Only after this period can the claimant file an enforcement petition (article 677º C.P.C. ex vi article 161º O.T.M.)	
SLO	None	
SVK	If the court issued the preliminary measure to grant the custody of the minor child to a natural body or the social services facility (§ 75a CCP), it shall ensure that this decision was executed without undue delay.	A period for voluntary performance may be set by the judgment of the court. If it is not set, the period is 3 days in accordance with the law and it passes since lawfulness of the judgment (§160 CCP)
SWE	None	
UK	None unless an interim order for a defined period	

1.15 The effect of change of circumstances on enforceability

In most Member States a change of circumstances has an effect on the enforceability.

The effect of change of circumstances is not the same in all Member States however, but for the most an amendment or revision of the original judgment (on petition) is possible.

The effect of change of circumstances on enforceability

	The effect of change of circumstances on enforceability	Consequence
AUT	On the basis of § 73(1) AußStrG. a petition of commutation can be made after the decision is final. However such a commutation procedure will not take place if it concerns a procedure on parental care or on the right of contact (§ 107(1 Z. 3) AußStrG). By virtue of § 110(3) AußStrG. not every petition of commutation leads automatically to a suspension of the enforcement, mostly in such a case a danger for the interests of the child has to be proved.	New procedure possible (§ 73(1) AußStrG.), except if it concerns a procedure on parental care or on the right of contact (§ 107(1 Z. 3) AußStrG.).
BEL	No information available	
CYP	Any court order on family law can be modified if there is a change of circumstances, and such modification is accomplished by petition to the Family Court by the party requesting the change. What constitutes a change of circumstances is within the court's discretion, considering all the facts of the case.	Modification of court orders on petition.
CZE	Judgments on custody and maintenance of minor children and restriction of parental responsibility may be amended, even in the absence of a motion to this effect, if the respective situation has changed. The court decides on amendment of the initial judgment in a new judgment. The court exercising an execution of decisions of approved agreements on the upbringing of minor children and arrangements for contacts with them and execution on the return of the child is allowed to take account of the change of the respective situation.	Amendment of the judgment (§162(2) CCP).
DEN	If sole parental authority has been vested in the father or the mother by agreement or a court ruling, then a transfer of parental authority to the other parent in the case of disagreement is only possible when conditions have changed substantially and this is deemed to be best for the child.	Transfer of parental authority.
ESP	Judicial orders on custody and visiting rights should never be considered <i>res judicata</i> and therefore should always be subject to change and adaptation according to the circumstances. The change of circumstances may result in a new petition or claim before the Court of First Instance seeking the modification of the definitive measure taken by the Court in the family law decision. This is a new declarative procedure and not part of the enforcement procedure.	Petition for modification possible (art. 775 CCP).

	The effect of change of circumstances on enforceability	Consequence
EST	With the passage of time the circumstances that were relevant for deciding the case may change from the time of delivering the judgment, undermining the initial reasoning of the court. Therefore, in cases where the judgment of the court is not expressly limited to a certain age of the child already, both parents may turn to the court again to change the regulation of access rights and/or place of residence of the child due to new circumstances. The bailiff can suspend the enforcement proceedings in certain cases, such as a change of circumstances. The enforcement proceedings shall be ended, if a judicial decision is made on the annulment of the court order or judgment that was the basis for initiating the enforcement proceedings.	The bailiff may suspend the enforcement proceedings. On petition amendment of the judgment.
FIN	The court must reject the petition for enforcement, if the enforcement would be because of the change of circumstances or for other reasons clearly against the best interests of the child. Further, whenever the circumstances of a child have changed in the case to the extent that it may have relevance in the enforcement, the bailiff must transfer the case to the court.	The bailiff must transfer the case to the court.
FRA	A change of circumstances may have an effect on the enforcement of a judicial decision which has become maladjusted having regard to the interests of the child.	New procedure possible
GER	In principle the substantive accuracy of the decision to be enforced is not to be proved in enforcement proceedings. However, the court must change the original decision and cancel the already employed and provided coercive measures of § 18(1 1.Hs.) FGG, if the underlying decision, in connection with the execution of a judicial order, is to be considered as unjust as regards content on the basis of valid reasons which permanently influence the interests of the child (§ 1669 (1) CC). Such a change should especially be considered if the determinant circumstances have changed or if new views have come forward, which make clear that the enforcement of the original decision is contrary to the interests of the child.	Amendment of the judgment (§ 1669 (1) CC)
GRE	If the circumstances have changed after a judicial decision has been rendered, the court, on demand of one or both parents or of the persons closest to the child or the representative, has to adapt its decision, by revoking or reforming it, to the new circumstances in conformity with the interests of the child.	On petition the court must adapt its judgment.
HON	If the circumstances change in connection with the placement of the child, the Enforcement Act contains rules how these changes affect the enforceability of the judgment. The claimer can turn to the court of first instance which has ordered the enforcement to suspend the enforcement proceeding. The court suspends it provided that it does not infringe anybody's rights. The obligor can also request the suspension of the enforcement proceeding but this is an exceptional measure. The conditions are that the obligor has justified the fact to be appreciated and no fine has been levied on him/her during the enforcement proceeding. The court may hear the parties before deciding on the suspension.	Suspension of the enforcement provided that it does not infringe anybody's rights.
IRL	Once a judgment is made it is good for all time unless appealed, varied or discharged by the court. A change in circumstances would be necessary to vary or discharge an order for custody (residence). Access and contact may be more easily varied where there is a change in circumstances. Variation and discharge of custody (residence), access and contact is governed by section 12 of the Guardianship of Infants Act 1964.	Variation and discharge of custody, access and contact (Section 12 Guardianship of Infants Act 1964).

	The effect of change of circumstances on enforceability	Consequence
ITA	Article 9 of the Law of 1 December 1970 provides that if justified reasons appear successively for the judgment pronouncing the dissolution of the marriage or requiring all the effects of the marriage in civil law to cease, the Tribunal can, at the request of a party, revise provisions concerning the custody of the child.	On petition the court revises its judgment on custody (art. 9 Law 1 December 1970).
LAT	The bailiff as well as the parties to the proceedings may turn to the court, which gave the decision, in order to request postponement, modifications in the method, procedure or time of the enforcement considering the circumstances of the case. It must be noted that currently the parties due to change of circumstances may not bring the same proceeding on the same matter before a court and thus acquire determination of different enforcement measures. However, as far as custody matters and access rights are concerned the law is amended and in these matters parties are entitled to litigate repeatedly on the same subject matter and the same basis due to change of circumstances (this only considers decisions rendered after 11 October 2006).	Postponement, modifications in the method, procedure or time of the enforcement (art. 206, 438 and 554 CCP). New procedure possible in custody matters and case of access rights.
LTU	Change of circumstances may have two different types of effect on enforceability. It may firstly furnish ground to apply to court for staying or scheduling enforcement of the judgment, or changing the enforcement procedure of the judgment (art. 284 CCP). Secondly, change of essential circumstances may form the ground to launch the new claim in a new proceeding for adoption of the reverse court judgment or adoption of the judgment that would amend the previous court judgment.	Application for staying or scheduling the enforcement or changing the enforcement procedure (art. 284 CCP). New proceeding to reverse or amend the judgment.
LUX	No information available	
MLT	No information available	
NED	No clear limit but passing of time (and change of circumstances) may be a ground to stay or suspend enforcement.	
POL	Court probation and supervision officers are obliged to request for a change of court decision in well-founded circumstances (art. 11 Court probation and supervision officers Act of 27 July 2001). A guardianship court can change its decision, also a final one, if it is required according to the interest of a person participating in the proceeding (art. 577 KPC). In such a case a court is obliged to change or repeal its previous decision.	The guardianship court may change its decision (art. 577 KPC).
POR	Judicial decisions on parental rights, custody, visiting rights and maintenance are considered probate jurisdiction (article 150 ^o O.T.M.). Therefore, those decisions can be modified whenever a change of circumstances occurs (article 182 ^o /1 O.T.M.) provided that one of the parents or the Public Prosecutor files a petition for a new procedure.	New procedure possible in order to modify the previous decision according to the new circumstances.
SLO	If the circumstances changed after the legal effectiveness, but before the execution of the ruling, this is a new procedure at the court of justice.	New procedure possible.
SVK	Judgments on custody and maintenance of minor children and on the interventions towards the execution of parental rights and duties may be amended, even in the absence of a motion to this effect, if the respective situation has changed.	Amendment of the judgment possible (§162(2) CCP).
SWE	In enforcement proceedings the court will take into account changes that have taken place since the judgement that is to be enforced was taken. In principle the judgment to be enforced is not reviewed, but the enforcement should always serve the best interests of the child. Change of circumstances may mean enforcement is no longer in the child's best interest.	
UK	There would have to be an appeal or an application to vary	

1.16 The effect of passing of time on enforceability

There is a great diversity between the Member States as to the effect of passing of time on enforceability.

In some Member States family law decisions or the law set a specific time frame for enforcement (Cyprus, Estonia, and Hungary).

In other Member States enforcement of family law decisions should take place as soon as possible, while the lapse of time may hinder the enforcement (Finland, France, and Germany).

The effect of passing of time on enforceability

AUT	After the time limit for enforcement has expired, a decision can be challenged if its commutation or abolition has no disadvantage (substantively as well as procedurally) for the other party (§ 46(3) AußStrG).
BEL	The general time limit for actions to enforce court decision is ten years. In case coercive measures are used to enforce a family law decision, these must be allowed in a separate court decision and the court deciding on these issues will take into account the effect of the passing of time of change of circumstances when granting coercive measures.
CYP	Art. 40 (8) of the Civil Procedure Rules provides that where 6 years have elapsed since the date of the order, or where any change has taken place by death or otherwise in the parties entitled or liable to execution, any other interested person may apply to the Court or to a Judge for leave to issue execution accordingly. In practice, the passage of time has no effect on the enforceability of a family law order, although a court may change its decision considering present facts. Family orders are continuing, unless (a) the order itself is modified or, (b) if the order itself specifically sets a time frame.
CZE	Both before and after commencement of proceedings regarding custody of a minor child, the presiding judge may issue an interlocutory injunction, if this is necessary to regulate the parties' relationship in the interim, or if there is concern that the execution of a court decision might be in jeopardy (§ 74 CCP).
DEN	Lapse of time may in practice make the enforcement of a family law decision difficult, as the party who estimates that the decision no longer corresponds with the best interests of the child, may start proceedings for a modification of the decision.
ESP	A limitation period (caducity) of five years is applicable to the enforcement of a judicial decision (art. 518 CCP). This period is to be calculated from the date of finality of the judgment and should be applied ex officio by the Court.
EST	If a court order or a decision has been issued and the court order or decision has entered into force, then the claim arising there from only expires in 30 years since making of the order or judgment (section 156 General Part of the Civil Code Act). The judgments of the courts regarding the place of residence of the child and/or access rights, however, are sometimes limited in their content to a certain age of the child and after the passing of such age the issue shall be reviewed again by the court to establish whether and to what extent the circumstances relevant for deciding on access rights and custody have changed.
FIN	The passing of time makes it important to secure the best interest of the child. Therefore the authorities must check whether nothing surprising in the circumstances has occurred during the enforcement process. However, the enforcement process has to be carried out in an urgent manner, because the lapsing of time will always strengthen present living conditions and circumstances of the child.
FRA	Lapse of time may hinder the enforcement of a judicial decision. The party who estimates that the decision does no longer correspond with the best interests of the child can ask the Family Court for modification of the decision.

GER	There is no such thing as a limitation of time for the enforcement of the judicial decision. However, the decision has to be enforced rather quickly, because otherwise the danger exists that the circumstances relevant for the decision have changed, which may hinder the execution of the original decision.
GRE	The enforcement procedure is not limited by any term.
HON	In the case of contact order the effect of time is regulated in the Order of Guardianship (Order No. 149/1997). A claim for enforcement of a contact order has to be submitted within 30 days either from expiration of the deadline for the contact, respectively the replacement of contact or from the time when the parent is aware the other parent repeatedly does not or not properly comply with the contact order through his/her own fault and thus does not provide the undisturbed contact (§ 33(1) Order No. 149/1997). If the claim for enforcement is withdrawn, a new enforcement proceeding cannot be initiated for the same contact. Note: According to § 57(1) Enforcement Act the right to enforcement becomes forfeited together with the claim that is to be enforced. The main rule is that the lapse of the right to enforcement has to be taken into account (§ 57(2) Enforcement Act). The enforcement can not be ordered and the enforcement procedure which has begun can not be continued for requests submitted once the limitation period has expired. According to § 57(4) the lapse of the right to enforcement is interrupted by any enforcement action.
IRL	In general the passing of time has no effect on the enforceability of a family law judgment. Once a judgement is made it is good for all time unless appealed, varied or discharged by the court.
ITA	The Civil Code states that a rights which is not exercised is debarred after 10 years, except for cases set out with a shorter limitation period when strictly stated (art. 2947 CC). This rule applies as well with reference to the inherent right to propose the enforcement of a direction of the judge.
LAT	The Civil Procedure Law does not provide for special measures as to how the passage of time affects enforcement of family law judgments. The only effect of passing of time is that documents for enforcement may be submitted for enforcement within 10 years of the day when the court decision or judgment comes into effect, unless the law determines other limitation periods (art. 546 CCP).
LTU	No information available
LUX	In matters of custody, child protection and parental responsibility there is no time limit for prescription of judicial decisions. The only time limit consists of the acquisition of majority of the minor.
MLT	Where a period of 5 years has expired since the day on which according to law any executive title mentioned could have been enforced - and this includes all judgments and decrees of the courts of justice of Malta - the enforcement may only be proceeded with upon a demand to be made by an application filed before the competent court. The applicant shall also confirm on oath the nature of the debt or claim sought to be enforced, and that the debt or part thereof is still due (art. 258 Laws of Malta, Chapter 12).
NED	Passing of time may have an effect on the enforceability of family law decisions
POL	The passing time does not have any influence on enforcement in family cases, although a court is competent to change its decision anytime (art. 577 KPC).
POR	The enforcement procedure in family law judgments is not limited by any term except the minor's passage into legal age.
SLO	No position taken
SVK	No position taken
SWE	No clear rule identified. The involvement and the powers of the court in the enforcement procedure appear to indicate that the court may take the passing of time into account when selecting enforcement measures. The importance granted to the opinion of the child would also play a role with respect to the consequences of the passing of time.
UK	No position taken

1.17 Other conditions which may constitute an obstacle to enforcement

The national reports contain few remarks on any other conditions that may constitute a (further) obstacle to enforcement. It would appear that where such obstacles are perceived, sometimes the existence of the obstacle is seen due to practical circumstances, which give rise to legal discussion. Clear practical examples would be sickness of the child at the moment of enforcement, which would make enforcement not possible for a certain period. Other issues that are quoted as obstacles to enforcement also relate to the child and find their origin in law. In some states children of a more advanced age have the right to act as a party in court and may thus raise objections to an enforcement that concerns them. Finally the fact that the party who wishes enforcement will have to commence enforcement proceedings is seen as a possible practical difficulty in one member state. In order to circumvent this, the enforcing party would ordinarily begin by announcing that enforcement will be initiated.

Other conditions which may constitute an obstacle to the enforcement.

AUT		In proceedings on care and upbringing and on personal contact, major children have the right to act independently before the court (§ 104 AußStrG.).
BEL	None mentioned	
CYP	None mentioned	
CZE	None mentioned	
DEN		According to art. 536 AJA enforcement cannot be levied if it would expose the child to serious physical or psychological harm. There is no legal connection between child support and obstruction of custody/visitation.
ESP		The intervention of the Public Attorney in enforcement proceedings is required when the issue in question directly concerns a minor (public interest). As provided in art. 539 CCP, both parties shall be defended and represented in enforcement proceedings by a "procurador". Art. 23 CCP determines that the party has to be represented before the Court by a procurador in all cases. Enforcement can only be possible where the judicial decision to be enforced contains an order (to give, to do or not to do a particular act) to be complied with by the parties (art. 559.1.3 CCP).
EST		A child of at least 14 years old that presents sufficient abilities of judgment may appeal independently a court order in a case that concerns him/her (section 553 CCP).
FIN	None mentioned	
FRA		Sickness of the child may form an obstacle to enforcement. In principle, non-payment of alimony does not justify the non-enforcement of the decision on contact rights.
GER	None mentioned	
GRE	None mentioned	
HON	None mentioned	

IRL		The major practical obstacle is the taking of proceedings by the aggrieved party. If the aggrieved party wishes to enforce the family law judgment, the primary responsibility lies with the aggrieved party to remedy the situation by commencing enforcement proceedings. The common method to enforce the judgment is not to immediately commence enforcement proceedings but to write the defaulting party stating that he or she is in breach of the judgment and requesting the defaulting party to comply with the judgment or order.
ITA	None mentioned	
LAT	None mentioned	
LTU	None mentioned	
LUX		None
MLT	None mentioned	
NED	None mentioned	
POL	None mentioned	
POR		In practice, sickness of the child may be an obstacle to the enforcement of the decision in what visiting rights are concerned.
SLO	None mentioned	
SVK		The child has the right to ask the authority of socio-legal protection of children for help, even without consent (notice) of the parents or other persons responsible for the child's care (up-bringing) (§ 8/2 of the Act on the Socio-legal Protection of the Children and the Social Tutorship).
SWE	None mentioned	
UK	None mentioned	

1.18 Summary remarks

The legal systems of the member states demonstrate a wide variety in approaches towards the effectuation of family law decisions.

This variety appears with respect to, at least, the following issues:

- 5 the *ratione materiae* of the family law decision (whether it concerns custody, return, contact rights)
- 6 the nature of the rights that are to be enforced: whether these rights are considered as a protective measure (taken in the general interest of the child) or as an obligation or an entitlement of a parent towards the child
- 7 the person who is the object of the coercive measures that can be taken, whether these are directed towards the child or towards adults in the child's environment
- 8 the nature of the coercive measures available, which may further differ depending whether they are directed towards the person ('taking' of the child or coercion of the adult implicated) or of a financial nature (fines or civil damages incurred by an adult)
- 9 the person or authority who is responsible for initiating enforcement (whether this is a party to the court proceedings that led to the decision or a judicial or government entity)
- 10 whether enforcement is possible on the basis of the court decision setting out the family law rights or whether a separate decision is necessary
- 11 whether the choice of enforcement measures is made by a court or by the enforcing party
- 12 the authorities who have a role in the actual enforcement, which may be specialized in dealing with children or may be generalists, who are involved in the enforcement of all types of judgements
- 13 the weight given to the opinion of the child in the enforcement process

The answers given to these issues differ between the member states. Although it is possible to categorize the solutions in several groups for each individual issue set out above, it is much harder to categorize the solutions to each individual issue into a greater whole.

A few main trends can be seen. Perhaps the most fundamental issue is whether the enforcement of family law decisions can take place on the basis of the general principles for enforcement of court decisions, or whether special rules are necessary. Some states are apparently struggling to adapt the general rules to family law decisions (e.g. the discussion in the Netherlands on enforcement of visiting rights); others have chosen to introduce a new system that is tailored to the enforcement of family law decisions (e.g. the very recent law reform in Belgium). Such states also veer towards a system that offers a chance for the matter to be resolved without or with less court intervention by making mediation possible (as is the case in Belgium and notably Sweden).

Connected to the question how the enforcement procedure takes place is the issue who bears the final responsibility for the enforcement, whether this is a task for the parties to the court decision or whether the courts have a special, leading or at least guiding role in the enforcement process. States like Belgium (and to a lesser extent Germany) demonstrate the strong position of the court in the enforcement process. But also the states that necessitate a court decision before the actual enforcement may commence, or where breach of the court decision constitutes contempt of court, demonstrate that the centre of gravity is with the court, not the parties.

What further comes forward is that at least in some of the member states a shift is taking place with regard to parental responsibility. It seems that parental responsibility is seen more and more as an obligation towards the child, which is not dependant on other circumstances, such as the existence of a marital bond. It also appears that a sentiment is growing that it is a joint responsibility of the parents to fulfil their duties and obligations towards the child. This implies that, from the parent's perspective, there are no rights vis-à-vis the child (that can be enforced) but only obligations (that must be fulfilled).

It also comes forward that there are often no special rules on the enforcement of family law decisions. To a large extent use must be made of enforcement measures that are developed for court decisions in general. To the extent that special solutions have been developed in court practice, it is notable that they are linked to other family obligations (e.g. effects on the right to maintenance of the parent who is obstructing the family law decision). It is further notable that there is a lack of conviction that the enforcement measures that exist are indeed the most appropriate. Reference in this context could be made to the English practice not to revert to contempt of court proceedings. But it also comes forward that even if the measures available are not considered very appropriate, governments do not have a clear idea what should be developed in place of the existing options. Reference could be made to the position taken by the Netherlands minister of Justice, setting out the numerous options available to induce adherence to contact orders but stressing that primarily parents should deal with this between themselves.

The measures taken to enforce a family law decision may vary according to the content of family law decisions. With respect to custody or return orders, more far-reaching measures may be available than with respect to visiting arrangements (although such a distinction is not always made, as is e.g. the case in France). Less apparent is to what extent the circumstances of the case influence the nature of the measure that can be taken. In case, in an internal case without a cross-border dimension, parents with joint parental responsibility quarrel over the place of residence of the child one would not rule out that the enforcement measures allowed will be less far-reaching than in a case where the physical well-being of the child is at stake.

Another issue is against whom the measures are directed. Measures may be directed towards the child or towards the adult who is obstructing the decision. Measures directed against the child are directed against the person, measures directed against the adult may be directed against the person or against property. This division supports the view that the enforcement process may take place on two distinct levels, the level of the child and that of the adult concerned.

Elaboration of the view that enforcement takes place on two levels leads to the following. With respect to the child the possibility to take measures are limited first by their nature (measures can only be directed against his person and are only possible with respect to custody issues). The second limitation, which increases in importance as the child grows older, can be found in the personal will of the child. The reports demonstrate that the will of a more mature child, from the age of 12 onwards, will greatly influence the result of the enforcement. To the extent that the law of the member states do not already take into account the limits the will of the child places on the enforcement process, it may not be ruled out that on the basis of human rights law such limits may be developed in the future.

With respect to the adult implicated as object of the enforcement process such limits do not exist. In principle physical or financial coercion may be exercised against the adult. The extent of the coercion is limited by the applicable internal law and, usually, the court decision setting out the coercive measures. The effect this coercion has in achieving the situation desired by the family court decision is however always indirect. There can be circumstances, e.g. when the child does not want to cooperate or is outside the influence of the adult implicated, wherein such coercion is ineffective.

Coercion against the property of adults also raises other dilemma's which are not found in the national reports but which may be mentioned here. It is generally accepted that decisions on family law issues find their limits in the best interest of the child. The interest of the child will greatly influence the result of the court's decision in family law cases. But when coercion is directed against the property of an adult, the financial benefits could go to another adult. This is difficult to accept when the best interests of the child are considered to be fundamental to the decision that should be respected. Certain coercive measures against property may even be detrimental to the child's benefit. A clear example is the practice found in some states that obstruction of visiting rights can lead to reduction of the maintenance due to the adult with whom the child lives. Effectuating financial coercive measures between the adults concerned (usually the parents who are often former spouses) will further heighten tensions between persons who are, in principle, close to the child. Nor does this solution appear fully in keeping with the approach that the purpose of the family law decision is that parental duties, not parental rights, are fulfilled.

In essence, this is an area of the law with at present very different approaches between 25 EU member states. It is difficult to indicate a common denominator between the legal systems, or even to indicate groups of legal systems that compete with each other for offering acceptable, although possibly not compatible solutions. There is the impression that most legal systems are undeveloped and have not yet found the right direction to take. Some member states appear to have a watertight, effective system but apparently practice seeks to circumvent the use of such systems (the example of the contempt of court mechanism, apparently often avoided in English legal practice). Other states recognize that there are inadequacies in the current law, but have not yet made a decision for future legislation.

It is not for this report to have an opinion on whether or not the family law systems of the member states should develop in this or that direction. On the other hand, it cannot escape the attention that there are certain trends with respect to the sharing of parental responsibility, with respect to the position of the child and with respect to the impact of human rights that are found in many member states. Nor can it escape the attention that there is not clear, universally accepted method for enforcing family law decisions. On the basis of these observations, it is possible to point out two legal systems that have recently tried to deal with these developments, Belgium and Sweden. Belgium recently introduced legislation that tried to address defects Belgium had identified in its earlier law. The main facets of the Belgian approach are the central role of the judge in the enforcement process and a system directed at achieving voluntary compliance. Little is known, at this stage, of the practical functioning of the new system. Sweden also recently reviewed its legislative provisions on the enforcement of family law decisions. The current system is aimed at voluntary compliance to the family law decision and

gives the court a number of tools to achieve this. The mediator can appoint a mediator chosen by the court and the mediator will have to carry out his assignment within a short period of time (two weeks). The mediation has a double role, as on the one hand it may lead to voluntary compliance, but on the other hand, if it does not, the mediator will be in a position to provide the court with useful information for the enforcement order. It further appears that the mediator in Sweden is typically recruited from social services, not from the legal profession.

Belgium and Sweden both give a central role to the court but make it possible for the court to achieve voluntary compliance. It appears that in both member states the decision as to what would be the most appropriate measure to take is decided by the court, on the basis of the court's assessment of the situation. This is different from the situation wherein the party seeking enforcement, usually a parent, indicates the measures it would like the court to take. It further appears, especially in Sweden, that the use of mediation is integrated into the court proceedings. Even if the mediation fails, the information obtained by a neutral party, the mediator, will be available to the Swedish court and will help the court in making an enforcement order.

A final remark is that, different from enforcement in ordinary proceedings, the object of the enforcement is a human being, the child. The child will, probably from an early age, have some sort of opinion on the enforcement process he is involved in. The older the child is, the more courts will be prepared to take the opinion of the child into account. The obligation to decide having regard to the best interests of the child may mean that a court refuses enforcement of a family law decision if the child opposes it. The involvement of the child forms a reason to doubt whether an adaptation of ordinary rules on enforcement can lead to suitable solutions. The child may not be fully competent as an independent legal subject, but neither can the child be considered as passive object of law. Whereas protection will be the prime concern for young children, once the child grows older there will be a concern to fathom the will of the child and to take that will into account. This dilemma will arise in ordinary proceedings, but also needs to be addressed during the enforcement process.

In the following part 2 of the Synthesis regard will be had to a subject that has not been discussed so far, the enforcement of family rights application in cross-border cases.

2 Enforcement in cross-border cases

2.1 Abduction orders

During the kick-off meeting representatives of the EU Commission requested to provide an update to the data that had been collected by the Permanent Bureau of the Hague Conference in response to its questionnaire on the execution of return orders (hereafter, the 'Hague questionnaire'). The Hague questionnaire, directed to national authorities, usually the Ministry of Justice, has been answered by 18 of the 25 states member of the EU in 2006 (Austria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Slovakia, Spain, Sweden and the United Kingdom). It was also answered by the states that joined the EU in 2007, Romania and Bulgaria. With respect to the 18 EU member states who had already answered the Hague questionnaire, the national experts were asked to update the information provided in response to the Hague questionnaire. With respect to the 7 member states who had not answered the Hague questionnaire, the national experts were requested to answer the Hague questionnaire in full. It should be noted that in view of the background of the national experts, mostly academic lawyers, the approach in answering or updating the questionnaire may have been slightly different from that of those who initially answered the Hague questionnaire on the behalf of their governments.

The responses to the Hague questionnaire by 45 states member to the Hague Conference have recently been summarized extensively and very adequately in a report by Mrs. Schulz, First Secretary of the Permanent Bureau of the Hague Conference. The general finding of the Hague report is that there are great differences in the law and practices concerning the enforcement of return orders between the Contracting States of the Hague Conference (see Hague Conference on Private International Law, International Child Abduction, Prel. Doc No. 6, October 2006, p. 4). This section of our report will draw upon the report from the Hague Conference and the additional information that was provided by the national experts. The report will only take into account the situation in the states that were member of the EU before 1 January 2007. The emphasis will be on the similarities and differences that exist in the legal systems and practices of the EU member states with respect to return orders. This section of the report will further examine to what extent EU legislation, the Brussels 2A regulation, helps in overcoming any differences that have been discerned.

