Annex – Questionnaire reproduced by question per country[1]

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Question 1: Have the courts in your jurisdiction encountered difficulties because there is no definition of 'habitual residence' and other jurisdictional grounds in the Brussels IIa Regulation, both in relation to matrimonial matters and parental responsibilities?	
Austria	No the Austrian courts have no difficulties.
Belgium	The Belgian courts often have to define the habitual residence of the parties concerned, both in matrimonial matters and matters on parental responsibility. Case law shows that courts always take several factual circumstances into account, as illustrated by the following cases. The Court of Appeal of Brussels had to establish the place of habitual residence of the wife in a divorce proceeding. The (ex-)husband claimed that the Belgian courts had no jurisdiction since the habitual residence of the wife was not in Belgium (Article 3,a Brussels IIa Regulation). Taking into account the case law of the CJEU[1] and the factual circumstances of the case, the Brussels Court of Appeal came to the conclusion that the wife's habitual residence was located in Belgium. The court of appeal referred to the fact that (i) the wife was registered in the Belgian population register since May 2012, (ii) she had travelled from Abu Dhabi to Brussels on 11 June 2011, (iii) she had applied for a (temporary) job as a doctor in Belgium for the period July 2011 until September 2011, (iv) in December 2011 and from April until June 2012 she had worked in Belgium and that (v) in December 2011 she had signed a contract to rent a house in Belgium. The court of appeal also took into account (vi) the bank statements of the wife. These documents showed that in the months before the procedure was initiated, the woman had purchased things in Belgium and made several payments in Belgium. The fact that the women had travelled to India twice and had stayed in Amsterdam for a short period didn't affect her place of habitual residence.[2] In a case concerning the parental responsibility of a child, the Court of Appeal of Liège considered as relevant facts to define the habitual residence of a child: the place where the children live, the place where they go to school and undertake their extra-curricular activities.[3]
Bulgaria	The claims for divorce, for annulment and for finding the existence or non-existence of a matrimony between the parties are considered under the special procedure of Chapter XXVI (PROCEDURE ON MATRIMONIAL LAWSUITS) of the Civil Procedure Code (CPC). However, the general rules of the CPC are applied about the court jurisdiction - "*The claim shall be filed at the court, within which region is the permanent address or the seat of the defendant*"[4]. It should also be considered that according to the law "*A claim against person whose address is unknown shall be submitted at the court of the permanent address of his attorney or a representative, and if he has no such – of the permanent address of the claimant. (2) The rules of Para 1 shall be also applied to a defendant, who does not live within the boundaries of the Republic of Bulgaria at his permanent address. (3) If the claimant has no address in the Republic of Bulgaria too, the claim shall be filed at the due court in Sofia.*"[5] The related national legislation uses the term "*habitual residence*" only in Art. 47 (8) of the Codex of International Private Law. At the same time it must be pointed out that the national legislation does not use the term "*habitual residence*" for defining the court's jurisdiction. Instead the CPC considers "*the present address*" or "*the permanent address*" or "*the place where he* /the worker/ *usually performs his labour obligations*" etc., depending on the subject matter of the case.[6] Therefore, in some rulings the courts follow the formal criteria which are used by related BG legislation as "*the present address*" or "*the permanent address*" or even "*nationality*" of the parties. However, the predominant court practice requires from the claimant to present evidence not only about the factual residence of the related party but also to convince the court in the common residence of the party/ies as a center of his/her/their social life.[7] It should also be noted that the judicial practice pays more attention to the term "*habitual residence*" in cases about parental responsibility than in a clear matrimonial matters.
Croatia	There is a lack of understanding of the term "habitual residence" in Croatian practice. This ambiguity derives from the fact that in Croatian Private International Law Act of 1982[8] this connecting factor was not employed at all, neither as a connecting factor of a choice of law rules, nor as a jurisdictional criterion. Croatian PIL Act was based on mechanical connecting factors of nationality and domicile. There was a general attitude of mechanical application of PIL in Croatia. Habitual residence has been introduced to Croatian legal system through Hague conventions (traffic accidents, product liability, form of testimony).[9] However, records on case law with application of these conventions were not reported, what may indicate they were rather rarely used in practice. Neither the doctrine provided more consideration of it interpretation.[10] Recently, since Croatia joined European Union and enacted several additional Hague conventions (adoption, maintenance convention and protocol)[11], habitual residence has become truly the most widespread criteria for jurisdiction and connecting factor. There is additionally a misunderstanding of the term due to several false official translations of the term with respective HCCH conventions.[12] Draft Private International Law Act of 2016 (hereinafter: Draft PIL Act of 2016) and supporting documentation[13] acknowledges that the habitual residence has become the

	most prominent connecting factor and procedural criteria. There is a definition of habitual residence proposed by the legislator. Legislator provides a justification for a definition in "better understanding of the law and promotion of legal security".[14] Pursuant to Article 5 of the Draft PIL Act of 2016 "Habitual residence is a place where physical person predominantly lives regardless if her presence or habitation is registered or allowed in that place. In determining habitual residence consideration of personal or professional nature should particularly be taken into account, particularly if they indicate towards permanent relations of the person with that place, or towards an intent that such relationship is established". Available Croatian case law is rather scarce.[15] Available case law does not disclose detailed examination of the courts, or its consideration on the content of the term habitual residence. In one case a court offered some considerations on the permanency of life of a person in another Member State.[16] Available case law proves that at general terms courts are facing difficulties with explaining concretely the factual grounds for habitual residence.[17] Examples of proper examination and explanation of the term may be fund as well.[18] One might imagine that CJEU early case law on habitual residence could provide some aid, but unfortunately those CJEU rulings have never been officially translated to Croatian language.[19]
Cyprus	- In regards of the term 'habitual residence' within our jurisdiction, the courts have not encountered difficulties as they are guided both by Cyprus and EU case law to interpret the term. - Hence, the principle is that the courts consider each case on its own facts. It would be fairer if there was an explicit definition as to what the legislator meant by the term 'habitual residence'. The non-determination and/or the interpretation of the term extends to the discretion that each Court exercises. - It can be assumed that the Regulation's failure to specify the meaning of the term 'habitual residence' gives the sense to citizens of unequal treatment, as citizens cannot perceive the difference when similar cases have different results. - In our jurisdiction when the courts are called to determine 'habitual residence', they examine the common intention of the couple to live in a country having a satisfactory degree of continuity, namely a settled purpose, but this does not mean that they must have the intention of staying in the country indefinitely. - Factors that the Cyprus courts take into account in deciding whether a person adopts a new habitual residence are education, work, other family ties etc.
Czech Republic	When the 1996 Hague Convention (2002) and the Brussels IIa Regulation (2004) entered into force in the Czech Republic (CR) the Czech judges had to learn the notion of habitual residence, as it was new and different from the connecting factors used in the national law (the old Private International Law Act No. 97/1963 Coll). It took some time till the judiciary got used to apply the habitual residence correctly. The guidelines set in the CJEU rulings (A, Mercredi) were helpful in this regard and later largely respected. The most important national decisions in this context are the judgments of the Supreme Court No 30 Cdo 2244/2011 dated 27. 9. 2011 and No 21 Cdo 4909/2014 dated 19.3.2015. Another ground for jurisdiction which was interpreted several times is Art. 12, i.e. the conditions for limited prorogation in matters of parental responsibility (e.g. judgment of District Court Náchod dated 13. 1. 2011 – superior interest of the child, judgment of Regional Court in Prague dated 27. 4. 2011 - matter relating to parental responsibility connected with divorce application, judgment of the Supreme Court No 30 Cdo 1994/2013 dated 27.1.2015 - "unequivocal manner" of acceptance of the jurisdiction – connected with CJEU case C-656/13 L, Judgment of the Supreme Court No. 30 Nd 201/2013 dated 11.11.2015 – connected with CJEU case C-404/14 Matoušková).
Estonia	There have been some difficulties to define "habitual residence" several years ago. Firstly, after coming into effect in Estonia, there was too little expertise on how to apply the Brussels IIa Regulation at the courts of first instance. And secondly, there was very poor translation into Estonian of the term of "habitual residence". The Supreme Court of Estonia has clarified the autonomous definition of "habitual residence" on parental responsibility and child abduction cases relying on CJEU case law (28.09.2010 Judgement, case nr 3-2-1-66-10; 10.10.2012 Judgement, case 3-2-1-109-12). The other jurisdictional grounds have been mostly understood quite well.

Finland	Yes. Habitual residence is a difficult concept to define in practical work of judges and advocates.
France	The absence of definition of residence is a deliberate choice of the Brussels IIa Regulation. As expected, it leads courts to adopt a functional approach of this notion, i.e. depending on the context in which it is referred to. It introduces flexibility to the jurisdictional system, in which courts have no discretionary power to decide upon their jurisdiction. In most cases the lack of definition of "habitual residence" was not really problematic, even though it may be difficult for lawyers to explain this concept to their clients. Due to the particular circumstances of some cases, the uncertainty of the concept can also exacerbate the debate on jurisdiction and unreasonably prolong the procedure. Most of all, not having a definition of "habitual residence" could be problematic in matters relating to parental responsibility and the biggest problems relate to child abduction matters. Indeed, the determination of the "habitual residence of the child" is a key factor in the process as regards the returning of a child (*geographically*: to prove the removal and *legally*: to prove its wrongful character). If the State where the child is removed does not consider that the child had his habitual residence in another Member State before the wrongful removal, then the return process is paralysed, although none of the exceptions pursuant to Articles 12 or 13 of the 1980 Hague Convention are met. Furthermore, there are circumstances in which the habitual residence cannot be found in the context of child abduction: the French Cour de Cassation had to decide on the habitual residence of a child who was removed during the pregnancy of the mother; could the removal be wrongful in this case where the child never had another residence than the one in the Member State where he was born? Many decisive aspects of the juridical struggle against child abduction rely on this uncertain notion of "habitual residence".
Germany	No, I do not think that the absence of a statutory definitions causes much difficulties. As far as I can see, the courts work with criteria developed by the CJEU, notably, as to the habitual residence of a child.
Greece	There have been no cases in which courts have encountered difficulties in what it concerns the definition of habitual residence or other jurisdictional grounds both in relation to matrimonial matters and parental responsibilities. As far as the term habitual residence in relation to matrimonial matters is concerned, Greek Courts also opted for its autonomous interpretation, in accordance with CJEU case law guidance, according to which, "habitual residence" is the place that an individual has determined, in a permanent way, as the permanent or habitual centre of its personal and professional interests. The interpretation may differ according to each case's real circumstances and depending on the jurisdiction. Additionally, it is noted in Greek case law that "the creation of a new habitual residence is not possible (e.g. at the place of birth of the individual) when there is only a temporary connection with that place (e.g. temporary professional visits or visits of other nature) and no intention to change the former habitual residence can be proven.[20] As far as the term habitual residence in relation to parental responsibility matters is concerned, Greek Courts follow the interpretation provided by the CJEU (C-523/07, C-497/2010 PPU) according to which, the residence of the child is fixed in the place where it is integrated in its family and social environment, always in accordance to the relevant circumstances in each case. The period of time of the residence should be estimated together with other relevant circumstances. Additionally, according to Greek case law if the child is considered mature enough, its opinion should be taken into consideration. (One member court of Kavala 24/2009, Court of Appeals of Athens 2712/2011, Areios Pagos 63/2001). In practice though, the autonomous determination of the child's habitual residence appears to be problematic due to the fact that the child's habitual residence depends on the habitual residence of the parent with which it lives. Another source of difficulties in relation to jurisdictional grounds is the case of dual citizenship of parties. Greek Courts adopt also in this case the interpretation given by the CJEU in Hadadi V. Mesko (C-168-08) case, where it was clarified that both nationalities are equally sufficient jurisdictional grounds and no priority is given to the citizenship of the Member State with which a strongest connection exists.
Hungary	Although it took some time for the Hungarian courts to establish a guidance for the proper interpretation of the term 'habitual residence' both in matrimonial matters and concerning parental responsibilities, according to the published decisions – see them below, respectively – the Hungarian legal practice of the Hungarian Curia (the Hungarian

	Supreme Court) follows clear principles which are in harmony with the CJEU's legal interpretation. The term 'habitual residence' is flexible enough. However, the new lifestyles mean a challenge. In our country an issue to be solved is e.g. the situation of families living at the Hungarian-Austrian border. They live actually in the territory of Hungary but the parents work in Austria and their children attend an Austrian school as well. The determination of the habitual residence is the key point when the Hungarian couple leaves Hungary to work abroad. Although they would like to try themselves abroad it often occurs that they do not sell all their properties and if one of them travels home after a short time – as it occurs sometimes – the issue of the whereabouts of the habitual residence is open. Nevertheless, the Hungarian courts seem to decide these cases according to the factual context of each case in harmony with the CJEU's case-law.
Ireland	There has been no adverse judicial comment on the absence of a definition of `habitual residence`. The judiciary interprets this in the ordinary sense of the term with no special meaning attached. There have been no difficulties.
Italy	The lack of definitions of "habitual residence" and "nationality" has been more times noted and criticized, holding that they would have fostered a more uniform application of the regulation in the countries of EU. The leading doctrine maintains that "habitual residence" should be interpreted autonomously, without reference to the construction based on national rules. An author has noticed that the Italian courts appear more careful that courts in other EU jurisdictions in evaluating the subjective requisite in establishing residence: Italian courts require fact elements showing the intention to reside, irrespective of the time passed. The Regulation should clarify, however, if reference should be made to the will of the minor or to the parent's, or to both, considering however that if the child is very young, he or she will not be distinguishable from the parent (the reasoning of the CJEU in *Mercredi* is not applicable to children in the shared custody of both parents). It is also possible that a child has more than one residence: it may happen – and it does happen, although not so frequently – that parents live in two different countries of EU, because for instance of their respective work, and meet in the weekends. Also in these cases, a clearer definition of "habitual residence" would be advisable.
Latvia	There were no huge difficulties because of lack of definition, since the Latvian Courts in each case determine habitual residence individually both in matrimonial matters and parental responsibility matters. In parental responsibility matters the Latvian courts in determining a habitual residence of a child consider whether a child has substantial connection with Latvia, by taking those criteria provided in Article 12(3) or 15(3) of Brussels IIbis Regulation.
Lithuania	Provisions of the Brussels IIa Regulation with reference to 'habitual residence' are interpreted in courts of Lithuania as determined in CJEU case law recommendations. Legal background for determination of applicable jurisdiction is being set according to factual habitual residence of a child. The Supreme Court of Lithuania ruled that child's habitual residence is a matter of facts and must be determined individually according to factual details of each case. A court is obliged to evaluate factual data on a case and determine habitual residence of a child each time individually. As there are no definition of 'habitual residence' and other jurisdictional grounds in the Regulation, the basis for determination of child's habitual residence is set individually in each case at court[21].
Luxembourg	In general, the issue of the lack of definition of 'habitual residence' has not been highlighted in Luxembourgish case-law. In one case the court mentioned all the grounds of jurisdiction based on habitual residence, but without reflecting on this concept ('Tribunal d'arrondissement de Luxembourg', no. 140194, 15 November 2011). However, in some other cases the court has adopted the concept of habitual residence in the "Explanatory Report on the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters (approved by the Council on 28 May 1998) prepared by Dr. Alegría Borrás" (DO C no. 221, 16 July 1998), in which habitual residence is "the place where the person had established, on a fixed basis, his permanent or habitual centre of interests, with all the relevant facts being taken into account for the purpose of determining such residence". This concept follows ECJ case-law ('Tribunal d'arrondissement de Luxembourg', no. 138103, 22 September 2011; 'Tribunal d'arrondissement de Luxembourg', no. 141449, 10 January 2013, among others). In another judgment, the court stated that the habitual residence of a child in the framework of Article 8 of the Brussels IIa Regulation must be assessed on a sovereign basis by the judge with jurisdiction to decide on the merits of the case ('Cour de cassation du Grand-Duché de Luxembourg', no. 3325, 3 April 2014).

	As regards the problems of definition of the other jurisdictional grounds of the Brussels IIa Regulation, no other general problems have been identified.
Malta	'Habitual residence' has been interpreted and applied to cases on an individual basis – Our Courts base their decision on proof filed by the parties including but not limited to school, the period of residence in such country, stability and other circumstances which indicate there's a habitual residence.
The Netherlands	In a number of cases brought before the Netherlands Supreme Court the application of the concept 'habitual residence' by lower courts was questioned. In matrimonial matters reference can be made to NL SC 1 September 2006, LJN: AW9383. The husband unsuccessfully argued, inter alia, that his registration in the Netherlands Municipal Personal Records Database (Gemeentelijke Basisadministratie (GBA)) meant that he had habitual residence in the Netherlands. Lower courts had found his actual residence was mostly on the Philippines and that he spent little time in the Netherlands. Therefore they found it was unlikely that he could meet the six months period of habitual residence in the Netherlands of Article 2(1)(a) Brussels II (Regulation 1347/2000). The appeal to the Supreme Court was dismissed by the Supreme Court without giving further reasoning, as the appeal did not raise a point of law. For a reasoning, reference can be made to the Opinion of Advocate-General Strikwerda which for the concept of habitual residence referred to the Report Borrás to the 1998 Brussels Convention and to case-law of the ECJ (ECJ 23 April 1991, Jur. 1991, p. I-01943; ECJ 15 September 1994, Jur. 1994, p. I-04295; also ECJ 12 July 2001, Jur. 2001, p. I-05547). On the basis of these references the Advocate-General was of the opinion that habitual residence in Brussels II was to be seen as equivalent to the well-known concept 'habitual residence' of private international law. In his view, the application of this concept by the lower courts to the facts of the case could not be questioned in cassation. NL SC 9 September 2011, LJN: BR0409 concerned parental responsibility. Again the appeal to the Supreme Court was dismissed by the Supreme Court without giving further reasoning, as the appeal did not raise a point of law. In appeal to the SC, the mother in essence argued that lower courts had overlooked facts and circumstances she had put forward to prove that the child in question had obtained habitual residence in Moscow. For the meaning of the concept of habitual residence, the A-G referred to ECJ 2 April 2009, C-523/07, Finland II, Jur. 2009, p. I-2805, pt. 37-39 and also to ECJ 22 December 2010, C-497/10 PPU (Mercredi/Chaffe), pt. 51-54. Under the circumstances of the case, the A-G found that a transfer of the habitual residence of the child to Moscow could only have taken place after proceedings had been initiated in the Netherlands. In view of Article 8(1) Brussels IIbis the Netherlands courts therefore had jurisdiction. NL SC 23 September 2011, LJN:BR3062 concerned parental responsibility. Again the appeal to the Supreme Court was dismissed by the Supreme Court without giving further reasoning, as the appeal did not raise a point of law. NL SC 4 January 2013, LJN:B Y7753 concerned parental responsibility. Again the appeal to the Supreme Court was dismissed by the Supreme Court without giving further reasoning, as the appeal did not raise a point of law. The parents unsuccessfully argued, inter alia, that they and their children had moved their habitual residence to Germany, as was shown by the removal of the registration of themselves and of their children from the Netherlands Municipal Personal Records Database (Gemeentelijke Basisadministratie (GBA)). For the meaning of the concept habitual residence the A-G referred to CJEU 22 December 2010, C-497/10 PPU, pt. 47-51; CJEU 2 April 2009, C-523/07, Jur. 2009, p. I-2805, pt. 37-40. The lower courts had in his view rightly applied that concept to the facts of the case. NL SC 3 May 2013, ECLI:NL:HR:2013:BY4107, concerned parental responsibility. The dispute concerned the custody of a child between the widowed father and grandparents on the deceased mother's side. The lower courts had found the child had habitual residence in the Netherlands. The SC held the finding where a child has habitual residence is intricately linked to findings of fact and can in cassation only be examined on grounds of comprehensibility. As a consequence, the considerations by the lower court were largely exempt from review in cassation. The judgment by the lower court was neither incomprehensible nor insufficiently reasoned. NL SC 28 March 2014, ECLI:NL:HR:2014:744 concerned parental responsibility. Again the appeal to the Supreme Court was dismissed by the Supreme Court without giving further reasoning, as the appeal did not raise a point of law. For the meaning of the concept parental responsibility the A-G referred to CJEU 22 December 2010, C-497/10, PPU-Mercredi, ECLI:EU:C:2010:829, pt. 47-51 and CJEU); HvJEG 2 april 2009, C-523/07, "A", ECLI:EU:C:2009:225, pt. 37 t/m 40 ("A"). NL SC 26 June 2015, ECLI:NL:HR:2015:1752 contains a reference to ECJ/CJEU case law for the concept of habitual residence. The decision also mentions the factual nature of the concept, which meant that the role of the Supreme Court in cassation was limited.

Poland	No, but since the concept of habitual residence has not been explained in the provisions of the Regulation, it is subject to autonomous interpretation. It is assumed that: 1) this is the place where the main point (center) of personal ties is situated - the center of person's life, 2) such a place is located in the state in which the child shows a certain degree of integration with the social and family environment, 3) during its determination, each time one should take into account the circumstances of the case, considering personal, family and professional situation of a person and a duration of stay. Doctrinal interpretations develop these issues. Factual circumstances have the primarily decisive importance for the determination of the habitual residence. Element of will (intention, plans) of a person is not required to establish habitual residence in a particular place. It is a place, where the main point (center) of ties of a person and his vital relationships, i.e. the center of her existence. The circumstances of a personal (family) and professional nature, indicating that the given place is the one with which the person is closely related need to be taken into account in this regard.[22] The condition for the existence of jurisdiction ground specified in the provision of Article 3(1)(a) is the continuance of the habitual residence in a forum state for at least a year before the application. It is at the same time a stay (presence), which continuously takes at least a year before the application, and not the sum of several stays in the forum country out of the last period of stays following one another with intervals (for habitual residence in another state), which together lasted for at least a year.[23] Decisive importance of objective circumstances is attributed in particular to determination of the habitual residence of the child for the purposes of designation of national jurisdiction in matters of parental responsibility. Admittedly the interpretation of the concept in cases of parental responsibility stems from the principle of protection of the best interests of the child. In the case of children, it is difficult to talk about the elements of volitional nature, but it does not seem justified to introduce the significant differences in the interpretation of this concept on the basis of the Brussels IIa Regulation.[24] The Regulation, not defining habitual residence, does not set time limits crossing of which would determine the existence of habitual residence in a given place. In the light of the Decision of Wloclawek Provincial Court, dated 28 August 2009, V CZ 37/09, presence on the territory of a particular country can be classified as a "habitual residence" within the meaning of Article 8 (1) of the Brussels IIa Regulation, only if the person has there the center of his life. Unlike the "domicile" from art. 25 of the Polish Civil Code[25], it is not necessary for the person to have the will (intention) to stay in the country, because it is sufficient to establish that the person stays within the territory.[26] However, it happens sometimes in the doctrine to confuse the habitual residence of the child with the so-called "habitual" domicile of the child, which is seemingly easier to determine, because a term "domicile" is defined and regulated in the Polish Civil Code[27] (PCC). Generally, in 95% of cases there are no problems, especially if the family decides to leave the country and clearly communicates it - then this is tantamount to the end of habitual residence in that state. In some other cases, it is difficult to capture the moment when one habitual residence ends, and when the other begins.
Portugal	In Portugal, courts do not have encountered difficulties due to the absence of a definition of 'habitual residence' and other jurisdictional grounds in the Brussels IIa Regulation. In Ruling of Second Instance Court of Lisbon of 22nd September 2011 (*Acórdão do Tribunal da Relação de Lisboa de 22-09-2011*, available in Portuguese in www.dgsi.pt) on parental responsibilities was decided that the definition of 'habitual residence' "*is independent of European legislation, independent on what can appear in the national legislation and should be interpreted in accordance with the objectives and purposes of the Regulation, which should be sought on a case by case by the judge, but taking into account, first, that the "usual" adjective tends to indicate a certain period of time*". However, this certain period of time is not defined in general by the Court. In this case, the minor was recently living in England with his/her mother, but the Court decided that should be relevant to consider the "*effective connection of the minor and their parents to Portugal, country of nationality of all, lasting for 6 year regarding the minor*". Nevertheless, we may identify a certain tendency of Portuguese Courts to decide in this matter based in these two principles: a) A new and very recent (for instance, for a few days) 'habitual residence' in another country (other than Portugal) is not ground to consider Portuguese jurisdiction incompetent (see Ruling of Second Instance Court of Porto of 29th April 2013 (*Acórdão da Relação do Porto de 29-04-2013*, available in Portuguese in www.dgsi.pt); b) When the new 'habitual residence' in another country is longer (for instance, one year) the criteria is mitigated with the principle of minor best interests, deciding for the competence of Portuguese jurisdiction if he/her and his/her family have a strong relation (for instance: nationality) with Portugal (see Ruling of Second Instance Court of Guimarães of 7th of May 2013 (*Acórdão da Relação de Guimarães de 07-05-2013*, available in Portuguese in www.dgsi.pt). Some literature (see. Maria Helena Brito, «O Regulamento (CE) N.º 2201/2003 do Conselho, de 27 de Novembro de 2003 relativo à competência, ao reconhecimento e à execução de decisões em matéria matrimonial e em matéria de responsabilidade parental», in Estudos em Memória do Professor Doutor António Marques dos Santos, v. I, Coimbra, 2005, Almedina, p. 323) tends to consider that the concept of 'habitual residence' should be interpreted with the same meaning given by CJEU.

Romania	The regulation uses the concept of „habitual residence" as a jurisdictional ground, without defining it; the Romanian doctrine mentions that it should receive a European autonomous definition[28] and be interpreted according to the opinions offered by the ECJ, regardless the national interpretations on the matter. Even if the ECJ already had the opportunity to clarify this concept, the absence of a legal/textual definition shows some inconsistencies in its interpretation and application by the inferior courts, especially in cases regarding the parental responsibility. If in general references are made to the detailed indications given by the ECJ in *A* (C-523/07) and *Mercredi* (C-497/07) decisions[29], very helpful in the field, nevertheless, in some cases the courts referred only to the national provisions[30].
Slovakia	No, there aren't serious difficulties. National courts do refer to the CJEU case law and legal doctrine in Slovakia dealing with notion of 'habitual residence'.[31]
Slovenia	Yes, in some cases Slovenian courts had problems mainly regarding to the interpretation of the meaning of habitual residence. In case "*VSM sklep III Cp 1643/2007"* from 27 August 2007 the High Court Maribor explained that habitual residence is considered as the place, where the parties were resident exclusively due to work and employment. There, it is irrelevant if they were registered in that place only a short period of time and that they do not have the intension to be there constantly. Only the formal declaration of habitual residence or the fact that someone is registered in a state as contemporary or permanent resident is not important for Brussels IIa and its use.[32]
Spain	The lack of a definition of habitual residence in the Regulation Brussels IIa has been faced differently by the national Courts of Spain. In regards to matrimonial matters, some judgments clearly admit that the concept of habitual residence has to be interpreted autonomously according to the Regulation (case number 46/2013 of 21 January, Provincial Court of Madrid; case number 166/2015 of 10 April, Provincial Court of Tarragona and case number 89/2015 of 22 April, Provincial Court of Girona). Given the lack of a definition in the text, these cases are referred to the guidelines given by the CJEU –although no reference is made to any specific case-, stating that the habitual residence is the "place in which the person has established the permanent or habitual center of his or her interests with stable character". However, the majority of cases dealing with the application of Article 3 Regulation Brussels IIa do not mention this idea and directly consider the application of the alternative forums without a deep examination of the circumstances of the case. As to the habitual residence in cases of parental responsibility, the Spanish Courts have quoted in some cases some of the reasonings of the CJEU when interpreting such concept (Case 523/07, 2 April 2009, *A and minors C, D, E* and Case 497/10, 22 December 2010, *Mercredi*). Good examples are the following cases: case number 214/2015 of 10 April, Provincial Court of Barcelona; case number 58/2015 of 20 February, Provincial Court of Barcelona or case 30/2011 of 21 February, Provincial Court of Valladolid). In most of the cases, however, the jurisprudence of the CJEU is not explicitly mentioned. This situation takes places differently. On the one hand, it is possible to find cases where the judge takes into account all the circumstances of the case in order to determine the habitual residence of the minor. However, this analysis is done without any reference to the idea that the concept of habitual residence is autonomous and has to be interpreted in line with the Regulation. Alongside this, there are also some cases where the Spanish Courts do not analyze in detail the concept of habitual residence of the minor, especially when the parents seem to agree in this particular issue. Finally, the absence of definition of the jurisdictional ground of nationality is not surprising, since it is up to each Member State to lay down the conditions for the acquisition and loss of its nationality (*Micheletti* judgment).
Sweden	At the outset, it must be pointed out that Swedish case law and Swedish literature on the Brussels IIa Regulation are very limited and statistics are often not available. The decision of the Swedish Supreme Court in the case of *NJA 2011 p. 499* may be of some general interest though. It concerned the habitual residence of a child that had moved, together with its mother who was its sole legal custodian, from Sweden to Indonesia. The case was about the jurisdiction of Swedish courts to deal with custody proceedings initiated in Sweden by the child's father. The Court noted that, pursuant to the criteria of habitual residence formulated by the CJEU case law, no Member State had jurisdiction under Article 8 of the Brussels IIa Regulation. The father's action was dismissed, as there was no Swedish jurisdiction according to Article 14 either. The decision confirms that the Regulation is applicable even when the case does not involve any Member State other than that of the forum.
UK	As Lamont has argued, the notion of habitual residence continues to play 'a central role' [33] across a number of areas of child and family law, with the 'the most controversial issue arising out of the new Regulation [being] the correct interpretation of the term habitual residence.'[34] This is especially so where the determination of parental responsibility post-relocation or abduction may be a key factor, with parental intentions perhaps being cited to determine or challenge factual aspects of difficult situations. The notion of the child's 'habitual residence' is meant however, to be grounded in an 'autonomous and uniform meaning,' based upon factual concepts.[35] Given also the modern interpretation of the concept of habitual residence, it should be 'highly unlikely, albeit conceivable,' that removed, or relocated, children may well find themselves

	in a sort of legal limbo.'[36] The 'see-saw analogy' suggests that such children will essentially be 'putting down roots' in the new country of residence, as they (almost simultaneously) disengage from their former place of habitual residence. Other factors indicating that integration has occurred might include the extent to which the adults in the child's life have prepared or engaged in practical planning for the move itself, or given some thought to how the child's daily life will play out within the new country. The question of whether key persons previously connected to the child have accompanied him or her, is also important, as is the absence of those who remain behind. Their non-presence in the new state may well signify that there are continuing familial or social ties to the former habitual residence. Parental intentions matter to some extent,[37] but these ought to be seen as only one factor when determining habitual residence. Significantly, they must not be used to simply outweigh the best interests of the child. On the need to avoid 'jurisdictional limbo,' the presence of the child within a given jurisdiction should not be overlooked. The Supreme Court recently (in *Re B* [2016]) looked to CJEU case law,[38] to confirm that the child's best interests was the key factor.[39] The question of habitual residence was one of fact, [40] and timing was significant, given how the social/familial integration test had been used within EU and domestic jurisprudence. Integration might not occur instantaneously, upon arrival, although the loss of habitual residence ('old links'[41]) could so happen, as 'a unilateral act…. It makes no sense to regard a person as habitually resident in the United Kingdom if she is not resident there at all because she has left it to live permanently elsewhere.'[42] As Harrison *et al* have observed, the decision in *Re B* is aimed at providing clarity, and a greater degree of certainty for those '…parents whose relationship breaks down shortly after a joint move to another jurisdiction. Where previously judges might normally have held that in the aftermath of a move children had no habitual residence at all, this will no longer be the case: the courts will strive to find an habitual residence for a child and only exceptionally hold that it is not possible to do so.' [43]

Question 2: Has the CJEU case law provided sufficient guidance when the courts in your jurisdiction encountered difficulties in applying the Brussels IIa Regulation?	
Austria	Yes, it is always referred to the decisions of the ECJ.
Belgium	Question 1 above and questions 6, 10 and 32 below discuss how the CJEU case law is applied by the Belgian courts.
Bulgaria	The BG courts use as a guidance related practice of the CJEU when applying the Brussels IIa Regulation. In this regards I am able to summarize that the CJEU case law provided sufficient guidance in many interesting issues related to precise application of the Brussels IIa Regulation. In addition, Bulgarian courts have also initiated a reference for a preliminary ruling to the CJEU asking for more clarity about some key issues related to the Regulation (EC) No 2201/2003. In particular about the term of 'habitual residence'[44]
Croatia	Great number of CJEU rulings could serve as a perfect guidance to proper application of Brussels IIa Regulation. Available case law reveals that in some situations Croatian national court recalled to the CJEU ruling to provide background to interpretation of the relevant case.[45] However, there is in general a reluctance of Croatian authorities towards application of case law as a legal source. Croatia belongs to continental legal circle where court rulings do not present a legal source. Additional problem to employment of CJEU rulings in Croatia relates to their translations. There are many rulings dating to the era before Croatia joined EU, which have never been translated to Croatian. There is still however a limited potential of the system of interpretation inherent to CJEU. Namely, many topics haven't been subject of CJEU interpretation, since no national court placed a request for preliminary ruling before in their regards. We may recall to the matter of transfer of jurisdiction, where provision of Article 15 left many issues to interpretation of practice. After 11 years of its application the preliminary ruling procedure relating strictly to the system of Article 15 came before CJEU with Case C-428/15, Child and Family Agency v J. D.[46] As far as informal communication with judiciary indicates the Croatian language variant of the *Practice Guide for the application of the Brussels IIa Regulation* has been the most widely used tool in interpretation of the Brussels II Regulation.[47]
Cyprus	- Yes, the courts do use CJEU judgments for guidance when such guidance exists. - Difficulties rise because the CJEU case law cannot cover every case that the Court is asked to consider.
Czech Republic	In general, yes. The CJEU case law is often cited in the reasoning of the court decisions. The Supreme Court applied for preliminary rulings to the CJEU in the following two cases: C-404/14 Matoušková, C-656/13 L. The guidelines provided by the CJEU in these cases seemed to be clear for the Czech courts.
Estonia	As far as the questions have risen in Supreme Court practice, there has been sufficient guidance and Supreme Court is eager to follow the guidance. But there have not been very many cases on Brussels IIa Regulation brought before the Supreme Court. There are no available data on practice in lower courts.

Finland	In practice not. At the moment preliminary ruling C-523/07 is the leading ruling in Finland concerning the concept of habitual residence. For a more clear-cut rule to emerge, additional rulings are required.
France	Yes, in most cases, the CJEU case law provided sufficient guidance regarding the interpretation and application of the Brussels IIa Regulation.
Germany	Yes. The courts cite the case law of CJEU regularly.
Greece	Greek judges do seem to rely on the interpretation provided by the CJEU in its case law especially for the interpretation of terms such as "habitual residence", "best interests of the child".
Hungary	Yes and I would refer two cases, namely *Hadadi*-case and *Mercredi*-case as they were interpreted and discussed in the Hungarian legal literature.[48]
Ireland	The CJEU case law is instructive and informative on Brussels IIA Regulation.
Italy	Not always. For instance, as for the meaning of "habitual residence", several authors have noted that the CJEU has expressed clear enough opinions in the cases Magdalena Fernández and Swaddling. But both these cases were about matters other than matrimonial. It would then be desirable that the CJEU would specify whether those decisions may be applied also in marriage cases.
Latvia	Since 2 April, 2009 in determining a habitual residence of a child the Latvian courts follows the case-law of the Court of Justice (Case C-523/07 and C-497/10 PPU), which in matters of parental responsibility are very helpful to determine the child's habitual place of residence.
Lithuania	The courts in Lithuania actively refer to the CJEU case law practice regarding application of Brussels IIa Regulation. Though there is still rather low number of such cases in courts of Lithuania and not many legal situations have been analyzed, there were no difficulties in applying the CJEU case law.
Luxembourg	Luxembourgish courts have only rarely quoted the CJEU case law. This may be because the facts of the cases differed from those that led to the questions considered by the CJEU. In other cases the court simply neither quoted nor followed the reasoning of the CJEU (e.g., see question 6 below).
Malta	Yes
The Netherlands	As follows from the answer to question 1, the understanding of the concept of habitual residence is usually based on the case law of the CJEU. The application by the lower courts has so far been approved by the Netherlands Supreme Court. In view of this, the first impression would be that the guidance by the ECJ/CJEU case-law, in respect of 'habitual residence' has been sufficient for the lower courts to work with. It should be added that the guidance of the ECJ/CJEU case-law on the concept of habitual residence has predominantly been used in parental responsibility or custody cases. What is less clear is whether the application in actual practice is as uncomplicated as the case law of the NL Supreme Court on the legal application of legal concepts suggests. From the legal point of view, the suggestion is that the courts can work with the legal concepts. But it is noticeable that the NL Supreme Court has now been asked to apply the Brussels IIbis Regulation in 19 cases. In 11 of the 19 decisions the Supreme Court dismissed the appeal in cassation without providing further reasoning. In 7 of these 11 decisions, the concept 'habitual residence' was one of the issues in debate between parties during proceedings. Perhaps further guidance on the concept 'habitual residence' will mean that the acceptance by parties of decisions by the lower courts is improved. For the way how such guidance could be provided, reference is made to the EU Commission guide on the application of the 'Habitual Residence Test' in EU social security legislation (see http://europa.eu/rapid/press-release_IP-14-13_en.htm; Practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland, December 2013, EU Commission, Employment, Social Affairs and Equal Opportunities). [This remark was already made in the national report drafted for the 2015 Study on the assessment of Regulation (EC) No 2201/2003]

	It should also be pointed out that none of the decisions of the NL Supreme Court in application of the Brussels IIbis Regulation led to a request for a preliminary ruling of the CJEU. Before the Supreme Court the question whether there was a need to do so was considered once, and dismissed, in opinion of an Advocate-General before NL SC 17 June 2011, LJN: BQ4833. Court of Appeal (CA) 's-Hertogenbosch 18 December 2014, ECLI:NL:GHSHE:2014:5382, is the only known decision by a lower court on Brussels IIa which briefly considered and then rejected the suggestion to ask prejudicial questions (to both CJEU and the NL SC). It should be noted that this case had already been before the Supreme Court (SC 28 February 2014, ECLI:NL:HR:2014:443, which had redirected to CA 's-Hertogenbosch to decide on jurisdiction under articles 8 and 10 BIIa. The decision of 18 December 2014 would be followed by yet another unsuccessful appeal to the Supreme Court, see SC 26 June 2015, ECLI:NL:HR:2015:1752. Again, to give a meaning to the concept of habitual residence reference was made by the NL Supreme Court to ECJ/CJEU case law and on the factual nature of the concept, which meant that the role of the NL Supreme Court in cassation was limited.]
Poland	The concept of habitual residence should be understood in the manner specified by CJEU case law. According to some voices of the doctrine, Brussels IIa Regulation can be interpreted too arbitrarily, depriving the child protection of the courts of the country in which he has relatives and family ties, already on the day of arrival in another EU country. This possibility is prescribed by the Practice Guide for the application of the new Brussels II Regulation:[49] "It must be emphasized that this does not refer to any concept of habitual residence under national law, but an "autonomous" notion of Community law. If a child moves from one Member State to another, the acquisition of habitual residence in the new Member State, should, in principle, coincide with the "loss" of habitual residence in the former Member State. Consideration by the judge on a case-by-case basis implies that whilst the adjective "habitual" tends to indicate a certain duration, it should not be excluded *that a child might acquire habitual residence in a Member State the very day of the arrival*, depending on the factual elements of the concrete case". In practice (as in noticeable number of Polish mother-German father cases decided by German courts) this means that in the day of arrival in the other than Poland EU country, a mother of a child can be forced to stand before the court adjudicating on depriving her parental rights and placing a child in a foster family - on a request of the local office of child care or child's father. At the same time it also means that her return to Poland may not be considered as entitling her and a child to protection of the Polish courts. The existence of such cases had been notified to the European Commission in January 2015. The Vice-President of the European Parliament, Ryszard Czarnecki, referred to the European Commission a question concerning a manner of interpretation of Article 8 of the Brussels IIa Regulation. The Commission replied on 1 July 2015, that so far no cases of disproportionate and abusive reserving the jurisdiction by the courts of Member States were reported. At this time, the Commission for at least half a year left without consideration two complaints with the reference numbers CHAP (2014) 03577 and CHAP (2015) 00185 on the tragic situation of the mothers and children. The Brussels II a Regulation does not entrust the Central Authority (Ministry of Justice) a capability of affecting actions of independent judicial authorities of other countries, nor the content of decisions in individual cases made by the said authorities. These decisions may be subject to appeal to a higher instance, as far as it is provided for in an appropriate legislation. Although the distinction between the sphere of action of the judiciary from the executive is an obvious component of democracy, and inability of influencing the actions of authorities of a foreign country is obvious, in the public opinion the indicated above activities of foreign bodies threaten the interests of the child and the family, also the trust in the EU mechanisms unifying law. In the opinion, the EU's practice of family law implemented through Brussels IIa Regulation crosses out guarantees concerning the right to a fair trial provided by the Polish Constitution, the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights and Fundamental Freedoms.[50]
Portugal	There is no evidence of that guidance.
Romania	Even if the ECJ case law interpreting the various texts of the Regulations 2201/2003 has become richer in the last years, the Romanian courts do not frequently refer to it; the most cited decisions are *A* and *Mercredi* regarding the interpretation of the habitual residence concept. We also found some sparse mentions of *Hadadi* (C-168/08)[51], *Rinau* (C–195/08)[52], *Detiček & Sgueglia* (C–403/09)[53] and *Povse* (C-211/10)[54].
Slovakia	Not really because the CJEU case law isn't that frequent.
Slovenia	Yes, the CJEU case law has provided sufficient guidance.

Spain	It is difficult to categorically admit if the rulings of the CJEU have provided with sufficient guidance to Spanish Courts when applying Brussels IIa Regulation. On the one hand, it has to be admitted that, in the majority of Spanish judgments, no reference is made to the interpretation of the Regulation by the CJEU. On the other hand, however, in a few very controversial cases, the Spanish judges have supported their arguments by making reference to the case law of the CJEU. Taking this into account, the particular influence of the CJEU in the Spanish jurisdiction will be analyzed specifically in questions 1 (concept of habitual residence), 6 (personal scope of application of the Regulation), 11 (double nationality cases) or 19 (concept of parental responsibility), which focus on the most relevant rulings.
Sweden	Yes, see the case NJA 2011 p. 499 described *supra*.
UK	Generally, the Supreme Court will look for guidance to the jurisprudence of the CJEU where necessary, for example, as in *Re B (a child)* [2016]. [55] Recently however, in *J (Children) (Brussels II Revised: Article 15)*, [56] the Supreme Court opted to rely upon its own reasoning, rather than await a CJEU decision on the 'live question'[57] before it (Ireland's Supreme Court having raised similar queries.)[58] The decision to do so was grounded in the urgent, child-protective need to prevent any further delays,[59] but provided an opportunity to declare that the remit of article 15 could include care proceedings likely to lead to placement with a view to adoption. [60]

Question 3: Have the courts in your jurisdiction encountered difficulties in applying the definitions in Article 2(1)-(6)?	
Austria	No, there are no problems due to the decisions of the ECJ.
Belgium	No published case law reveals any difficulties in the application of the definitions in Article 2(1)-(6) of the Brussels IIa Regulation.
Bulgaria	In my short research I have not found some special difficulties in applying the definitions in Article 2(1)-(6) by the national judicial system.
Croatia	There is some misunderstanding of the notion of autonomous interpretation of relevant terms, as prescribed in the provision with definitions. By example, notion of parental responsibility is understood narrower in comparison to the definition of the notion of parental care of Croatian Family Act of 2015.[61] There is also a misunderstanding of the term "court" as in Croatian legal system Social Welfare Centers are sometimes designated by law as an authority for certain legal matters. For example, Social Welfare Center (hereinafter SWS) is empowered to issue an order for certain disciplinary measures towards parents (surveillance for example). Recently SWS have been empowered to conduct out-of-court settlements on parental responsibility and maintenance agreements.
Cyprus	No.
Czech Republic	No.
Estonia	No information available
Finland	To my knowledge no.
France	To date, it does not seem that French courts have encountered real difficulties (if any) in applying the definitions in Article 2(1)-(6). However, French legal literature and doctrine have evoked several problems: Firstly, some of the definitions are useless: for example, the definition of the term "judge" duplicates the definition of the term "jurisdiction". Secondly, some definitions are considered clearly insufficient. This is the case of the term "decision": the question whether a refusal to pronounce the divorce is a "decision" according to Article 2(4) remains unanswered ever since the adoption of the Brussels II regulation. Before the CJEU rendered its decision in *Purrucker* (C-256/09) there was also a doubt about the character of a decision regarding provisory measures taken by a judge pursuant to Article 20: could they benefit from the recognition regime set out in Article 21 as "decisions"? It is also unfortunate that the Brussels IIa Regulation doesn't clarify if the term "decision" applies or not to same sex divorce. To conclude, while being essential for the determination of the Brussels IIa Regulation's scope of application, the term "decision" remains uncertain in many respects.
Germany	No. I am not aware of such a case. However, there is a discussion on the term "judgment" as to so-called private divorces or administrative divorces which are not rendered by a court but rather by an authority (civil status officer, notary, etc.).
Greece	There is no evidence in the Greek case law on the Regulation or from the legal literature indicating difficulties in relation to the definitions used in article 2 (1)-(6) of the Regulation[62].
Hungary	No. It is reflected in the fact that there is neither any published case nor any discussion in the legal literature concerning such difficulties.
Ireland	There are no reported difficulties with the application of the definitions in Article 2(1)-(6).

Italy	No special difficulty. Some decisions, however, have pointed out that the regulation applies also to citizens of third countries who are habitually resident in a Member State (Trib. Belluno 06.03.2009; Trib. Milano 10.07.2012).
Latvia	Parental responsibility proceedings in Latvia are dealt in so called "two level system" - by the Court (first instance – city/district court, appeal – regional court, cassation – supreme court) or by the Orphan's Court (so called custodial court). Court is dealing only with such issues as removal of custody, access rights, place of residence, maintenance support, whereas the Orphan's Court deals with issues concerning child's protection, such as – suspension of the custody rights, establishment of out of family care, appointment of the guardian, etc. Abovementioned proceedings before the Orphan's Court according to national law are administrative proceedings, even though in another Member States such matters are dealt exclusively as civil matters. However, in the Regulation reference to the "civil matters" may not be intended in a literal sense. Although the expression has been used to limit the scope to family matters, it nonetheless breaks through between civil and public law.[63] The term "civil matters" has to be interpreted as capable of extending to measures which falls under public law from the perspective of the law of a Member State.[64] Pursuant to the Latvian national law[65], an Orphan's court shall take a decision to suspend the child custody rights from a parent if there are factual impediments which deny the possibility to take care of a child; a child lives in conditions which are dangerous to health or life due to the fault of the parent; the parent misuses his or her rights and does not ensure care and supervision of the child; etc. If the reasons for the suspension of child custody rights no longer apply, an Orphan's court shall take a decision regarding the renewal of suspended child custody rights. When preparing a case regarding the renewal of suspended child custody rights or regarding the lodging an application with the court for the removal of custody rights of a parent in a court, an Orphan's court ascertains whether the reasons, due to which the child custody rights have been suspended from the parents, no longer apply.[66] The third part of the Article 203 of the Civil Law of the Republic of Latvia provides that if within a period of one year from the suspension of custody rights it is not possible to renew them, the Orphan's court shall decide regarding the necessity to remove the custody rights of the parents and if necessary to submit a statement of claim to the Court regarding the removal of custody rights from the parents. There are several situations in the Latvian case law[67] where the Orphan's Court within the case in which the custody rights have been suspended from parents and the guardianship over the child has been established, the guardian has moved to another Member State together with a ward for permanent living, where they have been living for some time already. Having reviewed the case after a year, the Orphan's Court has clarified that the reasons for the suspension of the child's custody rights from his/her parents still apply. Orphan's Court decided to submit the claim statement before the Latvian Court regarding the removal of custody rights from the parents, however the Court took a decision to refuse to accept such statement of claim, indicating that, according to the first part of the Article 244.[3] of the Civil Procedure Law of the Republic Law, an action for matters that arise from custody and access rights shall be brought in a court according to the place of residence of the child. The outcome of these cases where that the Court established that at the time the Court was seized the child's habitual place of residence was in another Member State; therefore jurisdiction within particular case is in the member State where the child is living habitually pursuant to the Article 8 of the Regulation. The present problem is in fact that the Court ignores that the Regulation is applicable no matter what the Court regime is and interprets formally Article 8 of the Regulation, in the meantime ignoring Article 2 (1), concentrating on the time when the Court is seized, disregarding that the case about the parental responsibility was at first initiated at the Orphan's Court. Further actions of the Orphan's Court by submitting the statement of claim to the Court regarding the removal of custody rights from the parents, is just further review of the specific case involving the same child and the same parties - parents. Namely, the Court misunderstands the fact that submission of the statement of claim by the Orphan's Court is continuation of particular parental responsibility matter – its further review. Courts interpret wording of the Regulation directly, namely – Court is Court and as it was mentioned above the Regulation stipulates – "at the time the Court is seized".
Lithuania	The Court of Appeals of Lithuania in one of its cases encountered difficulties in applying the definition in Article 2(4) ('judgment'), as a claimant applied to the court with request to not recognize a judgement of a member state court, which rejected claimant's request to return his child from member state to habitual residence state of a claimant[68]. The Court of Appeals of Lithuania had to interpret and clarify definition of 'judgment' as only covering court judgements which positively create or alter interests of a claimant. The court had to clarify that a member state court's judgement which rejected claimant's request, does not create or alter claimant's interests, and such judgement shall not be object to recognition in jurisdiction of Lithuania with reference to provisions of Articles 21, 22 and 23.

Luxembourg	No difficulties regarding the definitions in Article 2(1)-(6) were identified.
Malta	Not particularly – but as stated before, interpretation and application are on a case-to-case basis (in line with CJEU case law)
The Netherlands	Based on reported case law the answer is negative. There is simply no reported case law on these definitions. Reported case law (i.e. case-law published on the website of the Netherlands Courts (rechtspraak.nl) and in the journal Nederlands INternationaal Privaatrecht (NIPR) does sometimes deal with Article 2(7) and 2(11) Brussels IIa.
Poland	No, they did not encounter noticeable difficulties in application Article 2(1)-(6), at least absence of case law on them indicates it. The courts' activity leads to more in-depth interpretation of the terms, taking into account the further provisions of the Brussels IIa Regulation, as in the Decision of the Krakow Court of Appeal dated 19 November 2012., ACz 1719/12, concerning the formal legitimacy in the context of recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. In the light of legal definition of judgment included in Article 2(4), but also according to provision of Article 35 of Brussels IIa Regulation, it must be assumed that the formal legitimacy or the finality of the judgment are not conditions of recognition and enforcement. Therefore, judgments not final and inconclusive under the law of the county of their origin are subjects to recognition and enforcement.[69]
Portugal	There is no evidence of those difficulties.
Romania	The definitions of the terms mentioned in article 2.1-6 of the regulation did not raise problems for Romanian authorities. The article 2-1 gives a large definition to the term "*court*" (all authorities, judicial or otherwise, with jurisdiction…) and it is clear that for the applicability of the regulation is indifferent the fact that the proceedings are conducted before state courts or before administrative authorities. In Romanian law, the dissolution of marriage can be obtained not only in a judiciary procedure (art. 374, 379 Civil code) but also by administrative or notary procedures, if both spouses agree on the divorce (art. 375 Civil code); thus, the public officers of civil status and the notaries dealing with international divorce cases apply the Regulation. As regards the parental responsibility, public notaries do not normally have competences in the field. In cases of divorce with minors, the notaries should verify that there is no dispute between the parents as regards the joint parental responsibility, the residence of the child the contribution to each of the parents to the expenses concerning the child[70]. The Civil code states that any disputes regarding the exercise of the rights or the fulfilment of parental obligations will be solved by the courts (*instanta de tutela*, art. 486 Civil code) and any protective measures regarding the child should always be approved by the courts (art. 265 Civil Code). Finally, the agreements between the parties regarding the exercise of parental responsibility are possible only with court approval (art. 506 Civil code). The term "*judgement*" has a broad meaning, covering decisions, decrees, orders, having *res judicata* effect, issued by state courts, notaries, registrars, government offices, welfare authorities, even if they are pronounced in the matters for which the similar Romanian organs have no competences. The term « *member state* » it is interpreted as regarding all member states, regardless the moment of their adhesion to the European Union, with the exception of Denmark (art. 2.3), and with the exception of the associated regions (DOM/TOM).
Slovakia	Not.
Slovenia	Courts have not encountered difficulties in applying the definitions in Article 2(1)-(6). But we must emphasize, that in Slovenia the term "court" is not implied only for court proceedings, but also for administrative proceedings. Therefore also Slovenian administrative proceedings, used by Center for Social Work (hereinafter: CSW),[71] fall within the scope of Brussels IIa. The CSW has jurisdiction on decisions-making in following matters related to Brussels IIa: - the guardianship; - the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; - the placement of the child in a foster family or in institutional care; - measures for the protection of the child relating to the administration, conservation or disposal of the child's property. Slovenia is working on new Family Code which will transfer some matters from CSW to courts of justice (e.g. guardianship, child protection measures). Therefor the

	jurisdiction of CSW will decrease and on the other hand the jurisdiction of court will increase.[72]
Spain	The most problematic definitions could be the terms "court" and "judge", given the fact that from July 23rd 2015 –as a result of the Law 15/2015 of 2 July of non-contentious proceedings- onwards, Spanish Notaries are allowed to grant a divorce provided that the spouses agree to get divorced and as long as the couple does not have any minor or a disable person in charge. In this regard, it seems that according to the drafting of Article 1(1) ("...whatever the nature of court or tribunal…"), Article 2(1) ("…authorities…with jurisdiction in the matters falling within the scope") or Article 2(2) ("…an official having equivalent powers to those of a judge"), notaries could be bound by the provisions of the Regulation in cases of a non-contentious divorce given the conditions described above.
Sweden	No difficulties so far.
UK	Significant procedural differences exist between the jurisdictions of Northern Ireland, Scotland and England/Wales in relation to this area of child and family law, not least in terms of defining 'judgments' made in matters concerning parental responsibility.[73] There are a fairly wide range of venues dealing with matters of parental responsibility and child welfare.[74] Thus, (in respect of England and Wales), '…the family courts have changed dramatically in the past decade, and the experience of litigants now is radically different from that of their predecessors in the days of widespread public funding. The Family Procedure Rules 2010 imposed a duty of active and robust case management and required the courts to consider proportionality and the allocation of a fair share of court time to each case… Gone are the days when every contested case could expect to have a week's court time set aside for a leisurely trial, preceded by a string of 'directions' hearings.'[75] In terms of case management, it appears also that 'most experienced family judges are now quite happy to make summary determinations of more minor contested issues at a first hearing, on the basis of submissions alone and prior to any evidence having been filed.' [76] Arguably, cases potentially falling within the remit of Brussels IIa could be subject to the sort of expeditious settlement whereby the '…court positively declines to hear an application at all, on the grounds that to afford any time to it would not be a proportionate use of court time and resources, taking into account the backlog of other urgent work waiting to be heard.'[77] Similarly, if conciliation meetings are occurring within the court building (and especially if parties are in attendance for a court hearing), 'there is plenty of scope for misunderstandings and confusion about the status of communications made.'[78]

Question 4: What would be advantages and disadvantages of inserting a new provision in the revised Brussels IIa Regulation relating to out-of-court dispute settlement mechanism in cases of parental responsibility?	
Austria	Particularly in cases of parental responsibility, an out-of-court dispute settlement, for example through mediation, can have great advantages, because the parents jointly work out a solution and co-operate and communicate with each other. The resulting solution will be - which is in the best interest of the child- accepted by the parents rather than a judicial decision. However, an out-of-court dispute settlement does not work if the parents' positions have already hardened. The disadvantage of out-of-court dispute resolution mechanisms is that they lead to a delay in the judicial process. If there is a risk to the child or if a rapid decision is needed for another reason, the court procedure must have absolute priority.
Belgium	-
Bulgaria	The cases of parental responsibility are far more specific than other legal cases, including also a lot of very complicated and sensitive emotional, moral and ethical problems. Therefore the related out-of-court dispute settlement mechanism might be very useful. Some of the first instances courts strongly recommend the parties to use the mediation under the special Act of mediation for resolving related issues. Many lawyers also advise their clients not to reject the judges' recommendations in order not to lose the judges favor. Unfortunately, the mediation is not successful in many cases. It might be also explained by the mentality of the people as well as the local court practice that is strongly in favor of the mothers. Therefore, the last ones prefer to go in the judicial procedure.
Croatia	Out of court dispute settlement is highly promoted standard prescribed within national family legislation. This standard of internal legal protection should have been transposed to cross-border dispute settlement as well. Croatian FLA of 2015 highly promotes out of court dispute settlement, as no divorce procedure with minor children may be initiated before Croatian courts if prior conciliation procedure hasn't been accomplished before SWS. Within Croatian legal system there is an ambiguity with this standard and prior out of court procedure application to cross-border disputes. Namely, the moment when the divorce procedure is initiated is with the Family Law Act of 2015 retained as set historically with Croatian procedural legal tradition: at the moment the court was seized. In conjunction with the out of court settlement, parties wishing to initiate a divorce before Croatian courts are put into weaker position in comparison to parties abroad, as they cannot initiate a divorce before out of court settlement procedure has passed. Due to an alternative grounds of jurisdiction of Art 3 of Brussels II bis, and *lis pendens* rule, they may be deprived of legal protection before Croatian authorities as the opposing party may directly initiate a divorce procedure abroad. Legislative procedure to reform of Family Law Act of 2015 has already been initiated, with out of court settlement issues being placed to forefront position.[79] Regrettably, the 2016 Thesis for Family Code highlight the possible deprivation of legal protection merely as a deficit for Croatian nationals. Such statements are directly confronted to EU principle of prohibition of discrimination on the grounds of nationality.[80] In conjunction to the main question, it would be preferable for EU to find a durable solution to conciliate out of court settlement procedures in internal and cross-border situations for all of the Member States. Having in mind the benefits of out of court settlement on the one hand, and the positive effects of alternative jurisdiction on the other, such solution is most welcome and preferable.
Cyprus	- Out of court dispute settlement processes are not yet used in Cyprus for parental responsibility matters. The use of such disputes in overseas proceedings could lead to delays in case the matter cannot be resolved through such processes. - They may however result in faster resolution of disputes at less cost in case the process is successful; namely, if the parents agree it would be the most respectful solution for the child's psychological welfare. - Such out-of-court dispute settlement would be best if it is not compulsory for the parties to go through this stage first as in many cases where the parties do not agree the child will be left unprotected.

	- Moreover if a recast provides an out-of-court dispute settlement mechanism, experts should be appointed in order to protect the child, e.g. child psychologists or child welfare department. - In Cyprus in matters of parental responsibility there is a control mechanism; the Child Welfare Department is responsible for examining and reporting when a parent is fit or unfit to be granted the right of parental responsibility and then the court decides whether to remove or deprive the right of parental responsibility.
Czech Republic	We have not considered such mechanism, as it seems not relevant for our legal system. The settlements between parents have to be always approved by a court. We do not have experience with recognition and enforcement of "private" agreements under Ar. 46.
Estonia	In principle it is recognized in domestic parental responsibility cases that out-of-court dispute settlement mechanisms would be less harmful for child as well as for parents. Nevertheless, there is no highly effective out-of-court dispute settlement mechanism regulated today by domestic law in domestic cases (there is only voluntary out-of-court mediation and mediation by court in every such case). But there is political willingness to work out effective out-of-court dispute settlement mechanisms in domestic cases in closest future and promote family mediation measures. Both, Brussels IIa new mechanism as well as domestic out-of-court dispute settlement measures would lead in most of the cases to better solution, because in most of the cases the parental disputes have less to do with law and are mostly of psychological nature. Still, there have been some doubts on inserting such measures. Firstly, if the out-of-court dispute settlement mechanism is a voluntary alternative or a compulsory measure before court proceedings, there will be a considerable time laps in the cases where the out-of-court mechanism has had no effect. On the other hand, if there would be another authority instead of court (central authority or other authority or person), the same basic principles should apply as in court proceedings in order to guarantee the fundamental rights (right to be heard etc). Finally, if there would be a new out-of-court dispute settlement mechanism in Brussels IIa Regulation, it should fit also into domestic system of mechanisms.
Finland	-
France	The most obvious advantages would be to : - alleviate the conflict and tensions between the parents ; - ensure a better respect of the agreement reached through the out-of-court settlement ; - contribute to reducing the risk of child abduction. The difficulties (not necessarily being disadvantages) are : - the harmonisation between the MS of this mechanism ; - the risk of delaying the procedure ; - there would be need to clarify, if the absence of a conciliation procedure could be a ground to refuse the recognition of a court decision relating to parental responsibility. In any case, a provision relating to out-of-court dispute settlement could only be a tool because the mediator would not be able to deal with the juridical peculiarities of an international procedure in family law (for example: enforcement of rights of access).
Germany	I personally think that the procedural laws of the Member States and the Regulation is flexible enough so allow out-of-court dispute settlement. An express provision might cause confusion as eg Art. 8 of the Succession Regulation does. The Brussels IIbis Regulation deals mainly with jurisdiction. The question whether out-of-court dispute settlement is, however, mainly a procedural issue which should be governed by the lex fori.
Greece	The sole insertion of a provision on out-of-court dispute settlement mechanism would not be sufficient for the resolution of parental responsibility cases. The advantages of such mechanism should become more visible to EU citizens and an effort to change mentalities of legal practitioners and stakeholders is necessary. The necessity of such action is explained by the fact that recourse to the court in cases of parental responsibility problems is often linked with the mentality of legal professionals in countries like

	Greece where out-of-court dispute settlement mechanisms is, at least for the moment, not widely used. Furthermore, doubts as to EU competence to provide out-of-court dispute settlement mechanisms in parental responsibility cases should be taken into consideration. Additionally one should note the significant differences that occur among the laws of Member-States with respect to out-of-court dispute settlement mechanisms in general, as well as more in particular with respect to use and the permissibility of use of these mechanisms in cases of parental responsibility. This means that, in order to achieve the intended uniformity, most probably new institutions should be established in Member States and administrative issues and technicalities should be autonomously provided for in the Regulation.
Hungary	The legal practice of the Hungarian courts concerning child abduction cases was analysed in a working group, which consisted of judges, attorneys, lawyers from the Central Authority and academics, during 2013. The summarizing opinion the working group (in Hungarian http://www.lb.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2013_el_ii_g_1_14.pdf) dealt with the mediation as a tool of the required peaceful dispute resolution which promotes the parties' agreement. The mediation may have a role both in the proceeding before the Central Authority and in the judicial proceeding. According to the summarizing opinion the mediation's function of preventing the legal suit may come into the foreground in the process before the Central Authority and it could be initiated by the parties who should be provided with necessary information by the Central Authority. In the judicial proceeding not only the parties could initiate it but also the court. It could play an important role in rendering accessory but important issue just as the fixing of the child's transitory residence during the proceeding or the contact with the other parent. Mediation could be used as a tool to promote the voluntary return of the child in the enforcement proceeding. Although the summarizing opinion would promote mediation in the enforcement stage its usefulness would be questionable upon the experiences of mediation in inland enforcement cases. As the judicial proceeding in child abduction cases is a relatively a short and urgent one, mediation should be introduced as early as possible in the course of the process. What concerns the mediation arrangement it can be more complex than the judgment as many "accessory" issues should be incorporated into the arrangement. A cost effective method can be mediation via skype or other technical solution. Already in 2007 a publication was made based upon a research conducted by the Kék Vonal Gyermekkrízis Alapítvány (Blue Line Child Crisis Foundation), a Hungarian non-governmental organization. This publication confirmed the positive aspects of mediation both concerning the child's welfare, the cooperation between the parents and the parent-child contact (Éva Kerpel: Megelőzés és ártalomcsökkentés gyermekek jogellenes külföldre vitelének és visszatartásának eseteiben. [Prevention and Harm Reduction in Child Abduction Cases.] Budapest, Kék Vonal Gyermekkrízis Alapítvány, 2007.).[81] Altogether, introduction of mediation would improve communication of the parents especially in child abduction cases and even if not the whole dispute but one part of it is solved by mediation that means a huge success in cases concerning cross-border parental responsibility issues. According to the information received from the Central Authority they provide the parties with the necessary information on mediation and draw their attention to this alternative dispute resolution. This is in harmony with one project of the Hungarian Ministry of Justice (in cooperation with the Ministry of Justice of the French Republic) concerning the role of mediation in child abduction cases as a peaceful tool in the child interest (Mediáció a jogellenes nemzetközi gyermekelviteli ügyekben – békés megoldás a gyermek érdekében. [Mediation in child abduction cases – a peaceful tool in the child's interest, 2014-2015]; it was supported by the EU's Civil Justice Program.) The published handbook[82] provides an introduction to mediation and the legal problems of child abduction and also contains some good practices from France and Germany concerning mediation in child abduction cases. Besides, the role of mediators, attorneys, courts and the Central Authority is also discussed. According to the handbook the training, follow-up training, supervision of mediators would be strongly promoted just as the communication training of the employers of the Central Authority in Hungary.
Ireland	The main advantage is that it would be compatible with the general desire of utilizing alternative dispute resolution methods rather than contentious litigation. Negotiated settlements are preferred to lengthy and costly litigation. The main disadvantage is that parties could stall and delay the resolution by engaging or partially engaging in the process. The process would have to incentivize participation otherwise delays in resolving the dispute would follow. Litigation tends to focus the party's mind to the issue in dispute.
Italy	To my knowledge, up to now no Italian author has envisaged or fostered the adoption of out-of-court mechanisms. My personal opinion is that on the one hand it could ensure a wider room for autonomy and self-determination, which is an advantageous aim as far as couples are concerned. I do not think however that in matters like parental responsibility, access or children abduction, autonomy always would works for the respect of the rights of the persons involved and especially the children best interest. I am

	inclined to fear that in some situations it may resolve in a struggle were the stronger parties – "stronger" for factual reasons more than juridical – would manage to impose the solutions.
Latvia	Out-of-court dispute settlement mechanism (e.g. mediation) will work only when it is free of charge for the parties, namely all expenses are to be covered by the State. Inserting new provision on this in the Regulation will not meet the principle of subsidiarity. In Latvia there is the Law on mediation and there exist Court suggested mediation.
Lithuania	Advantages of inserting a new provision in the revised Brussels IIa Regulation relating to out-of-court dispute settlement mechanism in cases of parental responsibility might be: - Shorter terms for dispute settlement in cases of parental responsibility; - Interests of a family as a whole, as well as individual interests of family members could be more secured by mediators, who are professionals at dispute settlement in cases of parental responsibility; - Dispute settlement in cases of parental responsibility should be more confidential and discreet. Disadvantages of inserting a new provision in the revised Brussels IIa Regulation relating to out-of-court dispute settlement mechanism in cases of parental responsibility might be: - There might be not enough competent mediators, who would agree to work in out-of-court dispute settlement mechanism. Lack of competence in applying national and (or) international legislations for dispute settlement in cases of parental responsibility might arise; - Special quality control measures might be required to apply, in order to keep the professionality and competence of out-of-court dispute settlement mechanism and out-of-court dispute settlement might become costly for member states; - Full administrative personnel might be needed for such out-of-court dispute settlement mechanism to work efficiently. It might become costly for member states.
Luxembourg	In my view, the advantages of the out-of-court dispute settlement in cases of parental responsibility are: 1) the better atmosphere of an out-of-court environment, which may strengthen the collaboration required for carrying out the obligations related to parental responsibility; 2) the possibility to count on the help of experts in this field (normally the judges not only deal with parental responsibility cases, but with civil cases in general); 3) the flexibility of the process, which does not require to follow formal court procedure. As to disadvantages, using out-of-court dispute resolution mechanisms could lead to the proceedings being stalled, if one of the parties is not willing to cooperate. Moreover, it is not advisable in every case, e.g. cases of domestic violence or where the relationship between the spouses has deteriorated substantially, especially after the abduction of the common child by one of the parents. A case-by-case assessment would be necessary.
Malta	There would be more flexibility but nothing prohibits the parties from reaching an out of court settlement as long as such settlement is deemed to be in the child's best interests.
The Netherlands	The practitioners contacted indicated that there would not be much use of regulating the out-of-court dispute settlement mechanisms.
Poland	Since there is no possibility of control, appeal or examine the legitimacy of a verdict, out-of-court dispute settlement mechanism may prove useful, provided that the parties will have intention to come to an agreement and there will be no gap between the position of the party and the authority (in case of occurring it on the other side) executing its governmental power regardless of rightness and welfare of the child.
Portugal	Depending on the content of that provision, one may say that those solutions would be in accordance with the general tendency of favouring all alternative dispute mechanisms and out-of-court dispute settlement.

Romania	The out-of-court dispute settlement mechanisms, like mediation, might be helpful in (delicate/sensitive) cases of parental responsibility in multiple ways: they can be generally cost–reducing and they bring more celerity to the procedures, facilitating rapid decision-making); they are characterized by flexibility and are able to lead to solutions that are more likely to be complied with voluntarily. They represent a method of surpassing the legal conflicts, permitting the holders of parental responsibility to focus more on the needs of the child and its best interest. In the present, the *lis pendens* rule works against pre-proceedings mediation. The risks implied by the out-of-court dispute settlement mechanisms are also high: parties do not always have the same level of sophistication, power or amount of resources and this might conduct to inequitable solutions for the more vulnerable one; sometimes, when the parties do not reach an amiable solution, the out-of-court mechanisms might increase the costs and delay the final solution. Taking into account these risks and the fact that national laws are already mentioning the mediation as a facultative and alternative path to be followed even for this kind of disputes, we think that a provision making the such mechanism mandatory prior to court proceedings should be treated with prudence and not as an imperative for the moment.
Slovakia	It would be advantage to have provisions to out-of-court dispute settlement mechanism. But from the point of view of the Slovak legislator it could cause the problems because even on national level there isn't the obligation for court to force the procedural parties to undergo the dispute settlement mechanism in cases of parental responsibility.[83]
Slovenia	In Slovenia the alternative dispute resolutions (hereinafter: ADR) are regulated by the Act on Alternative Dispute Resolution and Judicial Matters[84] from 2009 (hereinafter: AADRJM). The AADRJM imposes to the courts of first and second instance the obligation to enable to the parties, also in family matter the use of ADR. Therefore, is court obliged to provide the parties with the information about the mediation and may refer parties to accredited professionals to undertake mediation. The court may refer parties to mediation which may be performed by private mediation services, mediation services within the judicial system or mediation services provided by NGOs. Mediation is available at all stages, but the court-connected mediation is available only during the court proceedings. In court-connected mediation the judge must take care if the case is suitable for the mediation. But we don't have any concrete information in how many cross-border family law disputes the mediation was used or even successfully. The advantages of inserting the possibility of out-court dispute settlement mechanism in cases of parental responsibility could led to: a) increased possibility of comprehensive settlement in dispute matters; b) better quality and more appropriate solutions for all in parental responsibility involved participants; c) speeding up of cases of parental responsibility; d) cost reduction; e) "decrease or elimination" of geographical distance between parents (e.g. on-line mediation); f) improving communication skills between parents and thereby creating a basis for further cooperation between them; g) taking into account cultural, linguistic, religious and/or other diversities of participants. The disadvantages of inserting the possibility of out-court dispute settlement mechanism in cases of parental responsibility could result in lack of adequately trained e.g. mediators: the potential multilingual, multicultural, multi-religious and/or diversities in cross-border parental responsibility matters would require additional knowledge, ability and professionalism of mediators.
Spain	First of all, it is necessary to clarify that the promotion of amicable resolution of family disputes was already foreseen by the Regulation Brussels IIa (see Recital 25 and Article 55(e)). However, a couple of changes can be advised. First of all, it would be interesting, at least, to update the content of the Regulation and introduce a disposition similar to Recital 29 of Succession Regulation or Recital 39 of Matrimonial Property Regimes Regulation clarifying that the Regulation "…should not prevent the parties from settling the succession amicably out of court". Secondly, if mediation is willing to be more promoted, a better position (not in a Recital) in the Regulation should be granted. From all out-of-court mechanisms, the EC has recently highlighted the importance of the mediation in family matters (see Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, 26.8.2016). In particular, the promotion of the mediation as an effective tool for parental responsibility matters

	is fostered in the webpage European e-Justice, by inviting the particulars to use the mediation before going to the Court determined by Brussels IIa Regulation. The advantages of the application of mediation in international family conflicts involving children are numerous. Apart from the well-known benefits of this alternative dispute resolution (flexibility, confidentiality, etc.), mediation seems to be adequate in parental responsibility matters because it promotes the communication between the parents in order to reach a tailored agreement according to their needs and circumstances. Alongside this, the process of mediation is swifter than the judicial one, so the minor will face a shorter period of uncertainty. Probably, the most controversial issue is related with the participation of the children in the process of mediation. On the one hand, there are arguments to defend that it would be convenient not to allow them to participate. For example, children can be disappointed when his/her views have not been taken into consideration by the mediator. Besides, the manipulation of some parents to the minors should not be underestimated. On the other hand, it has to be admitted that the participation of the children can be helpful for them in order to understand the new circumstances. What is more, it has been said that its participation provides for the best understating of its needs. In conclusion, the answer would depend on the specific kind of participation (i.e. presence or not in the mediation session) and on the interplay of different factors (age, safety of the minor, etc.) (Research Report "Family Mediation in international family conflicts: the European Context", prepared in the framework of the project *Training in International Family Mediation*, 21.04.2012)
Sweden	Out-of-court settlements are generally preferable, even in family law, but there is no establish Swedish view on the subject.
UK	It has been argued that 'if every family dispute was taken to law, family life would deteriorate further.' [85] In respect of out-of-court dispute settlement mechanisms generally, '…in England and Wales, there has been a concerted effort by the legal establishment to push disputants away from the court room steps. The process of stigmatising, and penalising, the frequently premature rush to court ...characterised earlier generations of litigants.' [86] Arguably, the aim of such measures is to speed up or avoid unnecessary litigation and reduce costs: a more cynical interpretation could see such reforms being motivated by a need to reduce costs, 'by ensuring that parties were channelled down the route of negotiation and other alternative dispute resolution (or "ADR") processes, so that inevitably a proportion of cases would settle rather than having to be decided by a judge in a court room.' [87] Issues surrounding such mechanisms have recently been discussed in a number of Reports and Reviews, against a continuing background of 'austerity measures:' some are in relation to Northern Ireland's family court system, with the aim of bringing it more closely into line with that of England and Wales (whilst also reducing current levels of state expenditure on legal aid.) Much of the discourse looks to the merits (or otherwise) of using out-of-court dispute settlement mechanisms in family law cases, and is therefore relevant here. In his recent Review of Civil and Family Justice (Draft Report on Family Justice) (2016) Gillen LJ noted that '…in some instances the dynamics and emotions of family separation make the current system of adversarial litigation inappropriate. It is predicated on a win/lose outcome that can drag on interminably. In, for example, child custody and divorce cases, the process can increase tensions between the parties, tensions that do not go away after the court process is completed.' [88] The Review stressed the need for 'fresh emphasis on solutions outside the court system, with more accessible mediation and educative parenting programmes in private law cases involving children.' [89] The Norgrove Review (2011)[90] (on Family Justice in England and Wales) had similarly found that significant procedural reforms were needed on several grounds i.e. to prevent undue delay, avoid excessive legal costs, simplify legal proceedings, and remove any overlaps or inconsistencies that existed across the system.[91] One consequence of the 2011 Review was the introduction of a system of family mediation within England and Wales, whereby couples were required 'to consider mediation before litigating in financial and children disputes – unless they were for a special reason deemed exempt.' [92] In respect of Scotland however, it should be noted that already 'many public law family proceedings are dealt with outside the court system, by a lay panel with an inquisitorial approach.' [93] The benefits of such a system are such that it is generally '…effective, proportionate and accessible. It resolves cases at a small fraction of the cost of equivalent court-based proceedings elsewhere in the United Kingdom.'[94] Stutt has argued (in relation to Northern Ireland) that such reforms would result in savings to the public purse but that they also often 'lead to better outcomes for the client.' [95] Alternative models of resolution within the family justice system should not be regarded however simply as the 'sole or dominant mechanism[s]' but rather as more cost-effective options, set 'alongside the continuing availability of legal support.'[96] It was suggested also that in those family law cases where legal fees are being covered by legal aid, there should be a very clear commitment on the part of lawyers to engage in 'constructive, non-adversarial dispute resolution.'[97] Hunter *et al* have argued however

	that some of the parties involved in out-of-court dispute resolution processes felt at times that their options were too limited and that they had not been offered a meaningful degree of choice. Worryingly, 'despite consistent attention on the importance of prioritising children's needs in dispute resolution processes, children are rarely directly included.' [98] In other words, there is the possibility that 'the child's voice–or wishes–is assumed or hoped to be represented by the parents in the mediation process.'[99] Such an approach could clearly hinder or defeat the aim of giving vulnerable children a meaningful voice in matters of parental responsibility.[100] It would similarly not be in keeping with the aims of the proposed EU reforms.[101] Although the Law Society of Northern Ireland has agreed 'in principle with the duty to pursue alternative resolution mechanisms where possible,' it has also advocated the need for 'a strategic view of ADR's place in the justice system - both to maximise its potential and minimise unnecessary expense.' [102] It therefore viewed '….mediation as a resolution mechanism…that it is entirely voluntary, as making it mandatory could have the effect of introducing an additional layer of bureaucracy and hardening the attitudes of clients towards its effectiveness. Ensuring effective and efficient ADR procedures acts as an important component of the dispute resolution process, but it cannot act as a panacea to meet the needs of all clients in each and every case. The important aspect of dispute resolution is to ensure that the client has the options available to fit the circumstances of his/her case and it is not accurate to suggest that a rush to court is the default position.[103] Within this area of child and family law there frequently may well be 'compelling reasons' to opt for formal court proceedings, for example domestic violence, or by virtue of the 'distances involved and the state of relationships between parties.' Where parties do opt for alternatives to litigation, this must be a 'voluntary and tailored' choice. [104] Harsh funding cuts offer a 'blunt and unjust mechanism for reducing costs:' given that such an approach has previously led to 'significantly negative consequences for the most vulnerable in England and Wales, particularly in the areas of family law, children's proceedings and housing….any proposals for reductions on scope should closely gauge the impact of such a decision.'[105]

Question 5: Taking into consideration the practice/experience/difficulties in applying the Brussels IIa Regulation in your jurisdiction, what are suggestions for improvement?	
Austria	I believe that in matrimonial matters a hierarchy of jurisdictional grounds should be included in Article 3 of the Brussels IIa Regulation. It should be formulated more clearly when the provisions of national law are applied, it would, in my opinion, be a good idea to change the order of Articles 6 and 7 of the Brussels IIa Regulation. In my opinion, it would also make sense to regulate whether the Brussels IIa Regulation also applies to homosexual marriages and registered partnerships. In the case of parental responsibility procedures, an intergovernmental cooperation with youth welfare should be set up in order to take appropriate measures to protect the child after his return to the State of habitual residence. It should, for example, be determined which authorities in the individual Member States are to strive to abolish the arrest warrant for child abduction so that the parent concerned can accompany the child returning to the country of his or her habitual residence.
Belgium	We refer to the suggestions discussed in the excellent article of two Belgian legal scholars, Kruger and Samyn.[106]
Bulgaria	-
Croatia	It is most welcome to replace the term "court" with authority.[107] It is at the moment hard to propose further suggestions that would relate merely to Croatian jurisdiction, as this Regulation so far has a minor influence and application before Croatian authorities. Croatia joined EU in middle of 2013, but the 2201/2003 regulation has not been employed as often as it should have been. The resolution of the cases are yet in many situations correct (as if the Regulation have been applied), but the courts do not recall to Regulation as a legal ground. In this situation we may not conclude weather the court applied it or not.[108] In general terms, improvements to the system should relate to introduction of prorogation clause to divorce jurisdictional grounds, improvements of a rule on transfer of jurisdiction, clarification of the application of the rules on provisional measures and *lis pendens*. It would be preferable to set a uniform standard for hearing of a child, as it has been clearly presented as a cornerstone of smooth circulation of judgements. Enforcement procedure should be unified as much as possible, with strict time limits that would render its efficiency.
Cyprus	- It should include more terms and definitions. - Designate deadlines for an appeal. - It is acknowledged that much power is given to the courts to interpret the provisions leading to different endings in similar cases and promotes inequality between the Union citizens. Therefore, the Regulation should designate guidelines in order to eliminate the discretionary power that the Courts have.
Czech Republic	1. Choice of court in matrimonial matters (but this remains only "theoretical wish" as the proposed recast of the Regulation does not open this possibility); 2. Revision of the "overriding mechanism" in the return proceeding (Art. 11/6-8); 3. Special jurisdiction for preliminary and related questions (e.g. measures protecting the property interest of the child where the property or the property interest is not in the state of the habitual residence of the child); 4. Abolishment of *exequatur* procedure; 4. Strengthening of the role of the Central Authorities.
Estonia	There have been proposed to abolish exequatur and harmonize enforcement proceedings.
Finland	To my knowledge there has not been that many cross-border cases, and because of the lack of cases, it is very difficult to make conclusions of any specific difficulties.

France	Some suggestions could be made for improvement (most of which are detailed in the following answers) : - if it is not always a desirable option to give a strict definition of some key notions, like "habitual residence", the Regulation, however, could provide some guidance for their interpretation in the recital. - suppression of Articles 6, 7, 14 and inclusion of a *forum necessitatis*; - inclusion of a choice forum clause in matrimonial matters ; - establish a kind of hierarchical order between jurisdictional grounds in matrimonial matters; - harmonizing the rules on jurisdiction with other European instruments dealing with family matters, in particular the Regulation on maintenance obligations.
Germany	Choice of court clauses for matrimonial matters; "ranking" of the jurisdictional grounds in Art. 3; clarification of the material scope (registered partners, same-sex marriage); limitation of the "last word" procedure in Art. 11(8) of the Brussels IIbis Regulation.
Greece	An independent Authority supervising the return orders in the context of the Regulation could eventually minimise the risks of non-return orders or at least take notice of the hurdles observed in abduction cases. Such an authority might be extremely useful in the aftermath of new artificial reproductive technologies and the institution of new forms of parentage (such double maternal link recognised already in UK, Sweden, Spain, Belgium etc.) that are not necessarily recognised in all the countries of the European Union. Furthermore, it is advisable to reinforce the role of the European mediator for abduction issues. Such reinforcement might necessitate hiring more specialists in those issues who will try to find compromises between the parents in abduction cases.[109]
Hungary	The main issue being discussed and having a lot of experiences is child abduction. The Central Authority has very sorrowful experiences concerning the criminal sanctions which are applicable in several countries against the parent who committed the child abduction. In several cases the abducting parent is in despair and reluctant to travel back to the country where he or she is threatened with such sanction. Although this is a practical and even not a civil law issue it makes a burden on parents and influences the perspective of the whole situation. The congruent opinion of the professionals (judges, attorneys and the employers of the Central Authority) dealing with child abduction cases is that these cases are more complex and the involved persons are much more determined to withdraw the child or get him or her back, respectively. Besides, there are many cases which is shown by the fact that while earlier fewer judges and personnel of the Central Authority had to deal with child abduction cases, nowadays all judges of the family law group of the Pest Central District Court (which has concentrated jurisdiction in child abduction cases on the first instance) and all personnel of the Department of Private International Law of the Ministry of Justice (which is the Central Authority) are involved in child abduction cases.
Ireland	The major potential problem would be to encourage forum shopping in relation to divorce owing to the strict domestic jurisdictional requirements under Irish Law. The parties must be living separately for four of the preceding five years before an application for a divorce may be made. Same sex marriage is now permitted under Irish Law so no issue arises in this regard.
Italy	A synthetic list of the possible suggestion for improvement would run as follows: - Legal doctrine has noted that the art. 1 n. b) produces a fragmentation of particular cases which are subject or not to the Regulation depending on the matters included in the petition. Little use to avoid this problem is that ancillary petitions fall within the competence of the judge of the main petition. It would be preferable to meditate on a way to concentrate any specific case into the field of application of the Regulation. - Art. 2 should be modified so that the cases of illicit transfer of residence and children abduction were separated and disciplined in different numbers of the same article (as in fact the EU Parliament has suggested), taking into account the different role of custody in the two rules. - As for the final term to ask for the return of the child, the relation between art. 11 of the Regulation and art. 12 of the Hague Convention should be clarified. This point will hopefully become clear reading below answer to question 25. Other suggestions, of more general character, will be presented below, answering question 54.
Latvia	Currently, Latvian government is in the process to approve national position about the EU Commission's proposal on the recast of the Brussels IIa Regulation, therefore Latvia will not disclose Latvia's suggestions to improve the Regulation.

Lithuania	There is still rather low number of cases regarding application of Brussels IIa Regulation in courts of Lithuania and no effective improvements could be seen as needed at this point.
Luxembourg	In general, the Brussels IIa Regulation works well for cross-border matrimonial and parental responsibility matters that come before the Luxembourgish courts. However, there are some situations where the Regulation could be better applied: when assuming jurisdiction or for applying the "fast-track" procedure of exequatur for judgments containing rulings on the right of access or the return of a child; and when there is the need to hear the child in cases of child abduction. As these situations are already addressed in the Regulation, most improvement will relate to changes in the Luxembourgish practice. It may be that the Regulation could be better worded with a clearer structure so as to be easier to understand and apply, but mandatory training for judges and authorities would also be desirable to improve practical application of the Regulation. In this line, the concentration of local jurisdiction, when requiring the expertise of the judges composing the competent courts, would be a good measure. Lawyers representing the parties in cases covered by this Regulation also seem to lack specific expertise. Moreover, the hearing of the child could be designed as an obligation, giving some parameters for the judges to assess the child's views with a proper balance.
Malta	One of the main issues always remains regarding notifications (serving the other party with the official court documents) – perhaps Brussels IIa Regulation could introduce a new method of notification by email or some other form of technologically advanced way in order to gain time as usually a considerable amount of time is 'wasted' on several attempts to notify the other party.
The Netherlands	The suggestion would be to include a provision on choice-of-court for divorce proceedings. From the perspective of practitioners, it would apparently not be a bad idea to allow such clauses in prenuptial contracts or contracts on matrimonial property concluded during marriage.
Poland	Attaching habitual residence to the list of definitions in Article 2 of the Brussels IIa Regulation or adding in the text of Regulation or its preamble a sufficiently obvious clarification of the term - distinguishing between domicile and presence on the territory (regardless of any autonomous interpretation these notions cannot be treated as synonyms). Inserting an intelligent, efficient control mechanism, that will not extend the time of resolving a case, taking into consideration that the expected resolving of a case within 6 weeks usually lasts longer. It will affect the improvement of confidence to the EU law and its execution. Adding out-of-court dispute settlement mechanism (considering the comment from point 4).
Portugal	It would be welcome to take the Brussels IIa Regulation to the level of defining conflict rules, thus working towards the harmonization of international private law amongst member States in these matters. This idea is referred in literature (Nuno Lemos Jorge, «O Regulamento (CE) n.º 2201/2003, do Conselho, de 27 de Novembro de 2003, relativo à competência, ao reconhecimento e à execução de decisões em matéria matrimonial e em matéria de responsabilidade parental», 6 Lex Familiae (2006), p. 162). This is the list of Portuguese key authors in this matter: - Moura Ramos, «Estudos de direito internacional privado da União Europeia», Imprensa da Universidade de Coimbra, 2016; - Moura Ramos, «Um novo regime do divórcio internacional na União Europeia», 62 Scientia Ivridica (Maio/Agosto de 2013), p. 413-461 (419-436 e 450-459). - Maria Helena Brito, «O Regulamento (CE) N.º 2201/2003 do Conselho, de 27 de Novembro de 2003 relativo à competência, ao reconhecimento e à execução de decisões em matéria matrimonial e em matéria de responsabilidade parental», in Estudos em Memória do Professor Doutor António Marques dos Santos, v. I, Coimbra, 2005, Almedina, p. 305-356; - Nuno Lemos Jorge, «O Regulamento (CE) n.º 2201/2003, do Conselho, de 27 de Novembro de 2003, relativo à competência, ao reconhecimento e à execução de decisões em matéria matrimonial e em matéria de responsabilidade parental», 6 Lex Familiae (2006), p. 157-162; - Lima Pinheiro, Direito Internacional Privado, v. III – Competência Internacional e Reconhecimento de Decisões Estrangeiras, 2ª edição refundida, Coimbra, 2012, Almedina, p. 231-265, e 445-470; - António da Costa Neves Ribeiro, Processo Civil da União Europeia. Principais aspectos – Textos em vigor, anotados, v. II, Coimbra, 2006, Coimbra Editora, p. 117-247; - Carlos M. G. de Melo Marinho, «O Regulamento (CE) N.º 2201/2003 do Conselho, de 27 de Novembro de 2003 relativo à competência, ao reconhecimento e à execução

	de decisões em matéria matrimonial e de responsabilidade parental», in Textos de Cooperação Judiciária Europeia em Matéria Civil e Comercial, Coimbra, 2008, Coimbra Editora, p. 49-81.
Romania	Our suggestions for the improvement of the regulation may be summarized as follows: - codification of (some of) the ECJ's decisions, in order to improve the predictability and certainty; - clarification/legal definitions of some terms (child, marriage, habitual residence), in order to unify the solutions and to promote the uniform application of the regulation; - introduction of a limited party autonomy in the field of divorce, in order to reduce the risk of rush to the court and to bring more predictability for the spouses; - clarification of the conditions related to the admission of the voluntary prorogation of jurisdiction for parental responsibility cases, specially the one related to the unequivocal accord of the parties as to the courts' competence. - introduction of stricter time-frame rules for the intervention of Central Authorities and courts in child abduction cases; - improvement of the rules regarding the functioning of the overriding mechanism from art. 11.
Slovakia	Return orders are often enforced late. They are also enforced by the inefficient means for enforcement.
Slovenia	Suggestions for improvement: - to establish some form of hierarchy among the grounds for jurisdictions, which could bring more clarity, security and predictability for parties and could also have the impact on decreasing of *forum shopping*. Such regulation also includes the prevention of rush to the court*;* - but the definition of habitual residence should not be given, because it could cause many problems due different national regulations. Therefor the content of term "habitual residence" should be identified and filled on case-by-case basis. Such regulation allows courts in every single case, following some circumstances (e.g. duration of child's presence in Member State, regularity, reasons, linguistic knowledge, social, cultural, religious or other inclusion…), to fill the term habitual residence for the purpose of running case. The term habitual residence should be therefore also further interpreted autonomously; - to create the possibility of party autonomy, especially in the case of divorce by mutual consent.
Spain	In order to answer this question, a distinction will be made between general and specific suggestions for improvement. In regards to the general ones, firstly, it is advisable that all amendments of Brussels IIa consider the coordination with related instruments, in particular, with EU Private International Law Regulations (Maintenance Regulation, Succession Regulation or Matrimonial Property Regimes Regulation). Concentration of proceedings under the courts of the same Member State or the application of the same State Law to connected disputes should be taken into consideration. Besides this, a new version of Brussels II should work "hand in hand" with some Hague Conventions, so attention has to be paid to the content of these latters. Secondly, the recast of the Regulation should be "updated" in respect with those questions that have been already clarified by the CJEU. Finally, in the specific case of Spain, there are still some judges applying domestic international jurisdiction rules instead of the Regulation Brussels IIa: the recast of the Regulation can be considered a chance to remember the supremacy of EU Regulations over international rules in cases falling inside its scope of application. As to the specific suggestions for improvement, new international jurisdiction rules are advisable for divorce. The risk of forum shopping recommends to abolish alternative forums and introduce a new system, where the first possibility should be the agreement of the parties –between a limited number of Member State's Courts connected with the case-, accompanied by a hierarchical list of jurisdictional grounds. Alongside this, a subsidiary jurisdiction rule and a *forum neccessitatis* disposition should be inserted. In regards to parental responsibility, some doubts arise when applying some of the rules contained in Section II Chapter II of the Regulation. For example, Article 12 Brussels IIa seems to be a difficult provision for practitioners, arising some doubts such as the timing of the agreement or the meaning of the expression "has been accepted expressly or otherwise in an unequivocal manner". Another example of controversy is Article 15, whose content is, in some parts, slightly vague. In this particular issue, guidelines should be offered for its application, the expression "by way exception" could lead to a heterogeneous application of this disposition in the Member States. Finally, the abolition of the exequatur procedure to all kind of decisions falling under the scope of application of the Regulation should be considered. In this regards, a good example in the area of family law could the Regulation 4/2009 in regards to Member States applying the Hague Convention 2007. The abolition of the exequatur procedure, however, should not prevent the parties to apply for the refusal or suspension of the enforcement under the same grounds of non-recognition of the current Article 23 Regulation Brussels IIa. In other words, it should be convenient to avoid the procedure itself, but not to eliminate the possibility of control of conditions.

Sweden	No particular suggestions.
UK	There is scope for an EU-wide regulated, rationalised, cross-border dispute settlement mechanism (potential post-Brexit consequences aside). Its use should not however be motivated primarily by the need for financial savings. Although the familial agreements so produced may tend towards being 'less financially and emotionally costly…[and] more complied with' [110] (on the presumed basis that they involved mutual consensus) a number of other factors must also be taken into account, e.g. time constraints, cultural differences, [111] and the child's best interests, not least the right to be heard and to participate meaningfully. Robust safeguards must be in place to protect vulnerable persons throughout the entire process, and afterwards in terms of enforcement. As Stutt further observed (post-Norgrove reforms) the family courts in England and Wales seem to have adopted a 'redefined role …in public law proceedings, which sees them having 'to concentrate on the principles rather than the detail of future care arrangements.'[112] As such, arguably, some forms of family mediation could perhaps find themselves 'better placed' (in terms of having more time and a wider, perhaps more child-centric remit) to focus upon significant details within such cases.[113] Given also that 'decisions on what is in the best interests of a child do not necessarily need to be taken by individuals with legal expertise,'[114] there is clearly room within the current system for involving a wide range of 'decision-takers who are intelligent, caring, have good judgment and have a good understanding of the issues faced by children with troubled family backgrounds.'[115] An inquisitorial system (along the lines of the Scottish model) might offer several advantages over starkly adversarial court proceedings, in terms of having less stressful, more informal procedures, easier and more efficient access to justice, more scope for children's participation and greater likelihood of adherence to agreed-to outcomes. That said, issues surrounding implementation, objections from legal practitioners, and the often complex nature of the cases covered by Brussels IIa, could serve to hinder the introduction or implementation of a workable model. As Allman argues, 'where there is more than one potential jurisdiction it is important to secure jurisdiction as a priority before engaging in dispute resolution.'[116] Given also the over-arching obligation to protect the best interests of the child, it may be difficult to adhere to some of the norms associated with ADR or mediation, for example, collaborative practice's non-disclosure of privileged or without prejudice client statements made during negotiations. Should litigation follow, the court's inherent jurisdiction could presumably be invoked on the basis that the child's best interests require disclosure. Where litigation is perhaps contemplated 'it is important to be clear about what information disclosed during the mediation can and cannot be shared within the litigation.' [117] Confidentiality agreements (or the rules on *without prejudice* privilege) must not preclude the disclosure of any information or material suggestive of a risk of harm to children or vulnerable adults. [118] Similarly, 'compulsion compromises another selling point of mediation...having courts actually order mediation would be a mistake. That's been one of the problems with the MIAM… people attend with 90% of their mind on the court process. They're ticking a box and fulfilling an obligation…'.[119]

Question 6: Are there problems with the application of articles 6 and 7 in your jurisdiction when determining the scope of application *ratione personae*? Does the reasoning of the CJEU in the *Sundelind Lopez*-judgment offer sufficient guidance in that respect?	
Austria	In Austria, there are no problems with the application of Art. 6 and 7 of the Brussels IIa Regulation, not least as a consequence of the ECJ decision in the Sundelind Lopez-Case and the literature[120].
Belgium	The published case law does not indicate any difficulties in applying Articles 6 and 7. However, as Article 3 offers a great variety of grounds of jurisdiction, residual jurisdiction grounds only play a marginal role. Belgian courts pay generally little attention to international jurisdiction by usually expressing their reasoning in this regard in just a few lines. Therefore, it is not clear whether courts give attention to the reasoning of the CJEU in the *Sundelind Lopez*-judgment. There is no published case law which explicitly refers to the *Sundelind Lopez*-judgment. Nevertheless, it is clear that most judges (implicitly) apply Articles 6 and 7 correctly. Most courts first check whether Articles 3-5 Brussels IIa Regulation lead to jurisdiction in a Member State. Only if this is not the case, they apply the national PIL rules. The scope of Article 6 has been discussed in legal doctrine. Some authors argue that Article 6 only excludes national jurisdiction rules when a defendant is sued in another Member State than the state of his habitual residence or nationality.[121] Others suggest that no national jurisdiction rule can be applied whenever a defendant has the nationality of a Member State or has his habitual residence in a Member State.[122] The matter seems not to have led to any disputes in Belgian case law.
Bulgaria	Having regards to the national judicial practice the reasoning of the CJEU in the *Sundelind Lopez*-judgment offers sufficient guidance for understanding articles 6 and 7 of the Brussels IIa Regulation. That is also underlined by the doctrine in the country.[123]
Croatia	Within available case law one may find cases where situation does not have connection with any EU member state besides Croatia. In these cases, application of Article 6-7 is justified. However, with many of the available rulings Croatian court wrongly recalls only to the legal ground of Croatian PIL Act, and does not mention Brussels IIa as a legal source at all.[124] There were cases with clear misunderstanding of personal scope of application, as spouses/on spouse/children were non-EU nationals. With some cases where regulation was not applied, we may not be sure if the reason for non-application was the misunderstanding of its personal scope.
Cyprus	- Our courts have not encountered problems in applying articles 6 and 7. - Going through the Cyprus case law in this matter it can be assumed that the reasoning given by the *Sundelind Lopez* judgment offers sufficient guidance. According to the *Sundelind Lopez* judgment, it is understood that Articles 6 and 7 of the Regulation are to be interpreted as meaning that where, in divorce proceedings, a respondent is not habitually resident in a Member State and is not a national of a Member State, the courts of a Member State cannot base their jurisdiction to hear the petition on their national law, if the courts of another Member State have jurisdiction under Article 3 of that regulation.
Czech Republic	- Our courts have not encountered problems in applying articles 6 and 7. - Going through the Cyprus case law in this matter it can be assumed that the reasoning given by the *Sundelind Lopez* judgment offers sufficient guidance. According to the *Sundelind Lopez* judgment, it is understood that Articles 6 and 7 of the Regulation are to be interpreted as meaning that where, in divorce proceedings, a respondent is not habitually resident in a Member State and is not a national of a Member State, the courts of a Member State cannot base their jurisdiction to hear the petition on their national law, if the courts of another Member State have jurisdiction under Article 3 of that regulation.
Estonia	No information available

Finland	- No problems, at least I am not aware of any difficulties. But again, the number of cases is not that huge in Finland. In my opinion Sundelind-Lopez gives sufficient guidance, and this has been confirmed in our legal literature.
France	The lower courts have experienced difficulties to determine the scope of application *ratione personae* of the European rules on international jurisdiction. Two major mistakes are made by the lower courts: some apply the national rules while the European rules are applicable; on the contrary, some judges refuse jurisdiction while their national rules would give them jurisdiction pursuant to Article 7 of the regulation. The French Cour de Cassation has applied article 7-1 mainly to sanction the lower courts for not having taken into account the national rules which establish their jurisdiction. Article 7-2 was never applied and Article 6 was never mentioned by the French Cour de Cassation even though it received implicit application in some cases (eg: 30 sept. 2009, n°08-19.793; 12 janv. 2011, n°09-17.540). The reasoning of the CJEU in the *Sundelind Lopez*-judgment offers some guidance but doubts remain about the links between Articles 6 and 7. In particular, do they have to be read together so that National rules on jurisdiction are applicable only in the cases where the requirements of both Articles 6 and 7 are met? Or does Article 6 only relate to Articles 3, 4 and 5 and apply when a Member State has jurisdiction over the case according to the rules of the Brussels II a regulation? It is commonly understood that these Articles have to be read in combination and allow the use of national rules when both sets of conditions are met. However, they form a complex system that should ideally be replaced by uniform rules on residual jurisdiction.
Germany	No. I am not aware of a case where the application of those provisions was problematic.
Greece	No problem has been observed in relation to the application of articles 6 and 7 of the Regulation. The guidance offered by the Sundelind Lopez judgment seems to be sufficient for Greek courts.[125]
Hungary	There is no published decision referring in an explicit way to articles 6 and 7 of Brussels IIa Regulation. Nevertheless in one published case (Pfv. II. 21.847/2014 of the Hungarian Curia) the court referred to the fact that the regulations of Brussels IIa Regulation were undisputedly not applicable according to the facts of that case. In that case the applicant was a Hungarian national, the defendant a French national and their child had Hungarian-French dual nationality. The defendant initiated a divorce in French Polynesia and later on the applicant initiated a divorce in Hungary referring to the fact that a Hungarian court had exclusive jurisdiction. The family never lived in Hungary as after entering into marriage they lived in Tokio, Japan and later on in French Polynesia. The defendant definitely never had any permanent or habitual residence in Hungary. The applicant referred to the fact that she had immoveable property on her own, registered permanent address, labour relationship and taxation card in Hungary. She did not debate that she had spent longer time abroad with their child but she regarded Hungary as her primary residence. The applicant actually spent her time (ten years) only abroad after her university studies and although she travelled to Hungary with the child between March and October 2011 several times and spent some time in her parents' home, she travelled to French Polynesia upon her free will. In this case the applicant's habitual residence was challenged but the Hungarian Curia confirmed that the applicant's habitual residence was in Bora Bora, French Polynesia and not in Hungary. The Hungarian Act on private international law (Law Decree 13 of 1979) provides regulations concerning the personal status of a Hungarian national and according to § 62/B the jurisdiction of Hungarian courts is an exclusive one except for cases listed in § 62/B. There is no exclusivity if a divorce proceeding concerning the marriage of a Hungarian national is opened abroad and this person has his or her permanent or habitual residence in the state of the proceeding court. Lis pendens is fixed in § 65 of the Hungarian Law Decree.
Ireland	No difficulties have arisen before the courts in relation to the application of Articles 6 & 7. The judgement in *Sundelind Lopez* in any event clarifies the issue were it to arise.
Italy	Several authors have noted that the wording of the artt. 6 and 7 are not clear enough. The Sundelind Lopez judgment, although its offers sufficient guidance in many aspects, leaves at least an unclear issue, that is the position of a defendant who is EU national not resident in a member State, for whom no judge has jurisdiction according to the artt. 3-5. Besides, the case of a person having more than one nationality is not disciplined by the Regulation. The lex fori then applies so that, according to art. 19 par. 2 of the Law 1995 n. 218 on Italian private international law, the Italian nationality, if present, should prevail; otherwise, the law with which the interested person has the narrowest connection. Art. 7, in particular, does not provide for the jurisdiction about divorce of a couple of communitarian citizens of different countries and living in a third country. In this case

	it could be that no court jurisdiction could be established. It could also happen that a divorce judgment could not be recognized (surely not on the basis of the Regulation Brussels IIa).
Latvia	Latvia has not experienced such problems.
Lithuania	There have been no problems with application of articles 6 and 7 in jurisdiction of Lithuania yet. The courts of Lithuania have not had a legal background to follow guidance of the CJEU in the Sundelind Lopez judgment yet.
Luxembourg	There are no Luxembourgish judgments where the application of Articles 6 and 7 of the Brussels IIa Regulation was expressly discussed. However, the Luxembourgish courts had trouble determining the scope of application *ratione personae* in connection with Article 3. When one party had some connection with a third State, the Luxembourgish courts tended not to check if some of the alternative criteria of Article 3.1 of the Brussels IIa Regulation existed, declaring it directly inapplicable. For example, in one case where the claimant had her habitual residence in Luxembourg, at the very same address where the spouses were last habitually resident (same situation as that stated in Article 3.1.a.2 of the Regulation), the court did not apply the Brussels IIa Regulation due to the Cape Verdean common nationality of the parties, excluding the application of this instrument because Cape Vert is not covered by the Regulation ('Tribunal d'arrondissement de Luxembourg', no. 109956, 13 December 2007). Exactly the same outcome was given to another case, where one spouse had Thai nationality, but the claimant was Luxembourgish and continued living in the very same address where the spouses were last habitually resident. The court, instead of applying the Brussels IIa Regulation, applied national law ('Tribunal d'arrondissement de Luxembourg', no. 112357, 29 January 2009). In those cases, there was no reference made to the reasoning of the CJEU in the *Sundelind Lopez*-judgment. Regarding other aspects of the scope of application of the Brussels IIa Regulation, there are cases where the scope of application of *ratione temporis* was better discussed and correctly applied ('Tribunal d'arrondissement de Luxembourg', no. 89525, 19 April 2007), as well as the scope of application of *ratione materiae* ('Tribunal d'arrondissement de Luxembourg', no. 109259, 4 October 2007; 'Tribunal d'arrondissement de Luxembourg', no. 102847, 11 December 2013; 'Tribunal d'arrondissement de Luxembourg', no. 102847, 11 December 2013, among others).
Malta	No Yes
The Netherlands	Probably not. To the extent that Brussels IIa leaves scope for application of national rules on jurisdiction, Netherlands law, Article 4(1) Code of Civil Procedure (CCP) provides that international jurisdiction in respect of dissolution of marriage (divorce, judicial separation et al) is to be determined only in accordance with Articles 4, 5 and 6 of Brussels IIa, even if the Regulation is not applicable. The general belief is that as a consequence of the national provision there cannot be a residual jurisdiction under national law which is broader than the jurisdiction granted under Article 4, 5 and 6 Brussels IIa. The reference in the national legislation to the Regulation would preclude the application of other grounds for jurisdiction. However, this understanding of the current legislation may be under pressure. In DC Noord-Holland (Haarlem), 6 April 2016, NIPR 2016, 269, the District Court found there was no jurisdiction on the basis of Article 3, 4 or 5 BIIa in respect of a petition for divorce by the wife. The DC considered that there was no jurisdiction for the divorce petition under Article 7 BIIa, as the ordinary national rules on jurisdiction, found in Articles 2 to 8 CCP, especially Article 4(1) CCP, did not grant jurisdiction. The DC then considered whether it could give application to Article 9 CCP. This provisions contains several ground for jurisdiction that may be applied if jurisdiction cannot be based on Articles 2 to 8 CCP. The DC first held that Article 9(b) CCP, which grants jurisdiction if court proceedings outside the Netherlands are impossible, was inapplicable as divorce proceedings had been instituted in India. The DC then found that it was possible to apply Article 9(c) CCP, which grants jurisdiction when proceedings must be brought by writ, the case is sufficiently linked with the Netherlands 'legal sphere', and it when it is unacceptable to require claimant to bring his case in a foreign jurisdiction. The DC side-stepped the rather obvious obstacle that on its wording Article 9(c) CCP only it applies to 'proceeding's brought by writ', while divorce proceedings must under Netherlands rules on civil procedure always be brought by petition. Weight was given to the wife's right to access to a fair trial under Article 6 ECHR in order to apply Article 9(c) CCP by analogy in a divorce case. Under the circumstances, the wife could not be required to take part in the divorce proceedings pending in India. The wife

	was a national of Pakistan and could not enter India without her husband's co-operation. There were also clear indications of domestic violence by the husband against the wife, who lived in the Netherlands.
Poland	The absence of case law concerning their application shows no problems. The reasoning of the CJEU in the *Sundelind Lopez*-judgment seems sufficient.
Portugal	There are no reported problems on the application of articles 6 and 7. Also, there is no known need of any Portuguese Court ever had to consider the reasoning of the CJEU in the *Sundelind Lopez*-judgment.
Romania	We could not identify any pertinent case law. The doctrine clearly explains that the terms "exclusive nature of jurisdiction" from art. 6 should not be interpreted through analogy with the internal law (and, we should add, with art. 24 Brussels Ibis Regulation), but merely stating the exhaustive character of the list of jurisdiction grounds from articles 3, 4 and 5 of the regulation when one of the spouses is national or habitual resident of a member state[126]. The doctrine's references to the *Sundelind Lopez*-judgment (C-68/2007, 29.11.2007) are made in order to bring more precision as to the respective roles of European and national norms of competence in matrimonial disputes[127]. In a future reform, a clarification in this respect would be welcomed.
Slovakia	No, actually we haven't noticed any problems with the application.
Slovenia	The courts did not show concrete problems related to the applications of articles 6 and 7. But, we support. We also follow the guidance given in the *Sundelind Lopez* judgment and agree with the standpoint that Article 6 confirming the exclusive nature of the jurisdiction determined under Articles 3, 4 and 5 of the Regulation may form confusion and therefore is superfluous as Articles 3, 4 and 5 describe in which circumstances a court has exclusive jurisdiction.
Spain	Not many cases in Spain have dealt specifically with the relation between Articles 6 and 7. However, Spanish doctrine have discussed about the personal scope of application of Brussels IIa Regulation (for example, CARRASCOSA GONZÁLEZ, GARAU SOBRINO, QUIÑONES ESCÁMEZ or SÁNCHEZ JIMÉNEZ). After the case *Sundelind Lopez*, some authors were of the opinion that Article 7 prevailed over Article 6, concluding that domestic international jurisdiction rules were going to be applicable only in those instances were any court of a Member State would be competent according to Articles 3, 4 and 5, regardless of the nationality or habitual residence of the defendant in the EU. However, a large number of authors, distinguished between those situations where the defendant was a national of the EU or had its habitual residence in the EU, and those were not. Whereas in the former it was not possible to apply the domestic international jurisdiction rules, in the latter, it was perfectly possible to apply them when the Regulation was not applicable. Anyway, there is no harmonization in the Spanish doctrine in regards to this particular question. Some examples of the application of Article 7 are Case number 358/2008 of 21 November (Provincial Court of Madrid) and Case number 466/2015 of 30 June (Provincial Court of Barcelona), where Spanish Courts examined its competence according to domestic international jurisdiction rules only after checking that any Court of a Member State was competent according to Articles 3, 4 and 5. In fact, both cases had in common that spouses were of a different nationality –Spanish or not- and neither of them had their habitual residence in Spain –or in a Member State. The application of domestic international jurisdiction rules (i.e. Article 22 quarter c) of Organic Law 6/1985, of 1 July, on Judiciary Power, amended by Organic Law 7/2015 of 21 July) (hereinafter, Organic Law on Judiciary Power), however, will not add any possibility in comparison with Article 3 Regulation Brussels IIa: the grounds of jurisdiction contained in the former are identical than those contained in the latter. Only the possibility of party autonomy contained in Article 22 bis Organic Law on Judiciary Power offers a different forum.
Sweden	There have been no particular problems so far. The CJEU reasoning in the *Sundelin Lopez* case, which originated from Sweden, was followed by the Swedish Supreme Court in *NJA 2008 p. 71*.
UK	Under *Sundelind Lopez*, Articles 6 and 7 are to be 'interpreted as meaning that if, in divorce proceedings, a respondent is neither habitually resident nor a national of a Member State, the courts of one Member State could not base their jurisdiction to hear the divorce petition on national law, if the courts of another Member State had jurisdiction under art.3. ' [128] That said, 'in practice it is often unnecessary to confront the clash between the approaches' to the interpretation of the notion of habitual residence.[129] In *Marinos v Marinos* [2007][130] for example, the High Court (England and Wales) had to determine whether a person could be habitually resident in two

	different countries at the same time, and also whether there was a distinction to be drawn between the terms 'habitually resident' and simply having 'resided'. The court relied upon two CJEU authorities, (namely, *Fernandez v Commission of the European Communities*[131] *and Swaddling v Adjudication Officer)*[132] to find that the term 'habitual residence' had an autonomous meaning under EU law: the case law established that a person could not be habitually resident in more than one country at the same time. However, the term 'resided' referred to residence, but not necessarily to one's habitual residence. In *Marinos*, the petitioner wife had effectively been 'resident' in two countries, having a residence in both states, but dividing her time between them, in near-equal amounts. As the English court had been the first court seised of proceedings, it had jurisdiction.**[133]** In *Munro* [2007] *[134]* the High Court subsequently disagreed with the *Marinos* interpretation however,[135] suggesting (albeit obiter) that 'there was no distinction between residence and habitual residence for the purpose of the Regulation and no need to insert words into the Regulation.'[136] The *Marinos* interpretation (of the fifth indent of Article 3(1)(a)) was followed in *V v V* [2011][137] on the basis that it offered a '…plain reading of the article; habitual residence was deemed to be 'a term of art' unlike the concept of residence, which was not.' [138] In *Tan v Choy* **[2014],**[139] *the Court of Appeal suggested t*hree 'possible' interpretations. [140] The first of these confirms the *Marinos* approach, while the second supports that of *Munro*. The third option provided 'an unexpected addition to the debate'[141] on the definition of habitual residence: '… "resided" must mean to have "residence" in England and Wales whilst not requiring the individual to be physically present in the jurisdiction for the full period.'[142] Thus the petitioning husband was deemed habitually resident for a year prior to his application (or, alternatively, that he had been habitually resident on the day of his application, but resident in England for the year prior). Although the respondent wife's appeal was dismissed on that basis, the Court made no clear ruling upon the correct interpretation of Article 3 (1) (a) (v).[143] T**he parties intentions may be significant, as Singer J previously observed i**n *L-K v K* [2006]: *'…although length of time clearly can be a relevant factor it is not a conclusive factor. Nor is there any particular period set down as a minimum.' [144]* There is still a need for clarification, arguably via reference to the CJEU: where a party aims to rely upon the fifth indent of Article 3(1)(a), and there is uncertainty over the issue of their having been habitually resident for the previous year, the lower courts may be inclined to either dismiss the conflicting dicta (of *Marinos* and *Munro*) or follow Munby J's interpretation, to essentially arrive at the same conclusion.[145] Thus '…whilst no court has endorsed *Munro*, the practical effect of either justifying a decision under both tests or ignoring the *Marinos/Munro* distinction has resulted in the same outcome as if *Munro* had been applied. In the long-term, if *Marinos* is the correct interpretation, this should not continue.'[146] As Hartley noted (in respect of *Tan v Choy)*, the lower court judge's refusal to refer a question to the CJEU was in keeping with the 'measure of self restraint' …urged upon referring courts by the CJEU.'[147] The Court of Appeal has confirmed that courts in England and Wales may stay matrimonial proceedings under domestic legislation in spite of Brussels II Revised. [148] It was suggested, *obiter*, that the matter of interpreting Article 3 (1) (a) indent five may yet be brought again before the courts given that there were 'at least 'three possible constructions of the provision.'[149]

Question 7: Was there a problem in your jurisdiction because the concept of marriage is not defined in the Brussels IIa Regulation? Brussels IIa Regulation does not determine whether the concept of marriage has to be interpreted autonomously according to the Regulation or according to the national laws of the Member States – how the concept of marriage has been interpreted in your jurisdiction? Do the courts in your jurisdiction apply the Brussels IIa Regulation to same-sex marriages and to legal relationships other than marriage (same-sex and/or opposite-sex)?	
Austria	In Austria there has so far been no case in which the question has arisen whether homosexual marriages and registered partnerships fall within the scope of the Brussels IIa Regulation. The ruling opinion in Austria[150] is that the regulation giver acted on the assumption of the classical concept of marriage, namely a union of man and woman. The ECJ[151] has also expressed this opinion in several decisions.
Belgium	Legal doctrine agrees that the concept of marriage should be interpreted autonomously. The concept does not pose considerable difficulties, except for the application to same-sex marriages. Most authors see it as an unresolved matter, although some exclude same-sex marriages.[152] Case law has handled two difficulties in connection to the concept of marriage in the regulation: 1) The Court of First Instance of Mechelen handled a case on the Dutch 'flash divorce' ('flitsscheiding'), i.e. proceedings whereby a marriage had first been transformed into a registered partnership, after which the partnership had been terminated. According to the court, the Brussels IIa Regulation does not apply to a 'flitsscheiding', not to the transformation of a marriage into a registered partnership, nor to the partnership or its dissolution.[153] We will come back to this case later on (question 15). 2) The Courts of First Instance of Brussels[154] and Arlon[155] handled cases on same-sex marriages. Both courts looked at the provisions of the Brussels IIa Regulation, without giving attention to the question whether the Regulation applies to same-sex marriages. After the courts determined that the regulation did not grant them international jurisdiction, they both recoursed to the *forum necessitatis* of Article 11 Belgian Code of PIL. The court of Arlon set aside the fact that Article 3 Brussel IIa Regulation granted international jurisdiction to French courts. It argued that France did not accept same-sex marriages and therefore would not grant a divorce. The court of Arlon thus applied the Brussel IIa Regulation in order to only check whether the Regulation gave jurisdiction to the courts of a Member State that actually recognizes same-sex marriages. As this was not the case, the court applied national jurisdiction rules, provided for in the Belgian PIL Code.
Bulgaria	Bulgarian legal system does not recognize the same-sex marriages. It should be noted that in the very new judgement of the Administrative court in Pazardjik[156] (still pending) the same-sex marriage couple (women) has appealed to the Court the rejection of the local municipality to issue a birth certificate to their child after presenting related documents from another Member State of the EU. The first instance court ruled that the municipality is obliged to issue required birth certificate, because the couple was presented the necessary documents including the name of the mother. However, it is still unclear whether the municipality should fulfill the box "father" or not as well as what will finally be the court judgment.
Croatia	There is no accessible case law to that point.
Cyprus	- There are no occasions in our case law where our courts encountered problems because the concept of marriage is not defined by the Brussels IIa Regulation. - Regarding same-sex marriages and legal relationships, these have not yet been examined by our courts, but it can be assumed that the Regulation should define the concept of marriage.
Czech	The absence of the definition of marriage in the Regulation results from the negotiation of the Regulation. It does not prevent the Member States from applying their own ideas about what is marriage. Neither the Regulation obliges the Member States to recognise foreign ideas.

Republic	"Marriage" under the Czech law means a permanent union of a man and a woman only. Besides, the Czech law allows also for registered partnership of same-sex couples (Registered Partnership Act No. 115/2006 Coll.). A court applied the Regulation per *analogiam legis* for the dissolution of a registered partnership stating that, although registered partnerships were not within the scope of the Regulation, it was feasible to apply it in the particular case *per analogiam*, because the national law did not provide any jurisdictional norm for such partnerships (judgment of the District Court of Rokycany No. 6 C 59/2011 of 20.9.2011). This decision, however, reflects the national law before the entry into force of the new Private International Law Act, i.e. before 1 January 2014.
Estonia	There has been a case on 2013, where courts of lower instances were reluctant to define same-sax marriage as marriage. No further information available.
Finland	- In judicial practice the concept has been defined to cover only opposite-sex marriages. Same-sex marriages have been recognised as registered partnerships. It has not been clear whether one should apply Regulation concerning these issues, or national PIL rules. - Note that same- sex marriage will become legal in Finland on 1 March 2017
France	French Courts have never had to determine whether the concept of marriage has to be interpreted autonomously according to the Brussels IIa Regulation or according to the national laws of the Member States. Only doctrinal authority exists on this question and the prevailing opinion is that the concept of marriage has to be interpreted according to the National law ("qualification *lege fori*"). There used to be a controversy on the application of the Brussels IIa Regulation to same-sex marriages but it is quite clear now that same-sex marriage has been introduced in French law, that the Regulation extends to same-sex marriages. There is a consensus that the Brussels IIa Regulation does not apply to legal relationships other than marriage (whether same-sex or opposite-sex).
Germany	No. According to strong opinion in Germany the Regulation does not cover same sex marriages. Rather, same sex marriages are characterised as registered partnerships by the German courts. Hence, the national jurisdictional rules for registered partnerships apply. The same is true for registered partnerships established in Germany and abroad.
Greece	So far no problem has been recorded in relation to the concept of marriage but there has not been any dispute brought before Greek judges that posed a hard issue to resolve such as the issue of the application of the regulation on same-sex marriage. Available case-law indicates that Greek judges rely on the lex fori for the determination of the concept of marriage. In our jurisdiction courts might be hesitant to apply the Brussels IIa Regulation to same-sex marriages and legal relationships other than marriage. This seems to be the dominant opinion in legal theory in Greece and it relies to the opinion that a foreign provision accepting the validity of such marriage will be considered as contrary to public policy.[157] This however is not confirmed so far by case law because there has been no known case having adjudicated on this issue. Furthermore, since the introduction of the civil partnership for same sex couples,[158] which also falls into the scope of the regulation,[159] it will be more difficult to claim that a foreign provision recognising the validity of a same sex marriage violates Greek public policy.
Hungary	Marriage is interpreted strictly in Hungary and interpreted in a traditional way. Marriage has always been interpreted according to the accustomed standards (as opposite-sex relationship). This attitude was confirmed as the Hungarian Basic Law which entered into force in April 2012 protects marriage and states that 'Hungary shall protect the institution of marriage, the conjugal union of a man and a woman based on voluntary and mutual consent and the family as the basis for survival of the nation. The basis of the family is marriage and parent-child relationship'.[160] The case law of the Hungarian Constitutional Court protects the marriage as definitely and exclusively an opposite-sex marriage. There is no published decision in which the issue would have emerged whether the concept of marriage could have been applied to other relationships than opposite-sex marriage. This problem is not discussed in Hungarian literature on private international law mostly because it is at least tacitly accepted that Brussels IIa Regulation concerns only opposite-sex marriages. Hungarian law recognizes registered partnership (literally it is called Hungarian as 'registered cohabitation') and it was introduced into the Hungarian legal order in 2009. Although the termination of the registered partnership is regulated as the termination of marriage by analogy the non-

	applicability of the Brussels IIa Regulation to registered partnership is mentioned.[161] (Only one commentary[162] mentions the problem of how qualifying a same-sex marriage in a country where it is not recognized but registered partnership for same-sex partners is regulated. They seem to accept the idea of qualifying the same-sex marriage as registered partnership in such case.
Ireland	Owing to the 34th Amendment to the Irish Constitution in 2015 that makes lawful same sex marriage, the lack of a definition of marriage does not arise as an issue in the Republic of Ireland and the regulation would apply to both heterosexual and same sex marriages.
Italy	Yes, there was a problem in the past. As it is probably known, the Italian legal system up to this year (2016) did not provide for any another form of union than marriage between a man and a woman. Diversity of sex is still considered an essential condition for marriage, although not expressly formulated in the civil code but in a law on civil status and related registers. Therefore, same sex marriages cannot be contracted, registered, recognized or dissolved in Italy as an effect of foreign statutory rules or decisions, even if regarding foreign citizen. However, same sex marriage abroad did produce many results similar to the effects of marriage in some matters, for instance grounding the right to stay (*permesso di soggiorno*) of the spouse who is EU citizen. According to qualified legal doctrine, besides, the foreigner who is married abroad with a person of the same sex, could be considered "free" to the effect of the requisites to marry in Italy. The concept of marriage up to now has been therefore interpreted according to the national law and the Brussels IIa Regulation was not applied (apart from some very recent decisions) to same sex marriages or to other kind of relations like partnerships. Only very recently, on 20 May 2016, "civil unions" for same sex couples have been passed together with rules on cohabitation, while the legal discipline of marriage is still reserved to couples of men and women. For the future, art. 1 par. 28 of the Law 20 May 2016, n. 76 delegates the Government to introduce a reform of the "private international law rules, in order to apply the discipline of the civil union to same sex couples who have contracted marriage abroad, or civil union or any other similar legal institution". This reform is expected soon.
Latvia	Latvian national laws and other legislative acts only regulate the legal order of marriage. Article 110 of the Constitution of the Republic of Latvia stipulates that the State protects and supports marriage – a union between a man and a woman – the family, the rights of parents and the rights of the child. Part One of the Civil Law on Family Law Chapter 1 on Marriage contains the detailed legal order of marriage including engagement, entering into and termination of marriage, personal rights of spouses, as well as the property rights of spouses. The term "registered partnership" does not exist under the Latvian legal system. The term "same-sex marriage" also does not exist under the Latvian legal system. Accordingly, there are no provisions for divorce or annulment of such marriages or partnerships. Consequentially, it's impossible to recognize and enforce judgments taken in another Member State in respect of same sex marriages and registered partnerships.
Lithuania	There have been no problems in jurisdiction of Lithuania, because of the lack in defining the concept of marriage in the Brussels IIa Regulation yet. The concept of marriage has been interpreted as voluntary agreement between a man and a woman to create legal family relations executed in the procedure provided for by law in Lithuania. Such definition of marriage is determined in the Civil code of the Republic of Lithuania (Article 3.7.). Although annual discussions are being brought up at the parliament of Lithuania regarding the necessity to legitimate modern concept of marriage in local laws, there still is no factual change in interpretation of the concept of marriage in jurisdiction of Lithuania.
Luxembourg	The concept of marriage was not raised in any of the decisions reviewed. Same-sex marriages are allowed in Luxembourg[163], but the law was only recently enacted which might explain the lack of relevant case-law[164]. There were also no cases applying the Brussels IIa Regulation to legal relationships other than marriage.
Malta	With the introduction of civil unions in Malta, we now have a blanket clause stating that parties who form a civil union are for all intents and purposes deemed to be married so all applicable laws for married couples are automatically applied to same-sex couples. In Malta we do not have the 'common-wife law' so couples are either married / in a civil union or deemed to be single.

The Netherlands	Netherlands law accepts same-sex marriages and does not differentiate between marriages (between two spouses) on the basis of sex. Due to a recent reform of Netherlands private international law, a marriage concluded abroad can only be recognized when at the time of recognition in the Netherlands both spouses are aged 18 or older. See Article 10:32(c) NL CC. BIIa is applied to the dissolution of marriages between spouses of the same-sex. One would expect that problems not dissimilar to that described in the answer to question 6 would arise especially in respect of same-sex marriages. E.g., a Netherlands court cannot assume jurisdiction for the dissolution of a same-sex marriage under BIIa, while the court that does have jurisdiction under BIIa is in an EU member state that considers recognition of the same-sex marriage contrary to public policy. In that situation spouses still have an interest in a dissolution of their marital bond but would not be able to obtain a divorce from the court that has jurisdiction in accordance with BIIa. The reasoning of DC Noord-Holland (Haarlem), 6 April 2016, NIPR 2016, 269, discussed in the answer to question 6, may fit such cases, but has not yet been put to the test. It should be added that it is not known whether an appeal has been lodged against the decision of 6 April 2016.
Poland	No, there were no problems with application of provisions concerning marriage. The position of the courts in this matter is well-established and based on the definition of marriage contained in Article 18 of the Polish Constitution. Marriage within the meaning of the Brussels IIa Regulation is only monogamous union of persons of different sexes - a man and a woman, with the exception of third parties, based on the expressed, in the law prescribed form, will to establish it, concluded permanently (indefinitely), in cooperation with the relevant public factor (state, church or other religious organization authority, e.g. the registrar). No other union can be regarded as marriage within the meaning of the Brussels IIa Regulation - as partnerships (unregistered, having only the factual character as well as registered, legally sanctioned), irrespective of whether they are unions of persons of different sexes (heterosexual), or of the same sex (homosexual), and regardless of how they are defined and treated in the national law of the member states of the European Union, where such relationships are provided in the national legal orders. In particular, the Brussels IIa Regulation does not apply to homosexual relationships defined by law in some member states as marriage.[165]
Portugal	There are no reported problems in the Portuguese legislation because the concept of marriage is not defined in the Brussels IIa Regulation. Portuguese courts consider the Portuguese legal definition of civil marriage as it is stipulated in article 1577 of Civil Code, and there is no evidence of difficulties related to the need to consider foreigner perspectives on it. The Civil Code defines civil marriage as "the contract between two persons that intend to constitute a family in a whole communion of life". This definition is a result of changes introduced by Law no. 9/2010, of 31st of May, eliminating the reference to "persons of different gender" and thus legalizing the same-sex marriage. Being so, in Portuguese jurisdiction the concept of marriage necessarily includes same-sex marriages. Nevertheless, in the Portuguese legislation there is a clear distinction between civil marriage (same-sex and/or opposite-sex) and *de facto* relationships, these latter recognized and regulated by autonomous legislation (Law n.o 7/2001, of 11th of May). The Brussels IIa Regulation is not applicable to these, as Authors confirm (see Maria Helena Brito, *op. cit.*, p. 355).
Romania	The proceedings concerned by the Section 1, Chapter II of the Regulation (and mentioned in art. 1.1.a.) raise a preliminary problem: the existence of a marriage. The European legislator did not offer a definition of this concept (normally understood as a heterosexual and monogamous marriage), even if it was aware of the possible difficulties that the consecration of same sex marriages in some European countries may entail. While an autonomous definition would facilitate the uniform application of the regulation in the member states (being also in concordance with the general rule of interpretation), this is not the position followed in Romania[166]. The manuals for magistrates clearly state that "marriage" is a concept that should be interpreted by reference to the national law[167]; this should be explained by the fact that the Romanian law has a very strict position on the matter, prohibiting expressly not only the celebration, but also the recognition of same-sex marriages in Romania[168]. Similarly, civil partnerships (same-sex or opposite sex, registered or not) are not recognized in Romania; the Brussels II bis regulation's jurisdictional grounds cannot be used as a tool for partners seeking a dissolution of their relationship[169].The attachment to the traditional/Christian definition of marriage/family explains also why the Romania did not took part to the European regulations on matrimonial property regimes and on the property consequences of registered partnerships.
Slovakia	No, there wasn't a problem in our jurisdiction because the concept of marriage is not defined. Our court don't apply the Brussels IIa Regulation to same-sex marriages and to legal relationships other than marriage (same-sex and/or opposite-sex). The supremacy of marriage was also recently manifested by the National Council (Parliament) of

	Slovakia. On 4 June 2014, the Council adopted a Constitutional Law (no. 490/2014) amending the 1992 Constitution, which entered into force on 1 September 2014. Article 41 of the law defines marriage as 'a unique union between a man and a woman'.[170]
Slovenia	In Slovenia, three partnerships relations are regulated by the law, i.e. marriage, cohabitation and registered same-sex partnership.[171] The marriage and the cohabitation are open to opposite-sex couples and homosexual couples have access just to the registered same-sex partnership. Such legal regulation is therefore (still) the basis for the different extent of the legal rights and duties of the same-sex couples in the comparison to the opposite-sex partnerships. Slovenian Courts have not yet confronted with the question of applying the Brussels IIa Regulation to registered same-sex partnerships or cohabitation.
Spain	Same-sex marriage is allowed in Spain since 2005 (Law 13/2005 of 1 July, modifying the Civil Code regarding the right to marry). Given the lack of an autonomous concept of marriage in the Regulation -and thus, stating if same-sex marriages fall inside its scope of application- some Spanish authors have considered that every single Member States should apply their own law in order to determine if a union can be considered a marriage or not. In the particular case of Spain, it seems that Brussels IIa Regulation can be applicable regardless the sex of the parties (for example, SOTO MOYA). This doctrinal position seems to be coherent with the content of Article 13 of Rome III Regulation. However, these authors have highlighted the problems that a different application of Brussels IIa Regulation could have in terms of free movement of people – and judgments-.
Sweden	There is no relevant case law. It is almost certain that the Regulation does not apply to registered partnerships and *de facto*-cohabitation, while the position towards same-sex marriages is less certain. As Swedish law accepts such marriages, Swedish courts would probably tend towards applying the Regulation to them, even though that was probably not the intention of the EU legislator at the time of the Regulation's enactment. It should also be noted that Swedish courts can only pronounce divorces, as marriage annulments and legal separations are unknown to Swedish law.
UK	As Davis observed, (albeit before the legalisation of same-sex marriage within most parts of the UK), 'cross-border recognition of relationships is a sensitive topic, and this is particularly the case where it involves same-sex couples.'[172] Within the UK, differing approaches are taken to the issue of same-sex marriages. They are legal in Scotland, England and Wales (as are civil partnerships) but still illegal in Northern Ireland, for the foreseeable future.[173] Same-sex marriages made within other areas of the UK are regarded as civil partnerships within Northern Ireland, which has led to (ongoing) judicial challenge and political controversy.[174] Generally, same-sex couples who married or registered their civil partnership within England and Wales are able to divorce or initiate dissolution proceedings there, given the lack of international consensus on same-sex legal unions. [175] As Woelke summarises: 'The rules are similar for civil partnership dissolutions for same-sex couples, but do not apply throughout the EU. The provisions for divorce of same-sex married couples are a bit bizarre: European law does not distinguish between same-sex and opposite-sex marriage and treats every marriage the same, whatever the gender of the parties, but the UK parliament has legislated parallel provisions (although saying essentially the same thing) for same-sex divorce.'[176] In relation to the application of Brussels IIa, the Supreme Court recently dealt with a case involving a same-sex couple, where, as the applicant parent was neither spouse, civil partner, nor in possession of parental responsibility, the question of the child's 'relocation' was not considered to have been illegal. [177] In *Re B (a child)* [2016] the appellant's argument that Pakistani society had a very negative view of homosexuality was considered in some detail: she stressed that she would have had little hope of success were she to bring proceedings before the courts there. She had suggested also that the child and respondent would likely both be at risk of harm, should the facts surrounding her conception - via sperm donor – or family circumstances be revealed. The Court of Appeal did acknowledge that there was no recognition of same-sex unions in Pakistan: the appellant would likely have been unable to successfully establish any form of legal relationship with the child she had previously co-parented. Lord Sumption (in his Dissenting Opinion) suggested that the Supreme Court's chief concern seemed not to be that the law in Pakistan might have differed significantly from that in the United Kingdom (for example in terms of lacking jurisdiction to adjudicate upon child welfare issues), but that the foreign court was probably inclined towards disapproval of same-sex relationships, and therefore unlikely, perhaps unable, to legally recognise the non-genetic (but clearly still strongly familial) relationship that the child in question had enjoyed with the appellant, up until her removal. Whilst this may well be 'a source of legitimate concern to the English courts…it is not a basis on which they are entitled to claim jurisdiction.' [178]

Question 8: Is there a possibility for a choice of forum for spouses in your jurisdiction?	
Austria	In Austria there is no possibility for a choice of forum relating the international jurisdiction in matrimonial matters. [179]
Belgium	Belgian case law does not accept freedom of forum choice in divorce matters. The Belgian PIL Code does not contain any specific provision on choice of forum in divorce matters (while Article 55 Belgian PIL Code regulates choice of law in divorce matters).[180]
Bulgaria	In accordance with the Art. 107 CPC the proper venue of the cases related to the matrimonial matters depending on "*the permanent address of the defendant*"[181]. There is also an exemption in case of a claim for maintenance where the claim may also be submitted at the permanent address of the claimant.[182] However, if the motion is filed before the undue court than the objection for undue jurisdiction may be presented only by the respondent and within the term to reply to the claim motion.[183] That must be estimated by the sized court under the Art. 119 CPC.[184]
Croatia	There is no choice of forum in Croatian PIL Act for any of the family related claims. However, in case law one may find examples where due to a joint application of spouses for a divorce claim the court proceeded with their request and settled a divorce, not questioning its competence at all. Draft PIL Act of 2016 does not provide for choice of law either.[185]
Cyprus	- No.
Czech Republic	No.
Estonia	No. Under the domestic law the spouses have three jurisdictional grounds, but no choice of forum.
Finland	- see later → question 9
France	No, there is no possibility for a choice of forum for spouses in French private international law. French courts can neither be chosen by agreement between the spouses; nor can the spouses agree on a choice of a foreign forum while a French court is seized and has jurisdiction (the court would not give effect to the agreement).
Germany	No. As the Brussels IIbis Regulation does not provide for choice of court clauses there is no possibility for a freedom of the spouses to determine the forum. This also applies to a residual jurisdiction as far as the Brussels IIbis Regulation refers to national law (Art. 14 of the Regulation). Although Sec. 106 of the German Act on Family and Non-Contentious Proceedings clarifies that the provisions on international jurisdiction are not exclusive ("Die Zuständigkeiten in diesem Unterabschnitt sind nicht ausschließlich"), it is the prevailing opinion that in matrimonial matters choice of court clauses are not allowed. Local jurisdiction in matrimonial matters is exclusive as well, cf. Sec. 122 of the German Act on Family and Non-Contentious Proceedings.
Greece	There is no possibility of choice of forum for spouses in our jurisdiction. According to article 42 of the Greek code of civil procedure, a written or spoken agreement of choice of a court other that the one competent by law, is forbidden since marriage relates to personal affairs of individuals and not to property issues, which according to Greek law are regulated by mandatory provisions, which are not subject to the will of the parties, since such issues fall into the scope of Greece's public policy.[186]
Hungary	The Hungarian Act on private international law (Law Decree 13 of 1979) contains some rules on choice of forum but according to § 62/F parties may stipulate jurisdiction only in respect of property-related legal disputes. Nevertheless, according to § 62/H of the Law Decree the jurisdiction of a Hungarian court can be established if the defendant makes a declaration on the merit of the case without objecting the jurisdiction of the Hungarian court except for the case if the jurisdiction of the Hungarian court is excluded.

Ireland	I am not entirely certain what the question seeks to elicit but there are alternative court choices for a litigant to choose from in nullity petitions. Judicial separation and divorce applications may proceed in different courts depending on the market value of the property in dispute. The Circuit Court (2nd lowest court in the hierarchy of the courts structure) has a jurisdiction in these application where the property does not exceed 3M€. Property valued above this amount must proceed in the High Court.
Italy	Leaving Regulations Brussels II bis, 4/2009 and 1259/2010 aside, the Italian private international law does not allow spouses to choose the State having jurisdiction over the disputes over separation, divorce, and parental responsibility. Generally speaking, the Italian jurisdiction may be derogated (art. 4 n. 4 law 1995/218) if the parties agree in writing and the controversy concerns matters which can be disposed of by private individuals, and provided parties have both rejected the Italian jurisdiction and chosen another one. However, according to the art. 32, personal separation, divorce, and parental responsibility are considered non disposable of by private individuals and for this reason art. 4 however does not apply to them. Therefore, in the infrequent cases where regulation Brussels II does not apply, parties cannot choose the state whose courts may hear the case regarding divorce or legal separation and the Italian jurisdiction will apply. On the contrary in other matters, concerning for instance the patrimonial regime of the family, the general rule of art. 4 of the law will indeed apply, and the parties will be able to choose, provided they prove their agreement in writing.
Latvia	No
Lithuania	No. There is no possibility for a choice of forum for spouses in jurisdiction of Lithuania.
Luxembourg	No, there is no provision allowing the choice-of-forum agreements for matrimonial matters within the Luxembourgish legal system.
Malta	No parties need to take recourse to family court (though prior they need to go to mediation stage).
The Netherlands	No. See the observations in the reply to question 6 on the intention of the legislator to let BIIa determine jurisdiction comprehensively.
Poland	The national legislation does not provide for such a possibility. It does not result from them directly, but the choice of forum is possible in case of the existence of the jurisdiction of more than one country. Polish civil procedure in contrast to previous years, rarely uses the exclusive jurisdiction. If the spouses have more than one common nationality, they can make the choice of court, before which they bring proceedings – the possibility results from the provisions of the Brussels IIa Regulation, not from the national legislation. The courts of countries of spouses nationality have the jurisdiction and are able to execute it. Moreover, the regulation, containing a broad catalog of grounds of jurisdiction, and not indicating the order of their application allows the plaintiff to choose. Initiating proceedings in a court of the member state of the European Union plaintiff makes the choice of the court through the selection of grounds of jurisdiction.
Portugal	No. According to article 72 of the Portuguese Civil Procedure Code, for cases of divorce or separation the competent court is the one of the territorial jurisdiction where the plaintiff has the 'habitual residence'.
Romania	The answer to this question is a negative one. As far as the *international competence of Romanian* courts is in debate, art. 1067 Code of civil procedure admits the voluntary prorogation of competence only when the dispute concerns subject matters/rights/acts of disposition of the parties (art. 1067 al. 1 Civil Procedure Code). Since this is not the case for divorce or annulment of marriage (actions concerning the civil status of a person), the rule will be inapplicable. The derogation to the competence of Romanian courts on the basis of a voluntary agreement of parties (in favour of another state's courts) is admitted only for patrimonial matters, which, again, is not the case for divorce or annulment of marriage. The rules of *internal territorial competence* are enshrined in art. 915 Civil Procedure Code, and among these a limited possibility of choice of court appears. Normally, the competent courts are, hierarchically: the courts from the last habitual common residence of the husbands; in absence or when neither of them still lives there, the courts from the habitual residence of the defendant; when the residence of the defendant is in a foreign state, the case may be heard by the courts from the residence of the claimant.

	When neither of spouses resides in Romania, the parties may choose any Romanian court to hear their divorce case. Finally, when they cannot reach an agreement, the competent court is Bucharest sector 5 Local Court.
Slovakia	No, there is not a choice of forum for spouses.
Slovenia	In Slovenian jurisdiction is a possibility for a choice of forum for spouses. Despite the general territorial jurisdiction (*actor sequitur forum rei* – art. 46(1) Civil Procedure Act[187] (hereinafter: CPA), the jurisdiction in matrimonial disputes may also be at the court on the territory of which the spouses had their last common permanent residence (art. 54(1) CPA). The possibility of choice is therefore limited and the plaintiff may choose just between general jurisdiction and last common permanent residence.
Spain	According to Article 22bis Organic Law on Judiciary Power, Spanish Courts will have jurisdiction as long as the parties, regardless of its domicile, would have agreed in that sense. However, it is important to note that implicit and explicit submission would only take place in those instances where "A rule specifically allows it". This expression can be controversial and would lead to problems of interpretation in order to accept that a choice of forum in regards to matrimonial matters would be possible in Spain.
Sweden	No.
UK	There is provision (in non-European cases) for arguing that another jurisdiction is the correct one for hearing divorce proceedings. That said, once jurisdiction has been decided, 'English courts always use English law on divorce and for the financial settlement.'[188] As de Boer has argued however,[189] the revised version of Article 7 was intended, in respect of divorce jurisdiction, to serve as 'a 'uniform and exhaustive rule' inspired by the fact that national rules on international jurisdiction 'do not always effectively ensure access to court for spouses although they may have a close connection with the Member State in question.'[190] The 'curious discrepancy' (between the respective wordings of Art. 12(1) and Art. 12(3) of Brussels II- *bis* and the proposed Article 3a in Brussels II-*ter)* is also highlighted by de Boer: whereas Article 12 states that 'the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner ... at the time the court is seised', Article 3a instead 'evidently expects the spouses to behave in a proactive way: the spouses may agree that a court or the courts of a Member State shall have jurisdiction ...the emphasis in Article 12 is on (express or implied) acceptance by the respondent, while Article 3a requires an agreement explicitly endorsed by both spouses.'[191] That said there is scope (under Article 3a(5)) for 'tacit submission to jurisdiction' (unlike Article 12's requirement that there must be clarity 'at the time the court is seized, that the respondent will not object to its jurisdiction.)[192] Thus, in relation to legal separation and divorce: '…spouses are allowed a choice of court. The choice is limited, however, to the fora listed in Article 3 and the fora introduced by the new version of Article 7…parties may not select *any* forum within the European Union but only those with which they have some connection on account of the nationality or habitual residence of either spouse, their common nationality or their former common habitual residence.'[193] In relation to choosing between the various jurisdictions *within* the UK, it has been argued that one seldom has 'the luxury of the choice of divorcing in one jurisdiction of another.'[194] Should spouses for example have a connection with both Scotland and England, it may be possible for them to issue divorce proceedings within either country.[195] Where spouses have raised proceedings there then 'the courts will not ordinarily allow both actions to run in competition with each other, effectively having a race to see which one reaches its conclusion first, but will instead decide which of the two divorce actions should prevail. In deciding which court should prevail, the court will look not only at the country in which the spouses are habitually resident, but also the country in which the spouses last resided within together.'[196] As Scott has further observed (in respect of the discrepancies within the UK's domestic law over jurisdiction), the concept of a '*forum conveniens* may involve more elaborate considerations [than application of the *lis pendens* rule], but could be thought to yield a more satisfactory result.'[197]

Question 9: Is there a provision on *forum necessitatis* in your jurisdiction?	
Austria	In Austria there is no provision on forum necessitatis in matrimonial matters. [198]
Belgium	Article 11 of the Belgian PIL Code contains a provision on *forum necessitatis*: "*Notwithstanding the other provisions of the present statute, the Belgian courts will exceptionally have jurisdiction when the matter presents close connections with Belgium and proceedings abroad seem impossible or when it would be unreasonable to demand that the action be brought abroad.*" The *forum necessitatis* is part of the Code's general provisions on international jurisdiction. It can be used when a case shows a sufficient connection with Belgium. In four cases, courts used Article 11 Belgian PIL Code to find jurisdiction in matters of divorce. In all four cases, the courts first checked Articles 3-5 of the Brussels IIa Regulation and subsequently the Belgian national PIL rules on divorce matters, before turning to the exceptional *forum necessitatis*. Two cases were about same-sex marriages. Both the Court of First Instance of Brussels[199] and the Court of First Instance of Arlon[200] applied Article 11 Belgian PIL Code (*forum necessitatis*). The Brussels court applied it after it had determined that neither Articles 3-5 Brussels IIa Regulation, nor the specific rules of the Belgian PIL Code led to jurisdiction. In the case handled by the court of Arlon, application of Article 3 Brussels IIa Regulation led to jurisdiction of the French courts. However, as France did not recognize same-sex marriages, the court of Arlon argued that French courts would not handle the case, so that the court took up competence under Article 11 Belgian PIL Code. The Court of First Instance of Brussels also applied Article 11 Belgian PIL Code in a divorce case between a Belgian and a Chinese national.[201] The parties were married in 2001 in Singapore and separated within the year. After the separation, the husband took habitual residence in Thailand and the wife in China. In Singapore, it is not possible to get a divorce within the first three years of marriage. The husband filed for divorce in Belgium and the Brussels' court established its jurisdiction on the basis of the *forum necessitatis*. In another case the Court of First Instance of Brussels used Article 11 Belgian PIL Code in a case between Moroccan nationals, habitually resident in Morocco. The couple never had their marital residence in Belgium.[202] The parties were divorced in Morocco, but this divorce could not be recognised in Belgium. The husband started a new divorce procedure before the Belgian court, arguing that he still had ties with Belgium and therefore, he should obtain a divorce in the Belgian legal order. The court applied Article 11 Belgian PIL Code to find jurisdiction.
Bulgaria	The Art. 4 (1) of the national Codex of International Private Law partly including such kind of provision.
Croatia	Such ground of jurisdiction is not prescribed by current Croatian PIL Act. Draft PIL Act of 2016 however provides for it.[203] There is scarce legal writing to that point. It has been first envisaged introduction to Croatian legal system by professor Tomljenović.[204] There are some writings on this provision in the context of EU rules: by professor Župan (on maintenance regulation)[205] and professor Medić (on succession regulation[206]).
Cyprus	- No.
Czech Republic	No.
Estonia	Yes. According to § 72 lg 1 (Code of Civil Procedure) § 72 if, pursuant to general provisions, a matter does not fall under the jurisdiction of an Estonian court or such jurisdiction cannot be determined and an international agreement or law does not provide otherwise, the matter is adjudicated by Harju County Court if: 1) the case must be adjudicated in the Republic of Estonia pursuant to an international agreement; 2) the petitioner is a citizen of the Republic of Estonia or has a residence in Estonia, and the petitioner has no possibility to defend his or her rights in a foreign state or the petitioner cannot be expected to do so;

	3) the matter concerns Estonia to a significant extent due to another reason and the petitioner has no possibility to defend his or her rights in a foreign state or the petitioner cannot be expected to do so.
Finland	Marriage Act 119 § states (Jurisdiction of Finnish courts): 1. (1) A matter pertaining to divorce may be ruled admissible in Finland, if: 1. (1) either spouse is domiciled in Finland; or 2. (2) the petitioner has been domiciled in Finland or otherwise has a close link to Finland and he or she cannot institute divorce proceedings in the foreign state where either spouse is domiciled, or this would cause unreasonable inconvenience to the petitioner, and the admissibility of the matter in Finland is justified in view of the circumstances. 2. (2) A public prosecutor in Finland may bring an action, as referred to in section 27(2), for the divorce of the spouses, if: 1. (1) the marriage ceremony has been performed by a Finnish authority; and 2. (2) either spouse is domiciled in Finland. 3. (3) Moreover, a public prosecutor in Finland may bring an action for the divorce of the spouses if they have married while a prior marriage or registered partnership of either spouse has been in force and the prior marriage or registered partnership has not yet dissolved, provided that both spouses are domiciled in Finland. 4. (4) A request for the end of cohabitation may be ruled admissible in Finland, if the spouses make their common home here. 5. (5) The provisions in paragraphs (1)—(3) apply only in so far as not otherwise provided in Council Regulation (EC) No 1347/2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses or in an international agreement binding on Finland.
France	There is no formal legal provision on *forum necessitatis*. Despite the fact that *forum necessitatis* has received jurisprudential recognition French law, it has never received application in family matters.
Germany	No. There is no explicit rule for matrimonial matters.
Greece	The only relevant provision would be article 601 of the Greek code of civil procedure according to which if there is no competent court to judge the matrimonial disputes and one of the parties is a Greek national (in which case Greek Courts always establish jurisdiction), the courts of the capital of Greece are considered competent. A case where such a provision might be necessary is when all the parties are third country nationals and do not fulfil one of the criteria stipulated by the Regulation. Thus, it seems that such a scenario will rarely arise. It has to be added that a spouse that has lost its citizenship due to its marriage will be accepted to seize Greek courts on the ground of article 601 of the Code of civil procedure.[207]
Hungary	There is no such rule.
Ireland	The concept of forum necessitates is not known to the Irish legal system. The only circumstance where a court would assume jurisdiction is where a Constitutional right was alleged to have been infringed in which case the High Court has an inherent jurisdiction to vindicate that right
Italy	No Italian law includes such provision. However, the Cassation Court has declared, with reference to the art. 6 of the European Convention of Human Rights, that in the exceptional cases where the jurisdiction of the Italian judge is not grounded according to the Italian law but the jurisdiction of a foreign court is not grounded either, with the result that there would be a deny of justice, then the Italian judge must be considered competent (Cass. 17 July 2008).
Latvia	No
Lithuania	Yes. There are provisions on *forum necessitatis* in jurisdiction of Lithuania. Article 29 of Code of Civil Procedure of the Republic of Lithuania determines common rule that a claim is brought to a court according to the defendant's place of residence. Article 30 stipulates that: - A claim against a defendant, whose place of residence is unknown, may be brought according to location of its property or his last known place of residence; - A claim for alimony award and affiliation may also be brought according to the plaintiff's place of residence.

	- A claim related to acting as a guardian or property administrator, may be brought also according to the residence place of a guardian, custodian or residence place or domicile of property administrator. The Civil code of the Republic of Lithuania (Article 3.52.) also determines a rule that a mutual application of the spouses for divorce shall be presented to the district court according to residence place of one of the spouses.
Luxembourg	No, there is no provision allowing *forum necessitatis* for matrimonial matters within the Luxembourgish legal system.
Malta	See above
The Netherlands	Netherlands law has a strict traditional rule on forum necessitatis in Article 9(b) NL CCP, granting jurisdiction when proceedings abroad are impossible, and which does not differentiate between proceedings by writ or by petition, and a more open rule in Article 9(c) NL CCP, which applies when 'it cannot be required' from parties to bring proceedings abroad in proceedings that 'have a connection' with the Netherlands and which only applies to proceedings brought by writ. Divorce proceedings are always brought by petition. See also the answer to question 7 and the case law of DC Noord-Holland (Haarlem), 6 April 2016, NIPR 2016, 269, which extended the rule of Article 9(c) NL CCP to a divorce petition. The same decision also considers that application of Article 9(b) NL CCP would be possible in divorce proceedings, but found it was not possible to do so under the circumstances of the case. It should be emphasized that the possible development towards acceptance of forum necessitatis can only be demonstrated by the single decision of DC Noord Holland, discussed above. Courts are not bound by precedent and there is no indication that this decision is followed by other courts. Nor can it be ruled out that this approach can be challenged successfully in appeal. See also the answer to question 13.
Poland	Due to the need to avoid negative conflicts of jurisdictions and to ensure the possibility of realization of the right to a court, a provision concerning so called domestic necessary jurisdiction has been introduced to the Polish Code of Civil Procedure (CCP).[208] It has both: subsidiary (it can be accepted only if it is not possible to determine the international jurisdiction of courts of the state concerned upon the current normative regulation) and incidental (it can be used only after considering the circumstances of each individual case) character.[209] It can be used only with consideration of all the circumstances of each given case and in accordance with the principles and values accepted by the national legislature.[210] The courts must take into account the regulations of foreign states concerning jurisdiction and for its application it is not actually necessary obtaining a foreign judgment stating the lack of jurisdiction.[211] However, the fact that a foreign judgment given in a particular case shall not be recognized in Poland must be established by a final judgment of the Polish court.[212] Polish doctrine assumes that necessary jurisdiction does not result from the provisions of domestic law, the regulations of international treaties, it is adopted due to need to avoid the refusal to grant legal protection for the entity concerned. In order to accept the necessary jurisdiction, one must demonstrate the existence of a sufficient connection of the case with the legal order of forum, which, however, does not justify the jurisdiction of that state in the light of the connecting factors provided in the norms granting jurisdiction. It should be a connection more intense than any link (expressed in the existence of any circumstance connecting facts of the case with the legal order).[213] According to Article 1099^1 CCP, if there are no grounds justifying domestic jurisdiction in a case, and if it is not possible to conduct proceedings before a foreign court or other foreign authority, or you cannot be required for the proceedings to be conducted, the case belongs to the domestic jurisdiction, providing that it shows sufficient connection with the Polish legal order (§1). In the event of a legally binding determination by a court that a judgment of a foreign court or other foreign authority is not recognized in Poland, the case decided by this judgment belongs to domestic jurisdiction, despite the absence of the grounds for this jurisdiction, providing that it shows sufficient connection with the Polish legal order (§2).
Portugal	The Portuguese Civil Procedure Code has rules on international competence and thus article 62(c) stipulates that the Portuguese courts are internationally competent "when the claimed right cannot become effective unless the action is filled in Portuguese territory or the plaintiff has a considerable difficulty in filling the action abroad, since between the subject of the dispute and the Portuguese legal system there is a ponderous element of connection, either personal or real (*causa rei*)".
Romania	The answer is affirmative. The article 1070 of the Civil Procedure Code states that the Romanian Courts from the place which has a sufficient connexion with the case become competent to hear a case, even if normally the Romanian courts are not internationally competent, when it is proved that it is impossible to have that case submitted to a foreign court or cannot be reasonably demand the seizure of a foreign court. If in the previous case, the claimant is a Romanian citizen or a stateless person domiciled in

	Romania, the competence of the Romanian courts is mandatory.
Slovakia	No.
Slovenia	Yes, the provision on *forum necessitates* is incorporated in Art. 54(2) of CPA: *"The territorial jurisdiction to decide upon matrimonial disputes shall be vested, in addition to the court of general territorial jurisdiction, also in the court on the territory of which the spouses had their last common permanent residence.* *If the power of courts of the Republic of Slovenia to decide upon a matrimonial dispute is based upon the fact that the last common permanent residence of the spouses was in the Republic of Slovenia, or that upon bringing of the action the defendant's place of permanent residence was in the Republic of Slovenia, the territorial jurisdiction shall be vested in the court on the territory of which the spouses had their last common permanent residence and the court on the territory of which the plaintiff has their permanent residence."*
Spain	For thefirst time in Spain, domestic international jurisdiction rules contain a *forum neccestitatis*. Article 22 octies.3.II Organic Law on Judiciary Power states that Spanish Courts may not decline its competence if the dispute is connected with Spain and provided that other State's Courts connected with the case have declined its competence. The introduction of such a disposition in our legal system is very positive, but is seems very difficult for the applicant to proof that any other State's Courts have declined its competence (ESPLUGUES MOTA).
Sweden	No, but in *NJA 1995 p. 238* (a case not covered by the Brussels IIa Regulation), the Supreme Court has manipulated the concept of habitual residence in order to create Swedish jurisdiction, invoking to the applicant's legitimate need of a Swedish divorce (she was an asylum seeker unable to apply for divorce in her home country and was therefore deemed to have habitual residence in Sweden).
UK	As Palmer has argued, '…unlike many civil law jurisdictions, English courts do not directly employ the term 'forum of necessity.' [214] They will instead look to such issues as the suitability or availability of alternative fora under the doctrine of f*orum non conveniens.* [215] Given the significance of habitual residence (and domicile) under The Regulation, application of the *forum non conveniens* doctrine is limited to those disputes over jurisdiction which lie beyond the scope of the Regulation.[216] Thus, if the defendant is 'non-EU domiciled and the alternative forum is outside of the EU, the English courts retain a discretion to apply the *forum non conveniens* doctrine. '[217] The case of *JKN v JCN (Divorce: Forum)* [2010][218] perhaps provides some guidance. Here, an applicant husband applied for a stay of divorce proceedings issued in England by his respondent wife (after she had failed to meet the residency requirements to issue in New York). Both parties were US citizens, having been born and raised there, but they had, since marrying, spent much of their time in London. By the time they separated they had gone back to the US, living there separately, with no intention of returning to England. A month after the wife issued proceedings, the husband issued his own proceedings in New York, arguing that the US courts were the correct forum in which to hear their case. The key issue was whether Article 3 prevented the High Court from using its inherent discretion to stay the wife's proceedings. [219] It was noted that there were two important objectives underpinning Brussels IIa, namely, avoidance of 'irreconcilable judgments between Member States, and ensuring recognition of judgments between Member States.'[220] If there were no mechanisms in place for resolving the situation of parallel proceedings this could create 'an undesirable lacuna in the law.' [221] Moreover, the UK's Supreme Court had already made plain that the doctrine of *forum non conveniens* 'was not an anathema to the 2003 Regulation.'[222]

Question 10: Has the jurisdictional ground 'nationality' caused difficulties in applying the Regulation in your jurisdiction? Were there any problems in connection with dual nationality or change of nationality when applying the Brussels IIa Regulation? Does the reasoning of the CJEU in the *Hadadi*-judgment offer sufficient guidance?	
Austria	The jurisdictional ground "nationality" causes in Austria no difficulties[223], not least to the Hadadi-judgment of the ECJ.
Belgium	The published case law does not indicate any difficulties in this matter. No published case law refers to the *Hadadi*-judgment. The Belgian courts have applied the 'nationality' jurisdiction several times. The Court of Appeal of Brussels applied Article 3, 1 b Brussels IIa Regulation in a case concerning Belgian nationals having their habitual residence in the Democratic Republic of Congo.[224] The Court of First Instance of Arlon used it in a divorce case of two Belgian nationals who got married in France and always had their marital residence in France.[225]
Bulgaria	In my short research I have not found national judicial cases where the court faces some difficulties in applying the Regulation on the ground of 'nationality' of the parties as well as does not have any special problems in connection with dual nationality or change of nationality when applying the Brussels IIa Regulation. The judicial practice has also successfully used the reasoning of the CJEU in the *Hadadi*-judgment.[226]
Croatia	In most common scenario before Croatian courts an international marriage relates to situation where both spouses hold Croatian nationality. In that case jurisdiction is grounded on Article 1b.[227] There is no available case law that would question the dual nationality of the spouses where both spouses have Croatian nationality.[228] Problem might occur with exclusive nature of Croatian nationality which is still prescribed with PIL Act of 1982,[229] and is retained with Draft PIL Act of 2016.[230] This standing of national laws has been overruled by CJEU 2003 ruling in Garcia-Avello. Hadadi ruling is clear enough though, thought we may not find any Croatian ruling that would refer to it.
Cyprus	- The jurisdictional ground of nationality has not caused problems in Cyprus
Czech Republic	The nationality is traditionally used as a jurisdictional ground in our national law. The national law provides in Art. 28 para 1 PIL Act a dual nationality rule (the Czech nationality prevails). The application of jurisdictional rules of the Regulation based on the nationality of spouses seems not to be difficult for the Czech courts. In one case the Czech court applied the *Hadadi* principles (decision of the Regional Court Prague dated 31.10.2011). The spouses had both dual nationality (Czech and German), both habitually resident in Germany.
Estonia	No information available.
Finland	- no, no and yes
France	The jurisdiction ground "nationality" is often used by French Courts to establish jurisdiction pursuant to Article 3-1(b). The main problem with the jurisdictional ground nationality is that it leads to a rush to the court, and even a rush to the divorce. Indeed, lawyers confront situations in which one of the spouses, while neither are entirely ready to divorce, nevertheless brings an action for divorce in the "best" forum in order to protect his or her interests (see question 11 for proposals).

	As to the situation of dual nationality, it was of course problematic before the CJEU rendered the *Hadadi*-judgment. This last judgment appears to give sufficient guidance on the application of Article 3-1 in situations of dual Member State nationality. However, the *Hadadi*-case doesn't say anything about the question when the dual nationality combines a nationality of a third State with one of a Member State (for the sake of application of Article 6 and/or 7). The solution in such a case would be that the Member State nationality should take priority. In case of change of nationality ("conflit mobile"), legal doctrine is in favour of giving priority to the nationality possessed at the moment when the court was seized (when the proceedings become pending). Same applies to the principle of *perpetuatio fori* under which the jurisdiction of a court– once established– shall not be disturbed by a subsequent change of nationality or domicile.
Germany	No. I am not aware of a case where nationality was problematic; the case law of the CJEU provides clear guidelines.
Greece	No problem has been observed in relation to the establishment of jurisdiction on the ground of nationality. Greek judges will apply the reasoning of the CJEU in the Hadadi judgment which offers sufficient guidance.
Hungary	The problem of dual nationality or change of nationality has not emerged in the published judgments. The reasoning in the Hadadi-judgment was satisfactory and is a well-known case as both spouses had Hungarian nationality and the judgment on divorce which recognition was the legal issue in the case was delivered by a Hungarian court (Pest Central District Court).
Ireland	There are no reported cases in which a difficulty has arisen in relation to nationality as a jurisdictional ground. The *Hadaddi* judgment in any event clarifies the position were it to arise. Ireland does not recognize the concept of nationality as a jurisdictional ground and in most relevant applications under the regulation we utilize the concepts of ordinary residence for 12 months or the concept of domicile (living with an intention to permanently reside in the Republic of Ireland of which citizenship would be one of a number of relevant factors to consider.)
Italy	The term "nationality" has in fact needed clarification. Nationality cannot be defined in autonomous way and each member state has exclusive jurisdiction in determining how it can be acquired or lost, within the limits established by communitarian law. Italian judges then applies the lex fori to establish whether both applicants can be considered Italian citizens, or the foreign rules that may be relevant to the same purpose. Dual nationality or change of nationality have been confronted with in many controversies but, on the whole, I would say that the reasoning in the Hadadi judgement has been shared and endorsed by the case law and the legal doctrine. However, in my opinion, a recast of the Regulation should include an express provision on the matter.
Latvia	There is no national case law on this issue.
Lithuania	There have been no difficulties with application of jurisdictional ground 'nationality' in jurisdiction of Lithuania yet. The courts of Lithuania have not had a legal background to follow guidance of the CJEU in the Hadadi-judgment yet.
Luxembourg	In none of the judgments reviewed did the courts refer to the jurisdictional ground 'nationality' in matrimonial matters. There were no cases where the spouses had dual nationality or had changed their nationality.
Malta	No Yes
The	Dual nationality or change of nationality does not appear to have caused difficulties, in view of the reported case law. The concept 'domicile' of the common law has not been addressed in case law of the Netherlands courts.

Netherlands	
Poland	There were no noticeable by the case law problems with application jurisdictional ground of nationality, also concerning dual nationality or change of nationality. Still according to the Law dated 2 April 2009 on the Polish citizenship[231] , Polish citizen holding at the same time citizenship of another country has the same rights and obligations towards the Polish Republic, as a person having exclusively Polish citizenship. Polish citizen cannot refer to holding citizenship of another country and the rights and obligations resulting from it in the relations with the Polish authorities (Article 3). According to the Law dated 4 February 2011 on Private International Law[232] (PIL), Polish citizen is a subject to the Polish law, even if a foreign law recognizes him as citizen of this country, a foreigner having the nationality of two or more states shall be subject to, as his national law, the law mostly connected with him (Article 2 §1,2). Both provisions are inconsistent with preliminary ruling in Case C-148/02 Carlos Garcia Avello v État belge: "It is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty." The regulation of private international law can also be treated as inconsistent with the Hadadi judgment, especially: " there is nothing in the wording of Article 3(1)(b) to suggest that only the 'effective' nationality could be taken into account in applying that provision." The following opinion expressed in the doctrine is applicable to both cases: if the national authorities were to decide a similar case under the Polish law, it should be considered to what extent it would be necessary to refuse to apply the above mentioned Polish rules in accordance with the principle of precedence of European law.[233] The last provision concerning dual common nationality from Article 2 §3 of PIL speaks in favor of the applicability of the Hadadi judgment, even without recourse to the issue of assessment of the binding force of case law and of the EU law precedence. If the legal provision subjects applicability of the law to a condition of holding the same citizenship by certain persons, to assume that this requirement is met, it is sufficient that the law of the country regards them its citizens. The commentary to Brussels IIa Regulation stresses that when persons concerned have several nationalities, the courts of several member states may also have jurisdiction. When the action is brought to the courts of several member states on the basis of Article 3 (1) (b), concurrence of jurisdictions should be resolved by applying the principle included in 19 (1) of the Regulation.[234]
Portugal	There are no reported problems related the jurisdictional ground 'nationality'.
Romania	As far as it concerns the nationality as a jurisdictional ground, the pertinent decision of Romanian courts discussing the matter are scarce. The article 2569 Civil Code states that the citizenship should be established according to the law of the state which citizenship is claimed. In case of multiple or double citizenship, the Romanian legislator has chosen in 2011 to confer priority to the most effective citizenship – the one belonging to the state with which the person is most closely connected (a particular regard being given to that effect to the place of living/habitual residence of that party) (art. 2568 al. 2 Civil Code). The fact that one of the citizenship in conflict is the Romanian one has no relevance *per se* anymore[235], the conflict being solved on the basis of the pertinence and the intensity of connections between the person and the states involved. In the last years, the Romanian case law mentioned only a few times the ECJ's Hadadi decision (C-168/08), as far as it concerns the alternative character of the jurisdictional grounds from the art. 3 of the Regulation; nevertheless, we found only one decision regarding the freedom of one party to invoke whichever citizenship is more convenient to it (as admitted by the ECJ in Hadadi or Garcia Avello[236] judgements)[237]. Given the priority of the European case law, it is submitted that when article 2568.2 Civil code leads to solutions contradicting that case law (as the French law in Hadadi), the Romanian courts should disregard it and accept the freedom of claimant to choose among his two nationalities the one that favours him. Concerning a possible modification of the nationality of one or both parties, it is submitted that the competence of the court should be verified in the moment where the court proceedings are instituted, so regard will be paid to the (common) nationality of the parties in that precise moment.
Slovakia	Yes, *Hadadi*-judgment offered sufficient guidance especially what concerns the weight of the effective nationality.
Slovenia	Slovenian courts did not report any problems in connection with dual[238] or multi nationality or change of nationality when applying the Brussels IIa Regulation. The *Hadadi*-judgment gives sufficient guidance.
Spain	Cases of double nationality of the EU seem not to be controversial after the *Hadadi*-judgment: the applicant can start proceedings in the Courts of the Member State of any of the common nationalities, provided that these nationalities are of the EU. However, two important aspects have been highlighted by the Spanish doctrine. On the one hand,

	some authors have argued that this interpretation could favour the forum shopping, since the applicant is provided with another potential competent court. On the other hand, the *Hadadi*-judgment does not cover cases of mixed double nationality (i.e. one of a Member State and another of a third State), although it can be assumed that the applicant could start proceedings in the Courts of the Member State of the common EU nationality (ÁLVAREZ GONZÁLEZ).
Sweden	No problems so far. The *Hadadi* judgment provides valuable guidance, but there are situations it does not cover.
UK	Jurisdiction under art 3.1(b) 'can be founded on the nationality of both spouses or, in respect of the UK and Ireland, the domicile of both spouses.'[239] The Court of Appeal recently considered the issue in *Sekhri v Ray* [2014],[240] confirming that it had jurisdiction in respect of the parties' divorce proceedings: both were resident in Singapore, but the husband's domicile of origin was in England (on the basis of his father's intention to settle there) while his wife had similarly acquired 'a domicile of choice' there.[241] In the High Court, *Divall v Divall* [2014][242] saw a petitioning husband fail to establish however that his Chinese wife (a British citizen, resident in Holland) had a domicile of choice in England. [243] Practical issues may also arise in relation to dual nationality *within* the UK, for example in respect of Northern Ireland, where a number of citizens may hold both UK and Irish citizenship, and be in possession of (or legally entitled to hold) two passports. Where a child is in possession of two passports, this may clearly prove a significant risk factor in cases involving potential abductions.

Question 11: Please explain whether the application of alternative criteria of jurisdiction in Article 3.1 caused difficulties in your jurisdiction, such as a rush to the court or forum shopping between spouses? If so, what solutions have been suggested in the legal doctrine in your jurisdiction?	
Austria	According to Mrs Mag. Thau, no cases of forum shopping could be identified. However, as long as the applicable law has not been unified in all Member States, forum shopping and forum running should be countered by setting a hierarchy of the judicial grounds for jurisdiction, analogous to Article 6 of the Council Regulations implementing enhanced cooperation in the area of jurisdiction, applicable law and recognition and enforcement of decisions of matrimonial property regimes and in matters of the property consequences of registered partnerships.
Belgium	A rush to court or forum shopping is inherent to a system providing alternative jurisdiction grounds. There are Belgian cases in which the applicant had been (re)registered in the Belgian population registry shortly before filing for divorce,[244] cases of Belgian nationals married and habitually residing in Switzerland, cases of spouses that had their last marital residence in the UK etc. In all these cases (one of) the spouses clearly tried to evade stricter divorce laws (*e.g.* Italian divorce law) or disadvantageous alimony or matrimonial property rules (*e.g.* British ancillary relief or Swiss alimony rules). Also, one of the spouses regularly tries to take advantage of the lack of knowledge and/or understanding of (the details of) foreign law by filing for divorce in another country. There are different solutions to minimize the risk of forum shopping. Two Belgian authors propose not to replace the current list of alternative jurisdiction grounds. They suggest that a 'choice of forum'-rule would be able to prevent a rush to court, possibly combined with a priority of *fora* based on habitual residence over the forum based on nationality.[245]
Bulgaria	Following the CJEU practice[246] the national jurisprudence including also the SCC has restated the nature of alternative criteria of Jurisdiction in Article 3.1. as well as noted that the legal provisions are not in hierarchical order. Therefore, the claimant has a choice among the related criteria including also the right to determine which court should be seized.[247] In the same case the respondent raised an objection of possible problem of forum shopping but related evidences about another legal dispute in another Member State were not presented. The courts accept that existence of one of the criteria is enough in order to establish the national jurisdiction.[248] There are also cases in which the Court has applied the criteria of Jurisdiction in Article 3.1. in order to define whether the court in another MS has a jurisdiction over the dispute in accordance with its own rules.[249]
Croatia	Available case law proves there are cases of rush to the courts. It is self-evident where two parallel procedures are initiated before various member states courts, and courts are faced with *lis pendens*. There are few available examples of *lis pendens* amongst EU Member States[250] and some on pending procedures in Croatia and a non-Member State.[251] The amount of this phenomena may not be measured, as no statistic or full accessibility of case law exist. There are no legal writings in Croatia to that point. There is a peculiar problem with rush to the courts, related to current provisions of Croatian Family Act of 2015.[252] Act is encouraging out of court dispute settlement in relation to child related matters (parental responsibility, custody, visitation, child maintenance). Parents should reach an agreement before Social Welfare Service, in order to fill in the sample of parental responsibility plan. These substantive law solutions are most welcome, however, their procedural nature is impeding the service of justice in cross-border cases. Out of court procedure before Social Welfare Service is a procedural precondition for initiating the divorce claim. It means that if a party wants to issue a divorce lawsuit before Croatian courts first it has to initiate the obligatory out of court procedure. The other spouse is then invited to participate to out of court procedure, whereas that other spouse instantly becomes aware of the intention of other spouses to initiate a divorce. Consequently, that spouse may take the opportunity and immediately lunch a divorce claim before some other member state courts, which he founds more suitable.
Cyprus	Although forum shopping is known to take place in Cyprus, it is not something that is seen as a problem.

Czech Republic	No serious difficulties.
Estonia	No information available.
Finland	No, but in general the number of cases still limited in Finland.
France	Obviously the alternative criteria of jurisdiction in Article 3.1 allow for *forum shopping* but the phenomenon is not new and is not due to the Brussels IIa Regulation. In the most frequent situations, the choice of alternative *fora* is limited to two *fora* and should not exceed four *fora* in very rare situations. Furthermore, the Brussels IIa regulation provides an effective mechanism to prevent parallel proceedings. However, it is true that the *prior tempore* rule gives a great incentive to the spouses to be the first one to seize a forum and, in this respect, strongly contributes to the phenomenon of "rush to the court". Such a situation frequently arises in Franco-English cases (e.g. a French couple having its residence in England like in CJEU, 6 octobre 2015, aff. C-489/14; or a French-English couple being separated and each spouse having a residence in one of the two Member States).The legal solutions suggested in the French legal doctrine to prevent *forum shopping* and/or rush to the court are obvious. The first and most obvious is to harmonize the conflict of laws rules in matter relating to divorce. This step was accomplished with the entry into force of the Rome III Regulation and the Hague Maintenance Protocol. However, these last two instruments do not concern all Member States so that the applicable law will continue to vary regarding the Member State whose jurisdictions are seized in the divorce procedure. Nevertheless, the doctrine acknowledges that uniform conflict of law rules are not sufficient to prevent *forum shopping* since important procedural differences remain between Member States. A second proposal is to reduce the list of connecting factors in Article 3-1 and consequently to offer a reduced choice of *fora* to the spouses. The third and favoured proposal is to allow the spouses to agree on a choice of *forum* clause (see question n°11). Finally, taking into account that the most acute problem is the alternative character of the jurisdictional ground "nationality", one could think of making this a subsidiary ground when spouses have a residence in the same Member State. Priority would then be given to the forum of the common residence of the spouses while the other grounds, including the "nationality" one, would only be available once it has been established that the spouses do not have a residence in the same Member State.
Germany	No. It does not cause difficulties for the courts because the lis pendes rules safeguard clarity. Nevertheless, I personally think that there should be no freedom of the applicant to choose between the alternative grounds for jurisdiction in order to avoid forum shopping. The incentive for forum shopping does not relate to the divorce as such. However, in many systems, jurisdiction for the financial consequences of divorce is connected to the jurisdiction for divorce as determined in Art. 3 et seq. of the Brussels IIbis Regulation. In the future, Art. 5(2) of the new Matrimonial Property Regulation and probably the Brexit will balance the problem to a certain extent.
Greece	The alternative criteria of jurisdiction in Article 3.1 have not been a source of particular problems such as forum shopping.[253]
Hungary	It has caused no difficulty. The Hungarian legal literature reported about the Hadadi-case and the private international law books emphasize the fact that there are alternative grounds of jurisdiction in Article 3.1 among which the applicant may choose.[254] The danger of forum shopping has also been discussed in the legal literature but only in a narrow way.
Ireland	The alternative criteria of jurisdiction in Article 3 have not caused difficulties as of yet. There is no evidence of forum shopping or rush to court.
Italy	No remarkable difficulty is to report in connection with rush to the courts and forum shopping. The possibility of both had been feared by the doctrine, but it has not materialised. Anyway, it would be preferable, in a recast of the Regulation, to clarify better the relations between artt. 6, 7, and 3. Besides, the "hierarchy" of application of the artt. 6 and 7 should be explicitly established.

Latvia	No problems are observed.
Lithuania	There have been no difficulties with application of alternative criteria of jurisdiction in Article 3.1 in jurisdiction of Lithuania yet. The courts of Lithuania follow guidance of the CJEU regarding obligation to secure child's interests when determining applicable jurisdiction. No repetitive rushes to the courts or forum shopping between spouses were noted.
Luxembourg	Usually, Luxembourgish courts have applied only one of the listed criteria of jurisdiction in Article 3.1, simply explaining that the requirements were met for applying the chosen head of jurisdiction ('Tribunal d'arrondissement de Luxembourg', no. 140506, 21 June 2012; 'Tribunal d'arrondissement de Luxembourg', no. 139144, 20 June 2013; 'Tribunal d'arrondissement de Luxembourg', no. 147128, 18 February 2014). In cases where the parties had some connection with a third State, Luxembourgish courts have tended not to check if any of the alternative criteria of Article 3.1 of the Brussels IIa Regulation was applicable, declaring it directly inapplicable. For example, in one case where the claimant had her habitual residence in Luxembourg, at the very same address where the spouses were last habitually resident (same situation as that stated in Article 3.1.a.2 of the Regulation), the court did not apply the Brussels IIa Regulation due to the Cape Verdean common nationality of the parties, excluding the application of this instrument because Cape Vert is not covered by the Regulation ('Tribunal d'arrondissement de Luxembourg', no. 109956, 13 December 2007). Exactly the same outcome was given to another case, where one spouse had Thai nationality, but the claimant was Luxembourgish and continued living in the very same address where the spouses were last habitually resident. The court, instead of applying the Brussels IIa Regulation, applied national Law ('Tribunal d'arrondissement de Luxembourg', no. 112357, 29 Janvier 2009). There is one case worth mentioning where the court had, apparently, some trouble applying the alternative criteria listed in Article 3 of the Regulation. In that case, the court reasoned by giving priority to the heads of jurisdiction based on the common citizenship of the spouses or the common habitual residence, and that failing those two, jurisdiction is assigned to the Member State where the spouses were last habitually resident, insofar as one of them still resides there. Nothing was said about the other alternative heads of jurisdiction ('Tribunal d'arrondissement de Luxembourg', no. 112401, 12 July 2012). Similarly, also the case 'Tribunal d'arrondissement de Luxembourg', no. 141449, 10 January 2013. Luxembourgish legal doctrine did not refer to the problems identified.
Malta	No
The Netherlands	It is understood that a (not publicly available) report by the Netherlands Standing Government Committee on private international law on the participation of the Netherlands in Regulation Rome III, doubts the importance of the 'rush to the court' phenomenon, when considering the adoption of Rome III for the Netherlands. It would appear that the solution is found by application of BIIa (and other rules of (EU) private international law). See e.g. Court of Appeal The Hague, 7 December 2005, NIPR 2006, 12: the wife had lodged divorce proceedings in Spain, the husband one month later in the Netherlands. As the documents instituting the proceedings in Spain had not been served properly on the husband (article 8 Regulation 1347/2000, lack of translation), the Netherlands courts had been seized first. It should be mentioned that there are few reported cases on divorce and parallel proceedings. Outside the scope of BIIa, Netherlands courts, when seized as the 'second court', demonstrate a certain willingness to continue divorce proceedings when it transpires that proceedings in the court first seized are languishing. See e.g. CA The Hague, 10 October 2007, NIPR 2008, 9, granting a divorce in the Netherlands as due to the wife's procedural inaction, proceedings in Switzerland that had been commenced first, were not moving at all.
Poland	None of applications of alternative criteria of jurisdiction from Article 3(1) caused difficulties. Doctrinal interpretations refer rather to the concept of habitual residence.
Portugal	There is no evidence of this problem.

Romania	One of the first problems raised by art. 3.1 of the regulation concerned the alternative or the hierarchical character of criteria of jurisdiction established at letters a) and b). Despite the fact that this „problem" was clarified in Hadadi judgement[255], and the doctrine insisted on the solution of the alternative character[256], unfortunately, sometimes the courts ignored the ECJ's case law and applied in an erroneous way the provisions of the regulation[257]. Fortunately, such examples are truly rare[258]. A bigger problem raised by the alternative criteria of jurisdiction in art. 3.1 was the risk of manipulation and forum (and law) shopping, by one or by both parties, being known that the divorce can be obtain very easily according to Romanian law[259]. This risk can be illustrated by the facts of two cases solved by Tg. Mures Courts in 2014[260] and 2015[261]: both of them concerned divorces of Italian citizens, domiciled in Italy. In the first one, the joint application for divorce (followed by an agreement for the application of Romanian law) was registered at the court in the day following the issue of certificates of residence in Romania by the local General Inspectorate for Immigration. In the second, the wife application for divorce followed the registration of the Romanian residence at the General Inspectorate for Immigration; the husband did not contest the competence of the Romanian courts. In both cases, the Courts raised *ex officio* the problem of their international competence according to the regulation and took a severe, but perfectly justified position: the registered residence in Romania was considered fictitious, *pro causa* chosen; the mere registration of the residence at the competent authorities is not enough to demonstrate the existence of the habitual residence; the courts insisted on the proofs of the actual living in the state where the interested persons claimed a habitual residence[262]. This strict interpretation of the "habitual residence" concept is one of the solutions promoted by the doctrine in this field.
Slovakia	We think that the alternative criteria of jurisdiction in Article 3.1 (fox example habitual residence, last habitual residence ect.) are clear and don't cause difficulties or interpretations problems. We didn't observe any doctrinal disputes.[263]
Slovenia	The judges are aware that regulation of Article 3.1. makes possible that more courts have jurisdiction in the divorce matter between spouses. If the spouse is introduced with Brussels IIa, he/she will have intention to choose the court and therefore the jurisdiction which could be in favour of him/her (*rush to the court).* And on the other hand the multiple alternative jurisdictions also influence the decisions of spouses to choose between all alternative criteria the one which seems to suits in the best way to the needs and wishes of spouses, who filled the action for divorce (*forum shopping).* But the judgments do not specify any serious problems.
Spain	A large majority of Spanish authors have criticized that forums contained in Article 3.1 of Brussels IIa Regulation promote a rush to the court or forum shopping, at least from two points of view (CARRASCOSA GONZÁLEZ). Firstly, alternative criteria of jurisdiction seems to benefit the wealthier spouse from a procedural point of view, since he/she will be able to start proceedings in the courts of the Member State of its will, taking into account circumstances such the length of proceedings or the contacts with lawyers in a particular jurisdiction. Secondly, a rush to the court or forum shopping takes place because not all EU Member States apply the same conflict-of-law rules to divorce matters. It is true that after the entry in force of Rome III Regulation this negative effect has been mitigated, however it is still taking place regarding those Member States not participating in the enhanced cooperation. Some authors have proposed to abolish the current content of Article 3.1 of Brussels IIa Regulation and establish a new system of international jurisdiction rules in matrimonial matters (see in this regard, SÁNCHEZ JIMÉNEZ). First of all, it would be advisable to introduce choice of court agreements, allowing spouses to choose between a selected number of jurisdictions connected with their circumstances. Secondly, in those instances where spouses did not choose the competent court, a hierarchical list of jurisdictional grounds should be provided. Finally, a subsidiary jurisdiction and *forum necessitatis* rules could be included as well. This proposal seems to follow the structure of new PIL Regulations on family and succession law, such as Maintenance Regulation, Succession Regulation or Matrimonial Property Regimes Regulation.
Sweden	No difficulties so far.
UK	English case law allows generally for some degree of 'forum shopping,' although, 'the scope for a 'two shop solution' is much more limited in Scotland.' [264] Significantly, 'the party with the greater wealth …is likely to want to avoid proceedings being raised in England where the reputation is for generous settlements to the poorer spouse and the granting of ongoing financial support.'[265] Article 3.1's focus upon habitual residence, nationality and domicile has done little to prevent 'races to court' between member states. In terms of forum-shopping *within* the UK, where conflicts arise between two territories it will not be the one where an action was raised first which has priority, but the country in which the couple 'last resided together as husband and wife, and hence the country with which the marriage had the closest connection.'[266] The *Agbaje* case [2010] highlights further differences between England and Scotland in this regard.[267] Here, two Nigerian citizens (with dual British and Nigerian nationality) issued proceedings simultaneously in Lagos and London. Both applied for a stay of the other's petition but neither party succeeded, with the divorce eventually being granted in Lagos. The ex-wife's subsequent challenge of the financial settlement in England, led to an appeal by her ex-husband (upheld by the Court of Appeal) on the basis that there

	had been 'insufficient deference to the Nigerian court, which was the natural and appropriate forum for resolution of the wife's claims.'[268] In other words, the doctrine of comity won out. The Supreme Court overturned the decision however, amounting to an endorsement of the "two forum" approach, which stops short however of a decision on *forum conveniens* : thus, 'the Scottish Law Commission explained that whereas the English preferred a solution in which there are wide grounds of jurisdiction and it is left to the courts to sift out cases where an award would be inappropriate on the basis of judicial self-restraint, the Scottish Law Commission recommended a solution with …3 grounds of jurisdiction, so the legislation identified in advance the cases where an award would not be appropriate, even if this excluded some cases where a judge might in his discretion allow the claim to proceed.' [269] With the Brussels regime adding an 'additional complication,' the case incurred costs of £1.5 million, with the wife described as a 'blatant forum shopper.'[270] Interestingly, English law would have applied had the case been heard either in Spain or in England.[271] Post-Spanish divorce, the ex-wife applied for financial relief in England: The Brussels II Regulation (pre - Brussels IIa) required the second-seised court to stay its proceedings, but the Spanish court found that the divorce litigation was by then at an end. The issue for the English court then was whether Brussels I applied (i.e whether the husband's Spanish litigation had been a hearing on maintenance): if so, there could be no 're-hearing' of that matter under the domestic 1984 Act.[272] As the Spanish court had dealt simply with 'an adjustment of wealth between the spouses' the 1984 Act was not precluded however. As Scott summarises, '…forum shopping is all very interesting, but as was recognised in England in the case of *Moore v Moore*, it may be very expensive.' [273] Given also the 'interesting issues about the differences in approach to financial provision across Europe,' an acceptance of Rome III by the UK 'would have meant a fundamental change'[274] for the UK.

Question 12: Should a recast include a hierarchical list of jurisdictional grounds?	
Austria	When the applicable law is not unified, yes.
Belgium	This question has not been subject of profound legal research in Belgium.
Bulgaria	That will fully depend on the systematical order and related goals by the authors.
Croatia	Hierarchical list of jurisdictional grounds would be beneficial to eliminate rush to the courts. However, it would deduce the flexibility that exists in European PIL systems for decades, where elective/alternative criteria have been employed for international cases. Other regulations pertaining to EU private international law regulations support alternative criteria of jurisdiction as well. Therefore, I would not advocate introduction of a hierarchical list of jurisdictional grounds.
Cyprus	No, as the hierarchical list of jurisdictional grounds results from the Articles of the Brussels IIa Regulation.
Czech Republic	This question is not relevant anymore, because the recast has been already submitted to the Council of the EU without Art. 3 being opened for revision. Anyway, the answer would be "No.".
Estonia	Rather not. Current solution on flexible and corresponds to the needs of different situations.
Finland	The current list has worked just fine in Finland.
France	There is no order of priority among the connecting factors of Article 3.1. The French Cour de Cassation had to emphasise this principle in quite a few judgments. Introducing a hierarchical order between the jurisdictional grounds of jurisdiction under Article 3-1 could be an effective remedy against *forum shopping*. French national rules on international jurisdiction for divorce are indeed listed in a hierarchical order (Article 1070 Civil Code of Procedure). Such a change could be perceived not to be in line with the spirit and the objectives of the Brussels IIa Regulation and the other European instruments which promote freedom of choice of *forum* for the applicant. Therefore, it could be interpreted as a step backwards, which would be inconsistent with other European regulations also dealing with family matters. Nonetheless, as explained in question n°11, since the alternative character of the jurisdictional ground relying on nationality leads to a pernicious rush to the court between the spouses, a priority could be established in favour of the jurisdictional ground relying on the habitual residence of the spouses in the same Member State. Failing this primary jurisdictional ground, the others grounds could be referred to as secondary alternatives.
Germany	In my opinion, this would be very sensible, see Q 11.
Greece	It is true that Brussels IIbis has been criticised for providing a significant number of jurisdictional bases in a non-hierarchical manner. However, if what is meant by 'hierarchical list' is an amendment close to the initial Brussels I regime, it should be noted that this model does not seem compatible with the nature of the disputes falling within Brussels IIbis. Rather a jurisdictional system closer to the one followed in the 650/2012 Regulation (in which one fundamental jurisdictional basis is indeed provided for), might be preferable in the Brussels IIbis Recast.