Specific legislative provisions on return orders under the Hague Convention or Regulation 2201/2003 (Bxl 2A)

In some member states the ratification of the Hague Abduction Convention has led to the introduction of legislation that serves to implement the system of the Hague Convention into the national legal system. Some states have drawn up separate acts which apparently intend to regulate of the national legal system in order to accommodate application of the Hague Convention. Examples of such legislation may be found in Austria and the Netherlands. Some other states, Denmark and Italy, drew up legislation at the time of ratification of the Hague Abduction Convention which appears to address only some aspects of national law. The entry into force of Regulation 2201/2003 caused some member states to make separate legislation aimed

at implementing the Regulation into their legal system. Such separate acts are in force are in the process of being created in Belgium, Lithuania and the Netherlands (in the latter state the act also deals with the Hague Convention on Protection of Children 1996). In some other states the ratification of the Hague Abduction Convention and the entry into force of Regulation 2201/2003 did not lead to separate implementing acts, but did lead to the introduction of special provisions in existing legislation, notably the Code of Civil Procedure. Special provisions connected with these instruments may be found in France, Germany, Greece and Poland. In the United Kingdom reference could be made to the practice directions that the Court of Appeal issued in the decision *Vigreux v. Michel*. The aim of this direction is to ensure that the speed of proceedings on return orders comply with article 11(3) Regulation 2201/2003. In the majority of member states however, there are no separate national rules related to the functioning in their legal system of the Hague Abduction Convention or Regulation 2201/2003.

Procedural conditions for enforcement

To start with a point of procedural law, whereas *in* most member states the enforcement can be based upon the return order itself, in some member states a separate order is necessary before the return order may be enforced. Such a separate order which authorises the enforcement action is necessary in Austria, Denmark, Spain, Estonia, Latvia, Lithuania and Poland. In Cyprus the return order has to have been drawn up by the court registrar, in the UK (England) no separate order is necessary but a request to enforce has to be made.

The procedural handling of return order

With respect to the handling of return order once the order has been issued it is possible in most member states to discern a clear practice, although this practice is not necessarily based on legislation. Nor is the practice the same in each member state. There is a great variation with respect to the parties who are involved in the return proceedings, in the way timelines are applied and in procedural aspects.

With respect to the timeline within which enforcement is to take place, the approaches in the member states vary. In some member states enforcement of the return order (possibly on the condition that the enforcement of the return order has been specifically allowed in a separate court decision) can in principle take place immediately. This is the case in Cyprus, Denmark, Estonia, Ireland, Luxembourg and the UK. In Ireland and the UK the return order is to be complied with immediately, but it is possible that the courts set a future date for return. In Ireland it is usual that through their lawyers parties will agree to a certain date for the return. In most member states a timeline is set for enforcement, as can be seen in Czech Republic, Spain, France, Germany, Greece, Italy, Latvia, Malta, the Netherlands, Poland, Slovenia and Slovak Republic. Usually this timeline is set by the court, but it also happens that the timeline is determined by the party seeking enforcement. The latter can be the case in the Netherlands, where the enforcing party, the Central Authority, may apply a reasonable period and in Latvia and Lithuania, where the bailiff can set a period to comply. Lithuania further makes a distinction between urgent cases where enforcement can take place ultimately on the day following judgment, whereas in other cases a five-day period would be granted. It should be noted that although in other member states enforcement may not be immediate, there is a general understanding that the enforcement should take place in due time and that there is an urgency to enforce.

Voluntary compliance

The actual timeline for enforcement, immediate or within a given period does not rule out the possibility of voluntary compliance. Even though enforcement can take place immediate, a period for voluntary compliance is possible in Cyprus, Denmark, Estonia, Luxembourg and the UK. Some member states however take a negative view on voluntary compliance. In Czech Republic the court will determine a period for enforcement, but voluntary compliance is not possible as a consequence of bad experiences. In Germany and Austria there is a period to comply with the return order, but this period only serves to make the necessary arrangements for return. In other states voluntary compliance may be dependant upon the provision of guarantees, or some undertaking that no attempt will be made to escape enforcement. Examples of member states where such an approach is known are Luxembourg and the Netherlands.

In other states it appears to be more difficult to make general remarks on the period for voluntary compliance, or the period within which compliance must have taken place according to the return order. This appears to be the case especially when the period of voluntary compliance is determined by the court. In case the party or authority that is responsible for enforcing the order is in a position to determine the period for voluntary compliance, it appears nonetheless that there are legal restrictions to the length of such a period. Thus in Latvia and Lithuania the bailiff apparently will apply a period of 10 days within which enforcement will commence.

Hiding of the child

There are diverse approaches to prevent that the child is taken into hiding. In some member states there are no apparent solutions to prevent this from happening (Cyprus, Czech Republic). In other member states it is possible to take certain measures that will make it difficult to leave the country. Such measures are known, or at least deemed possible, in Germany, Greece, Ireland, Lithuania, Malta, Poland and the UK. Actions that are more directly aimed at the actual whereabouts of the child within the member state are known in Denmark, Germany, Spain, Italy and the Netherlands. In the latter states actions are possible in order to locate the child, to prohibit the moving of the child within the member state or to demand that the child reports regularly to the local authorities.

In Spain and Poland a money guarantee can be imposed in order to prevent that the child is taken into hiding. In France and in the Netherlands the child could be placed in care. In Austria the method to prevent hiding is not to provide information on the actual date that the child must be handed over.

Once the child is taken into hiding, in most member states this will lead to involvement of the public prosecutor and the police and the hiding may be a criminal offence. It appears that in some member states the public prosecutor or a court official will be involved (France, Italy, Luxembourg, Malta, the Netherlands, UK). In other member states the authority responsible for enforcement (a bailiff or the Central Authority) will involve the police in order to conduct a search (Cyprus, Germany, and Lithuania). In other states the court has a role in ensuring that a search for the child is commenced, although the court is aided by other authorities, notably the police and the Central Authority (Austria, Denmark, Poland, and Slovak Republic).

Coercive measures

In cases of child abduction coercive measures are less well developed as might be expected. It appears necessary to distinguish measures that can be taken on the basis of civil law and measures that can be taken on the basis of criminal law. It must be said that the distinction is not always clearly drawn.

In states rooted in the continental legal tradition the state prosecutor and the police can be involved and their actions, making use of special powers can result in taking the child out of the powers of the abductor. The fact that criminal proceedings are possible is also considered as a threat that will help that the order is obeyed. The possibility for the police to detain a child is also known in Ireland. In the UK a seek and locate order can be issued by an officer of the court.

It is another matter whether the police can use powers when enforcement takes place on the basis of civil law. In some member states civil law allows the drawing in of police officials and gives the police special powers in order to ensure that civil law rights are respected. Such an approach is witnessed in Netherlands legislation, where the Code of Civil Procedure allows action by the police, which may enter any place in order to hand over the child to the person who is responsible for the child.

In other member states the authority responsible for the enforcement under civil law (the bailiff or the Central Authority) can draw in help of the police. But the powers of the police are not always clearly defined. Thus in Estonia the police may be present and the presence of the police is said to have a moral persuasive effect. But in Estonian law there is no possibility to make use of direct force in family law cases. An even clearer rejection of the use of direct force in family law cases is found in Greece. In the past under Greek law direct force could be used to ensure that a child was handed over. But nowadays Greek law holds the use of direct force as unconstitutional and in breach of the European Convention on the Exercise of Child's Rights. This may be contrasted to Germany, where it is the bailiff himself who must handle the actual handing over, 'taking', the child.

The measures that can be taken against the abductor under civil law are usually physical custody or pecuniary damages or a combination of the two. It is another matter whether such measures are often used in practice. In the Netherlands and Luxembourg it is thought that they will be used sparingly. In Poland it is possible to make a person testify under oath in order to obtain information of the child's whereabouts.

Costs

With respect to costs difference must be made between cost of the Central Authority, legal costs and other costs connected with of returning the child. The guiding principle is that costs of enforcement are borne by the party against whom enforcement takes place. The involvement of the Central Authority is without costs to the applicant. Costs for repatriation are seen as separate of the enforcement costs. The successful applicant will often have to bear these costs. But some states take the approach that the costs for repatriation are costs or damages that can be demanded from the abductor. This is seen in Spain and France. In the Netherlands the costs of repatriation are seen as costs that must be paid by the parents, which will usually

mean that applicant and abductor will have to share costs. The main view is however that the applicant will have to pay for repatriation. In Germany it is pointed out that one of the advantages of voluntary compliance would be that the costs of repatriation would be borne by the abductor, if the abductor were to return with the child to the state of habitual residence.

The initiator of enforcement

The initiator of enforcement is in almost all member states either the applicant, meaning the person seeking a return order, usually a parent, or the Central Authority. Enforcement is instituted by the applicant in Austria, Greece, Ireland, Latvia, Lithuania, Poland, Slovenia, Slovak Republic and the UK. Enforcement is instituted by the Central Authority in Belgium, Cyprus, Denmark, France, Malta and the Netherlands. Enforcement can be instituted by either the applicant or the Central Authority in Czech Republic and Spain. In Austria and Slovak Republic the court or the applicant can initiate enforcement. In Germany the court is ex officio responsible for enforcement. In Italy and Luxembourg the state prosecutor initiates enforcement.

Organs involved in enforcement

In many member states the initiator of the enforcement is also the main organ or party that is involved in the enforcement. But in some member states a role for the bailiff ('execution officer') exists. A role for the bailiff as the entity realizing the actual enforcement is seen in Austria, Estonia, Germany, Latvia and Lithuania. In other states this role is assumed by the state prosecutor (France, Italy and the Netherlands) or by a special officer of the court (the court probation and supervision officer in Poland, 'Tipstaff', the enforcement officer of the Supreme Court (or rather other officers to whom task have been delegated) in UK). In addition to the roles assumed by a bailiff or a state prosecutor, the enforcement may also lead to the involvement of other organs or organisations. In some member states judges play an important role in the enforcement. In Czech Republic, Latvia and Spain judges lead the enforcement process.

Different views exist as to which organ has supervision of the enforcement process. In some member states the supervision is seen as being in the hands of a court, often the court that gave the return order. But in a few states this role is assumed by the Central Authority (Cyprus, Denmark (together with the court), France, Malta and the Netherlands). In UK, there is no supervision of the enforcement.

Drawing in specialist help

In most member states it is possible to draw in help of trained professionals when enforcing the return order. In only one member state, the UK, such help would not be available at all. Specialist help is usually drawn from social services or youth care agencies and the specialist help can notably be given by psychologists. In many member states the involvement of such a specialist is dependant upon a court decision. In some member states the specialist help is drawn in by the authority or person that institutes the enforcement, e.g. by the bailiff in Estonia or by the public prosecutor in Luxembourg. It is less clear what criteria apply in order to draw in such specialist help.

Appeal and remedies

With respect to appeals and remedies in respect of return orders, for the EU member states a division appears necessary between orders that are based solely on the Hague Abduction Convention (and would presumably only be given in a case that has a link with a non-member state) and orders that are based on Regulation 2201/2003 (and would deal with cases that only concern member states). The reason for the distinction is the effect that Article 11 of Regulation 2201/2003, which has direct effect in all member states, may have on the handling of the return procedure. See notably Article 11(3) Regulation 2201/2003 requiring expeditiousness of proceedings on the return of a child.

Under the Hague Abduction Convention, most member states allow appeal and even final appeal with the highest court of the member state ('cassation'). The time limits for appeal are however shorter than in ordinary cases and may even be shorter than those applicable in summary proceedings ('référé').

A three-tier system may be found in Austria, Belgium, Denmark, Estonia, France, Germany, Greece, Luxembourg, the Netherlands, Slovenia, Slovak Republic and the UK. Appeal to the last tier, cassation, is usually only possible under conditions. A two-tier system, wherein after the decision in first instance there is only one instance for appeal, may be found in Czech Republic, Cyprus, Ireland, Latvia, Lithuania and Malta.

With respect to the consequences of article 11(3) Regulation 2201/2003, the impact of this provision appears to have been understood best in UK and in Belgium. In the UK the Court of Appeal in *Vigreux v. Michel* expressed shock and dismay when finding that proceedings in first instance had taken nearly 5 months to be heard. In addition to this the period for hearing the appeal was also considered unacceptable. In the decision practice directions were given in order to ensure that such delays would not take place in other cases. The effect of these measures should ensure that – in first instance – the deadline of the article 11(3) Regulation 2201/2003 can be met. In Belgium, the consequence drawn from Regulation 2201/2003 is that a return order under the Regulation cannot be appealed.

In other member states this impact of the Regulation is not yet clearly understood. Some comments were received from by the national experts as to the compatibility of the national legislation with the Regulation. The French national expert thinks that French law in its present state is able to meet the deadline of article 11(3) of the Regulation. In Germany the procedural rules with respect to appeal should ensure that there will be an enforceable decision within the six weeks period. Appeal should be made within two weeks and following the appeal the court of appeal should immediately decide whether the immediate enforcement of the decision in lower instance can be allowed (§ 40 Abs. 3 S. 1 *IntFamRVG*). The background of this rule is the experience that many appeals are brought to gain time and that therefore in most cases the immediate enforcement will be allowed.

With respect to Spanish law, the comment was given that formally Spanish law would meet the six-week deadline but that there would nonetheless be an inconsistency. Art. 1902 LEC 1881 establishes a six-week procedure to obtain a return order, not including within that period the time needed for enforcement of the decision. The return order is subject to appeal under Spanish law, although the appeal must be decided in twenty days and the appeal does not suspend

the enforceability of the appealed decision (Art. 1908 LEC 1881). Spanish law would therefore formally guarantee the objective of a prompt return of the child. It should be added that, in practice, some courts do not enforce return orders until the Provincial Court (Audiencia Provincial) has decided the appeal of the return order and this may suggest that a further clarification of provisional enforcement of appealed return orders would be advisable.

With respect to Greece the view was taken that the interpretation that according to article 11(3) Regulation 2201/2003 proceedings would have to be terminated in six weeks and that this would have consequences for the appeal proceedings was not possible under the Greek legal system. One issue is that appeal of the decision in first instance is always possible, as has been decided by the Greek Supreme Court. Another issue is that in case of appeal the period that runs from the moment of deposition with the Central Authority until the judgment becomes final is very long.

Under the Lithuanian Law on the enforcement of Regulation 2201/2003 (Law no. X-169 of 21 April 2005) the deadline of article 11(3) is applicable only to the hearing of the request for the return of the child in the court of first instance (Art. 2(5) of the mentioned Lithuanian Law). Appeal is allowed, but cassation is not allowed (Art. 2(6) of the Law). As the request for the return of the child is to be examined in summary proceedings (art. 2(1) of the Law), this means in practice that the request should be dealt with within two weeks. As the time limit for the appeal is seven days, it should be possible to finish the hearing (including the appeal, if there was such) within 6 weeks.

2.2 Tables

[Continued on next page]

1. Legislative provisions for enforcement

Enforcement legislative provisions	General legal base for enforcement family law decisions	Specific legislation implementing Hague Abduction Convention	Specific legislation implementing Bxl 2A	Enforcement provisions for Hague return orders	Enforcement provisions for other return orders	Other relevant provisions
AUT	Return orders: § 110/2 AußStrG: enforcement by physical handing over of the child. Possibility of punitive measures (§ 79 AußStrG). Other family decisions (custody or visiting rights): forced execution impossible (§ 110/1 AußStrG). Fitting coercive measures to be based on principles of defunct §19 AußStrG 1854 (see p. 16 Austria).	Bundesgesetz über die Durchführung des Übereinkommens über die zivilrechtlichen Aspekte internationaler Kindesentführung		§ 5 Abs. 4 des BG Durchführung Haager Übereinkommen: cooperation of the 'Jugendwohlfahrtsträger', including removing the child from the abductor and placing it in an institution		§ 112 AußStrG: foreign decision on custody and contact can only be enforced after an Austrian court has declared the decision enforceable
BEL		Fast track procedure in art. 1322bis-1322octies (Chapter XIIbis) of the Code of Civil Procedure	Legislation in preparation		Fast track procedure of art. 1322bis-1322octies (Chapter XIIbis) of the Code of Civil Procedure initially developed for Hague return orders is expected to be extended to Bxl 2A	Concentration of courts with jurisdiction for abduction cases expected after legislation to implement Brussels 2A enters into force
CYP	Civil Procedure Rules	Law No. 11(III)/94				
CZE	Article 176 CPC		None specific	None specific		Possibility to use 'interlocutory enforceability' (article 167 CPC): time limit for fulfilment runs from date of service judgment
DEN	Article 483 Administration of Justice Act: judgments on custody or contact are immediately enforceable (subject to any terms of the judgment). Article 536 AJA: such judgments can be enforced by use of default fines or by direct use of force.	Articles 10 and 11 of Act No. 793 of 27 November 1990 on International Enforcement of Decisions concerning Custody of Children and Restoration of Custody of Children, etc.				

Enforcement legislative provisions	General legal base for enforcement family law decisions	Specific legislation implementing Hague Abduction Convention	Specific legislation implementing Bxl 2A	Enforcement provisions for Hague return orders	Enforcement provisions for other return orders	Other relevant provisions
ESP	Art. 776 LEC 2000 (Law of Civil Procedure) specifically for enforcement family law decisions. Enforcement further regulated by general provision (arts. 517-747 LEC). Voluntary jurisdiction and recognition and enforcement of foreign decisions still regulated by old Law of Civil Procedure (LEC 1881).	Articles 1901-1909 LEC 1881 (Code of Civil Procedure 1881), are considered to implement the Hague Abduction Convention, but in wording these provisions give effect to any "international applicable convention" (Art. 1901), not specifically the Hague Convention.		Articles 1901-1909 LEC 1881 (Code of Civil Procedure 1881)	1901 LEC 1881: only applicable to return under international conventions (also under bilateral convention between Spain and Morocco). Arts. 1901-1909 LEC 1881 also used for Bxl 2A.	22nd Final Provision LEC 2000 applicable to certificate ex art. 42 Bxl 2A
EST	Code of Civil Procedure and the Code of Enforcement Procedure	None		None	None	
FIN	Finnish Child Custody and Right of Access Act (Law No 1983/361, Chapter 7). In addition, provisions of the Act on the Enforcement of Decisions on the Child Custody and Right of Access (Law No 619/1996) are applied. Furthermore provisions of the Enforcement Act (Law of 1895, reformed by the laws No 1996/197 and 2003/679) are applied as appropriate The Ministry of Justice has given guidelines (Dno 3553/36/96) to the enforcement officers concerning enforcement of decisions on child custody and rights of access. They apply to the enforcement of the return orders mutatis mutandis.	None specific.	None specific.	None specific	No.	
FRA			Arts. 1210-4 à 1210-6 NCPC (Nouveau Code Procédure Civile)	Arts. 1210-4 à 1210-6 NCPC (Nouveau Code Procédure Civile)	Arts. 1210-4 à 1210-6 NCPC (Nouveau Code Procédure Civile)	
GER				§ 44 IntFamRVG	§ 44 IntFamRVG	
GRE				Art. 950(1) CCP		
HON	Enforcement Act 1994			None		

Enforcement legislative provisions	General legal base for enforcement family law decisions	Specific legislation implementing Hague Abduction Convention	Specific legislation implementing Bxl 2A	Enforcement provisions for Hague return orders	Enforcement provisions for other return orders	Other relevant provisions
IRL	S. 5 Courts (No.2.) Act 1986			None specific	None specific	Art. 16 & 17 Non Fatal Offences Against the Person Act 1997
ITA	General arrangements of Book III Civil Procedure Code and Civil Code (Book 1)	Law No. 64 of 15-1-1994		Law No. 64 of 15-1-1994 involves State Prosecutor of the local Juvenile Court		
LAT	Art. 197 Civil Proc Law: determination of the exact obligation; Art 557 Civil Proc Law: specific coercive measures	None		None		
LTU		None	Law on Implementation of Bxl 2A of 21 April 2005	None		
LUX				Art. 1108--1116 NCPC	Art. 1108--1116 NCPC	
MLT		Child Abduction and Custody Act 1999		None specific		
NED	Art. 813 CCP	Act of 1991 implementing the 1980 Luxemburg Convention and the 1980 Hague Convention	Act implementing 1996 Hague Child Protection Convention and Regulation 2201/2003	Article 13 Act of 2 May 1991 and article 813 CCP	Article 13 Act of 2 May 1991 and article 813 CCP	
POL				Art. 598[1]-598[13] CCP	Art. 598[1]-598[13] CCP	CCP provisions also apply to incapable persons
POR	Code of Civil Procedure	None specific	None	General rules for enforcement are applicable	General rules for enforcement are applicable	
SLO	Act on Execution and Insurance	None	None	None	None	
SVK	Art. 176 CPC			None	272-273c CPC	
SWE	Chapter 21 of the Children and Parents Code	Act (1989:14) on Recognition and Enforcement of Foreign Decisions Concerning Custody of Children etc. and on the Return of Children	None. Chapter 21 Children and Parents Code is thought to apply to enforcement, in view of article 47 Bxl 2A.	Section 21 1989 Act, which refers to chapter 21 Section 14 in the Children and Parents Code		
UK	Child Abduction Act 1984	None				

2. The enforcement procedure of a return order

Enforcement procedure proper	Timeline for enforcement	Voluntary compliance	Prevention of hiding child	Actions taken in case of hiding	Coercive measures available	Hearing of child	Costs
AUT	No	No. Only for necessary practical arrangements	By not giving information on date for handing over child	Search by court or CA with police help. Direct coercion is possible by court authorities by involving government security services.	Direct coercion (actual enforcement); pecuniary fines		
BEL		Yes. Normally allowed					
CYP	Immediate	Can be allowed but not a purpose	Not possible	Application against abductor for contempt of court; search by CA and police	Contempt of court		
CZE	Usually determined by court	No. Bad experiences	No	Action of police and authorities. Return order remains in force	Pecuniary fines and physical force		
DEN	Immediate	Under circumstances	Yes. By measure granted during proceedings	Action by Court and police	Pecuniary fines and physical force		
ESP	Timeline will be given in the necessary separate decision to allow enforcement of the order	No	Interim measures: prohibition to move the child or surrender to Child Protection Services; money guarantee by abducting parent	Hiding may be criminal offence	Court is responsible for enforcement; parties and organs involved in enforcement proceedings can make any petition that they consider appropriate	Child is to be heard in enforcement procedure; opinion of the child has great influence and may lead to dismissal of the return claim. Court deciding on enforcement will decide within 2 days and consider interest child and applicable international conventions	Intervention CA without costs. Enforcement costs borne by abductor. Travel expenses pair by abductor.

Enforcement procedure proper	Timeline for enforcement	Voluntary compliance	Prevention of hiding child	Actions taken in case of hiding	Coercive measures available	Hearing of child	Costs
EST	Immediate	Yes, 10-30 days		Temporary placement in child-care institution	Bailiff can propose to fine person obstructing enforcement. Use of direct force is not accepted in family law cases, but presence of the police can have 'moral' persuasive effect.	General principle court must take into account wish child of 10 and older when deciding upon his interests. In custody cases children 7 or older are heard.	Bailiff's fee and expenses. Costs borne by debtor.
FIN	To be carried out urgently	Usually a period for voluntary compliance allowed, mainly to deal with practical arrangements	If deemed necessary by the local court, possibility to order that child is brought to a certain place or to place the child in care.	See remarks in preceding cell.	Conditional fine. Child can be placed in care or supervision. Physical force against person obstructing enforcement as decided by enforcement officer whilst enforcement takes place	Child will be heard when decision on enforcement of foreign family law decision or a return order is taken. Child heard if deemed to be have attained suitable age and maturity to take opinion into account	Free legal aid for the applicant of a return order. Legal costs borne by Finnish government. Repatriation costs borne by applicant, although a claim for restitution against the abductor is possible.
FRA	No specific timeline. Specialization allows accelerating procedures.	Time to comply can be granted	Placement in institution can be ordered in exceptional cases.	Enquiry by Procureur de la République.	Pecuniary fines ('astreinte'); Hiding is a criminal offence		Cost of Ministère Public borne by state. If applicant organises execution privately, costs are mainly borne by him. Judge can condemn abductor to bear costs of return voyage and procedure
GER	No. Enforcement should take place in due time	Yes, if this may be expected. Time limited to necessary preparations.	Court orders on residence or reporting to authorities; handing in of travel documents and closing of borders;	Search by CA with police help; CA has access to numerous public registries (also traffic and car register)	Pecuniary fines ('Ordnungsgeld') and physical custody ('Ordnungshaft'). Fines and custody now also applied as penalty in case of non-compliance		

Enforcement procedure proper	Timeline for enforcement	Voluntary compliance	Prevention of hiding child	Actions taken in case of hiding	Coercive measures available	Hearing of child	Costs
GRE	No	Depends on the circumstances of the case	Application to the public prosecutor for order not to leave state	Possible action by CA, police or public prosecutor	Pecuniary fine or physical custody. Must be ordered specifically. Actual delivery of the child is unconstitutional.		Cost borne by the person against whom enforcement takes place. But applicant must advance costs. Cost of return travel borne by applicant
HON	No	Yes. A not too lengthy period determined by court.	No	It is for the authorities being responsible for successful enforcement to discover the child's whereabouts. Lastly the obligor's warrant of capture can be ordered.	Fine is possible but does not occur in these cases. Enforcement actions are done by bailiff and police according to acts. Nevertheless, actions which could cause harm to the child are to be avoided.	Child is to be heard during the court proceeding itself whether to order the return or not.	In case of ordering the return the costs of enforcement are not borne by applicant.
IRL	No. Order will require immediate return. In practice defendant will agree date and time for return.	Court can specify date. Usually the lawyers of parties are asked to agree a date.	No specific measures. Passports can be taken in. Possible order not to remove child from jurisdiction	Police have power to detain child if they suspect the child may be removed to another state in breach of return order	After application for attachment and committal, non-abidance will lead to imprisonment until order is obeyed. Fining is not common		Costs are incurred by enforcing party. Repatriation costs are also borne by applicant.
ITA	No, but the whole procedure is deemed urgent	Possible but uncommon	CA has a role of vigilance during the return order proceedings and can take action to locate the child.	State Prosecutor will initiate search by police or Interpol	No provision in implementing legislation, assumed that national rules can be applied. Direct enforcement aided by public order forces. Indirect measures through criminal law, changes in custody or, possibly, damages.		