Hungary	It has not been discussed in the Hungarian legal literature whether a hierarchical list of jurisdictional grounds should have been introduced. The fact of the parallel character of these grounds has been accepted. As the rules of the Hungarian Act on private international law (Law Decree 13 of 1979) connect the personal status to nationality (and connected the divorce of a Hungarian national to nationality before Brussels IIa Regulation) it proved to be a task for the national court to adjudge the habitual residence in a correct way.
Ireland	I do not believe a hierarchical list of jurisdictions is needed. The Irish jurisdiction system operates on alternative grounds for grounding jurisdiction.
Italy	Probably yes, it should.
Latvia	No, definitively. Jurisdictional grounds should be alternative not hierarchical.
Lithuania	The courts of member states currently have a right to assess all legal and factual circumstances in each case individually and determine to the child's interests most favorable jurisdiction. The CJEU guidance is also sufficient in this matter. Inclusion of a hierarchical list of jurisdictional grounds might establish procedural rules which may not always be in best interests of the child. We currently do not see a need in hierarchical list of jurisdictional grounds to be set in a recast.
Luxembourg	Luxembourgish legal literature highlights the preference for a hierarchical list of jurisdictional grounds given that Luxembourgish Private International Law has a praetorian origin[275]. From my perspective, such a hierarchical list would contribute to a better application of the grounds of jurisdiction established in Article 3, as Luxembourgish judges are used to applying hierarchical lists and thus, misunderstandings of the rules would be avoided.
Malta	No as this would not allow the necessary flexibility to the courts
The Netherlands	It would appear this will not fit well with the views taken in the Netherlands. Under Netherlands substantive law, a divorce will be granted if one of the spouses requests a divorce. Under Netherlands choice-of-law rules, divorce is in principle subject to the Netherlands law as the lex fori. By way of exception spouses who share the same foreign nationality may elect application of their joint national law. The application of Netherlands law as main choice of law rule is considered to be based on the so-called 'favor divortii', a divorce should be made possible if one of the spouses so desires. A hierarchy would probably mean that it will be more complicated to obtain a divorce, as spouses may need to bring proceedings before a court outside the Netherlands that is higher in the hierarchy and less willing to grant a divorce. This would block the favor divortii. Reference can also be made to the willingness to continue divorce proceedings in case of parallel proceedings outside BIIa, see the answer to question 11. This willingness can also be linked to the favor divortii. Before BIIa, the same willingness could also be found in the case law when parallel divorce proceedings were taking place in other European States.
Poland	There is no need to include it. Regulation Rome III is sufficient for the countries in which the problems with forum shopping/choice of forum were observed.
Portugal	Literature tends to agree with the actual solutions of the Brussels IIa Regulation (Moura Ramos, «Estudos de direito internacional privado da União Europeia», Imprensa da Universidade de Coimbra, 2016, p. 194), making not essential to include a hierarchical list of jurisdictional grounds
Romania	The multiplicity of the competent foras is problematic in the states were the legislative policies concerning the divorce are highly restrictive (which is not the case for Romania), with the one or both parties trying to use them in his/their personal interest. Partially attenuated with the adoption of the Regulation 1259/2010, the risks of *forum shopping* still exist, even if we did not identify pertinent case-law, the overwhelming international divorce cases before the Romanian courts regarding Romanian citizens living abroad.

	Establishing a hierarchy between the available foras may be criticised from a double perspective. First, this may be seen as too restrictive from a European position, blocking the access to justice and undermining the legitimacy of the rules. Second, the fear of abuses may be excessive; the principle of mutual confidence should be applied also in regard to the ability of the member states' courts to apply/interpret correctly the jurisdictional grounds established by the European legislator and to prevent the eventual frauds/abuses. Nevertheless, since divorce disputes are frequently doubled by parental responsibility disputes, maintenance disputes or dissolution of matrimonial disputes, we think that a bigger attention should be paid to a possible correlation of the existing jurisdictional grounds, in order to facilitate the concentration of these indirectly connected disputes in face of a single court. This might result in a rearrangement or even a limitation of the existing jurisdictional grounds sets in article 3 of the regulation.
Slovakia	Yes, for the sake of legal clarity.
Slovenia	Yes, the recast should include a hierarchical list of jurisdictional grounds. Such regulation may result to reducing of the problems related to *rush to the court* and *forum shopping*, but on the other hand could also lead to more jurisdictional predictability, security and could lower costs.
Spain	The answer to this question is linked to the answer of the question number 13. If it is defended that a recast of Brussels IIa Regulation should include choice of court agreements, it seems logical the inclusion of subsidiary forums that would be applicable in those instances where spouses do not reach an agreement or when that agreement is not formally valid. In fact, combining the acceptance of choice of court agreements with alternative grounds of jurisdiction could clearly diminish the effectiveness of the former: a potential applicant –usually the healthier and best informed spouse- could not be interested in reaching an agreement, since he/she knows that proceedings can be started in the Courts of the Member State of his/her choice. What should be the forums contained in a hierarchical list of jurisdictional grounds? Its configuration should clearly take into consideration, at least, two different factors. Firstly, how related instruments –mainly Regulation 4/2009 and Matrimonial Property Regimes Regulation- deal with the competent court in cases of lack on an agreement between the spouses. This issue is really relevant in order to allow the concentration of proceedings under the courts of the same Member State. Secondly, it would be desirable to design a list of jurisdictional grounds taking into account the content of Article 8 of Regulation Rome III in order to match forum and ius. As a result of that, it seems logical to include the courts of the Member state in whose territory the spouses are habitually resident at the time the courts is seized as the first ground of jurisdiction. Failing that, the competent courts could be that of the last habitual residence of the spouses, insofar as one of them still resides there at the time the court is seized. Thirdly, it could be included the courts of the Member State in whose territory the respondent is habitually resident at the time the court is seized. Finally, the last hierarchical forum could be the common nationality of the spouses at the time the court is seized.
Sweden	No.
UK	Arguably, yes, given the need for fuller 'guidance' on certain intra-jurisdictional matters. As Resolution have further argued, 'A hierarchy of jurisdictions would reduce the risk of a "rush to court" but would still provide much needed certainty. Coupled with this, the possibility of proceedings in two or more Member States in relation to the same family unit needs to be curtailed.'[276] As the High Court (England and Wales) recently suggested, Brussels IIa does not apply to certain issues which might well arise between the UK's different jurisdictions. [277] As such, recourse must instead be had to the 'heavily amended over time…very difficult to follow'[278] provisions of The Family Law Act 1986, for example when attempting to determine jurisdictional remit in the wake of family relocation within the UK.[279] A recent intra-territorial case perhaps illustrates most clearly the problems associated with the concept of habitual residence, and the potentially quite harmful impacts upon the best interests of vulnerable children, that might well occur if they become 'marooned legally.'[280] In *an English Local Authority v X,Y, and Z (English Care Proceedings – Scottish Child)* [2015],[281] the key issue was the continuing uncertainty surrounding the child's habitual residence. Although he had become the subject of care proceedings in England, he was regarded as having been still habitually resident in Scotland at the time those proceedings issued. With no proceedings yet issued in Scotland (the child had by then been placed in foster care in England), the Scottish local authority was not willing to instigate them, arguing that they by then lacked jurisdiction, and thus had no power to deal with the matter, given that the child was resident in England. As the Family Law Act 1986 applies only to private law proceedings, Jackson J looked to Brussels II Revised ('BIIA') for guidance,[282] finding, as Sibley observes, that 'nothing in BIIR helped either.'[283] Although the matter clearly concerned parental responsibility, the child was not habitually resident in England, thus ruling out the application of Article 8. [284] He did not completely lack habitual residence however, which had the effect of ruling out the application of Article 13.[285] Whilst Article 20 (protective measures) did apply here, it provided no mechanism for the transfer of live court proceedings. Article 15 does apply to requests for the

	transfer of proceedings however (in relation to substantive matters) between the jurisdictions of member states, but does not apply to cases heard *within* the territories of member states, such as those of the UK. The court did consider whether this provision might have covered the transferring of proceedings between territorial units, but ultimately concluded that the law in this area was 'well settled' and that Article 15 therefore provided only for transfers *between* member states. [286] The vulnerable child was therefore 'deprived of a judicial determination,'[287] compounding an already precarious situation. Significantly, Jackson J noted that the child was being placed at serious disadvantage that might well have 'lifelong consequences'[288] in terms of welfare. The English local authority contended that the child's right to fair hearing (under Art 6 of the European Convention) was likely to be breached, should the situation not resolve itself urgently.[289] The case clearly '…shines light on a lacuna in the law regarding children who are the subject of care proceedings in England or Wales but are habitually resident in another territorial unit of the United Kingdom.'[290] As Mundy argues, in such cases the relevant domestic statutory 'provisions are difficult and complicated and have not prevented conflicting decisions concerning the same child being made in different jurisdictions within the UK.' [291] Fiorini also observes: ' …if a coherent and effective European private international law is to emerge, Member States must take the necessary time to reflect on alternative routes and solutions [to the enhanced co-operation process] that would work for the whole of the EU.'[292]

Question 13: Should a recast include a choice of forum? Please explain why or why not. What is the prevailing view in legal literature in your jurisdiction on this matter?	
Austria	A choice of forum agreement has the advantage for the parties that they know in advance where they are required to take legal action in the dispute. However, in the case of a choice of forum agreement, there is always the risk that the party, which is better advised or legally more adept, tries to disadvantage the other by the choice of jurisdiction. The law to be applied depends on jurisdiction, if the law is not unified. Moreover, the procedures in the different Member States are different and vary in length. The costs of the proceedings and their reimbursement vary. The language of the case also depends on the state in which the proceedings are conducted. The removal of the place of trial from the place of residence will also play a role because of the costs and the troubles of the journey. Because of the risk that one party could override the other in the choice of forum agreement, a choice of forum agreement is also only very limited in insurance-, consumer- and labour matters. However, if Article 3 of the Brussels IIa- Regulation does not include a hierarchy of grounds of jurisdiction, it would be permissible to allow for a choice of forum agreement because the plaintiff would otherwise be unjustified preferred because he could choose between several jurisdictional grounds, but the defendant itself could not influence jurisdiction. In Austria, no one has so far dealt with this issue because - as already mentioned - national law does not provide for a choice of forum agreement relating the international jurisdiction.
Belgium	Legal doctrine regrets the lack of a 'choice of forum'-provision in the Brussels IIa Regulation. It is suggested to insert a provision allowing choice of forum, as it gives the parties additional control and helps to prevent rush to the court.[293] However, it remains unclear whether parties would actually make a choice of forum, if it were allowed. Article 55 Belgian PIL Code - in the meantime superseded by the Rome III Regulation - allowed spouses to make a choice of law in divorce matters. Research showed that only few spouses have used this possibility.[294]
Bulgaria	The national legal doctrine also shares the points of view that the existence of an alternative criteria regarding to the jurisdiction in Article 3.1 might cause the real problem of forum shopping.[295]
Croatia	Choice of forum for divorce matters would be a preferable solution. It would be in line with all of other EU private international law regulations, where choice of forum is accepted in wide range of family related and inheritance matters. Moreover, provisions of regulations on maintenance, succession and matrimonial property lean on jurisdiction established for divorce. Due to that fact, and for legal security, choice of forum for divorce should have been provided for. There is no legal writing in Croatia to that point.
Cyprus	- No guidance is provided by legal literature in Cyprus on this matter.
Czech Republic	This question is not relevant anymore, because the recast has been already submitted to the Council of the EU without the possibility to include the choice of forum in matrimonial matters. I regret, because all the Czech "stakeholders" supported the introduction of the prorogation in order to allow spouses to "manage" their future disputes with certain degree of predictability and to bring all aspects of dissolution of marriage before courts in one state (divorce, parental responsibility, maintenance, property settlement).
Estonia	Rather not, but there is no legal literature on this issue.

Finland	- No discussion concerning precisely this matter. In my opinion choice of forum should not be added to the regulation, as it also indirectly affects the choice-of-law. Rome III was blocked in Finland as we feared its impact on the applicability of Finnish (liberal) divorce law (according to the Marriage Act no actual ground is not needed to get a divorce). This solution would not jeopardize the proper functioning of the internal market or the adequate judicial protection of EU nationals and domiciliaries.
France	A recast should indeed include a ***limited*** choice of *forum* like in other European regulations related to family matters (eg, Maintenance Regulation). First, a choice of *forum* clause is a good remedy against "juridical insecurity" because one spouse cannot take the other by surprise by seizing an unexpected *forum*. Second, such a possibility would be consistent with other European instruments. Most conveniently, a choice of *forum* clause would allow the spouses to concentrate all the proceedings related to their divorce in front of the same court (to dissolve their marriage and to fix all the patrimonial and personal effects of the dissolution). Third, introducing a limited freedom to choose a *forum* would reduce the pernicious "rush to the court" trend. The prevailing view in the French legal literature is turning in favour of the possibility for the spouses to agree on a *forum* among a limited list of *fora*.
Germany	Yes. In order to give the parties the possibility to fix jurisdiction in advance. This would also allow the parties to harmonise forum and ius (Rome III).
Greece	Restricted choice of forum would be a welcome amendment in the context of a recast. The parties should be given the liberty to choose the forum, of which the substantive law is applicable pursuant to the provisions of the Regulations. The restrictions included in Rome III Regulation for choice of law by the interested parties should also be taken into consideration in such a case, given the close connection between the two Regulations. It should also be noted here that non-provision of a choice of forum possibility might eventually lead to imbalances and unfair results, given that choice of forum is also provided in the Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, as well as in the EU Regulation 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.
Hungary	It has not been discussed in the Hungarian legal literature. The modern trend promotes self-determination and marriage belongs primarily not into the public sphere but the private sphere of the concerned persons. Nevertheless, these arguments should be balanced with the sensitive character of the issue of divorce. What can be seen in Hungary is the deficit of enough consciousness on the part of the spouses or future spouses. The vulnerable party should be protected and it seems to be a challenge.
Ireland	A choice of forum in a recast would give a degree of certainty to the jurisdictional problems that have arisen elsewhere in other member states. The would be litigants would have knowledge which jurisdiction would determine the dispute. An agreement so entered into would have to have to anticipate divorce proceedings in the near future. This is a personal view and there is no opinion to be found in the literature.
Italy	See the answer to question 11.
Latvia	Yes. There should be consistency with other EU Regulations.
Lithuania	Currently legal literature of Lithuania follows the rule of *forum necessitates.* As noted earlier, Article 29 of the Code of Civil Procedure of the Republic of Lithuania determines common rule that a claim is brought to a court according to the defendant's place of residence. Article 30 of the Code of Civil Procedure stipulates that: - A claim against a defendant, whose place of residence is unknown, may be brought according to location of its property or his last known place of residence; - A claim for alimony award and affiliation may also be brought according to the plaintiff's place of residence. - A claim related to acting as a guardian or property administrator, may be brought also according to the residence place of a guardian, custodian or residence place

	or domicile of property administrator. The Civil Code of the Republic of Lithuania (Article 3.52.) also determines a rule that a mutual application of the spouses for divorce shall be presented to the district court according to residence place of one of the spouses. We do not see any necessity for a choice of forum in a recast, as it might cause forum shopping of the spouses.
Luxembourg	In my view, it would be advisable to introduce a choice of forum rule for matrimonial matters. Currently, respecting the will of the parties in matrimonial matters is quite wide: couples can choose the country of celebration of their marriage, they can agree to designate the law applicable to divorce and legal separation (Regulation 1259/2010, Rome III) and they may choose the law applicable to their matrimonial property regime and the court with jurisdiction to rule on matters of their matrimonial property regime (Council Regulation 2016/1103 on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes). Such a choice of forum would also contribute to mitigating the rush to court risk that Article 3 of the Brussels IIa Regulation entails. If political concerns would prevent a choice of forum rule from being introduced, a feasible solution may be to allow the use of such a choice of court agreement only to spouses falling under the *ratione personae* scope of the Brussels IIa Regulation, if the connecting factor used points to a country willing to accept choice of court agreements. Luxembourgish legal literature did not express any view on this issue.
Malta	If the parties agree yes. If not, then court is to decide whether it has jurisdiction or not.
The Netherlands	The traditional view of Netherlands private international law is that a choice of court in divorce proceedings is not possible. See SC 3 July 1995, ECLI:NL:HR:1995:ZC1786 on whether the lower court should have found that in divorce proceedings spouses had made a choice of court in favour of the courts in Surinam. The SC considered that such a finding would not have been possible, as a choice of court cannot be accepted in proceedings on matters that are not at the free disposition of parties. In June 2015 Members of Parliament requested the Netherlands Government to study the possibility to make marriage in the Netherlands a possibility for future spouses without habitual residence in the Netherlands and without Netherlands nationality. The idea was that this would enable spouses from abroad to enter into a same-sex marriage in the Netherlands, when such a marriage was impossible in their state of residence or nationality. A note drawn up by the ministers of Justice and of Foreign Affairs explained in April 2016 that the government would not pursue this suggestion. The government did support the underlying idea, the wish to promote emancipation of LGBTs, but thought the suggestion to make it possible for 'everyone on this world' to enter into a marriage in the Netherlands would not be an effective proposition in view of practical and legal obstacles. Amongst the legal obstacles, the government pointed out that under BIIa Netherlands courts would not have jurisdiction over a divorce between (same-sex) spouses without any link to the Netherlands. This would lead to the undesired situation that for such spouses a marriage entered into lawfully in the Netherlands could not be dissolved by divorce, when jurisdiction would only be available in states that do not recognize a same-sex marriage. See Tweede Kamer, 2015–2016, 34 102, nr. 11, p. 2. The government apparently did not see a role for forum necessitatis under those circumstances, cf. the answer to question 9. Leaving aside the desirability of making a marriage in the Netherlands possible for everyone in this world, as suggested by Members of Parliament, one could argue that a choice of court would solve problems for LGBTs who under the current legislation are able to enter into a same-sex marriage in the Netherlands when they are connected to the Netherlands (on the basis of residence or nationality). If such spouses later in life find themselves in a situation that under BIIa divorce jurisdiction is only available in EU states that do not allow divorce proceedings as the same-sex marriage is not recognized, a choice of court provision would provide access to a court in an EU state that does recognize the marriage (such as the Netherlands). Nevertheless, this will only be a half-way solution as long as the dissolution of the same-sex marriage is not recognized as such in the state(s) to which spouses have become linked later in the course of their marriage. From a more general perspective, it should be remarked that in view of the main choice of law rule that is applied in the Netherlands (divorces are governed by Netherlands law as the lex fori) and in view of the content of Netherlands substantive law, a choice for the Netherlands courts would be highly attractive to spouses who wish to dissolve their marriage. Netherlands substantive law allows a divorce once one of the spouses claims the marriages has broken down irretrievably. On the substantive law, see the information contained in a report drawn up in 2014 which was used as a working document for the 2015 Study on the assessment of Regulation (EC) No 2201/2003 and the policy options for its amendment (ISBN 978-92-79-45907-8): When the bill for Book 1 NL CC was discussed in Parliament in the 1960s, the government described the breaking down of the marriage as a situation in which cohabitation has become unbearable and the reestablishment of normal martial relation cannot be expected.[296] In line with the parliamentary debate, case law long accepts that, if the irretrievable breakdown is contested, the well-founded assertion by a spouse that he or she can no longer continue to live together with the other spouse, forces the court to

	conclude that the marriage must be dissolved. Reference can be made to a 1990s case in which the Supreme Court upheld a lower court's finding that the marriage had broken down irretrievably in view of the husband's statement that he had thought things through before petitioning for divorce and that he saw no further basis for continuing the marriage. In this case the wife had argued unsuccessfully that a psychosis prevented her husband from properly determining his intentions.[297] The same understanding of the law can be found in two recent opinions issued by Advocates-General with the Supreme Court.[298] In both proceedings one of the spouses asserted that the lower courts had erred in finding that the marriage had broken down irretrievably.[299] In application of Article 81 Act on Judicial Organization, the Supreme Court dismissed both appeals by reference to the opinion of the Advocate-General and without giving further reasoning. No investigation by the court is required if the assertion that the marriage has broken down is not contested by the other spouse.[300]
Poland	Forum shopping is predominantly criticized, therefore, approval of a solution involving the permission for choice of forum seems to be doubtful.
Portugal	Apart from the traditional and general rejection of *forum shopping* (Ferrer Correia, «Direito Internacional Privado – Alguns problemas", Coimbra, 1985, p. 112) one may say that there is no negative and specific perspective on including choice of forum in this matter. Nevertheless, the present solutions are well accepted by the main authors, such as Moura Ramos (Moura Ramos, *op. cit.*, p. 193). Although, this Author refers that some difficulties may emerge in cases of pluri-nationality, since Brussels IIa Regulation is silent on this matter posing the question how those cases should be handled in the moment of the application (idem), stressing in addition that CJEU has already decided on this matter (Case Laszlo Hadadi v Csilla Marta Mesko, judgment of 16 July 2009). Maria Helena Brito refers to the impossibility of a convention of forum, but does express opinion on the advantages of changing the rules (Maria Helena Brito, *op. cit.*, p. 325).
Romania	The Romanian literature has not taken a position on this point. It is believed that admitting a limited party autonomy in this field would favour the consensual solution as to the personal situation of spouses. Also, it will bring more certainty as to the competent court and will reduce the risks for a rush to the court. This autonomy would better sustain the resolution of disputes between the parties and a concentration of cases (as very often, in case of divorce, ancillary disputes will arise as to the maintenance or dissolution of the matrimonial regime – for which the European legislator has already allowed a limited party autonomy). Also, the parties are granted the freedom to choose the applicable law (art. 5, regulation 1215/2012) and a common choice for jurisdiction and applicable law would bring more simplicity and is to be encouraged. A limitation as to the foras that may be chosen would be nevertheless necessary, in order to ensure a proper connection with the spouses and to avoid any abusive practices (such as a fora chosen long before the beginning of the procedures or by parties of unequal bargain power or without proper legal counselling). This proper or substantial connection is deemed to exist with the state of the common habitual residence of the spouses, with the state of the common nationality of the parties… Also, a limitation of the efficacy (in time) of such agreements may appear as opportune – the need to ensure the protection of the weaker husband will, its well-informed consent, its access to justice, but also the need to properly cope with the state principle of indisponibility of rights in this field could be taken into account in order to admit the voluntary prorogation of jurisdiction only in cases in which this represent the *actual will* of both parties in the moment of the courts' seizure.
Slovakia	Yes, a recast should include a choice of forum. That would support the autonomy of subjects.
Slovenia	Autonomy is today very important in our everyday life. It presents the possibility to regulate relations in the way most appropriate to all parties. Therefore the autonomy would be surely very welcome in recast of Brussles IIa. The possibility of parties to make a choice of forum could support the parties – spouses to act more responsible, especially in cases when the children are present in divorce matter. We are aware that the choice of forum won't be appropriate in all cases (e.g. divorce resulted from domestic violence), but nevertheless the autonomy (maybe with some restrictions) should be introduced also in recast.
Spain	The inclusion of choice of court agreements was mainly under debate by the Spanish doctrine at the time of negotiation of the Proposal for a Council Regulation amending Regulation 2201/2003 in 2006. Many authors defended the convenience of including such agreements in the Regulation as a tool to reduce the rush to the court or forum shopping derived from the alternative grounds of jurisdiction of Article 3 Brussels IIa Regulation. Besides this, it was argued that these agreements could offer legal certainty to spouses by allowing them to foresee the competent court in matrimonial matters. However, the design and drafting of Article 3bis of that Proposal was considered incomplete and vague. The "second" attempt for amending Regulation Brussels IIa Regulation seems to re-open the debate. However, the current scenario is different, since many changes have taken place since 2006. To begin with, choice of court agreements in family and succession law have been included in recent Private International Law Regulations

	(Maintenance Regulation, Succession Regulation or Matrimonial Property Regimes Regulation), allowing spouses to choose the competent court under a certain number forums. Alongside this, party autonomy is now offered in the sector of applicable law under Rome III Regulation. The need of coordination between the aforementioned instruments and Brussels IIa Regulation, as well as the adaptation to new tendencies in the sector of international jurisdiction, seem to advise the possibility to choose the competent court. If finally the recast of Brussels IIa decides to include choice of court agreements, different aspects should be taken into consideration. Firstly, party autonomy in regards to the competent court has to achieve a proper balance between the principle of proximity and the possibility to allow the spouses to litigate in the Courts of any Member State. Secondly, the formal and temporary aspects of the agreements should be carefully drafted. Finally, it is important to note that choice of court agreements do not eliminate, per se, the risk of rush to the court of forum shopping; they would need to be accompanied by a hierarchical list of jurisdictional grounds in the absence of an agreement between the spouses. It is true, however, that the lack of unification of conflict of law rules in all Member States derived from the enhanced cooperation of Regulation Rome III would still be problematic, but at least, it will be the decision of both spouses to choose the court of a Member State participating in that Regulation or not.
Sweden	There is no particular Swedish view on this matter.
UK	As Fiorini has argued, '…it is not clear to what extent the introduction of harmonized choice of law rules is a suitable solution to difficulties linked to the jurisdictional framework established by the Brussels IIa Regulation. Further, mere identical rules on the applicable law may increase legal certainty only for spouses involved in relationships having links solely with participating States.' [301] Referring to the proposals in Rome III (which the UK and Ireland have 'opted out' of), it is clear that any new rules must not 'increase the complexity of the situation of spouses linked (by way of nationality or residence) to both participating and non-participating States.'[302] Legal uncertainty may prove especially problematic if separating or divorcing couples are permitted to opt for their preferred legal framework. [303] Similarly, The European Commission's aim of drafting a set of harmonised choice of law rules in matrimonial matters (via Rome III) 'has given rise to diverse, often critical, reactions…the proposal is substantially flawed.' By not addressing substantive issues and by refusing to review the jurisdictional framework for the new rules, the proposed European codification (on matrimonial causes) seems unlikely to offer solutions to the various problem, in terms of preserving current uncertainties, unpredictability, and the desire (or need) to rush to court).[304] The decision to opt out seems a 'missed opportunity'[305] to prevent incidences of 'forum shopping' within the EU. The Law Society (of England & Wales) has further suggested that '…divorce courts in multi-cultural Britain should be sophisticated enough to offer choice to its own citizens and people from other European countries.'[306] Similarly, '…neither an estoppel nor a jurisdiction agreement can displace the provisions of Article 19 of the Regulation.' [307] The recent decision by the Court of Appeal in *Peng v Chai* [2015][308] merits mention, given its focus on jurisdiction and *forum conveniens*. Here, the wife's failure to establish that a foreign court was not "so inappropriate" a forum as to be oppressive and vexatious was not the same as the foreign court finding itself to be the 'more appropriate' forum.[309] On whether having concurrent hearings in two jurisdictions amounted to an abuse of process, it was held that it was 'difficult to envisage a case, other than in cases of fraud, blatant disregard for due process or where similar proceedings are already well advanced in one jurisdiction, where an abuse of process argument to stay proceedings in another valid jurisdiction would succeed."[310] On the English court's discretion to stay domestic proceedings,[311] the husband's arguments had 'not come close to surmounting the high hurdle presented when attempting to challenge the exercise of judicial discretion.'[312] On the issue of estoppel, the wife was not estopped from lodging fresh proceedings in England by the Malaysian court's decision (i.e. that it was the *forum conveniens)*. The English High court had adhered to the 'balance of fairness and convenience' test of domestic law.[313] Moreover, the question of the wife's habitual residence had turned on close study of the facts,[314] and judicial refusal to entertain the husband's contention that her 'uncertain immigration status was a telling factor in the determination of habitual residence.'[315] Relevant factors had also included the English court's being 'better used to dealing with 'needs' in big-money cases.' As Allman notes, the case deals with matters of 'considerable international importance' and potentially might 'encourage potential petitioners to issue proceedings, notwithstanding material doubts in respect of the jurisdiction of the English court, in the hope that they may later be able to re-issue proceedings when their jurisdiction claim is stronger due to the events in the intervening period.' [316] As such, the case provides much in the way of 'opportunity to the English forum shopper: if at first you don't succeed (or your jurisdiction is not very strong), try again once the forum litigation is well advanced and then you are more likely to succeed.'[317] Walker too has recently described as 'a blatant misuse of the Regulation in the ultimate forum shopping exercise' where, in an 'attempt to defeat the provisions of the Maintenance Regulation…a civil partner raised an action in Scotland seeking a maintenance payment from herself in favour of her civil partner in an attempt to seise the Scottish courts first and prevent her civil partner from raising an action in England for maintenance and opening up the more generous doors of the English courts.'[318] De Boer has however argued in favour of spouses being allowed to choose any forum within the European Union, on the basis that 'one of the objectives of the European Commission …is the unification or harmonization of choice-of-law rules with regard to divorce. Once that mission has been accomplished, I cannot think

	of any reason why adult people would not be allowed to start divorce proceedings before the court of their choice in any EU member state, as long as the Regulation guarantees that courts in all member states will arrive at the same choice-of-law result, while another Regulation, Brussels II, guarantees the mutual recognition of their decrees.'[319] Similarly, if 'the harmonization of conflict-of-law rules is thought to be an effective means to prevent forum-shopping, there cannot possibly be any objection to allowing the spouses to choose any court within EU territory as long as either of them has some connection with one of the member states, not necessarily the forum state.'[320] As such, a list of eligible fora (rather than a reference to those outlined in Article 3) would be preferable: also, 'legal certainty demands that the time of the agreement rather than the time the court is actually seized determines the validity of the choice.' [321]

Question 14: Should a recast include a *forum necessitatis*? Please explain why or why not. What is the prevailing view in legal literature in your jurisdiction on this matter?	
Austria	A recast of the Brussels IIa- Regulation should - to harmonize the Brussels IIa-VO to the other Regulations - include a forum necessitatis. Art 6 and 7 should be deleted. In Austria, no one has so far dealt with this issue because - as already mentioned - national law does not provide a forum necessitatis in matrimonial matters.
Belgium	The absence of a *forum necessitatis* in the Brussels IIa Regulation does not pose any problems in Belgium, as Article 11 Belgian PIL Code provides for a general *forum necessitates* which can be applied if no other provision leads to jurisdiction. The Belgian courts have applied the Belgian *forum necessitates*-rule on several occasions (see above, question 9). Legal doctrine has not discussed the lack of *forum necessitatis* in the Regulation profoundly. However, as the *forum necessitatis* has shown its importance in Belgian case law, one could argue that it should be inserted in the Regulation.
Bulgaria	In my short research I could not find out a court practice where the BG court is exercised jurisdiction under forum necessitatis.
Croatia	*Forum necessitates* is a European way of enabling service of justice in situations that rarely occur, but do not fall under the regular jurisdictional grounds. Such ground is provided for in maintenance and successions regulations and its introduction to Brussels II bis recast would be in line with other EU regulations. Such ground of jurisdiction is preferable as situations that do not fall under default grounds of jurisdiction may occur; in those exceptional cases forum necessitates would ensure service of justice. As previously stated, Croatian literature to that point is scarce.[322]
Cyprus	No guidance is provided by legal literature in Cyprus on this matter.
Czech Republic	This question is not relevant anymore, because the recast has been already submitted to the Council of the EU without the possibility to include *forum necessitatis* being included. In my view almost all international family situations with at least some link to the EU-territory are already covered by Art. 3 or national rules applicable on the ground of Articles 7 and 14. Therefore, the *forum necessitatis* does not seem necessary. In the Czech Republic courts do not have usually problems to establish their jurisdiction in cases with "Czech element". Or, in such cases, jurisdiction of another EU-Member State might be granted under the Regulation.
Estonia	Yes. It would afford better protection.
Finland	No discussion concerning these issues. Forum non conveniens is rejected (as contra legem) in Finland.
France	Yes, a recast should include a *forum necessitatis*. On the first hand, inclusion of a *forum necessitatis* would guaranty access to jurisdiction and the right to divorce to same-sex marriages. On the second hand, in mixed nationality marriages, even though both spouses, or one spouse, have a Member State nationality, the couple that is habitually resident in a third State is deprived of a European *forum*, unless one spouse can meet the criteria set out in Article 3-1 (a) dash 5 or 6. A *forum necessitatis* would consequently allow them to bring their case in a Member State.
Germany	Yes. In order to follow the modern approach in the Maintenance and Succession Regulation as well as the Matrimonial Property Regulations.

Greece	This question should be read in combination with the rules defining the personal scope of the Regulation, particularly the jurisdictional rules providing for establishment of jurisdiction pursuant to national jurisdictional rules. A forum necessitatis may indeed be useful in cases that Member states may not establish jurisdiction neither under their national jurisdictional rules. It has been pointed out in doctrinal writings that such an option would be helpful especially for same-sex couples who find no competent court for them to be divorced.
Hungary	It has not been discussed in the Hungarian legal literature. It has to be remarked that the re-codification of the Hungarian Act on private international law (Law Decree 13 of 1979) is going on now and the concept of the new Act contains the introduction of forum necessitatis.
Ireland	The recast should not contain a forum necessitates as our courts are not familiar with such a concept and would struggle to interpret and apply such a concept. There is no opinion expressed in the literature on this. This is my opinion.
Italy	While in legal literature opinions vary, I think that a rule on forum necessitatis included in a recast of the Regulation would help ensuring uniformity in the legal systems of EU.
Latvia	Yes. There should be consistency with other EU Regulations.
Lithuania	A rule for *forum necessitatis* in a recast could help the courts of member states to avoid unnecessary disputes for setting applicable jurisdiction. However such rule should contain an exception for the courts to decide on applicable jurisdiction *ex officio*, in order to secure the best interests of a child. Please also see answer to Question No 13.
Luxembourg	There is no provision on *forum necessitatis* for matrimonial matters in the Luxembourgish legal system and there was no case (within the case-law reviewed) where a situation of lack of jurisdiction of any court was discussed. In my view, the heads of jurisdiction of Brussels IIa Regulation, complemented by the grounds of jurisdiction stated by the national laws cover all the situations linked to matrimonial matters in the European Union, making it very difficult for the situation of denial of justice to occur. For example, Article 234 of the Luxembourgish Civil Code grants jurisdiction to Luxembourgish courts when the domicile of the defendant is in Luxembourg, without requiring a minimum period of residence. There is no reference to this issue in Luxembourgish legal literature.
Malta	No as this would not allow the necessary flexibility to the courts
The Netherlands	See also the answers to questions 6, 7 and 13. Relaxation on the basis of Article 9(c) NL CCP, outside the scope of BIIa, has been advocated in legal writing by Ibili, Gewogen rechtsmacht in het IPR, 2007. In DC Noord-Holland (Haarlem), 6 April 2016, NIPR 2016, 269, discussed in answers 7 and 9, the wife referred to this doctoral thesis to support her arguments for application of Article 9 (c) NL CCP. The discussion by Ibili (op cit, p. 123 et seq.) is based on Strikwerda, the first author advocating the extension of the application of the rule of forum necessitatis of Article 9(c) NL CCP to proceedings brought by petition (divorce must always be requested by petition) in article that appeared in 2005. It should be noted that the need to relax the national jurisdiction rules (application of the provisions of BIIa as rules of residual jurisdiction even when the case is outside the scope of the regulation) has so far been considered in practice only when a divorce was dragging on in a court of a third state and the right to fair trial in that third state was jeopardy. It is doubtful whether such arguments can ever be probable or valid reasons for relaxing jurisdiction rules in cases that are only linked to EU member states and not to third states. The dissolution of same-sex marriages could in some cases be facilitated by relaxation of current jurisdiction rules of BIIa. There may however remain obstacles to the recognition of such a dissolution. A dissolution of a same-sex marriage, once obtained, can only be fully effective when within the EU recognition of the dissolution of a same-sex marriage is in principle accepted as such. There would be a situation not incomparable to that of 'limping marriages' (spouses in traditional marriages are divorced in one state and still considered

	married in another) when spouses in a same-sex marriage are considered divorced in one state and considered not to ever have validly married in another state.
Poland	If, despite the long list of grounds of jurisdiction, there would be concern about the creation of a negative conflict of jurisdiction, then introduction of such a regulation would be justified. Polish doctrine sees it as a subsidiary measure, and therefore its application shall be the last one – the final solution (see point 9).
Portugal	There is no specific reference in literature to the need of a *forum necessitates.* Nevertheless, the Portuguese legal is to include a *forum necessitates*, what makes that inclusion advised.
Romania	In the article 7 (residual jurisdiction), the regulation left to the national law the possibility to determine whether the courts of a particular member state have jurisdiction or not. Unfortunately, this may compromise the uniformity of solutions in the European area, since big differences exists among the level of jurisdictional protection given the by the member states to their nationals who have moved and live abroad. The Romanian doctrine has not taken position as to the appropriate solution to be followed on this point. In our opinion, a *forum necessitatis* provision in the recast regulation will avoid the remissions to the member states' private international laws (with the divergences that this may entail) and thus may be justified. Also, the existence of a European norm, carefully tailored and applicable only in limited circumstances (such as the European citizenship of one parties and the impossibility of litigation abroad) would simplify the solutions and will increase the legal certainty for the EU citizens living in third states.
Slovakia	In order to remedy, in particular, situations of denial of justice, a recast should provide for a forum necessitates. It could be on an exceptional basis for example jurisdiction based on forum necessitatis should, however, be exercised only if the case has a sufficient connection with the member state of the court seised. Slovak legal literature understand forum necessitatis as an access to a fair trial set out in Article 6-1, in accordance with the case-law of the European Court of Human Rights.
Slovenia	Slovenian qualitative scientific literature relating to the Brussels IIa is very modest. We could encounter few articles, but no commentaries. The judges are using foreign language commentaries, books and articles, mostly English and German. Slovenia also does not have a systematic regulation of databases of matters related to Brussels IIa (nether to other EU Regulations). Starting from Slovenian PILPA (article 70), a Slovenian court shall have also jurisdiction in divorce matters when the plaintiff is a Slovene citizen and the law of the country whose court would have jurisdiction does not provide for divorce. But on the other hand not every national regulation has such provision. Therefore, we support the proposal of including the *forum necessitatis* in Brusseles IIa Recast. The *forum necessitatis* would allow that a court to have the jurisdiction in a case in which the court of other Member State has jurisdiction, but the proceeding is impossible due specific circumstances (e.g. war). Such provision would also follow the right to a fair trial[323] and the right of the access to the court.
Spain	First of all, it is important to note that if the recast decides to include a *forum neccesitatis*, it should also have to include a subsidiary jurisdiction rule. Whereas the goal of the latter is to allow spouses to litigate in the Courts of a Member State connected with their circumstances, the application of the former takes places in situation of denial of justice, allowing a Court of a Member State with a sufficient connection, on an exceptional basis, to rule on an issue which is closely connected with a third State. Actually, according to new Private International Law Regulations, the application of a *forum neccessitatis* disposition depends on the lack of competence of any Member State according to other Articles of a Regulation –and also, given that the proceedings cannot be brought in a third State-, including the subsidiary jurisdiction rule. In other words, the subsidiary jurisdiction rule is hierarchically above the *forum necessitatis* disposition.
Sweden	A provision similar to, for example, Article 11 of the Succession Regulation might be useful in order to avoid the need of manipulations such as that mentioned in paragraph 9 *supra*.
UK	As Palmer has argued, English courts are perhaps likely to act as a 'forum of necessity' only in extreme situations involving for example warfare, significant lack of infrastructure 'or even barbarism in the alternative forum.'[324] That said, (at least in relation to commercial law matters) 'English courts do not require a connection to England

	whereas many civil law systems do.'[325] Human rights considerations may potentially also be relevant in determining whether or not the doctrine should be applied, although the recent discourse in *Re B* [2016] (on the issue of whether or not the appellant would have been given a 'fair hearing' in a foreign court, within a society which did not recognise – or perhaps even approve of - same-sex relationships) seems to suggest that such considerations may not necessarily carry considerable weight. As Lord Sumption's Dissent argued, whilst such a socio-legal backdrop may well be 'a source of legitimate concern to the English courts…it is not a basis on which they are entitled to claim jurisdiction.'[326] A recent CJEU case referred by the English High Court is also relevant here: [327] Mostyn J's queries included whether the French court's original divorce jurisdiction might have expired or lapse as a result of the applicant's inactivity, allowing the English court to assume jurisdcition. [328] The CJEU held that once proceedings have expired in the court first seised, only then might the second seised court assume jurisdiction. Arguably, circumstances such as these could perhaps merit *forum necessitatis*.

Question 15: Please explain which decisions – apart from judicial, and taking into account non-judicial or religious divorce decisions - fall under the scope of the recognition regime in your country, in particular in the perspective of the CJEU case C-281/15 (*Sahyouni v. Mamisch*)	
Austria	According to the case-law[329] of § 97 of the AußStrG[330], private divorces can be recognized if a court has contributed to the divorce of the marriage, albeit only by holding a conciliation procedure or by registering (certifying) divorce. Therefore, the unilateral repudiation of the wife by the husband according to Islamic law (talaq) falls under the concept of (recognizable) decision. However, recognition was refused for breach of the Austrian ordre public.[331] If, however, Austrian law is to be applied, a marriage can only be divorced by decision of a court, so that foreign private divorces are not effective. [332]
Belgium	The existing case law does not indicate such decisions falling under the scope of the Regulation. In this regard, reference could be made to a decision of the Court of First Instance of Mechelen that did not apply the Brussels IIa Regulation for the recognition of a Dutch 'flash divorce' ('flitsscheiding'). This type of divorce entails two steps: (1) the conversion from the marriage to a registered partnership; (2) the termination of the registered partnership. There is no involvement of a judge in this type of procedure. The court decided that the recognition of the authentic deed of the notary was not a question of recognition of a divorce, but a question of recognition of termination of a registered partnership. The judge therefore did not apply Brussels IIa.[333] This type of divorce is no longer possible in the Netherlands.[334]
Bulgaria	In my short research I could not find out a court practice where the national judge is influenced by the CJEU case C-281/15 (*Sahyouni v. Mamisch*).
Croatia	There is a possibility to seek for a marriage annulment before court system of the Catholic church, in accordance to Code of canon law (Zakonik kanonskog prava).[335] However, effects of that dissolution to civil area are dependent on the Treaty with the Holly Seat. It's a standard area of regulation among the Church and the State. In Croatian case, the Vatican treaty provides for a provision that "to ensuring civil effects to decisions of Canonic courts on marriage annulment and decision of supreme Church authority on dissolution of marriage, such decision would be delivered to relevant national civil court".[336] Though signature of further provisions for implementation of this part of the Contract were expected, it has never been signed.[337] Due to this lacuna canonic procedures may only be instituted only ones parties have obtained formal dissolution of marriage before civil courts.
Cyprus	Only judicial decisions have been recognised up to now in Cyprus.
Czech Republic	The prevailing Czech doctrine interprets the notion of "decision" for the purposes of recognition of foreign decisions on divorce as decision of a state´s authority (judicial or, where applicable, administrative) and excludes "private" decisions of religious bodies, unless they were given powers to divorce expressly by law. There is no evidence in the case law that "religious divorce" has been subject of recognition procedure.
Estonia	No information available.
Finland	-
France	There is no answer yet to this question in French case law, but most authors agree that Article 2 adopts an extensive meaning of the words "court" (2-1) and "decision" (2-4). By virtue of Article 2-1, all decisions of divorce, legal separation or marriage annulment fall under the scope of the recognition regime as long as the authority that pronounced

	the divorce, legal separation or marriage annulment is officially vested with jurisdiction in these matters. In other words, non-judicial divorce decisions fall under the scope of the recognition regime if the authority was given the power by the State to divorce the spouses. The same reasoning applies to religious decisions: if the religious authority pronouncing the divorce "has jurisdiction" in the Member State to do so, its decision will fall under the Brussels IIa recognition regime. According to Article 46, documents which have been drawn up or registered as authentic instruments and agreements between the parties fall under the same conditions as judgments for their recognition and enforcement in the other Member States – provided they are enforceable in the Member State where they were concluded. Accordingly, a purely private divorce would not fall under the regulation for its recognition because it is not "enforceable" and does not constitute a "decision".
Germany	Only decisions in the sense of the Regulation. Private divorces by declaration of the spouses are "recognised" if they are valid under the law applicable to divorce. However, following the first decision in Sahyouni there is much confusion and discussion, especially whether Rome III applies to private divorces in third states.
Greece	Under the scope of the recognition regime fall not only judicial decisions but also decisions of dissolution of marriage issued according to administrative proceedings. On the contrary religious or decisions of private nature are excluded from the scope of the regulation except for those that are recognised as equivalent to the decisions of judicial authorities.[338]
Hungary	The Hungarian Act on private international law (Law Decree 13 of 1979) contains regulations on the recognition of decision including divorce decisions. These are general rules. According to § 70(1) the decision of a foreign court or other authority in a case in which the Hungarian court or other authority has exclusive jurisdiction cannot be recognized in Hungary. According to § 70(2) the final foreign divorce decision concerning the marriage of a Hungarian national has to be recognized in spite of the exclusive jurisdiction of the Hungarian court if the former spouse being Hungarian national herself or himself claims for its recognition, providing there is no ground for refusing the recognition determined in § 72(2). According to § 71 the final decision of a foreign court or other authority in a case in which the jurisdiction of Hungarian court or other authority is excluded has to be recognized in Hungary excepted for the case if it is contrary to § 72(2)(a)-(b). What concerns § 72(2) the foreign decision cannot be recognized if it is contrary to the Hungarian public order; the party against whom the decision was made did not attend the proceeding either in person or by proxy because the subpoena, statement of claim, or other document on the basis of which the proceeding was initiated was not served at his domicile or residence properly or in a timely fashion in order to allow adequate time to prepare his defence; it was based on the findings of a procedure that seriously violates the basic principles of Hungarian law; the prerequisites for litigation for the same right from the same factual basis between the same parties in front of a Hungarian court or another Hungarian authority have materialized before the foreign proceeding was initiated (suspension of plea); a Hungarian court or another Hungarian authority has already resolved a case by definitive decision concerning the same right from the same factual basis between the same parties. In one published case of the Hungarian Curia (Kúria Pfv. II. 21.022/2013.) the defendant claimed for divorce in Cambodia but the applicant who had also Hungarian nationality referred before the Hungarian court to the fact that at the time when the proceeding started in Cambodia she had already lived in Hungary for two months. Although the divorce proceeding was going on in another third county the applicant referred to the exclusive jurisdiction of the Hungarian court.
Ireland	Only decisions of a court of another member state are capable of recognition by the Irish courts. Non judicial abd religious divorce decisions do not fall for recognition.
Italy	Agreements on separation, dissolution and cessation of the civil effects of marriage may be recognized by Italian courts, as well as agreements on their modifications. This applies also to the agreements reached in front of the civil status officer introduced by the art. 12 of the D.L. 12.09.2014. On the contrary, decisions denying the dissolution (or the annulment, or the personal separation) are excluded from the application of the Regulation. Decisions on the dissolution of unions are excluded too if the unions not fall into the traditional notion of marriage foreseen by the lex fori (but see also answer to question 16). Judgements based on religious matters not requiring recognition by the State are similarly excluded. The same applied to decisions about fault and responsibility that are relevant as for the amount of maintenance (they must follow the competence established for the principal petition).

Latvia	The provisions of Family Law Part of the Civil Law of the Republic of Latvia and Part „P" of the Notariate Law provide a complete list of situations when the marriage can be dissolved. General regulation on institute of marriage is stipulated by the Family Law Part of the Civil Law. In Latvia only the Court or the Notary is eligible to dissolve the marriage. The Court shall dissolve the marriage if the application of one or both spouses is received. The Notary shall dissolve the marriage only if the spouses have an agreement on divorce of the marriage and the spouses do not have a common minor child or common property; should the spouses have a common minor child or common property, the relevant agreement on child's custody, access rights, child support money or division of common property shall be provided in writing to the Notary. Only then the Notary is eligible to dissolve the marriage.
Lithuania	Only judicial decisions fall under the scope of the recognition regime in Lithuania. The Court of Appeals of Lithuania had to interpret and clarify definition of 'judgment' in one of its cases[339]. The court clarified that the only court judgements which positively create or alter interests of a claimant might be recognized. The court explained that a member state court's judgement which rejected claimant's request, does not create or alter claimant's interests, and such judgement shall not be object to recognition in jurisdiction of Lithuania with reference to provisions of Articles 21, 22 and 23.
Luxembourg	Within the decisions reviewed, there is only one case that falls under the requirements stated. It is a case where a Luxembourgish court recognised a Danish administrative decision on divorce. The Luxembourgish court checked the same requirements as if it was a judicial decision: the jurisdiction of the foreign authority, the adequacy of the process followed, the application of the appropriate law, the compliance with Luxembourgish public policy and that against which no further appeal lies under the law of that State[340] ('Tribunal d'arrondissement de Luxembourg', no. 78663, 12 July 2004).
Malta	-
The Netherlands	Netherlands private international law has a liberal regime for the recognition of a dissolution of a marriage obtained abroad. The national rules now found in Articles 10:57-10:59 NL CC are applied to the dissolution of a marriage that has been obtained in a third state, outside the territorial scope of BIIa. Article 10:57(1) NL CC provides that a dissolution of marriage (or legal separation) obtained abroad is recognized in the Netherlands if this has been granted by decree of court or another authority provided the court or other authority had jurisdiction. Article 10:57(2) NL CC further provides that a dissolution of a marriage (or legal separation) which does not meet one or more conditions of Article 10:57(2) is nevertheless recognised when it is apparent that the other party has accepted the dissolution during proceedings (expressly or implicitly) or has consented to the dissolution after proceedings. Article 10:58 NL CC recognizes the dissolution of a marriage that is effectuated by a unilateral declaration of one of the spouses, on the condition that (a) the dissolution meets formal requirements of the national law of the spouse who unilaterally dissolved the marriage, (b) the dissolution has legal effect in the state where the declaration was made, and (c) the other spouse has accepted or consented to the unilateral dissolution. Article 10:59 NL CC provides that irrespective Article 10:57 and 10:58 NL CC, a dissolution obtained abroad will not be recognised if recognition is manifestly contrary to public policy. Although recently codified in the Civil Code, the regime of Articles 10:57-10:59 NL CC goes back to 1981 legislation (the International Divorce Act, *Wet conflictenrecht echtscheiding*, now revoked). Application of this regime has posed few problems in case law. Case law on recognition demonstrates the willingness of the Dutch legal order to facilitate divorce (*favor divortii*). SC 12 December 2007, LJN: BB8076 held it was a finding of fact whether the other spouse had accepted or consented to a unilateral declaration by the husband in Egypt. Under the circumstances, the lower court had determined that such was not the case. In SC 13 July 2001, NIPR 2001, 242, the argument that a dissolution by unilateral declaration that had been declared by a husband of both Netherlands and Moroccan nationality in Morocco could not be recognised on the ground that Netherlands nationality was the effective nationality of the husband, was rejected by the Supreme Court. As spouses were both of Moroccan nationality, the dissolution had legal effect in Morocco and the wife had consented to the dissolution, the dissolution had to be recognized in the Netherlands on the basis of the predecessor of Article 10:58 NL CC. In SC 26 January 1996, NIPR 1996, 179 the French courts had rejected an application for divorce by the wife, who then brought a petition for divorce in the Netherlands. The husband unsuccessfully relied on recognition of the French decision refusing the divorce. The SC found, inter alia, that wife's petition was based on different grounds (based on Netherlands substantive law) than the application brought in France (based on French substantive divorce law). This meant that the husband was wrong in contending that the same claim was brought again in the Netherlands. The right of the wife to petition divorce on the basis of Netherlands substantive law could not be denied

	on the basis of the earlier rejection by the French courts.
Poland	The courts did not encounter noticeable difficulties in application rules concerning recognition of foreign decisions, at least absence of case law on them indicates it. Doctrinal comments concern several aspects of Article 22 application. The grounds of the finality/legitimacy of the decision, compliance with rules on jurisdiction and the application of substantive law are not mentioned there, consequently these circumstances cannot constitute grounds for non-recognition of judgments.[341] Only the finding that the effect of recognition would be a violation of the fundamental principles of the law to the extent that cannot be accepted in Poland, gives rise to the application of the public policy clause.[342] When the other party agrees explicitly with the judgment, the judgment should be recognized in spite of the deficiencies regarding the service of the document which instituted the proceedings – e.g. when a defendant who wants to enter into another marriage seeks the recognition of the judgment and submits a copy of the judgment to demonstrate the absence of obstacles to the conclusion of the new relationship.[343] Assessment of the sufficient time to prepare a defense depends on the nature of the case, namely the degree of difficulty, complexity of fact or legal issues. In this regard, the recognizing court explores this prerequisite and it is not bound by the findings made by the court of the state of origin of the judgment.[344] It is not possible to recognize a foreign judgment if the legal effect of this judgment and of a judgment given in the proceedings between the same parties in the state in which recognition is sought are mutually exclusive, regardless of whether the object of both proceedings was identical or different, and whether the domestic judgment was earlier or later than the foreign judgment. The question of a possible conflict of judgments in each case requires a detailed analysis on the basis of specific facts. The time sequence of issuing rulings does not matter on the basis of this provision.[345] While the decision of the court of another country, complying with conditions necessary for its recognition in the state in which recognition is sought must come from a date earlier than the other foreign judgment concerned.[346] CJEU case C-281/15 (*Sahyouni v. Mamisch*) does not contribute anything to the issue of recognition of judgements in the EU states, according to the Brussels IIa Regulation. It is applied only between member states and the issue of recognition of judgments given in a third country remains outside the scope of union law. Case C-281/15 (*Sahyouni v. Mamisch*) concerns a judgment delivered outside the EU and refers to the so-called private divorces. Admittedly Regulation No 1259/2010 (Rome III), which is also applied to the private divorces, does not apply in Poland and in the absence of EU regulation CCP is applied (see point 18).
Portugal	For the purposes of the special process of 'recognition of foreigner judicial decisions' (articles 978 to 985 of the Portuguese Civil Procedure Code - CPC), in accordance with article 978 no. 1 of the CPC, 'foreigner judicial decision' is a only the judicial decision, with the value of *res judicata*, falling on *private rights, hoc sensu* civil and commercial matters, no matter the nature or designation of the entity which have made it, including the decision made by foreigner arbitrators on the same matters.
Romania	The regulation is applied to any decision originated from member states' courts (understood as explained supra), regarding the annulment of marriage, the annulment in the form of the divorce, the divorce (irrespective of the form – contested or by consent, as a result of a conversion of a legal separation), the legal separation. Dissolution through declaration or death or absence are not covered, nor should be marriage annulment after death of one or both spouses[347]. Also, the regulation is not applicable to conversion of marriage into partnership or to the dissolution of partnerships (registered or not). The regulation shall not be applied to matrimonial decisions issued by religious authorities (such as mufti's in Greece or Jewish rabbinic courts which were not certified by state organs/authorities[348], nor to the private divorces (which is the case for Muslim repudiations). More specifically, as regards the Muslim repudiation (regardless where they have been made – in a Muslim country or in a consulate in the territory of a member state), the article 2601 of the Civil code states that the foreign act that records the unilateral will of the husband to dissolve the marriage (when the applicable law does not recognise an equal right to the wife) cannot be recognized in Romania, except when this act has been established in the full respect of the applicable law, the woman freely and unequivocally accepted this modality of dissolution of the marriage and there is no other ground to refuse the recognition of this act in Romania. Despite the ECJ's judgement in the case C-281/15, *Sahyouni v. Mamisch*, it is submitted that the applicable law to these private divorces should to be determined according to the choice of law rules from the Rome III regulation (1259/2010), at a subsequent level the recognition being made in the respect of *lex fori* (art. 2601 Civil Code).
Slovakia	Under the scope of the recognition regime regulated by Act on International Private Law and Rules of Procedure (No 97/1963 Coll), as amended (hereafter the 'International Private Law Act') don't fall private divorce pronounced by a religious court. The Slovak authorities would not recognise private divorce according to art 36 of the International Private Law Act (on ordre public, or *verejný poriadok* in Slovakian). Art 36 says: *a legal provision of another State must not be applied if the effects of such an application would be contrary to principles of the social and governmental system of the Slovak Republic and its legal system, which must be complied with without reservation.*

Slovenia	No data or cases available on this topic.
Spain	In respect of religious decisions, according to Article VI.2 of the Agreement between the Holy See and Spain on legal affairs of 3 January 1979, declarations of annulment and pontifical decisions concerning a valid but unconsummated marriage shall be considered valid under the civil law if they were declared in compliance with State Law by sentence of the competent Civil Court. Two main issues should be highlighted in this regard. First of all, this article is not referred exclusively to judgments ruled by Spanish Ecclesiastical Courts, so it can be interpreted that "foreign" Ecclesiastical judgments regarding the nullity or dissolution of non-consummated marriage can have civil effects in Spain as long as they were considered valid under the Spanish civil law. Precisely, the wording "under civil law" is the second main issue. In this regard, attention has to be paid to Article 80 of the Spanish Civil Code. This article states that Ecclesiastical judgments will have civil effects in Spain as long as they obtain the exequatur according to the Spanish recognition of foreign judgments rules. Please note that, despite the fact that Article 80 of the Spanish civil Code is still referred to Article 954 of the Civil Procedural Code of 1881, new recognition and enforcement of foreign decisions rules are applicable in Spain after the entry in force of Law 29/2015, of 30 July, on international judicial cooperation in civil matters. As to public the public document ruled by a notary when it is under his or her competence to divorce the spouses (see question 3), its recognition in other Member States seems to fall inside the scope of application of the Regulation. In other words, as long as they can be bound by international jurisdiction rules of the Regulation, it seems logical to extend the application of recognition rules of the Regulation to the deeds of divorce.
Sweden	To the extent Sweden recognizes foreign divorces, it makes no difference what kind of foreign authority (judicial, religious, administrative) was involved in the proceedings. The position of purely private marriage dissolutions is uncertain, but Swedish courts have equalled those Moslem repudiations, that require for their legal validity some kind of proper registration by the state, to divorces pronounced by an authority.
UK	-

Question 16: In general, have there been difficulties in applying Sections 1 and 2 of the Brussels IIa Regulation as far as the recognition of decisions in matrimonial matters is concerned?	
Austria	In general, there have been no difficulties in applying Sections 1 and 2 of the Brussels IIa- Regulation.
Belgium	The existing case law does not indicate any difficulties in applying these provisions.
Bulgaria	The recognition of decisions in matrimonial matters following the new rules in Art. 622 CPC. According to that provision "*the interested party may approach the district court exercising jurisdiction over the permanent address of the opposing party or over the registered office thereof or, where the said party does not have a permanent address or registered office within the territory of the Republic of Bulgaria, over the permanent address or registered office of the interested party, with an application for recognition of the judgment according to the procedure established by Article 623 herein. Where the interested party, either, does not have a permanent address or registered office within the territory of the Republic of Bulgaria, the Sofia City Court shall be approached with the application*"
Croatia	There are no reported or available non-reported cases to witness problems with recognition of decisions in matrimonial matters in Croatia. In most of available unreported case law a request for recognition of a divorce relates to a divorce decree issued before the Brussels II a entered into force in Croatia. As these requests fall out of the temporal scope of application such requests have been proceeded under the PIL Act conditions for recognition. There are examples of requests for issuing a certificate using the standard form set out in Annex I pursuant to Article 39. Croatian court reportedly denied this application because, under article 64, the Regulation is not applicable to judgments rendered before its entry into force. In these cases, divorce was commenced decades or years before its entry into force in Croatia.[349] There is an information that several Croatian judgements were denied recognition in other Member States due to the fact that at first instance procedure parties have consented to resolution of their status issues and divorce and they have given up their right to appeal. Such judgements have been misunderstood by other Member States recognizing authorities (mostly Italy) which have found such provision as infringement of a procedural right to appeal.[350]
Cyprus	No.
Czech Republic	No difficulties were observed. International Department for Civil Matters of the Ministry of Justice is, among others, the competent authority for issuing Apostilles under the Hague Apostille Convention for judicial documents which shall be used abroad. An Apostille is required quite often for certificates issued by the Czech courts under the Regulation. The most common "destinations" of these certificates are Italy, The Netherlands or Germany. This might lead to doubts, whether Art. 52 is fully respected by authorities in all MS.
Estonia	No information available
Finland	No.
France	As far as the recognition of decisions in matrimonial matters is concerned there have been no particular difficulties in applying Sections 1 and 2. France was already used to recognise foreign judgments in matrimonial and personal matters without any special procedure (*de plano recognition*). However, the question if decisions refusing to pronounce a divorce fall under the recognition regime of Brussels IIa regulation remains unanswered in the legal literature.
Germany	No. However, civil status officers report that there are often difficulties to get the forms certifying foreign divorces.

Greece	No problems have been observed in relation to the recognition of divorce decisions which is systematically granted. The only exception is when the necessary documents for the recognition are missing which leads to repeat the hearing.[351] Besides that Greek courts accept the automatic recognition of decisions.[352]
Hungary	There is no published decision.
Ireland	There have in general been no difficulties with the application of Sections 1 and 2 of Brussels IIa.
Italy	Yes, there have been many difficulties in the past, because, as written above (answer 7) the Italian legal system up to this year (2016) did not provide for any another form of union than marriage between a man and a woman. In the absence of the law, many decisions of Italian courts dealt with issues of recognition of same sex-marriages and civil unions of different kind because many petitioner tried to force the legal system to accept different kinds of unions. However, at last the new Law 20 May 2016, n. 76 introduced "civil unions" for same sex couples, and some rules on cohabitating couples of diverse or same sex. Art. 1 par. 28 of the Law delegates the Government to introduce a reform of the "private international law rules, in order to apply the discipline of the civil union to same sex couples who have contracted marriage abroad, or civil union or any other similar legal institution". It is of course too early to forecast how the courts will apply these new rules, which should anyway ease the recognition of foreign judgements in these matters.
Latvia	Not observed.
Lithuania	There have been no difficulties with application of Sections 1 and 2 of the Brussels IIa Regulation in jurisdiction of Lithuania yet.
Luxembourg	In general Luxembourgish courts did not mention any difficulties in applying Sections 1 and 2 of the Brussels IIa Regulation ('Tribunal d'arrondissement de Luxembourg', no. 104237, 5 June 2007). However, there are some cases where the recognition of judgements from other Member States on divorce was given right away, without even referring to its conformity with the grounds of non-recognition ('Tribunal d'arrondissement de Luxembourg', no. 104237, 8 January 2008; 'Tribunal d'arrondissement de Luxembourg', no. 97323, 29 January 2009). In another case where only the recognition of a Portuguese judgment on divorce was discussed, the court declared itself incompetent on the basis of Article 29, as if the Portuguese judgment needed to be declared enforceable. In that judgment there was no ruling on parental responsibility ('Tribunal d'arrondissement de Luxembourg', no. 152890, 23 September 2015).
Malta	No
The Netherlands	The recognition of divorce decrees from other EU member states appears to be unproblematic and is not the topic of reported case law. To the extent reported case law applies BIIa and also deals with the recognition of divorce decrees, the issue of recognition is only addressed in respect of divorce decrees from third states. E.g. a spouse commences divorce proceedings in the Netherlands, jurisdiction is based on BIIa and the other spouse asserts that the marriage has already been dissolved in a third state, e.g. by unilateral declaration. A court then has to decide whether such a dissolution meets the requirements of Articles 10:57 or 10:58 NL CC.
Poland	The courts did not encounter noticeable difficulties in application rules of Section 1 and 2, concerning recognition of foreign decisions, at least absence of case law on them indicates it.
Portugal	There is no evidence of any difficulty.

Romania	In the first years after the Romania's adhesion to the EU, the inferior courts had difficulties to leave unapplied the provisions in the pertinent Romanian legislation (still in force). Unfortunately, even now some courts still mention, in parallel with the Regulation, the conditions for recognition (art. 1094, 1095) and the grounds for non-recognition (art. 1096) stipulated by the Civil procedure code[353].
Slovakia	No, there haven't been difficulties in applying Sections 1 and 2 of the Brussels IIa.
Slovenia	No.
Spain	No special difficulties have been detected.
Sweden	No difficulties so far.
UK	-

Question 17: If there were cases in which the recognition of judgments was refused in your jurisdiction, which grounds were mainly relied upon to refuse the recognition in matrimonial cases? Please explain.	
Austria	Unfortunately, there are no published decisions refusing recognition in the light of the Brussels IIa Regulation. According to Mrs Mag. Thau, there should have been cases in which recognition was refused because of violation of the right to be heard or because of violation of the ordre public.
Belgium	There is no case law available where the recognition was refused.
Bulgaria	The national court practice applies the recognition of judgments that were pronounced in another MS, in particular the judgment related to the parental responsibility.[354] Moreover, based on that ground the court has accepted inadmissibility of the legal procedure that was pending in front of him.
Croatia	There are no available reported or un-reported judgements that recognition would have been refused. There are several cases of recognition that are available, but they relate to a divorce decree rendered before the date of application of the Regulation. Therefore, those judgements were recognized pursuant to Croatian PIL Act procedure and grounds.[355]
Cyprus	We do not have cases of refusal of recognition in our limited case law.
Czech Republic	No case law.
Estonia	No information available.
Finland	-
France	The cases in which the recognition of (EU member States) judgments was refused in France are so seldom (if not inexistent) that there is no specific ground which was mainly (if ever) relied upon to refuse recognition in matrimonial cases.
Germany	No. I am not aware of such a case.
Greece	In the majority of the cases the Courts adopt a liberal approach in relation to the recognition of decisions. Thus, the lack of motivation can only be considered as contrary to public policy when it conceals that one of the parties did not have an opportunity of a fair trial.[356]
Hungary	There is no published decision.
Ireland	There are no reported decisions in which a court has refused to recognize a judgement of another member state court. Were a court to do so it would be in accordance with Article 22.
Italy	Recognition of marriages of persons of the same sex, and civil partnerships in general were refused (with some remarkable exceptions in recent times) because the Italian legal order did not foresee these legal institutions. Same sex marriage was qualified as against the public order. As written in answer 14, these precedents should now be considered obsolete.

Latvia	Not observed.
Lithuania	- A court's decision awarded in Netherlands was refused to be recognized by the Court of Appeals of Lithuania according to provisions of part C and D, Article 23. The evidences were provided to the Court of Appeals of Lithuania that a parent received information about court's proceedings in Netherlands on the 7th of December, 2012. No additional information was provided except for the date of a hearing on the 10th of December, 2012. A parent sent a message to court by fax on the 10th of December, 2012, before the time of hearing, requesting to appoint another date for court's hearing as she could not participate on the noted date. The court did not solve the request of a parent and made a final decision on the 10th of December, 2012. The Court of Appeals of Lithuania ruled that legal background for refusal of recognition, determined in provisions of parts C and D, Article 23, are applicable and refused to recognize a decision of Netherlands' court[357]. - A foreign court's decision awarded in Italy was refused to be recognized by the Court of Appeals of Lithuania according to provisions of parts A, C and D Article 23. The evidences were provided that a parent could not participate in a court's hearing, because she left the country of Italy before she was informed about the courts hearing, and could not participate. The Court of Appeals of Lithuania also judged that there is enough data to confirm that a child's residence place with a mother is in best interests of a child, and refused to recognize a decision where a child's residence place is determined with a father[358].
Luxembourg	Among the judgments reviewed, there was no case where a judgment on matrimonial matters issued by an EU-court was refused.
Malta	-
The Netherlands	Cases only concern the application of the Netherlands private international law provisions of Articles 10:57-10:59 NL CC. When the recognition of a dissolution stemming from a third state is debated, the issues that need to be resolved appear to be either whether the other spouse was aware of the institution of the foreign proceedings or whether the other spouse has accepted or consented to the foreign marriage dissolution. There was no reported case in which the recognition of a divorce or other dissolution of a marriage of another EU member state under BIIa was in dispute.
Poland	There were no such cases.
Portugal	There is no evidence of those cases.
Romania	The principle of the recognition is fully illustrated by a significant number of cases[359]. The discussions on (refusal of) recognition appeared mostly in relation with the default judgements. For example, in 2012, Bacău County court[360], confirmed by Bacău Court of Appeal[361], denied recognition to a Spanish judgement of divorce given by default (art. 22b). Also, in 2015, Brăila County Court[362] denied recognition of a divorce judgement delivered by a French court, because the claimant did not produce the certificate mentioned at article 39 of the regulation and a certified copy of the foreign judgement. Also, the Brasov County Court discuss the incidence of art. 22.b) of the regulation in relation with a judgement pronounced by default in Germany[363]. The court granted the recognition since the claimant was the party in default of appearance in the divorce proceedings; his request was considered *per se* a non-equivocal acceptance of that default judgement. The significance of the documents mentioned in article 37 al. 2 let. a., b. (the proofs for a proper service and of clear acceptance of the default judgement) was also discussed; since these documents are designed to safeguard the procedural rights of the defaulting party, when this is the one seeking for recognition, the court decided to dispense him with their production. A possible discussion may occur with regard to the possibility of using art. 22 lit. a) (public policy exception) as a ground for refusing the recognition of a divorce judgement in a same-sex marriage. Even if the marriage concerned was not recognized in Romania, article 22.a should not be utilised in our opinion as a ground for refusing the recognition of this judgement, since it is not establishing a status incompatible with the fundamental values of Romanian law.
Slovakia	-

Slovenia	No.
Spain	No cases have been found in which the Spanish Courts have refused the recognition of a judgment dealing with matrimonial matters. Consulted cases were outside the scope of application of the Regulation (material, temporal or geographical). In this particular issue, not denying the recognition of a judgment but allowing it, the case number 232/2012 of 2 May (Provincial Court of Zaragoza), confirmed that "…it is not enough to plead the involuntary non-appearance in order to exclude the enforcement of a judgment…the Regulation demands that respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defense".
Sweden	There is no published case law pertaining to Brussels IIa.
UK	-

Question 18: To what extend the grounds for refusing the recognition of judgments of non-EU Member States in matrimonial cases provided in you national law differ from the grounds under Article 22 of the Brussels IIa Regulation?	
Austria	The grounds for refusal of § 97 (2) no 1 - 3 of the AußStrG[364] correspond to those of Article 22 of the Brussels IIa Regulation. Furthermore, recognition can be refused in accordance with § 97 (2) no 4 of the AußStrG[365], if the recognizing authority was not internationally competent when applying Austrian law (ie § 76 (2) of the JN or § 114a (4) of the JN[366]). Example: An Austrian woman has divorced her Serbian husband in Serbia (disputed). [367] Since it is a (disputed)[368] divorce, § 76 (2) of the JN[369] must be applied as a mirror image. Pursuant to Section 76 (2) no. 1 of the JN[370], Austrian courts are internationally competent if one of the spouses has Austrian citizenship. That is to say, Serbian courts are internationally competent if one of the spouses has Serbian citizenship if the application of Section 76 (2) no 1 JN[371] is applied as a mirror. Since the husband has Serbian citizenship, the Serbian courts would have been competent under Austrian law. There is, therefore, no ground for refusal under section 97 (2) no 4 of the AußStrG.[372]
Belgium	The grounds for refusal of recognition of judicial decisions or authentic instruments from non-EU States or Denmark can be found in the Belgian PIL Code. A different recognition regime is applied for foreign judicial decisions (Articles 22 and 25 of the PIL Code) and for foreign authentic instruments (Article 27 of the Belgian PIL Code). Depending on the foreign document, also different grounds of refusal apply. In general we can say that there are more grounds of refusal in the Belgian PIL Code than provided in the Brussels IIa Regulation. For the recognition of judicial decisions the grounds of refusal are to be found in Article 25, § 1 of the Belgian PIL Code. They are the following: 1° the result of the recognition or enforceability would be manifestly incompatible with public policy; upon determining the incompatibility with the public policy special consideration is given to the extent in which the situation is connected to the Belgian legal order and the seriousness of the consequences, which will be caused thereby. This ground of refusal is the same as under Brussels IIa, but it is specifically mentioned that there should be a connection to the Belgian legal order and the violation of public policy lays in the seriousness of the consequences of recognition. 2° the rights of the defense were violated; This ground of refusal is more broadly expressed than Article 22(b) Brussels IIa. 3° in a matter in which parties cannot freely dispose of their rights, the judgment is only obtained to evade the application of the law designated by the present statute; This ground is not specifically provided for in Brussels IIa. 4° according to the law of the State where the judgment was rendered and without prejudice to Article 23, §4, the judgment would still be subject to an ordinary recourse in the said State; This ground is not specifically provided for in Brussels IIa. 5° the judgment is irreconcilable with a Belgian judgment or an earlier foreign judgment that is amenable to recognition in Belgium; This corresponds to Articles 22(c) and (d) Brussels IIa, although it is not specifically stated in the Belgian law that it has to be between the same parties. 6° the claim was brought abroad after a claim which is still pending between the same parties and with the same cause of action was brought in Belgium; 7° the Belgian courts had exclusive jurisdiction to hear the claim; 8° the jurisdiction of the foreign court was based exclusively on the presence of the defendant or the assets located in the state of such court, but without any direct relation with the dispute; or; 9° the recognition or enforceability would be contrary to the grounds for refusal provided for in Articles 39, 57, 72, 95, 115 and 121. These grounds differ from the ones under Brussels IIa. Article 25, § 2 determines that under no circumstances the foreign judgment will be reviewed on the merits. Such review on the merits is both for judicial decisions as for authentic instruments not possible under Brussels IIa (Articles 24-26 and Article 46 Brussels IIa).

	For the recognition of authentic instruments through Article 27 of the Belgian PIL Code the following grounds of refusal apply: - If the validity is not established in accordance with the law applicable by virtue of the present statute. Through this provision it is necessary to look to the applicable law according to the Belgian PIL Code (‘*contrôle de la loi applicable*’) and assess if the result obtained in the authentic instruments corresponds to the result that would be obtained by applying that law. In this respect the Belgian recognition regime for authentic instruments has a review of the substance of the foreign act, unlike the Brussels IIa regime (Articles 24-26 and Article 46 Brussels IIa). - A manifest violation of public policy (refers to Article 21 of the Belgian PIL Code) - Evasion of law (refers to Article 18 of the Belgian PIL Code). Besides the public policy exception, these grounds for refusal are different from the ones provided for in Brussels IIa. Special notice should be given here to Article 57 of the Belgian PIL Code that has specific refusal grounds for the recognition of repudiations. When only the husband has the right to repudiation and the dissolution of the marriage happened unilateral, there is a presumption that this form of divorce cannot be recognised in Belgium (Article 57, § 1). Recognition is only possible when the following criteria are met (Article 57, § 2): 1° the deed has been approved and sanctioned by a judge in the State of origin, 2° at the time of the court approval neither of the spouses had the nationality of a State of which the law does not know this manner of marriage dissolution; 3° at the time of the court approval neither of the spouses had their habitual residence in a State of which the law does not know this manner of dissolution; 4° the wife has accepted the dissolution in an unambiguous manner and without coercion 5° none of the grounds of refusal provided for in Article 25 (= general recognition rules) prohibits the recognition.
Bulgaria	In my short research I could not find out a court practice where the national judicial practice has refused the recognition of judgments of non-EU Member States in matrimonial cases which differ from the grounds under Article 22 of the Brussels IIa Regulation.
Croatia	There are additional grounds for refusing recognition of judgements in Croatian national PIL law. Judgement has to be final, with certificate to that regards. (Article 87). Reciprocity is retained as a ground of jurisdiction (Article 92). Further ground relates to substantive law applied in foreign procedure. Namely, if the Croatian substantive law should have been applied pursuant to Croatian PIL Act on deciding upon the personal status of a Croatian citizen, a foreign judgment shall be recognized even if a foreign law was applied, but the outcome of the judgment does not substantially depart from the Croatian law applicable to such a relation (Article 93). Lastly, if a foreign judgment concerns the personal status of foreigners who are not citizen of the state that has rendered a decision, the judgment shall be recognized only if it meets the conditions for recognition in the country whose citizens that persons is (Article 95).
Cyprus	-
Czech Republic	First of all, the recognition has to be declared in a special proceeding before the Supreme Court if one of the spouses was national of the Czech Republic at the time when the judgment was given (§ 51 PIL Act), unless an international treaty (bilateral or multilateral) provides otherwise. The test of conditions for recognition includes also 1. merits test – the Supreme Court has to prove whether the findings of facts in the divorce proceeding, would be, in principle, in accordance with the Czech legal order (Art. 51 para 3 PIL), 2. test of international jurisdiction of the court of origin and 3. test of accordance with the public policy (Art. 15 PIL). The mere fact, that the applicable foreign law allows for divorce or declaration of the marriage as null and void or non-existing for a reason which would not lead to such consequence under the Czech law, might not necessarily lead to non-recognition on the basis of the public order clause (Opinion of the Supreme Court No R 27/1991).
Estonia	According to § 620 lg 1 (Code of Civil Procedure) a court decision in a civil matter made by a foreign state is subject to recognition in the Republic of Estonia, except in the case where: 1) recognition of the decision would be clearly contrary to the essential principles of Estonian law (public order) and, above all, the fundamental rights and freedoms of persons; 2) the defendant or other debtor was unable to reasonably defend the rights thereof and, above all, if the summons or other document initiating the proceeding was not served on time and in the requisite manner, unless such person had a reasonable opportunity to contest the decision and the person failed to do so within the prescribed term;

	3) the decision is in conflict with an earlier decision made in Estonia in the same matter between the same parties or if an action between the same parties has been filed with an Estonian court; 4) the decision is in conflict with a decision of a foreign court in the same matter between the same parties which has been earlier recognised or enforced in Estonia; 5) the decision is in conflict with a decision made in a foreign state in the same matter between the same parties which has not been recognised in Estonia, provided that the earlier court decision of the foreign state is subject to recognition or enforcement in Estonia; 6) the court which made the decision could not make the decision in compliance with the provisions of Estonian law regulating international jurisdiction. There are no specific rules for matrimonial matters.
Finland	Section 121 of the Marriage Act states: 1. (1) Where a marriage has been cancelled or the spouses ordered to be separated or divorced by way of a judgment from a foreign state, the judgment shall be deemed valid in Finland without any specific validation: 1. (1) if, at the time of the judgment, both spouses were citizens of the state whose authority issued the judgment; or 2. (2) if the judgment pertains to spouses neither of whom was a Finnish citizen at the time of the judgment, and one or both of them are citizens of a state other than that whose authority issued the judgment, and the judgment is deemed valid in both spouses' home countries. 2. (2) A judgment issued by the authority of a foreign state, as referred to in paragraph (1), shall be valid in Finland only if specifically validated, if it concerns: 1. (1) spouses at least one of whom was a Finnish citizen at the time of the judgment; or 2. (2) spouses referred to in subparagraph (1)(2), where the judgment does not meet the criteria laid down in that subparagraph. Section 122 (1226/2001) A judgment referred to in section 121(2) may be validated here, if either spouse, in view of his or her citizenship or domicile, has such a link to the foreign state in question that the authorities of that state can be deemed to have had adequate grounds of being seised of the matter, and if the judgment is not in essential conflict with Finnish public policy (ordre public).
France	Some differences remain between the two recognition regimes, although they have diminished over time. The grounds for refusing the recognition of judgments of non-EU Member States provided in French national law are more numerous: they include review of the jurisdiction of the courts of the State of origin and review that the foreign courts were not fraudulently seized. Even though procedural grounds for refusing jurisdiction are not detailed in French national law (e.g., default of appearance, irreconcilability of judgments) the public policy ground is wide enough to include them. The review of applicable law was suppressed in French national law in 2007.
Germany	In third country cases, the jurisdiction of the foreign court is examined. Furthermore, German law requires a formal recognition procedure of divorce decisions from third states. There is no recognition ex lege. The relevant provisions can be found in Sec. 107 to 109 of the German Act on Family and Non-Contentious Proceedings: § 107 Anerkennung ausländischer Entscheidungen in Ehesachen (1) Entscheidungen, durch die im Ausland eine Ehe für nichtig erklärt, aufgehoben, dem Ehebande nach oder unter Aufrechterhaltung des Ehebandes geschieden oder durch die das Bestehen oder Nichtbestehen einer Ehe zwischen den Beteiligten festgestellt worden ist, werden nur anerkannt, wenn die Landesjustizverwaltung festgestellt hat, dass die Voraussetzungen für die Anerkennung vorliegen. Hat ein Gericht oder eine Behörde des Staates entschieden, dem beide Ehegatten zur Zeit der Entscheidung angehört haben, hängt die Anerkennung nicht von einer Feststellung der Landesjustizverwaltung ab. (2) Zuständig ist die Justizverwaltung des Landes, in dem ein Ehegatte seinen gewöhnlichen Aufenthalt hat. Hat keiner der Ehegatten seinen gewöhnlichen Aufenthalt im Inland, ist die Justizverwaltung des Landes zuständig, in dem eine neue Ehe geschlossen oder eine Lebenspartnerschaft begründet werden soll; die Landesjustizverwaltung kann den Nachweis verlangen, dass die Eheschließung oder die Begründung der Lebenspartnerschaft angemeldet ist. Wenn eine andere Zuständigkeit nicht gegeben ist, ist die Justizverwaltung des Landes Berlin zuständig. (3) Die Landesregierungen können die den Landesjustizverwaltungen nach dieser Vorschrift zustehenden Befugnisse durch Rechtsverordnung auf einen oder mehrere Präsidenten der Oberlandesgerichte übertragen. Die Landesregierungen können die Ermächtigung nach Satz 1 durch Rechtsverordnung auf die Landesjustizverwaltungen übertragen. (4) Die Entscheidung ergeht auf Antrag. Den Antrag kann stellen, wer ein rechtliches Interesse an der Anerkennung glaubhaft macht. (5) Lehnt die Landesjustizverwaltung den Antrag ab, kann der Antragsteller beim Oberlandesgericht die Entscheidung beantragen.

	(6) Stellt die Landesjustizverwaltung fest, dass die Voraussetzungen für die Anerkennung vorliegen, kann ein Ehegatte, der den Antrag nicht gestellt hat, beim Oberlandesgericht die Entscheidung beantragen. Die Entscheidung der Landesjustizverwaltung wird mit der Bekanntgabe an den Antragsteller wirksam. Die Landesjustizverwaltung kann jedoch in ihrer Entscheidung bestimmen, dass die Entscheidung erst nach Ablauf einer von ihr bestimmten Frist wirksam wird. (7) Zuständig ist ein Zivilsenat des Oberlandesgerichts, in dessen Bezirk die Landesjustizverwaltung ihren Sitz hat. Der Antrag auf gerichtliche Entscheidung hat keine aufschiebende Wirkung. Für das Verfahren gelten die Abschnitte 4 und 5 sowie § 14 Abs. 1 und 2 und § 48 Abs. 2 entsprechend. (8) Die vorstehenden Vorschriften sind entsprechend anzuwenden, wenn die Feststellung begehrt wird, dass die Voraussetzungen für die Anerkennung einer Entscheidung nicht vorliegen. (9) Die Feststellung, dass die Voraussetzungen für die Anerkennung vorliegen oder nicht vorliegen, ist für Gerichte und Verwaltungsbehörden bindend. (10) War am 1. November 1941 in einem deutschen Familienbuch (Heiratsregister) auf Grund einer ausländischen Entscheidung die Nichtigerklärung, Aufhebung, Scheidung oder Trennung oder das Bestehen oder Nichtbestehen einer Ehe vermerkt, steht der Vermerk einer Anerkennung nach dieser Vorschrift gleich. § 108 Anerkennung anderer ausländischer Entscheidungen (1) Abgesehen von Entscheidungen in Ehesachen werden ausländische Entscheidungen anerkannt, ohne dass es hierfür eines besonderen Verfahrens bedarf. (2) Beteiligte, die ein rechtliches Interesse haben, können eine Entscheidung über die Anerkennung oder Nichtanerkennung einer ausländischen Entscheidung nicht vermögensrechtlichen Inhalts beantragen. § 107 Abs. 9 gilt entsprechend. Für die Anerkennung oder Nichtanerkennung einer Annahme als Kind gelten jedoch die §§ 2, 4 und 5 des Adoptionswirkungsgesetzes, wenn der Angenommene zur Zeit der Annahme das 18. Lebensjahr nicht vollendet hatte. […] § 109 Anerkennungshindernisse (1) Die Anerkennung einer ausländischen Entscheidung ist ausgeschlossen, 1. wenn die Gerichte des anderen Staates nach deutschem Recht nicht zuständig sind; 2. wenn einem Beteiligten, der sich zur Hauptsache nicht geäußert hat und sich hierauf beruft, das verfahrenseinleitende Dokument nicht ordnungsgemäß oder nicht so rechtzeitig mitgeteilt worden ist, dass er seine Rechte wahrnehmen konnte; 3. wenn die Entscheidung mit einer hier erlassenen oder anzuerkennenden früheren ausländischen Entscheidung oder wenn das ihr zugrunde liegende Verfahren mit einem früher hier rechtshängig gewordenen Verfahren unvereinbar ist; 4. wenn die Anerkennung der Entscheidung zu einem Ergebnis führt, das mit wesentlichen Grundsätzen des deutschen Rechts offensichtlich unvereinbar ist, insbesondere wenn die Anerkennung mit den Grundrechten unvereinbar ist. (2) Der Anerkennung einer ausländischen Entscheidung in einer Ehesache steht § 98 Abs. 1 Nr. 4 nicht entgegen, wenn ein Ehegatte seinen gewöhnlichen Aufenthalt in dem Staat hatte, dessen Gerichte entschieden haben. Wird eine ausländische Entscheidung in einer Ehesache von den Staaten anerkannt, denen die Ehegatten angehören, steht § 98 der Anerkennung der Entscheidung nicht entgegen. (3) § 103 steht der Anerkennung einer ausländischen Entscheidung in einer Lebenspartnerschaftssache nicht entgegen, wenn der Register führende Staat die Entscheidung anerkennt. […] (5) Eine Überprüfung der Gesetzmäßigkeit der ausländischen Entscheidung findet nicht statt.
Greece	The same conditions of article 22 are included in the article of recognition and enforcement in Greek code of civil procedure. Additionally, the Court that issued the decision should according to Greek law have had jurisdiction to hear the case, according to Greek law. Furthermore the judgment to be recognised should be final and considered as res judicata in the state of issuance.
Hungary	They resemble each other quite much.
Ireland	An Irish court will refuse to recognize a foreign judgement where it was obtained by one or both of the parties perpetrating a fraud on the foreign court. If one of the parties to the foreign judgement participated under duress, the judgement obtained would not be recognized. If recognition would amount to a denial of justice for one of the parties.
Italy	Grounds for refusing recognition from non-EU Member States do not differ in a substantial way. Art. 22 applies too.

Latvia	In Latvia there are several other instruments in force which are dealing with the same matters as Brussels IIa Regulation – the Hague 1996 Convention; bilateral agreements on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters with – the Russian Federation, Ukraine, Belarus, Moldova, Kyrgyzstan, Uzbekistan, Poland, Lithuania, Estonia. Brussels IIa Regulation prevails the Hague 1996 Convention between the EU Member States. As regards bilateral agreements – they are commonly applied in matrimonial and parental responsibility matters with the Russian Federation and Belarus. As regards the EU Member States – Estonia, Lithuania and Poland – agreement is used when there are areas which are not covered with Brussels IIa Regulation. In terms of the grounds for refusing the recognition of judgments in matrimonial matters they do not differ whether it is EU or non-EU Member State.
Lithuania	The regulation determined in Article 810 of Code of Civil Procedure of the Republic of Lithuania stipulates minor differences on the grounds for refusal of recognition of foreign court's decisions, including in matrimonial cases. It is determined that a foreign court's decision shall not be recognized in jurisdiction of Lithuania, in case such court's decision is not final and is not yet valid. It is also determined that a foreign court's decision shall not be recognized in jurisdiction of Lithuania, in case application of exclusive jurisdiction for such case is determined in applicable Lithuanian laws or international treaties. No other differences in the grounds for refusing the recognition of judgments are provided in Lithuanian law.
Luxembourg	In Luxembourg, the grounds for refusing recognition of judgments of non-EU Member States in matrimonial cases come from case-law. According to one case where the recognition in Luxembourg of an Algerian judgment declaring a divorce was discussed, the Luxembourgish courts checked the following aspects: the jurisdiction of the foreign court, the respect to the right to a due process, the application of the appropriate law, the compliance with Luxembourgish public policy and that against the judgment no further appeal lies under the law of that State ('Tribunal d'arrondissement de Luxembourg', no. 152920, 6 March 2014). In that same case, the Algerian judgment was not recognised because it violated Luxembourgish public policy, as Algerian Law on divorce does not respect the principle of equality between the spouses. Hence, the grounds for non-recognition that differ from those established in Brussels IIa are: the review of the jurisdiction of the court of the State of origin, and the check on the application of the proper law. The ground for non-recognition in Article 22 (b) falls, in my view, within the Luxembourgish requirement to respect the right to a due process, although the notion of due process is –presumably– much broader than the specific scope of the requirement of Article 22 (b).
Malta	-
The Netherlands	The conditions for recognition under Netherlands private international law as applied to judgments from third states, are very similar to those of Article 22 under (a) and (b) BIIa. The conditions found in Article 22 under (c) and (d) BIIa are unknown. With respect to conflicting earlier decisions, reference is made to 26 January 1996, NIPR 1996, 179, discussed in the answer to question 15.
Poland	In general, judgments of the foreign courts issued in civil matters shall be recognized in virtue of law (ex lege), unless there are impedimenta laid down in Article 1146 of CCP (it applies accordingly to the decisions of other bodies of foreign countries issued in civil cases – Article 1149^1 CCP). The list of impediments from above mentioned Article 1146 CCP is longer than the one from Article 22 of the Brussels IIa Regulation. Namely, a judgment shall not be recognized if: 1) it is not final in the state where it was issued; 2) it was issued in a case belonging to the exclusive jurisdiction of the Polish courts (domestic jurisdiction is exclusive if both spouses are Polish citizens and have domicile and place of the habitual residence in the Poland; domestic jurisdiction in matrimonial case also includes adjudicating on the parental authority over common minor children of the spouses – Article 1103^1 CCP); 3) the defendant, who did not entered an appearance on the merits, was not served properly and in sufficient time to undertake a defense the document instituting the proceedings; the prerequisite described falls under the concept of deprivation a party of a possibility to defend his rights (indicated as the next prerequisite) - according to the case law, a failure of service of a copy of the statement of claim to the defendant was treated among others as the deprivation of possibility to defend party's rights (Decision of the Supreme Court dated 9 January 1980 1980, IV CR 478/79, OSNC 1980, No. 12, item 233).[373] 4) the party during the proceedings was deprived of possibility of defense – for instance: lack of notification of the date of the hearing or notification in accordance with the procedural rules of the state of the court adjudicating, but in a way not ensuring real opportunity to defend one's rights, in particular by posting an advertisement (Decision of the Supreme Court dated 3 June 1977, IV CR 189/77[374]), a failure of service of a copy of the statement of claim to the defendant (Decision of the Supreme Court dated 9 January 1980, IV CR 478/79[375]), lack of real possibility to participate in the proceedings and to defend (Decision of the Supreme Court dated 6 July 2000, V CKN 1350/00[376]); 5) the case concerning the same claim between the same parties was pending earlier in Poland than before a court of a foreign state (lis pendens); 6) it is contrary to the earlier

	issued, final judgment of the Polish court or previously issued, final judgment of the court of a foreign state that meets the conditions for its recognition in the Poland, issued in a case concerning the same claim between the same parties; impediments from points 5 and 6 shall apply accordingly to the case pending before Polish or foreign authority other than the court and to the decision given by Polish or foreign other than court authority; 7) recognition would be contrary to the fundamental principles of the legal order of the Polish Republic (public order clause) - the basic principles of the Polish legal system consists of both the principles arising from the Constitution and the basic principles of the various fields of law - as principles of child welfare or monogamy of marriage (Decision of the Supreme Court dated 18 January 2002, I CKN 722/99 April 1978, IV CR 65/78[377]), consequences of the judgment cannot be reconciled with the very concept of a particular legal institution in Poland (Decision of the Supreme Court dated 21 April 1978, IV CR 65/78[378]), violation of the main principles of process, e.g. the adversarial principle and the principle of the right to defense (Decision of the Supreme Court dated 28 March 2007, II CSK 533/06[379]).
Portugal	Using a different legislative technique, and unlike article 22 of the Brussels IIa Regulation, which stipulates grounds of non-recognition for judgments (relating to divorce, legal separation or marriage annulment), the article 980 of the CPC stipulates requirements that cumulatively must be fulfilled for the recognition of judgments in general: a) No doubt about the authenticity of the document recording the judgment or on the intelligence of the decision; b) The judgment must have the value of *res judicata* according to the legislation under which was made; c) The judgment comes from a foreign court whose jurisdiction has not been invoked in fraud against the law and respects to a matter that does not falls within the exclusive jurisdiction of the Portuguese courts; d) It is not possible to claim *lis pendens* or *res judicata* due to an action in a Portuguese court, except if it was the foreign court which prevented the jurisdiction; e) The defendant has regularly been cited for the action, in accordance with the law of the court of origin, and in the process have been observed the principles of adversarial and equality of the parties; f) The recognition of the judgement does not lead to a result manifestly incompatible with the principles of international public policy of the Portuguese State.
Romania	Articles 1096 and 1097 of the Civil procedure code distinguish between conditions for recognition and grounds of non-recognition of foreign judgements. Article 1096 sets the cumulative conditions for the recognition: the decision must be final, according to the law of the state of origin and must be rendered by a competent court, according to the foreign procedural law (but not based on an exorbitant jurisdictional ground); the reciprocity with the state of origin and the respect of the procedural rights of the defendant, in the default judgements must also be verified. Article 21.1 of the regulation does not require the final /enforceable character of the judgement in the state of origin (contrary to the art. 21.2 related to the updating of civil-status records) as a prerequisite for recognition; nevertheless, article 27 permits a stay of proceedings in the state of recognition, when an ordinary appeal has been lodged against the judgement in the state of origin and the (final) judgment will be automatically recognised, so the differences with the Romanian law are not important enough on this point. The review of the competence of the state of origin court remains the sole major difference with the European law (art. 24). The general grounds for non-recognition accepted by the Romanian legislator include the public policy, the fraud[380], violation of the exclusivity of the competence of the Romanian courts, the irreconcilability with a local judgement, the irreconcilability with a foreign judgement, the violation of the defence right in the foreign litigation, the final character of the judgement. Some of these merit some observations. Because a foreign judgement obtained by fraud can be sometimes taken into account under the article 22.a) of the Regulation as a violation of the public policy, the existing of a specific text on the fraud exception in the Romanian law does not amount to important differences with the European law[381]. Also, even if article 1096 f) Civil procedure code concerning the violation of the defence rights is broadly drafted, it covers almost the same aspects to those regulated in art. 22.b of the regulation. The irreconcilability with a local judgement - a common ground for non-recognition in Civil procedure code and in the Regulation - does not cover in fact the same realities. While article 22.c of the regulation stipulates clearly that only a local judgement will block the recognition, article 1096 let. c) Civil Procedure Code is more broadly drafted: the foreign judgment will be denied recognition not only when the dispute has been terminated by a local decision (final or not), but also when the proceedings are still pending before the Romanian courts, if these ones have started before the seizing of the foreign courts. The violation of the exclusivity of the competence of the Romanian courts is also a point of specificity. The article 1978.5 Civil Procedure Code establishes one exclusive competence ground in the matter: Romanian courts are exclusively competent for disputes concerning the dissolution and annulment of the marriage when both spouses are domiciled in Romania and one of them is a Romanian citizen. Because of its contrariety with article 6 of the regulation, this text cannot be used as a ground of jurisdiction by the Romanian courts (*instance directe*); it may operate nevertheless in the field of recognition of judgments originating in non-EU states.

Slovakia	The grounds for refusing the recognition of judgments of non-EU Member States are regulated in Article 64 and following of International Private Law Act. A foreign decision can neither be recognised nor enforced if (a) its recognition is pre-empted by exclusive jurisdiction of the Slovak authorities or if in application mutatis mutandis of the Slovak provisions on jurisdiction the foreign authority would have had no jurisdiction in the matter, (b) it neither has res iudicata effects nor is enforceable in the State of origin, (c) it is no decision on merits, (d) the party against whom recognition of the decision is sought has been deprived by the foreign authority of the possibility to participate in the proceedings before it, in particular he was not duly served the summons or the document instituting the proceedings; the court shall, however, not review this condition if the decision was duly served on the party and he has not appealed it or if the party has declared that he does not insist on the review of this condition, (e) Slovak court has issued a decision, which has res iudicata effects, in the matter or an earlier foreign decision in the same matter was recognised or is recognisable in the Slovak Republic, (f) the recognition would be contrary to Slovak ordre public. Article 65 of International Private Law Act states: Foreign decisions <u>in matrimonial matters and in matters involving establishment</u> (determination or contestation) of parentage where at least one of the parties is a Slovak national and foreign decisions on adoption of a child who is a Slovak national shall be recognised in the Slovak Republic, unless precluded by the provisions of Article 64 (b) to (f) Article 22 of the Brussels IIa Regulation states: Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment. A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised: (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought; (b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally; (c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or (d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.
Slovenia	Slovenian PILPA has following grounds for refusing the recognition of judgments of non-EU Member States: **Article 96 PILPA provides**: *"1. A court in the Republic of Slovenia <u>shall decline to recognise a foreign court decision</u> if, following an objection by the person against whom it was issued, it establishes that such irregularities have been committed in the procedure which prevented this person from taking part in the procedure.* *2. In particular, it shall deem that the person against whom a foreign court decision was issued was not able to take part in the procedure if the invitation, suit or decision which was the basis for initiating the procedure were not delivered in person or personal delivery was not even attempted, except when the person in any way engaged in the first-instance process on the main issue."*[382] **Article 97 PILPA provides**:

	"1. A foreign court decision shall not be recognised if the subject matter is within the exclusive jurisdiction of the court or other body of the Republic of Slovenia. *2. If a request to recognise a foreign court decision issued in a matrimonial suit is put forward by the defendant or if requested by the plaintiff and is not objected to by the defendant, then exclusive jurisdiction of a court in the Republic of Slovenia shall not be an obstacle to its recognition."* **Article 98 PILPA provides**: *"1. The court shall, following an objection by the person against whom it was issued, decline to recognise a foreign court decision if the jurisdiction of the foreign court was based exclusively on any of the following three circumstances:* *1. the citizenship of the plaintiff;* *2. the property of the defendant in the country where the decision was issued;* *3. personal delivery of the suit or of another act on initiating a procedure to the defendant.* *2. The court shall, following an objection by the person against whom it was issued, also decline to recognise a foreign court decision when the court which issued the decision did not take into account the agreement on jurisdiction of courts in the Republic of Slovenia."* **Article 99 PILPA** provides: *"1. A foreign court decision shall not be recognised if the court or another body of the Republic of Slovenia has issued on the same matter a legally binding decision, or if some other foreign decision on the same matter has been recognised in the Republic of Slovenia.* *2. A court shall wait with regard to recognising a foreign court decision if a suit on the same matter had been initiated earlier in the Republic of Slovenia between the same parties, until this suit has been brought to a legally binding conclusion."* **Article 100 PILPA** provides: "*A foreign court decision shall not be recognised if the effect of its recognition would be contrary to the public order of the Republic of Slovenia.* **Article 101 PILPA** provides: *"1. A foreign court decision shall not be recognised if mutuality does not exist.* *2. The absence of mutuality shall not be an obstacle for recognising a foreign court decision issued in a matrimonial suit and in suits to establish or contest paternity or maternity, or when the recognition or execution of a foreign decision has been requested by a Slovene citizen. 3. The existence of mutuality in connection with recognition of a foreign court decision shall be presumed until proven otherwise; if there are doubts as to whether mutuality exists, then an explanation shall be provided by the ministry responsible for justice."* **Article 102 PILPA** provides: *"1. A foreign court decision which concerns the personal condition (status) of a citizen of the country in which it was issued shall be recognised in the Republic of Slovenia without having to be tested under Articles 97, 100 and 101 of this Act.* *2. If the competent body of the Republic of Slovenia believes that the decision by a foreign court concerns the personal condition (status) of a Slovene citizen then it shall be necessary, if it is to be recognised, to test such a decision under the provisions of Articles 95 to 101 of this Act."*
Spain	From August 20th 2015 onwards, new domestic recognition and enforcement rules are applicable in Spain (Law 29/2015, of 30 July, on international judicial cooperation in civil matters). A comparison between Article 46 of that Law and Article 22 of the Brussels IIa Regulation demonstrates that the four grounds of non-recognition contained in the latter are also contained in the former. However, Article 46 is stricter in this particular issue, since it contains two additional grounds of non-recognition (c and f). According to the first one (Article 46.c), a foreign judgment will not be recognized in Spain if the matter ruled by the foreign judge belonged to an exclusive competence of Spanish judges; in other cases, the judgment will not be recognized if the foreign judge based its competence in an unreasonable connection with the case. As for Article 46.f), a foreign judgment will not be recognized if there was an open case between the same parties and the same cause of action in Spain, provided that the Spanish proceeding began before the foreign one.

Sweden	Non-EU divorces are normally recognized in Sweden pursuant to Act (1904:26), provided that, due to the citizenship or habitual residence of a spouse or another relevant connection, there were "appropriate reasons" for the divorce to take place in the foreign country in question. The recognition is in principle automatic, but a confirmation by a Swedish court is required for re-marriage in Sweden unless at least one of the former spouses was a citizen of the country of divorce. There are special rules on Nordic (Danish, Finnish, Icelandic and Norwegian) divorces, providing for automatic recognition without the possibility to invoke *ordre public*. Sweden is also a party to the 1970 Hague Convention on the Recognition of Divorces and Legal Separations.
UK	Divorces granted within the EU will 'almost always be automatically recognised…a certificate of divorce, properly translated and certified, is valid across the whole of the European Union.'[383] As Hodson summarises, for divorces occurring outside of the EU, recognition turns upon the issue of whether the divorce was obtained via 'proceedings' or 'other than by means of proceedings.'[384] The concept of 'proceedings' includes those which were held outside of the courts, provided there was 'some degree of state or other official involvement' e.g. foreign religious divorces.[385] Where a divorce decree was made 'other by means of proceedings,' then notice, or lack of it, to the respondent spouse may be key. Neither spouse must have been habitually resident within the UK for the previous year and both must have been domiciled in the state where the decree was made (or in a state where that form of divorce is legally recognised). The divorce must have commenced and ended within that same jurisdiction: English law 'will not recognise a foreign divorce in which any part of the divorce took place in England…in some circumstances a foreign divorce may not be recognised for reasons of English public policy.' [386]

Question 19: Have the courts in your jurisdiction encountered difficulties in the interpretation and application of the definitions in Article 2(7)-(10) Brussels IIa Regulation (the terms 'parental responsibility', 'holder of parental responsibility' , 'rights of custody' and 'rights of access')? If yes, how are these problems dealt with?	
Austria	No, the Austrian courts have no problem with the definitions in Art. 2 (7) – (10) of the Brussels IIa Regulation.
Belgium	The Belgian case law does not reveal any difficulties relating to the interpretation of the terms 'parental responsibility', 'holder of parental responsibility', 'right of custody' and 'rights of access'. However some clarifications of the terms appear in Belgian case law. The Supreme Court of Belgium held that according to Article 1.1 and 2 of the Brussels IIa Regulation, the Regulation applies to all civil cases concerning the attribution, exercise, delegation, restriction or termination of parental responsibility, regardless the nature of the court. Furthermore, the Court stated that the fact that a specific issue of parental responsibility is part of public law according to the domestic law, does not preempt the application of the Brussel IIa Regulation when the measure taken relates to entrust the minor to one of his parents.[387] The Court of Appeal of Brussels applied Article 12.3 Brussels IIa Regulation to a case concerning a Moroccan kafala. The father of a child living in Morocco gave the guardianship of his child to his older daughter by kafala. His older daughter, who had Belgian nationality and lived in Belgium, could not obtain the recognition of the kafala in Belgium. Therefore the father agreed to make his older daughter the custodian of his younger daughter. The sanction of the agreement of unofficial guardianship was brought before the Belgian court. The court held that an agreement of custodianship ('tutelle officieuse') concerns the parental responsibility and applied Article 12.3 Brussels IIa Regulation to establish jurisdiction for the Belgian court.[388] In a case where a grandmother claimed a right of access with her grandchildren, the same Court of Appeal of Brussels held that since the case related to parental responsibility and rights of access, it fell within the scope of the Brussels IIa Regulation. The Court decided that it had jurisdiction to hear the case based on Article 8 IIa Regulation, since the children had their habitual residence in Belgium at the moment the court was seized.[389] The Court of First Instance of Brussels held that all modalities of the right of custody and of the housing of the children fall within the scope of parental responsibility under Brussels IIa.[390]
Bulgaria	At the very new case the Bulgarian SCC has requested for a preliminary ruling to the CJEU asking for more clarity about several key issues related to the scope of the Regulation (EC) No 2201/2003 including also the definitions in Article 2(7). The CJEU[391] has pointed out that "*An action in which one parent asks the court to remedy the lack of agreement of the other parent to their child travelling outside his Member State of residence and a passport being issued in the child's name is within the material scope of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, even though the decision in that action will have to be taken into account by the authorities of the Member State of which the child is a national in the administrative procedure for the issue of that passport. Regulation No 2201/2003 applies in civil matters relating inter alia to the attribution, exercise, delegation, restriction or termination of parental responsibility. The concept of 'parental responsibility' is given a broad definition in Article 2(7) of Regulation No 2201/2003, in that it includes all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. Where an action requires the national court to rule on the child's need to obtain a passport and the applicant parent's right to apply for that passport and travel abroad with the child without the agreement of the other parent, the object of that action is the exercise of 'parental responsibility' for that child within the meaning of Article 1(1)(b) in conjunction with Article 2(7) of Regulation No 2201/2003.*"
Croatia	There are no reported or unreported cases with these problems.
Cyprus	- No.

Czech Republic	No.
Estonia	Rather not. Only poor translation of terms might have caused some problems.
Finland	- Sometimes, yes. Parental responsibility is not a concept that has a place in Finnish national child law system. We operate with a general concept called the custody of a child. It includes the authority to make decisions on care, upbringing and place of residence and other matters relating to the person of a child. The concept of guardianship is understood as looking after the rights and interests of financial matters on behalf of a minor (a person under 18 years or incompetent person). The custodians of a minor are also guardians unless the court appoints another person to this task. - Problems with differing terminology have been dealt with "comparative" implementation: what is the true meaning of a foreign concept? In my opinion, courts have been able to deal with foreign legal concepts in a satisfactory way.
France	The concept of "parental responsibility" has no equivalent in French law. This term is found in other international instruments but not necessarily with the same extensive meaning as in the Brussels IIa Regulation. As far as its interpretation by the French judges is concerned, the list of included matters provided by Article 1(2) and the list of excluded matters provided by Article 1(3) prove to be helpful to understand the term "parental responsibility". However, as such an extensive concept of "parental responsibility" does not exist in National law, French judges are not familiar with the idea that other people than the parents (or substitutes) can also be holders of the parental responsibility. The risk of confusion with the more restrictive national concept of "parental authority" could be problematic for the application of rules which necessitate the agreement of all "parental responsibility holders". As to the term "rights of custody", it has received the same extensive interpretation as in the 1980 Hague Convention on Child Abduction. Since the "rights of custody" is essential to the definition of the wrongful removal according both to the Convention and the Regulation, the case law on its interpretation is dense and complex. However, these interpretation issues are the same in the 1980 Hague Convention as in the Brussels IIa Regulation. There is no particular difficulty that arises in the Regulation only.
Germany	No.
Greece	There is no case-law indicating such difficulties so far in relation to the application of article 2 (7)-(10).
Hungary	There is no published decision in which the interpretation of the term of parental responsibility or the other mentioned terms would have been the discussed matter. The Hungarian Civil Code (Act V of 2013) contains the family law regulations in its Fourth Book and it uses the term 'parental custody'. Nevertheless it is clear for the Hungarian courts that the Hungarian term 'parental custody' is equivalent to the term 'parental responsibilities' in the Brussels IIa Regulation. What concerns the term 'rights of access', the Hungarian regulations use the term 'contact' but before 1986 the Hungarian term was equal to the term 'right of access' ('láthatás' in Hungarian), so the proper meaning is not debated.
Ireland	None of these terms in Article 2(7)-(10) have created problems of interpretation for the courts.
Italy	No special difficulty is reported in the decisions. As for the "holder of parental responsibility" legal doctrine, approving the extension of the right to access to persons different from the child's parents, has noted that such extension complies with the tendency to extend that right to the child's grandparents.
Latvia	No difficulties observed.
Lithuania	There have been no difficulties with application of the definitions in Article 2(7)-(10) Brussels IIa Regulation in jurisdiction of Lithuania yet.

Luxembourg	Luxembourgish courts have applied on several occasions the terms 'parental responsibility', 'rights of custody' and 'rights of access' without highlighting interpretative doubts ('Tribunal d'arrondissement de Luxembourg', no. 141737, 9 May 2012; 'Tribunal d'arrondissement de Luxembourg', no. 99740, 13 December 2012; 'Tribunal d'arrondissement de Luxembourg', no. 141177, 2 May 2013, among others). There is only one case where, on a question of *lis pendens*, the court stated that the claims on parental responsibility, rights of custody and rights of access share the same cause of action. However, the court did not give arguments justifying its statement ('Chambre d'appel de la jeunesse', no. 37396, 25 July 2011).
Malta	In Malta unless there's a court decree which stipulates otherwise, both parents are deemed to be trusted with care and custody of the children which means that both parents are to decide on what's in the child's best interests especially on matters relating to school, education and travelling. However children are deemed to reside with one of the parents, with access given to the other parent.
The Netherlands	There are a few decisions of lower courts that contain explicit references to Article 2(7) or 2(9) BIIa. There do not appear to be any difficulties, as such cases simply contain a reference to Article 2(7) BIIa (which is demonstrated in just 4 rather obvious cases of lower courts) or rephrase the wording of Article 2(9) BIIa (for the latter, see CA Den Haag, 9 March 2011, LJN: BP7558).
Poland	The courts did not encounter noticeable difficulties in their interpretation and application, at least absence of case law on them indicates it – although the notion "parental responsibility" does not exist in domestic legislation, there is "parental authority" instead.
Portugal	There is no evidence of any difficulty.
Romania	We did not identify decisions containing pertinent discussions regarding the interpretation of the terms 'parental responsibility', 'holder of parental responsibility', 'rights of custody' and 'rights of access'. Normally, when explaining these terms, the doctrine[392] refers to the definitions in articles 2.7, 2.9, 2.10 in the regulation, to the provisions of the preamble (pt. 9 and 10), to the articles 1.1, 1.2 and 1.3 which define the sphere of application of the regulation[393]; sometimes it is specifically mentioned that even if according to the internal law a case would concern the public law (such as the familial placement or other protective measures taken by the *State authorities for the child protection*, but not as a result of crimes committed by the child), it will be covered by the regulation because the terms used should be interpreted in an autonomous manner[394]. Also, the ECJ's judgements regarding the interpretation of these terms[395] will be taken into account for the resolution of eventual problems. The determination of the holder of the parental responsibility and attribution, the exercise, the delegation, the restriction and the termination of parental responsibility will be made according to the law designed by the choice of law rules established by The Hague Convention (1996); the determination of the parents (normally – holders of parental responsibility) will be made according to the choice of law rules regarding the filiation or adoption.
Slovakia	No, Slovak courts didn't face any difficulties in the interpretation and application.
Slovenia	We have not notice difficulties in the interpretation and application of the definitions in Article 2(7)-(10) Brussels IIa Regulation. But we have to stress some views of Slovenian legal regulation. The Slovenian Marriage and Family Relations Act (hereinafter: MFRA)[396] does not contain a definition of a child. Slovenia has ratified the Convention on the Rights of the Child, which provides the definition of the child. Based on the Article 8 of the Constitution of the Republic of Slovenia (hereinafter: CRS)[397], ratified and published treaties shall be applied directly and therefore the definition in Art. 1 CRC is applicable. In Slovenia, when a minor attains eighteen years of age, the parental rights[398] of parents end. Thus, *ex lege*, the child obtains with eighteen years the full capacity to contract. However, a minor may in two circumstances gain the full capacity to contract (and therefore also majority) before the age of eighteen. If a minor older than fifteen years but younger than eighteen enters matrimony, he or she gains full capacity to contract. Another exception is given in the case of a minor (older than fifteen years) becoming a parent. Upon entering matrimony, full capacity to contract is obtained by the decision in non-contentious procedure. The non-contentious court will grant the minor the full

	capacity to contract if it comes to the conclusion that subjective and objective circumstances are fulfilled. In Slovenia also the prolongation of parental rights is regulated. The parents or the CSW may address the court to prolong parental right over the child's eighteen years. Reasons justifying prolongation include a child's physical or mental illness that must be of such kind that the child is incapable of taking care of him- or herself, or his or her benefits and rights. The prolongation lasts as long as the reasons for the prolongation last. If these reasons end, the court, based on the CSW's proposal, can decide to end the prolongation of parental responsibility. Prolongation of parental responsibility is registered in the land registry if the child owns real estate, and in other public records. The prolongation of parental right presents specialty. However, the draft of the new Family Code no longer regulates the prolongation of parental rights.
Spain	First of all, it is necessary to point out that, in general terms, the Spanish doctrine welcomed the introduction of a definition of parental responsibility, given the different application of the Regulation that might have occurred as a result of the different interpretation of that concept –or related ones- in the Member States. Secondly, it has to be considered that concept of parental responsibility does not exist in the Spanish Legal System. In fact, the Spanish concept that defines the rights and obligations of the parents in regards to their children is "patria potestad". A comparison between that concept and the definition of parental responsibility given by the Regulation clearly demonstrates that the latter is wider than the former, since for example it also covers other measures for the protection of the child, such as guardianship (AÑOVEROS TERRADAS). Apart from the difficulties of dealing with an unknown concept in the Spanish legal system, some authors highlighted the problems of characterization that such a definition could entail. In particular, certain situations such as the figure of "pre-adoption care" (RODRÍGUEZ PINEAU) or the notion of "civil matters", taking into account the private-public character of some measure of the protection of the child, were not clearly covered by Article 1(2) and 2(7) of Brussels IIa Regulation (FONT I SEGURA). The concept of parental responsibility seems also to be controversial in regards to the child´s property, when differentiating cases falling inside the scope of application of Regulation Brussels IIa and Regulation Brussels I –now Regulation Brussels Ia-, despite the fact that Recital 9 states that the former is applicable exclusively to the protection of that property (FONT I SEGURA). It is important to highlight that some of the above mentioned doubts were faced only some years after the entry in force of the Regulation, since most of them have been, at least partially, clarified by the CJEU (see, for example Case C-435/06 of 27 November or Case C-523/07 of 2 April 2009).
Sweden	There is no published case law.
UK	In *Re B*, [399] (see question 1) the applicant parent lacked parental responsibility, (despite having played a significant role in the child's life) on the basis that she was neither spouse, civil partner, nor in possession of a Residence Order. As such, the child's relocation was not an illegal abduction. The Supreme Court did resolve the issue however, focusing upon the best interests of the child, and the question of her having retained her habitual residence in England. As Lamont and Fenton-Glynn have recently observed, 'both the rules and approach to the cross-national protection of children at risk from family members are only just starting to be clarified and fully applied.'[400]

Question 20: Does the absence of the definition of the term 'child' in Brussels IIa Regulation give rise to legal uncertainty or other problems in your jurisdiction? If yes, how are these problems dealt with?	
Austria	No, the absence of the definition of the term 'child' in Brussels IIa Regulation does not pose a problem for the Austrian courts.
Belgium	The absence of the definition of the term 'child' in Brussels IIa Regulation has not been an issue in court rulings in Belgium. Under Belgian law, a definition of the term 'child' can be found in Article 388 of the Civil Code. Article 388 Belgian Civil Code defines a minor child as any person younger than 18 years old. This article is applicable in all family matters.
Bulgaria	According to my opinion – No.
Croatia	There is no record that definition of a child would create obstacles to application of this Regulation.
Cyprus	No.
Czech Republic	No.
Estonia	No. Child is understood as a person under the age of 18.
Finland	-
France	The absence of the definition of the term "child" gives rise to legal uncertainty. Indeed, the Regulation sets no age limit to its application in matters relating to "parental responsibility". First, it is uncertain whether the concept of "child" differs from the concept of "minor". In French law the two concepts tend to merge and no real difference is made between them. Second, there is some hesitation on which law should be referred to in order to decide if the young person is a "child" (or a "minor") should the Member State refer to its internal provisions on the age of majority or should it apply its conflict of laws rule and search the answer in the applicable foreign law (e.g., national law of the young person)? The best solution would be to align the Regulation with the 1996 Hague Convention so that it would not apply to children over 18 years old, except in the cases where the Brussels IIa Regulation refers to the 1980 Hague Child Abduction Convention which only applies to children under 16.
Germany	No, however, there question might arise whether the Regulation does also apply to embryos in cryopreservation or other human cells. Unlike the 1996 Hague Convention (Art. 2) the Regulation does not clarify that it only applies from the moment of birth of the child.
Greece	Greek Courts have not in general encountered such difficulties. According to Greek law as a "child" is considered the individual until the age of eighteen which is the same

	age provided by the Hague Convention of 1996. Nonetheless, in the context of abduction cases the age of 16 will be considered as relevant for the needs of the application of the Regulation.[401]
Hungary	Neither the published decisions nor the Hungarian legal literature show any doubt concerning the proper interpretation of the term 'child'. The UN Convention on the Rights of the Child (1989), its regulation and articles just as other child-related international and European documents such as the documents on child-friendly or child-focused justice are dealt with in the Hungarian legal literature and they might contribute to the fact there has not been any discussion concerning this term in the Brussels IIa Regulation.
Ireland	The absence of a definition of a child has not created any problem for the judiciary.
Italy	The Italian legal doctrine has confronted with the meaning of the term "child" holding that: it does not only refer to the children common to both parents but also to the children born in previous personal relations of one parent; it applies also when the parents are not the biological parents of the child. More generally it has been noted that the concept of "parental responsibility" introduced by the Regulation is "all-inclusive" and connected to the idea of the preeminent minor's interest that inspires the Regulation itself. In the Italian legal system, minority ends at eighteen, although it ends at 16 for emancipated minors. The latter are, however, a very small number and are held outside the application of the Regulation. An author has suggested that in the matter of international abduction minority should end at 16 in accordance with the Hague Convention 1980.
Latvia	Absence of the definition of the term "child" did not raise any legal uncertainty. Article 3, para. 1 of the Law on the Protection of the Rights of the Child provides definition of child as an individual under the age of 18 except the individuals who are deemed by law to have reached full age earlier, i.e., the individuals declared of full age or those who have registered marriage before reaching the age of 18 years. Current Latvian case law with regard to the application of the Brussels IIa Regulation does not contain any issues related to different interpretations of the term "child" across the Member States.
Lithuania	There have been no problems because of the absence of the definition of the term 'child' in Brussels IIa Regulation in jurisdiction of Lithuania yet.
Luxembourg	There were no problems raised as regards the definition of the term 'child' in the decisions reviewed.
Malta	In Malta a child is any person under the age of 18. Though our courts obviously make a distinction between a 16 year old who can voice an opinion and a baby (just as an example).
The Netherlands	There is no indication that the absence of a definition of what is a child causes problems. In line with ECJ case law, there may be some differentiation in view of the various life stages of a child. See CA Arnhem-Leeuwarden, 1 August 2013, ECLI:NL:GHARL:2013:5757, concerning the habitual residence of a baby.
Poland	No, the definition of the child from the Convention on the Rights of the Child is commonly used. The definition from Law dated 6 January 2000 on the ombudsman for children[402]: in the meaning of the Act (Article 2.1), a child is every human being from conception until legal age of majority, is the only competition for it.
Portugal	There is no evidence of any problem. In accordance with the Portuguese legislation, 'child' is a person less than 18 years old.
Romania	Even in the absence of a definition of the term "child", it is undisputed that the regulation is applicable only to children under parental responsibility/minors. The minority is a problem of personal status and should be appreciated according to the substantial law designed by private international law of the forum (choice of law rules and renvoi)[403]. Nevertheless, taking into consideration the provisions of the Brussel II Practice guide[404] , some authors suggest that, when deciding the premises of the existence (or not) of a case of parental responsibility, the member states courts are allowed to refer directly to their internal substantial provisions regarding the age of majority[405]. We did not

	find any decision of the courts taking up a position on this issue.
Slovakia	No, there is not need to define the term "child". Slovak courts respect the term "child" as defined in Convention on the Rights of the Child as every human being below the age of eighteen years unless under the Slovak law applicable to the child, majority is attained earlier.
Slovenia	See the above mentioned in question 18. But we would support the idea of including the definition of the term "child" in Brussels II Regulation. Despite that this term din not cause any difficulties in Slovenia, we should not forget the possibility of different approaches to the term in national laws. With the common definition we would avoid the possible uncertainties.[406]
Spain	The lack of a definition of child under Brussels IIa Regulation can pose some problems, since it leads to the application of national conflict of law rules in order to determine if a person can be considered a minor or not (in Spain, Article 9.1 Spanish Civil Code) (GARAU SOBRINO). As a result, a person could be considered a minor in a Member State an adult in a different one. It goes without saying that a discontinuous application of the Regulation is not positive. The doctrine has also stress that the fact that each legal source dealing with the minor contains a different definition of minor –or lack of it- (for example, the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction considers a child a person of less than 16 years, whereas the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children opts by the age of 18 years), clearly difficult the task of legal practitioners and give rise to legal uncertainty in regards to the parents and the minor itself (ESPLUGUES MOTA)
Sweden	No case law so far.
UK	N/A

Question 21: Are there cases in which the courts determined jurisdiction in reliance on national rules on jurisdiction within the meaning of Art.14 of the Brussels IIa Regulation?	
Austria	A national rule on jurisdiction within the meaning of Article 14 of the Brussels IIa Regulation has been applied in a procedure relating the right of access. [407] The child had both Austrian and Serbian citizenship and was already in Serbia at the time of application.
Belgium	In a dispute on the rights of custody and the residence of the children (introduced before the entry into force in Belgium of the 1996 Hague Convention), the Court of Appeal of Brussels held that it lacked jurisdiction under Brussels IIa since the children were habitually resident in Niger. The court therefore found that based on Article 14 Brussels IIa Regulation, Belgian PIL established the jurisdiction. Since both children had the Belgian nationality at the moment the case was brought before the Belgian court, the court stated that it had jurisdiction according to Article 33 and Article 32 Belgian PIL Code.[408] According to these Articles 33 and 32 the Belgian courts have jurisdiction to hear actions regarding the parental authority or guardianship if the children are Belgian at the moment the action was introduced. In another case of 25 June 2013 the Brussels Court of Appeal confirmed this ruling. The court ruled that, since the children were not habitually resident in a Member State of the European Union at the moment the divorce proceedings were instituted and since one party rejected jurisdiction on Article 12 Brussels IIa, neither Article 12 Brussels IIa nor Article 8 Brussels IIa led to jurisdiction under Brussels IIa and therefore Belgian PIL should be applied according to Article 14 Brussels IIa. The Court established its jurisdiction based on Articles 33 and 32 Belgian PIL Code.[409] In a later case, the Court of Appeal of Brussels rejected the application of Article 14 Brussels IIa and therefore the application of the Belgian PIL Code. The mother had initiated divorce proceedings in Belgium against the father living in Belgium. The mother also lodged a claim to obtain a modification of the custody regime, which she later decided to withdraw. The father introduced a counterclaim to obtain primary custody of their only child. The child had habitual residence with his mother in the USA. The mother contested the international jurisdiction of the Belgian courts, based on Article 14 Brussels IIa. The court however established jurisdiction on the basis of Article 12 Brussels IIa. The court held that the child had a substantial connection with Belgium and that the mother expressly accepted the jurisdiction of the Belgian courts before by initiating proceedings before the Belgian courts.[410]
Bulgaria	In my short research I could not find out judicial practice where the national court is applied Art. 14 of the Brussels IIa Regulation.
Croatia	There are no reported or unreported cases where courts relied upon national jurisdiction of Article 14 in parental responsibility cases. There is an available unreported case where court applied national law to determine parental responsibility matter, but without recourse to any legal ground. In that case, court made a misapplication of legal source, as it should have determined jurisdiction pursuant to provision of Art. 14 of the Regulation which then directs to application of a respective provision of national PIL Act.[411]
Cyprus	No.
Czech Republic	Yes. If the child is Czech national habitually resident outside the EU in a state not bound by the 1996 Hague Child Protection Convention, the residual jurisdiction under Art. 14 leads to the jurisdiction based on Art. 56 para 1 PIL Act. It is not unusual situation in the practice of Czech courts.
Estonia	There has been a case where the court has applied the Art 14, although the grounds for that were not fulfilled. No further information available.

Finland	-
France	Yes, there is a least one case in which the French nationality of the applicant grounded the jurisdiction of the French courts (article 14 of the French Civil Code) in a procedure relating to parental responsibility towards a child whose habitual residence was in the United States. French courts had no jurisdiction pursuant to Articles 8 to 13 of the Regulation, nor pursuant to any international convention. However, the 1961 Hague Convention could also give jurisdiction to the French courts in cases in which the child has his habitual residence in a third State Country whose is party to this Convention (Switzerland and Turkey are the only States concerned).
Germany	Yes. If the child has his or her habitual residence abroad but German nationality, see Sec. 99(1)1 No. 1 of the German Act on Family and Non-Contentious Proceedings.
Greece	The Regulation provides for adequate grounds in order to establish the competence of Greek courts or other courts of Member states. Therefore, recourse to residual jurisdiction under article 14 is exceptional. There has been nonetheless one case reported where Greek judges established their jurisdiction on the basis of the Greek nationality of the mother of the child (article 601 Code of civil procedure).[412]
Hungary	There is no such published decision. However, the re-codification of the Hungarian Act on private international law (Law Decree 13 of 1979) is going on now and the concept of the new Act contains a rule stating that the Hungarian court has (residual) jurisdiction in cases of parental responsibility, right of access and guardianship according to Art. 14 of the Brussels IIa Regulation if the child has a Hungarian nationality.
Ireland	There have been no cases grounding jurisdiction on Article 14.
Italy	No decision has been published applying art. 14.
Latvia	Not observed.
Lithuania	No there are no cases in which the courts determined jurisdiction in reliance on national rules on jurisdiction within the meaning of Art.14 of the Brussels IIa Regulation.
Luxembourg	No, there was not a single case where Article 14 of the Brussels IIa Regulation was even mentioned.
Malta	-
The Netherlands	Reference to Article 14 BIIa was made by CA Arnhem-Leeuwarden, 28 March 2013, LJN: BZ6914. After a child had been placed under supervision of the Netherlands juvenile board, the parents disappeared with the child across the border. The court referred to Article 14 BIIa when it determined the Netherlands courts had jurisdiction, at a point where the parents frustrated the enforcement of the supervision order while it was unknown to which state the parents had taken the child. Although there was some suggestion that the child was in Germany, the evidence was inconclusive. There was some debate on the question whether the supervision order was still in force. The CA did mention as an obiter that if the court had found that the child had obtained habitual residence in Germany after expiration of the custody order (which while in force gave the juvenile board the right to determine the place of habitual residence of the child), it would not have assumed jurisdiction.
Poland	There are no problematic cases that reached the Supreme Court, nor substantial enough from lower instances to be published.
Portugal	No cases to report.
Romania	Art. 14 of the regulation organises the rapports between the European and national grounds of jurisdiction for parental responsibility matters. The European rules will always have priority when (at least) one of the jurisdictional grounds instituted in articles 8, 12, 13 of the regulation is located in a Member State. When this is not the case, the national rules of civil procedure apply, regardless of their (potentially) exorbitant nature; unfortunately, the following decision will benefit from the liberal recognition and

	execution regime enacted by the regulation. As regards the Romanian law, the pertinent rule is found in article 1080 al. 2.1 Civil Procedure Code which establish the Romanian nationality of the child as a jurisdictional ground of competence in disputes regarding the protection of child. We could not identify any decision applying it or discussing its applicability. Since this rule benefits only to Romanians (and not to children of the nationality of another Member States), its conformity with the European principle of non-discrimination appears as problematic.
Slovakia	No, at least we aren't aware of such a cases.
Slovenia	No.
Spain	No cases have been found in which domestic international jurisdiction rules have been applied by reference of Article 14 of the Brussels IIa Regulation.
Sweden	See the case described in paragraph 1 *supra*.
UK	See discussion of *In an English Local Authority v X,Y, and Z (English Care Proceedings – Scottish Child)* [2015],[413] at Q.10 above. Scott has further argued that, within the territories of the UK, (or in cases where Brussels II bis does not apply), 'the court must look to *forum conveniens*.'[414] In respect of Scotland, difficulties have arisen in relation to parental responsibility.[415] The considerable remit of Article 1(2) '..extends beyond residence and contact to guardianship, placement in a foster family, or institutional care and measures relating to the administration, conservation and disposal of a child's property.'[416] There are several areas in which domestic law differs from the Regulation.[417] Where, for example, an order has been made about a child in one part of the UK, domestic law allows the relevant court to make further orders, even where the child may have become a habitual resident elsewhere.[418] Applying Brussels IIa, this would not be possible if the child was habitually resident in another part of the UK. Similarly, 'the 1986 Act does not permit prorogation of jurisdiction, whereas Article 12 [of the Regulation] does'[419] in certain circumstances. Domestic case law evidences the difficulties, in terms of domestic relocation, and provides conflicting authority as to what the correct approach should be where a child's habitual residence has changed, or where proceedings were initiated in another part of the UK.[420] There is clearly the possibility of creating a 'jurisdictional vacuum'. [421] Thus 'if …Brussels II-bis does not apply at all to allocations of jurisdiction as between different parts of the UK in cases relating to parental responsibility…England has significant problems.'[422]

Question 22: Is there a provision on *forum necessitatis* in your jurisdiction?	
Austria	In Austria there is no forum necessitatis for procedures concerning parental responsibility. [423] However, pursuant to § 110 (1) no. 3 of the JN[424], the international jurisdiction is given, inter alia, if the minor has property in Austria and a measure affects this property.
Belgium	The general provisions on international jurisdiction in the Belgian PIL Code contain a provision on "*forum necessitatis*" (see question 9). There is no published case law available on the use of the *forum necessitatis* in relation to parental responsibility proceedings.
Bulgaria	-
Croatia	Forum necessitates is a European way of enabling service of justice in situations that do not fall under the regular jurisdictional grounds. Such exceptional ground of jurisdiction is not prescribed by current Croatian PIL Act. Draft PIL Act of 2016 however provides for it.[425] There is scarce legal writing to that point. It has been first envisaged introduction to Croatian legal system by professor Tomljenović.[426] There are some writings on this provision in the context of EU rules: by professor Župan (on maintenance regulation)[427] and Medić (on succession regulation[428]).
Cyprus	Yes there is a provision on *forum necessitatis* for urgent measures to protect a child present in the jurisdiction.
Czech Republic	No.
Estonia	Yes. See above question 9.
Finland	- section 19 of the Child Custody and Right of Access Act states: *Jurisdiction by virtue of the habitual residence of a child* 1. (1) A Finnish court may consider a matter concerning child custody or right of access, if the child has his or her habitual residence in Finland when the matter is instituted. 2. (2) A social welfare board may confirm an agreement on child custody or right of access, if the child is habitually resident in Finland. 3. (3) A child who has lived in Finland without interruptions for at least a year immediately before the matter was instituted is deemed to be habitually resident in Finland, unless otherwise shown in the case. 4. (4) A Finnish authority may investigate a case concerning child custody and right of access in the same manner as if the child was habitually resident in Finland, if the child is present in Finland and he or she is, due to disturbances occurring in his or her country of origin, internationally displaced or his or her habitual residence cannot be established. (436/2009) Section 20 (186/1994) − *Jurisdiction in other cases* (1) A Finnish court may consider a matter concerning child custody or right of access even if the child is not habitually resident in Finland when the matter is instituted, if the child is present in Finland or if the consideration is deemed justified for some other reason, and 1. (1) the child has been habitually resident in Finland during the year preceding the institution of the matter; or 2. (2) the child has, with regard to all the relevant circumstances, another close connection with Finland. (2) A Finnish court may, in connection with a case concerning dissolution of marriage, consider a matter between the spouses concerning child custody or right of access even if the child is not habitually resident in Finland when the matter is instituted, if: 1. (1) at least one of the parents has custody of the child and at least one of the parents is habitually resident in Finland when the matter is instituted; 2. (2) the persons having custody of the child have, after the matter has been instituted, approved that the matter will be considered in Finland; and 3. (3) the exercise of jurisdiction in the matter is in the best interests of the child.

France	There is no formal legal provision on *forum necessitatis* but a jurisprudential recognition of *forum necessitatis*. It has never received application in family matters.
Germany	Yes, indirectly. There is a residual jurisdiction if "das Kind der Fürsorge durch ein deutsches Gericht bedarf", see Sec. 99(1)2 of the German Act on Family and Non-Contentious Proceedings.
Greece	The only relevant provision is article 601 of the Greek code of civil procedure according to which if there is no competent court to judge a parental responsibility issue Greek courts can establish their jurisdiction if one of the parties (the mother, the father or the child) is a Greek national. In that case it will be the courts of the capital of Greece are considered competent, ie the courts of Athens
Hungary	There is no such rule.
Ireland	There is no provision for *forum necessitatis* in this jurisdiction.
Italy	No, there is no such provision for parental responsibility just as there is no provision for matrimonial matters. See above answer n. 9.
Latvia	There is no provision on forum necessitates in the Latvian jurisdiction.
Lithuania	Please see answer to Question 9.
Luxembourg	There is no *forum necessitatis* rule for assuming jurisdiction in the Luxembourgish legal order for matters of parental responsibility.
Malta	-
The Netherlands	On the strict rule of forum necessitatis of Article 9(b) NL CCP and on the more lax rule of Article 9(c) NL CCP, see the discussion above. In legal writing it has been advocated that Article 9(c) NL CCP, limited to proceedings by writ, should also be available in proceedings commenced by petition, such as divorce petitions and petitions in respect of parental responsibility. Against this suggestion it has been brought forward that in respect of parental responsibility, the national provision on jurisdiction, Article 5 NL CCP, which in principle provides that the courts do not have jurisdiction when the child has habitual residence abroad, offers scope for the courts to assume jurisdiction in respect if such a child under exceptional circumstances and on condition there is a link to the Netherlands legal sphere. For the view against, taking the view the current Article 5 NL CCP would suffice, see Ibili, Gewogen rechtsmacht in het IPR, 2007, p. 124-125. For case law applying Article 5 NL CCP in the manner described, see DC Haarlem, 20 September 2007, LJN: BC0186. It should be noted that the rules on jurisdiction of the NL CCP can only be applied when a case is outside the scope of BIIa. See also the answer to question 25 and the decision ECLI:NL:GHARL:2015:2625 discussed in that answer. The condition of Article 5 NL CCP of a connection with the Netherlands legal sphere resembles the condition of Article 12(3)(b) BIIa.
Poland	Yes, see point 9.
Portugal	The same rule referred above is applicable. Article 62(c) stipulates that the Portuguese courts are internationally competent "when the claimed right cannot become effective unless the action is filled in Portuguese territory or the plaintiff has a considerable difficulty in filling the action abroad, since between the subject of the dispute and the Portuguese legal system there is a ponderous element of connection, either personal or real (*causa rei*)".
Romania	The answer is an affirmative one; art. 1070 Civil procedure code, mentioned above, is the general rule that must be also taken into account for disputes concerning the parental responsibility.

Slovakia	No
Slovenia	Yes, the provision on *forum necessitates* in parental responsibilities matters[429] is incorporated in Art. 56 CPA: *"In procedure to establish or challenge paternity or maternity, the child may bring the action also with the court on the territory of their permanent or temporary residence. If the power of courts of the Republic of Slovenia to decide upon paternity or maternity suits is based upon the fact that the plaintiff's place of permanent residence is in the Republic of Slovenia, the territorial jurisdiction shall be vested in the court on the territory of which the plaintiff has had permanent residence."*
Spain	See answer question 9. According to Article 22 octies.3.II Organic Law on Judiciary Power states that Spanish Courts may not decline its competence if the dispute is connected with Spain and provided that other State's Courts connected with the case have declined its competence.
Sweden	There is no explicit Swedish provision, but Sweden, like the other EU Member States, is a party to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. The jurisdictional provisions of this Convention contain a system similar to *forum necessitatis*.
UK	n/a

Question 23: Have the courts in your jurisdiction encountered difficulties in applying the rule on general jurisdiction in Article 8 of the Brussels IIa Regulation?	
Austria	No the Austrian courts have no difficulties in applying the rule on general jurisdiction in Article 8 of the Brussels IIa Regulation.
Belgium	Some difficulties appear from case law. The first one is the situation where an appeal is lodged against the ruling of the court of first instance. The court of appeal, when examining the child's habitual residence issue, is faced with the dilemma of determining it taking into account the circumstances existing at the time of initial proceedings or at the time of the appeal. The Court of Appeal of Ghent chose the first option.[430] The second issue relates to the interpretation of the *perpetuatio fori* principle. The question arises if the court, after already issuing a ruling regarding parental responsibility for a child, remains competent under Article 8 to hear future disputes on the matter when the habitual residence of the child has changed. In the Belgian law[431] we have the so called 'continuous' jurisdiction which gives the same court the competence to revise its own ruling in the light of new circumstances. Does Article 8 allow Belgian courts to still exercise jurisdiction when the child moves to another Member State after the court already issued a ruling on the matter? Or should they consider that the initial proceedings terminated and the new proceedings should be started before the court of the Member States where the child has his current habitual residence? The Supreme Court has opted for the first solution in a case where the child had legally moved from Belgium to Germany with his father.[432] It ruled that the lower court should not have taken into consideration the changing of the habitual residence and should therefore regard itself competent to hear the case. This reasoning was followed by Court of Appeal in Brussels in another case where the child had been legally removed from Belgium to Luxemburg based on the ruling of the court of first instance.[433]
Bulgaria	In order to define the proper venue in matters of parental responsibility over a child under Art. 8 of the Brussels IIa Regulation many national courts prefer to use the criteria set up by the CJEU in C-523/2007 and C-497/2010, about the child's habitual residence. The SCC points out that the formal relationship as a registered national address or other kind of registration in the related country is not enough whereas the child's habitual residence requires factual relationship. On the whole the judicial practice has broadly accepted that the child's habitual residence depends on the habitual residence of the people who are looking after the child. In some cases the national courts also applies Art. 48 (7) of the Codex of International Private Law in regards with Art. 8 of the Brussels IIa Regulation in order to determine the child's habitual residence. Unfortunately, the last practice is in contradiction with the basic principles of the CJEU practice.
Croatia	Application of Article 8 presents a problem to Croatian practice due to criterion of habitual residence, which has to be closely examined for application. General problem with application of habitual residence have already been explained. Available case law proves that courts are dealing rather hard in determining, or at least writing down the explanation that relates to determining factual ground for habitual residence of a child.[434] In most available cases it was simple to determine the habitual residence of a child, as well as to explain the factual reasoning, which has been constantly omitted by the courts. More complex cases occurred as well.[435]
Cyprus	- In our jurisdiction there were no difficulties in the implementation of Article 8. - The courts are harmonized and adopting the guidelines resulting from the ECJ in Case C-523/07 in relation to Articles 8 and 10. The ECJ ruled in particular in Case C-523/07, that the child's habitual residence corresponds to the place where the child has been integrated in a social and family environment and it is for the national court to determine that location, taking into account all the particular circumstances of each case.

Czech Republic	Yes, when interpreting the "habitual residence" of the child. See the response to Question No 1.
Estonia	There have been difficulties before the judgements of Supreme Court (see question 1).
Finland	- again, difficulties concerning the definition of habitual residence.
France	A first set of difficulties is linked to the absence of definition of the concept of "habitual residence" (see question n°1). The uncertainty of this jurisdictional ground encourages parties to dispute about the determination of the "habitual residence" with the side effect of unreasonably prolonging the procedure. Besides that general difficulty, it should be observed that Article 8 of the regulation doesn't match with the French procedure on divorce. Indeed, it is unusual for the French courts having jurisdiction over the divorce not to have jurisdiction over parental responsibility. In particular, if the spouses have chosen to divorce by mutual consent, they should present to the judge an agreement settling all the consequences of their divorce including consequences towards the child. If the child doesn't have his habitual residence in France, and if the conditions set out in Article 12 are not met, the divorce judge does not have jurisdiction over parental responsibility and theoretically is unable to approve ("homologuer") the spouses' settlement, without which the divorce cannot be pronounced.
Germany	No.
Greece	Greek Courts have not in general encountered such difficulties.[436] As far as the general jurisdiction of the child's habitual residence in relation to parental responsibility matters is concerned, Greek Courts use the interpretation given by the CJEU (C-523/07, C-497/2010 PPU) according to which, the child must be integrated in this specific family and social environment so as to conclude on the existence of the residence.[437] The period of time of the residence should be estimated in combination with other relevant circumstances. Additionally, according to Greek case law if the child is considered mature enough, its opinion should be taken into consideration. Nevertheless the objective criteria abovementioned shall prevail over the expressed will of young children.[438] The provision based on habitual residence has nonetheless received some criticism due to the fact that the autonomous determination of the child's habitual residence leads to consider as the child's habitual residence the one of the habitual residence of the parent that it lives with.
Hungary	The term 'habitual residence' and the proper interpretation of the child's habitual residence have been discussed widely in the Hungarian legal literature, primarily in connection with the child's wrongful removal or retention. The relevant important CJEU judgments such as decision C-497/10 PPU in the *Mercredi*-case was reported and analysed in the legal periodicals. Although this term had been earlier not so easy to catch for the Hungarian courts the Hungarian decisions affecting the child's habitual residence are in consistency with the autonomous legal interpretation of the CJEU. The legal practice of the Hungarian courts concerning child abduction cases was analysed in a working group, which consisted of judges, attorneys, lawyers from the Central Authority and academics, during 2013. The summarizing opinion the working group (in Hungarian http://www.lb.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2013_el_ii_g_1_14.pdf) dealt with the legal interpretation of the term 'child's habitual residence'. The Hungarian legal practice has been continuously formed by the Hungarian Curia (formerly the Supreme Court) and a decision interpreting the Hague Convention from the mid-2000s seems to be a decisive one (EBH 2003/950). According to this decision the child's habitual residence is the place which served as the natural and undisturbed locality for the co-habitation of the parent and child for a lasting time and even without the intention of finality, also with regard to the proper common residence, the workplace of the parent who maintains the child and the micro-community where the child was fitted into in that period of time. It is a problem for the Hungarian courts to determine the child's habitual residence if the family live not only in one country. (An example for that is a family which lives not far from the Hungarian-Austrian border and the children's school just as the parents' workplace are in Austria but their home in Hungary.) According to the summarizing opinion the courts balance upon the facts and the parents' intention and take into consideration the locality of the family's co-habitation, namely where the parents jointly looked after the children and brought up them, where the children attended the preschool, where the parents had recourse to child-welfare services. I should refer to a case in which the habitual residence of the child was one of the legal issues (Legf. Bír. Pfv. II. 21.339/2011). The family lived in Brussels and when the parents' cohabitation split up they entered into an arrangement according to which the child would live with the mother and his permanent residence is the mother's flat

	besides the parents' joint parental responsibilities. The mother later on sold her flat in Brussels, left Belgium to Hungary and interpreted the arrangement that it allowed her to move to another country where her residence would be the child's permanent residence. The Hungarian court emphasized that it would have meant a misinterpretation of the arrangement as in case of joint parental responsibilities the parents have to decide jointly on the residence of the child whose habitual residence remained in Belgium. The mother decided unilaterally on moving into another country and although the parents decided jointly on the sale of the flat in Brussels where they had earlier lived together it did not give an authorization for the mother to leave Belgium. An important point is that the Hungarian court underlined that the child's habitual residence in Brussels did not mean the living in one concrete address.
Ireland	There are no reported difficulties in applying Article 8.
Italy	Art 8 has needed much interpretation work especially about the requisite of the habitual residence of the child. Several decisions based on the CJEU's decisions and many essays by the doctrine have addressed this issue.
Latvia	Please see the answer to the question No.3.
Lithuania	There have been no difficulties in applying the rule on general jurisdiction in Article 8 of the Brussels IIa Regulation in jurisdiction of Lithuania yet.
Luxembourg	In general, the Luxembourgish courts have no difficulties in applying Article 8 of the Brussels IIa Regulation ('Tribunal d'arrondissement de Luxembourg', no. 141177, 2 May 2013; 'Tribunal d'arrondissement de Luxembourg', no. 102847, 11 December 2013; 'Tribunal d'arrondissement de Luxembourg', no. 147128, 18 February 2014, among others). In one case the court not only applied the general rule of jurisdiction based on the country of habitual residence of the child (Luxembourg), but also justified the jurisdiction of Luxembourgish courts on the basis of the Luxemburgish nationality of the child ('Chambre d'appel de la jeunesse', no. 37396, 25 July 2011). Moreover, a greater value of evidence has been given to documents showing attendance at a school in a particular Member State than to the official population register of Luxembourg city. The result was that the Luxembourgish judge declined jurisdiction in favour of a neighbouring Member State, where it was believed that the child had its *de facto* habitual residence ('Chambre d'appel de la jeunesse', no. 36175, 20 October 2010).
Malta	Nothing in particular
The Netherlands	At the time of writing 132 reported cases dealt with application of Article 8 BIIa. There are 9 cases of the NL Supreme Court dealing with Article 8 BIIa. Only three of these cases are reasoned decisions. The typical problem of Article 8 BIIa appears to be the application of the concept habitual residence, a problem for which the role of the NL Supreme Court is limited. As an example, see NL SC 26 June 2015, ECLI:NL:HR:2015:1752: "3.7.2. Blijkens rov. 4.5.4 heeft het hof met het oog op de bepaling van de gewone verblijfplaats van de kinderen toepassing gegeven aan de verordeningsautonome en door het HvJEU ontwikkelde maatstaf, inhoudende dat het begrip "gewone verblijfplaats" in de zin van de art. 8 en 10 Brussel II-bis staat voor de plaats die een zekere integratie van het kind in een sociale en familiale omgeving tot uitdrukking brengt (vgl. HvJEU 22 december 2010, zaak C-497/10, ECLI:EU:C:2010:829, NJ 2011/500 (NIPR 2011, 5, red.) (Mercredi/Chaffe)). De rechtsklacht faalt derhalve. [the CA rightly applied the autonomous meaning of 'habitual residence' under the Regulation as developed by the ECJ, i.e. the place which reflects some degree of integration by the child in a social and family environment] Voor het overige is de invulling van het begrip "gewone verblijfplaats" in de zin van de art. 8 en 10 Brussel II-bis nauw verweven met waarderingen van feitelijke aard en kan deze in cassatie slechts op begrijpelijkheid worden onderzocht (vgl. HR 3 mei 2013, ECLI:NL:HR:2013:BY4107, NJ 2013/434. Het oordeel van het hof in de rov. 4.8.1 en 4.8.4 is niet onbegrijpelijk of onvoldoende gemotiveerd." [The application of the concept of habitual residence under Article 8 and 10 BIIA is closely linked with findings of fact. In cassation proceedings such application can only be examined upon their intelligibility. The judgment of the CA is not unintelligible or insufficiently reasoned.] NL SC 28 February 2014, ECLI:NL:HR:2014:443, held the lower court had applied the wrong date to determine the place of habitual residence. The court should have considered the situation as it was on the date proceedings were commenced.

	The third reasoned decision in cassation NL SC 3 May 2013, LJN: BY4107 is a decision in the same vein as NL SC 26 June 2015, ECLI:NL:HR:2015:1752 and is referred to in the latter decision.
Poland	Identification of problems is possible through the analysis of the case law of courts of the second instance, signaling erroneous application of the provisions of law. *Incorrect interpretation and application of rules*: Decision of Krakow Court of Appeal dated 11 January 2016, I Acz 2406/15[439]: The Provincial Court dismissing a lawsuit correctly referred to the provisions of the Brussels IIa Regulation, but incorrectly interpreted their content and examined the question of jurisdiction, in fact, from the perspective of Polish law, while, this regulation is comprehensive and independent in this respect. It follows from the content of Article 3 of the Brussels IIa Regulation that in the case, in terms of a decision relating to divorce (separation), the Polish court has jurisdiction (1b) - there is no doubt about the fact that both the plaintiff and defendant are Polish citizens. None of the provisions of that act subject jurisdiction of the courts of the Member State in a case concerning divorce to a condition of cumulative fulfillment of a condition in the form of the existence of jurisdiction in a case concerning parental responsibility. *Doubts as to cumulative settlement of the divorce proceedings and the case concerning parental responsibility - relating to the welfare of the child*: 1) Decision of Krakow Court of Appeal dated 12 August 2015, I Acz 1298/15[440]: The fact that the child's habitual residence is currently distant from the divorce court cannot be equated with the automatic assumption that jurisdiction of the court of divorce is in such a situation inconsistent with the welfare of the child. Although a minor child of the parties demonstrates the integration with the environment in which she resides in the UK, however, matters related to parental responsibility are associated with the divorce case of the parties, which follows directly from Article 58 § 1 of the Polish Family and Guardianship Code, which states that the court in the divorce decree decides on parental authority over a minor child of both spouses and the contacts of the parents with the child and also how much each spouse is obliged to bear the costs of maintenance and upbringing of the child. So if the divorce may be settled by the national court, also issues related to parental responsibility should be dealt with by this court on the basis of the Polish legislative framework and the local social conditions that shaped the parties. The fact that the parents of a minor child went abroad for work purposes and reside there temporarily may not result in the assumption that settlement of issues related to parental responsibility by the national court would be contrary to the best interests of the child. 2) Decision of Katowice Court of Appeal dated 15 May 2009, V ACz 252/09[441]: You cannot equate the lack of child welfare only because of the remoteness of the current habitual residence of the child from the divorce court. *The lack of examination of the jurisdiction by the court*: Decision of Kielce Provincial Court dated 11 December 2013, II Ca 1152/13[442]: It is undisputed that K. P. since 2005 permanently resides in London, where she graduated school and is currently working. Along with her, her son F. W. lives there. According to Article 8 of the Brussels IIa Regulation, the courts of the Member State in which, at the time of filing the petition or request, child has habitual residence have jurisdiction. According to the art. 1 of the Regulation, such matters include, among others, cases concerning custody and the right to personal contact with child, such as in the case. The responsibility of the District Court was therefore to ex officio examine the jurisdiction and determine, in this case, its lack. *Lack of sufficient examination of jurisdiction by a court*: Judgment of Gdansk Court of Appeal dated 18 March 2013, V Aca 13/13[443]: In each case with a "foreign element" the court has to assess in the first place and, therefore, always prior to going to the heart of the matter, its jurisdiction, and therefore the right to judge, and if so, to what extent. Moreover, such an assessment is made by each court ex officio at any stage of the proceedings, including appellate court, regardless of the allegations raised in the appeal (Article 1099 § 1 CCP). The Brussels IIa Regulation treats as separable jurisdiction as regards request for divorce and jurisdiction regarding parental responsibility in the broad sense. Having jurisdiction in divorce proceedings does not prejudge, therefore, its existence also in relation to requests for settlement concerning parental responsibility, unless specific conditions are satisfied, provided for in Article 12.1 of the Regulation. According to Article 8.1 of the Regulation in matters of parental responsibility, in principle, the courts of the Member State in which, at the time of filing the petition or request, child habitually resides have jurisdiction. *Incorrect application of the rules on contacts with children to grandparents' contacts with grandchildren*: Decision of Bydgoszcz Provincial Court dated 14 September 2011[444]: The applicant filed for settlement of her contacts with minors grandson. Meanwhile, the court of first instance erroneously referred to the regulations regarding contacts of parents with their children, which cannot for obvious reasons be applied to contacts of grandparents with grandchildren. Therefore considerations of the court of the first instance, whether to apply the provisions of the Brussels IIa Regulation or the CCP provisions are not relevant. Grandparents' contacts with grandchildren are not governed by the Regulation. *Incorrect assumption that jurisdiction designated by Article 8 of the Brussels IIa Regulation is absolute and the lack of analyze of the possibility to apply Article 12.3*: Decision of Torun Provincial Court dated 24 September 2010, VIII Cz 419/10[445]: The first instance did court not analyze indicated in Article 12.3 grounds of jurisdiction at all. As far as a significant relationship of the child with the Polish territory (due to the residence of the participant), or the child's nationality may not lead to major doubt, the prerequisite of recognition of jurisdiction by the parties is more complex. Recognition of jurisdiction in a legally binding manner at the earliest possible moment should be understood by the words: "the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time

	the court is seised". The submission of the petition is this moment for the applicant/plaintiff, and in participant/defendant case – his position included in his response to the petition/statement of defense should be considered as binding (see: Decision of Katowice Court of Appeal dated 15 May 2009, V ACz 252/2009). The Court could not therefore conclude lack of jurisdiction already at this stage without the possibility of participant's expressing on the recognition of jurisdiction. *Doubts regarding the notion of „habitual residence"*: Decision of Wloclawek Provincial Court dated 28 August 2009, V CZ 37/09[446]: Staying on the territory of a particular country can be classified as a "habitual residence" within the meaning of Article 8. 1 of the Brussels IIa Regulation only if a person has the center of his life there. Unlike the "domicile" from the Article. 25 of the Polish Civil Code it is not necessary to have the will (intention) to stay in the country, because it is sufficient to determine that a person stays on its territory.
Portugal	For example, in Ruling of Supreme Court of Justice Lisbon of 20th January 2009 (*Acórdão do Supremo Tribunal de Justiça de 20-01-2009*, available in Portuguese in www.dgsi.pt) was decided that the intervention of the CJEU was not necessary because the application of Article 8 of Brussels IIa Regulation was not controversial. Nevertheless, considering the concept of 'habitual residence', the same tendency explained in answer to question no. 1 exists in this matter. For example: Ruling of Second Instance Court of Lisbon of 12nd July 2012 (*Acórdão do Tribunal da Relação de Lisboa de 12-07-2012*, available in Portuguese in www.dgsi.pt); Ruling of Second Instance Court of Porto of 29th April 2013 (*Acórdão do Tribunal da Relação do Porto de 29-04-2013*, available in Portuguese in www.dgsi.pt); Ruling of Second Instance Court of Guimarães of 7th May 2013 (*Acórdão do Tribunal da Relação de Guimarães de 07-05-2013*, available in Portuguese in www.dgsi.pt).
Romania	Our research revealed a really big number of cases concerning families of Romanians with their habitual residence in other member states; this appears as a testimony to the fact that the Romanian judge is felt as the natural judge for disputes between Romanian (even if the child is habitually resident abroad). Nevertheless, firmly devoted to the article 8 (and also interpreting in a restrictive manner article 12.3, as will be shown infra), the Courts declared that they had no jurisdiction in such cases[447]. The main difficulty in the application of article 8 concerned the interpretation of the concept "habitual residence", as was shown supra, Q.1.
Slovakia	No difficulties.
Slovenia	No difficulties in applying the rule on general jurisdiction in Article 8 of the Brussels IIa regulation have been encountered. But Brussels IIa Regulation made a qualitative step forward. Under Slovenian national regulation, in matters between parents and children, usually the general jurisdiction is used, because there is a lack of special jurisdiction for custody and care matters.[448]
Spain	One of the main problems in regards to international jurisdiction rules regarding parental responsibility is that Spanish Courts are still applying, in some cases, the domestic international jurisdiction rules instead of the Regulation Brussels IIa. This situation is also taking place in matrimonial matters, where it is not difficult to find cases in which Spanish Courts based its competence in the Organic Law 6/1985, of 1 July, on Judiciary Power. Setting this alarming problem aside, the main difficulties that Spanish Courts could face are related not with the application of Article 8 itself, but on the interplay between this article and cases dealing with a change of habitual residence, the prorogation of jurisdiction or child abduction. These situations will be specifically analyzed in the forthcoming questions.
Sweden	No difficulties so far.
UK	As Phillimore argues, the concept of 'habitual residence' 'has often been described as a 'simple test of fact' but …this is more an expression of hope than a reflection of the reality, given the number of Supreme Court decisions in the past two years that have been directed at flushing it out.'[449] The High Court recently considered the issue of habitual residence (as evidenced by 'integration') in *Re L (Habitual Residence: Domestic Abuse)* [2016],[450] relying (amongst other authorities[451]) upon the decision in *Re B* [2016].[452] Here it was held that the mother and infant child had not lost their habitual residence in Ukraine: maternal intention to emigrate was deemed relevant but not necessarily decisive of the issue.[453] Her initial optimism for the move had faded as her relationship with her husband had deteriorated, so that in reality '….her visit had no true sense of permanence about it.'[454] She had had very little social contact since arriving in England, and the matrimonial home was both dilapidated and dangerous for their

	young child: as such, the court found that in respect of the question of 'integration,' there was little to suggest that mother and child had in fact done actually so.[455] Domestic abuse by her spouse had also served to produce a highly '…stressful environment …not one in which this mother (or indeed any other person) would be able genuinely and authentically, let alone easily or quickly, to integrate into a new life in a new country; the factors in play here would, conversely, operate as formidable barriers to integration.'[456] Significantly, the High Court recently set out quite firmly worded guidance for solicitors involved in habitual residence cases, in terms of the need to robustly prepare such cases for hearing: in *B (A Minor: HR)* [2016],[457] Hayden J confirmed that a child-centric approach was the correct one to adopt, and stressed that the role played by 'those who prepare the statements' was particularly crucial in respect of establishing the realities of the child's habitual residence: '[It] is all about his or her life and not about parental dispute. It is a factual exploration.'[458] This is likely to involve a considerable degree of 'forensic discipline' on the part of lawyers, who should not only strive to fully 'familiarise themselves with the recent case law,' but also actively ensure that they have engaged in highly detailed case preparations to accurately present factual issues to the court, focusing upon 'the day to day life and experiences' of the child, including 'family environment; interests and hobbies…and an appreciation of which adults are most important to the child.'[459]

Question 24: Is Article 9 frequently applied in your jurisdiction? Are there any problems in applying this provision (e.g. in determining the relevant date of the child's departure)?	
Austria	Art 9 is rarely applied by Austrian courts, there are no problems in applying this provision.
Belgium	Even though Article 9 has not been applied often by the courts, the existing case law so far doesn't indicate any difficulties in its application. In the limited number of cases where it has been invoked, the court has simply explained why this article was not applicable or relevant in the particular context of the case. The Court of First Instance of Brussels, for example, concluded that Article 9 could not be applied in one particular case since the child had been moved illegally from one Member state to another.[460] The Court of Appeal of Ghent upheld in the same way that Article 9 is only applicable when the child legally moves from one Member State to another.[461] In another case the court emphasized that Article 9 serves to examine the jurisdiction of the court on the day it was seized, while in the particular case that had happened before the lawful move of the child.[462] The three months period has also been confirmed as being an important condition for the application of Article 9.[463]
Bulgaria	-
Croatia	Continuing jurisdiction is an innovation to Croatian legal system, introduced by the 2201/2003 Regulation. There is only one unreported case of application of Article 9, where the movement of a child from one state to the other was lawful, with full cooperation of the parents. However, due to an increasing immigration of Croatian population to EU member states, such cases may occur more often in the future. [464]
Cyprus	The provision has not been considered yet in our case law.
Czech Republic	No, this provision is not applied very often. In one case a second-instance court (Regional Court Prague, decision dated 27. 4. 2011) had to explain the limited scope of Article 9 stating that it was not possible to use this provision as a ground for jurisdiction when custody (and not access right) is the subject matter of a request.
Estonia	No information available.
Finland	To my knowledge no.
France	Article 9 is not frequently applied in France. This reduced application does not reveal any specific problems in applying this provision. However, it happened once that a court of appeal that had jurisdiction pursuant to Article 9, declined jurisdiction pursuant to Article 15 because the court considered that the courts of the new residence of the children were better placed to hear the case.
Germany	No, as far as I can see; there are only few published decisions.
Greece	There have been some cases where this provision has been applied but there is no indication of a frequent use.[465] No particular problems have been observed in relation to the application of this provision. A doubt exists in theory as to the moment where the holder of access rights must have accepted the jurisdiction of the courts of the child's new habitual residence. According to one opinion it is better to apply this provision even in cases where the acceptance occurred before the acquisition of the new habitual residence.[466]
Hungary	There are not too many published decisions concerning Article 9. In one case (Legf. Bír. Pfv. II. 20.622/2009.) the child was wrongfully removed but the removal became a lawful one as the court decided on the child's residence and it was the parent's residence who moved with the child from Hungary to Italy. The Hungarian court arranged the contact between the child and the parent remaining in Hungary.

Ireland	There is no reported case concerning Article 9 and thus no difficulty has arisen in determining the date of departure of the child.
Italy	It is not very frequently applied. However, an important decision of the Court of Cassation (22238/2009) states that the term of three months starts from the time the minor has physically moved to the new Country, not from the time he or she acquires the habitual residence. To this aim, notices given from one parent to the other are crucial.
Latvia	There was only one case known, when the Article 9 was applied. No problems were observed.
Lithuania	No, Article 9 is not frequently applied in jurisdiction of Lithuania and there were no problems in applying this provision.
Luxembourg	Article 9 is generally not applied by the Luxembourgish courts. However, in a case where the application of this Article was discussed, some documents showed that the habitual residence of the children was established in Luxembourg, although they were attending a school in a close-by region in Germany (apparently where they lived before). Finally, the claim having been filed five years after moving to Luxembourg, the court applied Article 8 of the Regulation in favour of the Luxembourgish courts, explaining that Article 9 of the Regulation is only applicable when the legal change of residence occurs during the course of the proceedings ('Tribunal d'arrondissement de Luxembourg', no. 141449, 10 January 2013). In other cases, the court refused to apply Article 9 because there was no judgment on access rights given before ('Cour d'appel', no. 36816, 10 October 2012; 'Tribunal d'arrondissement de Luxembourg', nos. 133738 and 134058, 13 December 2012).
Malta	I've never seen Article 9 being applied in practice.
The Netherlands	Reported case law offers 10 cases in application of Article 9 BIIa. Most limit discussion of Article 9 BIIa to the statement that it is clearly not applicable. (DC Amsterdam, 2 March 2011, LJN: BP9438; DC Maastricht, 3 December 2009, LJN: BL0241; DC Haarlem, 7 December 2010, LJN: BO8309; DC Dordrecht 16 March 2011, LJN: BP8573; CA Amsterdam 19 July 2011, LJN: BT7148; DC Den Haag, 14 November 2014, ECLI:NL:RBDHA:2014:13891; CA 20 November 2015, ECLI:NL:GHAMS:2015:4312; NL SC 9 September 2011, LJN: BQ4831 (unreasoned). DC Rotterdam 1 April 2014, ECLI:NL:RBROT:2014:8651, made general reference to the exceptions to Article 8(1) granted by Articles 9, 10, and 11 to assume jurisdiction. The DC found that the children had habitual residence in Belgium when proceedings commenced in the Netherlands, but that this habitual residence was only temporarily. Before the move to Belgium they had always resided in the Netherlands. They had returned to the Netherlands after the commencement of the proceedings before DC Rotterdam on the basis of an order from a Belgian Court of Appeal. CA Amsterdam, 10 November 2015, ECLI:NL:GHAMS:2015:4318, found Article 9 was not applicable as the child still had habitual residence in the Netherlands when proceedings were instituted.
Poland	The lack of case law indicates that either provision is not frequently used, or its application does not cause problems. More likely is the first opportunity, for its application so much as five prerequisites must be met (four concerning one situation plus one concerning the other one, when the jurisdiction has been accepted and there is no reason to contest it in the court): a) a judgment on access rights has to be issued in a Member State, before the child will move from its territory, b) a child will move lawfully from one Member State to another, c) a child within 3 months from moving to another Member State will acquire a habitual residence there, d) the holder of access rights will continue to have habitual residence in the Member State of the child's former habitual residence, and at last e) the holder of access rights will accept the jurisdiction of the courts of the Member State of the child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction[467].
Portugal	There is no evidence of the application of article 9.
Romania	We identified only very few pertinent decisions regarding the applicability of article 9 of the Brussels IIbis Regulation. In one case from 2014, Bucharest Courts[468] refused to retain jurisdiction on the basis of article 9, since the conditions of the *perpetuatio fori* set by this text were not fulfilled;

	the Romanian courts of the previous residence of the child did not issued a judgement on access rights prior to the move. In 2014, the Brasov Court[469] discussed the applicability of article 9 in a dispute between two Romanian citizens, concerning the modification of a parental responsibility decision from 2007, occurred when the mother (having sole custody) decided to move with the child in France. The father seized the Romanian Courts, which declined competence; when counting the 3 months delay, they took into consideration not the moment at which the move occurred, but the date mentioned on the French official documents attesting the registration of the child as resident in France. Finally, a case decided in 2015 illustrates the difficulties in deciding the relevant date of child's departure, in the lights of the (sometimes contradicting) facts of the case; after taking into account the date at which the mother made the application for registering the child at an Austrian school, the date until which the child was physically present in school in Romania, the last day in which the father exercised his visiting rights in Romania, the date at which the mother communicated to the father the 'establishment' in another country, the courts finally decided that the 3 months delay had not expired and they were competent to hear the case[470].
Slovakia	Article 9 isn't frequently applied. The court are using the common evidence methods by determining of the moment of establishing new habitual residence.
Slovenia	The Article 9 regulates the continuing jurisdiction of the child's former habitual residence, when the child was moved lawfully from one Member State to another and acquires there a new habitual residence. In such situation the court of the child's former habitual residence retains jurisdiction for transitional period of three-month. Slovenian courts did not specify any problems, but we believe that this period of three month should be extended, what will enable less stressful transition.
Spain	Although the application of Article 9 is not very frequent, a reference will be made to some cases. Most of the problems of its application deal with the interpretation of the concept "acceptance of the jurisdiction of the Courts of the Member State of the child's new habitual residence". For example, in the case number 710/2015 of 16 December (Supreme Court), the Court considered that the defendant –the holder of access rights- accepted tacitly the competence of the courts of the child's new habitual residence as a result of its appearance in the hearing of provisional measures without appealing against the competence of that Courts. Another example of the application of this disposition is the case number 181/2009 of 2 June (Provincial Court of Madrid) when the Spanish Court rejected its competence since the minor was having his habitual residence in another Member State for more than 3 months.
Sweden	There is no published case law.
UK	In respect of Article 9, Renton has noted that potentially a child might be subject to domestic law as well as 'the subject of proceedings in the State where the child formerly resided lawfully.'[471] Citing Thorpe L.J.,[472] she observes that 'there is a high chance of contemporaneous litigation in two member States.'[473] In for example *Re S* [2008][474] (where the English court refused to enforce a Polish contact order, despite recognising it) it was held that it was 'wrong in principle to go behind a properly sealed and acted upon' foreign order. Here however, the Polish Court had wrongly assumed that the child's mother had actually consented to the Order: she was, rather, 'profoundly hostile to the terms.' As the child was by then habitually resident in England (and the provisions of Article 8 applied) litigation to vary should take place in England, on the basis of child welfare considerations. The court did order visiting paternal contact, but triggered wardship.[475] More recently, in *Re B* [2016], it was suggested that other tests for jurisdiction (presence, nationality or domicile, for example) might perhaps engender a less problematic transition between two 'habitual residences. The current test, was, by its very nature, prone to both producing a 'hiatus' and'…simply an inescapable consequence of the concept of a "habitual" residence in a case where a child migrates from a familiar to an unfamiliar place.' [476] Looking to the dicta of Lord Brandon in *In re J (A Minor) (Abduction: Custody Rights)* [1990],[477] it was also argued that: '..a person may cease to be habitually resident in country A in a single day if he or she leaves it with a settled intention not to return to it but to take up long-term residence in country B instead.'[478] Thus, if the test for determining habitual residence is one of fact,[479] the notion of the 'seamless transfer' might well fall within the realm of 'classic legal construct, which has no place in the essentially factual enquiry involved in identifying a child's habitual residence.'[480] Such a device ought not to be employed unless a child had been taken to a state which lacks 'jurisdiction founded on the presence of the child within its territory.'[481] English courts should in turn remain open to the idea that habitual residence might, on the basis of factual evidence, be quite quickly gained, in certain circumstances, as had occurred elsewhere.[482] Lord Clarke's Dissent observed that, given that the child had been 'lawfully and permanently removed from the country' by her (biological and legal) mother, the fact that there were still parentally owned premises within the UK and indeed a number of 'friends and relations to whom the child could return' was simply not relevant to the question of habitual residence here. Lord Wilson (delivering the majority view) stressed however that intention to depart from one jurisdiction is not necessarily 'precipitating, at that moment, a loss of habitual residence…such is not the modern law.' [483] Dissenting Opinions notwithstanding, it has been suggested that the outcome of this case essentially means that 'England has

	embraced modern international concepts of focussing on the position of the children abducted in these cases, rather than on the intention of the abducting parent. From now on, the child is unlikely to lose his or her pre-existing habitual residence at the same time as the abducting parent.'[484]

Question 25: Please explain how Article 12 is applied in your jurisdiction and whether any problems occurred in its application (e.g. with regard to the hearing of the child)? If relevant, please reflect on the condition 'at the time the court is seised' and to cases in which the court declined jurisdiction.	
Austria	Art 12 of the Brussels IIa-VO is rarely used in Austria. In my view, this is because there is no provision in Austrian law which provides that the court in which a matrimonial matter under Article 1 (1) (a) of the Brussels II a Regulation is pending is also competent in the procedure relating to parental responsibility. Therefore, according to § 109 of the JN[485], a court other than the one in which the matrimonial matter is pending (pursuant to § 76 (1) of the JN[486] or § 114a of the JN[487]) may be locally responsible for proceedings relating to parental responsibility. Nor can the marriage procedure and the parental responsibility procedure be linked because the marriage procedure (with the exception of the mutual divorce procedure) is a civil procedure, while the parental responsibility procedure is voluntary jurisdiction. There are no problems with the application of Art. 12 of the Brussels IIa Regulation. In two decisions,[488] the Austrian Supreme Court has rejected the jurisdiction under Article 12 of the Brussels IIa Regulation because a parent has already lodged an application with regard to parental responsibility with a court located in another State. It follows that that parent does not recognize the jurisdiction of the courts of the Member State in which the marriage proceedings are pending.
Belgium	The conditions for the application of this article have been applied several times by the courts in Belgium. In different cases the condition of 'unequivocal acceptance' has been clarified. The Court of Appeal in Brussels stated for example that the appearance in court of the parents without challenging the jurisdiction of the court could be regarded as 'clear and unequivocal acceptance' of this jurisdiction.[489] In another case the court confirmed that it is the parties to the proceeding that need to accept the jurisdiction. The fact that the public prosecutor had challenged the court's jurisdiction was not relevant for the purpose of Article 12.[490] In several other cases there was no agreement between the parties.[491] There is no case law available where the lack of acceptance 'at the time the court was seized' was at stake, requiring the court to decline jurisdiction. When applying this article the courts have been facing a real challenge in assessing whether or not the exercise of jurisdiction is 'in the interest of the child'. In one case it was simply reasoned by the court that the jurisdiction was in the interest of the child since the parents were residing in Belgium and the child and the father had the Belgian nationality.[492] In another case the same court tried first to determine whether any other court could exercise jurisdiction.[493] In a case before the Court of Appeal of Antwerp the court explained that exercising jurisdiction on the ground of Article 12 was not in the best interest of the child since the child had always lived in Germany.[494] The existence of a 'substantial connection' has also been assessed by the courts. In one case a court accepted that the fact that members of the child's family lived in Belgium and had the Belgian nationality was sufficient to prove the existence of such a connection.[495]
Bulgaria	The national judicial practice is partly controversial[496] as well as does not always or fully adhere to the requirements of the Art. 12. In particular, the courts recognizes their international jurisdiction but very often there is a lack of well-reasoned thoughts about the term "*the best interests of the child*" (often the judges presumes that requirement without any other explanations). Moreover, there is judicial practice of the highest court (SCC) which must be followed by the other courts of the country. In that regards the SCC points out that the related national jurisdiction in cases for parental responsibility follows the jurisdiction of the matrimonial matters of the case.[497] There is a clear tendency in such kind of cases the court jurisdiction to be reasoned by the acceptance of the jurisdiction by the people who are subject of the parental responsibility.[498] It should also be added that in some other judgments the court precisely requires to be reasoned that related circumstances alleged by the parties are (or not) "*in the best interests of the child*". As it was mentioned above, at the new case brought for a preliminary ruling to the CJEU (C‑215/15) the Bulgarian SCC has requested a reference for more clarity about the meaning of the Art. 12. The CJEU has also stated that "*Article 12(3)(b) of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility must be interpreted as meaning that the jurisdiction of the courts seised of an application in matters of parental responsibility may not be regarded as having been 'accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings' within the meaning of that provision solely because the legal representative of the defendant, appointed by those courts of their own motion in view of the impossibility of serving the document instituting proceedings on the defendant, has not pleaded the lack of jurisdiction of those courts. First, such acceptance presupposes at the very least that the*

	defendant is aware of the proceedings taking place before those courts. While that awareness is not in itself acceptance of the jurisdiction of the courts seised, an absent defendant on whom the document instituting proceedings has not been served and who is unaware of the proceedings that have been commenced cannot in any event be regarded as accepting that jurisdiction. Secondly, the wishes of the defendant in the main proceedings cannot be deduced from the conduct of a legal representative appointed by those courts in the absence of the defendant. Since that representative has no contact with the defendant, he cannot obtain from him the information necessary to accept, or contest to, the jurisdiction of those courts in full knowledge of the facts."[499]
Croatia	Some misunderstanding of Article 12 exists in Croatian practice, since choice of forum is not acknowledged by national PIL Act. This provision has even been applied in a situation which is clearly not a prorogation of jurisdiction (as the father and the mother issued parallel and concurrent procedures in different states). However, the court based its jurisdiction for parental responsibility and custody on Art 12(4). Court examines that child's habitual residence is in Bosnia and Herzegovina, which is a non-Member State and which is not signatory to the 1996 Hague Convention. Jurisdiction for custody was not properly grounded: Art 12(4) is a false ground of jurisdiction. Court should have used the residual grounds of jurisdiction in Article 14 if it wanted to engage in custody issues.[500]
Cyprus	The provision has not been considered yet in our case law.
Czech Republic	The condition "at the time the court is seised" is interpreted by Czech courts in the way it not necessarily means that both parents must consent at the very beginning of the proceeding, i.e. when application is submitted (e.g. judgment of the Regional Court in Ostrava No 50 Co 58/2012 dated 26.3.2012, judgment of the Supreme Court No 26 Nd 261/2007 dated 17.10.2007). From the prospective of the Czech civil procedure, it would be reasonable to allow the second parent ("non-applicant") to express his or her consent when he or she is informed about the proceedings and has the first opportunity to react and perhaps to agree with the jurisdiction. The condition of "connection" of the proceeding in divorce matters and the proceeding in matters of parental responsibility in the Art. 12 para 1 is interpreted by Czech courts as "related". Such a more flexible approach allows Art. 12 para 1 to be used in the divorce situation before Czech courts, as the Czech law does not connect parental responsibility and divorce in a sole proceeding and the proceeding on parental responsibility (care of the child after divorce) precedes the divorce proceeding. The Supreme Court had also the opportunity to interpret the condition of the best interest of the child and the "voice" of the child in the procedural context (when deciding on international jurisdiction) in its judgment No 21 Cdo 4909/2014 dated 19.3.2015. The Supreme Court stated that "…The best interest of the child in the procedural context implies the decision of the court which considers and emphasizes the interest of the child in order to achieve stable and long-term solution for the child in situation where interests of participants compete…" and that "… The best interest of the child … is already projected in the jurisdictional rules. Under recital No 12 of the Regulation, the jurisdictional rules in parental responsibility matters take into account the best interest of the child, especially its proximity." Another case law of Czech courts to Art. 12 was already mentioned in the response to Question No 1.
Estonia	No information available.
Finland	-
France	As already said, French courts having jurisdiction over the divorce to habitually adjudicate on parental responsibility. However, the French Cour de Cassation ensures that all the conditions required by Article 12 are met. In particular, it had to insist on the condition that the jurisdiction of the divorce judge had been accepted in an unequivocal manner. Indeed lower judges are tempted to consider that spouses divorcing by mutual consent have accepted that the jurisdiction of the divorce court extends to matters of parental responsibility. Recently the French Cour de Cassation had to specify that the silent parent does not agree because of his silence to the prorogation of the jurisdiction of the divorce court. Although, there is no case law on the interpretation of the condition "at the time the court is seized", the prevailing view in legal French literature is that the acceptance of the jurisdiction of the divorce court over parental responsibility matters should be contemporaneous to court seizure; in other words, the agreement to prorogate the divorce court's jurisdiction shouldn't be anticipated, unless it is renewed at the time the court is seized.
Germany	I am not aware of any problematic case.

Greece	Article 12 has not given rise to specific problems. In one case the provision of article 12 § 3 of the Regulation found application.[501] It is observed however as to the nationality that this condition should not be considered per se sufficient to indicate a substantial connexion of the child with the Member state of its nationality.
Hungary	There are not too many published cases concerning Article 12. In the first published case which concerned Article 12 (Legf. Bír. Pfv. II. 22.073/2009.) the first and second instance courts refused the claim for jurisdiction under Article 12(3) as they interpreted the first part of Article 12(3)(b) strictly. The Hungarian Curia emphasized that the claim could not have been refused as the accept of the jurisdiction of the court expressly or otherwise in an unequivocal manner might happen also 'indirectly'. In that case the defendant did not object or directly accept the jurisdiction of the Hungarian court but turned with counterclaims on the merits of the case to the court. In that case the best interests of the child (second requirement in Article 12(3)(b)) was not scrutinized, however, it has to be remarked that the child lived in Hungary. In another case the child lived abroad and the main point was the child's best interests. In this case concerning Article 12(3) (Kúria Pfv. II. 21.710/2013) the facts mirror the situation when the parents move abroad as a family to be employed abroad and after splitting up the residence of the child becomes a huge issue. In this case the mother and the father, both Hungarian nationals, decided to move to Ireland, enter employment and live there. Their child was born in Ireland, with the six-month-old child they visited Hungary and the defendant declared that he wanted to remain in Hungary and bring up the child there. The defendant took care of the child for a month during which both parents claimed for the residence of the child. Afterwards, as the defendant' behaviour was wrongful the child was taken to Ireland where the child's habitual residence was. As both the applicant and the defendant claimed Hungarian courts to decide on the parental responsibilities and the residence of the child the courts scrutinized whether the Article 12(3) could have been applied. According to the court of the second instance the requirements in Article 12(3)(a) and also in the first part of (3)(b) were fulfilled but the conjunctive requirement of serving the child's best interests was a questionable one. The second instance court concluded that as the applicant and the child lived in Ireland the rapid but complex evaluation proceeding of proofs in the child's best interest with the aim of deciding on the child's residence should have been concluded in Ireland. This decision was confirmed by the Hungarian Curia.
Ireland	There is no reported case on the application of Article 12 and thus it is not possible to state how it would be applied in Ireland. I would suggest the likely application would be in line with the English decision of VC v. GC [2012] EWHC 1246 / [2013] 1 FLR 244. Primarily to identify the jurisdiction of habitual residence at the time of the institution of proceedings and thereafter to identify if there was any acceptance of jurisdiction by the other party to the proceedings. Thirdly to enquire as to which jurisdiction was best suited to investigate what is in the best interests of the child's welfare.
Italy	It has been noted first of all that the article must be interpreted an applied in order to protect the paramount interest of the minor. Another decision affirmed that even if the jurisdiction as for the petition for divorce is uncontested by the defendant, the application for child's custody may challenge the court jurisdiction (Cass. S.U. 30646/2011). According to other decisions, the hearing of the holder of the right of visit by the judges of the Member State does not constitute acceptance of the jurisdiction provided he or she does not participate in the proceedings in a direct way or through a lawyer. About the child's hearing, see answer 35. A specific problem comes from the connection with the Hague Convention 1980. In one case (Trib. Sassari, 5 August 2013, unpublished but quoted by C. Honorati, "La prassi italiana sul ritorno del minore sottratto ai sensi dell'art. 11 par. 8 del Regolamento Bruxelles II.bis", in *Riv.Int.Dir.Priv.Proc.*, 2105, 2, 275 ff.) the court confront itself with an issue involving the Hague Convention and its coordination with the Regulation Brussels II bis. The question is whether the term of 12 months for the request of return (settled by the art. 12 of the Convention) should expire when the court is appealed or when the parent addresses the Central Authority. While the Italian legal doctrine is inclined to follow the former view, the Tribunale di Sassari has followed the latter. The court then held to have jurisdiction to hear the case, although in the end – considering complete and deep the inquiry done by the foreign judge – refuses the return of the child who would be exposed to the risk of the psychical damage of having to readapt to an environment which is no longer her own.
Latvia	No Court practice available.
Lithuania	There currently is only single case where local court of Lithuania declined its jurisdiction. The court explained that it cannot solve the parent's claim for child's custody as currently the child's residual place in another member state. The court was straight forward ruling that only a court of child's residual location is competent to solve such claim and duly hear out the parties, including the child[502].

Luxembourg	In the majority of the cases where Luxembourgish courts established their jurisdiction based on Article 12 (1) of the Brussels IIa Regulation, they did not give any reasoning on the requirements laid down by that article ('Tribunal d'arrondissement de Luxembourg', no. 97323, 29 January 2009; 'Tribunal d'arrondissement de Luxembourg', no. 134754, 13 June 2013; 'Tribunal d'arrondissement de Luxembourg', no. 130507, 13 June 2013; 'Tribunal d'arrondissement de Luxembourg', no. 101915, 13 June 2013; 'Tribunal d'arrondissement de Luxembourg', no. 122093, 4 July 2013, among others). However, in a few cases the courts have expressly assessed compliance with the requirement of the spouses' agreement set out in Article 12 (1), but leaving aside the interest of the child and without paying special attention to the condition 'at the time the court is seized' ('Tribunal d'arrondissement de Luxembourg', no. 124602, 2 February 2012; 'Tribunal d'arrondissement de Luxembourg', no. 134550, 12 July 2012; 'Tribunal d'arrondissement de Luxembourg', no. 141177, 2 May 2013; 'Cour de cassation du Grand-Duché de Luxembourg', no. 3282, 30 January 2014). It is worth mentioning a case where the court assumed jurisdiction on the basis of Article 12, although the children involved had their habitual residence in Luxembourg ('Tribunal d'arrondissement de Luxembourg', no. 141183, 2 February 2012). Moreover, in another case, when applying Article 12, the court paid special attention to the best interest of the child, taking into account the plans of the mother to live with her child in Luxembourg as soon as she found a suitable location ('Tribunal d'arrondissement de Luxembourg', no. 120959, 6 December 2012). In another case the court declined jurisdiction because one spouse did not accept expressly or otherwise in an unequivocal manner the jurisdiction of the Luxembourgish court ('Tribunal d'arrondissement de Luxembourg', no. 139144, 20 June 2013).
Malta	It is applied on a case-to-case basis. If possible and if deemed to be in the child's best interests, the child is heard in some way or another – this is done through an appointment/s with the child's advocate who then reports to court as to what the child has said, through the child actually speaking to the judge (in chambers or via video conference).
The Netherlands	Article 12 BIIa has so far not been considered in Supreme Court proceedings. Reported case law offers some 30 decisions on Article 12 BIIa. Most of these only contain the mention that parties have agreed to jurisdiction under Article 12 BIIa, or that the provision is not applicable. Some cases demonstrate that parties argue on the question whether jurisdiction was accepted by both parties. See e.g. CA's-Gravenhage,12 January 2011, LJN: BP9606, where the husband's claim that the wife (through oral statements of her attorney) had accepted jurisdiction could not be ascertained as there was no record of those proceedings. DC's-Gravenhage, 7 January 2011, LJN: BP9086 held that the husband clearly had not accepted jurisdiction. CA's-Gravenhage 27 June 2012, LJN: BW9886, held that jurisdiction under Article 12(1) BIIa was not in the superior interest of the child as there was insufficient information on the child's circumstances (the child was with the mother outside Europe). For application of Article 12(3) BIIa, see CA Arnhem-Leeuwarden, 26 March 2015, ECLI:NL:GHARL:2015:2625, in respect of a child with habitual residence with its grandparents in Surinam while the custodian father had habitual residence in the Netherlands. The court found there was a link with the Netherlands as required under Article 12(3)(a) BIIa and found that the grandparents had not contested jurisdiction (as required by 12(3)(b) BIIa). In relation to Article 12 BIIa there were no references in case law to the hearing of the child.
Poland	Article 12 is applied as an exception from the general rule of jurisdiction of the courts of the Member State of child's habitual residence in two situations: when a case concerning parental responsibility is connected with the ongoing matrimonial case and when jurisdiction of a Member State is justified by child's substantial connection with the forum state.[503] The most commonly judgments refer to the application of both articles: 8 and 12. The literal interpretation of the phrase " at the time the court is seised " means that consent to prorogation would have to take place before the initiation and no one from the parties (participants) should not be revoke until the initiation of proceedings.[504] Decision of Krakow Court of Appeal dated 11 January 2016, I ACz 2406/15[505]: The expression of the defendant's opposition for the recognition of entire case by the Polish courts causes however result in the light of Article 12, which gives the courts hearing the case of divorce jurisdiction in any matter relating to parental responsibility, however, only with joint fulfillment of two additional conditions: parental responsibility for a child must lie with at least one of the spouses and the jurisdiction of the courts must be explicitly or in an unequivocal way recognized by the spouses at the time of initiation of proceedings and be consistent with the interests of the child. The phrase used in the provision 'at the time the court is seised' indicates that for assessing the moment of recognition of jurisdiction of the divorce court should Article 16.1 should be applied,

	according to which court proceedings is initiated, among others, in the moment the document instituting the proceedings is lodged with the court. However, in such a particular moment a position regarding the jurisdiction could be expressed only the applicant. This means that Article 12.1(b) would be relevant only in the case of joint applications by all persons whose consent to the jurisdiction is necessary. The provision, referring to the moment of recognition of jurisdiction should not be understood in the above, "technical-legal" sense but it should be interpreted in such a way that it has regard to the initiation of legal proceedings. The moment of recognition of jurisdiction is therefore the one in which the parties could recognize jurisdiction at the earliest in a legally binding way. In the present case this moment for the plaintiff is filing a lawsuit, and for the defendant - the statement of defense, from which content proposal on the recognition of jurisdiction by her cannot be inferred from. Lack of recognition of jurisdiction of the Polish courts by the defendant produces the only effect that the Polish court currently does not have jurisdiction to adjudicate on parental responsibility, and does not affect the jurisdiction of the Polish court on the request for divorce. One must bear in mind that the question of jurisdiction in matters of parental responsibility is regulated separately in Article 8 of the Regulation, which grants jurisdiction in this regard, the courts of the Member State in which at the time of filing a suit the child resides habitually, and only in exceptional possibility of joint hearing of the case on parental responsibility by a court of a Member State which has the jurisdiction over the divorce proceedings, does not have, however, over the case concerning parental responsibility. Decision of Krakow Court of Appeal dated 12 August 2015, I Acz 1298/15[506]: You cannot agree with the Court of first instance, that in case there is no domestic jurisdiction in the case, in the range of the request concerning parental responsibility, because the domestic jurisdiction in this regard is not consistent with the best interest of the child. Art. 8 of the Regulation provides that in matters of parental responsibility the courts of the State in which, at the time of filing the petition or the request child resides habitually. In determining the meaning of "habitual residence" you should take into account the context of the provision and the purpose of the regulation. In the present case, the minor daughter of the parties resides in Great Britain for several years, attends elementary school and due to the disease she is subject to rehabilitation and medical care. These facts testify to the fact that the habitual residence of the minor child's of the parties is in the UK. At the same time it does not mean, in the context of the provision of Article 12.1 of the Regulation, that the court of a Member State having jurisdiction in the event of a claim or application for divorce on the basis of Article 3, does not have jurisdiction in a case concerning parental responsibility connected to the lawsuit, because the jurisdiction of the court of the state in the case of petition for divorce in this regard is not consistent with the welfare of the child. Judgment of Gdansk Court of Appeal dated 18 March 2013, V ACa 13/13: See point 23. Decision of Torun Provincial Court dated 24 September 2010, VIII Cz 419/10: See point 23.
Portugal	There is no evidence of the application of article 12.
Romania	The main aspects discussed by the case law concerning article 12 regarded the conditions of agreement on the jurisdiction of the court (with a rather severe position regarding the acceptance “in an unequivocal manner”) and the consideration of the superior interest of the child. In a case from 2016, Iasi County Court decided that the presence of the respondent before the court, at different sessions, without contesting the competence, can be interpreted as an unequivocal acceptance of the competence[507]. In this case, the court also referred to the other requirements for the prorogation, established in art. 12.3: the condition of the substantial connection of the dispute with Romania was considered fulfilled because the children had the Romanian nationality and their father was also domiciled in Romania. The “best interest of the child” was considered respected, since the proceedings were held in Romanian, the common language of the parties involved, without further costs of communication and translation of documents, and since the probation was already made before the (Romanian) first instance courts. Nevertheless, this practice is not unitary. In a decision from 2016, Targu Mures Local Court[508] stated that it was not properly seized on the basis of art. 12.3, since the express declaration of acceptance of the competence by the defendant was missing (even if it declared to accept the substantial claims of the claimant); the court considered also the “interest of the child” and decided that this would be best served if the case would be disputed in front of the Belgian courts from the habitual residence of the child, where all the probation regarding the child’s living environment and its social and familial relations can be made directly, in a proper manner. The Mures County Court had a similar position in a case decided also in 2016: with a weak motivation (centred on the importance of the proximity), the court relied only on the best interest of the child and refused to hear the case even if the parents, Romanian citizen, indirectly agreed on the competence and disputed only on the merits, both in front of the first and of the appellate court[509]. The applicability of article 12.3 was also discussed in a decision from 2014 of the Galati Court of Appeal[510]: after mentioning the cumulative character of the conditions set in letters a) and b) of article 12.3, the court analysed the requirement of the “agreement” and stated that the simple presence of the defendant in two hearings, in which he asked for an adjournment of the case in order to find a legal counsel, cannot be interpreted as an unequivocal acceptance of the jurisdiction. The court appreciated also that exercising its jurisdiction would not be in the best interest of the child, since the probation regarding the living environment of the child, his family and social relations would

	be done more adequately and more easily in Italy (the state where the child was habitually resident since 2007). The courts decided that a tacit agreement cannot be understood when one of the parties (the one residing in Romania, the claimant and the child were residing abroad) appears in front of the court in order to contest the competence[511] or does not show up at all before the court[512]. For example, *Moreni Court* discussed the "agreement" requirement, mentioned in art. 12.3.b) in the regulation and stated that the conventional/voluntary prorogation of jurisdiction cannot operate as a results of the exclusive will of a single party (the claimant who filed the application)[513]; the court required that parties' agreement as to the jurisdiction of the Romanian courts must intervene before the date of seizure of the court (the date of the registration of the application). Another problematic aspect regarding the interpretation of article 12.3 was discussed in a case from 2012 of the Court of Appeal Bucharest[514] : the need for some related proceedings pending before the court agreed by the parties for the parental responsibility dispute; the court took a restrictive view, considering that the prorogation is possible only if the court was already seised with a related action. This position is contradicted by the ECJ judgment in the case C-656/13 [2014] and it should not be used in the future. In a future reform, it should be taken into consideration the clarification of the requirements of the "agreement" and, particularly, the situation of the tacit prorogation of the competence. Its admission may be discussed : against it, it can be invoked the ECJ decision in *L vs M* case (C-656/13) (where it is stated that the acceptance of the prorogation must precede the court dispute), but also the article 17 of the regulation, which obliges the court to verify ex officio its competence; nevertheless, we believe that the tacit prorogation, with its important benefits in terms of procedural efficacy, should be admitted; the presence of one party into procedure demonstrates, in our opinion, its sufficient will to see the case solved by that court and article 17 could be interpreted as imposing the court to put into the parties debate its competence (and the issue of their agreement). For more clarity and in order to ensure the uniform application of the regulation, a clear rule should cover this aspect; eventually, the guarantee of the real consent of the weak-party defender could be realised through a solution similar to the one found in art. 26 of 1215/2012 regulation.
Slovakia	The Slovak courts respect the right of the child to be heard. Since 1st of July 2016 came into force the new Civil Procedural Code. The new Civil Procedural Code increased the importance of the right of the child to be heard and has introduced new processual guarantees. It is planned to fulfil in years 2018 – 2020 the judicial training for judges. The training will aim the improving of legal knowledge and wide range of psychological, social and communication skills of judges dealing cases in the area of family law.
Slovenia	We could not identify specific problems in Slovenian case-law. Nevertheless we recognize that the provision of the Article 12 is not sufficient clear and does not provide enough clarity how to used it, if there is no express agreement on jurisdiction. In such situation the court must infer the prorogation based on the actions of case parties. The court has to find out if there is an agreement or not. The question also arises, if jurisdiction based on article 12 is in the child superior interest,[515] because the general jurisdiction from Article 8 derives from the standpoint of the child's best interest, which could be in some cases undermined with the application of the article 12. Slovene courts also follow the guidance given by the Case C-436/13, that the prorogation under article 12 should last just for the time of this proceeding.
Spain	It is difficult to establish a common core between all decisions dealing with Article 12. However, a reference will be made to most controversial ones. First of all, in one case (case number 10/2015 of 8 January, Provincial Court of Barcelona), the Court interpreted Article.12.1.a) Brussels IIa Regulation by assuming that, although the parents of a child were having their habitual a different place than the child –he was living with his grandfathers-, it was possible to assume that they were holding and exercising the parental responsibility in relation to the child. The Court stated that the parents were participating in the most relevant decisions of the child and he was supposed to move with them in the future. Another controversial issue has been the interpretation of the wording "has been accepted expressly or otherwise in an unequivocal manner". A general overview of the cases dealing with this issue can be summarized considering three different positions. Firstly, in same cases the agreement of the spouses is not analyzed and the Court assumes its competence without an exhaustive reasoning (case number 308/2010 of 20 December, Provincial Court of Barcelona). Secondly, other judgments check that this requirement is fulfilled (case number 486/2006 of 29 November, Provincial Court of Salamanca or case number 182/2010 of 25 November, Provincial Court of Teruel). Finally, in other instances, the competent judge according to Article 3 declared it was not competent to deal with parental responsibility matters given the lack of an agreement between the spouses.