Enforcement procedure proper	Timeline for enforcement	Voluntary compliance	Prevention of hiding child	Actions taken in case of hiding	Coercive measures available	Hearing of child	Costs
LAT	Within six weeks by court of first instance. No specification as to time limit of decision in appeal, decisions must however be treated with priority without delay.	Yes. Bailiff will ask to comply within 10 days after issue of enforcement order.			Court determines measures in case of non-compliance. Bailiff can use force, police can assist. Pecuniary fine possible if actual enforcement is unsuccessful. Detention only if non-compliance leads to criminal liability. Bailiff or parties can ask court for further measures and conditions if actions have no result.		
LTU	In urgent cases ultimately the next day of the enforcement order. In other cases within 5 days after enforcement order.	Bailiff may set period to comply before initiating enforcement. Enforcement will commence within 10 days from the set deadline.	No clear solution. Order not to leave country can be given.	Bailiff will involve police to start search. Police have access to state registries.	Order prohibiting defendant to leave the country.		
LUX	Enforcement is immediate after notification.	Public prosecutor can allow time to comply voluntarily, especially when there is no risk of hiding.		Institution of criminal proceedings by public prosecutor. Police acts to localize child.	Actual enforcement with police assistance possible but seldom applied. Threat of criminal proceedings. In civil law, 'astreinte' (fine) may be ordered		Little practice. Public prosecutor may insist voluntary contribution travel costs by abducting parent. Possibly advance by the State, to be reimbursed by abductor.
MLT	No legal timeline.	Voluntary compliance may be allowed. No set principle.	Order prohibiting departure. Information of border patrols.	Action by CA, police and prosecutor			

Enforcement procedure proper	Timeline for enforcement	Voluntary compliance	Prevention of hiding child	Actions taken in case of hiding	Coercive measures available	Hearing of child	Costs
NED	Timeline usually determined by the court. If not, CA will apply a reasonable period.	Voluntary compliance possible, but CA can require guarantees that this takes place	Police can be ordered to safeguard the child; child can be placed in care (a foster family, usually)	Action by public prosecutor, possibility to take actions such as tapping telephone lines. Police will collect child when located.	Fines or imprisonment theoretically possible. In practice seldom used as not in best interest of the child.		Enforcement costs borne by CA. Costs of repatriation borne by parents.
POL	No timeline.	Court will set a date prior to which return or handing over should take place.	Guardianship court may prohibit the child to leave the country; this court can also take other preventive measures, e.g. money deposit	Investigation by court, involving police. Persons can be obliged to testify under oath on child's whereabouts.	Detention only, to be ordered in criminal proceedings		Applicant in principle bears costs of enforcement and of repatriation. Usually enforcement costs are borne by the state.
POR	No. Court will however set a date for return, usually in agreement with parties.	Voluntary compliance expected. Coercive measures must be ordered separately from the return order	No specific measure available.	CA and possibly public prosecutor and/or police involved.	Various civil orders possible, not a specific measure. Criminal prosecution possible if court order is not respected.	Involvement of the child in enforcement proceedings in general is rare.	Incurred by party effectuating enforcement, final liability would be with the defendant party. In practice legal aid scheme will often discharge costs.
SLO	Court will set a timeline for compliance	Voluntary compliance can take place within the timeline set by the court					
SVK	No. Decision enforceable after delivery or after lapse of period for voluntary compliance	Court may set timeline for voluntary compliance	Threatened with criminal prosecution (article 210 Penal Code).	Court, police and local authorities for the socio-legal protection of children take action	Pecuniary fines and actual force against person who abducted the child in case the child is not handed over		Costs for enforcement are free of costs. Legal representation by Centre of international legal protection is free. Other representation must be paid, unless entitled to legal aid. Applicant usually bears cost of repatriation.

Enforcement procedure proper	Timeline for enforcement	Voluntary compliance	Prevention of hiding child	Actions taken in case of hiding	Coercive measures available	Hearing of child	Costs
SWE	The court shall order the immediate return, unless the court decides otherwise. If there is a risk that the child will again be removed from the country or that enforcement will be obstructed, the court may order immediate enforcement and the use of police force. The court may order other measures if voluntary compliance is anticipated.	If a voluntary return is anticipated, the court can involve social services and/or mediators to encourage this.			If immediate return is ordered, the court can order the surrender of the child under penalty of a fine or alternatively collection by police (Section 18 in the 1989 Act). By amendments in the Act in 2006 the court can, even without a request, place a penalty of fine on the abducting parent or order the police to collect the child. The change in the law implies increasing possibilities to decide on coercive measures. However, the court may, as previously, only decide on penalty of fine if it can be assumed that the child through this will be returned without undue delay. In cross-border cases this means that normally the court would decide that the child should be returned through the assistance of the police.	Before a return order is decided, the child should have an opportunity to express its views. The child will be heard unless the Court decides this is improper in view of the child's age and maturity (Section 17 in the 1989 Act). This exception is interpreted strictly. The child shall be heard in a way that takes into consideration the child's age and maturity. The assessment of younger children's statement shall be made by people with certain knowledge in this area. In Sweden the hearing of the child is usually conducted by social workers.	
UK	Immediate	Court will set a date prior to which return should take place.	Retention of passports only.	Tipstaff would issue seek and locate order	No coercive measures available.		Enforcement covered by public funding (legal aid). Repatriation at cost of applicant.

3. Enforceability and legal remedies

Enforceability and legal Remedies	Appeal allowed under HC	Appeal allowed under BXL2A	Enforcement even if appeal is pending	Specific formalities	Other remarks	Effect of opinion of the child
AUT	Yes. 14 days. Cassation on a point of law is possible if allowed by the appeal court or the Supreme Court		If court allows enforcement at that stage (§ 44 AuBStrG).	Court must order actual enforcement action. § 110(2) AuBStrG. Appeal against this decision is possible in case circumstances changed.	Enforcement once in motion can only be suspended when the interest of the child is jeopardized (§110(3) AuBStrG)	
BEL	Yes. One month from notification of order. Cassation by Supreme Court is possible for breach of law or rules of procedure.	No. Article 11 BXL 2A	Yes. 1039 CCP		Concentration of justice with limited number of courts	
CYP	Yes. 14 days		No	Order must be drawn up		
CZE	Yes. 15 days		No. Decision must be final	No		
DEN	Yes, within 15 days. Leave to appeal from the decision in appeal may be granted.	N.A.	Yes, unless court declares otherwise	Application for execution necessary		
ESP	Yes, within 5 days since notification. Appeal decision must be decided in 20 days.	Procedure for return should be handled in six weeks (art. 1902 LEC 1881)	A party can apply to CoFI for interim enforcement pending in appeal. In most cases CoFI will wait for appeal decision by Provincial Court	Specific request necessary to enforce return order if this is not complied with		In decision upon request to enforce, opinion of the child has great influence and can lead to dismissal of the request
EST	Yes, within 15 days after delivery of the decision to the person concerned. Appeal is handled first by court that gave the order, which can refer it to an appeal court. Cassation possible of appeal decision within 15 days.		Court order can be enforced immediately	Person wishing to enforce return order must file application to bailiff in accordance with CCP.		General principle court must take into account wish child of 10 and older when deciding upon his interests. In custody cases children 7 or older are heard.

Enforceability and legal Remedies	Appeal allowed under HC	Appeal allowed under BXL2A	Enforcement even if appeal is pending	Specific formalities	Other remarks	Effect of opinion of the child
FIN	Yes, appeal in 14 days to Supreme Court	Yes	Court order can be enforced immediately	A specific order by the Helsinki Court of Appeal is needed to return the child	Concentration of justice with Helsinki Court of Appeal	Enforcement shall not take place if a child opposes this and has attained the age and maturity that its opinion must be taken into account
FRA	Yes. Appeal can not be denied, 15 or 30 days depending on nature court decision. Cassation within 2 months. Periods are 2 months longer when residing abroad.	Yes	Provisional immediate enforcement; may be suspended by court in case of appeal	No specific formality.		
GER	Only 'speed appeal' within two weeks. Return order cases must be handled with priority. Appeal court may refer to Supreme Court		Appeal court may allow immediate enforcement of judgment that was appealed. Must be allowed if appeal is manifestly ill-founded.	Return/surrender orders are enforceable by the court ex officio	Concentration of justice with limited number of courts	
GRE	Yes. 30 days if appealing party domiciled in Greece, 60 days when domiciled abroad. Cassation possible, within period of 30 days or 60 days when resident abroad.	Yes. Time limit of 6 weeks can not be maintained.	Yes. Appeal does not exclude enforcement		Opposition is possible against the (indirect) measures to enforce the decision. Using of force ('taking the child') is probably unconstitutional	
HON	Yes. 15 days from the disclosure of the court's judgment. (The normal legal remedies are available.)		Only the final decision can be enforced as a main rule. It is possible to order the return while the appeal is pending but it rarely occurs as the parties have right to appeal.	No. Court and enforcement proceeding mostly like in domestic cases	The Central District Court of Pest (Pesti Központi Kerületi Bíróság) has exclusive competence in return cases. The appellant court is the Court of Budapest (Metropolitan Court - Fővárosi Bíróság). The appeal can be made only once. It has a delaying force on the enforcement.	The child's hearing has effect during the court proceeding. Nevertheless, the child's opposition can make the enforcement really burdensome.

Enforceability and legal Remedies	Appeal allowed under HC	Appeal allowed under BXL2A	Enforcement even if appeal is pending	Specific formalities	Other remarks	Effect of opinion of the child
IRL	Appeal only to Supreme Court on a point of law. No re-hearing and appeal within 21 days. Date of appeal will be early date.		Return order takes immediate effect unless a court grants a stay of execution, which is customary in case of appeal.	None	Concentration of justice with Supreme Court	
ITA	Appeal only to Court of Cassation and only on a point of law within 60 days of service.	Yes.	Yes. Appeal to CdC does not suspend enforcement.	No		Child 9-16 usually heard under HC. Function is to avoid trauma. No clear impact.
LAT	Appeal within 10 days of decision (or of service if not present at proceedings). Decision of appeal court is final.	Yes. Time limit of 6 weeks applies to proceedings in first instance. No clear limit for appeal proceedings.	A request for an enforcement order can be made even if the return order is not final.	It is necessary to seek an enforcement order from the court. This can be given concurrently with the return order and cannot be appealed. Once issued, the bailiff will first request voluntary compliance. If not complied, bailiff makes statement to court and court will decide on liability of person not complying.		
LTU	Appeal of return order by regional courts within 7 days. No appeal or cassation of decision by Court of Appeal.		If enforcement is considered urgent and allowed at once in an enforcement order, an appeal will not suspend the enforcement.	Enforcement order is necessary to enforce return order. Enforcement can be ordered at once, before the underlying court decision becomes final. If the debtor does not comply with the enforcement order the bailiff will make a statement to the local court and the court will decide upon measures against the debtor.	Bailiff enforces in presence of person to whom child is to be returned and representative State Child Rights and Adoption Service.	

Enforceability and legal Remedies	Appeal allowed under HC	Appeal allowed under BXL2A	Enforcement even if appeal is pending	Specific formalities	Other remarks	Effect of opinion of the child
LUX	Appeal within 15 days after notification to the Court of Appeal. If defendant did not appear, 8 days. Cassation according to normal rules.		Cassation does not suspend provisional enforcement.			
MLT	Appeal in Court of Appeal within 20 days of judgement. Case set for hearing without delay. No further appeal possible.		Yes. Appeal does not stall the enforcement of the decision in first instance.	No.		
NED	Appeal to Court of Appeal within 14 days. Decision of CA subject to appeal to Supreme Court within 28 days.		Enforcement when appeal is pending is conceivable. Usually enforcement is however suspended by the appeal court	No authorization necessary		
POL			Appeal court may suspend enforcement.	Specific request by applicant necessary to enforce return order if this is not complied with. Court may then decide to have the child removed. Court probation officer will determine date for removal and handing over to applicant.		
POR	Ordinary rules for appeal, in two instances		An appeal will not stay the enforcement of a Hague return order			
SLO	Appeal within 14 days. Revision by the Supreme Court		Appeal will suspend enforcement. Revision will not suspend enforcement			

Enforceability and legal Remedies	Appeal allowed under HC	Appeal allowed under BXL2A	Enforcement even if appeal is pending	Specific formalities	Other remarks	Effect of opinion of the child
SVK	Appeal within 15 days. Limited recourse of appeal decision to Court of Cassation	No time limit for decision in appeal.	Return decree is preliminary enforceable by law, unless court decided that it would only be enforceable once final.	Return order is enforceable after delivery, unless timeline for voluntary compliance. A motion for judicial execution must be filed if decision is not complied with voluntarily		
SWE	Time limit for appeal of a return order is three weeks. Final appeal to Supreme Court if this court grants leave to appeal (only in cases of precedent value)		Return orders are immediately enforceable, unless a stay of execution has been granted upon request of one of the parties.			
UK	Usually within 14 days. Appeal will be fast-tracked and heard within 14-15 weeks. Two appeal levels.	Vigreux v. Michel: procedural guidance to ensure cases under HC and BXL2A are dealt with expeditiously	Appeal will stay enforcement.	No separate order on enforcement but a request to that effect has to be made.		

4. Return order practice: Content of orders and Actors in enforcement

Return order practice - Orders and Actors	Usual content or instruction of the order	Aim of enforcement	Usual initiator of enforcement	Organs involved in enforcement	Special professional assistance	Authority supervising enforcement
AUT	surrender or return	removal and handing over	The applicant or the court	Bailiff and social workers	Youth care workers (Jugendwohlfahrtsträger) offer assistance in many areas	Court that gave the return order
BEL	return	return to state of habitual residence	CA	CA	Psychologist or social worker can be appointed by court to facilitate enforcement	Court that gave the return order
CYP	return to habitual residence	removal and handing over	CA	CA	Social Services	CA
CZE	surrender	handing over	Applicant or CA	Courts (presiding judge)	CPA; mediators; psychologists	Court of general jurisdiction
DEN	surrender	removal and handing over	CA	CA	Police and social worker	CA; Court that issued the order in case of 'contempt proceedings'
ESP	return to habitual residence; surrender if necessary under the circumstances	return to state of habitual residence	CA (and Abogado del Estado) or other custodian or parent	Judge or Magistrate with intervention of 'Fiscal' (Public Attorney) and 'Secretario Judicial' (Judicial Secretary)	Intervention of psychologists or social workers can be ordered in case of surrender; surrender may be ordered at a neutral place with judge present	Court of First Instance
EST	No practice leading to issue of a return order under HC or Bxl 2A. One order to surrender in relation to Russian Federation			Bailiff at request of person seeking enforcement	Bailiff must involve local government representative trained to communicate with children	

Return order practice - Orders and Actors	Usual content or instruction of the order	Aim of enforcement	Usual initiator of enforcement	Organs involved in enforcement	Special professional assistance	Authority supervising enforcement
FIN	Surrender or return to state of habitual residence	Return to state of habitual residence	The applicant of the return order	Helsinki Court of Appeal; Bailiff	Social worker; medical doctor; other child specialists	Helsinki Court of Appeal
FRA	Immediate return to habitual residence with possible additional order to surrender	to return child to state of habitual residence	CA	Procureur de la République in liaison with the CA	MAMIF for mediation between parties; Specially trained personnel of CA;	CA
GER	Return to the state of habitual residence; surrender if the obliged party does not accompany the child	If there is enforcement ('Zwangsvollstreckung'), the aim is to hand over the child to the applicant. Voluntary compliance is achieved by return of the child.	Return or surrender orders under HC or BXL 2A are enforceable by the court ex officio	Actual 'taking' of the child is done by bailiff	Jugendamt' may be included in enforcement proceedings, e.g. to prevent escalation	The method of enforcement must be allowed by the court. Court deals with enforcement ex officio.
GRE	return of the child	handing over	the applicant of the return order			Court that gave the return order
HON						
IRL	return to state X until matter is decided by court of habitual residence	ensuring the return to state of habitual residence	Applicant	CA may give administrative assistance. Main tasks are for applicant.	Only on basis of undertakings from parties sought by the court. Exceptionally such undertakings relate to involvement of e.g., psychologists or social workers.	Initiative must come from applicant, who may have to file for attachment and committal proceedings if return order is not obeyed
ITA	handing over	ensuring the return to state of habitual residence	State Prosecutor (of the competent court)	State Prosecutor (of the competent court)	State Prosecutor can involve Social Services (USSM), CA and police	State Prosecutor

Return order practice - Orders and Actors	Usual content or instruction of the order	Aim of enforcement	Usual initiator of enforcement	Organs involved in enforcement	Special professional assistance	Authority supervising enforcement
LAT	Not enough practice. Presumably immediate return.	Return to state of habitual residence	Applicant	Court determines exact nature obligation. Bailiff ensures that the decision is respected. Officials of orphan's court may be involved by the court. Police can be involved by bailiff.	Psychologists may be provided by CA. However not clear under which circumstances such consultation is necessary. No legal framework.	Court.
LTU	Not enough practice.	Unclear	Applicant	Bailiff.	State Child Rights and Adoption Service involves social workers or psychologists	Court within bailiff's territory controls his procedural acts (general principle).
LUX	Immediate return to the parent concerned.		Public prosecutor's office ('ministère public, parquet'). Any other interested party.	Public prosecutor	Public prosecutor can draw in child psychologists or other experts	Public Ministry ('procureur-général', highest authority)
MLT	surrender or return	handing over and ensuring return	CA	CA	Courts can recommend involving Ap-pogg (national welfare agency) for psychological and social work. Not mandatory.	No clear supervising authority. CA seen by Maltese government as ultimate controlling authority. But CA is dependant on the orders the Courts will issue.
NED	surrender and return	handing over and ensuring return	CA	CA; Public Prosecutor; Child Protection Board	Child Protection Service; police (usually special officers, vice squad)	Supervision by CA
POL	surrender (for the purpose of returning to the State of habitual residence)	removing the child from the abductor or any other person	applicant	mandatory participation of a court probation and supervision officer	social and psychological services are available, notably during compulsory removal of the child	Supervision by the enforcement court, which started enforcement proceedings

Return order practice - Orders and Actors	Usual content or instruction of the order	Aim of enforcement	Usual initiator of enforcement	Organs involved in enforcement	Special professional assistance	Authority supervising enforcement
POR	Return of the child	Handing over of the child to the applicant (or someone designated by the applicant) and return of the child to state of habitual residence	Applicant. CA may assist or act on behalf of applicant.	Prime responsibility with applicant. Assistance CA or involvement public prosecutor or police possible	There are presently no special social or psychological services available. CA intends to organize social and psychological services to prepare the child for the return.	CA liaises with authorities (police, public prosecutor) and would turn to court for measures in case of difficulties.
SLO	Almost no practice		Applicant	CA and centres for social work		Supervision by the court
SVK	Surrender	remove and/or hand over the child	Applicant or court	Single judge or higher judicial official acts in motion to enforce decision. Police unit may assist if inevitable.	Authorities for the socio-legal protection of children may be involved. But there are no specifically designated services.	
SWE	The surrender of the child to the applicant	to hand the child over to the applicant or a person designated by him or her in Sweden and to ensure the child's return to his or her State of habitual residence	The applicant (in person or through a lawyer)	Stockholm District Court	Social workers, especially with a view to enable voluntary compliance to the return order	
UK	return to state of habitual residence	to ensure return to state of habitual residence	Applicant	Tipstaff (enforcement officer of the Supreme Court)	No	No supervision.

CA = Central Authority

CPA = Child Protection Authority (as organised under national law)

2.3 Family law judgements other than return orders

The following will provide an overview of the international instruments and national legislation that can be relevant for the enforcement of family law decisions. Today, within the EU, the main international instrument is Regulation 2201/2003 (Brussels 2A).

1. International Instruments relevant for the enforcement of family judgements in cross-border cases

Regulation Brussels 2A

This Regulation is in force for all Member States except Denmark.

1980 Hague Child Abduction Convention

All Member States ratified the 1980 Hague Child Abduction Convention or acceded to it. In case of accession, the Convention only enters into force between that Member State and another Member State if the accession has been accepted by the other Member State. Most accessions of Member States of the European Union have been accepted by the other Member States. There are, however, some exceptions. Austria did not yet accept the accession of Estonia and Denmark did not yet accept the accessions of Latvia, Lithuania, Malta and Slovenia. Therefore, the Convention is not in force between the non-accepting Member States and the respective Member States whose accessions have not been accepted.

1902 Guardianship Convention

This Convention (Convention du 12 juin 1902 pour régler la tutelle des mineurs) is the predecessor of the 1961 Hague Child Protection Convention, to be mentioned as the next Convention. For States that are a party to both conventions, the 1961 Convention applies. The 1902 Convention is, as far as Member States are concerned, still in force in the relationships between Luxembourg and Belgium (and in the relationships between these countries and the newly acceded Member State Romania).

1961 Hague Child Protection Convention

The Convention concerning the powers of authorities and the law applicable in respect of the protection of minors (The Hague, 5 October 1961, hereinafter: 1961 Hague Child Protection Convention) has largely been superseded by Article 59 of Regulation Brussels 2A. If, however, any issue might be covered by the 1961 Convention and not by Brussels 2A, the Convention will still apply. The Convention also applies in the relationship to non-Member States that are a party to it.

The convention has been ratified by Austria, Spain, France, Germany, Italy, Luxembourg, the Netherlands and Portugal. It has been acceded to by Latvia, Lithuania and Poland. As with the 1980 Hague Child Abduction Convention, this convention only enters into force for the acceding states after the accession has been accepted. As far as the Member States are concerned, the Convention is in force between Latvia and Austria, Spain, Germany, Lithuania, Luxembourg and Poland; between Lithuania and Austria, Germany, Latvia, Luxembourg and Poland; between Poland and Spain, France, Germany, Latvia, Lithuania, Luxembourg, the Netherlands (incl. Aruba and Netherlands Antilles) and Portugal.

1996 Hague Child Protection Convention

The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (The Hague, 19 October 1996) has been signed by 17 Member States. It has been ratified by the Czech Republic, Hungary, Latvia, Slovenia and Slovakia. It has been acceded to by Estonia and Lithuania. Malta did not yet sign the convention. Two of the Member States that did not yet ratify the convention incorporated its rules in national legislation (Denmark and Ireland).

1980 European Child Abduction Convention

The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (Luxembourg, 20 May 1980, hereinafter the 1980 European Child Abduction Convention) has been ratified by all Member States except Slovenia.

1931 Nordic Convention

The Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship applies between these countries. Finland and Sweden made a declaration according to Article 59 Regulation Brussels 2A according to which the Nordic Convention is applicable in the relation between these Member States in place of the rules of the Regulation.

Convention on the Repatriation of Minors

The 1970 European Convention on the Repatriation of Minors (CETS No. 071) not entered into force. It has been signed by a number of Member States. It has been ratified by Italy. As the only other ratifying state is Turkey, the minimum number of three ratifications as required has not been reached.

European Convention on the Exercise of Children's Rights

The European Convention on the Exercise of Children's Rights (Strasbourg, 25 January 1996, CETS No.: 160) contains in its Article 7 a provision that may be relevant to the enforcement of family judgments in cross-border cases. Article 7 reads:

"Article 7 – Duty to act speedily

In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced. In urgent cases the judicial authority shall have the power, where appropriate, to take decisions which are immediately enforceable."

The convention has been ratified by and is in force between Cyprus, the Czech Republic, Germany, Italy, Latvia, Poland and Slovenia. Furthermore, it has been signed but not ratified by a number of other Member States.

European Convention on Contact concerning Children

The 2003 European Convention on Contact concerning Children (CETS No. 192) aims at

- determining general principles to be applied to contact orders;
- fixing appropriate safeguards and guarantees to ensure the proper exercise of contact and the immediate return of children at the end of the period of contact; and
- establishing co-operation between central authorities, judicial authorities and other bodies in order to promote and improve contact between children and their parents, and other persons having family ties with children.

The convention has been signed by a number of Member States (Belgium, Cyprus, Greece, Italy, Malta, Poland and Portugal). It has been ratified by and entered into force for the Czech Republic. The other ratifying states are non-Member States.

Bilateral conventions

A number of Member States concluded bilateral conventions with other Member States and/or with non-Member States. Many of these conventions are on recognition and enforcement of judgments in civil matters, some of them cover jurisdiction as well. As far as these conventions are concluded between Member States, they are superseded by the Regulation Brussels 2A. They may, however, retain their function for matters falling outside the scope of the Regulation (e.g. where it concerns the recognition and enforcement of judgments given before the entering into force of the Regulation).

In the national reports, mention is made of the following bilateral conventions between Member States.

- Austria: Spain;
- Belgium: Luxembourg, Netherlands
- Cyprus: Czech Republic, Germany, Greece, Hungary, Poland, Slovenia
- Czech Republic: Cyprus, Spain
- Spain: Austria, Czech Republic, France, Germany, Italy
- France: Spain, Luxembourg
- Germany: Cyprus, Spain
- Greece: Cyprus
- Hungary: Cyprus
- Italy: Spain, Netherlands
- Luxembourg: Belgium, France, Portugal, Austria
- Netherlands: Belgium, Luxembourg
- Poland: Cyprus
- Portugal: Luxembourg
- Slovenia: Cyprus

In the relation to non-Member States and to states that became EU members in 2007, Bulgaria and Romania, the following bilateral conventions are mentioned:

- Cyprus: Belarus, Bulgaria, China, Egypt, Georgia, Russian Federation, Serbia, Syria, Ukraine
- Spain: Bulgaria, China, Colombia, Morocco, Russian Federation, Switzerland, Tunisia
- France: Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Gabon, Madagascar, Mali, Morocco, Senegal, Togo, Tunisia
- Greece: Armenia, Albania, Lebanon, Syria, Tunisia
- Italy: Lebanon
- Lithuania: Armenia, Azerbaijan, Belarus, Kazakhstan, Moldova, Russian Federation, Ukraine

2. National legislation

National legislation implementing Regulation Brussels 2A

Some of the national reports mention that national legislation is enacted in their Member State in order to implement Regulation Brussels 2A. Such legislation may appoint the Central Authority and determine powers and duties as far as these are not defined by the Regulation itself (e.g. the Netherlands); it may give detailed rules on where and how to obtain a certificate as mentioned in the Articles 39, 40 and 41 Regulation Brussels 2A (e.g. Spain, France). Some national reports mention that legislation for the implementation of Regulation Brussels 2A is pending.

Other national reports refer to the general legislation on the enforcement of foreign decisions or they mention that no specific rules have been enacted in the Member State concerned.

Other national legislation

The national legislation most frequently mentioned are the national codes of civil procedure. These codes usually contain rules on the recognition and enforcement of foreign decisions that do not fall within the scope of international instruments. Where they also determine the rules for obtaining an enforcement order and for the actual enforcement of decisions, they may apply both for decisions that are to be enforced under international instruments and for other decisions.

Some national reports mention legislation on the implementation of other international instruments than Regulation Brussels 2A.

Legislation on the recognition of parental responsibilities existing by operation of law

Parental responsibility is not always determined in a decision. Under many circumstances, it follows by operation of law. Generally, parents have joint parental responsibility during marriage; in many Member States, parental responsibility remains with both parents after divorce unless the court decides otherwise; and in a number of Member States, unmarried parents have joint parental responsibility either by operation of law as soon as paternity is legally certain, or by registration on the request of both parents. In all these cases, there is no judicial decision on parental responsibility.

The international instruments mentioned here largely deal with the recognition and enforcement of judicial decisions. The recognition of legal relationships existing by operation of law is only dealt with in two situations. First, the 1996 Hague Child Protection Convention provides that parental responsibility other than determined in a judicial or administrative decision (including parental responsibility arising out of an agreement or a unilateral act) is recognised under the conditions of Article 16. Second, in child abduction cases, Article 3(a) of the 1980 Hague Convention obliges the court deciding on a request for a return order to recognise, for the purposes of that Convention, the "rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention".

As long as the 1996 Convention has not been ratified by all Member States, the recognition of parental responsibility *de iure* will not be regulated uniformly throughout the European Union. After ratification of that Convention, there could still be complications if *de iure* parental responsibility has to be determined in accordance with the applicable foreign law. The recognition procedure of the Convention is only applicable to measures taken by an authority. Perhaps Article 30 (on co-operation between Central Authorities and other authorities), possibly in combination with Article 32 (on providing a report on the situation of the child) may be applied in obtaining a declaration from the authorities concerned on the existence of parental responsibility by operation of law, by agreement or by unilateral act. If only Article 32 would

apply, such declaration could only be obtained from the authorities of the state of the habitual residence of the child and, probably, not from e.g. the authorities of the state where the child had its habitual residence before.