Sweden	There is no published case law.
UK	In *I (A Child)* [2009][516] the Supreme Court declared that where parents have opted into the jurisdiction of an EU court (i.e. under article 12.3) then English courts are permitted to exercise jurisdiction in respect of the child, even where that child is not lawfully residing within a member state.[517] In *VC v GC (Jurisdiction: Brussels II Revised Art 12)*[518] the child in question had been born in France but been living in England for 22 months with the agreement of her French father. Her mother sought an adjournment of the French proceedings, and was also granted an English Residence Order. The French court however made an interim residence order in favour of the father, who accepted that the child was now habitually resident in England, but sought application of Article 12(1)(b) of BIIR so that the child's future might be determined in the French courts. The English High Court found that the child was habitually resident in England and that the court of habitual residence was best suited to determine issues of parental responsibility. Although acceptance of jurisdiction did not have to be made in writing, later acts and contact could 'illuminate the quality of the acceptance at the time the court was seised.' [519] Acceptance had to be unequivocal: the child's mother had not unequivocally accepted French jurisdiction. In relation to the child's best interests, these had been addressed via 'any welfare hearing' and by the court's having considered the 'appropriate exercise of parental responsibility.' The English court was, in sum, best placed to hear such matters and make any necessary enquiries.

Question 26: Is in your jurisdiction the ground for jurisdiction in Article 13 used with regard to refugee children? Is the definition of 'refugees' in the UN Convention on the Status of Refugees (1951) relied upon in this respect?	
Austria	No decision on Article 13 of the Brussels IIa Regulation could be found. However, since there are many (unaccompanied) refugee children in Austria, it can be assumed that Article 13 (2) of the Brussels IIa Regulation applies to refugee children. Who is refugee is determined in Austria[520] according to the 1951 Geneva Refugee Convention and the Protocol on the legal status of refugees.
Belgium	There is no case law available on the application of Article 13.
Bulgaria	I was not able to found a court practice related to the refugee children. However, it should be noted that some authors pay more attention to the bad translation of Art. 13 into Bulgarian language.[521] In particular, the transition comprises only classical refugees but not the so called "internationally displaced persons" in regard with Art. 6, par. 1 of the Hague Convention.
Croatia	There is no publicly available data at disposal. Upon request Social Welfare Authority Croatia has reported on several cases of refugee children found on Croatian territory without adult supervision. Unfortunately reports related only to factual situations that have occurred,[522] and none of legal issues relevant for their settlement was reported by the Social Welfare Authority. Available legal writings clearly indicate that respective definition of a refugee should have been applied by Croatian authorities as well.[523]
Cyprus	The provision has not been considered yet in our case law with regard to refugee children.
Czech Republic	Yes. Although, we do not have high number of cases.
Estonia	No information available
Finland	To my knowledge no cases.
France	So far, it doesn't seem that Article 13 was used with regard to refugee children. On the contrary it was used once in a very controversial way in a case where the child had his habitual residence in a third State but was present in France where his mother had temporarily settled. This interpretation of Article 13 is condemnable because it was not the case that the child's habitual residence could not be established ; it was established in a third State while the child was present in France taking into account the fact that his presence in France had not transferred his habitual residence to France. In this case, Article 14 of the Brussels IIa Regulation should have been applied instead and would have given French courts jurisdiction on pursuant to Article 15 of the French Civil Code. It is important to insist on the role of *forum necessitatis* played by Article 13.
Germany	I assume that Article 13 is used. I have found a case in which the provision was used without reference to the Convention. In most cases the child will also have his or her habitual residence in Germany.
Greece	There are no available data on the application of this provision. Eventually, the recent refugee crisis and the fact that Greece is one of the first destination countries of refugees might lead to a more frequent application.

Hungary	Such case has not occurred yet.
Ireland	There is no reported case on Article 13 but it is presumed that this is the logical basis to ground jurisdiction in the case of a refugee child. The Refugee Act 1996 gives effect to UN Convention on the Status of Refugees (1951).
Italy	Yes it is, although no judicial decision has been published on this topic.
Latvia	Not observed.
Lithuania	Yes, there is the ground for jurisdiction in Article 13 with regard to refugee children. The law on legal status of foreigners of the Republic of Lithuania determines that a legal status of refugee might be granted under application of a person, who fears for his persecution in a country of his origin because of racial, religious or national discrimination, or because of participation in social or political organization, who is beyond borders of his country and who cannot effectively use defense form his country, or his country refuses to provide such defense from persecution.
Luxembourg	None of the judgments reviewed mentioned the involvement of refugees, nor the children and neither the parents.
Malta	I have never seen this article put into practice
The Netherlands	The only example in case law applying BIIa in respect of refugees is a divorce case between two refugees. See DC Zutphen, 15 September 2010, LJN: BN7083 (Article 3 BIIa). There is some case law in which Article 13 BIIa is used as a basis for jurisdiction. It would appear that Article 13(1) BIIa is of use when the habitual residence of the child in the Netherlands cannot be determined or is dispted, while it is clear that the child is present in the Netherlands. See e.g. two decisions of CA Arnhem, 8 November 2012, LJN: BY8703 and 22 November 2012, LJN: BY9130; CA Arnhem-Leeuwarden, 11 July 2013, ECLI:NL:GHARL:2013:5001 and 5 August 2014, ECLI:NL:GHARL:2014:6440; DC Noord-Nederland (Leeuwarden), 6 February 2014, ECLI:NL:RBNNE:2013:8307.
Poland	There is no case law concerning its application with regard to refugee children, also there are no contraindications for its application to them - as evidenced by the voices of doctrine.
Portugal	There is no evidence of the application of article 13.
Romania	We could not identify any decision in which the courts retained competence on the sole ground of the presence of the child (either because the habitual residence could not be established or because the child was a refugee). The UN Convention on the status of Refugees (1951) and the 1967 Protocol are in force in Romania (since 1991). The definition of the term refugee given by these international norms is normally followed by the internal legislation[524] and by the courts when interpreting and applying various texts using it.
Slovakia	Article 39 of International Private Law Act states: (1) Slovak courts shall have jurisdiction in matters of parental responsibility in respect of a minor if the minor has his habitual residence in the Slovak Republic or if his habitual residence cannot be determined. (2) Slovak courts shall also have jurisdiction in matters of parental responsibility in respect of refugee children or children who, due to disturbances occurring in their country, were internationally displaced and are present in the Slovak Republic. (3) If the Slovak court does not have jurisdiction on the substance of parental responsibility, it shall only take measures necessary for the protection of the person or the property of the child and shall inform thereof the competent authority of the State of the child's habitual residence. Such measures shall be taken by the Slovak court in

	application of provisions of the Slovak substantive law. (4) Slovak courts shall have, in proceedings in matrimonial matters, also jurisdiction over the question of parental responsibility of spouses in respect of their common child, provided: a) the child has his habitual residence in the Slovak Republic, or b) at least one of the spouses has parental responsibility in relation to that child, the jurisdiction of the courts has been accepted by the spouses and the exercise of such jurisdiction is in the best interest of the child.
Slovenia	The jurisdiction of the Article 13 is based on the child's presence in the Member State, if child's habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article 12. Such jurisdiction presents also the *forum necessitates* and is the guarantee for the principle of the best interests of the child, especially in the case of refugee children. Article 13(2) applies also for the refugee children or children internationally displaced because of disturbances occurring in their country, but not for the refugee children or children that are internationally displaced outside of the EU. The provision of Article 13 is therefore based on the principle of subsidiarity and will apply only if the child has not habitual residence in any EU Member State. Despite the mentioned, Slovenian courts have not yet faced with the Article 13 Brussels IIa Regulation.
Spain	It was not found any case where Article 13 of Brussels IIa Regulation were to be applicable to refugee children or children internationally displaced because of disturbances occurring in their country. However, this provisions was used to "support" the international jurisdiction of a judge in those instances were the minor is present in a Member State but its habitual residence becomes controversial (i.e. the applicant states that the minor has its habitual residence in another Member State) (case number 710/2015 of 16 December 2015, Supreme Court or case number 187/2014 of 28 April 2014).
Sweden	There is no published case law.
UK	In *West Sussex County Council v H* [2014] [525] it was held that English courts had jurisdiction to hear care proceedings involving an Albanian infant, whose immigration status had yet to be regularised in the UK. *Re F* [2014][526] was followed, as was *A v A & Another (Children: Habitual Residence)* [2013].[527] The child was deemed to have habitual residence in England: the court was not obliged to actively consider transferring proceedings to Albania.[528]

Question 27: When Article 15 was applied in your jurisdiction was it mainly as an outgoing- or incoming transfer?	
Austria	According to my informant, Mrs Mag. Thau, there are a few more cases of referring to the courts of another Member State ("outgoing") than vice versa ("ingoing"). There is a decision of the Austrian Supreme Court[529], in which an Austrian court asked a German court to adopt a procedure concerning the rights of custody and the rights of access relating a child born outside the marriage. In a recently published decision of the Austrian Supreme Court[530], the latter made a reference to the initial court to apply Art. 15 Brussels IIa Regulation, since a transfer of the habitual residence of the two children to the United Kingdom was made. After a two-year stay in Austria, the father returned to the United Kingdom with the minor children, the mother is again in Great Britain, and all the participants are British citizens.
Belgium	In general, courts in Belgium do not hesitate to apply Article 15 on their own motion. The application of this article is mainly done as an outgoing transfer where the courts establish that another court is better placed to hear the case.[531] But there have also been cases where the Belgian court, after coming to the conclusion that it did not have jurisdiction based on Article 8, stated that it was better placed to hear the case than the courts in the country where the child had his habitual residence.[532] The various conditions laid down in Article 15 have been explained and implemented in several cases before the Belgian courts.[533] First the courts have examined whether courts of other Member States were better placed to hear the case. In a case where the living circumstances of the child needed to be inspected, the court stated that the courts of the State where the child was actually living were better placed to hear the case.[534] The opposite conclusion was reached in another case where the child had moved from Belgium to Germany during the proceedings. The court found that the courts in Germany were not better placed to hear the case considering that the Belgian court had already ordered provisional measures and the hearing of the child by an expert.[535] When assessing whether the other courts are 'better placed to hear the case', the courts have taken into account the best interest of the child. For the best interest of the child test, Belgian courts have bared in mind different relevant aspects such as the possibility for the court seized to gather information on the child's situation.[536] With regard to the particular connection condition, the courts have noted in different cases that such a connection existed independently of the time spent in the other country. In one case the children had been living in the other country only for a few months, but they went to school there and had made friends and thus had already created social links which indicated the existence of a particular connection.[537] While in another case before the same court the child had been living in the other country for two years already and this demonstrated the existence of a particular connection.[538] In the well-known *baby D* surrogacy case, the Court of Appeal of Ghent has dealt with the acceptance condition. According to this condition a transfer made by the court on its own motion must be accepted by at least one of the parties. In this case the habitual residence of the child was in The Netherlands. It was not disputed that the Dutch courts had jurisdiction on the basis of Article 8 Brussels IIa. Nevertheless, the Belgian Juvenile Court of Oudenaarde asked the Dutch Juvenile Court of Utrecht to transfer the case according to Article 15 Brussels IIa. It was of the opinion that the Belgian courts were better placed to hear the case. The Court of Appeal of Ghent ruled that the transfer was not done according to the conditions of Article 15 as it had not been accepted correctly by at least one of the parties to the proceedings. In this case the Dutch Council for Child Protection ('Raad voor Kinderbescherming') had agreed to the referral through a letter which was sent 'after' the court decision referring the case. The Court of Appeal of Ghent was of the opinion that this acceptance was not valid. Consequently the Belgian courts referred the case back to the courts in The Netherlands.[539]
Bulgaria	There is a limited practice under Art. 15.
Croatia	There was only one unreported case of application of transfer of jurisdiction pursuant to Article 15. In that case Croatian court was asked to take over the parental responsibility case of a minor living in UK. Due to the fact that child had no connection to Croatia (never lived here, no language skills), and that no relatives were willing to take care of a child, request for transfer was refused.[540]
Cyprus	Outgoing transfers.
Czech Republic	The interviews with judges showed that they experienced both situations. More difficult, from the procedural point of view seem to be the outgoing cases, as there are clear procedural rules neither in the Regulation nor in the national law.

	In its judgment No 21 Cdo 5311/2015 dated 18.6.2016 the Supreme Court concluded that the courts have to apply national rules when transferring the jurisdiction in another Member State, as the Art. 15 does not oblige the court to stay the proceedings until the requested court replies, and that the six-week time limit for the reply of the requested court in Art. 15 is preclusive.
Estonia	No exact information available
Finland	There is one possible problem in my mind, right to appeal according to article 15?
France	Article 15 was mainly (if not exclusively) applied in France as an outgoing transfer and was used in favour of other French speaking countries (Luxembourg and Belgium). The delays are too long to obtain an incoming transfer.
Germany	I have no data on Article 15, but I have been told by practitioners that the provision is often used.
Greece	There has been no Greek decision applying article 15 of the Regulation or Greek court accepting its jurisdiction after a transfer by a court of another Member state or ordering a transfer to another court.
Hungary	We do not have published decision concerning Article 15.
Ireland	Article 15 operates in relation to both incoming (see Child Care Law Reporting Project 2016 concerning a child in care being transferred to Ireland) and outgoing (HSE v. SF [2012] EWEHC 1640.
Italy	Most cases are outgoing. Just to give an example, in 2014, according to the statistics published by the Ministry of Justice (Department of minor justice), in a total of 240 cades of abduction, 166 were outgoing (97 toward EU countries) and 74 incoming (42 from EU countries).
Latvia	Taking into consideration that there are many cases where the Latvian nationals are subjects to the family/care proceedings in other Member States, particularly, when the Latvian child is removed from the parental care, Article 15 is widely used by the Latvian Orphan's Courts in requesting Courts abroad to transfer jurisdiction to Latvia. Outcome ratio is 50/50.
Lithuania	There is only a single case in Lithuania where a local court denied its jurisdiction and applied to another member state court according to provisions of Article 15[541].
Luxembourg	Article 15 was rarely applied by Luxembourgish courts, and if so, this provision was used in the framework of an outgoing transfer of jurisdiction. There is a case where the Luxembourgish court did not have jurisdiction as to the substance of the matter but still applied Article 15 to transfer the jurisdiction to the courts of another Member State (Belgium), that Member State being the country of habitual residence of the children. The court stressed the closer links of the case with the place of habitual residence of the children ('Tribunal d'arrondissement de Luxembourg', no. 138690, 22 November 2011). In another case the court did not apply Article 15 in favour of the courts of another Member State arguing it was not in the interest of the child and such a transfer of jurisdiction had an exceptional and optional nature ('Cour d'appel', no. 36816, 10 October 2012). Luxembourgish legal literature found this rule problematic in countries that, like Luxembourg, are not familiar with the notion of *forum conveniens*[542].
Malta	I have never seen this article put into practice

The Netherlands	There are presently 32 cases discussing Article 15 BIIa. They merit further study but do not appear to offer any clear direction as to whether courts have a preference either for either incoming or for outcoming transfers.
Poland	It was mainly an outgoing transfer – the cases were transferred to the foreign jurisdictions.
Portugal	There is no evidence of the application of article 15.
Romania	We could not identify any pertinent decision. Article 15 of the Regulation was nevertheless invoked in a number of cases, where the conditions of its applicability were far from being fulfilled: in particular, art. 15 was invoked as a ground of Romanian court's jurisdiction (as better placed courts) in cases where the habitual residence of the parties and of the child was located in another member state; the general position was one of rejection of such claims[543].
Slovakia	99% of cases are incoming transfer cases.
Slovenia	Article 15 of Brussels IIa Regulation was applied in outgoing as in incoming transfer.[544]
Spain	According to the cases that have been checked, an outgoing transfer has taken place in case number 161/2015 of 20 May, Provincial Court of Barcelona and case number 866/2013 of 18 December, Provincial Court of Barcelona by the argument that the Courts of another Member State were in a better position. These cases were clearly referred to the transfer of the case to the Courts of another Member State. Similarly, in the case number 122/2006 of 27 November (Provincial Court of Salamanca), the Spanish Court declined to request the Courts of another Member State the competence of the case, considering that that Courts were better place to hear the case given the circumstances. On the contrary, in case number 653/2007 of 17 October (Provincial Court of Valencia), Spanish Courts stated that they were better places to hear the case based on the Spanish nationality of the mother and the child and despite the fact that they were currently having their habitual residence in Germany. The argument of the Spanish Court was supported by the argument that German Courts had also considered Spanish Courts in a better position. In other cases, such as case number 496/2011 of 7 July (Supreme Court) or case 486/2006 of 29 November, Spanish Courts decided to not transfer the case to the Courts of another Member State by the argument that Article 15 of Brussels IIa had to be applied only in exceptional cases.
Sweden	There is no published case law.
UK	Cases tend to involve outgoing transfer applications. McCarthy and Twomey have suggested that in this area, much of the UK's recent case law has perhaps served 'to dilute the meaning of best interests in Article 15…it has become little more than a repetition of '*better placed to hear the case,*'[545] leading to a too-narrow focus upon issues of forum.[546]In *Re N (Children)* [2016], [547] the issue before the Supreme Court was the proposed removal of care proceedings from the UK to Hungary: the two girls had been born in the UK and placed from infancy with foster carers. They were likely to be eventually adopted by their carers, should the proceedings have remained within the UK. [548] The Court found that the best interests of the children clearly required 'that their future should be decided as soon as possible.'[549] Over-ruling the lower courts' decision to transfer jurisdiction, the Court provided guidance on how the best interests' principle was to be properly interpreted under Article 15. As Phillimore has argued, concern was expressed over the accumulation of recent case law that had led to the use of an 'attenuated welfare test,' [550] with Lady Hale noting that '…the question is whether the transfer is in the child's best interests. This is a different question from what eventual outcome to the case will be in the child's best interests. The focus of the inquiry is different but it is wrong to call it 'attenuated'… there is no reason at all to exclude the impact upon the child's welfare, in the short or longer term, of the transfer itself…' [551] It was held also that the issue of whether a court was "better placed" to hear proceedings was separate to the question of whether the actual transfer would itself be in the "best interests" of the child affected. Thus, if a foreign court were better placed to hear a case, it did not follow automatically that it would then be in the best interests of the child to transfer the proceedings. Significantly perhaps, the Court opted to not await forthcoming guidance from the CJEU, but to proceed instead on the basis of its own interpretation of Article 15, which was grounded in 'practical evaluation' [552] of the increasingly urgent situation. The decision highlights the need for further discussion of how domestic courts might be, or indeed become, 'best placed' to hear such difficult cases, and indeed on how the best interests of vulnerable children (whose welfare, as here, might be very adversely impacted upon by the transfer of proceedings) might be protected in such circumstances. That the care proceedings in question were not deemed

	to be 'measures preparatory to adoption' is also note-worthy, in terms of determining the best means of protecting those children who might find themselves in similar situations in future. [553] The case underpins how in such situations the courts should not simply 'ignore information which suggests that a fellow member state will disregard a key best interests factor'[554] as potentially might have occurred had the proceedings been transferred. There was still a need to avoid making decisions based upon 'subjective assumptions of the decision maker.'[555] Although the remit of EU law does not extend to substantive matters of family law, the longer-term, adverse 'consequences of migration'[556] for vulnerable children (i.e. the potential loss of all contact with birth relatives, not least their siblings) must be included in any judicial analysis on best interests. Similarly, if the Regulation is meant to cover parental responsibility 'in its entirety,'[557] then it seems reasonable to assume that it will apply to those hearings which carry the potential to end parental responsibility. Whether the CJEU will interpret the notion of 'measures preparatory to' adoption in a similar way in the forthcoming hearing of the Irish case i.e. *Child and Family Agency (CAFA) v JD* (Case C-428/15) (which concerns a British citizen), remains to be seen. Arguably, a key question to be determined in that case will be that of how courts ought to decide which factors *should* (rather than simply might) be considered when protecting the 'best interests of the child' (i.e. by deciding on the 'better placed' forum). If, as Kruger and Samyn observe, the concept of the child's 'habitual residence' is 'supposed to have an autonomous and uniform meaning based on it being a factual concept,'[558] then arguably decisions to transfer proceedings which have the potential to detrimentally affect the child's longer term best interests, should be equally grounded in factual concerns (such as, for example, a loss of contact – or any opportunity to seek contact - with siblings or grandparents). To ignore potentially harmful outcomes that might occur post-transfer, is to perhaps side-line the best interests of the child principle: human rights violations, for example under Articles 6 or 8 of the European Convention, may also arise. As Pranevičienė has argued, '…parental rights and duties often become only the means to an end while the battle for a child is waged. One frequently forgets that in most cases the mere results of such a battle are only the trampled rights and interests of the child.' [559]

Question 28: Should a recast include a *forum necessitatis* or it is not needed because provisions of Articles 13 and 14 provide for a sufficient coverage? Please explain why or why not. What is the prevailing view in legal literature in your jurisdiction on this matter?	
Austria	The question of whether a forum necessitatis should be introduced into the Brussels IIa Regulation has not yet been taken up in Austria because there is no forum necessitatis under Austrian law either. In my opinion, similar to most other regulations, the application of national law should be completely excluded and instead a forum necessitatis should be introduced. This is, in my view, easier to apply than the provisions of national law. In addition, as in the recent Regulations, a jurisdiction of estate should be created under which international jurisdiction is given when the child has property in the Member State concerned and the decision of the court relates to that property.
Belgium	With regard to matrimonial matters the Belgian courts have invoked the *forum necessitatis* rule envisaged in the national PIL Code (see question 9). In the legal literature there have been suggestions to introduce this concept in order to remedy situations of denial of justice.[560] Regarding parental responsibility matters in cases where no court of Member States has jurisdiction pursuant Articles 8 to 13, the courts have used the solution provided in Article 14 and turned to the national private international law rules. We refer to a case before the Court of Appeal of Brussels. The parties to the proceeding had two children. The family had resided in Mozambique first, then in Belgium, Chili and finally in Dubai. In 2009, the mother went to Fiji for a new job, while the father moved to Saudi Arabia with the children. The parties asked the court to order measures with regard to the children. The court first examined its jurisdiction. At the moment when the proceedings were started the children were not living in a Member State, so Article 8 could not be applied. Article 12 was not applicable either since the appellant had rejected the jurisdiction of the court. Finally the court relied on Article 14 of the Regulation and accepted the jurisdiction pursuant to Articles 32 and 33 of the Belgian PIL Code.[561] In another case the same court reached the conclusion that no court of a Member State had jurisdiction to hear the case. The children concerned were habitually resident in Niger, where they had been living for eight months and went to school. The court used the solution of Article 14 and applied the rules of the Belgian PIL Code. The Belgian courts had jurisdiction since the father was domiciled in Belgium.[562]
Bulgaria	National judicial practice based on the Art. 15 was not found.
Croatia	There are pro's and contra's on introduction of forum necessitates in the EU regulation. As for the later, current subsidiarity grounds of jurisdiction enable application of national criteria, and in most EU jurisdictions forum necessitates exists. However, as reported in the European Commission's Report majority of stakeholders, experts, respondents to the European Commission's public consultation (77%) "noted that the absence of a "forum necessitatis" hampers legal certainty and the assurance of EU citizens' fundamental right of access to court."[563] Since other EU regulations contain this open forum possibility it's introduction would not create any dis-balance to the EU PIL system. There is no article in Croatia on that point.
Cyprus	-
Czech Republic	No.
Estonia	There is no legal literature on this issue. There have been told that art-s 13 and 14 are sufficient

Finland	-
France	As explained in question 25, Articles 13 plays this role and in coordination with Article 14, these two provisions provide for a large coverage. However it should be observed that this large coverage is also due to the national provisions in French law which ground jurisdiction on the French nationality of the applicant (article 14 of the French Civil Code) or of the respondent (Article 15 of the French Civil Code). In any case, if a *forum necessitatis* is introduced in matrimonial matters (see question n°14), it should also be the case in parental responsibility matters.
Germany	Again yes. In order to follow the modern approach in the Maintenance and Succession Regulation as well as the Matrimonial Property Regulations.
Greece	In our opinion the jurisdiction grounds provided by the Regulation and more precisely seem to cover the majority of cases in relation to parental responsibility cases. Nonetheless, there is no harm in providing for a forum necessitatis in cases where no other jurisdiction of a State recognises its competence in relation to a child. Such a provision does not seem to create an unreasonable burden in the legal framework governing parental responsibility issues.
Hungary	It was not discussed in the legal literature.
Ireland	There is no legal opinion on the need for *forum necessitatis* but it would appear that the combined effect of both Articles 13 and 14 would provide sufficient coverage on the absence of such a basis for jurisdiction on *forum necessitatis*.
Italy	Legal literature has not published any opinion in these exact terms. However, I can infer that some authors would be in favour of such introduction, although at present the Italian legal system does not make use of the notion of forum necessitatis.
Latvia	Yes.
Lithuania	A rule for *forum necessitatis* in a recast could help the courts of member states to avoid unnecessary disputes for setting applicable jurisdiction. However, such rule should contain an exception for the courts to decide on applicable jurisdiction *ex officio*, in order to secure the best interests of a child. Although in our opinion, current regulation (Articles 13 and 14) provide sufficient coverage. Please also see answer to Question No 13.
Luxembourg	In this regard, in Luxembourg there was only one problematic case for determining the jurisdiction, in that it was only unclear where to establish the habitual residence of the children, due to the existence of documents proving it to be both Luxembourg and Austria ('Tribunal d'arrondissement de Luxembourg', no. 138103, 22 September 2011). It wasn't a case of absence of jurisdiction –scope of *forum necessitatis*–, but rather the contrary, of "multiplication" of jurisdiction. No other problematic cases in terms of the assumption of jurisdiction were found. Taking into account the absence of problematic cases and the wide number of scenarios falling into the scope of the Regulation, there is no need for a *forum necessitatis* rule, as jurisdiction will be assumed either directly through the Regulation or applying national law. The lack of need for such a rule is also expressed in Luxembourgish legal literature[564].
Malta	No as the mentioned articles provide for a sufficient coverage and because courts need flexibility.
The Netherlands	This issue has been addressed above. Netherlands legislation and the discussion in legal writing is only concerned with forum necessitatis in cases outside the scope of BIIa. It would appear that for parental responsibility cases within the scope of BIIa that concern children who either have a habitual residence in an EU Member State or are present in an EU Member State, the fact that for such a child there is a court in the EU that will have jurisdiction under BIIa ought to be sufficient. In the Netherlands, the main reason for accepting forum necessitatis (in whatever form) is that court proceedings abroad are either impossible (the strict forum necessitatis) or are impeded in such a way that proceedings abroad cannot be required. It is not understood how such situations can exist within the area of freedom, justice and security. And if they would arise, it would appear that action will be taken by EU authorities through the EU framework to strengthen the rule of law (cf. http://ec.europa.eu/justice/effective-justice/rule-of-law/index_en.htm).

	The forum necessitatis issue should only concern children who do not have habitual residence in the EU (Article 8 BIIa) and who are also not present in the EU (Article 13 BIIa). The current provisions of BIIa relevant for these children, chiefly found in Article 12, do not appear to prevent application of national rules on forum necessitatis under Article 14. Under the present scope of application of BIIa forum necessitatis in parental responsibility should be left to national law, to the extent global conventions (the Hague 1996 Convention) are not applicable. If forum necessitates were allowed for cases that are only linked to the EU, it would probably serve mainly as a means to covertly fall back upon jurisdictional grounds from the past, notably nationality.
Poland	Lack of jurisdiction and doubts concerning subsidiary solution from Articles 13 and 14 probably shows that they provide sufficient coverage. See point 9 and 14.
Portugal	There is not enough information to answer this question.
Romania	The Romanian literature does not take a position on this point. The European legislator sets a limited number of jurisdictional grounds concerning the parental responsibility cases (the habitual residence of the child, the agreement of the parties/parents); this may lead to some gaps when the child is resident in a non-European state and the parents does not agree as to the competence of the courts of the member state with which the child is closely related (by its nationality, for example). Since the article 13 (jurisdiction based on the presence of the child) operates only under restrictive conditions, the solution may come from the national rules of international civil procedures (applicable on the basis of art. 14, residual jurisdiction) which are sometimes based on discriminatory grounds. Because in general this entails disparities in the (jurisdictional) protection of children in the MS, we think that a uniform solution should be promoted at the European level. That would reduce the complexity of the legal treatment of cases (which involves now a difficult articulation of norms of European and/or international or national origin) and would bring more certainty in the field.
Slovakia	We can't imagine at this stage the case constellation where the rules of Articles 13 and 14 wouldn't be sufficient. But maybe would be proper to have a look at jurisdictions of Member states which have already established the rules of *forum necessitatis*
Slovenia	As already mentioned, Article 13 gives the basis for *forum necessitatis.* But the explicite provision on *forum necessitatis*[565] Brussels IIa Regulation would provide more legal certainty and would prevent the exclusion from the access to the court when special circumstances would occur (e.g. war).[566]
Spain	According to Article 13.2, the forum "Jurisdiction based on the appearance of the defendant" is applicable in cases of refugee children or children being displaced because of disturbances occurring in their country, which in the end is referred to similar circumstances to those that activate the *forum necessitatis* in the recent Family and Succession Private international Law Regulations ("…because of civil war or when an applicant cannot reasonably be expected to initiate or conduct proceedings in that State"). However, Article 13 cannot be considered a complete *forum necessitatis*provision, since this one has a broader scope of application: in general, it is applicable if proceedings cannot reasonably brought or conducted in a third State with witch the dispute is closely connected. Alongside this, Article 14 would not be sufficient to avoid situations of denial of justice because of the same reasons provided in relation to Article 7 of the Regulation (see answer question 14). Having regards to this, the inclusion of a *forum necessitatis* rule is advisable.
Sweden	Articles 13 and 14 appear to be sufficient, especially in view of Article 11 of the 1996 Hague Convention (see paragraph 22 *supra*).
UK	Articles 13 and 14 seem to provide sufficient protection. That said, as Fenton-Glynn has recently outlined, a number of significant issues still exist in respect of child protection, including the often very differing approaches of EU member states. [567] McEleavy has observed also (albeit in respect of the Hague Convention) that 'there have been many high profile examples where the new rules have failed to operate as intended, or indeed have been ignored entirely.' [568] The inherent jurisdiction of the High Court potentially provides further protection.

Question 29: In general, have there been difficulties in applying Sections 1 and 2 of the Brussels IIa Regulation as far as the recognition and enforcement of decisions in cases of parental responsibility are concerned?	
Austria	In general, there have been no difficulties in the application of sections 1 and 2 of the Brussels IIa Regulation.
Belgium	The existing case law does not indicate any difficulties in applying these provisions. However, there was one case with Scotland which led to some difficulties. In this case the Court of Appeal of Ghent had set up a preliminary agreement between the divorced parents on the parental responsibility of their children. The mother wanted to take the children to Scotland for the summer holidays. The court was concerned with the execution of its decision in Scotland. The court referred to Article 28(2) Brussels IIa and confirmed that the judgment would be enforceable after registration in Scotland. The court also confirmed its competence to issue a certificate under Article 39 upon request of one of the parties, which will be needed to obtain enforcement of the judgment in Scotland.[569]
Bulgaria	-
Croatia	No available case law exists to witness of problematic recognition of another member state judgement.
Cyprus	No.
Czech Republic	No.
Estonia	The additional time for the proceedings has been difficult to understand for the parents. There have also been some problems with making sure whether a specific court decision has to be declared enforceable or not.
Finland	-
France	No particular difficulties in applying Sections 1 and 2 of the Brussels IIa Regualtion are to be mentioned.
Germany	No.
Greece	Greek Courts have not in general encountered such difficulties in applying sections 1 and 2 of the Brussels IIa Regulation and they only exceptionally refuse the recognition and the enforcement of such judgments.[570] In particular Greek Courts have applied article 38 several times and recognised and enforced foreign final parental responsibility judgements even when no certificate of article 37 (1,b) and 39 was submitted due to the fact that all the relevant information were included in the authenticated copy of the decision.[571] It has also been stressed out by Greek Courts that the jurisdiction of the court of the Member State of origin cannot be not be reviewed when the recognition of judgment is sought.[572] Finally, Greek Courts have found that a foreign decision that has considered unnecessary to hear the opinion of the children, does not necessarily contradict the Greek public policy.[573] Another case where the omission to hear the child will not be deemed sufficient to refuse the recognition of a foreign decision will be the one of an urgent procedure such as one of provisional measures.[574]
Hungary	There are two published decisions concerning the issue of the recognition of a foreign decision concerning parental responsibilities. In one case (Kúria Pfv. II. 21.068/2013.) two grounds of non-recognition for judgments relating to parental responsibilities were discussed. The recognition of a decision of a Belgian court concerning the parental responsibilities was challenged in Hungary by referring to the fact that it was contrary to the public policy of Hungary and that the child was not heard. The Hungarian second

	instance court dealt with these two grounds of non-recognition and interpreted Article 23(a) and (b). The Hungarian Curia agreed with the interpretation of the second instance court. In connection with the statement of the debtor that the child was not heard the court in Belgium underlined that the hearing of the child is not obligatory for the court but the child has to be given the possibility (the proceeding and the legal tool) to unfold his or her opinion. In the concrete case the court in Brussels determined a date to hear the child but the mother did not use this possibility but forwarded the medical certificate about the child's illness. The Belgian court had the competence to decide on the approval of the medical certificate and it did not find it convincing. That is why the non-hearing of the child could not be a ground of non-recognition. What concerns the ground of being contrary to public policy the Hungarian court referred to the fact that the mere difference between the regulation being applied by the foreign court and the rules which would have been applied by the Hungarian court cannot serve as a basis of being contrary to public policy even if those civil procedural rules are cogent ones in the country where recognition is sought for. If the court in Brussels did not analyse the complex facts of the case it is to be dealt with by the appellant court and not by the court deciding on the recognition of the decision. Article 23(c) was scrutinized in another case (Kúria Pfv.II.21.594/2014.). The debtor challenged the recognition of the decision of the Venice court on the child's parental responsibilities upon the ground that the decision was given in default of appearance and this person was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for the defence unless it is determined that such person has accepted the judgment unequivocally. The Hungarian second instance court analysed the steps in the proceeding before the Venice court and underlined that the person did not accept the decision unequivocally as the non-appeal was not equal to the decision's acception. Besides, the judgment did not contain information on the possibility of appeal or the lack of it and the appeals in Hungary show that the judgment of the Venice court was not accepted by the debtor. The Hungarian Curia confirmed that the refusal of recognition of a judgment is an exceptional tool while in that case the debtor had enough time to make the procedural steps.
Ireland	There are no reported difficulties in the application of Sections 1 and 2 of Brussels IIa in recognition and enforcement of parental responsibility.
Italy	Difficulties, as already written, have concerned the custody of the couple's children, the notion of habitual residence, and the child's hearing. With respect to Sections 1 and 2 of Chapter III of the Regulation, no special difficulty should be reported. It has been affirmed that decisions about parental responsibly shall undergo a procedure of exequatur (Cass. 27188/2006), with the exception of decisions about right of visitation and decisions about the return of the child who was illicitly transferred abroad. Some doubts had arisen in connection with the expression "interested party" but has been cleared up with reference to the municipal Italian law.
Latvia	Practical difficulties which have been observed were with regard to the Article 21 (3), in particular - understanding of a term "any interested party". There are a lot of situations when the Court of another Member State grants custodial rights of the Latvian child to a guardian or competent institution in this Member State (e.g. the UK and Ireland). Consequently, guardian or institution is entitled to perform all actions on behalf of the child, e.g. to manage issues with acquisition of citizenship for the child, to submit an application for an issuance of the child's identity documents, etc. There were some situations when the Citizenship and Migration Office of Latvia in order to proceed with the child's citizenship or passport matters requested to obtain appropriate judgment of the Latvian Court on recognition of the judgment taken by the Court in another Member State in relation to the child's custodial rights. After intervention of the Central Authority of Latvia it was further explained that "any interested party" is a party which took part in proceedings in a result of what respective judgment was taken and judgments in parental responsibility matters taken in another EU Member State are recognized in Latvia without any special procedure.
Lithuania	There have been no difficulties in applying Sections 1 and 2 of the Brussels IIa Regulation in jurisdiction of Lithuania.
Luxembourg	There is only one case where a Luxembourgish court dealt with the question of execution of a judgment on parental responsibility issued by a court of another Member State. In that case the Luxembourgish court applied Article 21 (1) to automatically recognise the decision (issued by a French court). But at the same time the court pointed out that the declaration of enforceability was missing and requested the interested party to apply for it, following the procedure for making such application. Nothing was said about the fast-track procedure of exequatur with the certificate issued by the court of origin, according to Articles 40 and 41 ('Cour d'appel de la jeunesse', no. 31882, 26 March 2007).
Malta	No

The Netherlands	Difficulties may exist in child abduction cases. See e.g. DC Den Haag, 13 January 2011, LJN: BP2867CA, concerning enforcement of a return order from CA Amsterdam (21 December 2010, LJN:BP4618) that ordered the return of the child to Greece. The return order from CA Amsterdam contradicted a decision of a Greek court in first instance, which had refused an application for the return of the child to Greece from the Netherlands and had ruled that the habitual residence of the child was in the Netherlands. In proceedings in the Netherlands contesting the enforcement of the return order of CA Amsterdam the mother unsuccessfully relied on Article 21 BIIa for her argument that the decision of the Greek court in first instance (which was still subject to an appeal in Greece) should be recognized in the Netherlands. It should be noted that CA Amsterdam had held, inter alia, that BIIa did not concern the CA's jurisdiction to order the return of the child, which was based on the Hague Abduction Convention. Nor was the CA Amsterdam under a duty to stay proceedings on the basis of Article 19(2) BIIa, as the nature of the proceedings in the Netherlands and Greece was dissimilar. DC Zutphen 8 February 2012, LJN:BV6241 recognized a decision on parental responsibility from a German court (the divorce court) and then made a change to the division of parental responsibility laid down in the German decision. CA 's-Hertogenbosch, 3 March 2015, ECLI:NL:GHSHE:2015:648 recognized without reservation a Spanish decision on the basis of Article 21 BIIa. The CA did find it had to make a ruling on the translation of the terms 'patria potestad' and guardia y custodia' used in the Spanish decision. NL SC 4 October 2013, ECLI:NL:HR:2013:CA3757 referred to the CJEU decision in Purrucker I, ECLI:EU:C:2010:437, point 76, to refuse recognition of a Lithuanian provisional measure in respect of parental responsibility. The child had never been in Lithuania. The parents and the child had lived in Canada as a family. The Lithuanian husband had commenced divorce proceedings in Lithuania; the wife, a national of Italy and Argentina, had commenced divorce proceedings in Canada before moving to the Netherlands with the child. Enforcement of the provisional measure taken in the Lithuanian divorce proceedings instituted by the husband would have been in conflict with a decision on parental responsibility from the Canadian divorce court. See also the answer to question 30. Lower case law published under CA 27 August 2014, ECLI:NL:GHDHA:2014:3087, NIPR 2014, 314 shows that DC Den Haag applied the principle of Article 24 BIIa (no review as to the jurisdiction of the Member State of origin) in relation to a decision of DC Rotterdam.
Poland	No, there were none.
Portugal	There are no cases showing difficulties in applying Sections 1 and 2 of the Brussels IIa Regulation as far as the recognition and enforcement of decisions in cases of parental responsibility are concerned.
Romania	Some of the Courts showed some difficulties in using the public policy exception from the art. 23.a of the Regulation, as regards the character of the foreign decision being "manifestly" contrary to it[575]. We did not identify, however, any decision making an unreasonable use of this exception. It is probable that the decision of the ECJ in *P v Q* (case C-455/15) will bring more light in the matter. The principle of the recognition was fully respected in a large majority of cases[576]. For example, in a decision from 6 January 2016[577], Cluj Court of Appeal discussed in detail the problem of recognition, stating that the grounds of non-recognition (such as the public policy exception) cannot be used as a tool to control the competence of the origin courts or to revise the judgement as to the merits. Also, as it concerns the child's hearing (art. 23.3), the courts verify that child had an appropriate age and a degree of maturity that permits him to form his own views and express a free will. Regarding the proper notification, the court stated that it cannot be admitted a violation of the defence rights of the defendant when he/she has been represented in dispute by a representative (of his own), assisted by a lawyer, when the application of the claimant was notified to the defendant which took a legal position as to the dispute, despite not being personally present in courts. In a case decided in 2009, Bucharest Court of Appeal briefly discussed the application of art. 23.b (lack of child's hearing), in a case concerning the recognition of a Spanish judgement on parental responsibility[578]; the courts stated that even if the child would not have been heard (disputed aspect), the conditions set in art. 23.b) were not met since the lack of child's hearing must infringe the fundamental principles of procedure of the requested member state; or, this was not the case, since the Romanian law requires the mandatory hearing of the child only if the child is 10 or above and the party was under said age. Other courts took the same view[579]. Unfortunately, some courts still mention the fulfilment of recognition conditions set by the Romanian civil procedure code[580], and not the ones in the Regulation.
Slovakia	No difficulties.
Slovenia	No specific difficulties have been recognized.

Spain	It has been difficult to find cases dealing with the recognition and enforcement of judgments of parental responsibility according to Regulation Brussels IIa. This can be interpreted by a lack of serious real problems in applying Sections 1 and 2 of the Regulation.
Sweden	No difficulties so far.
UK	The question of the child's habitual residence remains significant. [581]As Allman recently observed, 'disputes may arise as to whether a person has parental responsibility as a matter of the law of another state, and how that parental responsibility may be exercised.'[582] Problems may occur also arise where more than one territory within a state has jurisdiction, or where different states (or territories) cannot agree over jurisdiction.[583] Domestic law (s. 5 of the Family Law Act 1986) empowers the court to stay proceedings where it would be more appropriate to have matters heard outside of England and Wales. As Munby J has observed however, "It is so deeply engrained in us that the child's welfare is paramount, and that we have a personal responsibility for the child, that we sometimes find it hard to accept that we must demit that responsibility to another judge, sitting perhaps in a far away country with a very different legal system. But we must, and we do. International comity, international judicial comity, is not some empty phrase; it is the daily reality of our courts. And be in no doubt: it is immensely to the benefit of children generally that it should be." [584]

Question 30: If there were cases in which the recognition or enforcement was refused in your jurisdiction, which grounds were mainly relied upon to refuse the recognition or enforcement in cases of parental responsibility? Please explain.	
Austria	According to my information, foreign decisions concerning parental responsibility for infringement of the right to be heard and ordre public were denied recognition and enforcement. However, there is only one published decision: The Austrian Supreme Court[585] has denied recognition to an Italian custody decision because the 12-year-old child was not heard before the decision. It justified the fact that the right of the child to be heard has the meaning of a fundamental procedural principle.
Belgium	There is one interesting decision of the Court of Appeal of Antwerp that could be mentioned here.[586] The court allowed the recognition of a British judgment of the High Court of Justice, Family Division, that ordered the immediate return of the child after the father had refused to bring the child back to the UK. In this case the mother had the right of custody. In June 2010, the High Court had enacted an agreement between the parties relating to the father's rights of access during the holidays. The father had refused to bring the child back to the UK after the summer holiday in Belgium. The High Court had subsequently ordered the immediate return of the child in September 2010. The mother had requested the enforcement of both decisions of the High Court in Belgium. The court of first instance had refused the recognition based on Article 23(1) (e) Brussels IIa (the judgment is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought). The president of the Court of First Instance of Mechelen had previously confided the custody of the child to the father in October 2010. In the meantime, that decision of the president of the Court of First Instance of Mechelen had been reviewed in third-party proceedings. In its new decision of 16 May 2011, the president of the court of first instance declared it had no jurisdiction on the basis of Article 19 Brussels IIa. The father had also initiated separate summary proceedings to obtain provisional measures on the basis of Article 20 Brussels IIa, but no order has been handed down at the time when the court of appeal had to make its decision. Therefore, the court of appeal could not withhold the exception of Article 23(1)(e). The court of appeal also considered the grounds of refusal in Article 23(1)(a), (c) and (d), but found that these grounds could not be applied in the present case. - Article 23(1)(a): The court emphasized that the public policy exception can only be used if the application is "manifestly" contrary to public policy. The fact that the mother has a small apartment and financial difficulties does not suffice to justify the exception. Neither does the limited social integration of the mother in the UK, nor the fact she only has a temporary residence permit. - Article 23(1) (c): The father claimed the right to an interpreter in the proceedings in the UK. The fact that this was not offered to him would be in violation of Article 6, § 3 of the European Convention on Human Rights. The court of appeal did not follow this argument. - Article 23(1) (d): It is only because the father did not return the child to the UK, in violation of the British judgments concerning the father's right of access, that the UK ordered a 'passport-order' against him, preventing him from going to the UK and exercising his parental responsibility. Once the father would let his daughter return to the UK this 'passport-order' would be lifted and he would once again be able to exercise his parental duties.
Bulgaria	-
Croatia	No available case law.
Cyprus	We do not have cases of refusal of recognition in our limited case law.
Czech Republic	No data available.

Estonia	No information available.
Finland	-
France	The cases in which the recognition of (EU member States) judgments was refused in France are so rare (if not inexistent) that there is no specific ground which was mainly (if ever) relied upon to refuse recognition in cases of parental responsibility.
Germany	I am only aware of the Aguirre Zarraga and the Purrucker case which have been decided by the CJEU.
Greece	As said Greek courts have not encountered particular problems in relation to the recognition and enforcement of decisions in cases of parental responsibility. Nonetheless, foreign judgments have not been recognised or enforced due to the following grounds: a) no written agreement on the custody rights and rights of access, ratified by the foreign Court, was produced,[587] (b) no certificate that the foreign decision has been final was produced. In the absence of the certificate the Greek Court stayed the proceedings and ordered repetition of the hearing,[588] (c) no certificate proving that the foreign decision is not irreconcilable with a latter Greek judgement was produced. Nonetheless, in that case the Greek Court stayed the proceedings and ordered repetition of the hearing.[589]
Hungary	There is no such published case.
Ireland	There are no reported cases concerning the refusal of a recognition and enforcement in relation to parental responsibility disputes.
Italy	A relatively recent investigation, accomplished by one the most prominent Italian scholar in this field has revealed that up to 2015, only 14 decisions have dealt with the return of the child according to art. 11 n. 8. Nine of them have confirmed the non return of the minor, five have ordered the return. To be very synthetic as it is required by the Instruction to this questionnaire, I will only refer that, generally speaking, the Italian judges have taken great care in weighting the reasons of the foreign courts. In doing so, they have been following perhaps the precedent of the decision 14 July 2010 n. 16549 of the Court of Cassation, which explained that the application of the art. 11 (8) focuses on the existence of the conditions fixed by the art. 13. The Italian courts appear therefore inclined to great caution in imposing the return which has already been evaluated by a foreign judge. In the five cases where the decision of the foreign judge was not confirmed (three of which were on the famous cases *Povse* and *Campanella*), however, the order to return the child has not been followed by the real return.
Latvia	No data available.
Lithuania	Please see answer to Question No 17.
Luxembourg	In the case described in the previous question, enforcement was refused because of the lack of declaration of enforceability of the foreign judgment. The court did not refer to any article in particular, but the requirement used by the court is the one stated in Articles 28.1 and 47.2 of the Brussels IIa Regulation (‘Cour d’appel de la jeunesse’, no. 31882, 26 March 2007).
Malta	-
The Netherlands	The main example would be SC 4 October 2013, ECLI:NL:HR:2013:CA3757, explained above. The provisional measure from Lithuania could not be recognized in view of the test laid down in Purrucker I, ECLI:EU:C:2010:437. The Lithuanian decision lacked the necessary reasoning on jurisdiction.
Poland	Decision of Katowice Court of Appeal dated 28 June 2016, I ACz 731/16[590]: The judgment which the request for recognition was related to has been issued in the proceedings in a case of child care, which purpose was to regulate the applicant's contacts with his minor daughters, who stayed with their mother in Poland. The request was accepted in

	part. It could not be accepted in the part on simultaneous threat to the mother by order to pay a designated amount of money in the event of breach of the duties concerning the contacts. The possibility of applying this type of disciplinary measures is provided for in Article 582. 1 § 3 CCP. The Brussels IIa Regulation provides that for the enforcement procedure the law of the state of enforcement is applicable. Thus, in order to ensure the implementation of the contacts in accordance with the foreign court judgment enforceable in Poland the appropriate rules of the Code of Civil Procedure will be applied and taking action in this regard belongs to the proper guardianship court. For this reason, the request in this regard did not deserve for consideration. Decision of the Supreme Court dated 22 January 2015, III CSK 154/14[591]: The public policy clause indicated in Article 23 of the Brussels IIa Regulation is to protect the national legal order against cases of breach thereof as a result of recognition of foreign judgments not corresponding with the fundamental legal standards. This involves a contradiction with the Polish legal system of the recognition of a foreign legal decision, not of the decision itself. The subject of the Polish court's examination remains only potential consequences of a particular recognition of a judgment of a foreign court. Decision of the Supreme Court dated 17 September 2014, I CSK 426/14[592]: You cannot effectively seek a statement that judgment of the competent court ordering the return of the abducted child provided for in Article. 11. 8 of the Brussels IIa Regulation, accompanied by a certificate referred to in Article 42 of the Regulation, shall not be enforced in the state to which the child was abducted. Decision of the Supreme Court dated 24 August 2011, IV CSK 566/10[593]: Art. 23 (e) of the Brussels IIa Regulation for the rejection of the request requires that the judgment presented for recognition (declaration of enforceability) oppose other, later judgment relating to parental responsibility of content that makes these judgments irreconcilable. Such judgment is not a judgment based on Article. 13(b) of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction rejecting the request for the return of the child.
Portugal	There is no evidence of the application of article 13.
Romania	The cases that were identified on this matter have refused the recognition on the basis of formal grounds. In one case, Court of Appeal Galati[594], confirming a decision of the inferior court, denied recognition of an Italian judgment given in default of appearance. The certificate issued by the Italian authorities according to article 39 mentioned this default of appearance and the claimant did not fulfil the conditions mentioned in art. 37.2 of the regulation (he did not produce the proofs attesting neither the service of documents instituting proceedings to the defaulting party or the acknowledgement and the acceptance of the judgement by the defaulting party). Also in other case, Brasov County court[595] denied recognition and exequatur to a decision of Trieste Tribunal declaring the forfeiture of the mother from her parental rights and establishing the custody of the child for the maternal grand-mother; the refusal of recognition was justified on the fact that the claimant did not present in court the documents mentioned by the regulation (specifically, the certificate from art. 39, even it was repeatedly asked to do so). The court considers that it is possible to dispense for producing those documents (acc. to art. 38), if the claimant furnishes other equivalent documents that prove the conditions for recognition (indirectly determined of the basis of art. 23) are fulfilled; since that was not the case, the recognition was denied)[596].
Slovakia	-
Slovenia	Supreme Court of the Republic of Slovenia (hereinafter: SCRS) has been facing in case *Cp 17/2008* with the question of non-recognition. SCRS explained that there is no reason to refuse the recognition of the Italian judgment on parental responsibility regarding the application of the Article 23.b of Brussels IIa Regulation. The SCRS confirmed that the child's opinion was acquired in proper way in Italy and therefore no violation of Slovenian fundamental principles of procedure was given. The here mentioned case does not refer to the Brussels IIa Regulation, but the decision on public order, made by SCRS is is of utmost importance and hence worth of mentioning. The Slovenian court of lower instance rejected the recognition of the court decision made by the U.S. court. It was a court judgment on adoption of a baby girl by same-sex couple, who wanted the recognition of this judgment in Slovenia. Lower Court rejected the recognition because of the reason of the public policy (Article 100 of PILPA[597]), because in Slovenia the adoption may be carried out just by married hetero-sexual couples, and therefore the adoption by same-sex couples is contrary to Slovenia public order. But the SCRS emphasis that as Slovenia is a Member State of the European Union and the European Council and the so-called European public order belongs to the Slovenian public order.[598] So, the American judgment was recognized, because the rejection would be unacceptable to and contrary to the International and European perspective of public order (e.g. best interest of the child).[599]

Spain	Two cases have been found in regards to the non-recognition of a judgment in matters of parental responsibility. In the first one (case number 58/2015 of 20 February, Provincial Court of Barcelona), the recognition was denied because the defendant was not served with the document which instituted the proceedings in Italy (Article 23 c). In the case 108/2014 of 11 June (Provincial Court of Malaga), the recognition was denied because the judgment was irreconcilable with a later judgment relating to parental responsibility given in Spain (Article 23 e).
Sweden	There is no published case law.
UK	Decisions to refuse recognition must take into account the child's best interests, and must be grounded in the view that the order in question is 'at variance to an unacceptable degree with the legal order of the state in which recognition is sought.' [600] Thus in *D (A Child) (Recognition and Enforcement of Romanian Order)* [2016] [601] the Court of Appeal (later upheld by the Supreme Court) dismissed an appeal against a Romanian Order on the basis that the wishes of the children concerned amounted to a fundamental principle.[602]

Question 31: To what extend the grounds for refusing the recognition or enforcement of judgments of non-EU Member States in cases of parental responsibility provided in you national law differ from the grounds under Article 23 of the Brussels IIa Regulation?	
Austria	§ 113 of the AußStrG,[603] which regulates in connection with § 115 of the AußStrG[604] the reasons for refusing recognition and enforceability of foreign decisions on the regulation of custody and the right to personal intercourse, differs in the following respects from Art. 23 of the Brussels IIa Regulation: 1. According to Article 23 (a) of the Brussels IIa Regulation it is a ground for refusing the recognition or enforcement if such recognition or enforcement is manifestly contrary to the public policy of the Member State in which recognition is sought **taking into account the best interests of the child.** On the other hand, recognition and enforcement must be refused in accordance with § 113 (1) no 1 of the AußStrG[605], if **it contradicts the best interest of the child** or other basic principles of the Austrian law (ordre public). In Austrian law the best interest of the child is thus given a higher priority than in the Brussels IIa Regulation. For example, a Serbian decision relating the right of access was denied enforcement because of a violation of the best interest of the child. [606] The decision stipulated that the mother who has the right of custody could not spend weekends with her children during the school year. Only the weekday with the associated daily stress would have remained to her and the children to be together. However, it was not in the best interest of the child to be not able to spend leisure time during the school year with the parent, who has the right of custody. .2. § 113 of the AußStrG[607] lacks a provision comparable to Art. 23 (b) of the Brussels IIa Regulation. However, that does not mean that a foreign decision is recognized and declared enforceable even if the child has no opportunity to be heard, thereby infringing essential procedural principles of the Member State in which recognition or enforcement is sought. The infringement of the hearing will either be regarded as a breach of the best interest of the child or as such against the procedural ordre public. Pursuant to § 105 (1) of the AußStrG[608], the court[609] has to hear minors in personal proceedings concerning care and education or personal contacts. However, according to § 105 (2) of the AußStrG[610], the questionnaire has to be omitted if the welfare of the child is jeopardized by it or by a postponement of the injunction, or, in view of the comprehension of the minor, it is not to be expected to comment prudential on the subject matter of the proceedings. Minors who have reached the age of 14 may, in accordance with § 104 (1) of the AußStrG[611], be able to take legal action in proceedings relating to care and education or personal contacts. In other words, a minor who has reached the age of 14 has the same legal rights as the other parties of the proceedings. According to § 113 (1) of the AußStrG[612], recognition and enforceability is refused if the child has not been granted hearing in accordance with §§ 104 and 105 of the AußStrG[613]. According to § 138 ABGB[614], the best interest of the child must be taken into account and ensured in all matters relating to minor children, in particular care and personal contacts. The important criteria for the best interest of the child listed in § 138 ABGB[615] include, among other things, the consideration of the child's opinion as a function of his understanding and the ability to form opinions (no 5) and the prevention of the child's impairment through the implementation and enforcement of a measure against his will (no 6). 3. § 113 of the AußStrG[616] lacks a provision comparable to Article 23 (g) Brussels IIa. 4. Even in the recognition and enforceability of foreign decisions concerning custody and the right of attendance, it is a ground for refusal if the recognizing authority was not (internationally) competent when applying Austrian law (ie § 110 of the JN[617]). According to § 110 of the JN[618], the international jurisdiction for matters relating to parental responsibility is given where the child is either an Austrian citizen or is habitually resident, or if urgent measures are taken, is resident in Austria or - as far as measures relating to this this property are concerned – has property in Austria. For example, a Serbian decision concerning custody is denied enforcement if the child is neither Serbian nor has his habitual residence in Serbia.
Belgium	The same provisions explained in the answer to question 16 apply (Articles 22 and 25 and Article 27 of the Belgian PIL Code). More specifically for parental responsibility, the following differences can be noted with regard to the grounds of refusal for judicial decisions (Article 25 Belgian PIL Code) from other EU Member States: - In the Belgian PIL Code public policy is not defined as taking into account the best interest of the child in cases of parental responsibility. Nevertheless, it is common practice for the Belgian courts to consider the best interest of the child a component of public policy. - There is no specific ground of refusal when the child was not heard. - There is no specific ground of refusal when the judgment would infringe the person's parental responsibility, when that person was not given the opportunity to be heard.

	- There is no specific ground of refusal based on the procedure of placement of a child.
Bulgaria	-
Croatia	There are additional grounds for refusing recognition of judgements in Croatian national PIL law. Judgement has to be final, with certificate to that regards. (Article 87). Reciprocity is retained as a ground of jurisdiction (Article 92).
Cyprus	-
Czech Republic	§ 15 PIL Act provides following grounds for recognition: 1. limited jurisdictional test (exclusive jurisdiction of the Czech courts is a ground for non-recognition); 2. *lis pendens* (proceeding initiated before a Czech court prior to the initiation of proceeding in the state of origin); 3. *res iudicata*; 4. breach of the right on defence in the state of origin, 5. manifest incompatibility with the *order public*, 6. reciprocity (where recognition and/or enforcement is sought against a Czech national). Where at least one of the participants is a Czech national, recognition has to be granted in a special proceeding under § 16/2 PIL Act.
Estonia	See question 18. No specific rules for parental responsibility cases.
Finland	- According to section 23 of the child custody and right of access act → *Recognition and enforcement of decisions* 1. (1) A decision on child custody or right of access issued in a foreign state is, upon request, recognised and enforced in Finland in accordance with the provisions below. 2. (2) A decision issued in a foreign state means a decision or an interim order issued by a court or another authority and the confirmation of an agreement, if the said measure is recognised as equal to a decision in the state where it was undertaken. 3. (3) An agreement concluded or an order issued without the involvement of an authority may be recognised and enforced in Finland in the same manner as a decision given in a foreign state, if the measure was legally valid and enforceable in the state where the child was habitually resident. Section 24 (186/1994) − *Recognition and enforcement of Nordic decisions* 1. (1) A decision that has been issued in Iceland, Norway, Sweden or Denmark is recognised and enforced in Finland without separate confirmation. 2. (2) The recognition or enforcement of a decision issued in a state referred to in subsection 1 cannot be refused by virtue of this Chapter, if the decision is to be recognised or enforced as provided elsewhere. Section 25 (186/1994) − *Recognition and enforcement of decisions issued in another foreign state* 1. (1) A decision that has been issued in some other foreign state than those referred to in section 24 is recognised in Finland without separate confirmation. Helsinki Court of Appeal may, however, upon application confirm that the decision is recognised in Finland. 2. (2) A decision which is, under subsection 1, recognised in Finland and enforceable in the state where it was issued (*state of origin*) may be enforced in Finland, if Helsinki Court of Appeal has confirmed, upon application, that the decision may be enforced here. 3. (3) When the Court of Appeal confirms that a decision on the right of access issued in a foreign state may be enforced in Finland, the Court may, at the same time, amend or specify the conditions for visiting as it deems appropriate with regard to the best interests of the child. Section 26 (186/1994) − *Enforcement of a decision determining the removal of a child wrongful* Helsinki Court of Appeal may, upon application, confirm that a decision by which the removal or retention of a child has been determined wrongful is enforceable in Finland, if: 1. (1) the decision has been issued in a state that is a Contracting State in the Council of Europe Convention on Recognition and Enforcement of Decisions concerning

Custody of Children and on Restoration of Custody of Children, done at Luxembourg on 20 May 1980 (*European Convention*); and

2. (2) when the child was removed across an international frontier, there was no decision, issued in a Contracting State in the European Convention, that could have served as a basis for enforcement.

Section 27 (186/1994) − *Grounds for the refusal of recognition and enforcement*

1. (1) The recognition and enforcement of a decision issued in a foreign state may be refused, if:
    1. (1) the recognition or enforcement of the decision would result in an outcome that is manifestly incompatible with the Finnish public policy (*ordre public*) relating to families and children;
    2. (2) it is manifest that the recognition or enforcement of the decision would, due to a change in the circumstances, no longer be in the best interests of the child;
    3. (3) at the time when the proceedings leading to the decision were initiated in the state of origin, the child was a Finnish citizen or was habitually resident in Finland and no such connection existed with the state of origin, or the child was a dual citizen of both the state of origin and Finland and was habitually resident in Finland; or
    4. (4) the decision is incompatible with such a decision issued in Finland or such a decision issued in a third state and enforceable in Finland where the proceedings leading to the decision were initiated before the application for the recognition or enforcement of the decision had been submitted, and the refusal is in the best interests of the child.
2. (2) If the decision is issued in a foreign state that is not a Contracting State in the European Convention, its recognition and enforcement may be refused also if the authority that issued the decision would, in accordance with the principles laid down in sections 19 and 20, not have had jurisdiction in the case and the child is habitually resident in Finland, or if the decision is not, for this reason, recognised or enforced in the foreign state where the child is habitually resident.

Section 28 (186/1994) − *Effect of the absence of the opposing party on the recognition and enforcement*

1. (1) If the opposing party has not been present during the consideration of the case, a decision may be recognised or enforced in Finland only if:
    1. (1) a summons or a notice of a hearing, containing information on the essential contents of the case, has been served on the opposing party appropriately and in good time for him or her to be able to act in the case; and
    2. (2) the jurisdiction of the authority that issued the decision has been based on the habitual residence of the opposing party, the last common habitual residence of the parents, if at least one of them is still habitually resident there, or the habitual residence of the child.
2. (2) Failure to serve the summons or the notice of the hearing in accordance with subsection 1(1) does not, however, prevent the recognition or enforcement of a decision, if the failure is caused by the opposing party concealing his or her whereabouts from the other party.

Section 29 (186/1994) − *Deferral of a case concerning recognition or enforcement*

A case concerning the recognition or enforcement of a decision may be deferred, if:

1. (1) the decision has been appealed against by using the ordinary means of appeal;

or

2. (2) a case concerning child custody or right of access is in Finland pending in

judicial proceedings initiated before the initiation of corresponding proceedings in the state of origin; or

3. (3) proceedings relating to the recognition or enforcement of another decision concerning child custody or right of access are pending.

Section 29 a (436/2009) − *Subsidiary nature of provisions*

The provisions in sections 19−21 and 23−29 are applied only if not otherwise provided in the Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, hereinafter *the Brussels II a regulation*, or in another convention binding on Finland.

Section 29 b (436/2009) − *Incompatibility with the Finnish public policy and references to a foreign law*

1. (1) A provision of a foreign law that would be applicable under the provisions of this Chapter must be ignored, if the application of the provision would result in an outcome that would, in view of the best interests of the child, be manifestly incompatible with the Finnish public policy.
2. (2) Unless otherwise provided in this Chapter, when referring to a foreign law in this Chapter, the rules of private international law of the foreign state in question are not referred to.

France	The grounds for refusing the recognition of judgments of non-EU Member States provided in French national law are more numerous: they include review of the jurisdiction of the courts of the State of origin and review that the foreign courts were not fraudulently seized. Even though procedural grounds for refusing jurisdiction are not detailed in French national law (e.g., default of appearance, irreconcilability of judgments) the public policy ground is large enough to include them. The review of applicable law was suppressed in French national law in 2007.
Germany	In third country cases, the jurisdiction of the foreign court is examined (see Q 18).
Greece	The conditions of article 23 are included in the relevant article of recognition and enforcement in Greek code of civil procedure. Additionally, according to Greek law in order to recognise a foreign decision the foreign Court that has issued the judgment should be competent to rule the case, according to the criteria adopted by the Greek code of civil procedure. Besides that, the final judgement must be final and considered as res judicata in the state of issuance.
Hungary	What concerns § 72(2) the foreign decision cannot be recognized if it is contrary to the Hungarian public order; the party against whom the decision was made did not attend the proceeding either in person or by proxy because the subpoena, statement of claim, or other document on the basis of which the proceeding was initiated was not served at his domicile or residence properly or in a timely fashion in order to allow adequate time to prepare his defence; it was based on the findings of a procedure that seriously violates the basic principles of Hungarian law; the prerequisites for litigation for the same right from the same factual basis between the same parties in front of a Hungarian court or another Hungarian authority have materialized before the foreign proceeding was initiated (suspension of plea); a Hungarian court or another Hungarian authority has already resolved a case by definitive decision concerning the same right from the same factual basis between the same parties.
Ireland	Arguably Article 23(a) reflects the Common Law grounds of fraud, duress and denial of justice. 23(b) is not a stated ground for refusal but the 31st Amendment to the Constitution now confers the right of the child to be heard subject, however, to the court's discretion in entertaining those views.
Italy	The reasoning of the judges focuses above all on the violation of the right to visitation or the rules on custody. Art. 23 has little or no room in the (really few) decisions refusing recognition of foreign judgements.
Latvia	In Latvia there are several other instruments in force which are dealing with the same matters as Brussels IIa Regulation – the Hague 1996 Convention; bilateral agreements on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters with – the Russian Federation, Ukraine, Belarus, Moldova, Kyrgyzstan, Uzbekistan, Poland, Lithuania, Estonia. Brussels IIa Regulation prevails the Hague 1996 Convention between the EU Member States. As regards bilateral agreements – they are commonly applied in matrimonial and parental responsibility matters with the Russian Federation and Belarus. As regards the EU Member States – Estonia, Lithuania and Poland – agreement is used when there are areas which are not covered with Brussels IIa Regulation. In terms of the grounds for refusing the recognition of judgments in parental responsibility matters they differ whether it is the judgement of EU Member State or the judgement of non-EU Member State. In Article 23 of the Regulation grounds for refusal are more extensive.
Lithuania	The regulation determined in Article 810 of Code of Civil Procedure of the Republic of Lithuania stipulates minor differences on the grounds for refusal of recognition of foreign court's decisions, including in cases of parental responsibility. It is determined that a foreign court's decision shall not be recognized in jurisdiction of Lithuania, in case such court's decision is not final and is not yet valid. It is also determined that a foreign court's decision shall not be recognized in jurisdiction of Lithuania, in case application of exclusive jurisdiction for such case is determined in applicable Lithuanian laws or international treaties. No other differences in the grounds for refusing the recognition of judgments are provided in Lithuanian law.
Luxembourg	None of the judgments reviewed dealt with claims for recognition or enforcement of judgments from non-EU Member States in cases of parental responsibility. According to the legal doctrine, in such a situation, the Luxembourgish court would check: the grounds of jurisdiction applied by the foreign court; the enforceability of the decision; whether the right to a due process was respected; the application of the appropriate law; and compliance with Luxembourgish public policy[619].

Malta	Article 23 reflects our laws well.
The Netherlands	The legislation on private international law (Book 10 NL CC) only contains an Article 10:113 NL CC providing that the protection of children is subject to: a. the Hague Convention on Protection of Children 1961; and b. Regulation 2201/2003; c. the International Child Protection (Implementation) Act). There is no specific national private international legislation. Since the 1970s the 1961 Hague Convention on Protection of Children, which is now replaced by the 1996 Hague Convention, used to be applied in case law by way of analogy to cases outside its scope. It would appear this approach will be maintained on the basis of the 1996 Hague Convention.
Poland	For the Polish grounds of jurisdiction see point 18. The main difference is lack of provisions concerning hearing a child and hearing a person claiming that the judgment infringes her/his parental responsibility.
Portugal	The same answer provided to question 17. is applicable. Aarticle 980 of the CPC stipulates requirements that cumulatively must be fulfilled for the recognition of judgments in general: g) No doubt about the authenticity of the document recording the judgment or on the intelligence of the decision; h) The judgment must have the value of *res judicata* according to the legislation under which was made; i) The judgment comes from a foreign court whose jurisdiction has not been invoked in fraud against the law and respects to a matter that does not falls within the exclusive jurisdiction of the Portuguese courts; j) It is not possible to claim *lis pendens* or *res judicata* due to an action in a Portuguese court, except if it was the foreign court which prevented the jurisdiction; k) The defendant has regularly been cited for the action, in accordance with the law of the court of origin, and in the process have been observed the principles of adversarial and equality of the parties; l) The recognition of the judgement does not lead to a result manifestly incompatible with the principles of international public policy of the Portuguese State.
Romania	Since articles 1096 and 1096 of Civil procedure code are the general rules on the matter, the conditions for recognition and the grounds for non-recognition of foreign judgements in the Romanian law are the same as the ones mentioned above for matrimonial disputes.
Slovakia	Article 66 of International Private Law Act states: (1) Foreign decision on the placement of the child in the care of a person or on the contact with the child may neither be recognised nor enforced if: a) any of the conditions set out in Article 64 (a) to (e) is not fulfilled, b) the child was not given the opportunity to be heard in the proceedings on the substance, unless the court dispensed with the hearing of the child for reasons of urgency or that the child was not capable to express his opinion due to his age and maturity, c) recognition would, taking into account the best interest of the child, be manifestly contrary to the Slovak ordre public. (2) The court shall not recognise a foreign order on placement or contact at the request of a person claiming that such decision infringes upon his parental responsibility if it was given, except in case of urgency, without such person having been given an opportunity to be heard. Article 68 Effects of foreign decision

	(1) A foreign decision recognised by a Slovak court shall have equal legal effects as a decision rendered by a Slovak court. (2) Even without recognition a foreign decision in matrimonial matters, in matters involving establishment (determination or contestation) of parentage or adoption of a child shall have equal legal effects as a decision of a Slovak court if the parties are not Slovak nationals and if it is not contrary to the Slovak ordre public.
Slovenia	The grounds for refusing the recognition or enforcement of judgments of a non-EU Member State are the same as the grounds mentioned in Question 16. The grounds are similar to grounds under Article 23 of the Brussels IIa Regulation. Differences relate to ground of reciprocity (Article 100 PILPA), exclusive jurisdiction (Article 97 PILPA) and exorbitant jurisdiction (Article 98 PILPA)
Spain	A comparison between Law 29/2015, of 30 July, on international judicial cooperation in civil matters and Article 23 of Brussels IIa Regulation allows to conclude that four of the grounds of non-recognition are common in both instances (public policy, infringement of rights of defense and both cases of irreconcilability of decisions). In regards to the differences, according to the answer provided in question 18, the Spanish Law includes two additional grounds of non-recognition that do not appear in the Regulation (Article 46 c) and f) Law 29/2015, of 30 July, on international judicial cooperation in civil matters). However, at the same time, three of the grounds of non-recognition in Article 23 (b), d) and c) are not provided in the Spanish legislation. This can be explained by the fact that these grounds are specifically thought for minor cases, whereas the Spanish ones deal with general situations.
Sweden	Sweden recognizes and enforces judgments from countries that are parties to the 1996 Hague Convention, provided the conditions imposed by Article 23 of that Convention are fulfilled. Sweden is also a party to the 1980 European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children. There are some special rules on judgments from the other Nordic countries. In the absence of statutory support, other foreign judgments are generally not recognized, even though they can be given evidentiary value regarding facts and/or foreign law. Some recent decisions (e.g. *NJA 2013 N 17*) indicate that some legal effects, for example in the field of social benefits, may be given even to foreign judgments that are not valid in Sweden.
UK	There is no automatic recognition but the courts here will 'give grave consideration…subject to the principle that such orders are always variable.'[620] The question of whether or not the person against whom the judgment was made was present in the foreign jurisdiction, and had engaged with the proceedings there, is also important.[621] The welfare of the child is at all times also a paramount consideration, as *DL v EL* [2013] confirmed.[622]

Question 32: Have the courts in your jurisdiction encountered difficulties in applying the definitions in Article 2(11) Brussels IIa Regulation (the term 'wrongful removal or retention')? If yes, how are these problems dealt with?	
Austria	No, the Austrian courts have no difficulties in the application of the definitions in Art. 2 no. 11 of the Brussels IIa Regulation.
Belgium	In most cases, judges don't experience a lot of difficulties in applying the definitions in Article 2(11) Brussels IIa Regulation. When confronted with a case based on Article 11 of the Regulation, the court seized will first determine whether both parents enjoy custody rights under the law of the Member State where the child was habitually resident immediately before the abduction. In practice, this means that the judge concerned will first examine the question of habitual residence. Although neither the Hague Abduction Convention, nor the Brussels IIa Regulation provide a definition of the notion habitual residence, the case law of the European Court of Justice[623] offers some usable criteria, making it possible for judges to determine the place of habitual residence. In a case where a little boy (9 months old) was (wrongfully) retained by his mother in Ireland, both the Irish and the Belgian court had to determine the habitual residence of the child. Both courts came to the conclusion that the habitual residence of the child was located in Belgium. The Irish High Court motivated its decision extensively. The High Court attached great weight to the relationship of the mother with her newborn child, but also scrutinized the intention of the parents. The fact that the women had agreed to live with the father of the child in Antwerp before the birth of their child, that it was her intention to spend her maternity leave in Belgium, that she had full time employment in Antwerp and that she had enrolled the child in a crèche in Hilversum (the Netherlands), were decisive for the Court.[624] The decision of the Belgian Juvenile Court is less extensive. The Juvenile Court only referred to the fact that the little boy was born in Belgium and was registered in the population register in Belgium. The intention of the parents was not discussed.[625] When looking at other cases concerning parental abduction, it becomes clear that Belgian courts often only look at the place where the child is registered, the place of the school where the child is enrolled and the consent of the left-behind parent. In October 2013 for example, the Court of First Instance in Antwerp decided that the place of habitual residence of a 15 year old boy was located in the Netherlands because the boy went to school in the Netherlands since September 2011 and his father had never filed a complaint against the stay of the boy in the Netherlands.[626] Once the place of habitual residence is clear, the judge seized will examine whether both parents enjoy custody rights under the law of that State. In cases where the habitual residence of the child is located in Belgium, both parents enjoy custody rights automatically, irrespective of their marital status and regardless whether they live together or not.[627] If the habitual residence of the child lies outside Belgium, the court will have to look at the national law of that State in order to determine whether both parents enjoy custody rights. In a decision of July 2014 for example, the Court of First Instance in Antwerp explicitly referred to a decision of the court of North-Holland. Since the Dutch court had granted both parents custody rights and this decision had obtained the force of *res judicata*, there was no discussion about this topic.[628] After having established the habitual residence of the child and the custody rights of both parents, the court examines if the rights of custody were actually exercised. A parent, who enjoys custody rights but failed to actually exercise his /her rights, can't invoke the protection offered by de Brussels IIa Regulation. In Belgium, case law shows that courts are very cautious when dealing with this issue. In July 2014 for example, the Court of First Instance in Antwerp decided that a father, whose daughter was living with his mother, was exercising his custody rights at the time of the removal. The fact that the paternal grandmother was providing the daily care of the child before the (wrongful) removal doesn't mean that the father wasn't actually exercising his custody rights. In this case the court took into account the fact that the girl only lived with her paternal grandmother for three months and the intention of the father to take care of the girl himself. [629]
Bulgaria	-
Croatia	There is one unreported case where a court had to establish if under respective law of a habitual residence of a child, a father had a parental responsibility rights under a child born out of wedlock. Since the matter related to a country where he was not holder of parental responsibility, court reached a conclusion that the removal of a mother was legitimate and dismissed the child abduction claim.[630]
Cyprus	- No.
Czech	No serious difficulties. Since 2008 we have concentrated jurisdiction for return proceeding under the 1980 Hague Convention at one court (Municipal Court in Brno for the

Republic	first instance, Regional Court in Brno for the second instance) where specialized judges decide. This enables effective training of judges in this special agenda.
Estonia	There have been difficulties with the term because of the very poor translation of Hage Convention into Estonian, but since the judgements of the Supreme Court it has been eliminated. No further information.
Finland	- in general one can comment that our CA, the Ministry of Justice provides active advice and help relating to international abduction.
France	French courts have encountered no more difficulties in applying the definitions in Article 2(11) Brussels IIa Regulation than they have had to apply the definitions in Article 3 of the 1980 Hague Convention on Child Abduction. Indeed, the same interpretation is given to the terms "wrongful removal or detention" in both texts. The qualification of a wrongful removal is a very sensitive issue (see questions 1 and 34) and in this respect, the case law is rich, but it presents no specificity linked to the Brussels IIa Regulation in itself.
Germany	No.
Greece	There is no case-law indicating such difficulties so far in relation to the application of article 2 (11).
Hungary	The Hungarian courts had had practice in applying the Hague Convention on Child Abduction before 2004 when Hungary joined the EU and began to apply the Brussels IIa Regulation. There were no difficulties in applying Article 2(11) and as the summarizing opinion of the working group which analysed the legal practice of the Hungarian courts concerning child abduction (http://www.lb.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2013el_ii_g_1_14.pdf) dealt with the legal interpretation of the term 'wrongful removal or retention'. It was clear that the removal or retention is illegal if it was contrary to the rights of custody according to the law of the MS where the child was habitually resident and those rights were actually exercised. As it can be seen from the published Hungarian decisions when the child was removed to Hungary or retained in Hungary without the consent of the other parent the parents had joint custody in the other MS and the right to determine the child's place of residence is included in the joint custody. It has been for a long time accepted and followed in the legal practice that the child's nationality does not play a role when deciding on the fact whether the removal to Hungary or the retention in Hungary was illegal. As first instance judges were involved into the work of the above mentioned working group and several judgments and proceedings were analysed the summarizing opinion could come to the conclusion that the determination of the actually exercised custody on the side of the parent without the consent of whom the child abduction was materialized is necessary. There seemed to be, however, some uncertainty in the first instance practice whether how the foreign law on custody could be certified and how the applicant – if the Central Authority was not cooperated with – could inform the court about the legal rules of the country of child's habitual residence. This uncertainty could have be seen from the first instance judgments as well as from the fact that in some cases the judgment cites the exact foreign substantial law rules on custody but in other cases the decisions only mentions the foreign regulation on substantive family law. The working group was on the opinion that the accurate referral to the foreign law on custody cannot be left out, however, if the fact that the parents exercised joint custody in the country of the child's habitual residence it can be accepted by the court. In the analysed cases the parent left behind not only had custody but actually exercised it as well. Even if there are differences in the exercise of custody when the parents live together or apart from each other it caused no difficulty for the Hungarian courts to determine whether it was actually exercised and in almost all analysed cases it was an actually exercised parental custody.
Ireland	There has not been any problem with the application of the terms in Article 2(11) of the Regulation.
Italy	See below answer 34.
Latvia	Not observed.
Lithuania	There have been no difficulties in applying the definitions in Article 2(11) Brussels IIa Regulation in jurisdiction of Lithuania.

Luxembourg	No problem has been identified in the Luxembourgish case-law as regards the application of Article 2 (11) Brussels IIa Regulation, although it has been applied occasionally (for example, 'Tribunal d'arrondissement de Luxembourg', no. 102847, 11 December 2013).
Malta	No. Its decided on a case-to-case basis.
The Netherlands	It would appear that these terms mainly lead to a discussion on the facts of the case. It seems at least that the NL Supreme Court never had to address these definitions.
Poland	No, they did not encounter noticeable difficulties in application Article 2(11), at least absence of case law on them indicates it.
Portugal	There are some Rulings regarding 'wrongful removal or retention'. For example, Ruling of Second Instance Court of Lisbon of 24th Mars 2009 (*Acórdão do Tribunal da Relação de Lisboa de 24-03-2009,* available in Portuguese in www.dgsi.pt) decided that it is not licit the action of the mother that breaches the couples agreement of establishing children's 'habitual residence' in Italy by retaining them in Portugal against the father's will.
Romania	A big number of cases discussed the term "wrongful removal or retention"; the courts referred frequently to the definitions in article 2.11 of the Brussels 2bis Regulation, in article 3 of the 1980 Hague Convention and to the explanation given in Perez-Vera Explanatory Report (sometimes citing entire paragraphs)[631]. We did not identify big difficulties regarding the application of these definitions. In a decision from 2010, the Bucharest Court of appeal[632] appreciated that one of the essential elements that must be considered when analyzing the "illegal" character of the removal is the habitual residence of the child; the retention in Romania should be considered illegal only when the child is resident abroad; the fact that the foreign residence of the child was not previous declared and registered to the Romanian authorities is without relevance in this regards. In the same line of reasoning, in a decision from 2015, the Bucharest County Court[633] declared that the removal of the child from Germany in Romania by the father was not made in the violation of the parental rights of the mother, when the habitual residence of the child was in Romania (because that was not operated either in fact or in law a change of the habitual residence of the child). In another decision from 2014, the courts[634] discussed the wrongful character of the retention of a child habitually resident in Italy, in the context of a decision declaring that the residence of the child should be with the mother, obtained by her refusal of the voluntary return of the child. The court of appeal stated that the wrongful character of the retention should be appreciated in the moment of the violation of the parental rights of the left-behind parent (i.e. refuse of the return); a further judgement on where the child should reside is indifferent to that effect so the retention in Romania is considered wrongful. As regards the custody rights breached by the removal or retention, the courts agreed that these must not necessarily be granted by judgment or by administrative decree, but may result as an operation of law: in a case from 2009, regarding a child habitually resident in Hungary, the Bucharest court of Appeal quashed a decision of the inferior court[635] and stated that the child's retention in Romania by the mother must be considered wrongful (in the meaning of art. 3 Hague Convention) when both parents had custody by virtue of law and the father did not consent to this retention[636]. Regarding the abduction, the courts considers that this is characterized when one of the holders of custody rights moved the child in another state without the consent of the other; the wrongful character of the removal does not derive from an act illegal by law, but from the infringement of the other holder's rights, equally protected by law and whose normal exercise was disrupted[637]. The courts also distinguish between de displacement (which may be legal) and the retention, stating that the abduction can be characterized when only the latter was made without the consent of the left behind parent. When both parents are holders of the parental responsibility, and one of them refuses the return of the children after the expiration of the period agreed by the other to be spent abroad, the refusal of return is wrongful[638]. In a decision from 2014, the Bucharest Court of Appeal[639] clarified more the circumstances for an abduction: it expressly stated the irrelevance of the fact that prior to the removal in Romania the children did not live with the father, the only pertinent things being their habitual residence in Hungary, the joint parental responsibility of the parents (according to the Hungarian applicable law), and the children retention by the mother, on the Romanian territory, without the father's consent. The court also stated that the return order cannot be criticized on the sole ground that the inferior court did not established expressly the precise (foreign) address where the children should be returned; in child abduction cases the courts are not asked to establish where the children should be domiciled, but only to determine if a wrongful retention occurred and in affirmative to order a return in the state of their habitual residence.

Slovakia	No the Slovak courts didn't have difficulties. The Slovak family law regulates similarly as other legal system in other Member states the notions such a (a) right of custody, (b) the exercise of the right of custody, (c) holder of parental responsibility.
Slovenia	No difficulties are present.
Spain	The main problem which has been evidenced regarding the concept "wrongful removal or retention" contained in Brussels IIa Regulation has more to do with the application in EU-cases of definitions established in other legal sources than with an incorrect application of this provision. Article 3 of the Hague Convention of 1980 on the Civil Aspects of International Child Abduction is always referred to in this scope, sometimes together with the concept of the Regulation and in other occasions with no reference at all to the European instrument. Besides this fact, no problems have been evidenced in the judgments that have been analyzed regarding the application of this definition in Spain. Spanish judges make an interpretation on a case by case basis according to the concept they mention in each decision.
Sweden	No particular difficulties. In *NJA 2012 p. 269*, the Supreme Court refused to order the return a child that had been wrongfully removed from the Czech Republic, because after the abduction the abducting parent succeeded in obtaining a Czech court's provisional permission to remain in Sweden together with the child. The removal or retention had thus ceased to be wrongful.
UK	In *Re B (A child)* [2016], the UK's Supreme Court offered 'significant new guidance,'[640] confirming its jurisdiction to make decisions concerning the welfare of a child lawfully taken abroad, on the basis that she had retained her habitual residence within this jurisdiction. The case concerned an unmarried, same-sex couple, who were not in a civil partnership: the appellant (the non-genetic mother) thus lacked parental responsibility, meaning that the child's removal to Pakistan (done without her knowledge or her consent) was neither wrongful nor unlawful.[641] On appeal, the Supreme Court held that the definition of habitual residence ought to fall within that which had been established by the European jurisprudence.[642] Thus, some degree of integration into a social and family environment was required, to suggest a 'certain stability or regularity';[643] significantly, removed children should not find themselves placed suddenly into some form of legal limbo. Powers of inherent jurisdiction should clearly not only be available in those unusual cases which are found to lie at 'the extreme end of the spectrum.'[644] By a 3:2 majority, the Supreme Court found that at the time of the wardship application, the child 'had not disengaged to the level required to mean she would lose habitual residence here.'[645] She had therefore retained habitual residence, and the order was made for her return to the UK, on that basis. The need to both promote and protect the best interests of the child was stressed, as was the obligation to comply with international law interpretations of the concept of habitual residence. Arguably, the case also highlights how parental intentions in relocation or removal cases do not always necessarily or inevitably support the best interests of the child: it was noted by the Court that the appellant co-parent had played an important, parenting role in the child's life. The decision amounts to a 'significant step forward in modern family case law…on a national and international level,'[646] confirming the need for courts to consistently adhere to a child-centric focus, rather than looking chiefly to parental intention. As Lord Wilson observed: '…it makes no sense to regard a person's intention, in this case a parent's intention, at the moment when the aeroplane leaves the ground as precipitating, at that moment, a loss of habitual residence….such is not the modern law.'[647] Lord Sumption's Dissenting Opinion raises a number of significant points: the majority's contention that it was "highly unlikely, albeit conceivable" that habitual residence could or would be lost before a new habitual residence had been acquired, gave rise, in his Lordship's view, to uncertainty, namely as to whether this statement might in itself be viewed as 'a principle of law' or merely a 'proposition of fact:' [648] '…so far as it is a principle of law, it appears to me to be wrong. So far as it is a proposition of fact, the [Court of Appeal] judge addressed all the relevant considerations in making her findings.'[649]

Question 33: Does the judiciary in your jurisdiction use a (national established) guideline to determine the 'Best interest of the Child'? Could such a guideline be of help to govern 'adequate measures' under Article 11?	
Austria	In Austria the „ best interest of the Child" is defined in § 138 ABGB[650].
Belgium	In Belgium, there is no national established guideline to determine the best interest of the child. There is, however, a guideline created by the Committee on the Rights of the Child (General comment No. 14), but the existence and use of this document is not widespread. Since both the Hague Child Abduction Convention and the Brussels IIa Regulation depart from the idea that the wrongful removal or retention of a child is not serving the best interest of that child, the immediate return of the child is the rule. Only in a few situations, the return of the child can be stopped. A well-known and well-used ground to refuse the return of the child can be found in Article 13, b) Hague Child Abduction Convention (grave risk or intolerable situation). This provision makes it possible for the requested State to decline the request of immediate return. The Brussels IIa Regulation refers to this ground of refusal, but adds that a court cannot refuse to return a child on the basis of Article 13, b) of the Hague Child Abduction Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. In Belgium, a specific provision had been adopted regarding the issue of adequate arrangements. Article 1322*duodecies* of the Code of Civil Procedure provides that the Public Prosecutor must bring proceedings before the family court, which has jurisdiction to order protective measures. As far as we know, family courts do not use a specific guideline when determining if and which measures should be taken. The fact that there is no (national established) guideline gives the national courts room to order the measures they consider necessary. This 'flexibility' also has a downside. There is no general consensus on what adequate measures should entail. Furthermore, it is not clear whether it is incumbent on the court seized of the request to order the return, to take contact with the authorities of the State where the child initially resided, in order to obtain information on such proper arrangements. A revised version of the Brussels IIa Regulation should pay attention to these problems and refer to an international established guideline (i.e. General comment No. 14), rather than obliging Member States to develop a national guideline. The use of an international established guideline increases the mutual trust necessary for the enforcement of the Brussels IIa Regulation and the legal certainty and predictability for the citizens concerned.
Bulgaria	On the national level does not exist legislative act as a guideline to determine the term '*Best interest of the Child*'. Meanwhile, in the court practice, the SCC[651] forwards to the Judgment of the Counsel of the Supreme Court dated from 1974 year[652], which has to be applied by the courts of all instances. According to that judicial act the interest of the Child has to be estimated considering the following circumstances: parents skills; caregiver and skills to educate; support training for acquiring knowledge; work habits; moral qualities of the parents; social environment and living conditions; ages and sex of the Child; attachment between children and parents ... The real problem is that in the court practice the final judgment almost always (more than 90%) is in favor of the Child's mother…
Croatia	Croatian FLA of 2015, introduces the best interest of a child amongst the guiding principles, which is used by courts and practice.[653] There are however other international obligations deriving out of international conventions: Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the UN Convention on the rights of a child of 1989 being the most prominent examples. The practice of European Court of Human Rights in application of these conventions has to be respected.[654] These are also the Guidelines of the Council of Europe on child-friendly justice of 2010, translated also to Croatian language.[655]
Cyprus	- There is no such national established guideline.
Czech Republic	No such "official" guideline exists. The Supreme Court provided detailed interpretation of the "best interest of child" in its judgment No 30 Cdo 3430/2011 dated 26.4.2012. The measures safeguarding the return of the child shall be "adequate" and appropriate taken into consideration all facts of every individual case. It is disputable whether a general guideline can be useful. For proper functioning of Art. 11 the communication between courts and mutual recognition of these measures are essential.