3. National practice with regard to the enforcement of family law decision of your own courts in another member state

The impression conveyed by some of the national reports is that, at least in a number of member states, a domestic court will usually not take into account the possibility that its judgment may later have to be enforced abroad. There may be a fairly practical explanation for this, which can be found in the rules on international jurisdiction. After all, in the majority of cases, the international jurisdiction will be based on the habitual residence of the child within the court's jurisdiction (e.g. on the basis of Article 8 Regulation Brussels 2A). Enforcement abroad will mainly arise in cases where the child has been moved to another state following the moment that proceedings were initiated before the court. The court may never have anticipated that its decision would need to be enforced abroad. Examples of situations wherein the court will have been aware of the chance that enforcement proceedings – if it comes to that - will be necessary abroad, would be a change of habitual residence that takes place during the proceedings or is expected to take place shortly thereafter. Furthermore, the possibility of enforcement abroad may be foreseeable when the jurisdiction of the court is based on any of the Articles 9, 11(8), 12 and 15 Regulation Brussels 2A. The mere fact that, in case of Article 12, the parents agree with the jurisdiction of the court does not necessarily mean that they will also voluntarily obey the decision after it has been given. Nevertheless, these cases appear to be rare and many report indicate that the authors are unfamiliar with legislation or case law on this topic.

It further transpires from the national reports that the domestic courts will not anticipate on what will happen abroad at the enforcement stage. Thus it is mentioned that the court will, generally, have insufficient information to foresee the peculiarities of enforcement in the other country (Germany); that the way of enforcement of decisions is to be determined by the state where the enforcement takes place (Italy) or that the issuing court is not willing to interfere with that jurisdiction (Belgium). The Netherlands report mentions that a court having jurisdiction will decide on the merits, irrespective whether the decision is to be enforced abroad; supporting orders are not given very often and if so, it is up to the other state whether and how that order is enforceable there. The position that the enforcement is a matter of the state where the enforcement takes place is found in many national reports.

Some national reports indicate that in some Member States courts take into account that enforcement is expected to take place abroad. An example is given by the Luxembourg courts which will take into account the law of the state of enforcement if that law is known to them. In Slovenia courts would try to take measures that are enforceable in the other state. Maltese courts appear to go even further, as they would try to find information that is relevant for the enforcement abroad and as they have requested social work institutions to make arrangements in the country of enforcement, e.g. through the intervention International Social Services (ISS).

An approach that seems to be based on a principal stance is demonstrated by the Irish court, who would refrain from making orders that are futile. This also has a bearing on inter-

national cases, as e.g., undertakings may not be ordered if it is unlikely that they will not be obeyed or enforced in the country where they are to take effect.

There are other issues that come forward and that are clearly related to the international dimension of cases. Thus in the Netherlands the risk of child abduction may be taken into account when contact orders are made. If one of the parents fears the other parent will not return the child at the end of a visitation period abroad and the court is convinced that such risk really exists, the court could order that contact will be exercised in the Netherlands and under supervision only. In Slovakia, free legal assistance is given to parents who have to enforce a Slovak decision abroad. In France, cases as meant in this question are explicitly mentioned as cases where mediation is applied.

The particular problems and the increase of expenses linked to carrying out visitation and contact orders that span greater distances are well understood by the courts in a number of Member States. Courts will take the consequences of covering longer distances into account in contact orders. It should be noted that, especially for the larger Member States, the problems associated with covering greater distances in order to have physical contact with the child are not reserved for international cases. Nor will contact and visitation in international settings necessarily imply that great distances are involved. It appears that the court practice in Luxembourg is often faced with cases with an international setting, but that in those cases the distance that has to be covered in order to have contact is not a complicating factor. It would appear that such situations may also exist in other parts of the Union, where integrated regions stretch across the borders of the member states.

4. National practice with regard to the enforcement of family law decisions of another member state in your own member state

Not all reports were able to comment on this.

The problems that may arise here are perhaps best illustrated by a remark made in the Slovak report, which states that when a foreign decision is recognised in Slovakia, it will have the same legal consequences as if it were rendered by a Slovak court. This is probably the general line of thinking in the Member States, in any case least when the foreign decision is recognised (or declared enforceable) under Regulation Brussels 2A. Nevertheless, the point of departure that an order made in another member state is to have the same legal consequences as a domestic order may constitute problems, in two ways.

Firstly, the modalities of the decision may not have been formulated sufficiently precise by the first court. Secondly, modalities may have been formulated that do not fit with the approach generally followed in the Member State of enforcement, e.g. because a certain means of enforcement is not usual, or even not allowed, in that Member State.

The first complication is addressed, as far as contact orders are concerned, by Article 48 Regulation Brussels 2A. That provision allows the enforcing courts to make practical arrangements if such arrangements have not been (sufficiently) made by the court of origin. The arrangements shall respect the essential elements of the judgment. Several reports rightly mention the practice of *précising* the data of contact, e.g. adapted to the holidays and vacation periods in the (new) Member State of the habitual residence of the child. An example of a practice to further elaborate decisions may be found in practice of German courts. If the decision that must be enforced is not precise enough, the German courts will

consider the judgment inapt for enforcement and the German court having jurisdiction will make the order more specific.

It is difficult to mention a concrete example in respect of the second issue, the decision which is recognised is sufficiently precise but the contents of the order do not tie in with the legal system of the state where enforcement is sought. The general remark that is often made in the reports is that the way of enforcement of decisions is to be determined by the state where the enforcement takes place. It is also thought that the court that hands down the order that is to be enforced abroad would not want to interfere with the jurisdiction of that state. But when a decision that must be recognised would contain orders or provisions that are considered unfitting for the legal system of the state where enforcement is sought, two lines of reasoning are mentioned as abstract solutions. One solution would be that the exception of public policy could be invoked to refuse a method of enforcement that does not fit in with the legal system of the state of enforcement. Another solution seen is that the authorities of the Member State that are involved in the enforcement will not be prepared to act beyond powers they possess under their national law. A more concrete solution may be found in Netherlands case-law. In that member state a person against whom enforcement is sought, would in exceptional cases be able to bring a claim in summary proceedings for an order to prohibit enforcement. There would have to be specific circumstances that give foundation to such a claim, and notably circumstances that were not considered when the original decision was made.

5. Setting aside or amending of foreign judgments

In some member states, the following consequence is drawn from the assumption that a foreign decision which is recognised or declared enforceable has the same authority as a decision given by a local court. Replacing this foreign decision by a new decision is regarded as identical to replacing a domestic decision. In order to replace the previous decision, it may be required that the earlier decision no longer meets the current needs of the child (Ireland, Malta) or that circumstances have changed since the first decision was given. In the Netherlands a reason for a new decision, next to change of circumstances, would be that the first court based its decision on incomplete or wrong information.

2.4 Issues concerning cross-border enforcement

1. The role of organs and institutions

The Central Authorities under the 1980 Hague Child Abduction Convention and Regulation Brussels 2A are generally identified as the main organ involved in cross-border enforcement. In some member states the courts, usually court of first instance, can be identified an organ that will be involved in cross-border enforcement. This identification appears to be based not so much on the more or less expected need to involve the court of the member state of enforcement for certain orders, e.g. a return order. Rather, in some member states the courts can be said to have a leading function in the enforcement process, as the courts are in a position to develop initiatives in the enforcement process and to determine on its own motion steps that are to be taken. This can be opposed to the situation in other member states, where the initiative is seen to be with the applicant or his representative, usually the Central Authority, who has to indicate to the court the measures required. Member States where the court can be seen as leading in the enforcement process would be Germany, Belgium and Sweden. In some states mediators may be involved in the enforcement process. In Sweden in particular, mediators, often drawn from Social Services, can be appointed by the court in order to intervene in the enforcement process. If the involvement of the mediator does not lead to the required effect (i.e. adherence to the decision), the court will take over and may make use of information or insights the mediator has obtained during his involvement in the case.

2. Time limits relevant for enforcement proceedings and the effect of time

Most reports refer for the relevant time limits to the time limits applicable in domestic cases, as have already been discussed in the preceding part of this report (see Part 1, paragraphs 1.12-1.14). Some exceptions to the limits applicable in domestic cases appear to exist as to time limits for instituting an appeal in international cases. In some Member States, persons resident abroad have more time to enter an appeal than persons residing in the Member State itself. In Greece, a foreign appellant is allowed a period of 60 days to institute appeal instead of the 30 days allowed to Greek residents; in Lithuania, the period to appeal for parties resident abroad is extended to 40 days from the 30 days. In Austria, the limit is two months instead of one, but only to the person who had no occasion to defend himself on first instance. That same person may use two months instead of one to answer an appeal made by the other party.

The law of the Netherlands provides for an appeal period of 15 days in child abduction cases. This is shorter than the ordinary time limit for instituting an appeal, even in summary proceedings. Luxembourg law increases the time limits for the notification of documents by 15 days for reason of distance if notification has to take place within Member States of the EU or the EEA, except for emergency cases where the court may restrict this time limit.

3. Coercive measures to ensure enforcement

The coercive measures available are similar to those available in the internal law of the member states, as developed for internal cases. The general approach is that for international situations the measures available for domestic situations will have to suffice (for the coercive measures in domestic situation, see the discussion in Part 1, paragraph 1.10-1.11).

4. Other legal or practical conditions that may form obstacles to enforcement

As obstacles that are specific for cross border cases, the following issues are mentioned:

- requirements for authenticity and legalisation of foreign public documents (for cases outside the scope of Regulation Brussels 2A);
- international communications, e.g.:
 - 14 translation problems;
 - 15 lack of skilled interpreters;
 - 16 difference in legal terminology;
- notification of documents,
- obtaining evidence abroad;
- costs;
- insufficient awareness of lawyers and authorities of rules in international cases
- residence permits

5. Issues of specific concern in cross-border cases

Some reports elaborated on issues that are of specific concern in cross-border cases. The summary hereunder sets out these remarks, but does not purport that such issues do not arise in respect of member states that are not mentioned.

- Whether rights under family law judgments are limited in a geographical sense (e.g. the territory of a state) or universal (to be exercised anywhere)

In most member states a family law decision on parental responsibility or custody would be granted without any geographical restriction. It is accepted that the content of the concept of parental responsibility or custody will vary from one state to another and that this may have consequences when the right is to be exercised abroad. The recognition and enforcement abroad of a family decision on parental responsibility is seen as dependent of the law of the country where recognition or enforcement is sought. This seems to imply, that the exercise of the rights, duties and authority that are conferred through the decision will be determined ultimately by the law of another state, if they are exercised abroad. The family decision itself would not contain a restriction that parental responsibility (or custody) may only be exercised in, e.g., the member state where it was issued.

This approach is however not universally accepted. Some Member States may set geographical restrictions and courts may provide that the parent with whom the child resides may not relocate the habitual residence of the child to another state. This practice is seen in Spain and, as will be demonstrated hereunder, restrictions with a similar effect are also found in other states (Estonia, Ireland).

With respect to visiting rights the imposition of geographical restrictions appears to be rare. In Spain it is not unusual to provide that the visit may only take place within the member state of the child's habitual residence. On the other hand, in France the imposition of a geographical restriction would mean that the legal nature of the visiting right is affected. A geographical restriction would in France mean that the '*droit de visite et d'hébergement*' (right of visiting and lodging) is reduced to a '*droit de visite simple*' (right of visiting only). For that reason, the French court may only set such restrictions when they are justified by grave causes, e.g. when the visiting parent disobeyed court orders on earlier occasions. In the Netherlands, visiting rights may be geographically restricted if a serious risk of child abduction exists.

- The need to obtain court permission to move or relocate to another member state

Generally such court permission shall be necessary in case of disagreement between the parents, when exercising joint parental responsibility. In some Member States it occurs that the earlier court decision on parental responsibility restricted the exercise of parental responsibility and providing that the child could not be brought outside the jurisdiction. In such cases moving to another Member State would require permission of the court.

If parental responsibility is not shared and is with only one person, there may still be restrictions possible with respect to moving and relocation. Limitations may be set although the point of departure appears to be that the person with parental responsibility may determine residence. As an example, in Germany and in the Netherlands it is accepted that in principle a parent with sole responsibility over the child may move abroad without permission of the other parent or of the court. Nevertheless, both states accept that the other parent has some possibility to apply for a court injunction in case a move is anticipated. Again, in France, the parent with parental responsibility who intends to move abroad with the child does not need to obtain prior permission of the other parent. However, under French law the parent is under a duty to the other parent in due time of the intention to vest a new home for the child abroad. In Latvia, such prior permission is necessary for the parent who does not possess the Latvian nationality.

A few criteria are mentioned that courts will apply when deciding on whether or not to allow a parent to move abroad with the child. Both in Ireland and in Italy, it is primarily the interest of the child is considered the deciding factor. In both states, continuation of contact between the child and the other parent plays a large role. In Italy the interest of the other parent for contact shall be balanced against the interest of the parent with whom the child resides, and who wishes to settle elsewhere. Luxembourg takes a liberal approach to moving abroad as long as the visiting rights of the other parent are respected. In Malta, the court gives an indirect decision. It first makes a suggestion for a solution; if the parents do not reach an agreement on this, the court does not decide on permission but it appoints the parent who shall in the end decide upon the issue.

- Specific issues that arise when enforcing foreign family judgements

On Cyprus, the name and passport number of the child and/or possible abductor may be put on a list for border authorities.

- Specific conditions that may form obstacles to enforcement

No comments were made on this issue.

- Influence of any bilateral or regional conventions

In Poland bilateral agreements play an important role in the relation to non-Member States.

6. Mediation/Alternative dispute resolution

Mediation seems to be an aspect of law that is rapidly developing in a number of Member States. From Belgium, Cyprus, Estonia, France, Latvia, Malta and Slovenia it is reported that legislation has been enacted after 2000 or that legislation is in a stage of preparation. A number of national reports just mention that in their Member State the parties are not obliged to involve a mediator in family cases. From a number of other Member States it is reported that mediation is encouraged and in some Member States mediation may be mandatory under certain circumstances.

It appears that even when mediation is a mandatory of family proceedings, parties may be obliged to enter into the mediation process, but they cannot be obliged to come to a resolution during this process. Parties can be obliged to act (or not to act) in a certain way but not to reach agreement.

Accordingly, French courts cannot oblige the parties to enter a mediation procedure but can oblige parties to appear before a mediator for an informative meeting. It should be noted that in France the Ministry of Justice has instituted the organisation Mamif which has specific tasks in the area of family issues. One the tasks is to promote communication and mediation between the parents. Although it cannot compel the parents to go to mediation, the authority of the Mamif may urge the parents to seriously consider its proposal for visiting a mediator. Mamif is independent and guards the confidentiality of whatever is revealed to it by the parents.

In Austria, courts are obliged to attempt to reach an agreement between the parents; according to a decision of the highest court this implies that courts should discuss the possibility of mediation with them. In Germany, courts are obliged under certain circumstances to draw the attention of the parents to the possibility of mediation. In the Czech Republic, the public defender of rights (ombudsman) criticised courts and social workers in a certain case because they did not sufficiently attempt to reach an out-of-court settlement.

Mediation is mandatory in Ireland and in Malta. In Germany, a negative attitude of one of the parents may lead the court to conclusions as to this parent's capability of raising the child together with the other parent; this may have consequences for the determination of parental responsibility, but not automatically.

Mediation may play a role in several stages of proceedings, e.g. when a decision on the merits shall be given but also when a decision is not obeyed voluntarily after it has been given. In Belgium, no cases are known to the reporters where mediation was used in cases where enforcement against the will of one of the parties had to take place. In Ireland, the mandatory character of mediation does only exist at the first stage and not at the stage of enforcement. On the other hand, legislation has been recently enacted in Estonia on conciliation procedures in cases where a contact order is not obeyed. Apparently, mediation is regarded in this Member State as a useful means to prevent involuntary enforcement.

An obstacle to mediation may be its costs. In France, costs are mentioned as one of the reasons why mediation is applied on a relatively small scale. In Italy, on the other hand, mediation is offered in many regions as a public service. In Latvia, an pilot project aims at offering mediation free of charge.

As the topic of mediation was only one of a large number of items in the questionnaire, some important questions remains open for further research. One of these issues is the legal status of an agreement reached through mediation. In a number of Member States such agreements reached must be approved by a court in order to become binding between the parties. The situation in other Member States is unclear.

Whether or not court approval of the mediation is necessary has an effect at the international and the community level. If court approval is not necessary the question is whether the mediation agreement can be considered an authentic act under Regulation Brussels 2A and is therefore recognised in the other Member States. When there is neither a court decision nor an authentic act, the meaning of the mediation agreement in other Member States appears to be not regulated on the community level.

2.5 Summary remarks

Enforcement of return orders

The diversity in approaches that has been described above is not unacceptable in itself. It is somewhat remarkable that so many member states did not consider it necessary to enact legislation connected with the application of the Hague Abduction Convention or Regulation 2201/2003 within their legal system. Apparently it was thought that the principles found in (mainly) national rules of civil procedure, developed for national cases, would be sufficient to deal with cross-border cases. In principle the organisation of the enforcement of return orders given under these international instruments can be left to the member states, on the condition that this is not contrary to international law or community law or impedes the application thereof.

The impact of Regulation 2201/2003 on return order practice

With respect to the application of community law, a possible conflict may exist in respect of the time-limit imposed by article 11(3) Regulation 2201/2003. The effect of this provision is possibly not understood in all member states (to which the Regulation applies) and it is unsure whether the limit of six weeks can be met. It is also not entirely clear what the meaning is of article 11(3) Regulation 2201/2003 with respect to the right to appeal and whether the provision entails that the appeal should also be dealt with within six weeks. If this is indeed the case, it can be expected that a number of member states, most certainly those with a three-tier system of appeal will not be able to abide to that provision. Another problem in this respect is the rule that appeal will suspend enforcement, which applies and cannot be set aside in many member states. In a legal system with three-tier system, it is difficult to see how a full procedure in three courts can take place in six weeks. In the present situation the national courts do not always have the powers to declare a decision provisionally enforceable. Nor is it sure that, if they would have the possibility to grant provisional enforcement, they will be inclined to do so. It is at present unsure whether the approach seen in Germany, where the appeal court will grant provisional enforcement of the judgement in first instance, is equally followed in other member states with a three-tier system.

The problems that may exist in respect of article 11(3) Regulation 2201/2003 raise the question whether the member states have well understood the changes that the Regulation has brought. In the past the Hague Abduction Convention was not the only, but in any case the most directly effective international instrument that was available to take measures in the field of child protection. The downside of the Hague Convention is that it a legal tool it stands alone and is only directed to one goal, the return to the state of habitual residence. Once the child had been returned to the state of habitual residence the case would fall outside the scope of the convention and the further dealing with the case would be left to national law. Regulation 2201/2003 changes this for the community, as the jurisdiction of the court of the state of habitual residence and the recognition of the court's decisions is now determined by community law. Another facet of Regulation 2201/2003 is the co-operation between courts made possible in article 11(6)-(8) of the Regulation.

The realisation that a system based on the Hague Abduction Convention is now integrated in the larger system of Regulation 2201/2003 caused a number of member states to amend their proceedings. Nevertheless such steps have not been taken in all member states. The consequence of Regulation 2201/2003 appears to be that the return of the child more and more becomes an 'order measure' such as an arrest of a ship or seizure of assets (no matter how different the subject matter involved is) and not a decision on the merits. That decision,

essentially where should the child live, is to be resolved in the member state of habitual residence. The question is whether this approach is accepted by the actors involved, first of all the parents and the child, but also the courts and other authorities that decide upon the return. Acceptance could mean fewer disputes on the return of children. Acceptance might also mean that the return is not seen as a punishment of the abducting parent, with foreseeable consequences for the result of the decision of the court of habitual residence, but merely to guarantee that the court that is best placed takes a well-reasoned and unbiased decision. It is to be feared however that some of the actors concerned have problems in accepting this principle, causing them to fight the return with all methods available. The acceptance could perhaps be improved by increasing co-operation between the courts of the member states. One measure to consider is that at present the court of the abduction state only has to transfer the relevant documents of the decision to the court of (original) habitual residence in case of a non-return order. If such information were also transferred in case of a return order it might help in ensuring a balanced decision by the court of habitual residence, if it is to be expected that this court will have to make a decision on the place of residence, on parental responsibility or on contact after the return of the child. This effect could be heightened if a *modus operandi* could be found for the court that issued the return order to exchange views on the parents and the child with the competent court in the member state of habitual residence. During such contact the court that gave the return order might be able to give a neutral and unbiased view on the consequences that the legitimate departure to the 'abduction state' could have. Such contact might also help in ending one of the true or false myths that surround child abduction, being that after the return to the state of origin, the child will never be allowed to go to the abduction state or to live or stay with the abducting parent.

The diversity in persons that are actors in return proceedings or that are responsible for enforcement may also raise problems when a return order, e.g. in application of article 42 of the Regulation, has to be enforced in another member state. At present the initiative for enforcement is with rather diverse actors, varying from the applicant, the Central Authority or a public prosecutor to the court that gave the order. The same remark can be made with respect to the actor that supervises enforcement. This diversity may cause problems to the citizen wishing to enforce an order, who in some states may rely on action taken by state authorities or the courts, and in other states will have to take action by himself.

Human rights

From the point of human rights law a case that has a strong connection with the subject-matter of this study is ECHR, 25 January 2000, Ignaccolo-Zenide v. Romania, (Application no. 31679/96). This case concerned the return of children who had been abducted from France to Romania (via California, United States) by their father. After very long proceedings in the Romanian courts the mother unsuccessfully sought enforcement of the return order that had been delivered in Romania. In the case that came before the European Court, the court considered:

92. In the Commission's view, the national authorities had neglected to make the efforts that could normally be expected of them to ensure that the applicant's rights were respected, thereby infringing her right to respect for her family life as guaranteed by Article 8 of the Convention.
(...)
94. That being so, it must be determined whether there has been a failure to respect the applicant's family life. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There are in addition positive obligations inherent in an effective "respect" for family life. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see the Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, p. 19, § 49).
As to the State's obligation to take positive measures, the Court has repeatedly held that Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with his or her child and an obligation on the national authorities to take such action (see, for example, the following judgments: Eriksson v. Sweden, 22 June 1989, Series A no. 156, pp. 26-27, § 71; Margareta and Roger Andersson v. Sweden, 25 February 1992, Series A no. 226-A, p. 30, § 91; Olsson v. Sweden (no. 2), 27 November 1992, Series A no. 250, pp. 35-36, § 90; and Hokkanen v. Finland, 23 September 1994, Series A no. 299-A, p. 20, § 55).
However, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned is always an important ingredient. Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (see the Hokkanen judgment cited above, p. 22, § 58).
95. Lastly, the Court considers that the positive obligations that Article 8 of the Convention lays on the Contracting States in the matter of reuniting a parent with his or her children must be interpreted in the light of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"). This is all the more so in the instant case as the respondent State is also a party to that instru-

ment, Article 7 of which contains a list of measures to be taken by States to secure the prompt return of children.

96. What is decisive in the present case is therefore whether the national authorities did take all steps to facilitate execution of the order of 14 December 1994 that could reasonably be demanded (*ibid.*).
(...)
111. Inasmuch as the Government criticised the applicant for not having applied for an order imposing a daily fine, the Court considers that such an action cannot be regarded as effective, since it is an indirect and exceptional method of execution. Furthermore, the applicant's omission could not have absolved the authorities from their obligations in the matter of execution, since it is they who exercise public authority.
112. Nor was any preparatory contact between the social services, the applicant and the children arranged by the authorities, who also failed to seek the assistance of psychologists or child psychiatrists (see, *mutatis mutandis*, the Olsson (no. 2) judgment cited above, pp. 35-36, §§ 89-91). The social services, for instance, despite having sufficient relevant powers under Article 108 of the Family Code, only met the children in connection with the proceedings for transfer of parental responsibility (see paragraphs 38 and 44 above) and did no more than make purely descriptive inquiry reports. Apart from the one on 29 January 1997, no meeting between the applicant and her children was arranged by the authorities, although the applicant had travelled to Romania on eight occasions in the hope of seeing them. As to the meeting on 29 January 1997, which, the Court stresses, took place one year after the present application was lodged with the Commission and two years after the interim order of 14 December 1994, it was not, in the Court's view, arranged in circumstances such as to encourage a positive development of the relations between the applicant and her children. It took place at the children's school, where their father was a teacher, in the presence of a large group of people consisting of teachers, civil servants, diplomats, policemen, the applicant and her lawyer (see paragraph 70 above). No social workers or psychologists had been involved in the preparation of the meeting. The interview lasted only a few minutes and came to an end when the children, who were clearly not prepared in any way, made as if to flee (see paragraphs 71-72 above). On 31 January 1997, immediately after the failure of that one and only meeting, the Romanian Ministry of Justice, acting as Central Authority, ordered that the children should not be returned, on the ground that they were refusing to go and live with their mother (see paragraph 73 above). Since that date no further attempt has been made to bring the applicant and her children together.
113. The Court notes, lastly, that the authorities did not take the measures to secure the return of the children to the applicant that are set out in Article 7 of the Hague Convention.
Having regard to the foregoing, and notwithstanding the respondent State's margin of appreciation in the matter, the Court concludes that the Romanian authorities failed to make adequate and effective efforts to enforce the applicant's right to the return of her children and thereby breached her right to respect for her family life, as guaranteed by Article 8.
There has consequently been a violation of Article 8.

The extract from the judgment is quoted here as it is relevant for two aspects. Firstly, the extract is relevant with respect to the methods for enforcement as it demonstrates that the ECHR has doubts on the use of indirect methods of coercion, such as the imposition of a fine. It also shows that – in the circumstances of the case – government authorities have a responsibility in matters of execution, as they exercise public authority. Secondly the extract shows the concern that reuniting the child with a parent is a matter that should be prepared in advance and wherein the authorities have a role to fulfil.

It is accepted that the circumstances of the case judged by the ECHR in 2000 were exceptional. Nevertheless the information obtained from the national laws of the member states on the coercive methods available and on the practice on the involvement of experts in 'reuniting cases' can not take away the impression that this part of the law is not very well developed. Indirect coercion is still very often presented as a, or the, main method to ensure enforcement. The involvement of experts is frequently mentioned, as a possibility, but in a number of member states there is little guidance as to when or how this should take place. It is submitted that if the decision of the ECHR must be understood as favouring direct execution, the decision also conveys the message that such execution should necessarily be surrounded by safeguards with respect to the preparation thereof. The impression is that at present in many member states direct execution is a method that stands alone, not surrounded by such safeguards.

Recognition and enforcement of parental responsibility relationships

Between the EU member states the recognition and enforcement of judicial decisions regarding parental responsibility is covered by Regulation 2201/2003 and by the Hague Child Abduction Convention. There are very small, mostly technical loopholes in this arrangement, as the regulation is not in force in Denmark and as a convention the Child Abduction Convention would not be in force between a few Member States, as some Member States did not yet accept the accession of other Member States to the Convention.

The recognition of parental responsibility existing by operation of law is covered by the Hague Child Abduction Convention but only in cases of wrongful removal of the child. For other cases, recognition is still depending on the national law of the Member States and on a limited number of ratifications of Conventions. This will only change after the 1996 Hague Child Protection will have been ratified by all Member States.

Procedures, time limits, authorities involved etc.: relationship between national and international cases

Apart from international instruments such as Regulation Brussels 2A and international conventions, there exist only a few provisions of procedural law that are specifically directed at international cases. The latter are specifically directed at the extension of time limits for appeal or notification, or, on the other hand, a limitation for appeal e.g. against return orders. As regards authorities and institutions involved, the reports primarily mention those authorities who are involved in national cases as well but additionally, reference is made to other institutions such as International Social Services and private interest groups.

Relationship between the Member State where the court decides on the merits and the Member State of enforcement

Generally, the courts deciding on the merits will do so without any geographical restriction. Usually courts will not take into account the consequences of enforcement abroad, if only because it is not foreseen that enforcement will have to take place abroad. If the need for such enforcement abroad is anticipated, courts will probably not be influenced in their decision on the merits but may take into account that method of enforcement will be different. It is generally accepted that the first court decides on the merits and that the way of enforcement shall be in conformity with the law of the place where enforcement shall take place.

Apparently under influence of the same principle, it is reported that in cross-border situations sanctions and other enforcement measures may be adapted to the law of the state of enforcement. For a change of parental responsibility (or visitation rights etc.) in the new state, it is generally reported that such change can only take place when the new court has obtained jurisdiction to decide on the merits *and* the conditions are fulfilled to make a new decision, such as a considerable change of circumstances.

Other legal or practical conditions that may form obstacles to enforcement

Paragraph 2.4.4. above mentions a number of obstacles to enforcement. Some of the problems identified are not specific for the enforcement of family law cases, such as the problems inherent to the use of foreign languages. Other issues appear to be more specific for family law cases, or at least warrant a specific approach. In view of the fact that the persons involved in family law proceedings are private individuals, dealing with issues that cannot be given an economical value, the problem of costs merits attention, both from the perspective of the state and of the private individual. There further appears to be lack of expertise both with lawyers and authorities when dealing with cross-border family law cases.

Mediation

Mediation is a rapidly developing way of conflict resolution that may solve many problems but also may de-escalate many conflict situations and enhance the conditions for voluntary compliance. In a number of Member States, legislation has been enacted recently or new legislation is pending. The issue deserves special attention and perhaps further research.

A few tentative remarks can be made with respect to the use of mediation. Distinction should be made between the use of mediation in the process that leads to a family judgement and its use during the enforcement process. The objective of mediation during the process leading to the family judgment is directed at reaching agreement on a future situation that meets legal standards. This agreement may be confirmed in a judicial decision, or may take away the need for such a decision. Mediation in this process should help to avoid enforcement proceedings, as successful mediation would lead to a situation that is accepted by all parties involved.

Mediation after a family law judgement has been granted by the courts would in principle have a far more limited role. The situation that should be achieved is the situation described in the judgment and the room for parties to come to an agreement would be limited to the modalities of the enforcement. Nevertheless, a rather novel development is that some member states have begun using mediation in enforcement situations. In view of the interests that must be balanced the use of mediation in enforcement situations has a certain attraction. This will be further explored in Part 5 of this Synthesis.

3 Empirical Survey

Introduction

As part of the study on the *enforcement of family law decisions* a survey is set up to collect data on the current situation in the member states of the European Union.

Originally, a telephone survey was planned. However, despite many efforts many of the respondents could not be reached by phone or were reluctant to participate in the survey. Therefore, the team decided to support the phase of data-gathering with a tool for web based surveying; the questionnaire for the telephone survey was used as a basis for this and placed on the survey platform in six languages: English, French, German, Italian, Polish, Spanish.

The questionnaire aims at finding trends and problems in the practice of enforcement of family law ruling, and the possible origin of these problems. The issues are addressed both from a national, international and a cross-border perspective. In particular, questions are developed to see what action is currently considered as appropriate in adherence to international standards (such as set by the ECHR and, to an extent, by community law) and whether there are common concepts with respect to the compliance to the international standards. The integral text of the questionnaire may be found in the Annexes under 3.

The aim was a survey population of approximately 500. The key for the distribution amongst the 25 Member States is the number of seats in the European Parliament. This leads to the following ideal distribution:

Austria	13
Belgium	17
Cyprus	4
Czech Republic	17
Denmark	10
Estonia	4
Finland	10
France	53
Germany	68
Greece	17
Hungary	17
Ireland	9
Italy	53
Latvia	6
Lithuania	9
Luxembourg	4
Malta	4
The Netherlands	19
Poland	38
Portugal	17
Slovak Republic	10
Slovenia	5
Spain	38
Sweden	13
UK	53
TOTAL	508

Of course, the number of respondents – both in the ‘ideal distribution above’ and in the actual sample - in the separate countries is often too low to allow for statistically valid calculations on the national level. Moreover, the method of sampling does not lead to an a-select population but to a select sample. Therefore, we will limit our description to the European level. ‘Missing values’ (meaning that respondents have not answered to specific questions) are left out of the tables.

In this part of the synthesis report we first describe the respondents in the survey. Then we move to issues of enforcement. Visiting rights is the third topic, followed by a description of the results of the survey in the area of ‘measures to help enforcement of contact or visiting orders. Then the topic of child abduction in Europe is discussed, and - after that - mobility in Europe. The last issue to be discussed is ‘hearing of the child’.

3.1 The respondents: descriptive data

Many of the respondents using the web based questionnaire did not report their nationality. The known distribution is as follows:

Table 1 In which Member State are you resident?

	Count	%
AUT	33	8%
BEL	7	2%
DEN	6	2%
ESP	44	11%
EST	3	1%
FIN	5	1%
FRA	34	9%
GER	72	18%
GRE	19	5%
HON	2	1%
IRL	4	1%
ITA	17	4%
LAT	3	1%
LTU	29	7%
LUX	13	3%
NED	16	4%
POL	60	15%
SLO	5	1%
SVK	6	2%
UK	13	3%
Total	391	100%

In general the distribution in table 1 implies that nationalities are both over- and under-represented in the survey. Some of the countries seem not to be represented. Gender, age distribution and professional background are described in the following tables.

Table 2 Are you male or female?

	Count	%
Male	173	41%
Female	251	59%
Total	424	100%

Table 3 How old are you?

	Count	%
18-25	27	6%
26-30	69	16%
31-35	63	14%
36-40	61	14%
41-45	65	15%
46-50	43	10%
51-55	60	14%
56-60	31	7%
60+	24	5%
Total	443	100%

Table 4a Could you please indicate to what profession you belong?

	Count	%
Practising lawyer (attorney)	164	37%
Judge	101	23%
Public prosecutor	5	1%
Enforcement officer	39	9%
Police officer	1	0%
Youth care worker	31	7%
Other interested party (action group; researcher)	65	15%
Other (e.g. personal experience with family law issues)	42	9%
Total	448	100%

Table 4b Please indicate why you would like to take part in this survey:

	Count	%
I have or have had a personal interest in a family law case	11	11%
I am active in improving the position of persons involved in family law proceedings (activist)	34	35%
I have carried out extensive academic research in this area	20	21%
Other reasons	32	33%
Total	97	100%

Table 5 In addition to your present occupation, we would also like to know something about the training you have had

	Count	%
Law	325	78%
Social sciences/child sociology	54	13%
Police studies/law enforcement	6	1%
Other	83	20%
Total	418	100%

More answers possible

Table 6 In case you are a respondent who through his profession deals with family law or youth care issues, could you indicate to how often you deal with such issues?

	Count	%
Seldom (less than 10%)	38	9%
Occasionally (10-30%)	54	13%
Regularly (30-60%)	80	19%
Very often (60-80%)	66	16%
All the time or almost all the time (80-100%)	148	36%
I am not responding as a professional, but for other reasons	27	7%
Total	413	100%

3.2 Enforcement

We will now take you through a number of questions that deal with family law issues. Of course in a legal sense 'family law' covers many other issues as well.

But for this interview, family law means parental responsibility, or custody or guardianship, and the issues closely connected with responsibility for a child, such as visiting rights and abduction of children. Of course, the responsibility for the child may be in the hands of persons who are not its parents, or in the hands of institutions, and those issues are included as well.

Table 8 In general, how often per year would you be dealing with a problem concerning the enforcement of a decision on parental responsibility, visiting rights or orders to return a child?

	Count	%
Never	26	8%
Not every year, but cases do arise from time to time	57	18%
Less than 5 cases year	41	13%
Between 5-15 cases per year	52	17%
Between 15-30 cases per year	41	13%
Between 30-100 cases per year	67	21%
Between 100-500 cases	22	7%
More than 500 cases per year	7	2%
Total	313	100%

Table 9 And having regard to your professional time, how much of your working time would be devoted to dealing with these issues?

	Count	%
Seldom (less than 10%)	82	27%
Occasionally (10-30%)	79	26%
Regularly (30-60%)	67	22%
Very often (60-80%)	34	11%
All the time or almost all the time (80-100%)	28	9%
This does not apply to me, but I should be interviewed for other reasons explained above	18	6%
Total	308	100%

We will now mention a number of issues that might be a reason for enforcement to be problematic. We would like you to indicate how often you think these reasons occur in practice. Please try to indicate in percentages how often you think the following issues occur:

Table 10 Resons for problematic enforcement

	never		1-10%		11-30%		31-60%		61-80%		81-99%		always		cannot say		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
the child does not want to cooperate	26	10%	107	42%	54	21%	16	6%	9	4%	1	0%	4	2%	37	15%	254	100%
an adult with whom the child lives does not cooperate	3	1%	13	5%	38	15%	57	22%	58	22%	58	22%	15	6%	16	6%	258	100%
an adult with whom the child does not live does not cooperate	23	9%	64	25%	59	23%	45	17%	22	9%	11	4%	5	2%	29	11%	258	100%
the child has gone missing	91	36%	103	41%	15	6%	8	3%	2	1%	1	0%	2	1%	29	12%	251	100%
the decision that must be enforced is still subject to appeal	45	18%	71	28%	45	18%	31	12%	8	3%	8	3%	12	5%	34	13%	254	100%
there is a problem of procedural law (e.g. incorrect notification)	77	30%	87	34%	22	9%	10	4%	7	3%			5	2%	48	19%	256	100%
the enforcement leads to new court decisions on how enforcement should take place	40	16%	97	38%	29	11%	16	6%	13	5%	4	2%	8	3%	46	18%	253	100%
the decision is too old and has become unsuitable	88	35%	66	26%	32	13%	13	5%	6	2%	6	2%	3	1%	40	16%	254	100%
there is another defect in the decision	71	29%	85	34%	9	4%	11	4%	8	3%	3	1%	3	1%	58	23%	248	100%
another reason, i.e.	50	30%	28	17%	8	5%	6	4%	3	2%	5	3%	3	2%	66	39%	169	100%

If there is a procedural problem, could you mention the most frequent problems?

Respondents reply to this:

- I don't know.
- The parent with whom the child lives does not respect the outcome of a final decision in a procedure.
- Too many formalities.
- Visiting rights cannot be enforced because sanctions are lacking in the decision.
- Incorrect notification.
- The enforcement is a problem. If the mother refuses to cooperate, there are not suitable sanctions.
- Providing suitable and adequate means of proof to the judge.
- The child does not cooperate with the decisions ruling.
- The Greek law demands that before a hearing takes place, the judge must try to conciliate the parties.
- Most of the times the parties refuse any negotiation.
- The other party does not want to accept the enforcement and does not comply with it.
- The Slovak Civil Procedural Code does not govern the matter of the enforcement of the decision on return of the child specifically.
- The lack of sufficient tools.
- People moving and question of jurisdiction.
- I.e. the court has not ruled about venue before making other rulings.
- Sometimes an issue as to the relevant foreign order in force.
- Delay in seeking enforcement; to a lesser extent delay in court procedures in England.
- Lack of cooperation from the 'Jugendamt'.

If other defects in the decision are the reason for non-enforcement, could you mention which defects occur frequently?

- However a sanction is mentioned in the decision, no co-operation can be obtained in case of visiting rights.
- The decision has not been formulated specifically i.e. half the summer holidays.
- The decision is too vague, which is reason nor to cooperate anymore.
- Unknown address of the parent and the child, lack of cooperation with the parties involved, inadequate child and social services.
- The parent with whom the child lives often alleges that the child is sick or in a bad mood and therefore does not want to communicate with the other parent.
- Non service.
- The lack of specialized family judges and family courts in my country (Greece) makes the enforcement of many judicial decisions in the field of Family Law problematic.
- The parental periods (time, when parent may take the child to spent time with her) are not defined clearly; there is no fine for the breach of the parental period.
- A decision without details about for example the exact place and time of the enforcement.
- The lack of hearing of the child/others.
- No specific time for visiting or holiday.

If there are other reasons for enforcement to be problematic, what will these reasons be?

- Interference of 'Raad voor de Kinderbescherming' or other institutions.
- Resident parent does not cooperate often.
- Different nationalities of the parents; fear for child abduction.
- Defendant does not respond.
- It all depends on the good will of the parents to make it work.
- The child has occasionally been abducted by the one of the parents.
- The children refuse to cooperate under parent instructions.
- Parents who do not live in a place permanently, parents who don't have evident property.
- The most common reason that makes enforcement to be problematic are: a) the prolonged war between husbands b) specially psychological problems: one side poisons the child against another side c) parents keep their incomes in secret and it makes the maintenance to be problematic.
- The case law suggests that the involvement of other persons charged with the care of the child (in Greece, most commonly the grandparents) gives rises to issues in a number of cases.
- It is not possible to locate a parent and a child - Child abduction.
- A notification to an address that it is no longer valid and the other party can not find out the new address.
- The conflicts between the parents can have changes or circumstances have changed.
- Getting the child onto a plane (in international abduction return cases).
- Non-cooperation by parent with whom child lives

It seems fair to say that a dispute on enforcement will always concern at least three people: one child and two adults. To what extent will problems connected to the enforcement lead to involvement of authorities?

Table 12 Authorities involved when enforcement is problematic

	never		1-10%		11-30%		31-60%		61-80%		81-99%		always		cannot say		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
Execution officers	23	11%	45	21%	28	13%	19	9%	8	4%	18	9%	33	16%	36	17%	210	100%
Lawyers	5	2%	22	10%	19	9%	36	16%	42	19%	34	16%	40	18%	21	10%	219	100%
Social services	9	4%	36	17%	25	12%	29	14%	34	16%	32	15%	31	14%	18	8%	214	100%
Youth protection agencies	31	16%	47	24%	29	15%	19	10%	14	7%	11	6%	7	4%	41	21%	199	100%
Police officers	21	10%	54	25%	38	18%	27	13%	18	8%	12	6%	9	4%	34	16%	213	100%
Judges	9	4%	12	6%	16	7%	25	12%	26	12%	39	18%	65	30%	23	11%	215	100%
Other authorities	17	10%	33	19%	19	11%	11	6%	3	2%	2	1%	8	5%	79	46%	172	100%

The enforcement can lead to involvement of a judge and this judge may have to take a decision on how the enforcement should proceed. We will now mention a couple of general issues that may play a role for the judge when making a decision.

Table 13 Importance judges give to certain issues

	very important		important		neutral		unimportant		Very unimportant		6,00		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
the interest of the child	168	77%	35	16%	5	2%	7	3%	3	1%	1	0%	219	100%
the opinion of the child	37	17%	126	58%	35	16%	16	7%	3	1%	1	0%	218	100%
the judgment must be enforced at all costs	18	8%	63	30%	89	42%	29	14%	12	6%	1	0%	212	100%
parties should be conciliated	67	31%	99	46%	28	13%	14	6%	7	3%	1	0%	216	100%
a new solution should be found	20	10%	68	33%	84	40%	27	13%	9	4%	1	0%	209	100%
Other	8	8%	12	12%	42	41%	16	16%	24	23%	1	1%	103	100%

If you think other issues play a role in the judge's decision on how enforcement should proceed (or not), what would these be?

- Judges pay attention to the economical background of the parents.
- Suggesting the situation of the abductor when returning with the child to the country of the habitual residence of the child.
- Keeping status quo is often given too much respect leaving users of the system fearing avoiding the trouble/being "lazy".
- As a lawyer it is difficult to give the judges and "Statsaforvaltning" reassurance to the fact that giving the time (and also money), the parties can come to an agreement - which is better for the child and bringing hope for the future.
- Comment on these answers: the child's interests and opinion will have been taken into account in arriving at the decision to be enforced, and thus these issues should not be 're-run'. If the parties can reach an alternative (conciliated) solution that is to be encouraged and supported, but is rare at the enforcement stage. Enforcement is important if the original decision-making process is to be sustained rather than undermined.
- Issues concerning other family members, in particular siblings and half-siblings

Presumably, a dispute on the enforcement will be resolved finally. What can be said about the final result? I will mention a number of possible results, please indicate how often you think they occur on a scale going from never (0%) to always (100%).

Table 15 Final result of enforcement

	never		1-10%		11-30%		31-60%		61-80%		81-99%		always		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
the decision is enforced rapidly	16	8%	48	24%	39	20%	36	18%	35	18%	18	9%	6	3%	198	100%
the decision is enforced after a long period	13	7%	55	28%	52	27%	29	15%	29	15%	14	7%	3	2%	195	100%
the decision is not enforced	23	12%	95	49%	43	22%	13	7%	12	6%	5	3%	2	1%	193	100%
the decision is replaced by another decision	12	6%	75	39%	63	32%	25	13%	13	7%	3	2%	3	2%	194	100%
parties are reconciled and solve the problem themselves	14	7%	92	46%	51	26%	29	15%	10	5%			2	1%	198	100%
Other	25	38%	21	32%	8	12%	2	3%			2	3%	8	12%	66	100%

If the final outcome is that the decision that was to be enforced is replaced by another decision, what factors do you think play a role for the judge when making a new decision?

Table 16 Factors influencing a new court decision

	never		1-10%		11-30%		31-60%		61-80%		81-99%		always		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
the wish of the child	9	5%	31	16%	52	27%	49	25%	28	15%	15	8%	9	5%	193	100%
the wish of the adult(s) with whom the child lives	10	5%	34	18%	47	25%	48	26%	34	18%	11	6%	4	2%	188	100%
the wish of an adult with whom the child does not live	19	10%	56	30%	56	30%	32	17%	21	11%	1	1%	2	1%	187	100%
the judge does not agree with the decision that had to be enforced	39	21%	86	47%	26	14%	22	12%	4	2%	3	2%	2	1%	182	100%
the judge wants to preserve the situation that exists at the time of enforcement even if this is not in line with the decision that must be enforced	40	23%	62	36%	27	16%	16	9%	12	7%	11	6%	3	2%	171	100%
Other	24	32%	21	28%	6	8%	8	11%	2	3%	6	8%	7	9%	74	100%

3.3 Visiting rights

The previous questions were about parental responsibility in general. We will now look at decisions on visiting rights. The following questions deal with the enforcement of visiting rights in general, questions on visiting rights in an international situation will follow later.

Table 17 In general, how often per year would you be dealing with a problem concerning the enforcement of visiting rights issued by the courts in your own member state?

	Count	%
Never	21	10%
Not every year, but cases do arise from time to time	37	18%
Less than 5 cases year	31	15%
Between 5-15 cases per year	27	13%
Between 15-30 cases per year	37	18%
Between 30-100 cases per year	36	18%
Between 100-500 cases	12	6%
More than 500 cases per year	2	1%
Total	203	100%

Table 18 And having regard to your professional time, how much of your working time would be devoted to dealing with these issues?

	Count	%
Never	13	7%
1-10%	60	31%
11-30%	54	28%
31-60%	21	11%
61-80%	10	5%
81-99%	13	7%
always	3	2%
Cannot say	19	10%
Total	193	100%

We will now mention a number of issues that might be a reason for the enforcement of visiting rights to be problematic. We would like you to indicate whether how often in practice these reasons occur. Please try to indicate in percentages how often you think the following issues occur:

Table 19 Visiting rights: reasons for problematic enforcement in general

	never		1-10%		11-30%		31-60%		61-80%		81-99%		always		cannot say		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
The child does not want to cooperate/does not agree	6	3%	63	33%	62	32%	32	17%	13	7%					15	8%	191	100%
An adult with whom the child lives does not cooperate	2	1%	13	7%	21	11%	48	25%	47	24%	42	22%	9	5%	12	6%	194	100%
The child has gone missing	69	36%	82	43%	13	7%	1	1%	5	3%					21	11%	191	100%
There is a problem of procedural law (e.g. notification)	50	27%	73	39%	18	10%	5	3%	4	2%	1	1%	1	1%	33	18%	185	100%
The decision is still subject to appeal	40	21%	51	27%	39	21%	21	11%	3	2%	3	2%	3	2%	27	14%	187	100%
The decision is too old and has become unsuitable	58	31%	63	34%	20	11%	13	7%	2	1%	2	1%			28	15%	186	100%
There is another defect in the decision	44	26%	64	38%	10	6%	3	2%			2	1%	1	1%	45	27%	169	100%
another reason, i.e.	24	27%	9	10%	9	10%	4	4%	1	1%	1	1%	1	1%	41	46%	90	100%

As 'other reasons' – see table 19 above – respondents mentioned:

- New facts have become known after the trial.
- Another reason that visiting rights are not defined in details.
- Lack of communication between the parents

If there is a procedural problem, could you mention the two most frequent ones?

- Too many formalities.
- The procedure takes long; the 'Raad van de Kinderbescherming' is acting slow and does not always have capable employees.
- Long court delays lack of adequate proof.
- Defective or incorrect notification.
- The other party does not want to accept the enforcement and does not comply with it.
- Breaking the decision on the visiting rights is not adequately punishable according to the law.
- Conflicts about, or no verification of, foreign or international law.
- Absence of adequate evidence (including social services evidence); one or other parent failing to attend court.
- Not enough measures in 'Art. 21 Haager Abk.' To be able to judge the level of visiting.

If other defects in the decision are a reason for non-enforcement, could you mention which of them occur frequently?

- The decision is not specific. No sanctions.
- Courts define the visiting right in a very short sentences (e.g. from that hour, to that hour). And the practice shows that some clichés are used.
- A decision without details about for example the exact place and time of the enforcement.
- The decisions of the courts are usually not precise (e.g. where should be the enforcement take place and under what conditions) and therefore the enforcement cannot be provided.
- Too slow procedure regarding verification about complaints about the decision of visiting rights.
- The decision is in its effect incompatible with the way the parents organize their lives.

If there are other reasons for enforcement to be problematic, what will these reasons be?

- Child or resident parent does not cooperate.
- Unknown address of the parties.
- Parents who avoid keeping in touch their child with the other parent pretending that the child can't see the other parent.
- Child lives far away from one parent.
- The access decision is too wide and need more details on when the access begins and ends.
- A notification to an address that it is no longer valid and the other party can not find out the new address.
- Most often because of conflicts between the parents.
- By far the most common reasons are:- (a) The parent with whom the child lives is in reality opposed to contact; or (b) The other parent is insensitive in dealing with contact; Or both.



Table 21 To what extent will problems connected to the enforcement of a decision on visiting rights lead to involvement of authorities?

	never		1-10%		11-30%		31-60%		61-80%		81-99%		always		cannot say		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
Execution officers	31	18%	31	18%	18	11%	8	5%	19	11%	11	7%	21	12%	30	18%	169	100%
Lawyers	6	3%	17	10%	26	15%	28	16%	31	18%	22	12%	28	16%	19	11%	177	100%
Social services	9	5%	27	16%	23	14%	23	14%	26	15%	22	13%	24	14%	15	9%	169	100%
Youth protection agencies	18	11%	43	27%	25	16%	26	16%	4	3%	5	3%	6	4%	31	20%	158	100%
Police officers	20	12%	60	35%	20	12%	26	15%	13	8%	4	2%	5	3%	24	14%	172	100%
Judges	10	6%	11	6%	19	11%	17	10%	26	15%	25	15%	43	25%	20	12%	171	100%
Other authorities	14	12%	27	23%	11	9%	5	4%			2	2%	2	2%	58	49%	119	100%

Perhaps the enforcement of visiting rights leads to involvement of a judge and this judge has to take a decision as to how the enforcement should proceed. We will now mention a couple of general issues that may play a role for the judge when making a decision. Can you say something about the importance that a judge, in your perception, gives to these issues? We will deal with specific issues in cross-border situations later.

Table 22 Visiting rights: importance judges give to certain issues

	very important		important		neutral		unimportant		very unimportant		6,00		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
The interest of the child	132	75%	32	18%	4	2%	5	3%	1	1%	1	1%	175	100%
The opinion of the child	23	13%	113	65%	30	17%	7	4%	1	1%	1	1%	175	100%
The judgment must be enforced at all costs	11	7%	36	21%	80	47%	33	20%	8	5%	1	1%	169	100%
The rights of the adult who wants to visit the child	14	8%	114	66%	30	17%	13	8%	1	1%	1	1%	173	100%
The rights of the adult with whom the child lives	12	7%	96	56%	53	31%	9	5%	1	1%	1	1%	172	100%
The need to change the modalities of the visits (time, place or duration of the visit)	20	12%	97	58%	42	25%	7	4%	1	1%	1	1%	168	100%
Other	2	3%	7	11%	37	59%	6	10%	10	16%	1	2%	63	100%

We will now turn to the enforcement of visiting rights in an international situation. Again we will mention a number of issues that might be a reason for the enforcement of visiting rights to be problematic. Please try to indicate in percentages how often you think the following issues occur:

Table 23 Visiting rights: reasons for problematic enforcement in cross-border cases

	never		1-10%		11-30%		31-60%		61-80%		81-99%		always		cannot say		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
The child does not want to Cooperate	9	6%	52	33%	35	22%	15	10%	10	6%	3	2%	1	1%	31	20%	156	100%
An adult with whom the child lives does not cooperate	2	1%	7	4%	26	16%	24	15%	39	24%	34	21%	5	3%	23	14%	160	100%
The child has gone missing	33	21%	57	36%	15	9%	9	6%	1	1%	4	3%			39	25%	158	100%
The modalities of the visiting arrangement are unsuitable	6	4%	31	20%	25	16%	31	20%	17	11%	10	6%	3	2%	33	21%	156	100%
The foreign decision is still subject to appeal	27	17%	37	24%	24	15%	13	8%	2	1%	4	3%			49	31%	156	100%
there is a problem of procedural law (e.g. notification)	20	13%	57	37%	9	6%	12	8%	4	3%	4	3%	1	1%	48	31%	155	100%
The decision is too old and has become unsuitable	32	21%	38	25%	22	14%	10	7%	5	3%	4	3%			42	27%	153	100%
There is another defect in the decision	28	19%	44	31%	5	3%	4	3%			3	2%			60	42%	144	100%
another reason, i.e.	23	26%	11	13%	1	1%	4	5%	2	2%					47	53%	88	100%

Table 24 Can you say something about the effect a lawful move from one Member State to another Member State has on contact orders? Suppose that the initial contact order was made for a national situation and did not provide for longer travel periods etc.

	Count	%
Yes	122	60%
No	19	9%
Cannot say	62	31%
Total	203	100%

Table 25a Do you think the courts are flexible, that is that they will be ready to accept changes that may be necessary to deal with visiting rights in a situation with cross-border aspects, or do you think they are inflexible and that they prefer to deal with this in a similar fashion as a 'normal situation where all persons concerned live in the same state?

	Count	%
Flexible	110	52%
Inflexible	31	15%
Cannot say	71	33%
Total	212	100%

If you think the courts are flexible, could you give an example?

- The Judge is flexible when it comes to holiday planning.
- In the interest of the child the courts look into the practical circumstances. I do not have an example.
- They give specific rules about costs of travelling, who brings the children etc.
- Respect decisions of foreign courts.
- They try to reach an agreement.
- Try to meet the need to assure the parents where the child lives that the child will be returned after visit.
- English courts will usually accept that an arrangement which was suitable when both parents lived in the same country (especially if they lived close to each other) has become unsuitable when the child and one parent move to England. An arrangement for longer periods of contact during school holidays will often have become more suitable than e.g. frequent contact at weekends.
- If it has been a long time since actual visits have taken place and there has grown a distance between parent and child, then an in-between solution will be created.

Table 25c And if you think courts are inflexible, do you think this should be changed?

	Count	%
Yes	29	100%
Total	29	100%

Table 26 If you think a change is needed to improve flexibility with regard to the international situation, what measures could be taken?

	Count	%
I have no idea	9	36%
I would suggest [please fill in]	16	64%
Total	25	100%

Table 27a Do you think that the current Regulation Brussels 2A offers sufficient scope for a flexible approach?

	Count	%
Yes	99	70%
No	42	30%
Total	141	100%

Table 28a Do you have experiences with the certificate that can be granted by the court of the Member State of origin under article 41(2) Regulation Brussels 2A?

	Count	%
Yes	17	8%
No	190	92%
Total	207	100%

Table 28b And what is your opinion on the way this certificate functions?