Estonia	There are no such guidelines.
Finland	-
France	There is no national established guideline in France to determine the best interest of the Child. Such a guideline could be of help to govern "adequate measures" under Article 11 but it would even be better to have a European guideline that all Member States would use to ensure a uniform interpretation of the terms "adequate measures" under Article 11.
Germany	I do not think that such guidelines would be necessary.
Greece	There is no specific national guideline to determine the best interest of the Child but Greek courts have gradually determined some criteria in order to evaluate the best interest of a child. According to Greek judiciary the parent who provides a permanent healthy and caring family and social environment for the child, who is interested in the child's educational and entertaining activities, protecting its' physical and social development and does not affect it in a negative way either physically and psychologically is in principle more appropriate to gain custody rights.
Hungary	Actually there is no established guideline for determining the child's best interests. However, the UN Convention on the Rights of the Child (1989), its regulation and articles are dealt with in the Hungarian legal literature and there are also judgments not affecting cross-border family relations but concerning a child where the term 'child's best interests' are referred to and interpreted. It was not discussed in the legal literature whether a guideline could help to adjudge the term 'adequate arrangements' in Article 11.
Ireland	The concept of best interests is determined by reference to a number of factors the court takes into account which have been developed by the courts and also identifiable in national laws. Best interests include the social, emotional, educational, physical and moral aspects to a child's rearing.
Italy	It surely could. In any case it would help ensuring uniformity of interpretation across the various Member States.
Latvia	In Latvia there is not national guideline to determine "best interests of the child". Courts determine that in each case individually. However, there are some judgements of the Constitutional Court where "best interests of the child" were considered; therefore Courts shall follow the interpretation of the Constitutional Court.
Lithuania	There are no nationally established guideline for Lithuanian courts to determine the 'Best interest of the Child' prospective. However the Supreme Court of Lithuania has issued the guidelines of the CJEU for application of Brussels IIa Regulation, which also covers recommendations for determining the content of 'Best interest of the Child' and local courts uses it. Although local courts of Lithuania have not had to govern 'adequate measures' under Article 11 yet, in our opinion a guideline to determine the content of the 'Best interest of the Child' would be of great help to the court of member states.
Luxembourg	The Luxemburgish courts follow the guidelines established by the European Court of Human Rights when it comes to assessing the best interest of the child. According to that case law, the notion of 'best interest of the child' is linked to the 1980 Hague Convention and is two-fold: firstly, it dictates that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit; and secondly, it is also in the child's interest to ensure its development in a sound environment ('Tribunal d'arrondissement de Luxembourg', no. 149284, 19 December 2012).
Malta	There's no established or written guidelines in Malta – however there are a number of factors which we practicing lawyers are aware that the courts regard as 'in the child's best interests' or not. Eg: it is known that our courts do not favour (unless in extraordinary circumstances) that siblings are separated or that children 'live in a suitcase – that is, on a rotation basis with both parents). What is in the child's best interests needs to be decided (as is the case) on a case-to-case basis.
The	The impression is that the legal concept 'adequate measures' is not the problem. The problem can be whether adequate measures can be taken. See as a clear example CA Den Haag, 18 March 2015, ECLI:NL:GHDHA:2015:586. The CA held that no adequate measures could be in place in respect of the child if it were to return to Bulgaria.

Netherlands	The Netherlands Child Care and Protection Agency had been unable to make contact and develop a cooperation with the Bulgarian authorities. DC Den Haag 5 February 2015, ECLI:NL:RBDHA:2015:1628 held no adequate measures were possible in respect of child C if it were to return to Poland, as the other members of its family would not be able to follow the child. No adequate measures could be taken in Poland to remedy this. The mother had a child D with autism from another relation. She successfully demonstrated that she had been under extreme duress when she was living in Poland with D and C due to abuse of D and her by the father of child C.
Poland	No, there is no national established definition of the best interests of the child/child's welfare nor any kind of guideline. On the other hand, because one of the principles of family law is the principle of the child's welfare, the provisions of the Polish Family and Guardianship Code[656] either explicitly express it or they should be interpreted and applied taking into account this principle. There are a lot of case law on the welfare of the child, not connected with the Brussels IIa Regulation. In relation to regulation: Decision of Katowice Court of Appeal dated 15 May 2009, Y ACz 252/09[657]: you cannot equate the lack of child welfare with the situation of remoteness of the current habitual residence of the child from the divorce court.
Portugal	There are no such guidelines.
Romania	The Romanian legislation established the superior interest of child as the principle that must be followed in every measure concerning the child (e.g. art. 263 Civil code). The *Act no 272/2004 on the protection and the promotion of children rights* establish a set of criteria to be taken into account when determining the child's best interest : a) the needs for physical and psychological development of the child, education and health, security, stability and inclusion into a family; b) the child's opinion, depending of its age and degree of maturity; c) the child's history, considering, in particular, situations of abuse, neglect, exploitation or any other form of violence against him, and the potential risky situations that may arise in the future; d) the ability of the parents to meet the needs for the child growth and care; e) maintenance of personal relationships with people with whom the child has developed attachments relationships. These are circumscribed to the normal moral and physical development, socio-affective equilibrium and family life and serve as a guideline also in child abduction cases[658].
Slovakia	The Slovak legislator has introduced since 1st of January 2016[659] in Slovak family Code the criteria of best interest of the child (Art. 5) such a: - safety and protection of the physical and psychological integrity of the child; - the promotion of the talents, abilities, interests and development of the child; - the consideration of the views of the child in accordance with the understanding and the ability to form opinions; - avoiding any danger, assault or violence to the child; - reliable contacts of the child with both parents; - avoiding conflicts of loyalty and guilt of the child; - respect for the rights and interest of the child and the living conditions of the child, his parents and other surroundings. Could such a guideline be of help to govern 'adequate measures' under Article 11? Yes
Slovenia	No, there are no national guidelines, but the courts use the *Practice Guide for the Application of the Brussels IIa Regulation* and the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. But the Ministry of Family is working on Strategy for children rights, which should be also followed by concrete Action plan.
Spain	a) Besides international conventions in this field, which shall of course be applied by Spanish authorities, the Organic Law 1/1996 on Legal Protection of Minors establishes the concept of "Best interests of the child" in Article 2. This provision is not mentioned in the analyzed judgments but it may help authorities to take decisions in the particular case. Its current drafting derives from the amendment of Organic Law 8/2015 on the Modification of the System of Protection of Childhood and Youth: "1. Every child has the right of his best interests to be valued and considered as paramount in every action and decision in which he may be involved, both in the public and private sectors. In the application of this law and other regulations that affect them, as well as in the actions concerning children adopted by public or private institutions,

	courts or legislative bodies, the interests of children shall above any other legitimate interest that may concur. Limitations of legal capacity of minors shall be interpreted restrictively and, in any case, in the best interests of the child. 2. For the purposes of the interpretation and application of the best interests of the child in each case, the following general criteria are taken into account, without prejudice to those established in the specific legislation applicable as well as those that can be estimated appropriate in the specific case: a) Protection of the right to life, survival and development of children and the satisfaction of their basic needs, material, physical and educational, as well as emotional and affective. b) Consideration of the desires, feelings and opinions of the child, as well as his right to participate progressively in the process of determining his best interests depending on his age, level of maturity, personal development and evolution. c) Desirability of developing his life in a suitable family environment free of violence. Priority will be given to permanence in his family of origin and family relationships will be preserved whenever possible and positive for the child. If a measure of protection is adopted, foster care will be prioritized. When the child had been separated from his family, the possibility and convenience of his return will be assessed, taking into account the evolution of the family since the protective measure was adopted and always giving priority to the interests and needs of the child over the needs of the family. d) Preservation of identity, culture, religion, belief, sexual orientation and identity or language of the child, as well as non-discrimination under these or any other conditions, including disability, ensuring the harmonious development of his personality. 3. These criteria shall be weighted taking into account the following general aspects: a) The age and maturity of the child. b) The need to ensure equality and non-discrimination because of his particular vulnerability, either for lack of family environment, having suffered abuse, disability, sexual orientation and gender identity, being a refugee, asylum or subsidiary protection seeker, member of an ethnic minority, or any other characteristic or relevant circumstances. c) The irreversible effect of time in his development. d) The need for stability of the solutions adopted to promote the effective integration and development of the child in society as well as to minimize the risks that any change of material or emotional situation can result in his personality and future development. e) The preparation of the transition to independent adult age, according to his abilities and personal circumstances. f) Other weighting elements which are considered relevant in the particular case and respect the rights of minors. The above elements shall be assessed jointly, in accordance with the principles of necessity and proportionality, so that the action taken in the interests of the child does not limit more rights than it protects. 4. If any other legitimate interest concur with the interests of the child measures adopted in response to these interests which also respect other legitimate interests must be prioritized. If all legitimate interests cannot be complied with, interests of children shall prevail over any other legitimate interest that may concur. Decisions and actions taken in interest of the child should assess in any event the fundamental rights of other persons who might be affected. 5. Any measure in the interests of the child shall be taken in accordance with due process guarantees and, in particular: a) The rights of the child to be informed and heard and to participate in the process in accordance with current regulations. b) Intervention in the process of qualified or experienced professionals. If necessary, these professionals must have sufficient training to determine the specific needs of children with disabilities. In the particularly important decisions affecting the child a report by a technical and multidisciplinary group of professionals is required. c) The participation of parents, guardians or legal representatives of the minor or a guardian ad litem if there is a conflict or discrepancy with them and the prosecutor in the process in defense of their interests. d) The adoption of a decision that includes in its motivation the criteria which were followed, the elements used in weighing the criteria and other present and future interests, as well as the respected procedural guarantees. e) The existence of challenge permitting to review the decision which has not considered the interests of the child as primary or in the case where the child's development or significant changes in the circumstances that led to that decision make it necessary to be revised. All children enjoy the right to free legal assistance in cases provided by law". Together with this provision, it is also important to stress that the Spanish Constitutional Court has dealt with cases on children abduction where it has had the opportunity to interpret the best interests of the child. For instance, in Judgment 176/2008, of 22 December, when assessing the right of access of a parent, the Court reminds the importance of evaluating this issue weighing it with the parents' rights, which are less important but not negligible, and refers to a number of Judgments of the European

	Court of Human Rights following this same doctrine. The best interests of the child operates precisely as a counterweight to the rights of each parent and requires the judicial authority to weigh both the necessity and the proportionality of the measure regulating the relevant measure. Furthermore, the recent Judgment of the Constitutional Court 16/2016, of 1 February, emphasizes the importance of including the integration of the minor in the weighting and the need to reflect this analysis in the judgment in order to avoid violation of the right of access to justice. Elements like the age of children, their environment and habitual living, including the presence of a new member in the family context and schooling in Spain were considered important by the Court in this case. Judgment 463/2007 of Provincial Court of Málaga shared this same view when it refused the return after assessing the integration of the child following an expert opinion and reports of the school. b) On the other hand, we agree that the above guidelines, both legal and based on case-law, may help to govern the referred "adequate arrangements" of Article 11.4 Brussels IIa Regulation. Under this provision, "A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return". Therefore, if measures have been adopted respecting the guidelines described above, the protection of the child is guaranteed and the return should be effective.
Sweden	There are no such guidelines.
UK	Domestic law contains both a welfare checklist[660] (reflecting the principles of the Children's Convention) and an adoption welfare checklist,[661] both of which frame the best interests of the child as paramount. The inherent jurisdiction of the High Court (wardship) offers a separate, welfare-centric protective remit.

Question 34: Have the courts in your jurisdiction encountered difficulties in applying Article 10 of the Brussels IIa Regulation? If yes, how are these problems dealt with?	
Austria	Austrian courts have no difficulties in applying Art 10 of the Brussels IIa Regulation.
Belgium	No major problems have been detected. There is, however, one case where the first judge applied Article 10 of the Brussels IIa Regulation, while the appellate judge was of the opinion that Article 8 of the Brussels IIa Regulation had to be used.[662] In this case, the appellate judge was of the opinion that, at the time the court was seized, the habitual residence of the child was still in Belgium (and not in Poland). Although the child was wrongfully kept in Poland, Article 10 of the Regulation was not applicable since the Belgian court was seized before the wrongful retention took place and the place of habitual residence of the child was – at that time – located in Belgium.
Bulgaria	-
Croatia	Regrettably in most EU child abductions subsequent to Croatian full membership Croatian courts haven't applied the regulation, merely the Hague 1980 Convention.[663] There is one available case where court recalled to Article 10(1)(a), as well as Articles 8, 9(1), and (b)(ii). Municipal Court states that the habitual resident of the child is not in Croatia because there is a final (as of 8 May 2013) and enforceable (as of 8 June 2013) decision of the same Croatian Court for the return of the illegally retained child by his father and for the child's return to Poland. "The County Court states that the Municipal Court failed to determine the facts as to where the child's habitual residence is: in Poland or in Zagreb since the facts of the case indicate that the mother is residing in Zagreb and that the first plaintiff is in school in Zagreb as well. The Municipal Court in the decision anew (P2-51/15-33 of 16 June 2015) states that the decree on the return to Poland was enforced and that his lawful habitual residence is there, that the mother is living and working in Poland for several years now and that her residence registered in Croatia does not change that and that because of Article 9 and 10(1)(a) or (b)(ii) the child cannot be held to have his habitual residence in Croatia. The court concludes that based on Art 3(1)(a) or (b) Polish courts are competent."[664]
Cyprus	- There is no Supreme Court case law dealing with this matter. - In the limited number of cases where the matter appeared before Cyprus courts, the courts have been willing to apply the provisions and accept jurisdiction.
Czech Republic	Yes, there was "an Art. 10 case" before the Supreme Court (judgment No 21 Cdo 4909/2014 dated 19.3.2015). The Supreme Court assessed the jurisdiction under Art. 10 in situation, where a notice under Art. 16 1980 Hague Convention on Child Abduction was made by the Czech Central Authority, however, the father does not submit the application for return to the competent court within a "reasonable time". The Supreme Court gave guidelines for assessment of the "reasonable time" and admitted jurisdiction under Art. 10 in case the time between the notice under Art. 16 and the submission of the application for return was not reasonable or the application had not even been submitted and at the same time the child had habitual residence in the state of the forum.
Estonia	-
Finland	-
France	Regularly, the French Cour de Cassation has to reverse lower judgments for practising what could be defined as "judicial nationalism". Indeed, judges tend to consider that they have jurisdiction in matter of parental responsibility over a child despite the fact that his residence in France is unlawful because the child was wrongfully removed. Judges grant too easily rights of custody to the kidnapping parent (in most cases this parent being a National of the Member State whose courts are seized) while the question of a possible wrongful removal is neither discussed nor even contemplated. The very strict allocation of powers between the Member States pursuant to Article 10 is a very good solution but a complicated one to implement. It would take time for this solution to be widely accepted and correctly applied. It is true that the whole mechanism (return of the child on the one hand, jurisdiction in matters of parental responsibility on the other hand) depends on the sensitive issue of the qualification of a "wrongful removal" (see question 32), which itself depends on the uncertain notion of "habitual residence" (see question 1).

Germany	No. As far as I can see, there is not much case-law on this provision in Germany.
Greece	There is not abundant case law on the application of article 10 of the Regulation. Nonetheless, Areios Pagos in one of its first decisions on the Regulation has interpreted accurately the meaning of this provision in a case where the wrongful removal of the child was to France and the habitual residence in Greece.[665]
Hungary	Actually the issue of the habitual residence is the crucial one in the Hungarian practice. As the summarizing opinion of the working group analysing the practice of the courts (http://www.lb.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2013el_ii_g_1_14.pdf) refers to that, sometimes it is not easy to determine that when the whole family – parents and their child – moves abroad they – and especially the child – has acquired a new habitual residence in the new MS. That is equal to the issue whether the family loses the habitual residence in one country if they move abroad. In harmony with the *Mercredi*-case the summarizing opinion emphasized that although the term 'habitual' shows a period of time it is not excluded that the child can acquire a new habitual residence when arriving into a new MS. In such case the court has to balance upon the concrete case's facts and circumstances by taking consideration the judgement in the *Mercredi*-case. In one case (Kúria Pfv. II. 20.123/2015.) the parents of Hungarian nationality being spouses with a one-year-old child wanted to settle in the United Kingdom, nevertheless it was not a final decision as they agreed they would live in England as long as they think it was better for them than it would be in Hungary. They rented a flat in England but did not sell their flat in Hungary. One of them entered into employment abroad, another spouse took care for the child and she was who moved back to Hungary half a year later when their relationship went wrong. As the child abduction proceeding started the first instance court had to decide upon the child's habitual residence and they voted for having the child the habitual residence in Hungary as the parents regarded their stay in England not as a final but transitory one. The second instance court got at the opposite conclusion while referring to the fact that the factual locality of the family's co-habitation was in England. This conclusion was confirmed by the Hungarian Curia which underlined that when balancing the facts and concrete circumstances with the aim of determining the child's habitual residence not the period of time has a primary relevance but the parents' common decision and their common intent. The Hungarian courts have accepted the attitude according to which the age of the child do not influence in itself the illegality of child's removal or retention and did not change (in itself) the child's habitual residence.
Ireland	There are no reported cases detailing any difficulty in the application of Article 10.
Italy	This article has been the object of rather keen work of interpretation. In general, it has been clarified that the Regulation prevails over the Hague Convention – as stated in art. 60 – because it is lex specialis (special law), but some authors have pointed out that the coordination between the two texts and the decisions of the ECHR is sometimes rather awkward. More specifically the terms "wrongful removal" and "wrongful retention" have been discussed: the judge – in order to evaluate the removal or retention – must take into account "the situation before the removal or retention" considering the real de facto conditions of life of the child, not only the civil registry registrations (Cass. 19695/2014). In the case of shared custody or in the case of exclusive custody with specific dispositions on the child's residence, the removal effectuated by both parents or by the one with right of custody without informing the other, amounts to an illicit behaviour (Trib. Reggio Emilia 7.05.2009). The wrongful removal or retention may be committed only by the holder of the right to visitation (Cass. 22238/2009), while the lawful change of habitual residence done by the exclusive custodial has no relevance (Cass. 252/2010). In this case, however, the non-custodial parent may request a change of the visitation conditions if necessary involving the Central Authorities. There is no wrongful removal, on the contrary, if the child is taken back to his or her habitual residence, even if one parent opposes to it, following a short period of time of absence agreed upon by the parents (Cass. 13936/2009).
Latvia	Not observed.
Lithuania	There have been no difficulties in applying Article 10 of the Brussels IIa Regulation in jurisdiction of Lithuania yet.
Luxembourg	Only in some judgments was Article 10 mentioned, without problems of application having arisen in general (for example, 'Cour d'appel', no. 40990, 23 April 2014).

	It is worth mentioning that in a case of wrongful removal, the court assumed jurisdiction on the basis of Article 8, because the court considered that the place of legal habitual residence of the children was Luxembourg, following from the lack of consent of the father of the children to move their residence to Germany. Although Article 10 was only arisen in the pleas of one of the parties, the court took over the argument pleaded, in the sense that despite the children were residing in Germany, there was no consent from one of the parents (who had also custody on them), and then in such an scenario of wrongful removal, the Luxembourgish courts still had jurisdiction, being Luxembourg the place of habitual residence prior to that removal. Article 10 was applied as a subsidiary head of jurisdiction for justifying the jurisdiction of Luxembourgish courts even in the case of wrongful removal ('Tribunal d'arrondissement de Luxembourg', no. 147128, 18 February 2014). In another case, the non-application of Article 10 was justified on *ratione materiae* scope, as it only covers actions of parental responsibility and not actions of return of a child ('Tribunal d'arrondissement de Luxembourg', no. 168998, 8 May 2015).
Malta	Initially yes though through the help of the Central authority and documentation, such problems are solved.
The Netherlands	The main problem in respect of Article 10 may well be the relation between BIIa and the Hague Abduction Convention. The view in the Netherlands is that jurisdiction for return orders under the Hague Abduction Convention is with the court of the abduction state. As a consequence the court of habitual residence under BIIa does not have jurisdiction to grant a return order. See NL SC 9 December 2011, NIPR 2012, 2, LJN: BU2834. The case concerned the jurisdiction in respect of a petition for the return of the child. The children had been taken to Belgium by the mother. The father made a petition to a court in the Netherlands for an order to return the child from Belgium to the Netherlands. The DC Breda, finding, inter alia, that the investigations by the Belgian Central Authority was still in a research phase at the time the case was heard in the Netherlands, held it had jurisdiction to grant an order for the return of the child under the 1980 Hague Convention. A-G Strikwerda started proceedings for cassation in the interest of the law and asserted that under Articles 8 to 12 of the 1980 Hague Convention DC Breda did not have jurisdiction to order the return of the child. The SC considered that in this case the DC Breda did not have jurisdiction under Article 10 Bxl IIa, as jurisdiction under Article 10 Bxl IIa would only concern decisions on the merits (in French: décision au fond) in respect of parental responsibility. The decision on return of a child under the 1980 Hague Convention was not a decision on the merits, but a disciplinary measure. The SC then went on to consider that under the system of the Hague Convention, a return order can only be given by the court of the state where the child is present. The DC Breda, court of the habitual residence, therefore wrongly assumed jurisdiction for a return order under the 1980 Hague Convention. NL SC 28 February 2014, ECLI:NL:HR:2014:443 concerns the relevant date for jurisdiction. The Youth Care Agency had asked for an extension of a supervision order by a request dated 7 January 2013. The SC held that in order to assume jurisdiction for the extension, it had to be determined whether the children concerned had habitual residence in the Netherlands on that date. NL SC 26 June 2015, ECLI:NL:HR:2015:1752, concerned the same children as NL SC 28 February 2014, ECLI:NL:HR:2014:443 and held that as the children had been placed in a foster family by a final Netherlands court order in 2012, the lower court had rightly found that habitual residence was in the Netherlands from 2012 and that this finding complied with the CJEU case law on the notion of habitual residence. Reported case law from the lower courts that addresses Article 10 BIIa is abundant (over 40 decisions). The following are a examples of recent decisions. DC Den Haag, 16 June 2016, ECLI:NL:RBDHA:2016:6960 referred to See NL SC 9 December 2011, NIPR 2012, 2, LJN: BU2834 when assuming jurisdiction to issue a return order in respect of a child held in Syria, which is not a contracting state to the Hague Abduction Convention. In DC Den Haag, 23 December 2015, ECLI:NL:RBDHA:2015:15397, the mother applied for single custody of children who had been in the Netherlands since the summer of 2014. During the proceedings in 2015 the mother indicated that she had refused to return the children to the father in Poland after they had spent the 2014 summer vacation with her in the Netherlands. Since September 2014 the children had been going to school in the Netherlands. The DC held the condition of Article 10 under a BIIa had not been met, as the father had made an application to the Polish Central Authority for the return of the child. Although return proceedings had not been formally initiated in the Netherlands, the DC held this was irrelevant for the application of Article 10 under a BIIa. The DC also found that the condition of Article 10 under b BIIa (one year of habitual residence) had not been met. CA Arnhem-Leeuwarden, 1 December 2015, ECLI:NL:GHARL:2015:9118 found that the lower court had rightly determined that habitual residence was in the Netherlands, in view of the content of an agreement between the parents. The father had withheld the child in Spain in breach of that agreement. The CA held there was no reason to give

	application to Article 15 BIIa. It was irrelevant that the child (born in 2001) had spent most of his life in Spain and would wish to remain there. DC Den Haag, 8 September 2015, ECLI:NL:RBDHA:2015:11361 held the jurisdiction of the Czech courts had ended on the date the parents had agreed the child would live with its mother in the Netherlands.
Poland	The lack of case law indicates that either provision is not frequently used, or its application does not cause problems. The doctrine however draws attention to three issues: 1. The court, after determining that either a child had been so far a resident of that Member State, or currently resides in it, would have sufficient grounds to determine its jurisdiction under the provisions of the Brussels IIa Regulation, or the provisions of the Hague Convention and could not reject a request for the child's return, citing the fact that the court of another Member State has exclusive jurisdiction to decide on the case. The decisive factor for resolving the jurisdiction of the court would therefore be a decision of a parent who would be entitled to choose the court of the Member State to lodge the requests for the child's return, while the court could reject it only after the consideration that the child did not reside in the Member State in which the court is located before the wrongful removal or retention nor currently resides there.[666] 2. The consent provided in Article 10(a) must be express, which means that it cannot be presumed, and that must come from the person entitled to custody over the person of the child, and not only to the right to personal contact with the child. If more than one person is entitled to custody, it must be expressed by all of them.[667] 3. The second situation, which may lead to the acquisition of jurisdiction by the court of the state in which the abducted child has acquired a right to residence requires the fulfillment of three cumulative prerequisites laid down at Article 10(b). The second prerequisite requiring that the child is settled in his new surroundings, creates doubts as to interpretation, since it is not clear criterion to distinguish this prerequisite from the condition to integrate / familiarity with the environment, required to establish the residence of the child.[668]
Portugal	There is no evidence of any difficulty.
Romania	We did not found pertinent case law applying article 10 of the Regulation[669]. The main difficulty regarding the application of the text might be the complex articulation between the temporal and substantial conditions that must be taken into account when deciding the jurisdiction of the courts. Other difficulties might concern the identification of the habitual residence of the child after its movement for a period of time, the interpretation of the term "acquiescence" in the removal or retention, the lack of correlation between the starting points for the calculation of one-year period from art. 10 of the regulation and art. 12 of the 1980 Hague Convention
Slovakia	No
Slovenia	Court applied Article 10 without any difficulties.[670]
Spain	As a general rule, the courts having rendered the decisions which have been analyzed in this research do not ground their competence in Article 10 Brussels IIa Regulation. Spanish courts assess whether the circumstances of the case are deemed a child abduction or not (under Article 2.11 Brussels IIa Regulation and/or Article 3 the Hague Convention) and apply Article 11 Brussels IIa Regulation as regards the return of the child but they do not generally explain the ground of their jurisdiction. This provision has been referred to in some decisions but not to this end (Orders 74/2008 of Provincial Court of Almería, 38/2009 of Provincial Court of Barcelona, 312/2010 of Provincial Court of Barcelona).
Sweden	No such difficulties so far.
UK	In *Re H* [2014],[671] the court considered whether, where both parents have parental responsibility for a child, either can unilaterally change the child's habitual residence. The father (having previously issued proceedings in Bangladesh) made application under the inherent jurisdiction of the High Court, seeking the return of his children to the UK. He claimed that the children were habitually resident here, or that they held British citizenship, having been born here. Jackson J dismissed the application on the basis of lack of jurisdiction, and that the children were not habitually resident here. On the point of their being unlawfully retained, it was noted that they were no longer habitually resident. [672] Their British citizenship did allow for the exercise of the court's inherent jurisdiction, given the facts of the case, this option would have been inappropriate: the Bangladeshi courts had been first seised, and had provided a forum for his case to be heard, and for child welfare concerns to be addressed.[673] Unusually, the children were joined as parties to the subsequent appeal, with Black LJ stressing that no precedent arose from the decision to do so. One ground of appeal concerned Article 10's operation: it was accepted that Brussels IIR can apply even where children were habitually resident or present in a non-member state.[674] Jurisdiction was therefore retained. The Court

	of Appeal found however that dismissal of the proceedings would have been the eventual outcome, and as such did not need to exercise their jurisdiction to hear the case.[675] As Easton observed, 'a significant feature of this case was the amount of time that had elapsed.' [676]

Question 35: Are there any difficulties encountered in practice in your jurisdiction in the application of Article 11(2)-11(5) which modify the application of the 1980 Hague Child Abduction Convention, concerning the obligation for the child to be heard?	
Austria	There are no difficulties with the application of Article 11 (2) of the Brussels IIa. According to §§ 111a, 105 (2) AußStrG[677], a questioning of the child has to be avoided if a pronounced statement is not to be expected. This is not the case for children up to 5 or 6 years of age. [678] In general it does not matter - except it is already 12 - that the child wants to be with the kidnapper. Thus, for example, a return order was issued, although the children between 8 and 12 years old had spoken out against a return, which led to a separation from their 16-year-old brother. [679]
Belgium	The right of the child to be heard in parental abduction cases is guaranteed by Article 11 (2) of the Brussels IIa Regulation. In Belgium, this right is also protected by Article 22*bis* of the Belgian Constitution. Before the law of 30 July 2013 concerning the creation of the family and youth court,[680] the courts struggled a lot with the obligation to hear children. The at that time existing legal framework did not only lack coherence, it treated children differently on the sole basis of the court seized.[681] Since the entry into force of the law concerning the creation of the family and youth court of 30 July 2013, judges are obliged to inform children of their right to be heard from the moment they are 12 years old. If the child informs the judge that he/she wants to be heard, the judge has to hear the child. Only after hearing the child, the judge can decide to not take into account the views of the child because he/she lacks the necessary maturity. Although the law of 30 July 2013 eliminated the discriminatory treatment between children on the sole basis of the court seized, the new law is far from enhancing children's rights. First of all, it is not clear whether or not the Articles 1004/1 and 1004/2 Belgian Civil Code of Procedure are applicable to cases which seek the prompt return of the child. Secondly, the fact that children under the age of 12 are not systematically informed with their right to be heard is problematic. Article 12 of the Convention on the Rights of the Child protects the right of *every* child to be heard in *any* judicial and administrative proceedings affecting the child. It is up to the Belgian legislator to bring the Belgian right to be heard in line with the international requirements, but there is also room for improvement on the level of the European Union. Article 11 (2) of the Brussels IIa Regulation is in itself problematic. Belgian legal literature points out that the Brussels IIa Regulation should place more emphasis on children's rights.[682] Since all Member States are bound by the EU Charter and the Convention on the Rights of the Child, it is recommended that a revised version of the Regulation would explicitly refer to those documents. In practice, judges often don't hear the child concerned by simply stating that the child is too young to be heard.[683] Even when children are heard, it is not completely clear which weight should be given to their opinion. The Brussels IIa Regulation stays silent on this matter. The Hague Child Abduction Convention states that the return of the child can be refused when he/she objects to the return and has attained an age and degree of maturity at which it is appropriate to take account of his/her views.[684] The Hague Child Abduction Convention seems to allow the court to refuse the return of a child on the sole basis of the opinion of the child. In Belgium, we see that courts sometimes do refuse the return of the child by referring only to Article 13, § 2 of the Hague Child Abduction Convention.[685] The European Court of Human Rights, however, recognizes that the objecting child should have a voice, but points out that the opinion of the child cannot amount into a veto in the process of deciding whether he/she will be returned.[686]
Bulgaria	-
Croatia	There is in general a problem with hearing of a child in Croatian practice.[687] Child is no heard before the court, but before a specialist of by the Social Welfare Service. Competent authorities are obliged to give an opportunity to the child to express its views always, or otherwise, to conclude that child opinion was not taken considering his or her age and maturity. Such obligation is determined with Art 12 of the UN Convention on the rights of a child. This provision has been transposed by provision of Art 86 (2) of the Croatian Family Act which prescribes the general obligation of taking into account the child opinion. Discussion ended with a referral to proposal for a recast 2201/2003 regulation directly refers to in respect of this matter.
Cyprus	No as in any case our courts routinely interview the children and do so in appropriate cases in child abduction proceedings.
Czech	No data available.

Republic	
Estonia	Like in domestic parental responsibility cases, the child has to be heard by the judge. Moreover, there has to be appointed a lawyer who has to protect the interests of the child in the procedure. Also the local child protection authority is involved in the proceedings.
Finland	- If the child has been heard, the child has been heard either directly before the court (if the child agrees and this is not considered to harm the child) or by the social welfare authority. Brussels II did not bring any new practices as section 39 of the child custody and right of access act states: "(1) Before the Court of Appeal decides on an application for the enforcement of a decision on child custody or right of access issued in a foreign state or an application for the return of a child, it must ascertain the opinion of the child. This applies if the child may be presumed, based on his or her age or other circumstances in the knowledge of the Court of Appeal, to have attained such a degree of maturity that it is appropriate to take his or her opinion into consideration. (2) The provisions in sections 15 and 16 are applied, where appropriate, to the ascertainment of the opinion of the child. (3) When requesting a report from the social welfare board, the Court of Appeal must exhort the board to submit the report urgently." - Note that according to national rules in Finland a return order is issued, upon request, by Helsinki Court of Appeal. A case concerning the confirmation of a decision issued in a foreign state and the return of a child must be considered urgently. If the Court of Appeal has not reached a decision in a case concerning the return of a child within six weeks from the submission of the application, the court must, upon request of the Ministry of Justice or the applicant, provide a statement of the reasons for the delay. According to section 42 of the Child custody and right of access act it is stated that: "The appeal period for a decision issued by Helsinki Court of Appeal confirming that a foreign decision on child custody and right of access is enforceable in Finland or ordering the return of a child is 14 days from the date of the decision of the Court of Appeal. In other respects, the provisions in Chapter 30 of the Code of Judicial Procedure apply to appeals against decisions of the Court of Appeal." - I also asked lawyers how many hours they have spent in these cases, and the answer was apprx 20-30 hours (usually clear cases and no interpretational problems).
France	In French internal law there is no strict obligation for the child to be heard, but there is an obligation to give him the opportunity to be heard (Article 388-1 of the French Civil Code). In child abduction matters, two main judicial practises exist: some judges apply the Article 388-1 of the Civil Code and do not systematically hear the child. Since the motivation of the French decisions refusing to hear the Child proved to be insufficient, French courts were invited by way of a ministerial circular to motivate carefully all their decisions in relation to matters of parental responsibility. By contrast, some other judges systematically hear the child even when he did not ask for a hearing. These judges make an emergency request in order to have a lawyer assisting the child during the hearing and the child is heard on the very same day as the trial so that his opinion is taken into account in the adversarial debate. By this practise judges want to ensure that they respect the six weeks time delay pursuant to Article 11 (3)-2 and that their decision will be recognised and executed in other MS. Article 11(5) is a key condition in the French procedure for the return of a child. Indeed, the application for return is normally made by the central authority through the public prosecutor. Yet, it could be difficult for the public prosecutor to defend the absent parent (asking for the return of the child) against the statements made against him/her by the kidnapping parent. For this reason, among others, it is a good thing that a court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.
Germany	Not to my knowledge, thanks to the specialisation and concentration of return proceedings in some courts only, which have developed expertise in that area.
Greece	In Greece the child can be heard in the context of a procedure of provisional measures and the need to be heard can be notified to the person who assumes de facto the custody even by an informal notification.[688]Omit to hear the child leads to a procedural irregularity which can found an appeal in cassation.[689]
Hungary	There is a tendency that the children are heard directly by the judge in a child abduction case. I would mention that the advantages and disadvantages of the child's hearing in a direct or indirect way are fairly deeply discussed in the Hungarian legal literature. According to the summarizing opinion of the working group analysing the practice of the courts concerning child abduction (http://www.lb.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2013el_ii_g_1_14.pdf) in cases concerning the child's illegal removal or retention it seems to be a tendency that the proceeding judge hears the child and acquires information directly from the child concerning the child's opinion and the child's fitting into the situation in Hungary and furthermore the situation abroad before coming to Hungary. According to the contribution of the first instance court to

	the working group the child's hearing contributed to the decision significantly as provided important information for the court. In the monitored period the children who were heard were between 5 and 9 years old. They were heard in the parents' absence and the judge informed the parents later on about the content of the record. The summarizing opinion emphasized that the practice of hearing the child directly should have been followed also in the future nevertheless there are several requirements which are to be provided for the court and judges. In one case before the Hungarian Curia (Legf. Bír. Pfv. II. 21.601/2009.) the Hungarian Curia underlined that the child's direct hearing by the judge is not contrary to civil procedural rules.
Ireland	There have been no difficulties experienced in applying Article 11(2)-(5).
Italy	Notwithstanding the amount of discussions devoted in the course of time to this topic – which has been, and still is, very controversial in Italy - I must admit that the child's hearing is still a source of difficulties. The Court of Cassation has explained that even when the hearing is held inappropriate the right to defence is guaranteed in an indirect way through the remarks of the social services (Cass. 196664/2014); it is not mandatory (Cass. 7479/2014; Cass. 16648/2014), but its weight is not just cognitive (Cass. 5237/2014) so that the distinction made in the art. 13 par. 2 of the Hague Convention between age and degree of maturity appears vague and the opinion of a minor who is able to express his or her views, emotions and needs may be, according to the judge's opinion, an obstacle to the child's return. The discretion of the judge is limited, as the hearing is necessary for the fulfilment of the procedures. Maturity is considered achieved at twelve, but it is up to the judge to decide whether the minor of inferior age is "able of discernment". The court will however choose the way it hears the minor (whether directly or through experts), but in any case the court must motivate the decision on this point. If the judgment does not take into account the results of the hearing and there is no explanation for this, then the decision will be appealable (Cass. 14651/2014). It is may necessary to add that the Italian legal system has introduced an individual right of the child to be heard through the Law 10 December 2012, n. 219. In spite of this, even now courts often evaluate rather roughly the maturity and the ability to discern of the minors. Finally, with reference to answer 30 above, I will add that in none of the nine decisions deciding for the non-return, the child had been heard directly, as art. 42 (2) a) would undoubtedly require.
Latvia	Not observed. The legislator has not established the age from which the child's opinion should be sought but it has stated that the court has the duty to examine a child if he/she is able to formulate an opinion, always taking the child's age and degree of maturity into consideration[690] The Orphan's Court, taking the child's age and maturity into account, uses appropriate measures to hear the child's opinion – either they hear the child themselves or they use the report of a psychologist/psychiatrist.
Lithuania	There have been no difficulties in the application of Article 11(2)-11(5) in jurisdiction of Lithuania yet.
Luxembourg	Luxembourgish courts have some difficulties as regards the application of Article 11 (2) concerning the obligation for the child to be heard. Generally, the opportunity to be heard is not given to the child ('Cour d'appel', no. 38330, 28 March 2012; 'Tribunal d'arrondissement de Luxembourg', no. 144586, 28 November 2012; 'Cour d'appel', no. 39629, 8 May 2013; 'Tribunal d'arrondissement de Diekirch', no. 144, 18 June 2013; ('Tribunal d'arrondissement de Luxembourg', no. 175558, 10 June 2016). However, in two cases the children were heard ('Tribunal d'arrondissement de Luxembourg', no. 132742, 12 October 2010; 'Tribunal d'arrondissement de Diekirch', no. 183, 16 July 2013). In another case the child was heard through his representative, not directly by the judge ('Tribunal d'arrondissement de Luxembourg', no. 166883, 10 March 2015). It is worth mentioning also a case of non-application of Article 11, where the claimant argued in favour of the application of this Article, and the court did not apply it because the children were wrongfully removed from Montenegro –and not from a Member State– ('Tribunal d'arrondissement de Diekirch', no. 154, 2 July 2013, judgment confirmed by the 'Cour d'appel', no. 40274, 6 November 2013).
Malta	No

The Netherlands	CA Den Haag 18 March 2015, ECLI:NL:GHDHA:2015:586 found, after hearing the child, that its resistance was not so much directed against a return to Bulgaria, but against being separated from its mother. For that reason the ground for refusal of Article 13(1)(b) HAC was not applicable. CA Den Haag 1 April 2015, ECLI:NL:GHDHA:2015:754 found the child truly did not want to be returned to Belgium. This case appears to be one of the few cases in which it was in dispute whether the child was old and mature enough to be heard. Unfortunately the year of birth of the child is removed from reported decision for privacy reasons.
Poland	The lack of case law indicates that either provision is not frequently used, or its application does not cause problems. The doctrine however draws attention to two issues: 1. The provision of Article 11(4) should be interpreted as meaning that even if the court makes findings leading to the conclusion that the return of a child would expose the child to physical or psychological harm or for other reasons would place the child in an intolerable situation, the court is not able to refuse to order his return if, at the same time, the court determines that the steps to protect a child from exposure to the situation described in the disposal of Article 13(b) of the Hague Convention have been taken.[691] 2. The Brussels IIa Regulation establishes the principle of hearing the child in the proceedings which refers to him. An exception to this rule, allowing the waiver of a hearing the child because of his age and his level of maturity, must be interpreted restrictively. Organization of hearings is carried out in accordance with the provisions of national procedural law. In the Polish civil procedure it will be Article 216^1 CCP, under which the hearing (if it concerns a minor child) takes place outside the court room.[692]
Portugal	There is no evidence of any difficulty.
Romania	A discussion might appear as to the exact duties of the courts as regard the audition of the child - an ex officio duty to hear the child, a duty to accept the request for hearing the child, a mere possibility to hear the child. The position of the Romanian courts can be illustrate with a decision of the Bucharest Court of Appeal from 2015[693]: the child's hearing should be made according to the conditions set by the internal law (who states that this is not mandatory when the child is under 10 years old); the courts refuses to reverse the return order rendered by the inferior court without the hearing of the 7 years old child, stating that the probative documents (social enquiry report and certificates) do not show that the return will generate any risk of psychological danger for the him[694].
Slovakia	The Slovak courts respect the right of the child to be heard. Since 1st of July 2016 came into force the new Civil Procedural Code. The new Civil Procedural Code increased the importance of the right of the child to be heard and has introduced new processual guarantees.
Slovenia	Regarding the Article 11(3) a court to which an application for return of a child is made shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law. But which proceedings shall apply in Slovenia is not clear and the practice of Slovenian courts varies.[695] In some cases the court decided that the rules of non-contentious procedure shall be used.[696] But in case *II Ips 457/2001*, the SCRS was of the opinion that the procedure rules of Claim Enforcement and Security Act (hereinafter: CESA)[697] shall apply. It was decision on the return of the child. It was not the final decision, but only as temporary arrangement to insure the smooth implementation of the procedure, in which the rights and duties of the parents towards their children should be regulated. Therefore the decision on the return of the child is closest to an interim measures which are regulated in CESA and not CPA. The use of the CESA provides better solution, because enforcement proceedings are the fastest procedure provided by Slovenian law. Therefore the CESA regulation is appropriate. Article 9 CESA provides that an complaint or appeal that does not withhold enforcement must be filed within eight days. Since the non-hearing of the child could lead to the refusal of recognition of the foreign judgment, Slovenia is working on the improvement of the child hearings standards. The courts should follow the principle of the best interest of the child (Article 3 CRC) and shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child. The views of the child shall be given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law (Article 12 CRC). Related to mentioned and to the Article 11(2)-11(5) the courts have the discretion right to provide the hearing of the child if it is appropriate. If the hearing could be harmful to the child's psychological health, the court should not perform the hearing of the child. But the courts should provide every legal step to enable the child (regarding to child's age and maturity) to express his or her views freely and that his or her views would be taken seriously by the court. The court shall take all measures, available under the national law, necessary to protect child's best interests in every individual case.[698]

Spain	The main difficulty concerning the obligation for the child to be heard refers to the assessment of the age and degree of maturity considered sufficient in each case for taking his opinion into account. Some examples can be mentioned regarding this issue. For instance, in Judgment 206/2016 of Provincial Court of Barcelona the court declares that it is not possible to decide the non-return of the children only on the basis of their opinion despite their intelligence and firm will of staying because they showed contradictory views as regards their mother care and moreover one of them was 9 years old (thus "less old than the minimum age required by the applicable legislation for being heard"). We find another example of the difficult and discretionary assessment of this issue in Judgment 160/2010 of Provincial Court of Islas Baleares, in which the Appeal Court disagrees with the lower decision which denied the return of the child because it took into account the opinion of a 7 years old girl. It refers to Article 770 of the Spanish Civil Procedure Act 1/2000, which states that children can be heard but it is not mandatory to do it until they are 12 years old. The court supports maturity is achieved close to puberty age and, under its view, Brussels IIa Regulation is respectful with national laws and therefore her opinion should not have been taken into account in this case. A third example of discretionary assessment can be found in Judgment 100/2006 of Provincial Court of Granada where the court considers that it is important to evaluate the positive personal evolution of the child and his social adaptation, which goes in line with his own will "whatever degree of maturity and discernment showed in the judicial interview". It must also be noted that the national legislation governing the "Measures related with the return of minors in cases of child abduction" regulated in the Civil Procedure Act 1/2000 was amended in July 2015 through the Act 15/2015 of Voluntary Jurisdiction. The new regime of Chapter IV bis has introduced some significant novelties in this field, also in the scope of the participation of children. Articles 778 quáter ff of the Civil Procedure Act are to be applied in case the return is sought according to an international convention or EU rules. Article 778 quinquies 8) of the Civil Procedure Act states that the judge shall hear the child before adopting the decision at any moment during the procedure unless the hearing is not deemed appropriate depending on the age and maturity of the minor, in which case this shall be stated in a reasoned decision. Under the former regime the judge was allowed to decide whether to hear the child or not (it was not an obligation) and he was not forced to render a reasoned decision in case he decided not to hear him.
Sweden	There seem to be no such difficulties so far.
UK	In *re S (A Child) (Abduction: Hearing the Child)* [2014], [699] a mother successfully appealed against an order requiring the summary return of her daughter to Russia, on the basis that 'no consideration had been given to the wishes and feelings' of the child, nor 'to her welfare from her own perspective.' [700] The Court of Appeal held that the High Court (when sitting in its inherent jurisdiction) was obliged in principle to consider whether and how to hear the child. The welfare of the child was subject to fundamental principles concerning effective access to justice (under the ECHR, UNCRC and Brussels IIa) even where proceedings fell within the remit of the inherent jurisdiction: a focus on the child's particular circumstances should therefore include her wishes and feelings, as an element of his/her welfare. [701] Although the 1989 statutory welfare checklist did not apply to proceedings brought under the inherent jurisdiction, it was in keeping with principles of good practice to so 'ensure the principle of effective access to justice for the child.'[702] Her father argued that delays could result if courts were required to hear the child in every such case: The court held however that the issue of weight and relevance of the child's view was 'a separate question from that of the principle that a child is to be heard.' [703]

Question 36: Do problems exist in your jurisdiction in relation to the term 'adequate measures' in Art.11 (4) Brussels IIa Regulation in relation to a court refusing an order of return?	
Austria	It can be derived from the decisions of the Austrian Supreme Court[704] that there seems to be no problem with the term "adequate measures" under Article 11 (4) of the Brussels IIa Regulation. In addition, a series of measures are enumerated in a commentary on Article 11 of the Brussels IIa Regulation, which are considered to be „adequate measures" within the meaning of the Brussels IIa Regulation. [705] However, there are difficulties in practice, such as a case where the restitution obstruction was that, in the event of a return of the children, they would have separated from their mother (that is, their psychical parent) because, an arrest warrant had been issued against the mother. In this case, the Austrian Supreme Court[706] has stated that it is not sufficient that the French authorities merely describe the general legal situation and possible procedures, but not to provide specific protection for the children after their return.
Belgium	In Belgium, courts are of the opinion that it is not sufficient that the law of the country where the child had his/her habitual residence before the wrongful removal or retention, provides in the possibility to adopt adequate measures. Belgian courts require that such measures have been effectively adopted, taking into account the specific circumstances of the case.[707] In cases where it is expected from Belgium to take adequate measures, the Court of First Instance of Brussels pointed out that foreign courts have the responsibility to contact the Belgian authorities in order to obtain information to see if adequate measures have been adopted.[708] In this case, Poland refused the return of a child to Belgium on the ground of Article 13, b) of the Regulation without even contacting the Belgian authorities. This case shows that there is not only disagreement on what adequate measures should entail, but also on the issue how much effort the State of refuge has to put in finding out if and which adequate measures have been taken.
Bulgaria	-
Croatia	There is an unreported case where adequate measure have been proposed by party opposing a return of a child, but they were not ordered by the court.[709]
Cyprus	- Our courts have applied the provisions when the relevant information is made available from the central authority of the state of origin.
Czech Republic	Yes. In some cases Czech courts ordered some obligations together with the return in order to ensure safe return and the best interest of the child (i.e. obligation towards the left-behind parent to provide a flat and maintenance to the child and the abducting parent, or not to hinder the contact between the child and the abducting parent). Such obligations are provisional, they can be overruled by a decision of the competent court in the state of origin. Unfortunately, in some cases the left-behind parent did not respect these obligations after the return (in one case the child was removed from the mother immediately at the airport despite the fact, that the father agreed in the return proceeding that the child stays with the mother after the return). Such obligations are hardly enforceable in the state of origin unless a "mirror" order is granted there.
Estonia	No information available.
Finland	- I am not aware of any difficulties (or cases).
France	To date, it seems that there are no specific problems in relation to the term "adequate measures". In most cases, the danger referred to in Article 13 b) of the 1980 Hague Convention was not characterized and the "adequate measures" possibly taken in the Member State of the habitual residence of the child constituted one more reason to order his return. Of course, it is difficult for the courts of a Member State to appreciate the adequateness of the measures taken in another Member State. When they had to apply Article 11 (4), French courts did not evaluate the "adequate" character of the measures taken in the Member State of the habitual residence of the child.

Germany	No.
Greece	First of all we have to note that there are decisions that are based solely on the text of the Hague Convention and omit to take into account explicitly the Regulation.[710] But in general no problems have been observed by Greek courts in relation to the 'adequate measures'.[711]
Hungary	According to the summarizing opinion of the working group analysing the practice of the courts (http://www.lb.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2013el_ii_g_1_14.pdf) the question emerged whether the term 'adequate measures' means concrete child-welfare or child-protection measures or only the possibility of rendering such measures which is equal to the availability of the country's child-welfare or child-protection service. It occurs that the parent who wrongfully removed or retained the child refers to the endangering behaviour of the other parent not at the beginning of the judicial process but only at a later stage when no adequate measure has been taken yet in the country of the habitual residence. In this case the Hungarian court does not expect a concrete measure but it is satisfactory enough if the competent child-welfare service of that country declares about the available child-protection measures in case of danger. (The declaration is requested for directly by the Hungarian court or via the Central Authority.)
Ireland	The term "adequate measures" has not caused difficulties in interpretation and is treated as a broad concept relating to anything that is relevant to securing the prompt return of a child.
Italy	No special problem may be noticed. Of course, the Italian court must make sure that the measures are ensured in that particular case not only in abstract by the law. The judge has therefore to examine all the issues that could be a danger for the child and then to motivate his or her decision (Cass. 19695/14).
Latvia	Some years ago, but not anymore (since the concentration of the jurisdiction in child abduction matters), there were some cases where the Courts fail to establish that adequate arrangements have been made to secure the protection of the child after his or her return[712] – in its judgments the Court establishes that adequate arrangements to secure the child after his or her return cannot be made by definition. The reason for that is mainly because the abductor mother announces that she is not willing to return and based on psychological reports the Court establishes that the child cannot be separated from his or her abductor mother otherwise it will expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. Consequentially the Court did not even request information on protection measures from the Member State where the child lived habitually before the wrongful removal or retention.
Lithuania	There have been no problems in relation to the term 'adequate measures' in Art.11 (4) Brussels IIa Regulation in jurisdiction of Lithuania yet, as there are no cases where a court would refuse an order of child's return.
Luxembourg	The Luxembourgish courts do not have problems in relation to the term 'adequate measures' in Article 11 (4) Brussels IIa Regulation ('Tribunal d'arrondissement de Luxembourg', no. 127555 and 129571, 14 July 2010). In one case, the court decided to refuse an order of return given that it was not proven that adequate arrangements were made to secure the protection of the child after her return to her father, in the sense of Article 11 (4) Brussels IIa Regulation. The circumstances that the court took into account were the help needed from social services for the father to take care of the child, and the lack of stable social ties of the child in the place of residence of the father ('Tribunal d'arrondissement de Luxembourg', no. 39629, 8 May 2013).
Malta	No
The Netherlands	This does not appear to be the case. See the answers to question 33.
Poland	No, it does not exist.

Portugal	There is no evidence of any problems.
Romania	We could not identify significant case law. In a decision from 2011, Bucharest Court of Appeal verified, as regards the « adequate measures » from art. 11.4 of the regulation, if the parent applying for the return has an appropriate home and resources to sustain the maintenance of the child[713]. In another case from 2012, the same court took into consideration the child's opinion (a girl aged of 12 who opposed to the return because of the precarious conditions of living and multiple school changings), mentioned the fact that in Spain she would be forced to live with the mother and her companion in a single room and refused to order the return[714].
Slovakia	No. According to judicial statistics of Ministry of Justice in year 2016 in 7 cases was secured the protection of the child after his or her return using the 'adequate measures'.
Slovenia	A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. Due to the missing definition of the 'adequate arrangements', such situation gives the possibility to the courts to determine case by case what is an adequate arrangement, of course following thereby the best interest of the child.
Spain	Under Art. 11(4) Brussels IIa Regulation a court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure his protection after his return. Many references to those measures have been found in Spanish case law, from which two issues have drawn our attention: a) The fact that every decision refer to "already made measures" (as required by the Regulation) but a few of them add also "future measures" the requiring state is willing to adopt; b) case by case analysis for establishing whether those measures have been adopted and in which cases they are deemed "adequate" to this end. a) All the decisions analyzed for this research referred to already adopted measures but a few of them also mention future measures. For instance, Judgment 463/2007 of the Provincial Court of Málaga declared that it had not been accredited that the requiring state had adopted *or was willing to adopt* adequate measures to ensure the psychical protection of the child after her return. In the same line, Judgment 243/2015 of the same Provincial Court of Málaga refers again to already adopted measures or measures the requiring state *is willing to adopt*. b) Examples: The Order 133/2006 of Provincial Court of Pontevedra considers that the intervention of public bodies assuming the custody of the minor due to the problems of his parents is the better guarantee of the adoption of adequate measures. The Provincial Court of Málaga (Judgment 238/2014) identifies the certainty of the future adoption of those adequate measures with the fact that the return of the child to Lithuania coincides with the country having jurisdiction to decide the change of domicile of the child and the protective measures to be adopted. The same Provincial Court ruled in 2015 (Judgment 243/2015) that the requiring State had already adopted measures through judicial order before the facts alleged by the party contesting the return. It does not clarify which ones but it says that they have been evidenced during the procedure. The Provincial Court of Zaragoza does not specify either which measures have been adopted in Italy (Judgment 19/2016) but it confirms that some measures have been adopted in order to ensure a stable and appropriate environment for the child. By contrast, the above mentioned Judgment 463/2007 of the Provincial Court of Málaga ruled that the adoption of those measures had not been evidenced so it ruled the refusal of the return due to the lack of accreditation. The same is ruled in Judgment 100/2006 of Provincial Court of Granada, where the court says that the secure protection of the child must be "extremely" weighted.
Sweden	An appellate court refused in *RH 2014:5* to order the return of a child abducted from Italy. The refusal was due to alleged health problems of the child, in spite of the fact that the competent Italian welfare authorities guaranteed that proper care could and would be offered in Italy. The court interpreted Article 11(4) of the Regulation as to mean that it only had in mind protection from harmful environment and not the child's health issues.
UK	In *Re A (Maltese return order)* [2007][715], the court outlined the approach of the English courts, which is to apply conventional welfare principles.[716] In *Re A HB v HMB* [2007] [717] it was held that 'it was wrong to treat a proper contact order made in the home state (England) as requiring a return order if an order was to be made at all under BIIR Article 11.' As Renton notes, 'an Article 11 return order may be an unrealistic goal on the facts of a particular case.' [718]

Question 37: What is the prevailing view in your jurisdiction regarding the appropriateness of the scheme under Article 11(6)-11(8) which alters the application of the 1980 Hague Child Abduction Convention? Are there any difficulties encountered in practice? Should it be abolished?	
Austria	*Miklau*[719] describes the provision of Article 11 (8) of the Brussels IIa Regulation as a major problem.[720] This is justified by the fact that his personal hearing of the child is not possible, because it is not in the State in which definitively is decided on the return. Furthermore, many mothers would not appear to be interrogated in the country of origin under the impression of the return procedure against them, sometimes for fear of confrontation with the child's father who had been violent against them. In the context of Article 11 (6) of the Brussels IIa Regulation, the length of the proceedings in Austria and the three-stage appeal are criticized. It takes until there is a (repellent) decision on the return comes up to a year, when a second process is necessary, up to two years. In the meantime, the child settled down in Austria. Art 11 (8) of the Brussels IIa- Regulation should be abolished because the duality creates more mistrust than trust.
Belgium	Two Belgian authors argue that it is appropriate to abolish the second chance procedure and return to the delicate balance struck by the Hague Child Abduction Convention.[721] According to Kruger and Samyn, the second chance procedure is problematic in different ways. Firstly, the second change procedure is only available if the return was based on one of the grounds mentioned in Article 13 of the Hague Child Abduction Convention. It is, however, unclear whether the court is allowed to use the second chance procedure when the court which has issued an order of non-return has not specifically referred to Article 13 of the Convention or if the refusal is based on more than one ground. In practice, we see that judges sometimes get creative in order to be able to "overrule" the foreign decision. The Court of Appeal in Brussels for instance, refused to limit itself to the actual order of the foreign court and examined what had been the actual ground for the order refusing the return of the child. The Belgian court came to the conclusion that although the foreign court had refused the return on Article 3 of the Convention, the decision was – according to the Belgian court – in fact based on two of the grounds mentioned in Article 13 of the Convention.[722] It is needless to say that this practice is not in line with the mutual trust principle that governs the European co-operation and should be stopped. The second problem is that the second chance procedure takes up more time. Since the Brussels IIa Regulation doesn't provide a time limit in which this procedure must be completed, it is often used only to prolong the case. By allowing a party to stretch the case, the best interest of the child – namely, the prompt return of the child – is no longer guaranteed. Thirdly, the extra procedure potentially increases conflict within the family. It increases the stress on the entire family and especially the child. Lastly, Kruger and Samyn point out that from a children's right perspective, it is inconceivable why we would listen to the child only the second time he/she says something. If the first judge took the time to hear the parties concerned and examine the circumstances of the case, why should this decision be questioned? Although there are a lot of reasons to abolish the second chance procedure, practice shows that sometimes this mechanism helps to rectify mistakes made by the first judge. By judgement of 30 July 2014 for example, the Belgian Court of Appeal of Brussels ordered the return of a child to Belgium, setting the non-return order of the Polish judge aside. The Belgian court was of the opinion that since the Polish court had refused the return of the child based on Article 13, b) of the Convention without taking into account Article 11 (4) of the Regulation, the decision of the Polish court was not legitimate and had to be re-examined.[723] Article 11 (4) of the Regulation explicitly states that "*a court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return*". Even though there is no consensus on how much effort the State of refuge has to put in finding out if and which adequate measures have been taken (see question 34), Belgium refuses to accept decisions were States have completely ignored this provision. Therefore, if the second chance procedure were to be abolished, another mechanism should be put in place to guarantee the correct application of the Regulation. It is advisable to keep investing in the supplementary training of judges confronted with child abduction cases, the distribution of good practices and the transnational co-operation between judges.
Bulgaria	-
Croatia	There is no reported or unreported case with application of the respective provisions. Legal writings suggest there might be some problems with application of these provisions before Croatian authorities. It is particularly related to initiation of a new procedure on the merits. As application of national law takes place here, the problem may occur as

	pursuant to the Croatian Family Act the court has no competence to initiate custody proceedings ex officio.[724]
Cyprus	- Our Supreme Court has found it difficult to understand and apply the provisions properly and have chosen to resolve the matter in an unsatisfactory way. - In deciding that in any case given that the children are resident in the state from which they were abducted, the courts of that state are best suited to deal with the matter of custody or visitation. In this way they have in effect failed to apply the provisions.
Czech Republic	In my personal view, the "overriding" mechanism and more generally the relationship between the Regulation and the 1980 Hague Abduction Convention, is worth of revision. The system of jurisdiction and powers of courts in abduction cases is one of the most complicated elements of the Regulation. The practical experience of the Czech Central Authority in several abduction cases ("outgoing" as well as "incoming") shows that the coexistence of the proceeding on substance in the Member State of origin and the return proceeding in the Member State where a child was unlawfully removed or retained is not ideal. In fact, problems arising in one family might be subject of two or even more proceedings (depending on local jurisdiction) in different countries. Without prejudice to the 1980 Hague Abduction Convention and its usefulness, the return proceedings seems to me as superfluous inside the Union. Unified jurisdictional rules and rules for recognition and enforcement of the Regulation, the mutual trust as one of the leading principles of the Regulation and the recent development of the EHRC case law (X ca. Latvia) are factors which support the elimination of special return proceedings in cases where Member States only are concerned. The return proceedings seems to be only a "segment" of resolution of family dispute where a child was abducted by one of the parents. The question is whether this segment is really necessary for the achieving of its original purpose – the prompt return of the child into his or her original jurisdiction – within the Union. The interpretation by the CJEU, especially of the "final say" of the Member State of origin strengthen my doubts on functioning of the return proceedings within the EU. On the other hand, would the return proceedings be abolished, it would be necessary to strengthen the effort to voluntary return or other amicable solutions. The Central Authorities should have the key role in this context. The position of the Czech Government and the Czech Central Authority goes not so far and does not call for the abolishment of the return proceedings. But at the same time, we want to revise the "overriding" mechanism to ensure swift procedures, supportive and cooperative central authorities in all Member States and respect to safeguards ensuring the best interest of the child. The interviews with Czech judges showed that the courts deciding on return applications often did not fulfil the obligation to inform the competent courts in the Member State of origin when the return was rejected (Art. 11/6).
Estonia	There are questions on the procedural aspects on how it should be done and whether it should be done for each decision on non-return or only when the decision comes into force.
Finland	-
France	The prevailing view is that the Brussels IIa Regulation rightfully prevents a too permissive approach taken in Article 13 of the 1980 Hague Child Abduction Convention. The scheme under Article 11(6)-11(8) should not be abolished. It should be clear that the only authorities who can order the return of the child notwithstanding the earlier decision refusing the return of the child (Article 11-8) are the ones of the Member State where the child had his habitual residence immediately before the wrongful removal.
Germany	There is no prevailing opinion. It is probably seen by most practitioners as an interference with the Hague Convention, especially, if the court has refused the return of the child based on the Convention but has later on to enforce a foreign return order without exequatur, as, for example, shown in the Aguirre Zarraga case.
Greece	The difficulties encountered in practice in relation to the scheme under article 11 (6)-11(8) are mostly linked with the length of the procedures in abduction cases which might render the whole procedure of the return futile. Means of recourse against a decision ordering the return can prolong the procedure so as that the child shall frequently have a habitual residence established in the country of wrongful removal in the sense that it will be integrated in its new environment. Except for that one should bear in mind that a lot of difficulties in such cases are linked with the enforcement procedure of a return order since no violence can be used in order to achieve it. Therefore, it doesn't seem that the solution to the problems families and practitioners face can derive from the abolishment of this scheme.

Hungary	It was not discussed either in the Hungarian legal literature or in the working group analysing the Hungarian courts' legal practice.
Ireland	Again there is no legal opinion on the issue but my opinion is that 11(6) and (7) should be retained for transparency reasons. Article 11(8) has the potential to conflict with the principle of the comity of the courts and could lead to it being abused by the losing litigant in a refusal ro return order. I would have concerns about Article 11(8) in this regard.
Italy	Many articles and essays have dealt with this issue. On the whole, I would say that, although the machinery is complex and the relation between the two sources not always well coordinated, the general opinion of the doctrine is positive. The scheme should not be abolished but clarified. Generally speaking, it has been noted that only a few decisions have been issued basing on art. 11. This happens because most case are solved outside court but also because art. 11 (8) allows a second decision only if the first was issued according to art. 13 of the Regulation, and this is not frequent. Moreover, a second trial is often too heavy emotionally and sometimes expensive for the left-behind parent.
Latvia	Since Latvia has experience with this Article (ECHR decision in case Šneersone and Kampanella v. Italy; Application No 14737/09), Latvia is of opinion that the over-riding mechanism proved in practice that this system in terms of mutual trust is not working as it is supposed to. Latvia is of opinion that it should be abolished; however Latvia is open for discussion for the better solutions at the working group before the EU Council. For both – i) the enforcement in the territory of the Member State to which the child was abducted a return order issued by that Member State under Article 11(3), and (ii) the enforcement in the territory of the Member State to which the child was abducted of a certified return order issued by the court of origin under Article 11 (8) applicable legal norms are prescribed in the Chapter 74.[3] "Return of a Child to the State, which is his or her Place of Residence", which is relatively new chapter effective from 1st October, 2011. Since this time there were only 2 cases where these rules were applied (in 2014 case with Georgia and in 2015 case with Lithuania). Before (mainly in 2007-2008) enforcement of the return orders was conducted in accordance with the general provisions on enforcement of judgments in civil cases, which was not effective mechanism.
Lithuania	There have been no cases in relation to the application of Article 11(6)-11(8) which alters the application of the 1980 Hague Child Abduction Convention in jurisdiction of Lithuania yet, as there are no cases where a court would refuse an order of child's return.
Luxembourg	In practice, no explicit difficulties have arisen. However, Luxembourgish courts tend to not mention the grounds of jurisdiction based on Articles 11 (6) and (7), but rather focus on the wording of the 1980 Hague Convention, even if the claim is based on those two paragraphs of Article 11 Brussels IIa Regulation ('Tribunal d'arrondissement de Luxembourg', nos. 133067 and 133042, 29 October 2010). In my view, this lack of application could be an indicator of the obscure wording of those articles, making its application in practice too difficult. A better and clearer wording might help to solve the problem. Luxembourgish legal doctrine states that these rules are too complicated and that they might pave the way for the judiciary power to have a sort of 'strong hand' against other Member States when making the decision of return or non-return of a child[725].
Malta	-
The Netherlands	There appear to be no cases that concern return orders issued on the basis of Article 11(8) Bxl IIa
Poland	It should be noted that in the light of the strict conditions laid down in Article 13 of the Hague Convention of 1980. And supplemented by Article 11 (2) - (5) of the Regulation, the number of cases of non-return order should be marginal. However, such situations occur quite often. Generally they do not create problems, it is therefore difficult to find a reason to abolish the scheme.

	According to doctrine, Article 11 (6) does not specify what documents should be attached to the copy of the order, limiting it to indicate that it should be "in particular a transcript of the hearings before the court". The issue was left to the judge, who shall make a summary of the most important elements, highlighting the factors on the basis of which the judgment was delivered, e.g. a report of the social welfare on a situation of the child. The regulation also remains silent about translations. It should be considered that taking into account the procedural law of the state to which the documents are addressed, translation may not be necessary for transfer of the case to the judge, who speaks language of the case. If a translation proves necessary, it can be limited to the most important documents. The Central Authorities may be helpful in this regard, they should assist by providing informal translations.[726]
Portugal	There is no evidence of any difficulty. There is not enough information to support the opinion that it should be abolished.
Romania	The doctrine did not take a position on the interpretation and application of these texts. The functioning of the overriding mechanism might appear complex in practice and sustains the disputes in different countries (with additional cost for the parties). Also, it generates difficulties as regard the transmission of documents between the competent authorities and their translation and increase the delays for solving the case. In Romania, the Act no 63/2014, which reformed the previous Act no 359/2004 regarding the application of the 1980 Hague Convention, instituted a national procedure for the implementation of article 11, par. 6 and 7 of the regulation. According to this text, the Romanian court issuing a non-return order must communicate it, along with the pertinent documents, to the Romanian Central Authority in 48 hours after its drafting. Their transmission to the requesting CA (from the state where the child is habitually resident) is made by the Romanian CA. According to article 21, the foreign decisions refusing the return of children abducted from Romania and the accompanying documents, received by the Romanian CA, will be translated in Romanian and will be transmitted in the shortest time to the competent territorial court (from the habitual residence of the child before the abduction). Except when these courts have been already seised with an application regarding the parental responsibility over the abducted child, a notification will be sent to the parents of the child, informing them about their possibility to apply to the court with a request (in a 3 months' delay from the transmission of the notification). We do not think that the overriding mechanism should be abolished; its main advantage (compared with Hague Convention's system) – abductions' deterrence – would be much diminished; a simple return to the previous solution (Hague) would not solve the problem of the multiplication of disputes in two countries (disputes regarding the parental responsibility, in the state of the habitual residence of the child; disputes regarding the return of the child, in the refuge state).
Slovakia	We don't have access to the judgements or information if the scheme under Article 11(6)-11(8) is appropriate.
Slovenia	-
Spain	The appropriateness of the system of Article 11(6)-11(8) Brussels IIa Regulation has been valued by academics and other jurists. The prevailing view is positive because it strengthens the system of The Hague, and proposals of abolition have not been found. For instance, REIG FABADO supports that the European regime "consolidates and develops the system regulated by the Hague Convention" through adding some procedural guarantees "which always benefit the fundamental right of access to justice". Furthermore, the Spanish legislator has included through the Act 15/2015 of Voluntary Jurisdiction new provisions in Final Disposition 22 of the Civil Procedure Act 1/2000 about "Measures for facilitating the application in Spain of Regulation nº 2201/2003" including procedural aspects of Articles 11(6) and (7).
Sweden	So far, there have been no difficulties and no voices in favour of abolishing the provisions in question.
UK	Renton has observed that 'a number of BIIR cases…are ongoing with expensive and complicated international ping-pong stays, attempts at transfer, appeals, and provisional measures in each jurisdiction. Despite valiant attempts by the judiciary and practitioners to make sense of our brave new world, it remains difficult to advise in many cases. All statutes and regulations have unintended consequences and present problems in dovetailing with domestic rules and legislation. BIIR was never going to be an exception.' [727] A key NGO (*Reunite*) has voiced support for the provision,[728] although McEleavy has observed that 'in practice [the] attempt to prioritise return does not appear to have delivered the expected dividend…There have been many high profile examples where the new rules have failed to operate as intended, or indeed have been ignored entirely.. in practice the child is rarely returned to the State of origin under the Article 11(8) mechanism.'[729]

Question 38: Please provide the average time of procedure in a child abduction case under Brussels IIa Regulation in your jurisdiction.	
Austria	The following figures are available on the duration of proceedings in child abduction cases, which ended with a decision by an Austrian court.[730] However, this does not distinguish between the procedures under the Hague Convention and the Brussels IIa Regulation: In 2011, 1 procedure lasted up to 6 weeks, 2 to 3 months, 6 to 6 months, and 5 to 6 months. In 2012, 2 procedures lasted up to 6 weeks, 4 to 3 months, 3 to 6 months, and 4 to 6 months. In 2013, 7 procedures lasted up to 6 weeks, 4 to 3 months, 10 to 6 months and 3 over 6 months. In 2014, 5 procedures lasted up to 6 weeks, 4 to 3 months, 3 to 6 months, and 2 to 6 months. The proportion of rapid procedures (duration of 6 weeks) increases: in 2011, it was 7%, 2012 15%, 2013 29% and 2014 36%.
Belgium	A survey of two judges at the Court of Appeal in Ghent and Brussels and one lawyer specialised in family law revealed that the six weeks' time frame provided for in the Brussels IIa Regulation is not always met in practice. Since we only obtained information of three professionals dealing with child abduction cases, our answer should not be interpreted as being representative for all child abduction cases that have ties with Belgium. One of the judges indicated that in 2011 she had a case that lasted 224 days. In 2015, she dealt with another child abduction case where the final decision was made 85 days after the procedure was initiated. With regard to the big discrepancy between the first and second case, the judge explained that the first case was dealt with by three judges, while the second case was judged by only one judge. The second judge was not able to provide us with information of recent cases, but she reported that in 2008, the child abduction cases she had to deal with, were completed within the six weeks' time frame. However, if one of the parties lodged an appeal, the case would drag on for at least another six weeks. In one case, the final decision was only pronounced 10 months after the appeal was lodged. The lawyer on the other hand, indicated that the average time of procedure in child abduction cases depends on the level of conflict between the parties involved and the judge seized. He is aware of cases that are dealt with within the six weeks' time frame, but also of cases that dragged on for months. In general, he is of the opinion that parties should count on 3 till 4 months per instance when it comes to child abduction cases.
Bulgaria	-
Croatia	No available official data. There are unreported cases of child abductions before Croatia joined EU, which indicate to inefficient procedures under the Hague Convention timeframe,[731] which is in respect of above question comparable with EU timeframe. It is however well known that child abduction procedures do not have any special treatment in Croatian legal system, what jeopardizes prompt service of justice.[732] In the most recent ruling of European Court of Human Rights in Vujica vs. Croatia the estimated six week period has been extended for more that 151 weeks! [733]
Cyprus	- The average time of procedure in a child abduction case under the Regulation is about 12 to 18 months.
Czech Republic	The average length of the return procedure is 2-3 months for each of the instances (i.e. the first instance and the second instance). However, the real length depends on various elements of each individual case, e.g. willingness of the parties to cooperate with the court, taking of evidence, service of documents.
Estonia	No information available
Finland	- see above.

France	Big differences are observed between courts. Some are diligent and others are not. In any case, it seems that no jurisdiction is able to respect the six weeks delay. In the better cases, the time of procedure in a child abduction case ranges from two to three months.
Germany	For comprehensive statistical data see the website of the German CA: <www.bundesjustizamt.de/DE/Themen/Buergerdienste/HKUE/Statistik/Statistik_node.html>
Greece	There are no official statistics on the average time of procedure in a child abduction cases under Brussels IIa Regulation. The time of procedure varies considerably. In general it can be observed that child abduction cases that concern member states are usually more expedient than procedures that affect third countries. However, it has also to be added that a fruitful cooperation and more expedient procedures are observed in relation to the United States and Israel.
Hungary	The proceeding according to the Hungarian regulations is a non-litigious proceeding which is an out of turn process. The court has to hear the parties at the latest the eighth day from the arrival of the claim. The period which was monitored by the working group analysing the practice of the courts in 2013 expanded from January 2010 until December 2012 and concerned the child abduction cases in which final judgment was given during this period. Altogether 28 cases were monitored. The first instance court could render the hearing of the parties in four cases in the above mentioned deadline as in other cases it happened a bit later. In the first instance court only six cases finished later than six weeks as the court (the Pest Central District Court is the only first instance court in Hungary where there are proceedings in child abduction cases as it has exclusive jurisdiction/competence). The first instance court could often experience that the parties and especially the defendant made an objection referring to the fact that he or she had no time or time enough to prepare or set a claim for further proofs. What concerns the second instance, the requirement of rapidity is determinant also here but there is no special procedural regulation in the Hungarian law.
Ireland	The Supreme Court has issued a practice direction that Abduction cases be given priority in the High Court and be resolved within six weeks of commencement. Appeals of return orders must be heard expeditiously (SC04 28th September 2007.)
Italy	According to the Lowe Report (2008) the average length of a procedure is 123 days – 17 weeks. In 2014, data published by the Ministry of Justice show that the procedure has required 6 months only in about 22% of the cases. In the others, it has needed more that six months.
Latvia	Matters regarding the child abduction across borders to Latvia or retention in Latvia if the place of residence of the child is in another state shall be adjudicated – in a court sitting within 15 days after initiation of the matter[734]. An ancillary complaint may be submitted in respect of first instance court decision within 10 days. A regional court (second and the final instance court in child abduction matters) shall adjudicate an ancillary complaint within 15 days after initiation of the appeal proceedings.[735] Therefore according to law, rule of 6 weeks is met. In practice, due to exceptional circumstances (mainly because of the defense based on the Article 13 (1)(b) of the 1980 Hague Convention) timescale set in the Regulation and national law in majority of cases is exceeded.
Lithuania	The proceeding at lower court might take approximately 3-5 months. The appeal proceedings might take another 4-5 months.
Luxembourg	In Luxembourg, the average time of procedure from when the child is abducted until a first instance judgment is delivered is 6 months. Any appeal does not make the process much longer, as those cases are treated urgently. There are cases where the whole procedure (from the wrongful removal to the appeal judgment) took 6 months in total ('Cour d'appel', no. 38330, 28 March 2012).
Malta	This depends on the case, the amount of witnesses involved and whether such case is appealed or not….though it needs to be noted that our Family court deals with such cases as urgent cases and appeals are heard quicker than other cases.
The	[Note: the following was already brought forward in the report for the 2015 Study on the assessment of Regulation (EC) No 2201/2003] It may be useful to note that enforcement of a return order issued by the Netherlands courts is suspended in case of appeal, unless the court determines otherwise (Article

Netherlands	13(5) of the International Child Protection (Implementation) Act). Recently the law was changed, to the effect that after appeal cassation is no longer possible in cases on return of the child. A document issued by the Netherlands Ministry of Justice (Guide to the International Child Abduction Procedure -Central Authority for International Child Abduction) sets out the approach taken: "Mediation is provided by the Mediation Bureau (linked to the International Child Abduction Centre). If the parties decide not to enter into mediation or if the mediation did not result in complete agreement, the lawyer will submit an application to the Hague District Court. In principle, a pre-trial review will be held by a single judge at the District Court within two weeks after submission of the application. The aim is to deal with the substance of the case, if necessary, during a second oral hearing before a panel of three judges within two weeks. The basic principle is that the final decision will be issued two weeks after this hearing. The parties have two weeks to appeal against this decision. The oral hearing of the appeal will, in principle, take place two weeks after having lodged the notice of appeal with the Court of Appeal. After this hearing, the aim is to render the decision on appeal within two weeks. It is not possible to lodge an appeal in cassation, except cassation in the interest of the law. The above is also referred to as the 'accelerated procedure', in this case 6 weeks for the intake phase by the CA (Central Authority), 6 weeks before the District Court, and 6 weeks before the Court of Appeal." It follows that court proceedings can last 12 weeks, preceded by an initial phase of 6 weeks for intake. It appears that this is not in line with the reading that the EU Commission makes of Article 11(3) Bxl II bis in the 2014 Practice Guide (and in its predecessor from 2005) for the application of the new Brussels II Regulation: "With regard to decisions ordering the return of the child, Article 11(3) does not specify that such decisions, which are to be given within six weeks, shall be enforceable within the same period. However, this is the only interpretation which would effectively guarantee the objective of ensuring the prompt return of the child within the strict time-limit. This objective could be undermined if national law allows for the possibility for appeal of a return order and meanwhile suspends the enforceability of that decision, without imposing any time-limit on the appeal procedure. For these reasons, national law should seek to ensure that a return order issued within the prescribed six week time-limit is "enforceable". The way to achieve this goal is a matter of national law (...)" Although Netherlands procedural law does set a limit to the duration of appeal proceedings, these rules entail that the overall duration of return proceedings will exceed the time-limit of six weeks of Article 11(3) BIIa by 100%. It is also accepted in practice that, before proceedings commence, a period of six weeks is spent on the intake phase.
Poland	Around six months.
Portugal	In average, approximately 12 (twelve months).
Romania	No official statistics are available on this aspect, and since the number of cases is elevated the information that follows might appear as relative: from what we could observe from the decisions consulted, the average time for the procedure was about 10 mounts, when an appeal on points on law (non-devolutory appeal; "recurs") was launched before the Bucharest Court of Appeal[736]; also, despite the provisions of art. 11.3 of the regulation, we found a number of cases in which at least a 3 months period lapsed between the date of the investment of the first instance court (Bucharest County courts) and the date of the decision. In 2014, the Act no 369/2004 was reformed[737] in order to bring more rapidity in the treatment of the cases. According the article 15, the return orders of the County court in first instance are executory. The judgment of first instance can be delayed with maximum 24 hours (after the final hearing) and it will be draft within 7 days of its delivery. It will be communicated to the parties and to the central authority, within 48 hours from its drafting. An appeal on points of law may be launched in 10 days from the communication; the court of appeal should receive the file from the inferior court in the 5 days following the expiration of the appeal delay. The delivery of the judgment can be delayed with maximum24 hours (after the final hearing) and it will be draft within 7 days. Both in front of first instance court and appellate court, the terms between the hearings cannot be longer than 2 weeks.
Slovakia	Approximately 2 months.
Slovenia	The courts are trying, as far as possible, to follow the given time frames of six weeks, but it is not always possible to obey them. The most of cases are lasting longer than 6 weeks. In year 2008 only 15% matters have been solved within six weeks.

Spain	According to statistics provided by The Hague Conference on Private International Law (2011), the applications received by Spain in 2008 in which the Brussels IIa Regulation applied were resolved more quickly than those received from non-Brussels II a States. The overall average time taken to reach a final settlement was 255 days if the requesting State was a Brussels II a State and 282 days if it was not (https://assets.hcch.net/upload/wop/abduct2011pd08c.pdf, p. 165). It has also been pointed out that the lack of means and human resources of the Spanish Central Authority is one of the main causes of slowness of procedures. However, it must also be noted that the new rules referred to above (Articles 778 *quáter* ff of the Civil Procedure Act 1/2000), adopted in 2015, aim at speeding up "exponentially" the resolution of these cases. The current procedure is quicker and the average is being reduced according to FORCADA MIRANDA. From 1 August 2015 to 21 January 2016 (entry into force of the new regulation) the Ministry of Justice referred 26 cases and 11 decisions were rendered, none of which lasted more than 2 months. In the same period the previous year, the cases were resolved in more than 2 months and some had even achieved a time resolution of 7 or 8 months. Two aspects have been highlighted in this regard: the new procedure and the concentration of jurisdiction (Art. 778 *quáter* 2) grants jurisdiction to the Court of First Instance of the capital city of the province, Ceuta or Melilla, having competence in Family Law, in whose territory the minor is located).
Sweden	The information is not available.
UK	It has been noted that 'in Brussels II cases the Court is required to deal with the case expeditiously usually within 6 weeks (Article 11(3)). That this time must be adhered to has been stressed by the Court of Appeal.' [738]

Question 39: Is the absence in Brussels IIa Regulation of a time frame where the Central Authorities are involved in child abduction cases an impediment on proceedings to secure the 'Return of the Child'?	
Austria	Due to the lack of independent steps before the Central Authority (beyond improvement procedures), there is no time problem in the Austrian Central Authority.
Belgium	This issue does not seem to have attracted the attention of courts in Belgium (yet), nor has the Belgian legal literature published anything about it (yet).
Bulgaria	-
Croatia	No. Time frame exists in Hague Convention of 1980.
Cyprus	- No.
Czech Republic	Yes. Central Authorities in some Member States reply with considerable delay (extreme cases experienced by the Czech Central Authority: four or even six month). Setting a time limit in the Regulation might be helpful.
Estonia	No.
Finland	-
France	In principle a time frame could be helpful. Nevertheless, in the current situation, the introduction of a time frame would probably be inefficient and useless because of the limited powers of the French Central Authority and its dependence on intermediaries placed between the CA and the judge.
Germany	I do not think so.
Greece	It doesn't seem that the problems in relation to proceedings on the Return of the child are linked with the absence of a time frame. The most delicate issue in return proceedings concerns the enforcement of Return orders.
Hungary	There was no such experience.
Ireland	A time frame stipulation has not acted as an impediment to securing the return of a child owing to the issuing of practice directions by the Supreme Court.
Italy	Yes, the time limit is actually one of the main problem in the application on Brussels IIa Regulation in the real interest of children and of parents in good faith. I think that the activity of the Central Authority, however, should be taken into consideration together with the issue of appeal. See therefore answer 40 just below.
Latvia	No. In Latvian national law both for incoming and outgoing cases time frame for the Central Authority is set 10 working days, namely – in incoming cases 10 working days after the receipt of the application it shall be sent to the Court, in outgoing cases – 10 working days after the receipt of the application it shall be sent to the foreign Central Authority.
Lithuania	There have been no cases in relation to the application of proceedings to secure the 'Return of the Child' in jurisdiction of Lithuania yet, so we cannot determine whether the absence in Brussels IIa Regulation of a time frame where the Central Authorities are involved in child abduction cases could be defined as an impediment on proceedings to

	secure the 'Return of the Child'.
Luxembourg	This question can only be answered on a case-by-case basis. On the one hand, there is a case where the absence of that time frame could be considered as an obstacle for the return of the wrongfully abducted children. In that case, the Dutch central authority took seven months to notify the Luxembourgish authorities about a wrongful removal of three children that were taken to Luxembourg. On top of that, the left-behind parent only contacted the Dutch central authority one year after the wrongful removal, with the result that the Luxembourgish court ruled for the non-return of the children, due to the amount of time that they had stayed in Luxemburg ('Tribunal d'arrondissement de Luxembourg', no. 149284, 19 December 2012). On the other hand, in another case, the Luxemburgish central authority contacted the Portuguese one only fifteen days after the decision on the return of the child was issued ('Tribunal d'arrondissement de Luxembourg', nos. 133067 and 133042, 29 October 2010). It is also worth mentioning that the Luxembourgish Central Authority tends to establish restrictive terms in order to avoid any risk of absconding[739].
Malta	No
The Netherlands	See the answer to question 38. It would appear that the system developed in the Netherlands has only managed to ensure that court proceedings in first instance are completed within the six week period envisaged by the EU Commission. This is only one stage of three stages possible in the Netherlands return process (intake, proceedings in first instance, appeal). What is remarkable is that in the approach to the abduction problem there does not appear to be much concern in respect of the potential educational setbacks when the abduction protracts. If the child goes to school in the abduction state chances are that it will be confronted with a different schooling system and language; if it is eventually returned after a longer period it will probably not be able to return to the exact school environment it was in before the abduction. The only case that appears to address this issue is CA Amsterdam 11 February 2014, ECLI:NL:GHAMS:2014:607, which is not about application of BIIa but concerns the mother's petition for permission to move with the child from the Netherlands to the USA. The father opposed the move to the USA. The CA held the child had an interest to remain in the Netherlands until it had finished primary school and had participated in the admission test for secondary schools.
Poland	It seems that adequate way is to indicate that the courts/authorities should, as in Article 11(3), act expeditiously in proceedings on the application, using the most expeditious procedures available in national law – justified by the specific nature of the matters related to abduction and return of children, in which the time of reaction factor plays a crucial role. Determination of time limit and lack of taking into account exceptional situations, the occurrence of which can significantly extend the time needed to complete the case, can lead to situations in which the cases will generally be dealt with in a slower way, because there is often, in fact, no possibility of fitting into the indicated time. Imposing condition impossible to meet by the courts/authorities may cause ignoring the necessity to act as soon as possible by them. On the other hand, repetition of solutions from Article 11(3), and thus the admission of exceptions, may also lead to tardiness, because each case can be regarded as an exceptional and civil courts in general operate fairly sluggish.
Portugal	There is not enough information to properly answer the question.
Romania	As it results from the case law that we consulted, the absence of a time frame for the activity of CA involved in child abduction cases, set at European level, may delay the procedures, but does not affect significantly its results. In the Romanian law, the Central Authority is obliged to examine rapidly any request of assistance (it has 10 days from the reception of the request to verify that the conditions set in art. 8.2 of the Convention are met). Even if, according with art. 27 of the Hague Convention, the Central Authority refuses to instrument the case, the applicant is allowed to seize directly the competent courts (art. 8 from the Act no 369/2004). They are no time limits that should be respected by the Central Authority when deciding to refer it to a lawyer.

Slovakia	We don't think so.
Slovenia	The determination of acceptable time frame could improve the proceedings on the return of the child. But on the other hand this could lead to the extension of the proceedings on the return of the child. In both cases the best interests of the child should not be undermined.
Spain	Two deadlines are established in Article 11(6) and (7) regarding some actions undertaken by Central Authorities in the framework of the transmission of the refusal of return to the Member State where the child was habitually resident, but the absence of a time frame regarding their own activity in these cases is undesirable. In fact, we believe that the absence of time frames in general is always negative, above all in matters related with minors, where rapidity in resolution is imperative for the sake of the best interests of the child. Nevertheless, we would also like to note that the establishment of deadlines is useless without financial support and means, both human and material, to accomplish their task.
Sweden	A time frame could be useful, as delays work in favour of the abductor and are harmful to the child.
UK	It has been noted by some practitioners that the Regulation generally 'has reinforced the need for speed in these cases although…not all Member States are adhering to the six week deadline….courts must apply the most expeditious procedures available under national law and issue a decision within six weeks from being seised with the request, with the aim of ensuring the prompt return of the child within the strict time limit.' [740] In relation to 'the special procedure under Article 11 (6), (7) and (8)' this allows for 'the same cause to be litigated in a different procedural context in the Member State of origin with unacceptable delays and outcomes.' [741]

Question 40: Is the absence in Brussels IIa Regulation of a time frame in matters of appeal in child abduction cases an impediment that needs to be redressed? If so, what time frame would you deem sufficient?	
Austria	In Austria, there is a three-stage appeal in child abduction procedures, which in most cases is also exhausted. Often, because the first instance of further findings are applied, there is a second legal process, so that the proceedings take two years or more. In addition, the kidnapper will be pleased to make a request for rejection of the judge (s)to delay the procedure. The right of appeal should therefore be restricted in order to speed up the procedure. It would be possible to establish an urgent procedure before each Member State's highest court in which it should be decided within 6 months.
Belgium	Belgian legal literature is of the opinion that the absence of a time frame in matters of appeal in child abduction cases is an impediment that needs to be redressed. It is argued that there should be a limitation to the right of appeal. Kruger and Samyn are of the opinion that it should not be possible to appeal a return order more than once.[742] With regard to the time frame, reference could be made to the Practice Guide for the application of the Brussels IIa Regulation.[743] We share the opinion that the six-week deadline should also be respected in the event that national law allows for the possibility of appeal. It is in the best interest of the child that administrative and judicial organs act diligently.
Bulgaria	-
Croatia	Time frame of appeals should be introduced. Both number of appeals should be reduced to one, number of reasons for appeal should be limited. Also the duration of possibility to lodge an appeal and for adjudication upon appeal should be significantly shortened, in comparison to regular civil procedure.
Cyprus	- Yes the time frame for abduction cases needs to be addressed. - A time frame of three months would be appropriate.
Czech Republic	No. We do not have encountered difficulties with this matter.
Estonia	We try to keep in mind the 6-week deadline for all court proceedings separately.
Finland	-
France	Yes, this question needs to be reconsidered. Only one appeal should be allowed and another delay of 6 weeks should be allotted to the appellate court to adjudicate.
Germany	I do not think so.
Greece	The time frame is in connexion with the infrastructure and the financial means that each member state has available. Therefore, irrespective of the wish for a more expedient procedure, rules cannot in principle address this issue just by providing for more specific time frames or by adding sanctions for the respect of the existing deadlines provided by the Regulation. Eventually, a solution could be found if some issues dealt by Central authorities were assumed by a central European Authority. Such independent authority could take into consideration the difficulties in relation to possible delays so as to inform directly the relevant judicial authorities. It could also better fulfil the guarantee of impartiality which might be more difficult when a national authority intervenes on behalf of its citizen.
Hungary	According to the Hungarian experiences the courts tend to finish a child abduction case as soon as possible and tend to keep the six-week-deadline in each instance. Nevertheless, it is difficult to imagine how it could be even speeder.

Ireland	The Supreme Court intervened in September 2007 directing that appeals must be listed for mention by the following Thursday after a decision has been made by the High Court at which mentioning the Supreme Court will give directions as to the filing of written submissions and the fixing of an early hearing date.
Italy	Yes, it should redressed. In general, the terms settled in the art. 11 should absolutely be respected. This might probably be a sufficient measure to avoid the passing of too much time, a crucial point in this matter. Specifically for the appeal, the actual procedures are no doubt far too lengthy. Time could be shortened in two ways: either introducing a filter to the possibility of appealing or providing specialized courts with apposite procedures enabling them to decide in very short time.
Latvia	In Latvia there is possible only 1 appeal – from the district court to regional court which's decision is final. Time frame for the appeal is 10 days, which is sufficient. However principle of subsidiarity must be considered when setting time frame for appeals within the regulation.
Lithuania	We do not see the absence in Brussels IIa Regulation of a time frame in matters of appeal in child abduction cases as an impediment that needs to be redressed. However, in our view four months term for appeal in child abduction cases should be deemed as sufficient.
Luxembourg	According to Luxembourgish legal literature, the establishment of a certain period of time of procedure in a child abduction case would be detrimental for calm reflection and objective justice. In Luxembourg, these types of cases are given priority and treated urgently[744], so the absence of a specific time frame does not need to be redressed. From the point of view of the judiciary, it is difficult to set an invariable time frame that ought to be respected in any way. There may be circumstances relating to a case where that time frame would be difficult, if not impossible, to be respected. The courts/judges should be aware of the necessity to act very rapidly, guided by their sense of responsibility and of professional duty. Another concern related to the time limit is the issue of the consequences if the time frame is not respected[745].
Malta	In Malta no – but I do see the scope of a time-frame being imposed. Such a time-frame should not be too short as the court of appeal needs to go through the court file and all the necessary documents before deciding. 3 months should be more than enough.
The Netherlands	It would appear that the view taken by the Commission in the 2005/2014 Practice Guide on appeal should be adopted by the member states. It transpires from the answer to question 38 that this is not the case in the Netherlands. Comparative study may indicate that the Commission's view can only be realised through further unification. With respect to the time frame, perhaps more regard should be had to the period of time that is considered acceptable for on dealing with the return of the child proceedings in relation to the legal duration of childhood (16 years, see Article 4 1980 Hague Abduction Convention). One should also take into account the interest of the child with respect to education. When the problem of abduction is viewed as 'the empty table in the classroom', not as a dispute between parents, one might embrace different legal solutions. It would also appear that the time frames acceptable in 1980 (under the Hague Abduction Convention) to deal with abduction on the global level should not offer too much guidance in the integrated EU. On the other hand, it must be accepted that in practice there is still a huge lack of cross-border cooperation. See e.g. CA Den Haag, 18 March 2015, ECLI:NL:GHDHA:2015:586, discussed in the answer to question 33.
Poland	See point 39.
Portugal	There is not enough information to properly answer the question.
Romania	Empirically, we observed that the decision by the Court of Appeal is pronounced in 3 to 6 months from the moment when the County court decision was rendered. This is due partially to the fact that the county court judgement is communicated in a number of days after the final hearing, to the time for launching the appeal, which runs from the communication date, to the number of hearings before the final judgement is given. A time frame in matters of appeal, established by European rules, strict and detailed as to the circumstances to be taken into account for eventual extensions, would bring more uniformity and might speed up the proceedings

Slovakia	We would suggest to regulate in Brussels IIa Regulation time frame of appeal max. 15 days starting from delivery of first instance judgement.
Slovenia	The determination of acceptable time frame in matters of appeal in child abduction cases could lead to the improvement of the proceedings, but could also cause the extension of the proceedings. The best interests of the child should be followed in both cases.
Spain	As said in answer to question 39, the establishment of time frames is always useful and notably important in this field. The new Spanish legislation of 2015 includes provisions governing the appeal (also time frames) but it would probably be useful to harmonize this issue in the EU. Art. 778 *quáter* 5) Civil Procedure Act: "The procedure will have urgent and preferential character. It should be made, in both instances, if any, in the inexcusable total period of six weeks from the date of filing of the application urging the restitution or return of the child, unless there are exceptional circumstances that make it impossible" Art. 778 *quinquies* 11) Civil Procedure Act: "Only appeal with suspensive effect is provided against the rendered decision; it will have preferential character and shall be resolved within the non-extendable time limit of twenty days. In processing the appeal the following specialties shall apply: (…)"
Sweden	A time frame could be useful, as delays work in favour of the abductor and are harmful to the child. A time limit of 60 days would be reasonable, but the matter has not been discussed.
UK	Given time, the habitual residence of parties may be changed, pending enforcement or appeal. As such, appeals should subject to similarly 'expeditious procedures' e.g. 12 week deadline.

Question 41: Are there difficulties in practice in connection with the application and interpretation of the provisions on the enforcement of judgments ordering the child's return and rights of access under Section 4 of the Brussels IIa Regulation? What suggestions for improving the enforcement regime are provided in the legal literature in your jurisdiction?	
Austria	My informant says that too little attention is paid to the „best interest of the child". In my view, however, Austrian courts too often refer, especially if the child hast the Austrian citizenship, to the best interest of the child, which means that the child is not returned to the State of its former residence. This, however, is contrary to the aim of the Hague Convention and the Brussels IIa Regulation to prevent child abductions by not taking advantage of the child's abduction by the parent who kidnaps the child. In the case of the right of access, the courts (as in purely national cases) see far too long how the parent (usually the mother), who cares for the child, violates the rights of the other parent by all means. In my view, the first infringement should be threatened by a fine and the second infringement should actually be imposed. Often the right of access of the non-supervising parent is boycotted until the expert discovers an alienation between the child and the parent who does not live with him. Due to the long duration of the right of access proceedings, this often leads to the fact that the decision on the right of access is no longer enforced because the best interest of the child is the supreme principle in the care process.
Belgium	Many judges are not aware of the obligation to fill in the certificate *ex officio* in matters of rights of access and for decisions based on Article 11(8) Brussels IIa concerning the order for the return of abducted children (Article 41 Brussels IIa). Also the fact that this obligation applies when the case acquires a cross-border element after the court decision, is not fully known.[746] An exception is the Court of Appeal of Ghent that renders the certificate *ex officio*.[747] Although perhaps not a difficulty, but more a note: there is a divergence among judges if, and where, the certificate should be mentioned in the judgment. Some courts mention the certificate in the motivation of the judgment[748] or in the decisive part[749], other courts merely mention the certificate on the back of the judgment or do not mention it in the judgment itself. In legal literature it is reported that the age requirements for hearing the child cause a lot of difficulties dealing with enforcement. The age at which children should be heard in court proceedings is determined by national law and differs significantly among Member States. In Belgium, judges are only obliged to hear a child from the age of twelve. In Germany, children as young as three years old should be heard. It is the judge of the State of origin that has to verify if the child was heard before he delivers the certificate. This certificate cannot be challenged in the State of enforcement, where the age requirements could be very different. This could lead to problems of enforcement.[750] Kruger and Samyn argue that the second chance procedure of Article 11(8) Brussels IIa for cases of child abduction should be abolished. If this is not possible, some additional safeguards are suggested: - "The certificate should be served on the party (parent) refusing to return the child. - The certificate must contain clear language, so as to avoid the disagreements that have arisen in the case law. - If the certificate is false, the party contesting enforcement should have access to a court in the State of enforcement."[751]
Bulgaria	-
Croatia	No available data. No literature to that point.
Cyprus	- No guidance is provided by legal literature in Cyprus on this matter.
Czech Republic	In general, neither the Czech courts nor the Central Authority dealt with lot of cases, were enforcement of foreign order was requested in parental responsibility matters.
Estonia	The court has to specify what enforcement measures can be taken. When that is done sufficiently, there is no problem with enforcement as such.

Finland	-
France	Some problems appear in connection with the enforcement of judgments ordering rights of access when that judgment's organisation of the practical exercise of the rights of access is not compatible with the law of the Member State where it should be enforced.
Germany	I am not aware of any specific problems.
Greece	Except for the issues already addressed by the European Court of Justice[752] there are no specific problems that have been observed in Greek legal literature in that respect.[753]
Hungary	There is no published case and that was not discussed in the Hungarian legal literature.
Ireland	There have been no reported cases indicating difficulties with the application and enforcement judgements ordering the return of a child and rights of access.
Italy	It is discussed with different answers the doubt whether the right to visitation of the art. 40 applies only to parents or also to other persons connected with the minor, like for instance grandparents. The right includes rights of contact through telephone or email.
Latvia	No difficulties were observed with the judgments ordering the rights of access.
Lithuania	There have been no difficulties in practice in connection with the application and interpretation of the provisions on the enforcement of judgments ordering the child's return and rights of access under Section 4 of the Brussels IIa Regulation in jurisdiction of Lithuania yet.
Luxembourg	There is only one case where the Luxembourgish courts issued a return order under Article 11(8) of the Brussels IIa Regulation (although the court only referred to Article 11 (6) and (7) of the Regulation). This return was issued as a consequence of reviewing the right of custody over the child, which pertained to the left-behind parent with habitual residence in Luxembourg (the right on custody was provisionally-granted in a previous judgment). Nothing is said in that judgment about the certificate referred to in Article 42 of that Regulation. The judge only ordered the provisional execution of the judgment ('Tribunal d'arrondissement de Luxembourg', nos. 133067 and 133042, 29 October 2010). Luxembourgish legal literature did not refer to this issue.
Malta	The Central authority do a good job in this regard.
The Netherlands	See the answer to question 37. There appear to be no cases that concerned return orders issued on the basis of Article 11(8) Bxl IIa.
Poland	Existing case law of the courts of higher instance does not show difficulties with the application of the provisions. While there is no case law on rights of access, there are two interesting judgments concerning return of the child (Article 42): 1. Decision of the Supreme Court dated 17 September 2014, I CSK 426/14[754]: You cannot effectively seek a declaration that provided for in Article 11 (8) of the Brussels IIa Regulation judgment of the court with jurisdiction ordering the return of the abducted child, accompanied by a certificate referred to in Article 42 of the Regulation, shall not be enforced in the state to which the child was abducted. 2. Decision of the Supreme Court dated 17 September 2014, I CSK 426/13[755]: Polish court may not refrain from enforcement of the judgment of the court of a Member State of the European Union ordering the return of the child to the country of his origin wrongfully removed to Poland by one of the parents. Because there are no serious difficulties with the application of this part of the Regulation, it is difficult to suggest methods of its improvement.
Portugal	There is no evidence of any difficulty. There are no suggestions in the legal literature in this matter.

Romania	One of the problems raised in practice by the application of the provisions of Section 4 of the Brussels II bis regulation might be generated by the differences of regime for the judgements on custody (which might not be recognized and enforced when they violate the public policy of the forum, for example) and the judgements on return or on the visiting rights (for which do not exist grounds for refuse of enforcement); this is source of incoherencies and should be addressed. Also, the principle of automatic recognition and enforcement, combined with legislative disparities in the member states regarding the hearing of the child, might be seen as problematic: some countries have severe rules on the matter, the judgements rendered in other member States without the proper hearing of the child contradicts their public policy principles, but they cannot be opposed. It is this author view that uniform rules at the European level would give support better the legitimacy of the rules of automatic enforcement.
Slovakia	No.
Slovenia	In Slovenian legal literature no such suggestions are provided. Despite that we suggest that the enforcement proceedings need some changes with the aim to speed up the child's return and rights of access. The idea of forming the minimum standards for enforcement standard should be supported.
Spain	We have had access to few decisions in Spain having dealt with the enforcement of returns. The European Court of Justice dealt with the enforcement of a return decision rendered by a Spanish court in Case C-491/10 PPU (preliminary ruling from the *Oberlandesgericht Celle* (Germany) in the proceedings Joseba Andoni Aguirre Zarraga vs. Simone Pelz), where the German court referring the case had considered that the Spanish judge had not taken into consideration the child's opinion. The judge had fixed a date for presential appearance but the mother did not want her to travel alone to Spain nor travel with her due to the consideration of child abduction as a criminal offence in Article 225 *bis* of the Spanish Criminal Code. She asked for the appearance to be done by videoconference but this suggestion was denied despite being contemplated in Recital 20 of the Preamble of Brussels IIa Regulation (The hearing of a child in another Member State may take place under the arrangements laid down in Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters). The German court considered that the Spanish judge had not adopted sufficient measures to grant the right of the child to be heard. The ECJ ruled that the court with jurisdiction in the Member State of enforcement cannot oppose the enforcement of a certified judgment, ordering the return of a child who has been wrongfully removed, on the ground that the court of the Member State of origin which handed down that judgment may have infringed Article 42 of Council Regulation (EC) No 2201/2003 (…), interpreted in accordance with Article 24 of the Charter of Fundamental Rights of the European Union, since the assessment of whether there is such an infringement falls exclusively within the jurisdiction of the courts of the Member State of origin. A second case can be mentioned where the Regulation has been properly applied. In Judgment 3/2012 of the Provincial Court of Cádiz, the court refused the enforcement of an order of return under Article 47.2.II) Brussels IIa Regulation because the other parent had renounced to the return and then the custody was granted to the mother. Therefore, "(…) a judgment [*including orders in accordance with Article 2.4)*] which has been certified according to Article 41(1) or Article 42(1) cannot be enforced if it is irreconcilable with a subsequent enforceable judgment". Finally, it is relevant to note that the Act 15/2015 of Voluntary Jurisdiction has included new provisions in Final Disposition 22 of the Civil Procedure Act 1/2000 about "Measures for facilitating the application in Spain of Regulation nº 2201/2003", which include rules governing procedural aspects of enforcement. The certificates of Articles 41(1) and 42(1) shall be issued by the judge separately through order (*providencia*) by filling the forms of Annexes III and IV of the Regulation.
Sweden	There seem to have been no difficulties so far and no improvements have been suggested in the literature.
UK	As Resolution have observed, when enforcement of an existing order comes before court in another jurisdiction, that court may substitute its own judgment. This 'can lead to "forum shopping" and an increase in litigation.'[756] It would be helpful if there were 'direct judicial communication between courts seised' when considering Article 15 transfers. In respect of the wording surrounding child arrangements orders (in England and Wales) issues may arise, given that a child may be set to 'live with' or 'spend time with' one or more parent (or other relative). It may therefore be helpful if it is made clear exactly 'what rights are conferred by an order vis à vis the Regulation.'[757]

Question 42: What is in the context of Article 41 (direct enforceability of access judgments) the experience in your jurisdiction as to the relevance of the age of the child or level of maturity in this respect?	
Austria	Unfortunately there is no decision on this question. Sengstschmid, [758] who advocates an autonomous interpretation of Article 41 (c) of the Brussels IIa Regulation, argues that in the case of an age-typical degree of maturity of the child, only the age should be decisive. If, however, the child is more mature than a child of the same age, then the degree of maturity attained is decisive. Conversely, for example, if a mental disability exists, the degree of maturity makes a hearing appear inappropriate in older children. With regard to Article 8 of the ECHR, Art 12 UN Convention on the Rights of the Child and Article 24 (1) of the ECCR, the age limit should be set low. [759]
Belgium	Articles 1004/1 and 1004/2 of the Belgian Code of Civil Procedure introduced the principle that every child has the right to be heard in court proceedings (Family court) which concern him. These provisions apply since the 1st of September 2014. There is a distinction depending on the age of the child. - The child that is older than 12 years, is informed of his right to be heard. The child has the right to be heard, but may refuse to be heard. - The child younger than 12 years, also has a right to be heard, but is not informed of this right. He can ask to be heard, or this request can be made by the public prosecutor, by one of the parties or by the judge himself. If the request is made by the child or the public prosecutor, the court must hear the child. Before, the legislation on the right to be heard was not entirely clear. The juvenile court had the obligation to hear children older than 12 years (Article 56*bis* of the Act of 8 April 1959). Before other courts it was up to the discretion of the judge when the child had acquired the level of 'discernment' ('onderscheidingsvermogen'). The Court of Appeal of Ghent considered that there was no obligation under Belgian law to hear a 5 year-old child, nor did it found that the child had the required level of discern ('vereiste onderscheidingsvermogen'). The judge issued the certificate without hearing the child.[760] The same reasoning was applied in a case where the children were 10, 7 and 4 years old.[761] It should be noted that these cases date from before the 1st of September 2014 when the right to hear children older than 12 years was introduced in the Belgian law. However, in a case before the Court of Appeal of Brussels decided on the 20 February 2015, the court delivered an Article 42 certificate without hearing the child. The child was 4 years old and the court found it inappropriate considering its young age and level of maturity to hear it.[762] In a case where the court set a schedule for custody of the children during the summer holidays, the court issued a certificate for enforcement without hearing the children. Although the children were 16 and 11 years old at the time, the court found it not necessary to hear the children since the matter was limited in scope and the parents had reached an agreement.[763] In the application of Article 41, Belgian judges have also applied an analogy reasoning between Articles 23 and 41 Brussels IIa. In matters of urgency judges have delivered the certificate without hearing the child concerned.[764]
Bulgaria	-
Croatia	No available data. No literature to that point.
Cyprus	- The provision has not been considered yet in our case law.
Czech Republic	No data available.
Estonia	There are problems with judges who are not sure whether to issue the certificate or not – i.e. the certificate is a bit difficult for them to fill in, since there is no place to explain. This is especially relevant for the hearing of the child – whether the child was given effective opportunity, or was heard, but not taken into account etc. Also the judges are

	confused as to who mark under p. 3 and who in p. 4, especially when one parent has sole custody then marking the other parent under p. 3 would suggest they also have custody, while they might just have access.
Finland	-
France	Unfortunately, it seems that the answer to this question will depend on the Member State in which the decision is to be enforced. For example, if the enforcement is to take place in Germany, the French judges should be careful to hear the child; if the enforcement is to take place in Belgium, presumably less efforts are needed. In any case, few judges automatically deliver the Article 41 certificate. One should ask for it, and even then it is sometimes difficult to obtain it.
Germany	I do not think that the provision plays a significant role in Germany.
Greece	There are no available data in that respect.
Hungary	There is nothing special.
Ireland	Where a court decides to hear the views of the child, provided the child is mature enough and expresses coherent reasons, the view of the child can be influential in the courts' decision to or not to order a return. See TMM v. MD [2000] 1 IR 149 where the child detailed evidence of nightmares where the non-abducting mother would appear at the child's bedside drunk and attempt to remove her back to England.
Italy	As to the relevance of the child's age or his or her level of maturity, art. 41 should be compared with the art. 11(2). See above answer 35. In the context of section 4, however, the lack of the child's hearing prevents the judge from issuing the certificate, apart from the case when this is justified by the age or the degree of maturity of the minor.
Latvia	No information available.
Lithuania	The practice at courts of Lithuanian regarding applications of Article 41 (direct enforceability of access judgments) is poor. Though in one of the cases, where a matter of issuance of the certificate referred to in Article 41 was solved, the court determined that a five year old child must be heard in the context of Article 41, as his maturity level is enough to express child's opinion. The court also stated that such hearing of the child won't harm him.
Luxembourg	There is no judgment where the issuance of such a certificate is mentioned.
Malta	This is harder in practice – there should be stricter laws for non-adherence of access and the police (through communication with the police or foreign authorities) should be able to enforce such judgements in practice.
The Netherlands	DC Zwolle-Lelystad, 17 March 2009, LJN: BI1910 is the only reported decision with a reference to Article 41 BIIa. The case turns mostly on application of Article 47 BIIa, whether there was a reason to suspend the enforcement of an Italian order that had been for which a certificate had been issued under Article 41 BIIa. The DC found that the Italian contact order had been made after extensive investigation by an expert nominated by the Italian court, who had been in contact with both parents. The age of the child in question is unknown.
Poland	None from the relevant case law- due to lack of case law. But according to the national legislation, the court in cases involving minor children hears the minor child, if his mental development, state of health and degree of maturity permits. The hearing takes place outside the court room. The court, according to the circumstances, the development of mental health, state of health, and maturity of the child, takes into account his opinion and reasonable wishes (Article 216^1 CCP, Article 576 § 2 CCP similarly). Only in divorce cases hearing of minors is much more limited: there is an absolute prohibition on hearing of children as witnesses under the age of thirteen (Article 430 CCP: Minors who are under the age of thirteen, and descendants of parties who have not completed seventeen years, cannot be heard as witnesses). But even in divorce cases (because according to the Family and Guardianship Code the decision regarding contacts with the child and the manner of exercising parental authority is an obligatory

	part of the judgment of divorce) the court guided primarily by the welfare of the child, hears the child informationally, if his mental development, health and degree of maturity permits. The right to hear the minor child is guaranteed by Article 72(3) of the Polish Constitution: In the course of establishing the rights of the child, public authorities and persons responsible for the child are obliged to listen to and, if possible, to take into account views of the child; it is also based on Article 12 of the 1989 Convention on the Rights of the Child. In practice, court's contact with the child takes place in the judge's room. Statutory or legal representatives of the child or other participants/parties cannot be present during a hearing, although they are informed about its date and statutory representatives of the child are responsible for bringing the child to be heard. In connection the decision of the Supreme Court dated 16 December 1997, III CZP 63/97, the obligation to hear the child does not have to be carried out only in the form of direct hear the child before the court, especially in the courtroom. Due to the confirmed in practice fact of often harmful impact of his direct contact with the court on the psyche of the child, the trial court has the opportunity to become familiar with the position of the child through its auxiliary bodies, such as the guardian/curator or opinion of diagnostic-consultative center, and finally the opinion an expert psychologist.[765] The hearing of the child should be recorded, because it is unique, and its repeating should be excluded. Parties should submit questions or issues to be asked about during the hearing by the court.[766]
Portugal	There is not enough information to properly answer the question.
Romania	Unfortunately, we could not found pertinent cases. In a decision from 2013, the Baia Mare City Court[767] issued the certificate from art. 41.1 of the regulation, verifying only the requirement of the opportunity of the parties, present in the court, to be heard; it does not say anything about the hearing of the child, aged of 7years old, but since according to Romanian law, this hearing is mandatory only starting at 10, probably the requirement was indirectly considered fulfilled. Also, in some cases, the courts issued the certificate from art. 39 of the regulation for the judgements concerning the access rights[768].
Slovakia	There isn't concrete age level in Slovak law where the child's will bind the court. According to our experience the right to be heard is exercised (guaranteed) by courts directly in case of children older than 5-6 years old.
Slovenia	In every case the court or central Authority should encourage the parents to return the child voluntary. If this is not possible, the measures for the immediate enforcement of final judgments may be used. That the measure will be enforceable, must be in operative part of judgement exactly specified, how the return of the child will be held, who and where the child must be brought. The enforcement should be carried out as in the case where the district court in family matters issued a temporary injunction, but in these cases is required immediate direct delivery of a child under Article 238.e CESA. Today, EU has 28 Member States which differ in court systems, child law regulations (material and procedural) and also in hearings of the child. Therefore, already mentioned Common minimum standards concerning the hearing of the child would contribute to the extension of safeguards for children. It would also lead to a high level of uniformity in rules which could give to Member States and parties more predictability, safety and could increase the proceedings effectiveness. In general, no problems have been encountered with enforcement procedures in Slovenia.
Spain	Articles 41 and 42 Brussels IIa Regulation have been mentioned in some decisions together with other legal instruments (i.e. Article 12 UN Convention on the Rights of Children or Article 9 Organic Law 1/1996 of Legal Protection of Minors) in order to stress the importance of the child to be heard in cases related with their protection (for instance, Judgments 110/2008 and 331/2014 of the Provincial Court of A Coruña) but we have no information about the application of this provision to a particular case.
Sweden	There is no published case law.
UK	As Langdale and Robottom note, the welfare checklist (e.g. S. 1 (3) of the Children Act 1989) highlights how such factors as 'the child's age, sex, backgrounds and any other characteristics which will be relevant to the court's decision.' [769] The wishes of the child are not necessarily always the over-arching concern, as in *Re W (Contact: Joining Child as a Party)* (2003) where it was held that '…the child has a right to a relationship with his father even if he does not want it. The child's welfare demands that efforts should be made to make it possible that it can be.' [770] In *Re R (Residence Order)* [2009],[771] the Court of Appeal did stress however that courts 'must be careful not to discount

	the wishes and feelings (and the reasons behind them) of mature children as against other welfare factors.'[772] In relation to the Hague Convention, English courts have assumed 'a more strenuous approach towards wishes and feelings in abduction cases.'[773] In *Re W (Abduction: Child's Objections)* [2010][774] it was held that 'a subtle shift of emphasis' had come about via Article 11(2),'[775] insofar as it had enshrined 'a presumption that in Article 12 and 13 Hague Convention proceedings that 'it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.'[776] In *WF v FJ, BF & RF* [2010][777] it was noted also that there was 'no particular age where a child is to be considered as having attained sufficient maturity for his or her views to be taken into account.' [778]

Question 43: As for the issuance of the certificate referred to in Article 42 (return of the child), is this denied in your jurisdiction in case the child or another party was not given the opportunity to be heard? Does 'party' in Article 42 under 2 (b) also include others than 'holders of parental responsibility', e.g. a child's natural father?	
Austria	As already mentioned, there are no (published) decisions on Art. 42 of the Brussels IIa. Regulation. According to my information, the issuing of the certificate is refused in case of hearing impairment. The "affected parties" are understood only as the holders of parental responsibility. [779]
Belgium	To answer the first part of the question, no such issues have arisen, based on the existing case law. The second question is unclear. Reference could be made here to a case of the Court of Appeal of Brussels that specifically mentions that the mother is given the right to be heard.[780]
Bulgaria	-
Croatia	No available data. No literature to that point.
Cyprus	- The matter has not been considered yet in our case law.
Czech Republic	No data available.
Estonia	No information available
Finland	-
France	The interpretation of Article 42(2)(b) gives rise to some questions. It is not clear, if the condition that "all parties concerned were given an opportunity to be heard" refers to the parties in the procedural meaning or refers to all the holders of parental responsibility. The latter interpretation is favoured in the legal literature. However, "party" does not include other than "holders of parental responsibility". There is no case law that could confirm or infirm that the issuance of the certificate referred to in Article 42 (return of the child), is denied in France in case the child or another party was not given the opportunity to be heard.
Germany	I have no information on such cases as such decisions are regularly not published.
Greece	The issuance in cases where the child or another party was not given the opportunity to be heard will depend on the circumstances of each case. Article 42 under 2 (b) should be construed as including others than holders of parental responsibility.
Hungary	There is no published case.
Ireland	There is no case law specifically on the failure to hear a child and refusal of a certificate. A child natural father is considered a party with parental responsibility irrespective of marriage provided he has resided with the natural mother for period of at least 12 months.
Italy	Yes, it is denied if the child was not given the possibility to be heard (see above answers 35 and 42). I have found no decision dealing with the issue of denying the certificate when other parties have not been heard, or interpreting the expression "other parties".

Latvia	In Latvia's experience there was only 1 case (in 2008) where the Court in another Member State in accordance with the Article 11 (8) issued the certificate referred to in Article 42. After several proceedings before the European Commission and the European Court of Human Rights, basically, it was established that the judgment of the Court in another Member State, on the basis of which the certificate was issued, was poorly based[781]. Therefore there are some concerns that abolition of exequatur proceedings for the return of the child (Article 42) cannot be used just as an instrument to achieve at any cost the outcome which is desirable for one party of the proceedings. As it was mentioned before, it's important that abolishment of exequatur proceedings for the Article 41 and 42 proves itself in practice.
Lithuania	There has been no practice at courts of Lithuania where the issuance of the certificate referred to in Article 42 (return of the child) is denied, because the child or another party was not given the opportunity to be heard, yet.
Luxembourg	There is no case where Luxembourgish authorities issued the certificate referred to in Article 42 of the Brussels IIa Regulation (please see question 41 above).
Malta	No if the child cannot be heard for whatever reason that is. Yes
The Netherlands	The single reported decision with a reference to Article 42 is DC Zwolle-Lelystad, 17 March 2009, LJN: BI1910. In addition, Advocate-General Strikwerda in his opinion before SC 23 September 2011, LJN: BR3062, remarked that Article 42 and Article 11 BIIa reinforce the principle of the 1980 Hague Abduction Convention that the assessment of what the best interest of the child entails, is made by the court of habitual residence, not by the court of the state to where the child has been abducted.
Poland	Lack of case law.
Portugal	There is no evidence of that denial.
Romania	We did not identify pertinent case law. According to the internal law, the hearing of the child is mandatory only starting at 10 years; under this age, the hearing is left to the court's appreciation. This standard is also applicable when deciding the issuance of the certificate. In the context of art. 42 of the regulation, the doctrine did not take position on the obligation of the hearing of the other 'parties' than holders of parental responsibility. It is submitted that 'parties' should designate only the direct (involved) parties to the dispute (the abductor and the person requesting the return).
Slovakia	When to child or to another party was not given the opportunity to be heard, it is similarly the ground for refusing the recognition of judgments according to Article 64 Lit. d) of International Private Law Act: the party against whom recognition of the decision is sought has been deprived by the foreign authority of the possibility to participate in the proceedings before it, in particular he was not duly served the summons or the document instituting the proceedings.
Slovenia	Yes, the issuance of the certificate under such circumstances will be denied. In Slovenia holder of parental responsibility are just child's parents. Other persons, natural (foster parent, guardian) or legal (guardian, institute), cannot obtain parental responsibility, but they may have the right or even duty to take care about the child (guardian, foster parent, institute) or may have the right to access. Under the Article 106 MFRA, a child has the right to contacts with other persons in a family or personal relationship except if this is in conflict with child's interests. It is considered that these persons could be child's grandparents, adult brothers and sisters, former foster parents, former spouses or cohabitant of child's parents. The contacts are agreed upon by the child's parents, the child, if he or she can understand the meaning of the agreement, and this other person. The CSW supports them in forming of an agreement. The supervision of contacts shall be in the child's best interests. A proposal may be filed also by a child aged of 15 years and capable of understanding the meaning and legal consequences of his or her actions, other persons and the CSW.
Spain	See answer to previous question and question n. 41.

Sweden	There is no published case law.
UK	Parties must be given the opportunity to be heard – hearing of the child may be effected via CAFCASS report. Presumably, other parties may be covered e.g. the child's legal guardian, persons named in a child arrangements order or involved in parental responsibility agreements.[782]

Question 44: Should rules be enacted in your jurisdiction or in the recast of the Regulation which require the court delivering the judgment to assign which authority in the other Member State will actually enforce the decision?	
Austria	No, because the deciding court does not know which authority is competent in the other Member State to enforce the decision.
Belgium	The available case law does not indicate any specific issues here.
Bulgaria	-
Croatia	No. Enforcement rules should be kept national.
Cyprus	- It is not necessary for such rules to be enacted in our jurisdiction or in the recast of the Regulation as the judgments are enforced expeditiously by the police and child welfare department.
Czech Republic	No.
Estonia	No. This is a question of national procedure. They can say which authorities may help with the enforcement (social workers for example), but this might also bring about the need for adaptation / practical arrangements.
Finland	-
France	Why not? This could of course be an improvement but there may be more urgent issues to consider first.
Germany	Under German law the court has to enforce return orders ex officio cf. Sec. 44(3) of the International Family Procedure Act. I think it is not a good idea to require the courts in the Member State issuing an order to specify the enforcement authorities in other Member States. This presupposes that the court is familiar with the details of the enforcement procedure in other Member States. It should be rather the task of the CA to support the enforcement of foreign return orders.
Greece	There is no need for such rules in the Greek legal order.
Hungary	Such solution was not discussed.
Ireland	Rules should not be necessary for the court delivering judgement to assign which authority will enforce the decision in the Member State.
Italy	The recast of the Regulation should identify the authority with power to enforce the decision. That would probably ensure a quicker definition of the matter.
Latvia	No, definitively.
Lithuania	There have been no problems regarding actual enforcement of the decisions in jurisdiction of Lithuania yet, so we do not see any necessity for any rules which require the court delivering the judgment to assign which authority in the other Member State will actually enforce the decision.

Luxembourg	Yes. There is a case where a Luxembourgish court did not enforce a French judgment deciding on rights of access because that judgment was not declared enforceable in Luxembourg. The court referred to the traditional enforcement procedure without informing the parties about the fast-track enforcement procedure established in Brussels IIa Regulation ('Cour d'appel de la jeunesse', no. 31882, 26 March 2007). Perhaps, if the French judgment had assigned which Luxembourgish authority was in charge of enforcing the decision (and also in charge of declaring it enforceable), the parties in this case would have saved time.
Malta	In Malta this is done through the central authority
The Netherlands	It would appear that the Netherlands government would consider this a matter for national implementing legislation, not EU legislation.
Poland	Due to the procedural autonomy (or principle of the authonomy of lex fori processualis), it does not seem justified giving the court of one Member State possibility to impose the court of another Member State certain appropriate behavior.
Portugal	It is not clear how that would be an advantage or even practical, since the court delivering the judgment may not have an easy way to immediately know which authority is in the best position to enforce the decision in the other Member State. In other word: some barriers may be difficult to overcome when a urgent decision has to be deliver (linguistic, cultural, legal, etc.).
Romania	Such rules would be difficult to implement since in practice the judges from one state may ignore the specific judicial organisation of another state.
Slovakia	Yes. It would support the effectiveness of enforcement.
Slovenia	No.
Spain	The introduction of rules clarifying issues which may have encountered problems in practice can always be useful. However, this proposal has more to do with national legislation than with European harmonization, and furthermore it could refer to so many procedural aspects to be resolved in cross-border cases that updating every piece of information in every EU Regulation or national legislation may be too difficult to accomplish. Another way of resolving this issue may be facilitating the access of the relevant information on the Internet, enhancing the use of Websites like e-Justice (where this kind of information is already available: https://e-justice.europa.eu/home.do) and the existing networks of international cooperation.
Sweden	No. Such assignments could easily give rise to misunderstandings regarding the actual competence of the various authorities in the other Member State.
UK	Arguably, yes, given that 'other Hague countries do not enforce with the vigour that the English do.'[783]

Question 45: What kind of issues are dealt with in making practical arrangements in applying Article 48 in your jurisdiction (e.g. supervised contact, location, time-schedule)? Is the court able to make enforcement measures in this respect?	
Austria	Often accompanied contacts (with a visiting attendant) are ordered. However, as with the application of national law, there are difficulties when the parent, who is entitled to care, prevents contacts. Although, according to § 110 of the AußStrG[784], the right to of access is to be enforced with appropriate forcible measures pursuant to § 79 of the AußStrG[785] (fines and coercive detention up to a total term of one year) this happens in practice rather rarely or not with the necessary haste. The enforcement is often refused on the grounds that it is contrary to the best interest of the child (eg because of alienation to the parent, whose right to access is to be enforced). [786] However, the alienation has often occurred precisely because the decision on the right of access has not been carried out quickly enough. This is rightly criticized. [787] Since the KindNamRÄG 2013, [788] however, the enforcement of the right of access has been given more importance in purely Austrian cases, so that it can be assumed that often in the enforcement of foreign decisions relating the right of access, fines and, if necessary, detention against the parent which prevents contact with the child, be imposed.
Belgium	There is no specific case law on this matter.
Bulgaria	-
Croatia	No available data. No literature to that point.
Cyprus	- No problems arise in organising such arrangements. - It is done through the welfare department which also routinely organises such arrangements for local child custody and contact cases.
Czech Republic	No data available.
Estonia	No information available
Finland	-
France	There is no case law on this provision. Yet some problems appear in connection with the enforcement of judgments ordering rights of access when the organisation of the practical exercise of the rights of access is not *compatible* with the law of the Member State of enforcement. Article 48 raises the question of the limits of the prohibition to review the substance of the judgment.
Germany	I have no information on such arrangements as they are not published.
Greece	There are no decisions in the Greek legal order that proceed to the adoption of such practical arrangements for the needs of the application of article 48.
Hungary	There is no special regulation concerning Article 48. The enforcement of the placement or the handover of the child is regulated in the Act No. LIII of 1994, it is Act on Judicial Enforcement. The enforcement with regard to access rights is primarily not the task of the independent judicial bailiff but that of the guardianship authority and regulated in the Order of Government No. 149/1997 on public guardianship authority and proceeding in child welfare and guardianship cases (Order of Guardianship). Concerning the enforcement of the placement or handover of the child (which is to be applied in case of return of the child), the Judicial Enforcement Act has special

	enforcement rules for the case when a definite act or behavior has to be enforced on the basis of the judgment (§§ 172-179). One kind of the behavior to be enforced is the placement or handover of the child (§§ 180 and 180/A). Child has to be handed over to the applicant, in the applicant's absence to his/her representative or to the guardianship authority. The obligor' duty is to inform this person about the health of the child or any other circumstances which may endanger the child's life or body. Besides, the obligor has to handover the child's personal documents, the child's objects in daily use, clothes, tools which are needed in studies, medicals in case of illness [§ 180/A (1)-(3)]. If the bailiff initiates, the police can remove persons whose behavior hinders the enforcement; if either the obligor or the child is not found, a warrant of caption, if needed an international warrant of caption is sent. The Order of Guardianship regulates the enforcement of right to access (§§ 33-33/B). If the guardianship authority ascertains the lack of the applicant fault in the unsuccessful child-parent contact it orders the enforcement. The guardianship authority calls the obligor to make the exercise of right to access possible and warns to the legal consequences of malpractice [§ 33(4)]. In case of the obligor's default the Order of Guardianship refers to the Act on Judicial Enforcement (namely §§ 172-180/B on the general rules of a behavior's enforcement and specially that of the child's handover) and/or the guardianship authority has some special possibilities. It may initiate child welfare mediation and can request for the child welfare services' assistance [§ 33(5)]. The Hungarian Commissioner for Fundamental Rights published a report in 2013 on the protection of children's rights.[789] This report dealt with several legal and administrative issues affecting a child and it mentions that persons participating in an enforcement proceeding often do not have enough knowledge about children and trainings should be provided for them.
Ireland	Where necessary in the absence of details set out in the judgement, practical matters may be ordered and such is enforceable.
Italy	The judge can take any measure required by the factual situation, if necessary even partially altering the foreign decision. The court can order enforcement for the arrangements applying art. 48 just as for any other decision in the matter of parental responsibility according to the Italian legal system.
Latvia	No issues observed, as well as no case law available.
Lithuania	There has been no practice at courts of Lithuania in applying Article 48 in jurisdiction of Lithuania, yet.
Luxembourg	None of the judgments reviewed enforced a decision on rights of access issued by a Member State.
Malta	Agency Appogg (a parastatul agency) helps with the practical arrangements of supervised visits by means of supervisors / carers. Usually court appoints such supervisors to ensure that such practical issues are dealt with.
The Netherlands	CA Arnhem-Leeuwarden, 2 February 2010, LJN: BL3774, found that there were practical problems in respect of the enforcement of a contact order from the Italian courts. The problems arose in respect of the contact that according to the order was to take place in Italy. With reference to Article 48 BIIa the CA ordered that for that reason contact should only take place in the Netherlands, until the court with jurisdiction over the substance of the matter (DC Lelystad-Zwolle) had decided on a petition to amend the Italian order.
Poland	If the parties are not in conflict, they make practical arrangements themselves, the court does not make any of them. In the absence of consensus between the parties the court makes a very detailed arrangements, are suitable for the enforcement. Generally, the court shall apply the provisions of Articles 113-113^6 of the Family and Guardianship Code, which refer to contacts with the child. Measures indicated therein relates more to bans, which the court may issue in connection with the welfare of the child, however, organising the exercise of rights of access, the court may specify a date, time, time-schedule, location, determine who has to bring a child to the meeting place, at whose expense, indicate whether the meeting is to be held in the place of residence of the child, or elsewhere, indicate in whose presence is to be a meeting place (e.g. contact supervised by a guardian/curator or psychologist), etc. The court makes practical arrangements, which are necessary in a particular case - the legal provisions do not contain a closed catalog of measures to be taken by a court.
Portugal	There is not enough information to properly answer the question.

Romania	We did not identify pertinent case law for internationally disputes. Normally, the practical arrangements referred to in art. 48 regards the location and the time schedule for the meetings with the child, supervised contacts, communication methods (phone, internet..). According to the art. 909 and the following of the Civil procedure code, all the measures concerning the child (including visiting rights) are likely to be enforced by public force. The enforcement officer (bailiff) will intervene in the presence of the representative of the public authority on the child protection and, if necessary, of a psychologist, with the possible help of the police. The debtor who refuses to fulfil his obligation can be obliged to daily money penalties and risks also criminal sanctions. When the child strongly opposes to the enforcement measure, the court may impose his insertion in a psychological counselling program. According to the Act no 272/2004[790] on the protection and promotion of children rights, in order to guarantee the child's personal relations with its family members or its return after the visiting program, the judge may dispose, upon request, provisional and protective measures such as daily money penalties, collateral or guaranties, the submission of the passport or the identity act to a public authority designed by the court (art. 20).
Slovakia	The substantive Family law in Slovakia doesn't allow for example supervised contact. But if there would be so called adaptation clause in Regulation, Slovak courts would be able to make enforcement measures. We think it would be helpful to have effective measures available for enforcing. But there should be possibility for national courts to protect child's best interests, especially in cases when enforcement is against children.
Slovenia	The courts in Slovenia may make following practical arrangements for organising the exercise of rights of access: - the contacts may be supervised by the employee of the CSW or the person who child trust; - the contacts may be supervised and therefore exercised at the CSW; - the contacts may be allowed just in - the contacts may be restricted at the minimum (e.g. one hour per month; without any direct contact (just through phone calls or emails); - the contacts may also be totally prohibited; The courts have not reported any problems to enforcement.
Spain	We have no information about any judgment having dealt with this issue. A parallel interpretation can be done with the enforcement of a decision of return, where the Spanish legislator has provided for some guidance in the new regime of 2015: Art. 778 *quinquies* 9) Civil Procedure Act: "(…) The resolution establishing the return of the minor shall contain in detail the form and deadline of enforcement; the court may adopt the necessary measures to avoid a new wrongful removal after the service of the judgment". Art. 778 *quinquies* 13) Civil Procedure Act: "When enforcing the judgment ordering the return of the minor to the state of origin, the Central Authority shall assist the court in order to guarantee that no danger exists and shall adopt in each case the relevant administrative measures. In case the parent who was ordered to return the child does not fulfill this obligation, the court shall adopt the necessary measures of enforcement of the judgment immediately including the possibility of asking for assistance to social services and state security forces".
Sweden	Various flexible practical arrangements can be prescribed by the courts.
UK	A wide range of practical issues may be covered e.g. via child arrangement orders (which replaced residence and contact orders in England and Wales in April 2014). That said, 'although the Regulations that support the Convention place a duty on local authorities to respond in a timely way to certain types of request, there is no prescription as to the form that responses should take. As far as possible, authorities should follow their existing local procedures, based on a proportionate response to the level of risk of harm to the child.'[791]

Question 46: What would be advantages and disadvantages of concentrating the knowledge and expertise through 'specialised' courts or another authority for issuing and enforcing judgments?	
Austria	In my view, a concentration of knowledge and expertise in a specialized court or other authority would be an advantage because it would increase the quality of the decisions and, if the court have enough specialized judges, the duration of the proceedings would be shortened. If there are only a few specialised courts, this could make it difficult for the parties to access the court.
Belgium	In Belgium, requests for the return of a child may only be brought before the family court of the place where a court of appeal is located and where, depending on the case, the child is present or where he/she habitually resides at the time that the application is filed or the request is sent (Article 1322ter and 633sexies of the Code of Civil Procedure). Hence, only five courts in Belgium have jurisdiction over these matters. Internationally, the concentration of knowledge and expertise in child abduction cases is promoted by the Hague Conference for Private International Law.[792] When the implementation of the Brussels IIa Regulation was discussed in Belgium, the specialization of the courts dealing with child abduction cases was also emphasized.[793] Concentrating child abduction cases has several advantages. First of all, the judges who deal with child abduction cases are well trained and have good knowledge of the (inter)national instruments applicable to child abduction cases and the relevant (inter)national case law. Secondly, the fact that only a few judges deal with child abduction cases, enhances the direct co-operation between judges of the different Member States.
Bulgaria	-
Croatia	Specialization of courts presents a valuable procedural tool to ensure more quality, speed, efficiency, harmonization of court practice. In Croatian legal system there is so far no specialization / concentration at first instance. As of 1 July 2015 there is a concentration at second instance.[794] According to this legislative Act family related matters are at second instance attributed to courts in Pula, Split and Zagreb. Strategic document speaks of further specialization within each of designated appellate courts, meaning that certain judges and certain judicial councils would be attributed cases with same subject matter.[795] Strategic plan emphasizes that specialization of courts and judges within those courts would ensure harmonization of court practice in same/similar subject matters, what would have further benefits for legal security, length of proceedings and quality of rendered decisions. Arguing for more quality and expertise in justice and adjudication process, President of Supreme Court of Croatia strongly advocates for specialization within Croatian judiciary. It is pointed to the fact that wide reaching EU acquis has to be applied directly before Croatian Courts.[796] Regrettably, Report of 2015 to large extent repeats the 2013 Report, as no significant moves have been achieved in the period.[797]
Cyprus	- There are clearly advantages in having specialised courts. Such courts would be in the best position to understand the provisions of the law including the convention and regulation and to deal with the matters more fairly and quickly. - On the other hand such specialised courts may prove unpopular with members of the judiciary and end up being populated with judges who are not suited to carry out the tasks and who cannot be easily moved to other courts so that other more suitable judges can take their place.
Czech Republic	Advantages: concentration of the judicial know-how, deeper education of judges, intensive practical experience. Disadvantages: distance between the specialised court and some regions.
Estonia	It would be good to have all the knowledge and case-law concentrated, then again there's the issue of people's access to the court. As there are quite few cases in Estonia, it would be rather complicated to have a special court or authority.
Finland	-

France	The advantages would by far prevail if sufficient means and efforts are invested into this solution. At present there are specialised courts (geographically and as regards subject matter) in France to deal with child abduction matters, but these courts are too numerous and due to the turnover of the judges, the experience they have gained risks being underexploited.
Germany	As already mentioned: The specialisation of jurisdiction was very successful in Germany. There is a constant exchange between the "international child law" judges. I see no significant disadvantages.
Greece	A basic concern of the Greek legal order in the eventuality of specialised courts lies in the cost of the creation of such specialised courts. Such a problem might exist in other legal orders as well. A more realistic solution for countries that face more broad problems with the organisation of their justice system would be special training for judges who express their interest or are willing to intervene regularly in the context of such cases.
Hungary	As there is one court of first instance and one of second instance which deliver the judgments in child abduction cases such concentration is materialized which seems to be useful and important. The judges who deal with the child's wrongful removal or retention are well exercised lawyers speaking also foreign languages and mostly having knowledge in the Hungarian and sometimes foreign legal literature concerning child abduction. (I should remark that there are more and more cases when both parents affected by a child abduction are Hungarian nationals.)
Ireland	Specialised courts would be able to process applications with speed and consistency. The use of another authority would not work as only courts established under our Constitution have the authority to make binding decisions on individuals. Another authority would not have the legal authority to make binding decisions.
Italy	As it was pointed out in the Povse case, "specific streamlined proceedings may be required for the enforcement of return orders", as time is crucial in this matter. Specialized courts with specific procedure may shorten the interval. I do not see any disadvantage.
Latvia	This shall be left within the competency of each Member State.
Lithuania	Advantages of concentrating the knowledge and expertise through 'specialised' courts or another authority for issuing and enforcing judgments might be: - Shorter terms for dispute settlement in cases; - Interests of a family as a whole, as well as individual interests of family members could be more secured by mediators/judges, who are professionals at such dispute settlement; Disadvantages of concentrating the knowledge and expertise through 'specialised' courts or another authority for issuing and enforcing judgments might be: - There might be not enough competent mediators/judges, who would agree to work in such 'specialised' courts or another authority. Lack of competence in applying national and (or) international legislations for dispute settlement might arise; - Special quality control measures might be required to apply, in order to keep the professionality and competence of specialised' courts or another authority and such 'specialised' courts or another authority might become costly for member states; - Full administrative personnel might be needed for such specialised' courts or another authority to work efficiently. It might become costly for member states.
Luxembourg	The advantage of such a concentration of courts is the particular expertise of the professionals in charge. Such an expertise would lead to better quality decisions and speed up proceedings. Also such a concentration of knowledge would have an economic impact, as a consequence of shortening the enforcement procedure. As disadvantages, I can only identify one: the collapse of the courts. That would happen if only one court per country were in charge of issuing and enforcing proceedings, which could lead to excessive workload. There is also the question of geographical distance for the parties if only one court per country were to assume these functions. Therefore, it would be better to concentrate the courts or authorities in charge of these issues, allowing several courts or contact points per State.
Malta	In Malta we have a family court which deals with such issues.

The Netherlands	According to Article 11(1) of the International Child Abduction (Implementation) Act the District Court Den Haag is the only court in first instance with jurisdiction in child abduction proceedings. Appeals are still heard by the Court of Appeal with territorial jurisdiction in respect of the case. It should be noted that in the last years the Netherlands judicial system is trending towards concentration and specialization of the courts, not only in family law matters.
Poland	The most important advantage of concentrating the knowledge and expertise is uniformity and predictability of conduct, which also may result in uniform case law. The last one may be a basis for finding that the cases are not sufficiently and individually examined, what should be treated as disadvantage. In Poland, so called family courts or guardianship courts adjudicate in matters of children, what in fact means the family and minors divisions of the courts - at the level of district courts (the lowest in the structure of the courts, always acting as the first instance). The courts of higher instance do not have such divisions, but in general - civil divisions - which can eliminate or reduce the specialization.
Portugal	Specialization of courts, authorities, entities and, in general, administration dealing with these matters of child abduction is definitely an advantage and highly recommended.
Romania	One of the problems in the application of the texts related to the international child abduction is represented by the delays in judicial proceedings. Since this stems from a general lack of experience of the judges in dealing with these texts (regulation/Hague convention), we think that a concentration of disputes regarding the return proceedings in front of specialized courts (and judges) might ensure an efficient and speedy treatment of cases, which would minimise, in turn, the harmful effects of the abduction (and of the proceedings) on families and children. The concentration would permit a better use of resources for training the judges and would improve the professionalism, the quality of the decisions and the uniformity in the application of texts. In Romania, such a concentration is implemented. All the cases in the field of child abduction are handled by Bucharest County Court (first court invested) and Bucharest Court of Appeal (appellate court).
Slovakia	The specialised courts could help to increase the effectiveness of enforcement.
Slovenia	The advantages: - the possibility of greater lingual skills of judges; - the possibility of judges with greater professional skills; - the possibility of forming relevant data base and statistical centre for the purpose of the Brussels IIa regulation; - the faster solution of the cases; - the costs could be lower; - nearby and more intensive cooperation with other bodies which are also in capitol Ljubljana (starting from the position this court will be in capitol Ljubljana), especially with the Central Authority, Ombudsman, SCRS, Ministries…; - the possibility to improve the protection of child's best interests and also the well-being of the relationship between the child and parent; - better implementation of mediation. We do not see any disadvantages.
Spain	The concentration of jurisdiction is one of the main novelties of the Spanish system introduced in July 2015. Art. 778 *quáter* 2) Civil Procedure Act 1/2000 grants jurisdiction to the Court of First Instance of the capital city of the province, Ceuta or Melilla, having competence in Family Law, in whose territory the minor is located. This novelty is deemed positive for different reasons: the concentration leads to more grounded decisions; it ensures the knowledge, expertise and training of judges about international instruments; it reduces time frames of resolution as well as the risk of heterogeneity when interpreting the rules. The "low" number of cases does not justify the creation of courts only in charge of international child abduction cases but granting jurisdiction to courts dealing with Family Law of capital cities will certainly lead to positive outcomes in terms of speediness and legal certainty.
Sweden	There are no special "family courts" and no need of such concentration is felt.

UK	A unified family justice system exists in respect of England and Wales.[798] As Hodson notes, 'in the family law context [it] has the total and active support of top family law judges such as Thorpe LJ in promoting judicial co-operation…we are immensely fortunate in this country in having some of the world's most internationally aware family law judges, at all levels, who are actively encouraging judicial co-operation on individual cases.' [799] Gillen LJ has also observed in respect of Northern Ireland that there is 'considerable advantage' in having a concentration of decision making with one judge dealing with Hague Convention cases in one court house, with that same judge serving as 'liaison judge.' There is a problem in other jurisdictions where that does not occur.' That said, there was still a clear need for other members of the family law judiciary and the legal profession in general to 'keep abreast of family justice case law and developments in other jurisdictions.' [800]

Question 47: Have problems arisen because of the manner in which the CA in your Member State is organised institutionally and/or due to its working method? Mention the positive and negative aspects.	
Austria	No problems have arisen. Positive aspects: trust relationship with the courts, impartiality, because not directly representation tasks are perceived. Negative aspect: As reports are usually required from the courts or representatives, reports on the state of affairs can rarely be given immediately.
Belgium	The Belgian Central Authority is the Federal Public Service Justice, situated in 1000 Brussels, Boulevard de Waterloo 115 (rapt-parental@just.fgov.be). This institutionally organized authority seems to have a good working method. There are no notable negative aspects, although a recent shift in personnel has increased the workload for the CA personnel dealing with cases in the French language (cases at the CA are either dealt with in the French or Dutch, depending on the whereabouts of the minor(s) concerned). The CA deems it generally functions efficiently. The CA provides enough information. The following webpage – only in French and in Dutch – contains information about international child abduction: http://justitie.belgium.be/nl/themas_en_dossiers/kinderen_en_jongeren/internationale_kinderontvoering. It is unfortunate that the information on the webpage is only accessible in Dutch and in French (thus even not in the third official language of Belgium (German), or in English). On a yearly basis the CA publishes interesting statistics, see http://justitie.belgium.be/nl/themas_en_dossiers/kinderen_en_jongeren/internationale_kinderontvoering/statistieken.
Bulgaria	-
Croatia	Croatian internal division of competence in relation to Brussels II a Regulation is between two Ministries: Ministry for Demography, Family, Youth and Social Policy and Ministry of Justice. Ministry of justice is nominated as contact point under the EJN[801]. Another legislative act prescribes that Service for international legal assistance gives support to EJN.[802] They are both engaged in communication to European Commission, particularly at the moment in relation to process of revision of this Regulation. When the Central Authority functioning is at stake, it is solely the responsibility of Ministry for Demography, Family, Youth and Social Policy, as was determined with the Act on the Implementation of the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. In accordance with the Regulation on Internal Organization of the Ministry of Social Policy and Youth[803] the Service for International Cooperation in the field of Protection of Children and Coordination of Social Security Systems performs the tasks of the Central Authority upon the Regulation 2201/2003. It is notable that it is the same service within this Ministry that serves as a Central Authority for family and child related Hague Conventions: Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance; Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption; Council of Europe Convention on Contact concerning Children; Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children; Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and Council Regulation No 4/2009of 18 December 2008on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.[804] The work being performed within the Service has been divided between the employees considering the legal instrument for which the Ministry was designated as Central Authority. This way of organization resulted with the specialization of the state officers in specific fields (respectively for the parental responsibility, access rights and child abduction). Regrettably, due to a small number of employed staff and still valid prohibition of new employments, this desired specialization is not accomplished yet. On the other hand, the negative aspect of this kind of work organization is that there is a small number of officers assigned to work on the specific legal instrument. The lack of administrative staff is a result of still effective prohibition of employment in state administration. As far as number of employees is concerned, total amount of Service employees is four. Besides the Head of the Service (lawyer by vocation), there are three state officers working in the Service: two lawyers (one senior adviser specialist and one expert assistant) and one social worker (senior adviser).[805]
Cyprus	- Our CA is understaffed and therefore has a huge workload. Furthermore the decision to use members of the legal service of the government to file the cases result in serious

	delays.
Czech Republic	In 2007-2008 the position of the CA was strengthen. The CA has been established as an independent authority providing the assistance to the international families in crisis and towards another foreign CA. In this context, the CA ceased to represent either a child or the applicant in the return proceeding before court. The CA provides wide range of services to the families, including psychological consultations and mediation. Almost 25 % of the abduction cases are solved amicably without the need to initiate the return proceeding before a court.
Estonia	Only problem – understaffed, too little financial resources available
Finland	-
France	The CA reports to the Ministry of Justice, which to my knowledge has not caused any problems so far.
Germany	As far as I can see, no (I am not familiar with the day-to-day work of the CA).
Greece	Central authorities seem to have the necessary expertise already obtained under the Hague Convention on international abduction of children. The Personnel of the Central Authority is very well aware of the problems in abduction cases. Occasionally difficulties in the functioning of the Central Authority are linked to the lack of the necessary financial resources.
Hungary	In Hungary there are two ministerial departments which fulfill the tasks of the Central Authority. One is the Department of Private International Law of the Ministry of Justice and another is the Department of Child Protection and Guardianship of the Ministry of Human Capacities. According to Order of Government 2031/2005 (III. 8.) the two ministries are the Central Authorities and the Ministry of Justice is the CA in child abduction cases. The division of the tasks emerges from the fact that the Ministry of Justice has always been CA of the 1980 Hague Child Abduction Convention while the Ministry of Human Capacities has dealt with contact cases within the EU as also the CA of the 1996 Hague Convention. The tasks of being the CA of the Brussels IIa Regulation are divided nevertheless it is not always easy for the public to make the proper distinction. The two CAs have good cooperation with each other. They have different attitudes as the personnel of the Department of Private International Law in the Ministry of Justice has that of the private lawyer while the personnel of the Department of Child Protection and Guardianship has accustomed to the procedures of an authority. The lawyers dealing with child abduction cases in the Central Authority are well experienced and have good relationships to the Hungarian courts and foreign Central Authorities. As the cases are more and more complex from one year to another special courses for education should be important in national and European level as well.
Ireland	No problems have arisen from the organization and working methods in the CA. There is a dedicated team that operates child abduction applications.
Italy	Italy passed an apposite Law in 1994 (15 January 1994, no. 64), appointing the Department for minors' justice of the Ministry of Justice (*Dipartimento per la giustizia minorile presso il Ministero della giustizia*) as Italian Central Authority. No special problem has arisen up to now as for the way the C.A. is organized or works. I think that its positive and negative aspects set out in the professor Nigel Lowe's report are still valid. Concerns relate to the possible costs for applicants wishing to appeal in court, the jurisdiction of the Minor's Courts, and the lack of a summary procedure for abduction case. Positive aspects are the efficiency of the C.A., the paper and web information about the way to address it, its costs, the expedited way for dealing with applications, and its accepting almost all applications.
Latvia	Central Authority of Latvia is the Ministry of Justice, as in many EU Member States. No issues from this perspective have arisen.
Lithuania	There have been no problems because of organization of CA in Lithuania. As already mentioned, CA in Lithuania is obliged to participate in all and any court proceedings related to the interests of a child.

Luxembourg	The CA of the Grand-Duchy of Luxembourg is a very small entity composed of a General Advocate (Serge Wagner) assisted by one person from the Secretary of the General Prosecutor's office. No specific problems have arisen regarding the manner in which the Luxembourgish CA is organised institutionally or due to its working method. As there are no problematic situations, no negative aspects arise. Concerning the positive aspects, the small number of staff allocated to the CA makes internal coordination in daily tasks easier.
Malta	No
The Netherlands	Reply from the Dutch Central Authorities: *No. In the Netherlands the Central Authority International Children's Issues is embedded in the department for Legal and International Affairs of the Ministry of Security and Justice. Besides the Brussels IIa Regulation, the Central Authority performs the duties related to three Hague Conventions. This concerns the 1980 Child Abduction Convention, the 1996 Child Protection Convention and the 1993 Intercountry Adoption Convention. Considering the close relationship between the Brussel IIa Regulation and the Child Abduction Convention as well as the Child Protection Convention, this combination is considered as very valuable*.
Poland	No, there were no problems. To ensure the proper functioning of the CA it is required to have sufficient number of staff - appropriate and adequate to the number of cases and the appropriate equipment required for the job.
Portugal	In Portugal the CA is *Direção-Geral de Reinserção e Serviços Prisionais.* Positive aspects are related to the highly specialization of people dealing with matters related to the Regulation, what gives guarantees of efficiency and speed of action and decision. Negative aspects are related to the fact that: a) This CA is not only dedicated to the matters of the Regulation, considering that it is CA for other international instruments; b) Deals with many different matters, including social reintegration and administration of prisons; c) Could have more autonomy if it was a autonomous Public Institute (*Instituto Público*), considering that it is public, but in direct dependence of the Ministry of Justice.
Romania	The activity of the Minister of Justice as a Central authority in the administrative phase of the return proceedings is regulated by the Act no 369/2004 regarding the application of the 1980 Hague Convention (reformed in 2014[806]) and by the Order of Justice ministry no 3573/C of 9 October 2014. According to the personnel of the central authority, who gave us few short responses, until now no particular difficulties were identified as regard the procedure to be followed. After the reforms from 2014, the competences of the Ministry of Justice, as Central Authority, become clearer; also, the critics regarding the lack of impartiality of the Ministry of Justice (who acted both as Central Authority and representative of the claimant), diminished since at the present the petitioner residing abroad will be represented before the courts by a lawyer under the judicial assistance regime or chosen by himself.
Slovakia	CA works properly, is organised institutionally as government body and work with adequate methods. CA in Slovakia is: The Centre for International Legal Protection of Children and Youth (Centre). AS already mentioned Centre is the government body operating in the territory of the Slovak Republic. The Centre was established by the Ministry of Labour, Social Affairs and Family of the Slovak Republic as its directly managed budget organization to ensure and provide legal protection of children and youth in relation to foreign countries with effect from 1.2.1993. Scope of the Centre is defined in the Act. 305/2005 Coll. on social and legal protection of children and social guardianship and amending certain laws. Centre performs the role of a body designated to implement international conventions and legal acts of the European Union, namely: - it acts as a receiving and transmitting authority in the recovery of child support and other forms of family maintenance under international conventions, - it acts as a central authority in the field of international child abduction under international conventions and legal acts of the European Union, - it acts as a central authority in the field of intergovernmental adoption under the international convention, - it issues certificates under the international convention, - it performs other tasks in the field of child protection in relation to a foreign country under special regulations,

	- it provides free legal assistance in family law matters with a foreign element, especially in the area of maintenance, minor child care and adoption, - it cooperates with the receiving authorities and transmitting authorities of the contracting countries abroad, with the central authorities of the contracting countries abroad, embassies, central government authorities, banks, branches of foreign banks, local government authorities, regional government authorities and accredited bodies.
Slovenia	Before 2012 the Central Authority (hereinafter: CA) from Hague Abduction Convention (hereinafter: HAC) was at the Ministry of Interior. This situation caused many problems in past, because of the lack of knowledge. Therefore in year 2012 followed the transfer to the Ministry of Labour, Family and Social matters. Today, both CA (HAC and Brussels IIa Regulation) are at the same ministry. But, it would be more appropriate the CA should be under the auspices of the Ministry of Justice, since CA exercise the powers conferred by Brussels IIa and HAC who fall under the Ministry of Justice. Such an arrangement is also present in other countries (e.g. Austria, Switzerland). The CA has only one employee. In year 2014 the CA has been faced with 13 cases on international abduction. At the moment the employee in principle may cover the needs of CA. But this is problem in the case of absence (eg . illness, vacation, training, ...) and could lead to inconvenience in case of an increase of abduction matters.
Spain	According to the information provided by the experts we have contacted, the CA in Spain is organized institutionally in an appropriate way within the Ministry of Justice General Directorate of International Judicial Cooperation. However, it has to be pointed out that there is still a lack of personal and financial resources in this institution.
Sweden	No problems have arisen so far.
UK	Although the ICACU is a small administrative unit, staffed by non-lawyers, (it cannot give legal advice), practitioners have expressed satisfaction generally, [807] as has Reunite, a key NGO.[808] As Munby LJ has observed, 'The ICACU does not notify consular authorities about proceedings concerning a child of a foreign nationality either pursuant to *Re E (Brussels II Revised: Vienna Convention: Reporting Restrictions)* [2014] EWHC 6 (Fam), [2014] 2 FLR 151 or at all as that is not a central authority duty or function. ..a request for an opinion on jurisdiction is not a question for central authorities. The ICACU will not offer an opinion on jurisdiction and nor should a question about jurisdiction form part of a request for the collection and exchange of information…The ICACU does not become directly involved in the court proceedings. Central authorities are not under any obligation to engage in proceedings and do not require a court order before discharging their duties and responsibilities under the Revised Brussels II Regulation or the 1996 Hague Convention.'[809]

Question 48: Is there special training/courses on the relevant issues in the Brussels IIa Regulation, the Hague Conventions or specific matters such as child abduction for the staff of the CA in your Member State? If yes, what kind of training?	
Austria	In the Central Authority, there are three members of the judiciary who are competent for Brussels IIa, the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, and the the Hague Convention of 20 October 1980 on civil aspects of child abduction. They are permanently trained in the office, especially at weekly joursfixes and international seminars. An institutional training within the Central Authority is not appropriate in this list.
Belgium	On the job training is provided for new personnel. Furthermore, a process manual was established in 2015 with a systematic description of the processes pertaining to each instrument the CA works with, which is useful for members of the CA and new agents. The CA holds regular team meetings to discuss new developments in the instruments based on which it works, as well as to discuss difficulties with or the best ways to approach specific cases.
Bulgaria	-
Croatia	In 2013 Central Authority organized a series of several workshops for judges and lawyers employed to social welfare service, as well as mere employees of Central Authority. These workshops covered matters relating to Brussel II bis Regulation as well. Ever since there were no special trainings/courses for the staff of the Central Authority in the Republic of Croatia. However, state officers from the Central Authority are often participating in the educations/seminars that are related with their work area, organized by the academics, State School for Public Administration and others. Central Authority is actively participating in EU funded project awarded to academic institutions, where cooperation is substantive and continuous.[810] Cooperation has also been established regarding individual scientific work. However, information that would be most valuable to the academics, as ones relating to statistics and applications on concrete provisions.[811] Due to the lack of administrative staff the Central Authority was not able to handle additional education, but it had informed the Croatian Judicial Academy about the necessity of such educations.
Cyprus	- There is no organised local training program. Members of the CA however will occasionally attend training sessions in other jurisdictions when such opportunity arises.
Czech Republic	Yes. The CA organizes special lectures, workshops and conferences for its officials and allows them to attend different "external" events (e.g. seminars and conferences in ERA) and study visits at foreign CA. Currently, the CA leads a multidisciplinary project focusing on participation of the child.
Estonia	Yes and no – it is possible to take part of different training courses available for judges, lawyers etc, but no specific training for central authorities. Usually, the person being substituted etc, either trains the substitute or leaves manuals.
Finland	-
France	The CA's staff are composed of highly qualified persons: judges, former lawyers with experience in international family law matters, or high-level civil servants. The staff is trained on a continuous basis. Judges are trained in the context of courses at the National School for Magistrates in Bordeaux (Ecole nationale de la magistrature). Other staff members receive less specialized training. However, even for them there are training modules that deal with judicial cooperation in international family law matters. In addition, to the extent that this is possible, the CA's staff participate in the meetings of the European Judicial Network in civil and commercial matters dealing with the Regulation. They also take part in the special committees or conferences organized by the HCCH as regards the implementation of the Hague Conventions.
Germany	As far as I know, yes. There are regular conferences for the specialized judges and the CA staff on recent problems and developments.

Greece	There are not special training/courses for the staff of the CA on the relevant issues in the Brussels IIa Regulation but the staff attends all the events in that purpose organised by the European Union and the European Commission.
Hungary	What concerns the working method the everyday administration is operative via e-mails. In the Ministry of Justice there is more employers fulfilling the tasks of the CA and the urgent cases are always dealt with immediately. It is also a positive aspect that in both ministries the same persons and lawyers have been involved in such cases for many years so they are well experienced and also well-known not only by the Hungarian judges but also by the foreign CAs. The Central Authority is not only a 'transmitter' between the interested party and the attorney but administers the cases on the merits as well. It has the consequence as a positive aspect that the personnel interpret the legal sources for the parties (parents) especially if they are not represented by an attorney. Is there special training/courses on the relevant issues in the Brussels IIa Regulation, the Hague Conventions or specific matters such as child abduction for the staff of the CA in your Member State? If yes, what kind of training? The number of the lawyers dealing with child abduction cases is low and usually no special training is available for them. They take part on the annuals meetings of the European Judicial Network which is considered to be useful
Ireland	I am unaware of any specific training for the staff of the Central Authority. Those who work in this area are experts in the field.
Italy	The staff of the Italian Central Authority receives specific training both on the Hague Convention and the Brussels IIa Regulation. Updating courses are provided too.
Latvia	Staff of the CA on a regular basis is attending international conferences related to the topics covering the scope of the Regulation and the Convention. Staff turnover is very low – the same persons are working for the CA 11, 8 and 5 years.
Lithuania	We currently have no information regarding trainings for the staff of the CA in Lithuania.
Luxembourg	No special training/courses are organized for the staff of the Luxembourgish CA. However, the General Advocate attends different conferences held on these specific matters.
Malta	-
The Netherlands	Reply from the Dutch Central Authorities: *No, there is no specific training or course for the staff members of the CA. New Staff members of the CA (mostly lawyers or pedagogues) are usually well introduced in the substance of the matter concerning child abduction and child protection by their colleagues. Besides this they off course regularly follow training and courses for their own development.*
Poland	Internal trainings are organized within the CA. They are conducted by experienced personnel, employed for years in the CA.
Portugal	Yes, the staff has intense and proper training/courses in these matters.
Romania	With funds from specific European grants, the Romanian Minister of Justice organized training courses for magistrates and other persons with duties in the application of the Brussels II bis Regulation and of the EU Directive on the Mediation. The National Institute for the Magistrates organizes periodically courses for the continuous formation of magistrates, which cover also specific topics on the European regulations or international conventions to which Romania is part.
Slovakia	We do assume, that the employees of CA are trained and specialized for specific matters. CA organizes yearly international conferences dealing with Brussels IIa Regulation.
Slovenia	In Slovenia, the most trainings/courses on the relevant in the Brussels IIa Regulation, the Hague Conventions or specific matters such as child abduction issues are carried out by the *Judicial Training Center* (*Center za izobraževanje v pravosodju)*[812] at Ministry of Justice.

	Slovenian CA staff has legal education and qualifications. The person speaks fluent four foreign languages and others have also very good English language skills. They regularly attend various trainings organized by European Judicial Network.
Spain	According to the information provided by the experts we have contacted, the Spanish judicial net and the General Council of the Judiciary Power have recently organized some workshops or meetings in the field of international family law. However, it is still important to invest more resources and time in the training of judges in the field of international family law.
Sweden	There is no such special training.
UK	Presumably staff attend training events e.g. national CPD training courses.

Question 49: Are there practical difficulties and/or good practices with regard to the internal cooperation within the organisation of CA in your Member State?	
Austria	The Central Authority is located in a department of the Federal Ministry of Justice (one head, three judicial consultants, two clerks and a secretarial staff). The organization is lean, but not inefficient in international comparison.
Belgium	The CA is of the opinion it's not experiencing practical difficulties. With regard to good practices, mention can be made of the regular team meetings discussed in question 48. Informal discussion and brainstorming on specific problems or on the best approach in specific cases also regularly takes places.
Bulgaria	-
Croatia	No reports on functioning of CA in Croatia exists. As was notified directly from the Central Authority, there is a good cooperation within the Croatian Central Authority. As they indicate, despite the lack of administrative staff in the Central Authority no difficulties were identified in the realization of this kind of cooperation.
Cyprus	-
Czech Republic	In my view there are not serious difficulties. The CA has an internally well organised structure and uses modern methods to prevent conflicts internally and also towards the "clients", e.g. the supervision.
Estonia	No
Finland	-
France	As good practice it could be put forward that the French CA has a unit offering mediation services in international family matters. With the consent of both parents, this unit can become active at any time of the proceedings. Its main sphere of activity is international child abduction and transnational rights of access. Its services are free of cost and rendered in French, English or Arabic language. The unit also offers training sessions to private mediators wishing to familiarize with international matters.
Germany	I am not familiar with the details of the internal organization of the CA in Germany.
Greece	Good practices exist mostly in relation to the Central authorities of other EU member states. It appears that such cooperation is facilitated by the European Network of Justice. The Head of the Greek central authority notes that: "Operating as a Central Authority for Hague Convention 1980 and Brussels IIa on child abduction cases, our cooperation with other Central Authorities can be considered, at all levels, satisfactory, with no particular problems. Day-to-day real time communication via e-mails or facsimile is highly promoted to save time and accelerate procedures and transfer of information. Hard copies, if needed, follow".[813]
Hungary	Yes, there are good practices as the colleagues working for the Central Authority have been dealing with such cases for a longer time. Child abduction cases are administered by the whole personnel in the Department of Private International Law of the Ministry of Justice therefore there is division of such cases upon the ground of language at the best. Several lawyers work in English and there are some who work rather in German and/or French.
Ireland	There are no practical difficulties with the internal cooperation within the organization of the Central Authority.

Italy	As for the internal cooperation within the organisation of the Italian C.A. no practical difficulty or good practice has been reported.
Latvia	N/A
Lithuania	We currently have no information regarding internal cooperation within the organisation of CA in Lithuania.
Luxembourg	There are no practical difficulties with regard to the internal cooperation within the organization of the Luxembourgish CA, due to the small number of staff and the allocation of its working space on the same floor. No particular good practices are followed regarding internal cooperation.
Malta	-
The Netherlands	Reply from the Dutch Central Authorities: *Until now, no practical difficulties have arisen with regard to the internal cooperation within the organization of the CA.*
Poland	There are no practical difficulties. Good practices were established during years of practice on the base of Articles 55 and 57 of the Brussels IIa Regulation.
Portugal	There is no evidence of any difficulty.
Romania	(see 51)
Slovakia	No there aren't practical difficulties. Good practices: CA organizes yearly network meetings for judges, employees of CA, social workers, mediators on national level.
Slovenia	No problems, but difficulties may occur due to fact, that the CA has just one employee. See above.
Spain	According to the information provided by the experts we have contacted, no internal problems have been detected in the organization of the CA in Spain.
Sweden	There seem to be no practical difficulties.
UK	See response to Q 45, above.

Question 50: Are there practical difficulties and/or good practices with regard to the cooperation between the CA and other authorities/organisations/judiciary in your MS, both on a formal and informal level?	
Austria	The cooperation is partly formal (file transfer), partly informal (including e-mail and telephone) and works very well because the employees of the Central Authority were recruited from the judiciary.
Belgium	The main partner of the CA is the Public Ministry (Prosecutor's Office), to whom the CA transfers Article 55 requests for welfare checks as well as child abduction requests for localization/hearing of the person(s) with whom the minor(s) is (are) staying and, if necessary, introduction of court proceedings in a later stage. The Public Ministry has designated five persons of reference on the first instance level and five on the appeal level which deal with Hague Convention/Brussels IIa matters. So, there is a concentration of experience and continuity in dealing with cases. The CA is of the opinion that it has a good working relationship with the Public Ministry, and informal discussion in specific cases often takes place. From time to time, coordination meetings are also held in specific cases with the CA, the Public Ministry, the applicant, and, if applicable, the Ministry of Foreign Affairs in order to discuss possible ways forward/practical actions to resolve a blocked situation. The CA does note that the delay between the transfer of the case and the response regarding localization/hearing can be quite long at times (a few months). Other authorities (such as Courts for Article 15 cases; regional child welfare agencies for Article 56 cases; the NGO Child Focus for Hague Convention cases; the Ministry of Foreign Affairs) also work well with the CA. If necessary for the good follow-up of a case, (informal) discussion takes place. With Child Focus, the CA occasionally holds formal meetings. In communications with the previously listed authorities, privacy considerations are taken into account: not all information/documents can be shared. Finally, mention is made of the existence of a cooperation protocol between the CA, the judicial authorities (Public Ministry), Child Focus and the Ministry of Foreign Affairs in which the role of each and their mutual cooperation is outlined.
Bulgaria	-
Croatia	No reports on functioning of CA in Croatia are publicly available. As CA notified upon request, the Central Authority is mostly cooperating with the authorities having jurisdiction for decision making and procedure conducting in accordance with the Act on Implementation of Brussels IIbis Regulation. Precisely those are the relevant civil courts and Centers for Social Welfare. Very good cooperation was noted between the Central Authority and these competent authorities, which was mostly carried out formally. Additionally, there is a common practice on preliminary delivery of letters via e-mail, pursuant the urgent nature of the proceeding conducted upon the Brussels IIbis Regulation. Also, Central Authority is cooperating with the state administration authorities competent for judiciary, interior, foreign and European affairs and others. As notified by Central Authority this kind of cooperation is beneficial for urgent delivery of the information required by the Central Authority.
Cyprus	-
Czech Republic	The CA cooperates at the national level with local child-welfare authorities and in some cases acts as a *guardian at litem* of child in court proceeding (except of return proceeding). The CA is a member of the Internal Judicial Network in Civil and Commercial Matters and of the European Judicial Network in Civil and Commercial Matters (EJN). The CA, as a special child-welfare authority, is subordinated to the Ministry of Labour and Social Affairs, but has also very close connection to courts and the Ministry of Justice. Despite this "disunity", the cooperation is more than satisfactory.
Estonia	We try to train / meet with many of our partners – courts / judges, lawyers, local child protection authorities etc.
Finland	-

France	To address difficulties regarding the cooperation with other authorities, the CA is currently elaborating a practical guide that will deal with civil and penal matters in the context of international wrongful child removal. This guide will be addressed to prosecutors and courts in order to reinforce the cooperation between the various authorities that may intervene in these matters. It would be helpful if juvenile judges and departmental councils (conseils départementaux) were more aware of the application and applicability of existing international law instruments.
Germany	Dito.
Greece	The Central authority will try to get in contact with the competent jurisdiction once the procedure for the return of the child has been delayed. The head of the Greek central authority observes: "In many cases, for the application of national law, the Central Authority consults judges, national contact points of the European Judicial Network in Civil and Commercial Cases (EJN). Exchange of views of information and best practices on the application of these legal instruments is also conducted between the contact points of the EJN at the regular EJN meetings at European level, where staff from our Central Authority and judges (national members of the EJN) participate."
Hungary	There are established routines and cooperation which work well. The personnel of the CA and the judges of the Pest Central District Court which has exclusive jurisdiction in child abduction cases have occasionally meetings where they discuss the emerging problems. The cooperation between the two ministries fulfilling the tasks of the Central Authority belongs to the daily routine. They maintain personal contact with the personnel of the police as well.
Ireland	There are no practical difficulties with cooperation between the CA and other authorities / organization / judiciary.
Italy	A special point of interest is the cooperation between the C.A. and the Minors' Courts (*Tribunale per i minorenni*), which are 29 in the country. As the Lowe's report illustrates, it would be preferable to concentrate jurisdiction only in some of these courts, to avoid diversity of treatment of the cases. Moreover, appeals are only possible to the Court of Cassation, requiring long time to be heard, as there is no special procedure for abduction cases.
Latvia	Staff of the CA on a regular basis is giving trainings to other authorities/organizations/judiciary on the topics covered by the Regulation.
Lithuania	We currently have no information regarding cooperation between the CA and other authorities/organisations/judiciary in Lithuania.
Luxembourg	No problem has been encountered. The cooperation with other authorities/organizations/judiciary in Luxembourg is very good especially due to close working channels among these authorities.
Malta	Since Malta is a small country there are no major issues……There are actually good practices and good communication with the authorities, organisations and the court system.
The Netherlands	Reply from the Dutch Central Authorities: *The CA has positive experiences with regard to the cooperation with organizations and the judiciary in the Netherlands that are involved in the subjects of the Regulation and the Conventions. The CA regularly meets with all parties.* *Specifically can be mentioned the International Child Abduction Center, a foundation in the Netherlands, subvented by the Ministry of Security and Justice, which informs and supports parents who are confronted with a(n) (threat for a) child abduction. This foundation also assists parents in finding a specialized lawyer. Besides this, the foundation operates the Mediation Bureau. The Mediation Bureau organizes cross border mediation. This enables parents, assisted by two experienced cross border mediators in an informal, discrete environment, to settle their disputes independently and objectively.*

Poland	See point 49.
Portugal	There is no evidence of any difficulty.
Romania	(see 51)
Slovakia	No there aren't practical difficulties.
Slovenia	The jurisdiction on return of the child is given to 11 District Courts.[814] Some District Courts judges are specialized for family matters. But no judge is specialized just for the abduction cases. Judges, at smaller district courts, also stated that they have with international child abduction modest or no practical experiences. But on the other hand, judges which already have experiences with international child abduction cases, emphasized and praised the good cooperation with Slovenian CA. The "concentrated jurisdiction" could be useful and desirable, because Slovenia is small country and every named district court could be reached from the capitol Ljubljana (if we proceed from the fact, that the District Court of Ljubljana could have the jurisdiction and specialized judges) inside of two hours. The CA cooperates efficiently with other governmental agencies, the Ministry of Justice, the Ministry of the Interior and the CSW, police… Communications are verbal, by mail and electronically.
Spain	According to the information provided by the experts we have contacted, there is a fluent and active communication and relationship between the CA and the judiciary authorities.
Sweden	In general, the cooperation works satisfactorily.
UK	See response to Q 45, above

Question 51: Are there practical difficulties and/or good practices with regard to the cooperation with CA's in other Member States, both on a formal and informal level?	
Austria	The better known in person and the more closely the legal regulations are in formal and material terms, the more smoothly the communication takes place. Also international many can be solved by e-mails or telephone calls.
Belgium	The degree of assistance given by the CA, the information provided in response to inquiries (for instance about potential assistance by the CA or about national law on topic such as appeal), and the delay to respond differs from Member State to Member State. Some CAs are more involved, while other only transmit information between the requesting CA and the authorities in their own Member State. There is also a difference in how involved CAs are in the execution/enforcement of decisions. The Belgian CA has also had cases where it took exceptionally long to receive a copy of the Hague Convention decision or the documents pursuant to Article 11.6. Another difference is whether or not a CA in the other Member State assists the applicant for the translation of the application in the right language. In this context, the Belgian CA wishes to draw attention to the fact that the language for translation depends on the presumed whereabouts of the minor(s). It is therefore strongly advised that the CA from the other Member State reaches out to the Belgian CA with a mention of the supposed whereabouts of the minor(s) before assuring the translation/informing the applicant about the translation language. The Belgian CA will promptly advise on the required language. On a few occasions, the CA has had representatives of the CA from another Member States (FR, PT) visit its offices and receive information on the way it functions.
Bulgaria	-
Croatia	Upon request, Central Authority notified that this body has a good cooperation with the Central Authorities of the other Member States. This kind of cooperation is mostly carried out formally, with the previous delivery of the letters via e-mail. Informal cooperation between officers of Croatian Central Authority and officers from Central Authorities of other Member States is conducted via email communication. Such informal communication occurs regarding the specific open cases handled between two states and with the respect to the information about national proceedings, respectively the legal possibilities available to the applicants in accordance with the national law of the Member States. Cooperation with other member states authorities substantiates also within the regular Central Authorities meetings organized by European Commission, which are attended by the Croatian Central Authority. Special values are attributed to continuous bilateral meetings focused on the open cases solving. As notified by mere Central Authority, no difficulties have been detected in respect to the cooperation with the Central Authorities of other Member States.
Cyprus	-
Czech Republic	The Czech Central Authority had quite negative experience with services of some foreign Central Authorities and their inaccurate interpretation of the Hague Child Abduction Convention and the Regulation and delays of reactions to requests. In one case, a foreign Central Authority asked, four month after receipt of a return application, for additional documents which were, under the opinion of the Czech Central Authority, not relevant for return proceedings (confirmation of the father on payment of maintenance). After some time, more than one year after receipt of the return application, the foreign Central Authority replied, no return proceeding would be initiated; the applicant (left-behind parent) was advised to find a solicitor on his own behalf to start return proceedings. In another case, the foreign Central Authority refused to initiate proceeding on contact rights explaining that the Convention (the Hague Child Abduction Convention) shall be applicable only in urgent cases arising from abduction or another serious circumstance. Some foreign Central Authorities provide information on the situation of the child with considerable delay (in some cases more than six month).
Estonia	We have very good contacts with Finland as we have the highest number of cases with them. We are in touch very often informally, but we also have 2 roundtables annually: 1) Central authorities roundtable to discuss any difficulties etc; 2) Child protection roundtable between 2 countries, where we involve different ministries and child protection authorities.

Finland	-
France	To my knowledge there are no significant practical difficulties except perhaps, when the French CA's counterparts in other Member States suffer budget cuts.
Germany	Dito.
Greece	See above under 49.
Hungary	There are not too many lawyers dealing with child abduction cases in the Hungarian Central Authority but they are well experienced having been working in this field for many years and have well-built relationships with several Central Authorities in another MSs also on informal level. According to the information received from the personnel of the Central Authority they prefer the bilateral meetings which are organized on the occasions of the European Judicial Network's annual meetings. As the e-mail contact with a foreign CA sometimes does not work effectively these bilateral meetings provide a chance to discuss some cases personally and therefore those are effective. They can deal not only with cases but also with general issues. The experiences confirm that the personal contact has huge importance in the administration as well.
Ireland	I am unaware of any practical difficulties with cooperation between the Central Authority and Central Authorities in other Member States.
Italy	As for the cooperation with C.A. of other Member States, no specific practical difficulty or good practice has been reported.
Latvia	There are no any specific substantial difficulties with regard to the cooperation between the central authorities. All experienced difficulties are purely administrative – which Central Authority provides translation of documents, too long period of providing the response to the requests, etc.
Lithuania	We currently have no information regarding cooperation with CA's in other Member States in Lithuania.
Luxembourg	There are no specific difficulties with regard to the cooperation with CA's in other Member States.
Malta	No major issues
The Netherlands	Reply from the Dutch Central Authorities: *In most cases the cooperation with CA's of other member states can be considered as good, both formally and informally. With the CA's of a few states however, the cooperation can be considered as difficult, due to a lack of communication with the CA's (late or no response to messages etc.).*
Poland	There are no practical difficulties regarding cooperation. Its frames are established by Articles 55 and 57 of the Brussels IIa Regulation. The Polish CA usually cooperates with the CAs from 5 counties (GB, Ireland, Belgium, Germany and the Czech Republic) – cooperation with the British one can be defined as exemplary.
Portugal	There is no evidence of any difficulty.
Romania	49-51. Given the long activity of the Minister of justice (as central authority) in the field of international child abduction, the relations with central authorities from other MS and with other Romanian or foreign authorities has become smoother; until now, the specialist in the Minister did not feel the need to elaborate a (public) guide with good practices regarding the cooperation with these authorities. Nevertheless, the Minister of justice concluded protocols of cooperation with the Direction of Criminal investigation (of the General inspectorate of Romanian Police), and with the Bucharest Bar (regarding the lawyers' fees for providing legal assistance). Based to Ministerial Order no 3573/2014, the Romanian Central Authority is obliged to confirm the reception of applications, to transmit to the applicants (natural persons) the standard forms to be completed and to give them support for their completion, to inform the applicants about the courts' decisions in the case. According to the same Ministerial Order, the communications will be made by fax, email, post.

Slovakia	No there aren't practical difficulties. Good practices: Employees of CA take participations at conference abroad organizes by CA's in other Member States.
Slovenia	No, special difficulties have been reported. The cooperation is also smooth. Slovene CA has good co-operation with ECtHR, CJEU, CA from other EU Member States, EJN-civil, HCCH, Hague Network Judges, diplomatic and consular representations abroad, …
Spain	It has not been possible to identify difficulties or good practices in regards to the cooperation with the CA's in other Member States.
Sweden	In general, the cooperation works satisfactorily, but problems arise occasionally with regard to the translation of documents. If other problems arise, they can be solved within the framework of bilateral contacts in connection with EJN meetings.
UK	See response to Q 45, above

Question 52: What information/research data is available regarding the positive or negative experiences of the parents and children involved in their relation to the CA in your jurisdiction?	
Austria	Because of the strong near to the citizens of the Austrian courts (where applications were filed, the hearings were held, and, if necessary, mediations were initiated) and the construction of the Central Authority as the hub of the current of the files, but not the contact person to the parties, here is little contact between the parties and the Central Authority, except for legal information There is also a lack of data on party satisfaction.
Belgium	Currently no such information/research data exists.
Bulgaria	-
Croatia	Web site of the Ministry for demography, family, youth and social policy provides some general information about the parental responsibility proceedings according to relevant Regulation and Conventions are available: http://mspm.hr/istaknute-teme/medjunarodna-suradnja-u-podrucju-zastite-djece/561. On the same web location, the Form for the Application for the return of a child and Form for the Application for ensuring effective exercise on access rights are available. Additionally, users are directed towards useful web addresses and link to the: E-Justice Portal, Eur-Lex, HCCH and others. Upon request, Central Authority notified that the officers of Croatian Central Authority are at disposal to the potential applicants and other interested parties. They are formally receiving the formal queries but are also directly responding to e-mails and phone call (contact details available on the web sites of the Ministry, E-Justice Portal - Atlas and HCCH). Thus they give the instructions on the procedure and necessary documentation, deliver the forms and give the professional support on the filing the forms to the potential applicants and other interested parties (judges, Center for social Welfare workers, lawyer and others).
Cyprus	- There is no such information available.
Czech Republic	No data available.
Estonia	No information available
Finland	-
France	The CA has not yet collected such data. However, it is currently participating in a European study on the subject that aims at interviewing parents and children concerned by a proceedings, how they perceived the treatment of their case by various authorities, including the CA.
Germany	I am not aware of any empirical studies in this respect.
Greece	There are not sufficient data in that sense. Eventually, this is due to the fact that the most important part of this procedure is assumed by the lawyers that represent the parents.
Hungary	There is no research data as there has not been a special research yet. Nevertheless, the personnel of the CA is in contact with the interested families and it is a daily or weekly contact depending also on the case and the willingness of the family members. According to the experiences of the CA the personal contact with the interested persons helps in making the legal situation, legal sources and possibilities understandable and clear. The possibility of a case conference with the participation of every interested parties is attractive for them nevertheless it does not occur in Hungary. The possibility of mediation as an alternative dispute resolution is always offered and its availability is explained but it is not really used.

Ireland	There appears to be no such research / data on the experiences of parents and children with the Central Authority.
Italy	No feedback is published as for parents and children experiences.
Latvia	No information available. CA of Latvia did not introduce any questionnaires or surveys in order to ascertain opinions of persons involved.
Lithuania	Information regarding experiences of the parents and children involved in their relation to the CA is confidential in Lithuania and is not available for public.
Luxembourg	There is no specific information or research available on this issue. However, in general, there is no obstacle between the families and the Luxembourgish CA, due to its approachable staff and the small office dealing with these matters.
Malta	-
The Netherlands	Reply from the Dutch Central Authorities: *the Dutch Central Authority does not apply any instrument regarding measuring the satisfaction of parents and children in their contacts with the Central Authority. In 2015 a report under auspices of the Netherlands Scientific Research and Documentation Center was issued about the research into the practice of the implementation of international child abduction in incoming cases in the Netherlands, compared with England and Wales, Sweden and Switzerland. This report contains among others the result of an inquiry into the experiences of parents and children in their contacts with the Dutch Central Authority.*
Poland	Only the number of cases decided in a course of application of the 1980 Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction in the Ministry of Justice (CA) statistics – available on a website of the Ministry.
Portugal	There is not enough information to properly answer the question.
Romania	There is no information/studies/research regarding the experience of families in their relation with the Romanian CA in the field of child abduction cases.
Slovakia	There aren't public data available regarding the positive or negative experiences of the parents ect. There are official statistical data available in annual reports.
Slovenia	In Slovenia we don't have any concrete data on: - cases related to Brussels IIa regulation or Hague Abduction Convention; - statistical issues related to both instruments; - positive or negative experiences. We strongly support the necessity of the introduction, organization and management of the above mentioned bases.
Spain	According to the information provided by the experts we have contacted, the CA is registering all the cases while, at the same time, providing statistics. The perception of our experts is that the experience between the CA-parents and children involved is really positive.
Sweden	The information is not available.
UK	See response to Q 45, above

Question 53: How does the role of the CA under Brussels IIa Regulation in your Member State relate to the role of the CA under other European regulations and international treaties? Please mention the differences and similarities.	
Austria	Division I 10 of the Federal Ministry of Justice is the central authority both under the terms of the Brussels IIa Regulation, as well as under the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, the Hague Convention of 20 October 1980 on civil aspects of child abduction, the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention of 13 January 2000 on the International Protection of Convention of 13 January 2000 on the International Protection of Adults. International process aid and legal aid (notifications, taking evidence) are also located in the same department. This allows a greater overview and avoids the development of different practices. Of course, this also depends on the number of cases and the size of the authorities and can hardly be seen as a guideline for significantly larger countries (for example, Germany and the BAJ Bonn).
Belgium	The same service at the Federal Public Service Justice acts as CA for the 1980 and 1996 Hague Conventions, the Brussels IIa Regulation, the Evidence Regulation (Article 17), the Legal Aid Directive, the Maintenance Regulation & Hague Convention, as well as the 1965 Service Hague Convention, the 1954 Civil Procedure Hague Convention, and the 1968 London Convention on Foreign Law Information. The benefit is that this stimulates a consistent approach of cases under the different legal instruments. There is one sole exception. The Belgian Central Body concerning the Service Regulation 1393/2007 is the National Bailiffs' Association of Belgium (Avenue Henri Jaspar 93/Henri Jasparlaan 93, B-1060 Bruxelles/Brussel, Chambre.Nationale@huissiersdejustice.be, Nationale.Kamer@gerechtsdeurwaarders.be). However, this Central Body has a quite different and marginal role (see Article 3 Service Regulation 1393/2007) because of the fact that the service mechanism itself is decentralized.
Bulgaria	-
Croatia	An indicated above, except for the Brussels IIbis Regulation, Service for the Service for International Cooperation in the field of Protection of Children and Coordination of Social Security Systems perform the tasks of the Central Authority upon Regulation No 4/2009 and family related Hague Conventions. It also performs the task of the Receiving Agency upon the Convention on the Recovery Abroad of Maintenance, New York, 20 June 1956. Furthermore, the Service performs the tasks of the competent authority according to the regulation on coordination of social security in the field of family benefits and maternity and paternity benefits. In the parental responsibility cases handled with other EU Member States, there is a parallel application of the Brussels IIbis Regulation and 1980 Child Abduction Convention. Applications received from the same applicant but based on different legal ground are handled as particular cases. The manner of work of the Croatian Central Authority, considering the cooperation with competent authorities, state authorities, foreign Central Authorities and parties, is in the most of the cases similar in large to the described in above questions, regardless the legal ground of the request.[815]
Cyprus	-
Czech Republic	In the Czech Republic, we have one CA for all EU legal acts and international treaties on child protection (parental responsibility, maintenance, international adoptions). The role of the CA is more or less the same under each of the mentioned instruments. The CA shall assist to international families in crisis and make the application of the instruments easier.
Estonia	All CA roles, except under the Hague 1993 Convention, are fulfilled by the same unit and the same people. With Brussels IIbis Regulation, Hague 1980 & 1996 Conventions, the help provided by the CA is as flexible as possible. We try to help as much as possible.
Finland	-

France	In France there is only one CA for all family matters except for the case of maintenance obligations and international adoption. The CA adopts a comparable role throughout all instruments.
Germany	The same authority (*Bundesamt für Justiz*) is also in charge for other international instruments.
Greece	In Greece the CA under Brussels IIa Regulation continues functioning as the CA had been established under the Hague Convention regime. From an administrative point of view the role and function it seems that the CA has not in actual fact been amended since the entrance into force of the Brussels IIbis Regulation.
Hungary	The Department of Private International Law of the Ministry of Justice is the Central Body concerning the 1980 Hague Child Abduction Convention, the Central Authority of the Convention 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, Protocol of 2007 on the Law Applicable to Maintenance Obligations, Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters seeks to improve, simplify and accelerate cooperation between courts in the taking of evidence and the Council Regulation (EC) No 4/2009 of 18 December 2008 relating to maintenance obligations aims at ensuring the effective and swift recovery of maintenance. The Department of Child Protection and Guardianship of the Ministry of Human Capacities is the Central Authority concerning Convention of 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption and Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.
Ireland	The Central Authority also operates as the Central Authority under the European Convention on Recognition and Enforcement of decisions concerning custody of children (Luxembourg Convention)
Italy	The Central Authority for Italy is also responsible for the operation of several international and European treaties and conventions: the 1980 Hague Convention on International Child Abduction, the 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children, the 1970 European Convention on the Repatriation of Minors, and the 1961 Hague Protection of Minors Convention. Most of the C.A. work however concentrates on the Hague Convention. Difference and similarities in the role of the C.A. are not sensible.
Latvia	CA of Latvia under the Brussels IIa Regulation is also the CA for the 1961; 1980 and 1996 Hague Conventions and all bilateral agreements on the matters of judicial cooperation. No issues or difficulties observed in respect of that
Lithuania	CA of Lithuania the State Child Rights Protection and Adoption Service (*Lith. - Valstybės vaiko teisių apsaugos ir įvaikinimo tarnyba*) is subordinated to the Ministry of Social Security and Labour of the Republic of Lithuania. It's a specially established distinct authority of Lithuania to coordinate and monitor implementation of national policy as well as national and international legislation. The ministries of the government of Lithuania usually follow the organizational structure as the above mentioned example with State Child Rights Protection and Adoption Service. Each ministry has established special distinct authorities which work as CA under other European regulations. Such CA coordinate and monitor implementation of EU regulations and are fully subordinated to the ministries. The most essential difference for State Child Rights Protection and Adoption Service is that provisions of Civil Code of the Republic of Lithuania determine a mandatory participation of this CA in all cases at courts, where disputes related to a child are solved (Article 3.178). No other CA of Lithuania has such legal regulation.
Luxembourg	In the Grand-Duchy of Luxembourg the General Prosecutor exercises the role of CA for the majority of European regulations and international treaties. However the daily work of the CA under the different instruments is carried out by the General Advocates of Luxembourg, representing the General Prosecutor. So each General Advocate is in charge of a specific regulation or treaty. The relationship among them is very close and smooth, all following the same working method, without relevant differences being spotted.
Malta	The Central Authority in Abduction cases takes a more pro-active role in court proceedings. However in both scenarios, the central authority is helpful and seeks to achieve the harmonization and implementation of the applicable legislation.