	Count	%
The certificate does away with many problems	4	25%
The certificate does not do away with all problems	8	50%
I have no opinion	4	25%
Total	16	100%

Table 29 Will the courts of your member state be prepared to make a new decision on visiting rights, even if there is a decision from another member state that is enforceable on the basis of the certificate of the Brussels 2 Regulation?

	Count	%
I have no opinion	141	69%
Yes	36	18%
No	27	13%
Total	204	100%

Table 30 And what will be necessary to obtain a new decision? (More answers possible)

	Count	%
To demonstrate new circumstances	31	91%
To demonstrate that the earlier decision (from another Member State) cannot function in a cross-border situation	21	62%
Other	6	18%
Total	34	100%

3.4 Measures to help enforcement of contact / visiting orders

Table 31 Are you aware of a practice in the courts to issue orders to support enforcement?

	<i>Count</i>	<i>%</i>
Yes	81	48%
No	88	52%
Total	169	100%

Table 32 Could you rate the effectiveness of the following measures?

	effective		not effective		no opinion		Total	
	number	%	number	%	number	%	number	%
reduction of maintenance for the child concerned (e.g. no rights during period of non-compliance with family law decision)	23	29%	38	48%	18	23%	79	100%
reduction of maintenance rights for the adult who does not comply	40	51%	22	28%	17	22%	79	100%
other pecuniary fines	50	63%	16	20%	14	18%	80	100%
physical restraint of the non-complying adult	29	36%	30	37%	22	27%	81	100%
measures with respect to parental responsibility (e.g. reducing rights of the non-complying parent and increasing the rights of the other adult(s) concerned)	51	64%	11	14%	18	23%	80	100%
complete removal of parental responsibility of the non-complying parent (e.g. taking child into care, granting parental responsibility to another adult)	44	54%	19	23%	18	22%	81	100%
change of residence of the child	32	41%	26	33%	20	26%	78	100%
contempt of court	22	29%	22	29%	32	42%	76	100%
other measures	8	19%	2	5%	32	76%	42	100%

Table 32a Could you indicate whether the measures mentioned above are appropriate in view of the interest of the child?

	appropriate		not appropriate		no opinion		Total	
	number	%	number	%	number	%	number	%
Reduction of maintenance for the child concerned (e.g. no rights during period of non-compliance with family law decision)	31	19%	114	69%	21	13%	166	100%
Reduction of maintenance rights for the adult who does not comply	93	56%	53	32%	20	12%	166	100%
other pecuniary fines	118	72%	26	16%	21	13%	165	100%
Physical restraint of the non-complying adult	52	32%	77	47%	35	21%	164	100%
measures with respect to parental responsibility (e.g. reducing rights of the non-complying parent and increasing the rights of the other adult(s) concerned)	120	72%	25	15%	21	13%	166	100%
Complete removal of parental responsibility of the non-complying parent (e.g. taking child into care, granting parental responsibility to another adult)	97	58%	45	27%	25	15%	167	100%
Change of residence of the child	68	41%	60	36%	38	23%	166	100%
Contempt of court	56	36%	42	27%	58	37%	156	100%
Other measures	21	21%	5	5%	72	73%	98	100%

3.5 Child abduction within the EU

Suppose that there is a decision ordering the return of a child that to another member state. Presumably, the child is currently with the abductor in your member state and the central authority in your member state has been notified.

Table 33 When dealing with a return order, where a child has to be brought back from your member state to another member state, what is your impression of the time needed to enforce such an order?

	Count	%
Enforcement is always or almost always effectuated rapidly	17	12%
In the majority of cases enforcement carried out rapidly	29	20%
In the majority of cases enforcement leads to complications, someone will try to slow down the enforcement process	62	43%
Enforcement always or almost always takes a long time	30	21%
Enforcement will not take place	5	3%
Total	143	100%

Table 34 When the residence of the child is unknown, what options are available to the national central authority to locate the child?

	Count	%
None	9	6%
Other government authorities will start searching	64	43%
Consultation of public registries	191	68%
Consultation of records that are not open to the general public	45	30%
Other	10	7%
Total	149	100%

More answers possible

'Other' answers (table 34) given were:

- The English courts will make (inter alia) orders for disclosure of mobile telephone logs and of bank records (to show where cash has been withdrawn).
- I have no expeditious with this issue.
- Almost none.

Table 35 And what options are available for another interested party in most cases this will be the other parent, to locate the child?

	Count	%
None, such party should refrain from action	8	6%
Consultation of public records will enable such a party to locate the child	10	7%
The interested party will have to leave the search to the Central Authority	17	12%
The interested party should leave the search to the Central Authority, but may take steps at his own expense to find the child	88	61%
The interested party may request a court order to give him access to non-public records	21	15%
Total	144	100%

Table 36 Please rank on a scale from 1-5 (1= most effective, 5= least effective) the effectiveness of the following methods to locate the child:

	most effective 1		2		3		4		least effective 5		Total	
	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%	num-ber	%
	Police search	66	43%	43	28%	26	17%	13	9%	4	3%	152
Publicity (e.g. advertising, television, internet)	31	22%	41	30%	38	28%	20	14%	8	6%	138	100%
Private search by an interested party	44	30%	47	32%	33	22%	15	10%	8	5%	147	100%
Other	4	9%	7	16%	9	20%	6	14%	18	41%	44	100%

What other measures as compared to the ones in table 36 would you consider to be effective?

- No experience.
- I have no professional advice for you on this.
- Systematic communication with the family of the kidnapper, requesting contact and discussion.
- See above - court orders for disclosure of mobile phone logs and bank records.
- 'Signalement national, Schengen, Interpol'.

Once the child has been located, there can be a number of issues that must be dealt with before the child can be returned in accordance with a return order.

We would like to take a closer look at these issues, which we have split up in the following:

- notification of the return order
- measures in preparation of the return
- coercive measures
- legal remedies available against enforcement of the return order

Table 37 In your experience, does notification of the return order slow down the process of returning the child?

	Count	%
No	34	21%
Yes	54	33%
I have no opinion	75	46%
Total	163	100%

Table 38 When yes, what are the reasons for a slow-down (more than one answer possible)

	Count	%
The person to whom the order must be notified cannot be located	67	82%
There is discussion as to whom the order must be notified	19	23%
Other reasons	12	15%
Total	82	100%

More answers possible

'Other reasons' mentioned (Table 38) are:

- Given the wrong circumstances, you risk the other party will try to dodge notification/ enforcement Determined objections on the part of children old enough to express a strong view.
- Manipulated or not, the child disagrees with the decision.

Table 39 After the child has been located and assuming that the return order is not contested, is it usual for a government body, such as the central authority, to prepare the actual return of the child?

	Count	%
No. It is not necessary to prepare the return, the child is simply returned as quickly as possible. Preparations are limited to travel arrangements	42	36%
Yes. Prior to the actual return, a number of procedures are	76	64%
Total	118	100%

Table 40 When a government body, such as the central authority, does prepare the actual return of the child, which of the following practices is applied?

	Count	%
Organising of meetings between parents, when the abduction occurs between parents	34	33%
Meeting with the person with whom the child is staying	44	43%
If the child goes to school, meeting with school authorities	21	21%
Interview with the child	40	39%
Medical examination of the child	19	19%
Other	13	13%
Children are simply returned as soon as possible	38	37%
Total	102	100%

More answers possible

Table 41 When a government body, such as the central authority, wants to actually return the child and take it from the place where the child is staying, what is the most accurate description of what usually happens?

	Count	%
Usually the person with whom the child is staying is request to hand over the child at a certain date and place. If this does not happen, further steps, including coercive measures, may be taken	35	23%
The authorities fix a date for picking up the child in consultation with the person with whom the child is staying	17	11%
The authorities take the child into their care as soon as possible and following that arrange for the return to the state of origin	22	15%
The practice is different, i.e.	10	7%
I have no opinion	65	44%
Total	149	100%

Table 42 In your perception, what is the best method to enforce return orders?

	count	%
Discussion should be limited to the minimum. The child should be taken back as soon as possible to the country of origin	29	19%
It is inevitable and necessary to fine-tune such a return with the persons concerned, including the child	39	26%
Neither of the above. The best method differs from case to case and can not be generalized	55	36%
None of the above. The best method is ...	2	1%
I have no opinion	26	17%
Total	151	100%

If you think it is none of the above methods is suitable, then what?

- And the child should be taken back as soon as possible to the country of origin.
- Cooperation between the central authority, the parties involved and competent social services is needed.
- At this stage one should try mediation.

Table 43 How does actual practice compare to your perception of the best method?

	Count	%
Actual practice comes quite close to what I think is right	70	61%
Actual practice is far different from the way it should be in my opinion	44	39%
Total	114	100%

Table 44 Presumably, attempts are made to contest return orders in a number of cases. In your experience, how often are return orders contested?

	Count	%
In every abduction case I have been concerned with	26	23%
In almost every abduction case I have been concerned with (90%)	20	18%
In 70%-90% of the abduction cases I was concerned with	12	11%
In more that 50% of abduction cases I was concerned with	15	13%
In between 30-50% of the abduction cases I was concerned with	7	6%
Less than 30% of the abduction cases I was concerned with	12	11%
Almost never (less than 10%)	16	14%
Never	6	5%
Total	114	100%

Table 45 And what issues are mainly raised to contest the return order? (More than one answer possible)

	Count	%
The person requesting return had accepted the move of the child at an earlier stage	47	40%
There is a great risk for the child's physical or mental health	89	76%
There is conflict with a court decision from the courts of the 'abduction state' (the state the child has been taken to)	31	26%
The child does not want to be returned	72	62%
Other	8	7%
Total	117	100%

More answers possible

Other issues, mentioned by respondents, are:

- The left-behind parent was not executing his custody rights at the time of the abduction.
- Violence within the family.
- The other parent did not take care for the child properly.

Table 46a Do you have experiences with the certificate that can be granted by the court of the Member State of origin under article 42(2) Regulation Brussels 2A?

	Count	%
Yes	8	6%
No	135	94%
Total	143	100%

Table 46b And what is your opinion on the way this certificate functions?

	Count	%
The certificate is an improvement	3	33%
The certificate does not improve matters	4	44%
I have no opinion	2	22%
Total	9	100%

Table 47a Will the courts of your member state be prepared to refuse the return of the child, even if there is a decision from another member state that is enforceable on the basis of the certificate of the Brussels 2 Regulation?

	Count	%
I have no opinion	123	68%
Yes	25	14%
No	34	19%
Total	182	100%

Table 47b What would be a reason to refuse return?

	Count	%
The person requesting return had accepted the move of the child at an earlier stage	13	59%
There is a great risk for the child's physical or mental health	18	82%
There is conflict with a court decision from the courts of the 'aduction state' (the state the child has been taken to)	5	23%
The child does not want to be returned	12	55%
Other	1	5%
Total	22	100%

More answers possible

Another reason mentioned is the gender of the kidnapper being female.

Table 48 In case the return takes place on the basis of a decision of another member state for which a certificate has been issued, is there still scope for the courts of your member state to deal with the modalities of the return?

	Count	%
No, the certificate does away with that possibility	15	17%
Yes, but only if the decision with certificate does not address the modalities	19	22%
Yes, when the decision with certificate addresses the modalities but these do not fit in with the local or national circumstances or practices	28	32%
This is irrelevant as there is no need to deal with modalities of the return.	26	30%
The child should simply be returned forthwith		
Total	88	100%

Table 49 Would you be able to comment on the way enforcement of return orders is taking place between EU member states, comparing the current situation where both an EU regulation and an the Hague Abduction Convention apply, and the situation a few years ago

	Count	%
The situation between Member States has not improved significantly	22	26%
The situation between Member States has improved significantly	19	22%
The situation between Member States has improved but not significantly	30	35%
The situation is unchanged	15	17%
Total	86	100%

Table 50 And do you think the handling of return orders can still be improved? (More answers possible)

	Count	%
No	4	3%
I have no idea	50	38%
Yes, by further taking away legal barriers for enforcement	37	28%
Yes, by preventing abductions	42	32%
Yes, by improving the modalities of enforcement	37	28%
Yes, by other methods, not related to legal barriers for enforcement, such as	15	11%
Total	133	100%

More answers possible

Meditation was mentioned as another methods several times.

Table 51 If you think further legal barriers for enforcement of return orders should be taken away, what measures are you thinking of (more than one answer possible)

	count	%
I do not think further legal barriers for enforcement of return orders should be taken away	19	17%
By making the procedure for enforcement the same or almost the same in all EU Member States	78	70%
By removing of the need for an 'enforcement order' ('exequatur) between EU Member States	28	25%
By increasing the priority of the decision of the member state from where the child was abducted	28	25%
Other measures	5	4%
Total	112	100%

More answers possible

Table 52 If you think preventive measures are needed, what sort of measures are you thinking of (more than one answer possible)

	count	%
I do not think preventive measures are needed	18	17%
Make it possible to verify who are responsible for the child for the child and whether the circulation of a minor in the EU is approved by the responsible adults	72	67%
Measures with respect to the validity of travel documents	51	47%
Other	6	6%
Total	108	100%

More answers possible

Table 53 If you think the modalities should be changed, what are you thinking of?

	count	%
I do not think the modalities should be changed	11	8%
Improving possibilities for professional assistance to the child (psychologists, mediators, counsellors)	83	63%
Improving possibilities for professional assistance to the adults concerned (psychologists, mediators, counsellors)	81	61%
Improving possibilities to mediate between the adults concerned at the enforcement stage	81	61%
Other measures	3	2%
Total	132	100%

More answers possible

3.6 Mobility within the EU

We would like to ask some questions on your views with respect to mobility of children within the EU. These issues do not concern the actual enforcement, but may give an idea about problems underlying the enforcement problem.

Suppose that a young child, under the age of 12, is currently under the parental responsibility of both parents and the intention is to move to another member state in order to live in with only one of the parents. The intention is that the parents maintain the joint parental responsibility

Table 54 What would be the best advice you could give to these parents, if the child was now living in your member state and the intention is that one parent will go with the child to live in another state?

	count	%
I advise them to formalise their agreement in a private document between the parents	52	33%
I advise them to formalise their agreement with the aid of court intervention (possibly leading to a court decision)	52	33%
I see no need to formalise this, parents can deal with this between themselves	13	8%
A formal arrangement between the parents will not prevent future problems	24	15%
I would advise another solution...	5	3%
I have no opinion	10	6%
Total	156	100%

Other solutions mentioned are:

- Parents should be counselled about eventually future problems. Then parents could formalise their agreement if they will think that is necessary.
- Assistance of a mediator.

Table 55 And suppose this young child was now living in another state and the intention was that the child would come and live in your state with one of the parents

	count	%
I advise them to formalise their agreement privately in a party document	52	34%
I advise them to formalise their agreement with the aid of court intervention (possibly leading to a court decision)	56	37%
I see no need to formalise their agreement, parents can deal with this between themselves	11	7%
a formal arrangement will not prevent future problems	19	13%
I would advise another solution	2	1%
I have no opinion	12	8%
Total	152	100%

Table 56 Suppose that a young child is under the parental responsibility of only one parent and this parent wishes to move from one state to another state. If the parent is now living in your state, what would be your advice if you were informed of this intent?

	count	%
I see no problem, the parent with sole parental responsibility can determine where the child lives	78	53%
I would recommend to seek court approval in my state first	33	22%
I would advise another solution	25	17%
I have no opinion	12	8%
Total	148	100%

If you would consider another solution, what would that be?

- Cannot say.
- The parent in charge could take the decision alone. He or she should discuss it with the other parent.
- He should inform parent with contact right and if they can not agree about further contacts with a young child they should make agreement with aid of court.
- Mediation.
- Obtaining an agreement with the other parent

Table 59 And suppose, in the previous question, there is still another parent who does not have parental responsibility but who does have visiting rights that are frequently used?

	count	%
That does not alter the situation, the parent who has sole parental responsibility can determine where the child lives	47	32%
I recommend seeking court approval first. I expect that such approval will be given	35	24%
I recommend seeking court approval first. I doubt whether such approval will be given	11	8%
I would advise another solution, namely...	34	23%
I have no opinion	18	12%
Total	145	100%

Mediation was mentioned a number of times as 'other solution'.

Table 60 And suppose that this other parent does not exercise his visiting rights regularly, would that change your answer?

	count	%
No, the parent who has sole parental responsibility can determine where the child lives	56	37%
I recommend seeking court approval first. I expect that such approval will be given as the move will not be seen as contrary to the best interest of the child	41	27%
I recommend seeking court approval first. I doubt whether such approval will be given, as the move may be considered against the best interest of the child	6	4%
I would advise another solution, namely...	24	16%
I have no opinion	23	15%
Total	150	100%

3.7 Hearing of the child

The following questions deal with the hearing of a child, in connection with the enforcement of a family law decision.

Table 61 How frequent will court proceedings connected to the enforcement of a return order lead to the hearing of the child?

	count	%
In every abduction case I have been concerned with	19	12%
In almost every abduction case I have been concerned with (90%)	18	12%
In 70-90% of the abduction cases I was concerned with	7	5%
In more that 50% of abduction cases I was concerned with	6	4%
In between 30-50% of the abduction cases I was concerned with	10	6%
Less than 30% of the abduction cases I was concerned with	8	5%
ALMOST never (less than 10%)	12	8%
Never	6	4%
Cannot say/do not know	69	45%
Total	155	100%

Table 62 How frequent do other court proceedings connected to the enforcement of other family law decisions (which are not return orders) lead to the hearing of a child?

	count	%
In every other family law case I have been concerned with	12	8%
In almost every other family law case I have been concerned with (90%)	17	11%
In 70-90% of the other family law cases I was concerned with	18	12%
In more that 50% of the other family law cases I was concerned with	11	7%
In between 30-50% of the abduction cases I was concerned wit	14	9%
Less than 30% of the other family law cases I was concerned with	11	7%
Almost never (less than 10%)	18	12%
Never	2	1%
Cannot say/do not know	47	31%
Total	150	100%

Table 63 From what age do you think that, generally speaking, it is wise to find out what the opinion of a normal child is?

	count	%
From a fairly young age, say from about three to four years	44	29%
Not before the age of 6	32	21%
Not before the age of 8	31	20%
Not before the age of 10	27	18%
Not before the age of 12	12	8%
Not before the age of 14	4	3%
Not before the age of 16	3	2%
Total	153	100%

Table 64a To what extent do you think the opinion of the child influences your personal view on what should happen in a case concerning the enforcement of a family law decision?

	count	%
the child's opinion will greatly influence my view	27	17%
the child's opinion will influence my view, but is not decisive for my actions	89	57%
in most cases the child's opinion does not influence my view I tend to look at other aspects of the case. Sometimes the child's opinion can be valuable.	24	15%
I pay very little attention to the child's opinion, as I think the child will be unable to assess his own position	1	1%
I pay little attention to the child's opinion as I think that the opinion of the child will be influenced by adults	2	1%
I have no opinion	12	8%
Total	155	100%

Table 64b And under what conditions do you think that the child should be heard?

	count	%
under the similar conditions as other parties or witnesses	5	3%
under conditions that are adapted to the child	143	92%
I have no opinion	7	5%
Total	155	100%

Table 64c And do you think that in the actual court practice of your member state hearings of the child find place in suitable conditions

	count	%
yes	77	49%
no	44	28%
I have no opinion	36	23%
Total	157	100%

Do you have any further comments with respect to the hearing of the child?

- In the Netherlands all children older than 12 will be heard in Court.
- In England the views of the child are always sought if the child is mature enough (say 8, but this is flexible) to express a proper view. The child does not give evidence but is interviewed by a specialist social worker who presents the child's views to the court.

3.8 A legal perspective on the empirical survey

The following observations on the empirical study are made from a legal perspective and do not claim to be relevant from sociological or any other perspective.

3.8.1 The respondents: predominantly legal professionals

With respect to the nationalities, some are over- and others underrepresented in the survey. For the larger member states, the number of respondents for Germany and Spain are close to the desired number, for Poland the number of respondents is significantly higher, for France the number is slightly lower and for Italy and the United Kingdom significantly lower. With respect to the smaller member states there is an overrepresentation for Luxembourg and Austria and an under representation for Belgium, Denmark and Hungary.

The number of female respondents (59%) exceeds the number of male respondents (49%). The age groups of the respondents are fairly evenly distributed between 26 and 55. Above 55 the proportion of respondents is half that of those between 26 and 55, under 26, which the case is also for respondents of 25 and younger.

Judges and practicing lawyers make up 60% of the respondents, and for every 2 judges approximately 3 lawyers have responded. Public prosecutors or other court officers (enforcement officers) make up 10% of the respondents, youth care workers 7%. Other persons, who are interested in the survey for other reasons but who do not belong to legal or paralegal professionals who are involved in the practice of enforcement, total to 25% of the respondents. Of these, 9% of the total respondents have had personal experiences with family law issues. With regard to educational background, 78% of the respondents received a legal education.

With respect to the intensity of their involvement in family law cases (not necessarily enforcement cases) 71% of the respondents indicated that they deal at least regularly with family law or youth care issues, and 52% of respondents dealt with those issues very often or (almost) all the time.

3.8.2 Enforcement

With respect to their involvement in enforcement of family law decisions, 30% of the respondents indicated that they dealt with 30 or more cases per year. Another 30% dealt with 5-15 cases per year. With respect to the professional time devoted to these issues 42% indicated that they dealt at least regularly with enforcement of family law decisions.

With regards to the type of problems that would arise during enforcement of a family law decision, a few conclusions can be drawn.

A large minority (42%) thought that non-cooperation of the child occurred in 1-10% of the cases. Another large group (21%) thought this would happen in 11-30% of the cases. A majority of 63% respondents therefore thinks that the problem of non-cooperation of the child will not occur in at least 2/3 of all enforcement cases.

Exactly half of the respondents think that in 60% or more of the cases an adult with whom the child lives is uncooperative in enforcement. A third of the respondents (34%) think that the inverse situation, an adult with whom the child does not live does not cooperate, occurs seldom, in less than 10% of the cases, and a fair majority (57%) still thinks this will happen in maximum 30% of the cases.

The problem that a decision is still subject to appeal does not appear to occur very frequently. Only 18% of the respondents think this occurs in 30% or more of the cases. Almost half of the respondents, 46%, think this occurs seldom, in less than 10% of the cases. Other problems of procedural law, including problems of notification, also appear to occur relatively seldom, as 64% of the respondents think this will happen in less than 10% of the cases. Other problems that may be contributed to legal anomalies also appear to occur relatively seldom. A third of respondents think that the problem that a decision is too old and has become unsuitable never occurs. Another 26% thinks this occurs in less than 10% of the cases. Other defects in the court decision also would not lead to problems in 90% or more of the cases according to almost two thirds (63%) of the respondents. Most respondents (79%) do not think or do not know that there could be any other reason that may form an obstacle to enforcement.

The answers give the expression that when asked to give their view on the possible reasons for problems in enforcement, the main source of problems is not attributed to legal aspects but to human aspects. The adult with whom the child lives is seen as a main factor in making enforcement problematic. The second human factor in creating problems in the enforcement is the child, who may not be willing to cooperate. Legal aspects may be a source of problems, but they are not seen as the main source of complications. It is further notable that when it comes to singling out complicating factors of a legal nature that there is not one single factor that is considered to stick out.

The view that not one single factor can be identified as the main factor complicating enforcement, is supported by the relatively wide range answers that were given to open questions on the nature of certain problems that might occur. Although the replies to the open question vary, certain issues are mentioned often. Human behaviour is one issue, either from the adult with whom the child resides or the child itself is indicated as a problem in the enforcement. There are also practical problems linked to mobility, persons moving in and out the jurisdiction would complicate matters. In the same vein proper notification is considered a problem; a reason given is that it can be difficult to locate the defendant, whose address is unknown or has become obsolete. Problems are also identified with finding solutions based on reconciling the parties. One respondent criticized the need in his jurisdiction that a judge must first seek to reconcile parties, another remarked that parties refuse to negotiate. In this respect, the will of the parties (parents) was mentioned as the main factor to make the legal arrangement work. There were also some remarks with respect to the professionals who have to handle the enforcement. Critical remarks were made with respect to the lack of specialized knowledge of judges and of and of youth protection agencies.

When asked how often problems in the enforcement would lead to involvement of authorities, there range of the number of occurrences, as seen by the respondents, is remarkably evened out. It is difficult to draw a conclusion from this, with one notable exception. Thirty

percent of the respondents indicate that a judge will always be involved when there are problems. A further 18% indicates that in almost all cases (more than 80%) a judge will be involved. This rate of involvement is not mentioned for any other authority. Nor is there any authority that is clearly marked out by the respondents as not being involved in the enforcement process.

When it comes to rating the importance judges give to issues surrounding the enforcement, one main issue is put forward. More than three quarters (77%) of respondents rate the importance judges give to the interest of the child as 'very important'. Another 16% think that judges rate the interest of the child as 'important' and there is hardly support for the view that judges would consider the interest of the child as unimportant or very unimportant. This overwhelming weight given to the interest of the child is followed only by two issues that have to do with the persons involved in the proceedings. A large majority (77%) thinks that conciliation of parties is an issue that judges rate as important or very important. This is followed by 75% of the respondents who think judges will give weight to the hearing of the child. According to 58% of the respondents judges will rate the hearing of the child as 'important', another 17% of the respondents even think that judges consider this 'very important'.

There is much less support for the suggestion that the notion that a judgment should be enforced at all costs is fundamental to the judges' decision. Thirty percent of the respondents think this is considered 'important' by judges, but a large minority of the respondents (42%) think judges are neutral to this aspect of their decision making. It is further remarkable that even more respondents (33%) think that judges give importance to the notion that a new solution should be found, an aim that is difficult to equate with the notion that judgments should be respected.

With respect to the other issues respondents have mentioned as playing an important role in the judge's opinion, one comment mentions the economical situation of the parties (parents) involved. Other remarks show that the respondents have different opinions with regard to the desired objective of the enforcement proceedings. One remark points out that the material issues (including the best interests of the child and its opinion) will have been discussed in the proceedings that led to the judgment that is enforced. Hence the case should not be repeated during the enforcement. Another remark emphasises the need for reconciliation and agreement between parties, even at the enforcement stage, as this would be better for the child.

With respect to the result of the enforcement, the views on the final outcome are, from all respects, rather pessimistic. It is notable that only 10% of respondents think that a decision will be enforced rapidly in 80% or more of the cases. A majority (52%) thinks that only in 30% or less of the cases rapid enforcement will be the final result. The chances that the decision is replaced by another decision are also seen as minimal, 77% thinks this will happen in 30% or less of the cases. But conciliation between parties is also ruled out as very probable result. More than half of the respondents (53%) rate the chance of a conciliation at less than 10% of all cases.

If the decision that had to be enforced is replaced by another decision, the reasons for this appear to be very diverse. There are no aspects that are mentioned as playing a frequent

role in the majority of cases. If any conclusion can be drawn from the responses it would be that judges are thought not to be influenced much by the opinion they have on the contents of the judgment that is to be enforced. More than half of the respondents (68%) think that in less than 10% of the cases judges would let their disagreement with the decision play a role in their handling of the enforcement. Nor do the respondents think that maintaining the status quo, even if incompatible with the enforceable decision, matters for the judges (59% of respondents think that only in 10% or less of the cases judges will want to preserve the existing situation).

There is some support for the idea that replacing the decision that had to be enforced can be attributed to the wish of the child or of the adults involved, but this explanation is not seen as one of overriding importance. Forty percent of the respondents think that the wish of the child will play a role in 30-80% of cases, 44% thinks the wish of the adult with whom the child lives plays a role in 30-80% of the cases. The wish of the adult with whom the child does not live is considered to have much less weight, 70% of the respondents thinks this plays a role in 30% or less of the cases.

3.8.3 Visiting rights

With regard to the incidence of cases on visiting rights, the respondents rate this an issue that will occur regularly. Eighteen percent of respondents indicate they will deal with 30-100 cases per year, another 18% would deal with 15-30 cases per year. Almost 60% of the respondents indicate the working time consumed in dealing with such cases will be less than 30%.

With regard to the problems, non cooperation of the child is considered not to occur very frequently. Two thirds of the respondents (68%) think that in 30% or less of the cases the non-cooperation of the child will be a problem. On the other hand, a majority (51%) thinks that non cooperation of an adult with whom the child lives is a problem in 60% or more the cases. Again, issues of a strictly legal nature, such as problems of procedural law, appeal to the decision that is enforced, or unsuitability of the enforceable decision, are seen as an issue that have much less impact. Most of these issues would according to the majority of respondents play a role in 10% or less of the cases. A large minority, 48%, rates that a possible appeal will be a problem in 10% or less of the cases.

With respect to individual comments, the content of the decision that must be enforced is seen as a reason for problems. A reproach made more than once is that decisions are not specific or precise enough with respect to the visiting arrangements. Decisions on visiting would not be precise enough in determining how and when the actual contact should take place. It was also remarked that judgments tend to be standardised. In a similar vein comes the remark that the decision may not take into account the way parents have organized their lives. Other reasons for problems have also been mentioned in reply to the general questions on problems with enforcement: the attitude of the parent with whom the child lives, or more in general, the tense relation between the parents.

Respondents do not clearly point out authorities that they expect to be involved in the enforcement of visiting rights. The one exception is judges, as 40% of respondents think judges will be involved in 80% or more of the cases. The involvement of other authorities is not expected to occur as frequently. The involvement of authorities such as youth protec-

tion agencies, enforcement officers or police officers is expected in less than 10% of the case by approximately 40% of the respondents. There is a slightly higher expectation with respect to the involvement of social services.

Respondents have much higher expectations that a problem in respect of contact or access will lead to involvement of professional lawyers. Sixty-two percent of the respondents expect involvement of lawyers in more than 30% of case, 46% expects their involvement in more than 60% of all cases.

With regard to the issues that a judge will find important when dealing with a dispute on contact or access, a large majority expects the judge to give weight to the position of the child. Judges are expected to rate the interest of the child as important or very important by more than 90% of the respondents (75% of all respondents expects this to be 'very important' for the judge). The opinion of the child is expected to be important for the judge in 78% of the cases (65% expects this to be 'important' for the judge). Other issues that could play a role, the position of the adults involved, are expected to be important for the judge by a majority of the respondents. The idea that a court decision should be enforced at all costs is not expected to play a role in the judge's decision-making. What may play a role is the idea that the modalities of the contact or access must be amended; 70% of the respondents expect judges to consider this important or very important.

In another set of questions, the question on problems expected when dealing with the enforcement of visiting rights was repeated specifically with regard to international situations. Although not identical, there was not a great variety in the responses. In particular there was not a specific problem that was expected to occur frequently in international situations. On the other hand, a majority of respondents expected that a move from one member state to another would have an effect on the contact order. A small majority of the respondents expected courts to deal flexible with changes as a result of a move across borders.

A set of questions seeking more explicit statements on cross-border situations or on the application of Brussels 2A generated limited results. Brussels 2A was thought to leave sufficient scope for a flexible approach, but experiences with novelties of the regulation, such as the certificate, were extremely few.

3.8.4 Measures to help enforcement of contact/visiting orders

About half of the respondents had experience with measures to help the enforcement of contact or access orders. With respect to the effectiveness of a number of possible measures, about two thirds of the respondents rated two measures as effective: pecuniary fines (63% of the respondents) and measures in respect of parental responsibility (64%). A smaller majority (54%) still thought that far reaching measures in respect of parental responsibility, such as the removal of parental responsibility, would be effective. There was much less support for other measures, such as action with regard to maintenance (48% considered this ineffective, 29% effective). There was equality between the respondents who thought contempt of court as effective or as ineffective.

When asked to what extent the measures indicated would be appropriate in view of the interest of the child, large majorities (72%) thought that both fines and measures in respect of parental responsibility could be considered appropriate. This was also the case for reduction of maintenance for the parent who did not comply (56%), and for complete removal of parental responsibility for the non-complying parent (58%). With respect to contempt of court, the views were more or less balanced to the extent that this would be an appropriate measure having regard to the interest of the child.

3.8.5 Child abduction within the EU

With respect to child abduction, a large minority of the respondents expected that dealing with a return order would lead to complications. A fifth of the respondents expected that enforcement would take a long time.

With respect to measures to locate the child available to the Central Authority, a third of the respondents indicated that consultation of records not open to the general public would be possible. In England, orders for disclosure of mobile phone numbers or bank records (location of cash withdrawals) would be a measure that could be ordered by the court to support the search process. A majority thought the other parent involved should not take action by himself and leave the task of locating the child to the Central Authority. With respect to other measures, in general police search, private searches and publicity were seen as most effective measures to locate the child.

With respect to legal formalities, a problem that may form an obstacle in dealing with the return order is notification to the parent who has abducted the child. Although not clearly seen as a problem by majority of the respondents, those who did think that this was a problem expected that locating the parent concerned would be a problem.

Once the child is located, a third of the respondents still stated that it would not be necessary to prepare the return and the child would be returned as soon as possible. The other two thirds expected that a set of procedures would be run through. These procedures were mainly expected to entail a meeting with the person with whom the child was staying (43%), an interview with the child (39%) or a meeting between the parents (33%). Nevertheless, 37% of respondents thought that children would simply be returned as soon as possible.

With respect to the best method to enforce return orders, the majority of respondents who had an opinion on this thought that the best method would differ from case to case. The other views, being that the child should be returned rapidly or that it was necessary to fine-tune the return with all persons concerned more or less hang in the balance. Although the views on what would be best appeared to vary, a majority (61%) still thought that actual practice came close to what they thought the best. A large minority however (39%) thought that the actual practice needed improvement.

Return orders appear to lead to a high number of proceedings contesting the return. A majority (52%) indicated that this would happen in 70% or more of the abduction cases they had been involved with. The issues mainly raised to contest the order would be the well-being of the child (76% of the respondents) and the wish of the child, who would not want

to be returned (62% of the respondents). According to 40% of the respondents the argument would be raised that the move had been accepted by the person requesting return.

Few respondents had had any practical experience with the certificate of Brussels 2A. Few respondents had an opinion whether courts would refuse the return, if such a certificate had been issued. A large minority of the respondents who had an opinion thought the return may be refused, although a certificate had been issued, usually because of the physical or mental well-being of the child or because the move had been accepted or the child would not want to be returned.

There are no clear views yet on the changes brought about by Brussels 2A in relation to child abduction. A majority (57%) supports the statement that the situation has improved, 22% think the improvement is significant.

With respect to improving the handling of return orders, a large minority does not have an opinion. The respondents who do have an opinion more or less evenly think that solutions can be found in preventing abductions (32%), taking away legal barriers for enforcement (28%) and improving the modalities of enforcement (28%). As an alternative to the options set out in the questionnaire, mediation was mentioned several times.

As a measure to remove barriers, harmonizing the procedure for enforcement was mentioned by 70% of the respondents. As a measure to prevent abduction, 67% of the respondents who had an opinion in this, thought this could be achieved by making verification possible as to who has parental responsibility and whether this person approves the move of the child. As an improvement of the modalities, almost identical majorities (ranging from 61-63%) expressed a preference for making professional assistance available to the adults and children implicated and for improving the possibility to mediate.

3.8.6 Mobility within the EU

With respect to an anticipated move of the child within the EU, who was under joint parental responsibility of the parents, a majority of respondents (66%) would advise parents to formalize their agreement, either in a private document or in a document bearing court approval. This would apply both in case of children leaving with one of the parents for another member state and in case of children coming from another member state to stay with one of the parents. The need for this was considered much less important in case the child was under parental responsibility of only one parent. Even if there would be another parent who would exercise visiting rights in respect of the child, the need for court approval was mentioned by 24% of the respondents. A third of the respondents took the view that the parent with parental responsibility could decide where the child would live. Some respondents proposed to make mediation possible under these circumstances.

3.8.7 Hearing of the child

With respect to the hearing of the child in abduction cases, there is an indication that this may not occur too frequently. A third of the respondents (33%) mentioned that they had come across this in more than 50% of the abduction cases they had been involved in. A

quarter (24%) indicated this occurred in more than 90% of the cases they had been involved in. These figures do however appear to match the incidence of hearing the child in other cases.

A large majority supports the view that a child should be heard from the age of 8 onwards (80%). From this group, still a majority (60%) supports the view that children should be heard from the age of 6 onwards. The respondents further indicate in majority (74%) that the opinion of the child will influence their view, although the influence may not be decisive.

Almost all respondents think the child should be heard in circumstances adapted to the child. Almost a majority (49% of respondents) think that at present the conditions in their member state are indeed adapted to the child.

3.9 Lessons from the legal perspective

The trends in the replies to the questionnaire and the individual remarks can be used to identify the problems and dilemma's that the law has to address.

Main source of problems: human behaviour

Not too surprising, the main problem in enforcement of a family law decision is thought to be human behaviour. But the human being responsible for the complication will vary depending on the nature of the decision that is to be enforced. In general, respondents point an accusing finger to the parent with whom the child lives. But the legal position of the person with whom the child lives will vary. In abduction proceedings the whole object of the proceedings is the question whether the child should remain living in with the parent who has breached at least certain rights and duties in respect of parental responsibility by moving the child to another state. In enforcement of contact orders the parent with whom the child lives will generally be the person – leaving aside the possible consequences of an infraction on contact rights – with whom the child is expected to reside.

The other human influence on the way enforcement takes place is the child. The will of a child is seen as an obstructing element mainly in return cases. The will of the child is seen as frequently meaning that the return will not take place. To the contrary, in contact cases, the will of the child is seen much less as an obstructing element.

The practical problem is that the behaviour of the adult physically closest to the child at the time of enforcement is crucial. The legal position of these adults may vary. Sometimes measures will have to be effective against an adult who in principle has full parental responsibility to a child (e.g. in case this parent has single custody but obstructs visiting rights). In other cases measures will have to be taken against an adult (usually a parent) of whom it can be said at the very least that the situation with regard to parental responsibility is doubtful. The abducting parent may not have had any parental responsibility over the child at the time of the abduction. In case the abducting parent shared parental responsibility the abduction is an infringement of that joint responsibility that will often have more consequences than being obliged to return the child. It can not be ruled out that sooner or later the entitlement to joint parental responsibility may be forfeited.

The legal inference that can be drawn from this is that to influence the human behaviour of the adults concerned the legal position of the adult will have to be taken into account.

When e.g. the use of a measure in respect of parental responsibility is considered as a threat, this may be more effective in respect of a person who has something to lose. The second legal inference that can be drawn from this is that measures to influence human behaviour will have to be directed against a different person in return proceedings and in contact cases. In return proceedings the main blocking human factors are the parent who moved the child to another state and the child itself. In contact proceedings the main blocking human factor would be the parent with whom the child is intended to live. In that case a situation will exist that in principle does not infringe parental responsibility, except for the blocking of the exercise of contact rights.

Heightening the expertise of judges

With regard to the legal professionals who are involved in family law proceedings, some unprovoked remarks were made that, certainly in cross-border proceedings, judges lack expertise. Concentration of justice would be a possible solution for this, as it should mean that judges become more experienced in deciding cross-border cases. Concentration could have a positive effect on the quality of legal decision-making with the jurisdiction and could improve the exchange of information between courts of the member states. Depending on the number of cases that need to be handled per member state, the number of judges that are involved in the enforcement of international family law judgments within the EU could be fairly limited. The heightened expertise should eventually have a bearing on the way practising lawyers handle cases as well. In some member states, such as Ireland, Belgium, Sweden and Germany the jurisdiction in international family law cases has been concentrated with one or several courts specifically for this purpose.

In view of the criticism voiced on the expertise of judges, it is worrying that almost half of the respondents expect that problems surrounding the enforcement of family law decisions will lead to the involvement of judges. If the criticism on the expertise of judges were held to be valid, the cynic conclusion is that there are situations that are considered problematic, that these situations lead to involvement of the courts, but that the courts do not exactly know what to do with the case. In this case that conclusion may not be drawn, as the criticism can only be regarded as a signal, not as accepted truth. Nevertheless there is an indication that courts have trouble in dealing with enforcement cases. In this respect reference may be made to the law reform in Sweden, which gave judges the responsibility to deal with the enforcement. This was seen as a measure that would give them a better understanding of the issues they were dealing with.

A further reason why the courts may have problems in dealing with the enforcement is that human behaviour is seen as the main source of problems in the enforcement. To overcome these problems courts would in any case need to have the right legal instruments. But there will also be a need for the judge to understand the underlying reasons for the human behaviour, and to an extent, to be able to understand actions taken by persons from different jurisdictions than his own. It is debatable whether ordinary court proceedings are most suitable for developing this understanding. In this respect, the step taken in Sweden to involve a social worker as a mediator may help prepare the court case, if it would come to that. It should be noted that in Sweden the mediator will provide information to the court if the mediation fails.

Balancing the enforcement and the underlying issues

Respondents indicate that judges have an eye for issues that surround the enforcement. In their decision-making, judges are thought to be concerned with three issues: the interest of the child, some sort of conciliation between parties (i.e. parents) and the opinion of the child. Although enforcement of the judgment is the aim of the enforcement process, a need is perceived to balance the enforcement with these three issues. This approach appears justifiable in view of the diligence that is dictated by human rights law. But if it is accepted that there are valid legal reasons to be concerned with these issues, then there should be some sort of legal framework that sets out how the judge should take into account the issues. If the process of balancing of the interest of the child, of the opinion of the child and the possibility to conciliate the parents (which should lead to voluntary compliance) is not regulated, then the chances are rife that the process will exceed the boundaries of a dispute on the enforcement of judgments.

Speeding up enforcement

The respondents are pessimistic about the chances that enforcement will take place quickly. From the legal perspective, this is a most worrying observation. The expedient return of the child is fundamental to one of the legal instruments concerned by this study, the Hague Abduction Convention. Although the return should be organised in circumstances that respect human rights, this is not an excuse for lengthy delays. But also when the enforcement of other family law decisions is at hand, e.g. visiting rights, a delay, or possibly a total failure, will mean that the whole purpose of the decision that is to be enforced is missed. Children tend to grow old quickly.

The lack of speed in the enforcement process may be explained by a trend found in the legal survey. The internal legal systems often do not contain special rules for the enforcement of family law decisions. All too often, parties are required to revert to the same methods that are available for the enforcement of 'ordinary' court decisions. In the enforcement of ordinary civil or commercial cases it is often possible to attribute a monetary value to an obligation that is not fulfilled. The time that went past while the obligation was not fulfilled is compensated by the interest that has accrued. In the area of parental responsibility, the passing of time is irreversible and can not be compensated by the accrual of interest. This implies that the law should offer other solutions that respect the need for swift measures.

Enforcement of visiting rights

The contents of the original decision are often seen as a complicating factor in enforcement. All sorts of reproaches are made in respect to decisions on visitation, which are thought to be too imprecise, or not adapted to the way parents now organise their lives, or as the product of standardisation. Whichever reproach comes closest to the truth; the prevailing opinion is that the content of the visiting order needs improvement in order to facilitate enforcement. From the legal perspective, guidelines or even legislation may help in overcoming this inadequacy.

With respect to the position of the child when enforcing visiting rights, the child is not seen as the main obstacle to enforcement, but hearing his opinion is considered of great importance. Enforcement of visiting rights is further seen as a problem that mainly leads to involvement of judges. No other authorities were clearly designated by the respondents as being involved in the enforcement of visiting rights. The central role of the court in en-

forcement of visiting rights is supported by the measures that respondents deem effective. Respondents mainly favoured measures that will have to be ordered by a court, such as pecuniary fines and measures in respect of parental responsibility.

The legal question mark that can be placed in respect of this is whether the nature of visiting rights, as a regularly recurring event that for practical reasons requires some mutual trust between the adults (parents) concerned, is best served with solutions that rely on strong judicial intervention. It is also questionable whether judicial and enforcement authorities would have the man-power to handle ever-recurring disputes on the exercise of visiting rights. The legal part of this study already witnessed a trend towards the integration of mediation in enforcement proceedings. This tool, if successful, appears to be especially suited for creating a climate conducive to respecting a court decision on visiting rights. This is not to say that, to the extent that fear for e.g. abduction may make parents reluctant to carry out a visiting order, other safeguards are unnecessary. But the need for safeguards to prevent cross-border abduction should have been confronted when the decision on visiting rights was made. And to an extent the legal system as a whole should contain such safeguards.

Child abduction in the EU

A major problem is locating the child and locating the adult who has abducted the child. Locating the child is necessary in order to be able to ensure its physical return to the state of origin. Locating the adult who abducted is necessary in order to institute legal proceedings as judicial documents will need to be notified to him. With respect to the latter, the reason for not being able to notify documents usually will be that the address is unknown and that it even may be uncertain in which member state the adult is. Both reasons are independent grounds for community legislation not to apply (see article 1(1) and 1(2) of Regulation 1348/2000). To the extent that the (pseudo) cross-border element of the notification is invoked to claim that community legislation should have been respected, thus creating a reason for invalidating a notification, a solution may be found in amending the community legislation, e.g. by excluding its application in return proceedings when these take place in the member state whereto the defendant is thought to have abducted the child. The fiction would then be that there is no need to send a judicial document to another member state, as the defendant will be present in the state where proceedings take place. The fiction would require a definition that leaves no room for discussion on its applicability.

To the extent that the internal system for notification is inadequate, it would be for the member state to remedy this situation. The case law of the ECHR demonstrates that the internal system can be under strain when notification is to take place in abduction proceedings.

Mobility within the EU

The respondents emphasize the need to formalize the agreement that one of the parents would move (permanently) to another member state, especially when the parents share parental responsibility. The formal agreement prior to the move is probably thought to help ensure that at a later stage the move is not seen as child abduction under the Hague Abduction Convention. However the development in the legal system of many member states is that parents are expected to retain joint parental responsibility for their children, irrespective of the development of the marital or other relation between the parents. As a con-

sequence a decision on dissolution of the marital bond no longer necessitates a court decision on parental responsibility or residence of the child, as parents are supposed to deal with this question themselves. The big issue is whether the liberal, emancipated approach at the national level can be maintained at the community level (let alone the global level). Parents will often not be aware, at the beginning, of the risk that a situation may turn into an abduction case by lack of mutual agreement.

In order to prevent this from happening, one solution could be to reinstate the need to decide on residence during divorce proceedings in some member states. However, for such a reinstatement to be effective, it would have to be made mandatory to all cases, even those that at the time the decision is made do not have an international or community element. The mobility accorded within the EU implies that every situation may one day have a community element, as a consequence of a later move within the EU. The other solution would even be more drastic, as it would mean the instatement of community rules that leave certain cases that will now fall under the regime of the Hague Abduction Convention outside its scope. A possible jurisdiction rule could be that the state of the member state where a child is present would have to intervene directly in case the continuation of the stay of the child is disputed between parents who share parental responsibility. Such a solution will create new dilemmas, especially with regard to nationals of third states who are party to the Hague Abduction Convention and who are resident in the EU. But from the point of the community, in view of the continuing further integration of the member states, such a jurisdiction rule is not that strange. In national (domestic) cases, the court closest to the actual place of residence of the child is often granted jurisdiction.

4 Enforcement procedures in the EU regarding family law decisions: statistics

4.1 Introduction: the research questions

In the technical specifications of the study the gathering of the following statistics was asked for:

- the number of family law judgements on parental responsibility, including residence, contact/access, that were enforced in an Member State in a given calendar year (preferably 2004 or 2013);
- an indication of the proportion of the family judgements referring to above that concerned the enforcement relating to a cross-border situation;
- the average length of any such enforcement proceedings from the moment the relevant order was granted or enforcement was sought (whichever is the earlier) until the enforcement process is completed;
- the number of cases where the enforcement was achieved only with difficulties;
- the nature of, and the reasons for, the difficulties encountered (e.g. difficulties to locate the child, obstruction by a holder of parental responsibility, language problems, incomplete information, insufficient powers etc.);
- the role of mediation in the enforcement procedure;
- in those cases where enforcement was prevented or abandoned or could not otherwise take place, the reasons for this including specification of the difficulties encountered and their significance.

In the following paragraphs we describe the methods we used to collect the required data first. Then we summarize and analyse the results, and develop our conclusion.

4.2 Approach

The first step in our approach was to include the questions above in our guidelines to the experts, who were contracted to develop the national reports. They were specifically requested to provide for the statistical data, or data-sources. In the instruction we used the list of questions above.

Based on the answers received, the research team made a second step. We searched the web-sites, which were mentioned to us by the national experts. Furthermore, the members of the core team made a specific effort to acquire the statistical data through direct (telephone) contacts with officials and experts in the Member States. This approach took place in the first half of this year. Also, an intensive web search was done in order to find (sources) of statistics and possibly results of international comparative research in the field.

The results of these steps and activities are described and analysed in the following paragraph.

4.3 Results and analysis

General description

The team received and found the following statistics:

Country	Sources	Topics of the data	Year of data presented
AUT	Federal Ministry of Justice; expert	Hardly any relevant statistical data available	
BEL	Experts and web search	Data on return orders	2004-2006
CYPR	Expert and web Search	No relevant statistics	
CZ	Expert, web search (Ministry of Justice)	Statistics on family law judgements on parental responsibility, custody, return orders, contact / access	2000 - 2004
DAN	Expert and web Search	Data on numbers of child abduction cases	1991 - 2005
ESP	Expert	No statistics found	
EST	Ministry of Social Affairs; expert	General statistics on family law cases; additional qualitative information on the numbers of return orders	2003, 2004, 2005 (2004, 2005)
FIN	Expert	Divorces and decisions regarding child's custody and contact; enforcement figures; numbers of return orders	2003, 2004, 2005
FR	Statistics office, expert	General statistics, no information on enforcement	
GER	Expert, web search	Statistics on return orders and child abduction cases	2005, 2006
GREE	Expert	Data on return orders	2000 - 2004
HUN	Expert	General cases; civil proceedings broken down to family cases	2004 - 2006
IRL	Expert and web search	Data on return orders	2003, 2004
IT	Expert and web search	Data on return orders	2000 - 2005
LAT	Expert	No data available	
LTU	Chamber of Bailiffs, Expert	General statistics on family law cases; not on cross-border situations; data on enforcement of judgements on custody / return of the child	2003, 2004
LUX	STATEC, Ministry of Justice, expert	General statistics on family law cases; numbers of children involved	2005
MT	Expert	No statistics found	
NETH	Core team and web search	Statistics on return orders and child abduction cases	2002-2006
POL	Expert	No data available	
PORT	Ministry of Justice	Data on victims of crimes, of abduction	2003 - 2005
SLO	Expert	No statistics found	
SVK	Expert, statistics office	Statistics on family law cases	2000 - 2005
SWE	Expert	No statistics found	
UK	ICACU, expert	Statistics on return orders	2004 - 2005

The data retrieved and received are accumulated in a separate annex to this report. However, it is clear that this basis of statistics does not allow us to do any kind of comparative analysis. Therefore, we searched for separate international sources, and identified the Hague Conference on Private International Law. This institute provides for statistical analysis of applications under the Hague Convention of 25 October 1980 on civil aspects of international child abduction.¹ The most recent reports are on the year 2003. It, however, merely supports our observation. As a representative of the Convention stated:

“As said in regard to more recent statistics, regrettably many Contracting States of the Hague Child Abduction Convention do not provide us with statistical data at all or very irregularly – and there are also many European States among those States.”

It was mentioned that the Convention awaits the implementation of a new statistical instrument: INCASTAT.

In the following section we use the statistics available to try to provide for answers to the research questions.

4.4 The application of available statistics

The number of judgements enforced

The question

- the number of family law judgements on parental responsibility, including residence, contact/access, that were enforced in an Member State in a given calendar year (preferably 2004 or 2003);

Results

In the table below we summarize the data we retrieved:

¹ *A statistical analysis of applications made in 2003 under the Hague Convention of 25 October 1980 on the civil aspects of international child abduction* – N. Lowe, E. Atkinson, K. Horosova and S. Patterson (HcCH, The Hague, October 2006)

Table: The number of family law judgements on parental responsibility, that were enforced in a Member State in 2004 *

	Number of child abduction cases	Number of return orders	Number of return orders concerning cases in EU-MS	Voluntary returns
AUT	X	X	X	X
BEL	X	112 ***	X	31
CYPR	X	X	X	X
CZ	X	17	X	X
DAN	23	X	X	X
ESP	X	X	X	X
EST	X	3	3	X
FIN	X	3	X	3
FR	X	X	X	X
GER**	316	240	162	28
GREE	X	16	X	4
HUN	X	X	X	X
IRL	X	58	X	X
IT	130	98	89	X
LAT	X	X	X	X
LTU	X	3	X	X
LUX**	X	X	X	X
MT	X	X	X	X
NL	X	107	62	X
POL	X	X	X	X
PORT	12	X	X	X
SLO	X	X	X	X
SVK**	80	X	X	X
SWE	X	X	X	X
UK	144	68	56	15

* We took 2004 if possible. Deviations are mentioned.

** Data from 2005.

*** Only new cases in that year

As can be seen, the data are fragmented and are sometimes difficult to interpret.

Cross-border situations

The question

- an indication of the proportion of the family judgements referring to above that concerned the enforcement relating to a cross-border situation;

Results

No specific information s available.

Length of enforcement procedures

The question

- the average length of any such enforcement proceedings from the moment the relevant order was granted or enforcement was sought (whichever is the earlier) until the enforcement process is completed;

Results

The available statistical data do not provide for an answer to this question. The results of the survey, which has been done for this study, show that a majority of the respondents has the impression that enforcement often leads to complications (43%) and very often takes a long time (21%).

The number of cases with difficulties

The question

- the number of cases where the enforcement was achieved only with difficulties;

Results

Again, statistics do not provide for an answer to this question. The results of the survey, mentioned earlier, contain an indication for this (tables 8 and 17).

Nature of the difficulties encountered

The question

- the nature of, and the reasons for, the difficulties encountered (e.g. difficulties to locate the child, obstruction by a holder of parental responsibility, language problems, incomplete information, insufficient powers etc.);

Results

The reasons for these difficulties often lie in the lack of cooperation from the adult where the child lives. This is, however, not found in the statistical data.

The role of mediation

The question

- the role of mediation in the enforcement procedure;

Results

The role of mediation is frequently mentioned by the respondents in the survey. We did not find statistical evidence for this.

Reasons for prevention or abandonment of enforcement

The question

- in those cases where enforcement was prevented or abandoned or could not otherwise take place, the reasons for this including specification of the difficulties encountered and their significance.

Results

See the report of the survey for indicative information also.

4.5 Conclusion

The description above, and the analysis which is based upon it, shows that only limited data were found; in a number of countries data are not retrievable. As far as basic statistics are available, data-mining is needed to be able to construct relevant tables. Then, still, not every Member State will be present in them.

The conclusion should be that, when these statistics are needed by the Commission, a new and very intensive effort of data-collection has to start. An effort like that goes far beyond the scope of this study.

5 Conclusions and Recommendations

5.1 Conclusions of the preceding parts

It seems appropriate to repeat the essence of the summary remarks made at the end of the four preceding parts.

The legal systems of the member states demonstrate a wide variety in approaches towards the effectuation of family law decisions.

This variety appears with respect to, at least, the following issues:

- 1 the *ratione materiae* of the family law decision (whether it concerns custody, return, contact rights)
- 2 the nature of the rights that are to be enforced: whether these rights are considered as a protective measure (taken in the general interest of the child) or as an obligation or an entitlement of a parent towards the child
- 3 the person who is the object of the coercive measures that can be taken, whether these are directed towards the child or towards adults in the child's environment
- 4 the nature of the coercive measures available, which may further differ depending whether they are directed towards the person ('taking' of the child or coercion of the adult implicated) or of a financial nature (fines or civil damages, reduction of maintenance incurred by an adult) or in respect of the person's rights (removal of parental responsibility)
- 5 the person or authority who is responsible for initiating enforcement (whether this is a party to the court proceedings that led to the decision or a judicial or government entity)
- 6 whether enforcement is possible on the basis of the court decision setting out the family law rights or whether a separate decision is necessary
- 7 whether the choice of enforcement measures is made by a court or by the enforcing party
- 8 the authorities who have a role in the actual enforcement, which may be specialized in dealing with children or may be generalists, who are involved in the enforcement of all types of judgements
- 9 the weight given to the opinion of the child in the enforcement process

The choices made in respect of these issues differ substantially between the member states. There is further discussion on whether the enforcement of family law decisions can take place on the basis of the general principles for civil enforcement of court decisions, or whether special rules are necessary. Some states struggle to adapt the general rules to family law decisions; others have chosen to introduce a new system that is tailored to the enforcement of family law decisions (e.g. the very recent law reform in Belgium). There is also a difference of opinion on the use of measures derived from criminal law. In some member states threat of criminal prosecution is a fundament of enforcement in family law proceedings. In other member states the use of criminal prosecution is a measure of last resort.

Another rift exists with regard to who bears the final responsibility for the enforcement, whether this is a task for the parties to the court decision or whether the courts have a special, leading or at least guiding role in the enforcement process. States like Belgium and Sweden (and to a lesser extent Germany) demonstrate the strong position of the court in

the enforcement process. But also the states that necessitate a court decision before the actual enforcement may commence, or where breach of the court decision constitutes contempt of court, demonstrate that the centre of gravity is with the court, not the parties. It should be accepted that some states may consider e.g. visiting rights an issue that parents should resolve in the first place, but take a different stance when custody rights are at stake, especially when there is fear for the child's well-being. Such circumstances will warrant involvement of public authorities and the courts.

Changing views on the nature of parental responsibility also play a role. Parental responsibility is seen more and more as an obligation of the parent towards the child, which is not dependant on other circumstances, such as the existence of a marital bond. It also appears that there is a trend that the joint responsibility of the parents to fulfil their duties and obligations towards the child should continue, irrespective of the existence of a formal or affective relation between the parents. From the parent's perspective, there are no rights vis-à-vis the child (that can be enforced) but only obligations (that must be fulfilled).

There are often no special rules on the enforcement of family law decisions. Often between parents use must be made of enforcement measures that are developed for court decisions in general. To the extent that special solutions have been developed in court practice, it is notable that they are linked to other family obligations (e.g. the right to maintenance of the parent who is obstructing the family law decision). It is further notable that there is a lack of conviction that the enforcement measures that exist are indeed the most appropriate. Reference in this context could be made to the English practice not to revert to contempt of court proceedings. But it also comes forward that even if the measures available are not considered very appropriate, governments do not have a clear idea what should be developed in place of the existing options. Reference could be made to the position taken by the Netherlands minister of Justice, setting out the numerous options available to induce adherence to contact orders but stressing that primarily parents should deal with this between themselves.

The measures taken to enforce a family law decision may vary according to the content of family law decisions. With respect to custody or return orders, more far-reaching measures may be available than with respect to visiting arrangements (although such a distinction is not always made, as is e.g. the case in France). Less apparent is to what extent the circumstances of the case influence the nature of the measure that can be taken. In an internal case without a cross-border dimension, a quarrel between parents with joint parental responsibility over the place of residence of the child may well lead to less far-reaching enforcement measures than a case where the physical well-being of the child is at stake.

The enforcement process may take place on two distinct levels, the level of the child and that of the adult concerned. With respect to the child the possibility to take measures are limited first by their nature (measures can only be directed against his person and are only possible with respect to custody issues). The second limitation, which increases in importance as the child grows older, can be found in the personal will of the child. The legal reports demonstrate that the will of a more mature child, from the age of 12 onwards, will greatly influence the result of the enforcement. To the extent that the law of the member states do not already take into account the limits the will of the child places on the enforcement process, it may not be ruled out that on the basis of human rights law such lim-

its may be developed in the future. In the empirical survey, many respondents indicated that they considered the opinion of a child much younger than 12 relevant.

In principle physical or financial coercion may be exercised against the adult who does not respect the decision. The effect this coercion has in achieving the situation desired by the family court decision is however always indirect. There can be circumstances, e.g. when the child does not want to cooperate or is outside the influence of the adult implicated, wherein such coercion is ineffective. Measures directed against the adult may raise the issue to which extent the measures are against the best interest of the child.

Coercion against the property of adults also raises other dilemmas which are not found in the national reports but which may be mentioned here. It is generally accepted that decisions on family law issues find their limits in the best interest of the child. The interest of the child will greatly influence the result of the court's decision in family law cases. But when coercion is directed against the property of an adult, the financial benefits could go to another adult. This is difficult to accept when the best interests of the child are considered to be fundamental to the decision that should be respected. Certain coercive measures against property may even be detrimental to the child's benefit. A clear example is the practice found in some states that obstruction of visiting rights can lead to reduction of the maintenance due to the adult with whom the child lives. Effectuating financial coercive measures between the adults concerned (usually the parents who are often former spouses) will further heighten tensions between persons who are, in principle, close to the child. Nor does this solution appear fully in keeping with the approach that the purpose of the family law decision is that parental duties, not parental rights, are fulfilled.

It is difficult to indicate a common denominator between the legal systems, or even to indicate groups of legal systems that compete with each other for offering acceptable, although possibly not compatible solutions. There is the impression that most legal systems are undeveloped and have not yet found the right direction to take. Some member states appear to have a watertight, effective system but apparently practice seeks to circumvent the use of such systems (the example of the contempt of court mechanism, apparently often avoided in English legal practice). Other states recognize that there are inadequacies in the current law, but have not yet made a decision for future legislation. Some states appear to be further developed than others, such as Belgium (recent legislation on enforcement), or Hungary (the system appear to favour mediation) and Sweden, which recently integrated mediation into the enforcement procedure, while maintaining the supervising role of the court.

There is a diverse approach with respect to the enforcement of return orders. With respect to the application of community law, a possible conflict may exist in respect of the time-limit imposed by article 11(3) Regulation 2201/2003. The problems that may exist in respect of article 11(3) Regulation 2201/2003 raise the question whether the member states have well understood the changes that the Regulation has brought.

The realisation that a system based on the Hague Abduction Convention is now integrated in the larger system of Regulation 2201/2003 caused a number of member states to amend their proceedings. Nevertheless such steps have not been taken in all member states.

The consequence of Regulation 2201/2003 appears to be that the return of the child more and more becomes an 'order measure' such as an arrest of a ship or seizure of assets (no matter how different the subject matter involved is) and not a decision on the merits. That

decision, essentially where should the child live, is to be resolved in the member state of habitual residence. It is to be feared however that some of the actors concerned have problems in accepting this principle, causing them to fight the return with all methods available. Acceptance could perhaps be improved by increasing co-operation between the courts of the member states. The diversity in persons that are actors in return proceedings or that are responsible for enforcement may also raise problems when a return order, e.g. in application of article 42 of the Regulation, has to be enforced in another member state.

The information obtained from the national laws of the member states on the coercive methods available and on the practice of the involvement of experts in 'reuniting cases' give the impression the impact of human rights law on this part of the law is not very well developed. When dealing with the enforcement, the modalities of the enforcement may not take in account the safeguards that could be dictated by human rights law.

Mediation is becoming more and more important during the enforcement process. Some member states (e.g. Hungary and Sweden) give an important role to mediation during the enforcement process. The new legislation in Belgium specifically makes mediation an option. Mediation may well be an attractive solution in a situation where the enforcement is not so much taking place in the interest of one of parties, but where the interest of a third party is of great importance. Disagreement between the parents (or other parties to the decision that is enforced) may have serious repercussions on the child. The child may further have personal insights on the situation and mediation may offer an opportunity to take that view into account. Mediation may also help the parties to accept that realisation of their rights (to the extent that in family law proceedings there would be rights to enforce) does not serve a real purpose and especially does not serve the interest of the child. A distinction is probably necessary between cases where mediation can be beneficial and those wherein there can not be scope for mediation. When there is a grave risk for the person of the child, immediate action should be taken.

The empirical survey among respondents in the member states led to the following observations in respect of issues that the law should address:

- the main source of the problem is human behaviour, not the law;
- the expertise of judges should be increased;
- there is need for a legal framework setting out how the judge should balance important underlying issues (the interest of the child, the will of the child and the possibility to conciliate the parents) during enforcement;
- the handling of the enforcement should be speeded up;
- the content of visiting orders should be improved;
- strong judicial intervention in the enforcement of visiting rights is a questionable solution;
- notification in abduction cases should be less prone to formal defects;
- the friction between the increased mobility within the EU, the system of the Hague Abduction Convention and the trend towards shared parental responsibility (for 'life') in the national legal systems;

The statistical data that are available do not make it possible to rate the effectiveness of the enforcement methods that are currently used in the member states. The statistical data give a slight indication as to how often courts have to deal with a particular case, the return order under the Hague Convention. In 11 member states, 725 return orders were is-

sued during 2004, which averages at 66 orders per member state. Of these orders, 372 can be said with certainty to concern abduction between member states of the EU, but this proportion will be higher, as not all data indicate the state from where the child was abducted. There are further some indications in data available at the level of the member states, e.g. the Netherlands, that abduction situations often occur in relation to neighbouring member states (source: letter of the Netherlands minister of Justice to Parliament ('Tweede Kamer') of 21 August 2007, p. 3).

5.2 The growing discrepancy between internal law and international law approaches

The law is influenced by important developments in the internal legal systems with respect to parental responsibility. More and more the idea is that parents have a continuous obligation to jointly exercise parental responsibility. Granting parental responsibility to one parent after dissolution of the marriage is still possible but is becoming the exception in many member states. Proceedings on dissolution of the marriage do not necessarily entail a decision on parental responsibility. More and more the idea gains acceptance that the parents themselves should deal with the problem of exercising parental responsibility. The state will mainly interfere when there is a need to protect the child. It may well be that the number of cases wherein the state must intervene to protect the child are on the increase, but then the child will be living in conditions that are socially unacceptable. This will not be the case in the bulk of the family law disputes.

Currently the state will always be involved (through the Central Authority) in cases of cross-border child abduction. There are indications in the history of the Hague Abduction Convention that this instrument was based on other perceptions of parental responsibility than existing today. Thus, in a document drafted in the course of preparation of the Hague Abduction Convention, the remark is found that:

'the true victim of the childnapping is the child himself, who suffers from the sudden upsetting of his stability, the traumatic loss of the contact with the parent who has been in charge of his upbringing, the uncertainty and frustration which come with the necessity to adapt to a strange language, unfamiliar cultural conditions and unknown teachers and relatives. An important modern trend in sociological thought support this presumption, since many sociologists and social workers lay increasing stress on the child's need for stability – some even suggesting custody orders should in principal be final and unconditional and that the parent given custody should have discretion over whether or not to grant visitation to the non-conditional parent' (followed by reference to Goldstein et al. *Beyond the Best Interests of the Child*, p. 101, New York 1973). Source: Conférence de la Haye, Actes et documents de la treizième session, Tome III, Enlèvement d'enfants, p. 21-22.

The quotation should be seen in its context, a report made in the 1970s in early preparation of the Hague Abduction Convention, but it nevertheless conveys an impression of prevailing opinion in the years before the Convention was made. Nowadays the child is probably less a victim as, certainly for older children, courts will try to fathom his opinion on the abduction situation. It may be doubted whether the cultural shock will always be as severe as described in the quotation. Abductions often take place between neighbouring states and

within the EU these states are integrating. Concepts in the law of some member states, such as the continuously shared parental responsibility or the concept of 'résidence alternée' in French law, shed doubts on the emphasis placed on stability of the child (or at least, on the idea that stability can only be created by granting custody to one parent). The idea that the parent with custody should be granted sole discretion to determine visiting rights will find little acceptance in the courts of today. At least between the member states, the legal (and perhaps the sociological) analysis of the situation described in the quotation may now be different.

This report is not intended to evaluate the functioning of the Hague Abduction Convention. But when dealing with enforcement of family law decisions, notions in the internal legal systems can not be set aside. The internal legal systems increasingly demonstrate the wish that parents share parental responsibility at all times. If that is the case, then a moment of crisis in their relations, leading to a case that can be qualified as an abduction case under the Hague Convention (and EU regulations), should not lead to permanent disruption of the exercise of joint parental responsibility. The end of the abduction case should not be that one parent is the winner and the other the loser when, at least in many EU member states, the basic supposition has become that parents should share parental responsibility. Granting sole responsibility to one of the parents is not the wished situation in the internal law of many member states. Then it probably should not be the usual outcome of a return case if parents shared responsibility before the abduction.

In abduction cases that are created when parents share parental responsibility in one state and one of the parents moves with the child to another state, (see the definition of child abduction in article 3(a) Hague Abduction Convention), the key to the solution can still be in the joint hands of the parents, as long as parental responsibility is still with both parents. If the parents are able to overcome their difference of opinion the exercise of parental responsibility can continue and there would no longer be a need for a return order. It appears that mediation is the best tool to see whether this difference of opinion can be overcome. It should be stressed that this can only apply when parents have the right to jointly determine the place of residence of the child, not when this right is dependant on court approval.

It is a policy decision whether this approach is acceptable, but it appears that the following conditions must be met in order to qualify for this approach:

- parents must share parental responsibility prior to the move
- parents must have had the autonomous right to jointly determine where the child will live
- the continuation of shared parental responsibility is possible under the law of the state where the child is going to live after the mediation

The view that in some respects the handling of abduction cases should offer some chance for mediation does not mean that the handling of these cases should be softened up. On the contrary, the impression is that the general handling of these cases suffers too much from hesitating before a decision is made. There are several objectives that should be met in order to improve the handling. One aspect is that the application of the Hague Abduction Convention also takes place in relation to non member states that are party to the Hague Convention. The handling of abduction cases should not make the member state susceptible to well-founded criticism of these non-member states. Therefore the ground rules of the

Hague Abduction must be respected, as long as the regime of that convention is applicable between the member states. Another aspect is that the enforcement procedure should respect the limits set by European human rights law.

With respect to visiting rights, one outcome of the empirical survey was that there was much criticism on the content of court decisions on visiting rights. There is however doubt whether this criticism can be remedied by developing guidelines for the courts to take into account when drawing up orders on contact. The dilemma again appears to be to what extent responsibility can be shifted to the parents (also in cases where one of the parents has sole parental responsibility) and to what extent courts should intervene. There is hesitation to recommend action to promote the use of detailed arrangements, whether made in a party document between the parents or in a court decision. This will inevitably increase rigidity of the arrangements, which are to take place in respect of a child that will continuously develop as a human being. The intention of the shift that is taking place towards shared parental responsibility will not have been that parents revert to the drafting of exhaustive clauses in party documents on how they will deal with this responsibility. In a situation where parental responsibility is not shared, such detailed arrangements may make some more sense. But the effort of the legislator should primarily be directed to creating a climate that is conducive to the exercise of visiting rights. From the cross-border perspective, this should be expressed in adequate response to a removal to another jurisdiction.

5.3 The background for further community action

Suggestions for further community action must be seen in the light of the present situation.

Legal systems in the EU have diverse solutions for enforcing family law decisions. In general the action that may be taken to enforce a decision can be very diverse and can range from far reaching measures, such as pseudo-criminal proceedings, to relatively light measures, such as a compulsory mediation. Solutions may further vary from case to case, in internal situations.

In international situations there is much less variety in response, as an infringement on custody rights will usually lead to a return order. At this point there appears to be a great difference with internal cases, as in internal cases many other measures appear to be possible.

There is a lack of knowledge on the impact of human rights law when enforcing return orders. A strong argument for harmonizing the enforcement of family law decisions in the EU is to prevent such situations. On the other hand the national legal systems appear to be in a process of developing their standards and views in respect to enforcing family law decisions. Steps to harmonize the law in respect of enforcement in cross-border cases may lead to a divergence in the handling of internal and cross-border cases. Such divergence would jeopardize the success of the harmonisation. It is not excluded that a difference in approach between internal and international cases will in the future lead to more opposition to the system of the Hague Convention on Child Abduction. There already appears to be a high incidence of contested cases in the court room. At conference in Birmingham in June 2007, feminist criticism was voiced over the system of the Hague Convention by the Dutch law professor Jeannet Pontier.

It is submitted that the approach in the national legal systems to make parental responsibility continue for both parents following divorce will lead to an increase of the number of cases that in an international context give rise to a return order, whereas in internal cases much lighter actions would be allowed. This development could be countered by making it necessary to hand down decisions on residence as part of divorce proceedings. But it would be necessary to do so in all cases, as a cross-border situation may always develop.

In general at the heart of all problems surrounding the enforcement of family law decisions the human factor is considered preponderant. This human factor is usually found in the parent with whom the child lives and, to a lesser extent, in the child itself. Decision-making in the enforcement process is further influenced greatly by notions of serving the interest of the child and in reaching conciliation between parents.

If action were considered to promote the enforcement of family law decisions in cross-border cases, perhaps it would be useful if the judgments that are to be enforced can be categorized as judgments taken to protect the child, and which need prompt and acute action, and judgments that are taken to settle the obligations of the parents vis-à-vis the child but which do not necessitate prompt action to protect the child. For judgments protecting the child the enforcement process should be aimed at achieving the situation set out in the judgment, with all possible means available. The chance of infringing human rights would be limited in view of the underlying reason of protecting the child.

It is expected that the far majority of judgments would fall in the second category and would set out the obligations of the parents towards their child. In that setting, and in the absence of a direct need to protect the child, developments in internal law point to the increasing importance and effectiveness of mediation. Mediation may be a much better tool to deal with the two different levels at which enforcement is to take place: the level of the parents and the level of the child.

In many national legal systems authorities, often judges, have an important role in the enforcement process. This model should be contrasted to a model wherein one of the parents has to take action in order to realise enforcement. By increasing the role of the judge in the enforcement process, some of the factors that have to be taken into account, such as the rights of the child and the possible impact of human rights law may be better respected. Although it might at first sight be seen as yet another obstacle to enforcement, the practice of an enforcement order as found in some legal systems does appear to guarantee that these factors are taken into account.

The Hague Abduction Convention has created a system of organs with expertise in dealing with cross-border cases. But their role is chiefly aimed at dealing with return orders. And for many return orders the enforcement of the return order will take place in the member state of the court that ordered the return, as that court will have jurisdiction based on the presence of the child. The cross-border element of the enforcement of a return order is usually not that a judgement from state A is enforced in state B, but that the child must be transferred across the border. In case where the abduction takes place in breach of an earlier decision on parental responsibility (e.g. a decision granting single custody), the return order and its enforcement may perhaps be seen as a specific form of enforcement of the original decision on parental responsibility. But in all cases where parents had joint parental responsibility by operation of law the return order will be the first judgement ever and

this judgment will usually be enforced in the state where it was made. Cases that fall under article 42 Brussels 2A would be the exception.

5.4 Possible avenues for Community action

The internal legal systems demonstrated that the approaches are not settled. But it seems defensible that the legal systems agree that enforcement in family law proceedings differ from ordinary enforcement of judgments. Enforcement will always concern a third party, the child. The child is not a passive object in the enforcement proceedings. Enforcement further usually concerns persons who have had some sort of personal relationship. And many provisions in a judgment on parental responsibility that relate to factual circumstances will have a limited 'shelf-life', as these circumstances change with the development of the child.

As there is no settled approach, a choice for a certain method for enforcement cannot be made on the fact that the method is generally accepted. A choice will be influenced by the objectives that are attributed to the enforcement and to the perception of the situation that is most ideal for the child and for the parents involved. It has been set out that the perception of this ideal has changed within the member states. If the community were to take action towards improving enforcement in cross-border cases, the procedure should make it possible to maintain that ideal.

Sweden recently introduced a new procedure for the enforcement of family law decisions. The legislation is primarily intended for use in internal cases. Typical of the new procedure is that the court is responsible for the enforcement, but that the court will initiate mediation as first step in the enforcement. If the mediation fails, the court will take over and will be able to make use of the information obtained during the mediation. The mediation is usually carried out by someone working for social services and the duration of the mediation is limited. It should further be noted that the courts were expressly made responsible for the enforcement, in order to better understand the consequences of their decisions.

The approach in Sweden appears well adopted to the specific circumstances of enforcement in family law cases. The court and not the parents are responsible for enforcement. The mediation phase will offer some opportunity to understand the reasons for any resistance to the decision, on the side of the parents and of the child. If the resistance can not be taken away during the mediation, the court will better know what the reason for resistance is.

If the Swedish approach were accepted as a valid model for regulation of cross-border enforcement, then in cross-border situations the following amendments appear necessary. First of all the court that is responsible for the enforcement will never be the court that gave the original decision. The court responsible for enforcement will lack certain information that was available to the court that made when the original decision. In order to remedy this, some exchange of information should be made possible between the court that made the original decision and the court that is responsible for enforcement. Contact between the courts will be another burden for both the courts and its use should not be exaggerated. But especially when the enforcement is problematic, contact between the courts would make the court that handles enforcement more aware of the latitude that the original decision allows him.

A problem of the Swedish approach is that in cross-border cases the mediation phase will be more complicated, as there will be language problems and travel will be necessary.

The objective of the mediation phase may in cross-border cases be more or less restricted, depending on the nature of the decision that is to be enforced. If the enforcement is for a return order (which usually will not be a decision from another member state), the mediation is in principle limited to aspects that relate to organising the return. Mediation in the enforcement phase is not intended to recommence a discussion on the need for a return order. If the return order is recent, other aspects, such as the opinion of the child should have been taken into account when that decision was taken. Only when the return order is of older date could it be perceived that the mediation phase must be extended. The decision for such an extension would be with the supervising court, who may also decide to pursue enforcement.

In case the enforcement is for a judgment on visiting rights, the objective of the mediation phase would be to restore the relation between parents in such a way that they can both abide to the visitation order. A possible problem will be that the original order, when issued in another member state, is not well adapted to the local circumstances. The court responsible for enforcement should have some authority to amend the original order on details, without directly invalidating the original order. The opportunity for contact between the courts in the two member states should help in maintaining consistency in their approach to the problem. It must be accepted that, when the child is lawfully residing in the member state of the enforcing court, eventually this court will have jurisdiction to issue a new visiting order. However, if one of the parents feels that the court of one member state understands his or her wishes better than others, forum-shopping or even attempts to abduct the child may be the result. For that reason consistency in the approach of the courts is required which should prevent the existence of irreconcilable judgments (cf. article 47(2) Regulation Brussels 2A).

A system based on the Swedish model does not yet solve the problem of coercive measures. These again vary greatly from member state to member state. Harmonizing the coercive measures would mean drastic changes in the internal law of the member states, as there coercive measures are always derived from the measures known in internal cases. It seems prudent to leave the choice of the actual coercive measure to the law of the state where enforcement takes place. However, if the court is made responsible for the enforcement, it would appear that the court will also determine of its own motion the coercive measure that is to be taken. This may not always be possible when the internal law now provides that a coercive measure can only be ordained at the request of one of the parties.

There is one form of coercive measure that is sometimes used in internal cases and which causes complications in cross-border cases. Reduction of maintenance as a means to enforce a family judgment is prone to lead to conflicting decisions between the courts of the member states. The jurisdiction for maintenance is determined by regulation 44/2001, which may well mean that other courts than that of the place of enforcement have jurisdiction. Such courts may not be aware or may not take into account the obstruction of enforcement that led to measures in respect of maintenance. Regulation 44/2001 may even mean that the court of enforcement does not have jurisdiction to amend maintenance. In view of this, and in view of the reservations against its use that were found in the legal and empirical study, this practice should be discontinued.

The central role of the court in the enforcement (which will usually be the court of the state where the child is), does not exclude that parties may be given some assistance, especially when they live in other member states. In cross-border cases in the EU there might be some interest in giving the central authorities (or at least the organs that also fulfil this role) a role in a system where an enforcement order, not necessarily a return order, would be needed to 'enforce' a family law decision in another member state. Thus the organ now acting as Central Authority could deal with a request of a parent to enforce a decision on visiting rights given in another member state, and apply with the court for an enforcement order in the country of receipt.

Crucial to the avenues set out above is that there is some common perception on how parental responsibility should be exercised. If this common perception can be found, it would be much easier for the courts to co-operate across borders.

To sum up, in order to better address the problems that surround the enforcement of family law decisions, the Community should consider the following:

- What is the common perception of the way parental responsibility should be exercised within the community? This study thinks that the trend is towards continuous shared parental responsibility, but it must be verified that this trend is accepted in all member states;
- What is the best method to enforce judgments on parental responsibility, in view of the common perception? This study thinks that the introduction of mediation, possibly along the model found in Sweden, offers a solution;
- Is it possible to use the 'Swedish' model that integrates mediation in cross-border situations, and to overcome problems of language and distance? For many cases the answer would be affirmative, as cases often involve parties from neighbouring countries. And usually the parents will have one language in common;
- Is it possible to divide responsibilities: after the material decision by one court, at a later stage another court has responsibility for the enforcement? This study thinks that in order to make this work, courts must accept the distribution of responsibilities and would need to co-operate.
- What can be done to promote court co-operation across borders? Concentration of justice appears to be the best solution. The concentration could probably be limited to the courts that are responsible for the enforcement. Jurisdiction for the material decision, the decision that is to be enforced, should be maintained as it is now. Concentration may be advisable with respect to return orders.
- Can the solution of the Hague Abduction Convention be better integrated in the legal system of the community? The Community could develop a system to deal with the issues that surround child abduction as a whole, not limit the dispute to the return of the children. The introduction of mediation in certain cases would be a small first step.

Based upon the outcome of these considerations, the Community may further develop its actions.

List of abbreviations

General abbreviations

CA	Central Authority
CC	Civil Code (Code Civil)
CETS	Council of Europe Treaty Series
CPC/CCP	Code of Civil Procedure ('Code de Procédure Civile')
idF	in der Fassung (German: 'in the version')
Prel. Doc No	Preliminary Document Number

Specific abbreviations for national legislation:

AU

AußStrG Bundesgesetz über das gerichtliche Verfahren in Rechtsangelegenheiten außer Streitsachen (Außerstreitgesetz . AußStrG) (NR: GP XXII RV 224 AB 268 S. 38. BR: AB 6895 S. 703.)

KindRÄG Bundesgesetz: Kindschaftsrechts-Änderungsgesetz 2001 – KindRÄG 2001 (NR: GP XXI RV 296 AB 366 S. 44. BR: AB 6275 S. 670.)

DEN

AJA Retsplejeloven (The Administration of Justice Act)

ESP

LEC Ley de Enjuiciamiento Civil (Code of Civil Procedure)

FRA

MAMIF La Mission d'Aide à la Médiation Internationale pour les Familles (Mission for the aid to international mediation to families)

GER

IntFamRVG Internationales Familienrechtsverfahrensgesetz (Code of procedure in international family law cases) 26. Januar 2005 (BGBl I Nr. 7 vom 31.01.2005)

ITA

CdC Corte di Cassazione ('Court of Cassation', Italy Supreme Court)

MLT

Appoġġ Organisation for social welfare on Malta encompassing the Children Services, the Adult and Family Services and the Community and Generic Services

LUX

R.GrD. Règlement grand-ducal ('regulation of the Grand-Duchy')

NED

IND

Immigratie en Naturalisatiedienst ('Service for Immigration and Naturalisation')

POR

OTM

ORGANIZAÇÃO TUTELAR de MENORES, TRIBUNAIS de MENORES e ESTABELECIMENTOS de ASSISTÊNCIA (Decreto-Lei nº 314/78, de 27 de Outubro (a) (Actualizado até Novembro de 1999)) ('Guardianship of Infants Act')

POL

KPC

Kodeksie postępowania cywilnego ('Code of Civil Procedure')