The Netherlands	Reply from the Dutch Central Authorities: *See the reply to question 45. The difference between applying the Brussel IIa Regulation and the 1980 Child Abduction Convention and the 1996 Child Protection Convention is, that the Brussel IIa Regulation prevails over both Conventions.*
Poland	According to the widespread belief, the Brussels IIa Regulation gives much more room to maneuver than for instance the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children - due to the lack of closed catalog of measures that CA may undertake under Article 55. While in the Convention numerus clausus of the CA activities was provided, the Regulation contains the term: all appropriate steps. It makes possible to take actions that are necessary at a given moment in a particular case. The solution from the Regulation seems to be more practical and more effective.
Portugal	There is not to much to report, since de CA is the same for the purposes of the Regulation and other regulations and international treaties, like for example: a) Convention of 1961 Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants; b) Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; c) Convention of 20 July 1983 on Judicial Co-operation relative to the Protection of Minors, between the Government of the Portuguese Republic and the Government of the French Republic; d) Convention of 12 June 1992 relative to Judiciary Assistance in matters of custody and rights of access, between the Portuguese Republic and the Grand Duchy of Luxembourg.
Romania	The ministry of justice's role as Central Authority is in general similar for the European regulations; it implements the judicial cooperation with the authorities from others Member States (cooperate with other central authorities, transmits applications and information to the appropriate authorities and courts). As detailed by the Act no 369/2004[816] and by the Ministerial Order no 3573/2014[817], its activity in the field of cross-border child abduction knows some specificities. For example, the Romanian Central Authority is obliged by law: - To try to solve amiably, including by mediation, the disputes between the parties, for a voluntary return of the child; - To intervene among the Police authorities in order to locate in Romania the child and the abducting parent; - To seize the competent authorities for children protection in cases of potential dangers regarding the child; - To facilitate the translation of judgements by an authorized translator; - To inform the applicant about the possibility to contest a judgement; - To assist the courts as regards the return of a child after a non-return order, the cross border placements, the transfers of the case.
Slovakia	The Slovak CA works with the same methods as CA under Brussels IIa Regulation one side and as CA under Hague Child Abduction Convention.
Slovenia	As well the CA under Brussels IIa and Hague abduction Convention also CA under Despite the fact that Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children from 1996 (hereinafter: Hague Convention 1996)[818] is under the Ministry of Family. Despite the fact that Hague Convention 1996) is applicable in Slovenia since 2005, no special attention in literature or in case-law have been given to its application. Cooperation system under Hague Convention 1996 is similar (to Brussels IIa Regulation). The Hague Convention has 45 Contracting States and all the EU Member States are also contracting State.
Spain	It has not been possible to obtain information in this regard.
Sweden	In addition to the differences between the tasks of CA under the various Regulations, it should be noted that the CA function is assigned to various bodies. For example, the

	Ministry of Foreign Affairs is the CA under the Brussels IIa Regulation, Ministry of Justice is the CA under the Regulation on the Taking of Evidence, the Social Insurance Office acts as CA pursuant to the Maintenance Regulation, etc.
UK	See response to Q 45, above

Question 54: Were there other problems encountered in the application of the Brussels IIa Regulation? Considering the experience in your jurisdiction in resolving these problems what would be suggestions for improvement?	
Austria	Auf folgende Punkte sollte bei der Revision der Brüssel IIa-VO das Augenmerk gelegt werden. The following points should be considered during the revision of the Brussels IIa Regulation. • to promote consensus • on the effectiveness of overall packages (return - relocation - due care - maintenance); Who approves this? • To promote contact with the parent left during the return process • Introduction of the adjustment of foreign decisions • Abandonment of exequatur in the case of the formation of concrete grounds for refusal (not simple: child well-being) • (at least partial) renunciation of perpetuatio fori • Clear rules on cooperation Simplified provisions for placement in another Member State
Belgium	An ongoing issue concerning the Regulation is the lack of awareness of its application for the local authorities. For instance, dealing with the recognition of divorce acts or judgments within the EU, the Flemish Agency for Integration[819] reported that many local authorities are not aware that European judgments or acts are governed by the recognition regime of Brussels IIa. It occurs that a European divorce act already has an Apostille, but not an Article 39 certificate. The question remains in that case if the certificate is still necessary.
Bulgaria	-
Croatia	Besides previously mentioned difficulties some additional issues may be highlighted. Application of the *lis pendens* rule in practice should be clarified. Judges are facing problems on the matter of establishing the fact that ongoing process is taking place abroad. Regulation prescribes an *ex officio* obligation for the court to establish the moment of seizure of both courts. Perhaps direct judicial cooperation and EJN are effective tools in discovering relevant data, but Croatian practice is rather reluctant to EJN mechanisms. One's a court receives some information from a relevant court in the other member state, a question remains which kind of a document deriving from foreign jurisdiction should be used by the judge in establishing the fact that prior procedure is ongoing in another member state. In one unreported case a first instance judge relied on the document on foreign language which he has substantive knowledge of, and dismissed the claim with conclusion that procedure is ongoing in Italy. However, the appellate court did not uphold that reasoning, as it stated that it has to be an officially translated document that may be relevant pursuant to Croatian Procedure Act.[820] There is ambiguity on the question which national authority is competent for the issuance of the certificates of Art 39 and Art 41. In accordance with Art 39, the competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex I (judgments in matrimonial matters) or in Annex II (judgments on parental responsibility), and in accordance with Art 41(2) the judge of origin shall issue the certificate using the standard form in Annex III (certificate concerning rights of access). Available information's confirm there is no uniform solution in this matter before the Croatian courts. At some courts a concrete judge that has rendered a judgement is filling and verifying the certificate, while in some others other persons (not a judge) are adjudicated for certificates matters. Open issues relate also to the transfer of a court under Art 15. It would be advisable to introduce a form of a transfer containing mandatory information relevant in these cases.
Cyprus	-

Czech Republic	In my view, currently, the most serious problem is the different level of services provided by the Member States and their Central Authorities and respect for obligations set in the Regulation. The revision of the Regulation should bring clearer and stricter obligations towards the Member State.
Estonia	When the parents reach an amicable solution during child abduction proceedings and agree that the child can stay in that country and put in place the access plan, the court does not have jurisdiction to confirm this agreement. This is problematic from point of view of CA.
Finland	-
France	Regarding other problems encountered in the application of the Brussels IIa Regulation, the *lis pendens* rule is sometimes difficult to implement. In matrimonial matters, the rush to the court phenomenon puts a strong pressure on the *prior tempore* rule pursuant to Article 19. The terms "where the jurisdiction of the first court seised is established" had to be clarified by the CJEU in the case *A v. B*, 6 october 2015, aff C-489/14. The French Cour de Cassation also had to decide a case where the spouses had seised the courts of two different Member States on the same day so that the determination of the first court seised was depending on the precise hour when the action for divorce was filed (Civ. 1re, 11 juin 2008, *Klammers c/ Leman*). This observation strengths the necessity of allowing the spouses to agree on a choice of *forum* clause for divorce.
Germany	None. As far as I can see, the German courts had – in comparison to other European instruments – no particular problems in applying the Brussels IIa Regulation.
Greece	The rationae personae application scope should be clearly defined in the Regulation. Further, delineation of its application scope from other Regulations' scope is also a well-known and raised aim. Furthermore, the head of the Greek central authority notes that in relation to article 11(6)-(8) of the Regulation the following points must be taken under serious consideration "- The need for meeting the requirement of expeditious procedures and the provided deadlines for issuing a judgment - Direct communication between the court in charge of ruling on the return and the authorities in the state of origin should be improved -Judicial training should be promoted focusing on the application of Art. 11 (particularly par. (6)-(8)) and relevant provisions of the Regulation - Issue of enforcement of return orders in the Member State : as the enforcement procedure is governed by the law of the Member State of enforcement and as differences exist between national laws, difficulties may arise with regard to the enforcement of the relevant decisions".[821] Besides that the head of the Greek Central authority stresses the need to take into account the following issues in relation to article 55: " - the need for effective cooperation of central authorities as regards the collection and exchange of information on the situation of the child; internal procedures and formalities may affect the transfer of the required information - the need for the accuracy of the request in order to save time and accelerate procedures for its execution (also, in some cases the relationship between the Regulation and the Taking of Evidence Regulation should be clarified)".[822]
Hungary	-
Ireland	There are no reported difficulties in the application of Brussels IIa.
Italy	- On the whole, better coordination with the Hague Convention would be advisable, in order first of all to gain a quicker return of the child, or a quicker definition of the matter. Procedural aspects resulting from the application of both these instruments should especially be coordinated and simplified. - The issue of time is crucial. To contrast the phenomenon of children abduction, the return of the minor should be the rule, but it is essential that it is ordered and performed in a reasonable short time. In a recast of the Regulation, therefore, time issues should receive great attention. - A leading author has written that when the return order "is not complied with or enforced in a very short time...the best interest of the child would call for a subsequent review of the decision rendered by the court of the place of the child's habitual residence". - Parents should be more informed about the opportunities offered by the Regulation Brussel IIa. It has been noted that left-behind parents often do not involve immediately the court where there minor has his or her habitual residence, but they address the foreign court. This behaviour turns into a waste of time and in the end endangers the minor's rights.

	Suggestions about more detailed aspects have been set out in answer to the question 5.
Latvia	N/A
Lithuania	No other problems were encountered in jurisdiction of Lithuania, which would be worth noting.
Luxembourg	Other problems related to the application of the Brussels IIa Regulation involve its lack of application when it should have been applied. For example, in cases where the instrument applied was the previous Regulation 1347/2000, being the claim filed in 2008 ('Tribunal d'arrondissement de Luxembourg', nos. 113414 and 113949, 17 June 2008). Or cases where the Regulation was not applied because one of the elements of the case was connected to a third State (please see questions 6 and 11, above). Another issue, problematic from the perspective of the parties and not because of the wrong application of the Regulation by the judges, is the determination of the competent court for issuing provisional measures. In several cases the parties asked the Luxembourgish courts to issue extraterritorial provisional measures ('Tribunal d'arrondissement de Luxembourg', no. 108656, 13 July 2007; 'Tribunal d'arrondissement de Luxembourg', no. 112405, 4 March 2008; 'Tribunal d'arrondissement de Luxembourg', no. 137433, 29 July 2011). In general terms, the suggestions for improvement are: 1) to draft provisions with a clearer wording; 2) to give better training to the professionals involved in the application of the Regulation; 3) to draft guidelines which clarify the application of the Regulation in practical terms and 4) to strengthen coordination among judges and authorities of the different Member States.
Malta	We need to ensure that our courts have flexibility to ensure that culture, mentality and stability are kept in mind and ensured at all stages in order to decide what is really in the child's best interests in that particular case – without falling into the trap of over-regulating everything whilst prejudicing the children's rights (though not intentionally) since every child's needs are different.
The Netherlands	See mainly the remarks above in reply to questions 13, 34, 39 and 40. Reply from the Dutch Central Authorities: *Modification of the Regulation itself would be desirable, specifically with regard to aspects such as recognition and enforcement of decisions and foster care. Since the Regulation is now in the process of revision, proposals to improve the Regulation will, from the part of the Netherlands, be put forward during discussion sessions regarding the revision of the Regulation in Brussels.*
Poland	No, there were none.
Portugal	There is no evidence of any other problems.
Romania	-
Slovakia	There aren't any other problems encountered in the application of the Brussels IIa Regulation.
Slovenia	No specific problems are present.
Spain	Suggestions for improvement have been detailed in the different answers of the questionnaire. However, two general recommendations can be concluded. Firstly, it would be advisable that Member States adopt internal procedural rules in order to facilitate the application of the Regulation. Secondly, the training of the legal practitioners should not be underestimated; in this regard, a constant learning through workshops or meetings will be welcomed (GONZÁLEZ BEILFUSS).

Sweden	No suggestions.
UK	As Gillen LJ has stated (in respect of Northern Ireland) 'the family judiciary and the legal profession must be strongly encouraged to remain au fait with case law and developments in…wider jurisdictions…our researches for legal cases can be too constrained and parochial, bereft of international input. Long gone are the days when a member of the judiciary could express the view that "*there is no law in family cases.*" [823] The cuts to legal aid remain a worry also, for example Stutt's suggestion that for public law cases, 'legal aid should only be provided where it is necessary to assist the court in determining what is in the best interests of the children.' [824] The human rights issues surrounding accessing to justice and the voice of the child might perhaps be an area where the EU could usefully use its influence (again, Brexit issues aside) to positively 'intervene in family law,' [825] by providing further guidance in this area. As Jourová, has recently stated, 'the children concerned deserve judicial proceedings that clarify their situation as quickly as possible and in the best interest of the child…' [826] There is clearly a judicial obligation to provide children with a meaningful opportunity to be heard.[827] As the Gillen Review similarly observed, '…it is not only the child who needs to be listened to in an informed manner but also other vulnerable witnesses in family proceedings, and particularly in care proceedings. How their oral testimony is to be facilitated is a key component of any justice system. Maturity, age (in the case of a child), mental health and social functioning disabilities are all matters which demand attention. The family courts arguably appear to be struggling to find their way to a scheme of suitable arrangements for vulnerable witnesses, particularly when they are children.'[828] Phillimore's observation also merits repeating: 'when the Court of Appeal and Supreme Court in *Re N* reach different conclusions on such a fundamental concept as 'best interests' we know that there will be some interesting times ahead in addressing this concept.'[829]

[1] CJEU 2 April 2009, No. C-523/07, ECLI:EU:C:2009:225, *A.*
[2] Court of Appeal Brussels 25 June 2013, *Revue@dipr.be* 2013/3, 59-73.
[3] Court of Appeal Liège 29 June 2010, *Actualités du droit de la famille* 2011, 94-96.
[4] Art. 105 CPC.
[5] Art. 107 CPC.
[6] See Chapter twelve "Jurisdiction", CPC.
[7] Ruling №7559 from 04.05.2012, Private Civil Case (PCC) №2512/2012 Sofia District court.
[8] *The Law on Resolution of Conflict of Laws with Regulations of Other Countries* (hereinafter: Croatian PIL act) dates back to 1983, when it was introduced in former Yugoslavia. It was adopted in Croatia in 1991. Službeni list SFRJ No. 43 of 23 July 1982 with corrigenda in No. 72/82, adopted in Croatian Official Gazette (Narodne novine) No. 51/91.
[9] Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions Sl.l. MU 10/62, NN MU, br. 4/94; Convention of 4 May 1971 on the Law Applicable to Traffic Accidents, Sl.l. 26/76, NN MU br. 4/94; Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, Sl.l. MU 8/77.
[10] M. Željko, Međunarodno privatno pravo: posebni dio, Zagreb 1980., Group of authors reported on one case on traffic road accident, but with no relevance for interpretation of habitual residence. K. Sajko, H. Sikirić, V. Bouček, D. Babić, N. Tepeš, "Teze za hrvatski zakon o međunarodnom privatnom pravu", in: K. Sajko, et.al. *Izvori hrvatskog i europskog međunarodnog privatnog prava* (Zagreb, 2001) p. 213.
[11] Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children NN MU br. 5/2009; Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, NN 5/2013; Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance OJ L 192, 22/7/2011, p. 40, and the Hague Protocol on the Law Applicable to Maintenance Obligations OJ L 149 12.6.2009., applicable to Croatia as of 1 July 2013.
[12] One may disagree particularly with official translations of this term in 1980 and 1993 Convention. Within Official Gazette text of 1980 Child Abduction Convention "habitual residence" is translated as "regular place of life", while Official Gazette text of 1993 Adoption Convention translates "habitual residence" as "habitual domicile".
[13] Draft Private International Law Act; Explanation of certain provisions; Explanation of the Act, published at: https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=3787.
[14] Explanation of certain provisions, Arts. 4-6, p. 1.
[15] Although court rulings should be displayed on e-boards freely accessible via web site of the Ministry of Justice (https://e-oglasna.pravosudje.hr), only some courts upload anonymized decisions there.
[16] In this case Court applied the lispendens rules and declined jurisdiction ex offo. County Court Varaždin, P-3/14-19 of 2.4.2014. (CRF20140402).
[17] County Court Split, Gž Ob-58/2015 of 20.7.2015. (CRS20150720), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[18] Municipal Court Osijek, P2-614/2013 of 23.12.2013. (CRF20131223), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[19] Cases are not translated on the Curia portal. There are doctrinary comments available in I. Medić Musa, *Komentar Uredbe Bruxelles II bis u području roditeljske skrbi* (Osijek, 2012) and M. Župan, „European cross-border family procedures" [Europski prekogranični obiteljski postupci] in: T. Petrašević, I. Vuletić, eds. *Procedural aspects of EU law* (Procesno-pravni aspekti prava EU), Pravni fakultet Osijek, 2016, p. 125-167.
[20] Court of Appeals of Athens 902/2011, Court of Appeals of Thessaloniki 1689/2005, *Armenopoulos* 2005, p. 1782, Multi member court of Athens 1630/2013, One member court of Athens 2750/2006, Court of Appeals of Thessaloniki 1377/2014, *EPolD* 2014, pp. 738-741, obs. ANTHIMOS Apostolos.
[21] The Supreme Court of Lithuania decision of 29-05-2015 in civil case No 3K-3-360-378/2015.
[22] K. Weitz, Jurysdykcja krajowa w sprawach małżeńskich oraz w sprawach dotyczących odpowiedzialności rodzicielskiej w prawie wspólnotowym, Kwartalnik Prawa Prywatnego 2007, vol. 1, p. 83.
[23] Ibid.

[24] J. Zatorska, Komentarz do rozporządzenia nr 2201/2003 dotyczącego jurysdykcji oraz uznawania i wykonywania orzeczeń w sprawach małżeńskich oraz w sprawach dotyczących odpowiedzialności rodzicielskiej, LEX/el., 2010.
[25] Journal of Laws 2016, item 380.
[26] POSAG 2010/1/75-86, Lex No. 563037.
[27] Journal of Laws 2014, item 101.
[28] E. Blidaru, Stabilirea competenței instanței în dosarele de dreptul familiei, *Manual INM 2014-2015 – formare inițială* (*euroquod.ro).*
[29] See Moreni Local Court, decision no 311/23 June 2014; Bucharest 2nd district Local Court, Civil Division, decision no 7077 from 10 June 2014; Alba Iulia Local Court, decision no 1752 from 12 September 2014; Bucharest County Court, 5th Civil Division, decision no 1370 from 14 November 2014; Bucharest Court of Appeal, 3rd Civil Juvenile and Family Division, decision no 303 A from 09 July 2014 (in a case regarding a child abduction); Targoviste Local Court, decision no 2863 from 12 August 2014; Viseu de Sus Local Court, decision no 1606 from 10 September 2014; Targoviste Local Court, decision no 1826 from 07 May 2015; Constanta Local Court, Civil Division, decision no 9492 from 09 September 2015; Câmpina Local Court, decision no 226 from 21 January 2016. Bucharest Court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no 152 from 17 February 2016.
[30] Suceava Local court, decision no 3185 from 5 June 2015, declaring that for the interpretation of the term "habitual residence" should be taken into account the provisions of article 2570.1 Civil code (stating that the habitual residence of a natural person is localized in the country where this person established his main place of living, even if the formalities of registration in that country where not fulfilled).
[31] For example: Haťapka, M.: Ešte raz k pojmu „obvyklý pobyt" v medzinárodnom práve súkromnom a procesnom (Once again to the notion of 'habitual residence' in international private and procedural law). Justičná revue, 63, 2011, č. 4, s. 512–513; Dobrovodský, R.: In Zámožík, J. a kol.: Civilné právo procesné. (Civil procedural law) Výkon rozhodnutia o výchove maloletých. Praha: Aleš Čeněk, 2013; Dobrovodský, R. Europeizácia a internacionalizácia rodinného práva (Europeisation and Internationalisation of Family Law) In: Lazar, J. a kol. Občianske právo hmotné. - Bratislava: Iuris Libri, 2014.
[32] *VSM Decision III Cp 1643/2007,* 27.8.2007; see also *VSK Decision Cp 431/2008,* 7.5.2008; *VSL Decision IV Cp 1237/2012,* 3.5.2012.
[33]Lamont R 'Habitual residence and Brussels IIbis: Developing concepts for European private International family law' (2007) 3 *J. Priv. Int'l L.* 261 – 281 p 280
[34] Ibid p 262 (citing Thorpe LJ).
[35] Kruger T and Samyn L 'Brussels II bis: Successes and suggested improvements' (2016) *J. Priv. Int'l L* (12) 1 pp 132-168 p 141. As Sasan argues, it should be noted also that within '… the UK where there is more than one system of law applying in different territorial units, the habitual residence is that which is established in the territorial unit at the time.' Sasan F 'Jurisdiction: Dispelling the myth' *The Journal of the law Society of Scotland* (2006) available at http://www.journalonline.co.uk/Magazine/51-2/1002713.aspx accessed 10.09.16).
[36] *Re B (a child)* [2016] UKSC 4.
[37] See *Re J (A Minor) (Abduction: Custody Rights)* [1990] 2 AC 562.
[38] *In Proceedings brought by A* (Case C-523/07) [2010] Fam 42; *Mercredi v Chaffe* (Case C-497/10PPU) [2012] Fam 22, (as confirmed by the Court of Appeal in *A v A (Children: Habitual Residence)* [2014] AC 1).
[39] 'In the context of article 12 of the Regulation, the Court of Justice has recently drawn attention to this recital in *E v B* (Case C-436/13) [2015] Fam 162, para 45.' (Per Lord Wilson, para 69 in *Re B op cit* n 36).
[40] 'Now that it has been adopted, the task of the courts is to apply it. The recital is not a licence to treat questions of jurisdiction as discretionary or to import legal qualifications into the essentially factual exercise of determining where a child is socially integrated and where she is not.' (ibid para 70).
[41] Ibid.
[42] Ibid at para 71.
[43] Harrison R, Reardon M, Perrins J and Bruce S, 'In the Matter of B (A Child): Habitual Residence and the Child-Centric Approach to Jurisdiction' (2016) *Family Law Week* p 7 (available at http://www.familylawweek.co.uk/site.aspx?i=ed158964, accessed 30.09.16) noting also that the court's obiter comments have left unresolved the issue of the exact remit of the court's *parens patriae* jurisdiction in such cases.

[44] Ruling №7559 from 04.05.2012, PCC №2512/2012 Sofia District Court.
[45] County Court Pula, No. Gž Ovr Ob-18/2016-2 of 20.10.2016, upreported.
[46] Case C-428/15, Child and Family Agency v J. D, ECLI:EU:C:2016:819.
[47]Praktični priručnik za primjenu Uredbe Bruxelles II.a, http://ec.europa.eu/justice/civil/files/brussels_ii_practice_guide_hr.pdf
[48] See among others, András Osztovits, Kettős állampolgárság megítélése a házassági perek joghatósági szabályaiban. [Double nationality int he jurisdiction rules of the matrimonial procedures]. In, Családi Jog [Family Law Periodical] 2009. 4. 24-28.; Henriette Kozák, Gyakorlati kalauz a nemzetközi családjog egyes kérdéseihez. [Practical Guide to Some Issues of the International Family Law]. In, Családi Jog [Family Law Periodical] 2012. 1. 15-22.; András Osztovits, A szülői felelősséggel kapcsolatban hozott külföldi határozat végrehajtásának megtagadása. [The denial of the enforcement of the foreign judgment concerning parental responsibilities]. In, Családi Jog [Family Law Periodical] 2012. 1. 23-27.; Csongor István Nagy, Nemzetközi magánjog. [Private international law]. HVG-ORAC, Budapest, 2012.; Orsolya Szeibert, A családjogi harmonizáció kérdései és lehetőségei Európában. [The issues and possibilities of family law harmonization in Europe]. HVG-ORAC, Budapest, 2014.
[49] Document has been drawn up by the Commission services in consultation with the European Judicial Network in civil and commercial matters. Up-dated version 1 June 2005, http://ec.europa.eu/civiljustice/divorce/parental_resp_ec_vdm_en.pdf, p. 12 (1/10/2016).
[50] See Internet reports and articles concerning the Polish/German cases: https://secure.avaaz.org/pl/petition/Deutscher_Bundestag_Wzywamy_do_oddania_zagranicznym_matkom_dzieci_zabranych_im_w_Niemczech/?pv=13 (published 11/11/2015), http://zmienmy.to/petycja/petycja-o-ochrone-dzieci-i-rodzin-obcokrajowcow-przed-sadami-w-niemczech/ (published 22/10/2015), https://wolnemedia.net/prosba-o-czlowieczenstwo-i-solidarnosc-wobec-dzieci-i-matek/ (published 12/11/2015), http://ratunekdzieciom.forum.praw.pl/topic/4/polska-w-unii-europejskiej-jako-obszar-polowan-na-dzieci-i-wyzysku-dzieci, http://ratunekdzieciom.pl/wiadomosci/2015/11/10/prosba-o-czlowieczenstwo-i-solidarnosc-wobec-dzieci-i-matek/ (published 10/11/2015), http://ratunekdzieciom.pl/wiadomosci/2015/09/20/polskie-rodziny-bez-ochrony-przed-niemiecka-przestepczoscia/ (published 20/09/2015).
[51] Iasi County Court, Civil Division, decision no 258 from 08 June 2016; Sibiu Local Court, decision no 1652 from 28 February 2012.
[52] Ploiesti Local Court, civil decision 14206 from 25 October 2013; Focsani Local Court, civil decision no 4914 from 21 November 2014.
[53] Onesti Local court, civil decision no 2763 from 22 November 2013. Petrosani Local Court, civil decision no 2048 from 20 June 2014.
[54] Ploiesti Local Court, civil decision 14206 from 25 October 2013.
[55] Op cit n 36, where they referred to *In Proceedings brought by A* (Case C-523/07) [2010] Fam 42; *Mercredi v Chaffe* (Case C-497/10PPU) [2012] Fam 22.
[56] UKSC 15 (13th April 2016) (also referred to as *Re N (Children)* [2016]). The case considered the remit of Art 15 (1) in some detail, in respect of transfer of proceedings between EU states in parental responsibility cases: considerable time was devoted to the question of which jurisdiction was 'better placed to hear the case.' See further Mc Carthy R and Twomey M 'No child transfer to the EU under Article 15 BIIR without a best interests analysis of its effects on the child' (2016) *Family Law Week* (available at http://www.familylawweek.co.uk/site.aspx?i=ed160298 accessed 29.09.16) arguing also that 'the best interests of the child' ought to be fairly simple and 'self-explanatory so long as it is understood to mean that the transfer must be in the best interests of the child.'
[57] At para 40.
[58] *Child and Family Agency (CAFA) v JD* (Case C-428/15). Four (of six) questions matched those raised in *Re N* [2016] (at para 33) including: a. whether article 15 applied to public law care applications by a local authority, where, if another member state assumes jurisdiction, this will give rise to separate proceedings under a different legal code, perhaps relating to different factual circumstances; b. if the 'best interests of the child' refers only to the decision as to forum, what factors might a court consider under this heading, which have not already been considered in determining whether another court is 'better placed'? c. May a court have regard to the substantive law, procedural provisions, or practice of the courts of the relevant member state? d. What matters were to be considered by a national court in determining which court is best placed to determine the matter.
[59] It is noteworthy that '…some of the delay [was] attributable to the local authority, which should have brought proceedings long before they did, rather than relying upon the parents' agreement for the children to be accommodated; some …to the vacillations of the parents and their failure to co- operate with the authority over assessments and contact with their children; *some of it is attributable to the courts*.' [emphasis added] (para 55)

[60] See further Phillimore S 'What's really in the best interests of children from other European countries involved in care proceedings?' (2016) *Family Law Week* (available at http://www.familylawweek.co.uk/site.aspx?i=ed160679, accessed 30.09.16) who notes that article 15 'does not apply to adoption proceedings, or to measures preparatory to adoption, citing in support of this contention paragraphs 19-23 of the judgment in *CB (A Child)* [2015] EWCA Civ 888, 'a long running case involving direct intervention from the Latvian authorities as the LA had not informed them of the care proceedings in 2012, when they should have done.'

[61] Croatian Family Act of 2015, Official Gazette No. 103/15.

[62] VASSILAKAKIS Evangelos, article 2, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003,* SAKKOULAS, Athens-Thessaloniki, 2016, pp. 42-48.

[63] Ed. Ulrich Magnus and Peter Mankowski; Walter Pintens, European Commentaries on Private International Law; Brussels II bis Regulation, (Munich: Selier, European Law Publishers, GmbH, 2012), p.55.

[64] "ECJ looks at jurisdiction where children taken into care", EU Focus 252 (2009): p.18.

[65] Article 22, Law on Orphan's Courts (7 July 2006). Available on: http://likumi.lv/doc.php?id=139369. Accessed September 8, 2016.

[66] Ibid.

[67] Decision of Jūrmala Court of 1st June, 2012, Case No.3-10/0049/05; Decision of Valka District Court of 28th May, 2012, case No. 3-10/004.

[68] The Court of Appeals of Lithuania decision of 07-03-2014 in civil case No 2T-29/2014.

[69] LEX No. 1236858.

[70] Some authors declare nevertheless that the public notary is an authority, in the meaning of art. 2.1 of the regulation and has competences for parental responsibility matters (see G. *Lupsan, Ghid de drept international privat în materia dreptului familiei, Magic Print 2014, p. 35*). We think that this statement can be discussed: when the public notary authenticates an agreement between the parties regarding the exercise of the parental responsibility, he acts as an agent who merely reproduce the will of the parties at a certain moment; the document issued does not have legal res judicata effect and the parties (or one of them) can revoke it. The public notaries are not invested with jurisdiction for parental responsibility matters, they do not conduct and finalise legal proceedings and they are not bound by the rule in art. 8 and following of the regulation.

[71] In Slovenia are 62 CSW.

[72] Also adoption (Brussels IIa does not apply to adoption) will be transferred to the court, but foster-care will remain at the CSW.

[73] See further Mundy F 'Child Cases: Who Decides?' (May, 2016) *The Journal of the Law Society of Scotland* (available at http://www.journalonline.co.uk/Magazine/61-5/1021703.aspx accessed 30.09.16).

[74] Taylor A 'The Ties That Bind' *New Law Journal* (2011) (available https://www.newlawjournal.co.uk/content/ties-bind-0 accessed 14.10.16) observing that (albeit in respect of the term "administrative authorities" under Art 2(11)(2) of the Maintenance Regulation) '…it is possible that …decisions or assessments made by the Child Maintenance and Enforcement Commission (CMEC) will now be treated as akin to decisions made by the courts.'

[75] Reardon M 'Negotiating in the Shadow of the Court: Mediation in parallel with litigation' (2016) *Family Law* (available at http://www.familylawweek.co.uk/site.aspx?i=ed166241&f=166241 accessed 27.10.16).

[76] Ibid, adding that 'Provided that they stay on the right side of the line between robust case management and a premature determination of the issues they are likely to be upheld on appeal: see eg *Re C (Children)* [2012] EWCA Civ 1489; *Re Q (Children)* [2014] EWCA Civ 918.'

[77] Ibid. 'The sort of issues that spring to mind are those involving the nuances of child arrangements …or specific issue applications where each party's position is reasonable and there are no really significant welfare implications for the child. I am not aware of a court yet having refused to hear an application of this nature, other than in those protracted cases where the parties have already had more than their fair share of the court's time and attention; but this must be on the horizon if it has not already happened.'

[78] Ibid, observing that '..the confusion has not been assisted by the transition from the various pre-Child Arrangements Programme conciliation schemes operating in different courts, which were often privileged (eg at the Central Family Court, if agreement was not reached at the first hearing, known as a 'conciliation appointment', the Judge and Cafcass officer had no further involvement with the case) to the CAP hearings (FHDRA and DRA) which are not privileged – even though the DRA equivalent in financial proceedings, the FDR, is….Interestingly, privileged hearings in children cases have recently reappeared in the area of public rather than private law, with a pilot scheme for without prejudice 'settlement conferences' in care cases running in selected courts from June to October 2016.'

[79] "Legislative solution should ensure access to justice before the court prior to launching a conciliation/out of court settlement…this solution is referable in situations with potential divorce jurisdiction of several states." https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=4049.

[80] "In practice limitation of access to court due to prior conciliation procedure ... may lead to a situation where our citizen, waiting for the accomplishment of conciliation procedure, is placed to a weaker position in comparison to his spouse (citizen of some other Member State).." *Tako Uredba Bruxelles II bis kao državu nadležnu za razvod braka, pored ostalog predviđa i državu u kojoj je jedan od bračnih drugova državljanin, te u kojoj ima uobičajeno boravište. U praksi bi ograničenje na pristup sudu radi prethodnog provođenja postupka posredovanja (čak i ako se postupak može provesti bez većih teškoća) moglo dovesti do toga da naš državljanin, čekajući da se provede postupak posredovanja, bude doveden u nepovoljniji položaj u odnosu na svog bračnog druga (državljanina neke druge članice EU) koji bi za vrijeme trajanja postupka posredovanja, mogao neometano pokrenuti postupak razvoda u svojoj državi i time sebi osigurati, iz niza razloga, primjenu za njega povoljnijeg prava, a što bi moglo odrediti daljnji tijek postupka, prava i obveze stranaka i slično, potencijalno i na nepovoljniji način za našeg državljanina."*ibid.

[81] The research is referred to also by: Thalia Kruger, International Child Abduction. Hart Publishing 2011.

[82] See the published handbook in Hungarian: Mary Caroll – Ute Briant – Zoltán Németh – Virág Vajna – Márta Gyenge Nagy, Mediáció a jogellenes nemzetközi gyermekelviteli ügyekben – békés megoldás a gyermek érdekében. Kézikönyv mediátorok és más szakemberek részére. [Mediation in child abduction cases – a peaceful tool in the child's interest. Handbook for mediators and other professionals] Budapest, 2015.

[83] Dobrovodský, R.: Európske a národné aspekty mediácie ako metódy na ochranu najlepšieho záujmu dieťaťa (European and national aspects of mediation as a method to protect the best interests of child) In: Rodinná mediácia v kontexte aktuálnej právnej úpravy. - [Bratislava] : Vysoká škola zdravotníctva a sociálnej práce sv. Alžbety, 2016. - ISBN 978-80-8132-159-7. - S. 106-120.

[84] Zakon o alternativnem reševanju sodnih sporov (Act on Alternative Dispute Resolution in Judicial Matters): Uradni list RS (Official Gazette), no. 97/09; 40/12.

[85] Stutt C, 'A Strategy for Access to Justice: The Report of Access to Justice (2)' (Sept. 2015) (available https://www.justice-ni.gov.uk/sites/default/files/consultations/doj/access-to-justice-review-consultation.pdf accessed 12.10.16) para 1.4, p.20.

[86] Broadbent N 'Alternative dispute resolution' *Legal Information Management* (2009) 9(3), 195-198 p 195.

[87] Ibid. p 196.

[88] Lord Justice Gillen (Rt. Hon) 'Review of Civil And Family Justice: The Review Group's Draft Report on Family Justice' (available at http://www.jsbni.com/civilandfamilyjusticereview/Documents/Preliminary%20Family%20Justice%20Report%20published%204%20Aug%2016.pdf accessed 12.10.16) p.5. The Stutt Review had similarly stressed the need to 'reduce costs and conflict in family proceedings,' arguing also that '…family justice reform should be informed by an awareness of these cost drivers within substantive family law.' Ibid Para15.11 p 127.

[89] ibid.

[90] Norgrove D 'Family Justice Review: Final Report' (November 2011) pp 41-45 (available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf accessed 09.10.16).

[91] Other reforms included the creation of a unified family court for England and Wales (2014) under the Crime and Courts Act 2013 and the introduction of a (not uncontroversial) 26 week time limit for care proceedings.

[92] Hughes S (Rt. Hon) 'A Family Justice System Fit for Families' (2014) *Family Law* (available at http://www.familylawweek.co.uk/site.aspx?i=ed128962 accessed 02.10.16).

[93] Stutt, op cit at n 85 para 36, p 14. See also paras 16 1-3 on Scotland's non-adversarial Children's Hearings system, which is 'not court based…Decisions are reached by a lay panel of three volunteers from the local community. The aim is to reach decisions in a consultative way. Costs are not awarded and lawyers are usually not involved. If the parents/carers or child dispute the facts underlying the referral to the hearing, the case is referred to the courts.'

[94] Ibid at para 36.

[95] Ibid. The emphasis is very much on making financial savings, however. Thus, the Review suggests also that 'long running family cases should be discouraged by a combination of remuneration rules, cost limitations and new powers to require repayment of legal aid costs where the client fails to comply with orders of the court. Legal aid for private law family proceedings should be more about solving problems and less about following legal processes. A new system of Early Resolution Certificates should be established to encourage settlement through negotiation and mediation. Financial conditions should create incentives for clients to resolve cases at this level. Funding for

representation in family court proceedings should only be available where attempts at settlement have been unsuccessful and strict criteria for prospects of success and cost benefit have been satisfied.' (at paras 42-43).

[96] Ibid. The court system would be maintained but '…under a restructured and streamlined family legal aid scheme.'

[97] Ibid.

[98] See further Hunter R, Barlow A, Smithson J, *et al*. 'Mapping paths to family justice: Matching parties, cases and processes.' *Family Law* (2014) 44 (10) 1404–1411 on how some participants 'felt their choices to be constrained for a variety of reasons, and few appeared to have been given a real choice between options.' (Briefing paper also available at http://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/lawimages/familyregulationandsociety/pdfs/Mapping_Paths_to_Family_Justice_Briefing_Paper_23_06_14.pdf accessed 12.10.16) on how the role of the court was generally 'very varied' in family law cases, with not every case falling within the category of 'lengthy and expensive.' Significantly, family lawyers would often 'issue proceedings as an aid to settlement, not as an alternative to negotiation' and that frequently, solicitors' negotiations proved to be more effective than mediation in resolving such disputes.

[99] Smithson *et al* 'The 'Child's Best Interests' as an Argumentative Resource in Family Mediation Sessions' *Discourse Studies* (2015) p 1-15 p 3.

[100] See further Stutt's (op cit at n 85) comment (at para 15.17) 'I have a slight worry that there is a danger in placing too much emphasis on the voice of the child, as if children's views and best interests were the same. I have seen many examples of acrimonious contact disputes where children are under the sway of and will naturally side with the resident parent against the parent seeking contact. The voice of the child is a contribution to, not a substitute for, the determination of what is in the child's best interests.'

[101] See http://ec.europa.eu/justice/civil/files/family-matters/brussels2_regulation_en.pdf.

[102] The Law Society of Northern Ireland '*Response To Access To Justice II Report: A Strategy For Access To Justice'* (2016) (available at https://www.lawsoc-ni.org/DatabaseDocs/nav_2848776__response_-_doj_-_access_to_justice_ii_review_stutt_report_feb_2016.pdf accessed 03.10.16) para 5.

[103] Ibid para 36, p 18.

[104] Ibid para 25, p 14.

[105] Ibid Para 4. See further '*IFLA launches children arbitration scheme: New scheme welcomed by Resolution and FLBA'* (2106) (available http://www.familylawweek.co.uk/site.aspx?i=ed161897 accessed 04.10.16).

[106] T. Kruger and L. Samyn, "Brussels IIbis: successes and suggested improvements", *Journal of Private International Law* 2016, Vol. 12, issue 1, 132-168.

[107] See response to question 3.

[108] Municipal court Požega, R1 Ob-6/2016-7 of 16.2.2016. (CRF20160216); Općinski sud u Splitu, Pob – 384/14 of 8.1.2016. (CRF20160108), available at EU Fam's project database (www.eufams.unimi.it) under specified code.

[109] GEORGOULEAS Nikolaos, "International Abduction of Children", in TSOUCA Chrysapho (ed.), *International Family Law*, Nomiki Vivliothiki, Athens, 2016, p. 330 See also : <http://www.europarl.europa.eu/atyourservice/en/20150201PVL00040/Child-abduction-mediator> .

[110] Dittrich L 'Promoting Voluntary Agreements in International Child Abduction Disputes: The Case of Brazil' *Int J Law Policy Family* (2015) 29 (1) 97p 98.

[111] Ibid, noting the need for any such models to fit into perhaps very differing legal systems and frameworks, and highlighting how The Hague Conference on Private International Law opted for 'a broad definition of mediation.' p 98.

[112] Stutt Review ibid at n 85 Para 15.6 p 126.

[113] It should be noted that family law cases are classified differently in Scotland, so that 'there is room for debate as to which Scottish cases should be regarded as "public law." Ibid. Stutt suggests that the Scottish system could potentially develop into a 'more formal and lawyer-driven process' as a result of the 'increasing impact' of the European Convention on Human Rights.

[114] Ibid para 16. 22.

[115] Ibid.

[116] Allman M '*Conflict of laws: Matrimonial causes'* (2015) *Insight- Westlaw* (accessed 12.10.16).

[117] Reardon op cit n 75.

[118] Ibid, noting also *Re D (Minors)(Conciliation: Disclosure of Information*) [1993] Fam 231, and that '…issues of privilege, confidentiality and without prejudice communications are complicated and the law on these issues, …is not entirely clear.'
[119] (as quoted in Reyes E 'Game of give and take' (2016) *LS Gaz*, 3 Oct, 16.
[120] In detail, when the Brussels IIa Regulation and when autonomous law are applied *Simotta* in *Fasching/Konecny* (editors), Commentary on civil procedural law [Kommentar zu den Zivilprozessgesetze], second edition, volume V/2 (2008), pages 116 – 126, 133 – 143; *Simotta*, When in matrimonial matters the Brussels IIa Regulation and when autonomous law are applied ? [Wann kommt in Ehesachen die EuEheKindVO (=Brussels IIa Regulation), wann autonomes Recht zur Anwendung ?] in *Geimer/Schütze* (editors), Anniversary publication [Festschrift] for Athanassios Kaissis (2012), pages 897 ff; *Simotta* in *Fasching/Konecny*, Commentary on civil procedural law [Kommentar zu den Zivilprozessgesetzen] third edition, volume I (2013), § 76 JN note 16/1 – 16/14.
[121] J.-Y. Carlier, S. Francq and J.-L. Van Boxstael, "Le règlement de Brussel II – compétence, reconnaissance et exécution en matière matrimoniale et en matière de responsabilité parentale", *Journal des tribunaux – Droit européen* 2011, 78-79, nr. 18-20.
[122] See I. Curry-Summer, in I. Couwenberg, A. Hansebout and L. Vanfraechem, *Duiding Internationaal Privaatrecht*, Brussels, Larcier, 2014, 303.
[123] Natov, Nikolai&Museva, Pandov, Tsenova, Sarbinova, Yordanski, Tsanev, Stankov, Regulation Brussels IIa, Comment, Ciela, 2014, p. 89-90.
[124] Municipal court Dubrovnik, 3 P Ob. 28/2016 of 23.5.2016. (CRF20160523); Municipal court Split, Pob – 409/13 of 25.2.2016. (CRF20160525); County court Rijeka, Posl. br. Gž-5432/2013-2 of 28.11.2013. (CRS20131128), Municipal Court Osijek, P ob 345/15 of 28.5.2015. (CRF20150528) available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[125] ARVANITAKIS Paris, articles 6, 7, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 83-91.
[126] E. Blidaru, *op. cit., p. 6.*
[127] G. Lupsan, *op. cit.*, p. 9.
[128] Allman op cit n 116.
[129] Viney J 'Habitual Residence - Habitual Problems' (2014) *Family Law*, noting that '…within The Borras Report (*Official Journal of the European Communities* 1998, C 221/27), it is described as: '… the place where the person had established, on a fixed basis, his permanent or habitual centre of interests, with all the relevant facts being taken into account for the purpose of determining such residence' (at para 32). (available at http://www.familylawweek.co.uk/site.aspx?i=ed128552 accessed 13.10.16)
[130] [2007] EWHC 2047 (Fam), [2008] 2 FCR 47, [2007] 2 FLR 1018. Here, Munby J held that 'the fifth indent' of article 3 (1) (a) requires (i) habitual residence on a particular day and (ii) residence, though not necessarily habitual residence, during the relevant immediately preceding period'. (at para 46) See also Bennett J in *Munro v Munro* [2007] EWHC 3315 (Fam) for a differing stance however.
[131] (Case C-452/93P) [1994] ECR 1-4295.
[132] (Case C-90/97) [1999] 2 FLR 184. As Viney (op cit n 129) notes, Munby's approach was approved in *Z v Z* [2009] EWHC 2626 (Fam) where it was noted that (at para 40) '…a centre of interests may be established quickly or slowly, depending on the circumstances. Habitual residence in one country may not be lost despite a lengthy period in another.'
[133] In *L-K v K* [2006] EWHC 153 (Fam) the parties had '… established in this jurisdiction not as transients but for a settled purpose or intention' (at para 34) (as cited by Viney, op cit n 129).
[134] *Munro v Munro* [2007] EWHC 3315 (Fam) [2007] EWHC 3315 (Fam).
[135] '… I do not think it accords with the proper construction of Art 3(1)'(ibid at para 49).
[136] Ibid. (as cited by Viney, op cit n 129). See also *Olafisoye v Olafisoye* [2010] EWHC 3539 (Fam) where the court asked only whether a spouse had been habitually resident for the full 12 months.
[137] In *V v V* [2011] EWHC 1190 (Fam).
[138] Ibid at para 47.

[139] EWCA Civ 251. The petitioner husband wished to bring proceedings in England whereas his Malaysian wife sought to litigate in Malaysia. Habitual residence was defined as: '(i) a permanence or stability, not temporary or intermittent; (ii) the centre of his/her interest; (iii) exclusivity of such circumstances; that is to possess but one habitual residence.' (at para 10) (as cited by Viney, op cit n 129).

[140] Ibid. *'…the person seeking to found jurisdiction has to be "habitually resident" in the territory concerned at the date the proceedings are started and he also has to have "resided" there for at least a year before the relevant proceedings are started. Secondly, it could mean that the person seeking to found jurisdiction has simply to have been "habitually resident" for one year prior to the start of the proceedings. Thirdly, it could mean that the person seeking to found jurisdiction has to establish that he/she is "habitually resident" at the time the proceedings are started and that this fact is proved by establishing that he/she has "resided" in that territory for at least a year immediately before the proceedings were started ("…application was made").'*

[141] Viney *op cit* n 129.

[142] Ibid.

[143] Ibid.

[144] Ibid, citing *L-K v K* [2006] para 43 per Singer J.

[145] Viney, op cit n 129.

[146] Ibid, noting also that in *Tan v Choy* [2014] EWCA Civ 251 the Court of Appeal acknowledged an apparent 'inability to transpose the decisions of the Supreme Court and CJEU relating to habitual residence of children involved in cases of international wrongful removal or retention and the ambiguity of the definition of "resided" absent adverb within the Regulation.' per Macur LJ at para 18.

[147] Per Macur LJ (para 20), as cited by Hartley C *Family Law*, (2014) available http://www.familylawweek.co.uk/site.aspx?i=ed128434 accessed 12.10.16).

[148] See further *Mittal v Mittal* [2013] EWCA Civ 1255.

[149] per Aitken LJ para 30.

[150] *Simotta* in *Fasching/Konecny*, Commentary (see footnote 1), second edition, volume V/2, Art 1 EuEheKindVO note 31; *Rassi* in *Fasching/Konecny*, Commentary (see footnote 1), second edition, volume V/2, Art 21 EuEheKindVO note 34; *Garber*, The concept of marriage within the meaning of Article 1 (1) (a) Brussels IIa Regulation [Zum Begriff der Ehe iSd (im Sinne des) Art 1 Abs 1 lit a EuEheKindVO (= Brüssel IIa-VO)] in Geimer/Schütze/Garber (editors), Anniversary publication (Festschrift) for Daphne-Ariane Simotta (2012) pages 145, 155 ff.

[151] EuGH Rs C-59/85 *Niederlande/Anne Florence Reed/Reed* ECLI:EU:C:1986:63; EuGH Rs C-249/96 *Lisa Jacqueline Grant/Southwest Train* ECLI:EU:C: 1998:63; EuGH Rs C- 122/99 P connected with 125/99 P *D. and* The Kingdom of Sweden v Council of the European Union ECLI:EU:C:2001:304.

[152] M. Pertegás Sender, "The impact and application of the Brussels IIbis Regulation in Belgium", in K. Boele-Woelki and C. Gonzalez Beilfuss (eds.), *Brussels IIbis: its impact and application in the member states*, Intersentia, 2007, 64-65; W. Pintens, "Marriage and Partnership in the Brussels IIa Regulation" in J. Erauw, V. Tomljenovic and P. Volken (eds.), *Liber Memorialis Peter Sarcevic. Universalism, Tradition and the Individual*, München, Sellier, 2006, 335-344; P. Wautelet, "Private International Law Aspects of Same-sex marriages and partnerships in Europe – Divided we stand?" in K. Boele-Woelki and A. Fuchs (eds.), *Legal Recognition of Same-Sex Relationships in Europe: national, cross-border and European persepectives*, Cambridge, Intersentia, 2012, 159 et seq.
Includes same-sex marriages: F. Swennen, "Atypical families in the EU (private international) family Law" in J. Meeusen, M. Pertegas, G. Straetmans and F. Swennen (eds.), *International Family Law for the European Union*, Antwerp, Intersentia, 2007, 396.

[153] Court of First Instance Mechelen, 12 January 2006, *Echtscheidingsjournaal* 2006, 153.

[154] Court of First Instance Brussels, 19 June 2013, *Revue@dipr.be* 2013/4, 70.

[155] Court of First Instance Arlon 20 November 2009, *Revue trimestrielle de droit familial* 2012, 696.

[156] Judgment №533/19.10.2016, Administrative Court Pazardjik.

[157] VASSILAKAKIS Evangelos, article 1, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 27-28, nº 12 ; FOUNTEDAKI Ekaterini, *European regulations in family law matters, Scope of application and regulation of international jurisdiction*, 2014, p. 118.

[158] Law 4356/2015, OJ A' 181/24-12-2015.
[159] ARVANITAKIS Paris, article 3, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], p. 53.
[160] See in English, Orsolya Szeibert, The changing concept of 'family' and challenges for family law in Hungary, in: Jens M. Scherpe: European Family Law Volume II, Edward Elgar Publishing, Cheltenham, 2016, 108-110.
[161] See Miklós Kengyel – Viktória Harsági: Európai polgári eljárásjog. [European Civil Procedural Law.], Budapest, Osiris Publishing Company, 2009, 210.
[162] Vékás – Mádl, Nemzetközi magánjog és nemzetközi gazdasági kapcsolatok joga. [International Private Law and the Law of International Economic Relationships]. ELTE Eötvös Publishing Company, Budapest 2014.
[163] *Loi du 4 juillet 2014 (Réforme du mariage), Journal Officiel du Grand-Duché de Luxembourg*, A, no. 125, 17 July 2014.
[164] Following the view shared by David Hiez, Gilles Cuniberti and Céline Camara, "National Report for Luxembourg, External Assessment of Regulation No. 2201/2003/EC (Brussels IIa Regulation) for the European Commission", 2014.
[165] K. Weitz, Jurysdykcja krajowa w sprawach małżeńskich oraz w sprawach dotyczących odpowiedzialności rodzicielskiej w prawie wspólnotowym, Kwartalnik Prawa Prywatnego 2007, vol. 1, p. 83-154.
[166] We think that even under an autonomous definition, the concept of marriage in the Brussels II bis Regulation may be understood as a heterosexual marriage; a common core of among the member states' legislations as regards the same sex marriages (which could militate for a different position) may still be disputed and the it is for the European legislator, in the future recast, to take a clear view on the matter in order to change this.
[167] See E. Blidaru, *op. cit.* p. 3, stating that, because of disparities existing between the member states' laws, the interpretation of concepts should be done according to each national law. Article 13 of the regulation 1259/2010 is cited as an argument of respect that the European legislator was paying to the national particularities and sensibilities on this matter. (In our opinion, the mere existence of art. 13 work as a proof that the regulation 1259/2010 is to be applied in principle also to the divorces of same sex marriages; since the sphere of application of both regulations should be correlated (see recital. 10, Rome III preamble), the European legislator should intervene on this matter to clarify/correct the situation.
[168] See article 277 Civil code (from 2011); as regards the recognition of foreign same-sex marriages, a more nuanced position is nevertheless advocated, in the light of the European standards regarding the protection of private and familial life (art. 8, ECHR) – see A. Oprea, „Despre recunoașterea statutului matrimonial dobândit în străinătate și protecția europeană a dreptului la viață familială", în *Studia UBB Iurisprudentia*, Nr. 4/2012.
[169] This position is probably consistent with the views of the European legislator in 2003 and takes appropriate account of the large disparities existing between member states' legislations as to the personal and patrimonial effects of the partnerships (and of the marriages), which make difficult the extension of the concept marriage to them, even under a teleological and large interpretation.
[170] European family law in action. Volume 5: Informal relationships / [authors Marianne Roth, **Róbert Dobrovodský**(2,33%) ... [et al.]] ; edited by Katharina Boele-Woelki, Charlotte Mol, Emma van Gelder. - 1st ed. - Cambridge: Intersentia. - xx, 1168 p. - (European family law series, 38). - ISBN 978-1-78068-323-2. National report: Slovakia, 2015.. http://ceflonline.net/wp-content/uploads/Slovakia-IR.pdf.
[171] In February new Partner Relationship Act will step into force. Since than the cohabitation (now just registration) would be available also for same-sex partners, but not marriage.
[172] Davis S 'Same-sex couples and the harmonisation of EU matrimonial property regimes: unjustifiable discrimination or missed opportunities?' (2013) 25 *Child & Fam. L. Q.* 19 p 22. Davis examines the possibly adverse consequences of trying to provide for equal treatment of same-sex couples in this area of law under the current proposals for reform.
[173] See The Marriage (Same Sex Couples) Act 2013 and the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014/543. The provisions of the Council Regulation are essentially echoed by The Civil Partnership Act 2004 and The Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005/3334. See further Allman op cit n 116.
[174] See further http://www.bbc.co.uk/news/uk-northern-ireland-37791366 (accessed 28.10.16).

[175] See further Woelke A, 'Expat Divorce in England – Forum Shopping' (May, 2016) (available at http://www.alternativefamilylaw.co.uk/international/expat-divorce-forum-shopping/ accessed 12.10.16).
[176] Ibid. See further Bell C and Bačić Selanec 'Who is a "spouse" under the Citizens' Rights Directive? The prospect of mutual recognition of same-sex marriages in the EU' *European Law Review* (2016) 41 (5) pp 655-686.
[177] *Re B (A child)* [2016] UKSC 4 op cit n 4, overturning the Court of Appeal's decision.
[178] *Ibid* at para 67. Some practitioners ('*Resolution*') have observed that 'if there is a civil partnership or marriage in England and Wales between two foreign nationals who subsequently move to another EU state which does not recognise their union, there would appear to be no possibility of that relationship being dissolved under the Regulation as the English courts would not have jurisdiction. This issue may be avoided by permitting a prorogation agreement or forum necessitatis in limited circumstances.' (2014) p15 (available http://www.resolution.org.uk/site_content_files/files/resolution_response_council_regulation_ec_2201_2003.pdf accessed 14.10.16).
[179] *Simotta* in Fasching/Konecny, Commentary (see footnote 1), third edition, volume I, § 104 JN note 116/1 und § 76 JN note 4.
[180] This national provision has in the meantime been superseded by the Rome III Regulation.
[181] Art. 105 CPC.
[182] Art. 112 CPC.
[183] Art.119, par. 3 CPC.
[184] Ruling №388 from 5.6.2012, PCC №112/2012 SCC, III.
[185] Draft PIL Act of 2016, Article 49.
[186] Court of first instance of Kavala 24/2009.
[187] Zakon o pravdnem postopku (Civil Procedure Act (hereinafter: CPA)): Uradni list RS, no. 73/07 OCV with later changes.
[188] Woelke, op cit n 175, noting also that '…even an agreement in a pre-nuptial or pre-registration agreement about the law to be applied is disregarded by the courts in England and Wales.' (available http://www.alternativefamilylaw.co.uk/international/family-law-england/ accessed 11.10.16).
[189] Th.M. de Boer, 'The second revision of the Brussels II Regulation: Jurisdiction and applicable law' in Boele-Woelki K and Sverdrup T '*European Challenges In Contemporary Family Law'* (2008) Antwerp: Intersentia (available at http://dare.uva.nl/record/1/285252, accessed 13.10.16).
[190]Ibid, (citing COM (2006) 399, at p. 9) de Boer argues further that courts 'may resort to national criteria if jurisdiction cannot be based on Articles 3, 3a, 4, 5 or 7….however, the Explanatory Memorandum makes it clear that Article 7 is an 'exhaustive' rule. Besides, it is hard to see on what (national) ground a court in a member state could reasonably assume jurisdiction if the case is not linked to the forum state by any of the connections listed in the regulation.'
[191] Ibid.
[192] Ibid 'In other words, under Article 3a(5) petitioner is not required to file some kind of statement that respondent is prepared to submit to the court's jurisdiction. Provided the respondent does not contest jurisdiction, entering an appearance suffices.
[193] Ibid, adding that 'The conditions laid down in the first two paragraphs of Article 3a(1) – one of the spouses should be a national of the forum state, or the spouses should have had their last common habitual residence in that state – should be met at the time the choice-of-court agreement is concluded.'
[194] Cochrane S '*Does it matter whether you divorce under Scots law or English law?*' Brodies Legal Resource: Family Law (available at http://www.brodies.com/blog/matter-whether-divorce-scots-law-english-law/ accessed 03.10.16).
[195] Ibid.
[196] Ibid, adding that '…it is not unheard of for one spouse to suggest the family relocates to another part of the UK in order to be able to divorce in the jurisdiction which is favourable to them…The most common scenario is where a family relocates to another part of the UK for the husband's work, one spouse fails to settle there and returns to their home country. Divorce then follows, but it transpires that although the couple have lived for the vast majority of their lives in one part of the UK, they can only be divorced under the law of another part as that is where they last resided together. This outcome can often have undesirable, and in some cases, unintended consequences on divorce.'
[197] Scott J M '*Choice of forum-Jurisdictional issues within the UK'* Advanced Family Law Conference Paper (Law Society of Scotland) (2007) p 10.

[198] There is no forum necessitatis according to § 28 (1) no. 2 of the JN, if the international jurisdiction - as in matrimonial matters (cf. § 76 (2) and § 114a (4) of the JN), is expressly and conclusively regulated (*Garber* in Fasching/Konecny, Commentary [see footnote 1], third edition, volume I, § 28 JN note 83).
[199] Court of First Instance Brussels, 19 June 2013, *Revue@dipr.be* 2013/4, 70.
[200] Court of First Instance Arlon 20 November 2009, *Revue trimestrielle de droit familial* 2012, 696.
[201] Court of First Instance Brussels, 9 December 2011, *Revue trimestrielle de droit familial* 2012, 364.
[202] Court of First Instance Brussels, 2 December 2011, *Revue trimestrielle de droit familial* 2012, 359.
[203] Draft PIL Act of 2016, Article 59. „Ako se primjenom odredbi ovoga Zakona ili drugih zakona Republike Hrvatske ili međunarodnih ugovora na snazi u Republici Hrvatskoj ne može zasnovati nadležnost u odnosu na tuženika koji ima prebivalište u državi koja nije članica Europske unije, a postupak se ne može voditi u inozemstvu ili je to nerazumno očekivati, sud Republike Hrvatske je nadležan, ako je predmet postupka dovoljno povezan s Republikom Hrvatskom da bi bilo svrsishodno voditi ga u Republici Hrvatskoj.
[204] V. Tomljenović, „Kako pomiriti odbacivanje međunarodne nadležnosti i članak 6. Europske konvencije za zaštitu ljudskih prava“ (How to Reconcile the Decline of International Jurisdiction and Article 6 of the EHRC?) presented at interantional conference *Legal Culture in Transition: Supranational and International Law in National Courts*, Opatija 17-18.6.2011.;
[205] M. Župan, M., „Određivanje međunarodne nadležnosti u obiteljskopravnim stvarima“, in J. Garašić, (ur.), *Europsko građansko procesno pravo – izabrane teme* (Narodne novine Zagreb 2013) p. 147-171 at.p. 165.
[206] I. Medić, Uredba 650/2012, in V. Lazić, I. Medić, *Priručnik za suce* (Pravosudna akademija Republike Hrvatske 2015).
[207] ARVANITAKIS Paris, article 7, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003,* SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], p. 90, nº 5.
[208] See justification for the amendments to the Polish Code of Civil Procedure, http://www.poznan.so.gov.pl/att/Obrot_Prawny/uzasadnienie_zmian_kpc.pdf.
[209] T. Ereciński, w T, Ereciński, J. Ciszewski, Międzynarodowe postępowanie cywilne, Warszawa 2000, p. 76, A. Hrycaj, Jurysdykcja krajowa w sprawach o ogłoszenie upadłości objętych zakresem zastosowania rozporządzenia Rady (WE) Nr 1346/2000 w sprawie postępowania upadłościowego, Lex 2011, p. 443.
[210] A. Hrycaj, Jurysdykcja krajowa w sprawach o ogłoszenie upadłości objętych zakresem zastosowania rozporządzenia Rady (WE) Nr 1346/2000 w sprawie postępowania upadłościowego, Lex 2011, p. 443.
[211] K. Weitz, Jurysdykcja krajowa w postępowaniu cywilnym, Warszawa 2005, p. 379-380.
[212] M.P. Wójcik, Komentarz aktualizowany do art.1099(1) Kodeksu postępowania cywilnego, in: A. Jakubecki (ed.), J. Bodio, T. Demendecki, O. Marcewicz, P. Telenga, M. P. Wójcik, Komentarz aktualizowany do ustawy z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, LEX/el., 2016.
[213] M.P. Wójcik, Komentarz aktualizowany do art.1099(1) Kodeksu postępowania cywilnego, in: A. Jakubecki (ed.), J. Bodio, T. Demendecki, O. Marcewicz, P. Telenga, M. P. Wójcik, Komentarz aktualizowany do ustawy z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, LEX/el., 2016.
[214] Palmer S (2015) 'When will the English Court agree to be a "forum of necessity" for foreign litigants?' *Transnational Notes* (available http://blogs.law.nyu.edu/transnational/2015/01/when-will-the-english-court-agree-to-be-a-forum-of-necessity-for-foreign-litigants/#_ftn7 accessed 02.10.16).
[215] Ibid.
[216] Ibid.
[217] Ibid, adding that '…such arguments fall broadly into two categories: (i) where the forum is "unavailable", i.e., unacceptable risks to personal safety or ineffective state infrastructure; and (ii) where the forum is technically "available" (under category (i)) but the court directly attacks that forum's integrity, i.e., arguing the relevant foreign court is untrustworthy.' See further Lord Goff's dicta in *Spiliada v. Maritime Corp v. Cansulex,* [1986] 1 AC 460 at 478 (as cited by Palmer). Thus in respect of 'unavailable forum', 'the *forum non conveniens* doctrine presupposes a functioning court system exists in the alternative forum, otherwise the English court is the only available court and, de facto, the most convenient forum.' (ibid.).
[218] [2010] EWHC 843 (Fam); [2011] 1 F.L.R. 826; [2011] 2 F.C.R. 33; [2010] Fam. Law 796.
[219] In conjunction with *Owusu v Jackson (t/a Villa Holidays Bal Inn Villas*) (C-281/02) [2005] Q.B. 801.
[220] Ibid.

[221] Ibid.
[222] See *I (A Child) (Contact Application: Jurisdiction), Re* [2009] UKSC 10, [2010] 1 A.C. 319.
[223] See *Simotta* in *Fasching/Konecny*, Commentary [see footnote 1], second edition, volume V/2. Art 3 EuEheKindVO note 80ff; The effectiveness of citizenship also plays no role in national Austrian law in the case of dual citizenship. It is sufficient if one of the citizenships is Austrian (see *Simotta* in Fasching/Konecny, Commentary [see footnote 1], third edition, volume I, § 76 JN note 18; *Mayr* in Rechberger (editor), Commentary on Code of Civil Procedure [Kommentar zur ZPO] fourth edition, (2014). § 76 JN note 3; *Nademleinsky* in Gitschthaler/Höllwerth (editors), Commentary on the law of marriage and partnership [Kommentar zum Ehe- und Partnerschaftsrecht], (2011), § 76 JN note 7; Higher Regional Court Vienna [OLG Wien)] EFSlg [Ehe- und familienrechtliche Entscheidungen] 23.065 (1974).
[224] Court of Appeal Brussels 29 June 2009, unpublished.
[225] Court of First Instance Arlon 12 December 2008, *Revue trimestrielle de droit familial* 2009, 728.
[226] Decision №1696 from 8.3.2013, Civil case (CC) №9637/2010, Sofia City Court.
[227] Municipal Court Osijek, P ob 223/2015 of 6.5.2015. (CRF20150506); County Court Pula, Posl. br. Gž-269/15-2 of 7.4.2015. **(**CRF20150407), all available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[228] County Court Rijeka, Posl. br. Gž-5432/2013-2 of 28.11.2013. (CRS20131128), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[229] PIL Act, Article 14.
[230]Državljanstvo *"*Članak 3. (1) Ima li fizička osoba državljanstvo određene države, određuje se po pravu te države. (2) Ako osoba koja je državljanin Republike Hrvatske ima i državljanstvo neke druge države, za primjenu ovoga Zakona smatra se da ima samo državljanstvo Republike Hrvatske. Ako osoba koja nije državljanin Republike Hrvatske ima dva ili više stranih državljanstava, za primjenu ovoga Zakona smatra se da ima samo državljanstvo one države čiji je državljanin i s kojom je u najužoj vezi."
[231] Journal of Laws 2012, item 161.
[232] Journal of Laws 2015 item 1792.
[233] M. Taborowski, Glosa do wyroku TS z dnia 2 października 2003 r., C-148/02, LEX/el. 2012.
[234] J. Zatorska, op. cit.
[235] In the previous legislation (art. 12.2 from the PIL Act no 105/1992), when to nationalities were in conflict and one of them was the Romanian one, the latter prevailed. When neither of the nationalities in conflict was the Romanian one, the priority was given to the most effective one.
[236] Garcia Avello case (C-148/02).
[237] Targu Mures Local Court, decision no 6750 from 09 October 2013: the case concerned a divorce case of a bi-national couple, Romanian and German, living in Germany since 1995. The competence was contested; without citing the Hadadi judgement, the court interpreted the art. 3.b) of the regulation as permitting to the claimant to invoke the common Romanian nationality of the spouses as a ground for the international jurisdiction of Romanian courts. Since the criteria for internal territorial competence were not fulfilled, the court finally declined the competence in favour of Bucharest 1st District Local Court.
[238] Provisions on dual citizenship is included in Slovenian Citizenship of the Republic of Slovenia Act (Zakon o državljanstvu Republike Slovenije): Uradni list RS, št. 24/07 OCV: Article 2 provides: "*On the territory of the Republic of Slovenia, a citizen of the Republic of Slovenia, who also has the citizenship of a foreign country, shall be considered citizen of the Republic of Slovenia, unless otherwise stipulated by international agreement*." Provision on dual citizenship could be find also in article Slovenian Private International Law and Procedure Act (Uradni list RS, no. 56/99): "(1) *If a citizen of the Republic of Slovenia also has citizenship in another country, then it shall be considered, for the requirements of this Act, that this person only has citizenship in the Republic of Slovenia. (2) If a person who is not a citizen of the Republic of Slovenia has two or more citizenships, then it shall be considered, for the requirements of this Act, that this person has citizenship in the country whose citizen he is and where he also maintains permanent residence. (3) If such a person described in the second paragraph of this Article has no permanent residence in any of the countries where he has citizenship, it shall be considered, for the requirements of this Act, that this person has citizenship in the country whose citizen he is and with which he has the closest connection*."
[239] Allman op cit n 116.
[240] EWCA Civ 119; [2014] 2 F.L.R. 1168.
[241] Ibid.

[242] EWHC 95 (Fam); [2014] 2 F.L.R. 1104.
[243] Ibid.
[244] Court of First Instance Brussels 2 February 2011, *Actualités du droit de la famille* 2011, 96.
[245] T. Kruger and L. Samyn, "Brussels IIbis: successes and suggested improvements", *Journal of Private International Law* 2016, Vol. 12, issue 1, (132) 142-143.
[246] Case C-168/08 Hadadi v Hadidi [2009] ECR I-6871- judgment delivered on 16th July 2009.
[247] PCC №2729/2015 SCC, as well as Decision №1696 from 8.3.2013, CC №9637/2010, Sofia City Court.
[248] Ruling from 22.03.2012 Private Civil Case №108/2012, District court Jambol.
[249] Ruling №524 from 27.10.2010, PCC №424/2010 SCC.
[250] Municipal Court Varaždin, P-3/14-19 of 2.4.2014. (CRF20140402), Municipal Court Rijeka, P-1638 of 26.9.2016. (CRF20160926) available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[251] Municipal Court Dubrovnik Gž.1366/14, of 15.10.2014. (CRF20141015) in relation to parallel proceedings pending in Croatia and Bosnia and Hercegovina and County Court Rijeka, GŽ-5432/2013-2 of 28.11.2013. (CRS20131128) in relation to parallel proceedings pending in Croatia and Serbia. Case available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[252] See also response to qustion 4.
[253] ARVANITAKIS Paris, article 3, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 60-72.
[254] Judit Brávácz – Tibor Szőcs, Nemzetközi családjog. [International Family Law]. In, András Kőrös (ed), The Handbook on Family Law, HVG-Orac, Budapest, 2007.; Csongor István Nagy, Nemzetközi magánjog. [Private International Law]. HVG-Orac, Budapest, 2012).
[255] In Hadadi case, the ECJ placed on an equal position the different nationalities that someone may have (regardless their effectivity) for the interpretation/application of article 3.b of the regulation: ''*where spouses each hold the nationality of the same two Member States, Article 3(1)(b) of Regulation No 2201/2003 precludes the jurisdiction of the courts of one of those Member States from being rejected on the ground that the applicant does not put forward other links with that State. On the contrary, the courts of those Member States of which the spouses hold the nationality have jurisdiction under that provision and the spouses may seise the court of the Member State of their choice*'' – par. 58 of the judgement.
[256] See the Practice Guide for the application of Brussels II a Regulation (available in Romanian at http://ec.europa.eu/justice/civil/files/brussels_ii_practice_guide_ro.pdf), the practical example at p.13; C. Nicolescu, Competenţa jurisdicţională de drept internaţional privat în materia acţiunilor de stare civilă, Revista Română de Drept Privat nr. 5/2008, pp. 79-103.
[257] For example, in a case decided in 2014, Cluj Court of Appeal, 1st Civil Division, decision no 43/R from 04 April 2014, stated that the criteria set in art. 3 let. a) and b) of the regulation are not alternatives, and the nationality is "beyond any doubt" hierarchically subsidiary to the criteria set in art. 3.a), based on the habitual residence. This is highly problematic since the large majority of divorce cases in Romania are disputed between Romanian citizens. Also, this kind of interpretation undermines the legitimacy of the European rule in the eyes of the public.
[258] Admitting the alternative character of the jurisdictional grounds from art. 3 a) and b), see **Cluj** Court of Appeal, **Civil division, civil decision** no 2573/R/2009 from 18 November 2009, in a case of divorce of two Romanian citizens, both residing in Spain; the competence of the Romanian courts was discussed and confirmed on the basis that the both parties were Romanians. See also, Mures County Court, Civil Division, civil decision no 172 from 25 February 2016 (divorce of a Romanian couple living in Italy). The High Court of Cassation and Justice, Civil division, in the civil decision 687 from 27 February 2014, took position in the same way.
[259] The notarial procedure for divorce is a very attractive one, and the number of cases with foreign element in front on Romanian notaries increased significantly in the last years; this may raise high suspicions as to the proper interpretation of the concept "habitual residence" by the notaries and to possible forum (and law) shopping.
[260] Tîrgu-Mureş Local Court, decision no 1551 from 02 April 2014.
[261] Tîrgu-Mureş Local Court, decision no 2248 from 06 May 2015.

[262] For a similar decision, see **Bucharest** Court, C**ivil section,** Civil sentence no 15100 from 03 October 2012 (divorce of an Italian couple; the defendant's demarches to obtain a residence title in Romania were considered purely formal, since she did not live nor realised a professional activity locally; its address in Romania was at the claimant's lawyer domicile. The court state that its international competence, according to art. 3a) of the regulation can be established only when the defendant lived effectively in Romania a sufficient period of time, in order to obtain a real habitual residence here).

[263] see. Csach, K. – Širicová, Ľ.: Približný počet výsledkov: 824 (0,53 sekúnd). Úvod do štúdia medzinárodného práva súkromného a procesného.Košice. 2011. p. 168-169. https://www.upjs.sk/public/media/1084/Zbornik_18.pdf.

[264] Scott J '*Forum Shopping – Having The Best Of Both Worlds?*' (available at http://www.murraystable.comwww.murraystable.com/assets/files/articles/Forum_Shopping_the_best_of_both_worlds.pdf accessed 25.10.16) See further *Agbaje v Agbaje* [2010] UKSC 13, [2010] 2 WLR 709, *Moore v Moore* [2007] EWCA Civ 361, [2007] FCR 353, *Tahir v Tahir* 1993 SLT 194, *Tahir v Tahir* (No 2) 1995 SLT 451 (Scottish case) and *Holmes v Holmes* (1989) 2 FLR 364 which saw judicial refusal to overturn a foreign court order on financial provision.

[265] Walker L '*Has forum-shopping had another lease of life?*' (2015) Fam. L.B. (136) pp 5-7) https://www.balfour-manson.co.uk/news-plus-events/comments/2015/03/has-forum-shopping-had-another-lease-of-life/ (accessed 04.10.16).

[266] Ibid.

[267] Scott op cit n 264. The Matrimonial and Family Proceedings Act 1984, underpinned by issues concerning non-recognition, allows for domestic applications for financial provision to be brought in the wake of divorces obtained abroad.

[268] Ibid. See also Hodson D '*Agbaje* financial provision after a foreign divorce: The Supreme Court restores opportunity for international justice' (2010) *Family Law Week* available at http://www.familylawweek.co.uk/site.aspx?i=ed55684 accessed 18.10.16).

[269] Scott, ibid, arguing further that '…the task of the judge in England was to apply Part III of the 1984 Act. At that point the case ceases to be directly applicable in Scotland, where the court is required to apply Part IV. ….' Therefore '…not only must the [Scottish] applicant be domiciled or habitually resident on the date the application was made, the defender must also satisfy domicile or habitual residence requirements on the date of the application or the date of separation (section 28(2)). This has the potential to hand an argument to the defender.'

[270] Ibid. The Court of Appeal commented also that the husband may have entertained the cynical hope that the Spanish court would misapply English law to his benefit.

[271] Ibid.

[272] Ibid. See further The CJEU decision in *In Van den Boogaard v Laumen* C-220/95, 1997 QB 759. 'Maintenance is not just a periodical payment, or an award that describes itself as maintenance. It is necessary to look at the nature and intention of any award. A lump sum or transfer of property intended to support a spouse will be maintenance. An award to divide property or give compensation is not maintenance. An award that constitutes division of assets concerns right in property and does not fall within Brussels I.'

[273] Scott op cit n 268, p 4. See also *Moore v Moore* [2007] EWCA Civ 361, [2007] FCR 353.

[274] Ibid, arguing that '…the English approach apparent in Moore is that a case may most appropriately be decided in the place whose law is to be applied. If English law was to be applied, then England would be an appropriate forum. Reasoning based on *forum conveniens* in relation to the 1984 Act may not have survived the rejection by the Supreme Court in *Agbaje* but there is a discernible tone in the English family court…the United Kingdom's approach thus far has been quite negative. The aim in Brussels appears to be to eliminate forum shopping. The short term effect of the European intervention thus far has not been encouraging, at least if *Moore* is anything to go by.'

[275] Wiwinius, J.-C., "L'impact et l'application du Règlement Bruxelles II bis en Grand-Duché de Luxembourg", in Boele-Woelki, K. and González Beilfuss, C. (eds.), *Brussels II bis: Its Impact and Application in the Member States*, Intersentia, Antwerp/Oxford, 2007.

[276] Resolution 'The functioning of the Brussels IIa Regulation (EC 2201/2003): Resolution's response to the European Commission'.
(2014) (available http://www.resolution.org.uk/site_content_files/files/resolution_response_council_regulation_ec_2201_2003.pdf accessed 22.10.16)

[277] *PC (A Child) (Brussels-II revised*) [2013] EWHC 2336 (Fam); [2014] IFLR 605). See also *M v LA* [2015] EWHC 2082 (Fam) and *Re W-B (appropriate jurisdiction within the UK)* [2013] IELR 394; and *B v B* 2009 SLT (Scotland).

[278] Ibid. In respect of Scotland however, 'the 1986 Act does not govern jurisdiction in relation to adoption orders, orders placing children in the care of or under a supervision of a local authority, orders made under the Education (Scotland) Act 1980, orders made under Part II or III of the Social Work (Scotland) Act 1968, orders under the Child Abduction and Custody Act 1985, or permanence orders.'

[279] Ibid, noting that '…provisions within Part 1 [of the Act] dealing with jurisdiction in England & Wales (chapter II) and Northern Ireland (chapter IV) are very similar. The provisions relating to jurisdiction in Scotland (chapter III) are markedly different.' In sum, the law on this area is complex, with courts in England & Wales unable for example to make 'a s 1(1)(a) order with respect to a child unless it has jurisdiction under Brussels II-bis or the Hague Convention, or neither of these apply but the question of making the order arises in matrimonial or civil partnership proceedings or judicial separation proceedings between the child's parents which are continuing (s 2A(1)(a)(ii)) or the condition in s 3 is satisfied.' Courts dealing with matrimonial (or civil partnership proceedings) in Scotland or Northern Ireland are permitted '….to prorogate jurisdiction to allow the courts in England & Wales to make Part 1 orders in relation to a child who is presumably present or habitually resident there.' Courts in England & Wales may also refuse to make a Part 1 order if the matter in question 'has already been determined elsewhere, or stay proceedings for a Part 1 order where proceedings in relation to the child are continuing elsewhere and the court feels that it would be more appropriate for the matters to be determined in those proceedings.'

[280] Per Jackson J in *An English Local Authority v X,Y, and Z (English Care Proceedings – Scottish Child)* [2015] EWFC 89.

[281] Ibid.

[282] Citing *Re N (Children) (Adoption:Jurisdiction)* 1995 1 FLR 711); The Family Law Act 1986 governs matters of jurisdiction within the UK's three territories (England/Wales, Scotland and Northern Ireland, respectively) but does not apply to care proceedings: *(Re M (Care Orders: Jurisdiction)* [1997] Fam 67).

[283] Sibley E 'Summary of *An English Local Authority v X,Y and Z (English Care Proceedings – Scottish Child*) [2015] EWFC 89' (available at http://www.familylawweek.co.uk/site.aspx?i=ed163228, accessed 05.10.16).

[284] Per Jackson J op cit at n 105, at para 9.

[285] Ibid at para 10 Article 15 provides that where the courts of a member state have jurisdiction over substantive matters, they may stay proceedings and request (or invite the parties to make such a request) that the case be heard in the courts of a fellow member state, on the basis that the other jurisdiction's courts are better placed to deal with the issues, the child having some particular connection with that jurisdiction.

[286] Per Jackson J op cit at n 105 at para 16. See also *Re ESJ (A Minor) (Residence Order Application: Jurisdiction within UK: Applicability of Council Regulation (EC) No 2201/2003* [2008] NI Fam 6 wherein Morgan J (now LCJ) also adopted this approach, as did Sheriff George Jamieson in the Scottish case *GOT v KJK* (December 12, 2012).

[287] Para 19.

[288] Para 23.

[289] Para 24. It was argued by the parties to the case that welfare decisions would be better decided by the Scottish courts, given the case's complexities (the family were well known to the Scottish social services and to the police: extensive disclosure was likely to be required). Also, the child's case required a high degree of confidentiality given the level of significant harm that he had suffered there, he still had a deep connection with Scotland however (in terms of family connection) and English social workers could not be deployed in Scotland.

[290] Sibley, op cit n 112.

[291] Mundy F 'Child Cases: Who Decides? An in-depth exploration of how the Family Law Act 1986 operates to determine jurisdiction in cross-border cases involving children, and the various procedures for enforcement within the UK' *The Journal of the Law Society of Scotland* (2016) (available at http://www.journalonline.co.uk/Magazine/61-5/1021703.aspx accessed 11.10.16) Citing Lord Justice Thorpe (in *In the matter of W-B (A Child*) [2012] EWCA Civ 592) Munby suggests that '…article 66 of Brussels II-bis leaves open the possibility that the regulation could be applied to jurisdictional disputes within the UK. If, as article 66(a) requires, the phase "habitual residence in a territorial unit" is substituted for "habitual residence in a member state", for example in article 8, it could be argued that the phrase "the courts of a member state" must therefore mean "the courts of a territorial unit of a member state".' See also *S v D* 2007 SLT (Sh Ct) 37 which suggested that Brussels II-bis could perhaps serve to determine jurisdictional remit 'not only between member states but also between courts of a particular legal system within a state.'

[292] Fiorini A 'Harmonizing the law applicable to divorce and legal separation - enhanced cooperation as the way forward?' (2010) *I.C.L.Q*. 2010, 59(4) pp 1143-1158 p 1158.

[293] T. Kruger and L. Samyn, "Brussels IIbis: successes and suggested improvements", *Journal of Private International Law* 2016, Vol. 12, issue 1, (132) 142-143.

[294] J. Verhellen, *Het Belgisch Wetboek IPR in familiezaken. Wetgevende doelstellingen getoetst aan de praktijk* (The Belgian PIL Code in family matters: Field-test research of legislative intentions and the actual practice of courts and administrations), Brugge, die Keure, 2012, 183-199.
[295] Natov, Nikolai& Museva, Pandov, Tsenova, Sarbinova, Yordanski, Tsanev, Stankov, Regulation Brussels IIa, Comment, Ciela, 2014, p. 68.
[296] Tweede Kamer (Second Chamber), 10 213, nr. 3, p. 14 et seq; Tweede Kamer, 10 213, nr. 6, p. 3 et seq.
[297] SC 6 December 1996, NJ 1997, 189.
[298] ECLI:NL:PHR:2009:BG6720 (AG Verkade); ECLI:NL:PHR:2013:BY7924 (AG Langemeijer).
[299] ECLI:NL:HR:2009:BG6720; ECLI:NL:HR:2013:BY7924.
[300] See ECLI:NL:PHR:2009:BG6720, point 3.3, with further references.
[301] Fiorini A 'Harmonizing the law applicable to divorce and legal separation - enhanced cooperation as the way forward?', op. cit. n 292.
[302] Ibid.
[303] Ibid, observing also that '…given that there are or may soon be common rules on applicable law concerning matrimonial property and parental responsibility, and given the existence of harmonized rules of jurisdiction in divorce and legal separation, was it really necessary (other than for political reasons) to activate enhanced cooperation solely for the area of the law governing the principle and grounds of divorce?'.
[304] Fiorini A 'Rome III — Choice of Law in Divorce: Is the Europeanization of Family Law Going Too Far?*' Int J Law Policy Family* (2008) 22 (2): 178-205.
[305] Baksi C 'Rome opt-out rapped' (2006) *Law Society Gazette* (2006) Nov. 4 (2).
[306] Ibid.
[307] Allman op cit n 51: See also *Jefferson v O'Connor* [2014] EWCA Civ 38; [2014] 2 F.C.R. 112. See further Bojarski A 'Has Forum Shopping Had its Day? *Family Law* (2014) who suggests that there will also be 'less tolerance of 'forum shopping' within England and Wales in the future.' (Available at http://www.familylaw.co.uk/news_and_comment/has-forum-shopping-had-its-day-0#.WBTM9i0rKM8 accessed 11.10.16).
[308] *Peng v Chai* [2015EWCA Civ 1312.
[309] Benson M (case summary) *Family Law* (available at http://www.familylawweek.co.uk/site.aspx?i=ed158000 accessed 05.10.16).
[310] Ibid.
[311] See further *Butler v Butler* (Nos 1 and 2) [1997] 2 FLR 311 and *de Dampierre v de Dampierre* [1988] 1 AC 92.
[312] Benson M *op cit* at n 309.
[313] As set out in *Spiliada Maritime Corp v Cansulex* Ltd [1987] AC 460.
[314] distilling the legal test for habitual residence from Borras report of 16th July 1998, Merinos v Merinos [2007], as confirmed by the Court of Appeal in *Tan v Choi* [2014] EWCA Civ and as stated by Baroness Hale of Richmond in *Re A (Jurisdiction: Return of child)* [2014] UKSC 60.
[315] Cayoum M (on the High Court's decision in *Chai v Peng* [2014] EWHC 3519) *Family Law* (available at http://www.familylawweek.co.uk/site.aspx?i=ed136449 accessed 17.10.16).
[316] Allman M '*Chai v Peng*: Shifting the Jurisdictional Goalposts Once the Forum Dispute Match Has Started' (2014) *Family Law* (available at http://www.familylawweek.co.uk/site.aspx?i=ed129940 accessed 16.10.16), arguing further that courts should consider the issue of jurisdiction from the moment a party issues proceedings, to avoid 'spouses engaging in secretive and deceptive behaviour in order to gain English jurisdiction against the knowledge of their spouse.' As the husband's legal team also suggested, 'to file prematurely is the equivalent of laying one's towel at dawn upon the sun lounger of the English court and returning at high noon to bask in the warmth of the law of England and Wales on divorce and financial remedies.'
[317] Ibid.
[318] Walker *op cit* at n 265, p 7. See further Hodson D 'What is jurisdiction for divorce in the EU? The contradictory law and practice around Europe' *I.F.L.* 2014, Sep, 170-174. See also *E v E (Jurisdiction: Lis Pendens)[*2015] EWHC 3742 (Fam); [2016] Fam. Law 301.
[319] TH.M. DE BOER, Jurisdiction and Enforcement in International Family Law: A Labyrinth of European and International Legislation, *Netherlands International Law Review* 2002, p. 307-351, at p. 342/343. If Article 12(1) Brussels II-bis allows the spouses to ask the forum divortii for a decision on parental responsibility for a child habitually

resident in another member state, why could it not be the other way round? Why are they not allowed, then, to choose a forum divortii in the member state where their child is habitually resident?

[320.] Ibid. See Art. 23 Brussels I Regulation, allowing the parties to choose any court within the EU as long as one of them is domiciled in a member state, not necessarily the forum state. The Commission's proposal for a regulation on international maintenance obligations COM (2005) 649, 15 December 2005, contained a similar provision. Unfortunately, however, this provision has been brought into line with the Brussels II-*ter* proposal. *Cf.* Article 4 of the latest draft, 11281/07 JUSTCIV 180, 28 June 2007: with regard to maintenance, the parties may choose one of the fora that would have jurisdiction if there had been no choice-of-court agreement, or the *forum patriae communis,* or the courts of the member state in which the (former) spouses had their last common habitual residence for a minimum length of time (one year? three years?). On the other hand, the maintenance proposal has retained the provision of Article 24 Brussels I (tacit submission to the jurisdiction of the court seized), while the Brussels II-*ter* proposal does not allow tacit submission unless the court seized 'would otherwise have jurisdiction under this Regulation': Art. 3a(5).

[321] Ibid, arguing further that ideally, they should be allowed to choose any forum within the EU, as long as one of them is a EU citizen or resident at the time of the agreement.

[322] See response to question 9.

[323] Comp. Article 6(1) of the European Convention on Human Rights.

[324] Palmer op cit n 214.

[325] Ibid.

[326] *Re B (a child)* [2016] UKSC 4 per Lord Sumption, at para 67 (Dissenting opinion). (see question 1). Palmer argues however (citing Briggs and Rees, *Civil Jurisdiction and Judgments* (2009) para 4.29) that the UK's enactment of the 1998 Human Rights Act (in October 2000) obliges domestic courts 'to address claims that a party's human rights will not be respected by a foreign judicial system.' The 'willingness to welcome' international law cases (albeit in the context of commercial law) has also 'potentially, whether directly or indirectly, resulted in a greater openness to hearing the type of challenges to the integrity of a foreign forum that were previously taboo.' (ibid). Palmer argues further that 'this area will undoubtedly be subject to further development…unless the English Parliament adopts statutory guidance or even a "black list" of inappropriate fora, uncertainty is an inevitable consequence…this area impacts not only comity but also international policy and relations.'

[327] Clark L 'EU law coming to a court near you' (2015) *FLB* 138 pp 5-8.

[328] *A v B* (C-489/14) CJEU 6 October 2015: 'The husband lodged a request for judicial separation with the French court in March 2011. The wife issued proceedings in England in May but the English court later declined jurisdiction, being second seised. …The wife again sought to seise jurisdiction in England by issuing a petition on 13 June 2014, attempting— unsuccessfully—to ensure that the petition would only take effect at one minute past midnight on 17 June [once her husband's non-conciliation had expired. The husband then issued in France early in the morning (before court opening UK time) of 17 June 2014.' (reported as *S v S* [2014] EWHC 3613 Fam).

[329] Austrian Supreme Court [OGH] 31.08.2006 6 Ob 189/06x, 29.01.2010 1 Ob 139/09i, 13.10. 2011 6 Ob 69/11g RIS- Justiz RS0121191 ECLI:AT:OGH0002:2006:RS0121191.

[330] Federal Law on Judicial Proceedings in Matters of Voluntary Jurisdiction [Bundesgesetz über das gerichtliche Verfahren in Rechtsangelegenheiten außer Streitsachen], BGBl [Bundesgesetzblatt] I 2003/111, last amended by BGBl [Bundesgesetzblatt] I 2016/50.

[331] Austrian Supreme Court [OGH] 31.08.2006 6 Ob 189/06x, Austrian Supreme Court [OGH] 28.06.2007 3 Ob 130/07z, Austrian Supreme Court [OGH] 07. 02. 2008 7 Ob 10/08k, Austrian Supreme Court [OGH] 13.10.2011 6 Ob 69/11g RIS-Justiz RS021192 ECLI:AT:OGH0002:2006. RS021192.

[332] See footnote 331.

[333] Court of First Instance Mechelen 12 January 2006, *Tijdschrift voor Vreemdelingenrecht* 2008, 62.

[334] Dutch Act of 28 November 2008 (Wet van 27 november 2008 tot wijziging van Boek 1 van het Burgerlijk Wetboek en het Wetboek van Burgerlijke Rechtsvordering in verband met het bevorderen van voortgezet ouderschap na scheiding en het afschaffen van de mogelijkheid tot het omzetten van een huwelijk in een geregistreerd partnerschap (Wet bevordering voortgezet ouderschap en zorgvuldige scheiding)).

[335] N. Škalabrin, *Ženidba. Pravno-pastoralni priručnik* (Đakovo, 1995); V. Blažević, *Ženidbeno pravo Katoličke crkve* (Zagreb, 2004).

[336]Article 13(4), Zakon o potvrđivanju Ugovora između Svete Stolice i Republike Hrvatske o pravnim pitanjima, NN MU 02/1997.

[337] N. Eterović, „Ugovor između Svete Stolice i Republike Hrvatske" 2*PRINOSI; Crkva u svijetu* (1997) p. 182 -183.

[338] ARVANITAKIS Paris, article 3, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 54-55 ; KAPETANYIANNI Maria, article 21, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], p. 231, nº 2, p. 232, nº 5, p. 233, nº 7.
[339] The Court of Appeals of Lithuania decision of 07-03-2014 in civil case No 2T-29/2014.
[340] This case is reported in Vogel, G., *Le divorce en Droit Luxembourgeois*, 3rd. ed., Larcier, Brussels, 2010.
[341] J. Ciszewski, Europejskie prawo małżeńskie i dotyczące odpowiedzialności rodzicielskiej. Jurysdykcja, uznawanie i wykonywanie orzeczeń. Komentarz, Warszawa 2004, p. 93.
[342] J. Zatorska, op. cit.
[343] J. Maciejowska, Ustanie małżeństwa w stosunkach transgranicznych – jurysdykcja sądu i uznawanie orzeczeń zagranicznych (in:) J. Ignaczewski (ed.), Rozwód i separacja, Warszawa 2010, p. 512.
[344] J. Gołaczyński, Współpraca sądowa w sprawach cywilnych i handlowych w Unii Europejskiej, Warszawa 2007, p. 65.
[345] J. Zatorska, op. cit.
[346] J. Maciejowska, op. cit., p. 97 and following.
[347] See nevertheless ECJ, 13 October 2016, C-294/15, *Edyta Mikołajczyk* v. *Marie Louise Czarnecka* & *Stefan Czarnecki.*
[348] See recital 9 from the regulation 1347/2000.
[349] See Municipal Court Rijeka R-4113/95 of 21.1.2015. (CRF20150121), Municipal Court Zlatar Posl. br. 19 R1-11/2016-4 of 21.3.2016. (CRF20163021), Municipal Court Rijeka P-4842/06 od 14.9.2014. (CRF20150914), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[350] Municipal Court Zagreb, number missing – to be delivered.
[351] ANTHIMOS APOSTOLOS, "Case law of European procedural law, case law of the years 2013-2014", *Epitheorissi Politikis Dikonomias* 2015, pp. 139-144, esp. p.
[352] *Court of first instance of Ioannina 84/2008*, *Efarmoges Astikou Dikeou* 2008, p. 1252 ; *Court of first instance of Kerkyra 168/2007*, *Armenopoulos* 2008, p. 599.
[353] Galati County Court, 1st Civil Division, decision no 231 from 08 March 2016; Vaslui County Court, Civil Division, decision no 529 from 28 May 2014; Buzau County Court, 1st Civil Division, decision no 448/2014 from 08 May 2014.
[354] Decision №3 from 4.2.2010, CC №402/2009 Burgas District Court.
[355] See Municipal Court Zagreb, R1-165/16-3 of 3.6.2016. (CRF20160603), Municipal Court Zlatar, Posl. br. 19 R1-11/2016-4 of 21.3.2016. (CRF20163021); Municipal Court Sisak, 20 R1-eu-6/2015-2 of 16.9.2015. (CRF20150916); Municipal Court Novi Zagreb, R16726/15 od 14.1.2016. (CRF20160114), Municipal Court Sisak, 24-R1-eu-1/16 of 19.1.2016. (CRF20160119), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[356] Areios Pagos (Greek supreme court) 812/1977, *Nomiko Vima* 1978, p. 511, Areios Pagos 1134/1975, *Nomiko Vima* 1976, p. 419, Court of Appeals of Thessaloniki 1415/1976, *Dike* 1977, p. 427.
[357] The Court of Appeals of Lithuania decision of 08-07-2013 in civil case No 2T-26/2013.
[358] The Court of Appeals of Lithuania decision of 16-03-2015 in civil case No 2T-23-407/2016.
[359] See Iași Court of Appeal, decision no 152 from 3 November 2008; Mehedinti County Court, 1st Civil division, civil decision no 181 from 30 September 2014; Galati County Court, 1st Civil Division, civil decision no 1784 from 24 November 2014; Bucharest County court, 4th Civil Division, civil decision no 423 from 03.04.2014; Dambovita County Court, 1st civil Division, civil decision no 1160 from o1 October 2014; See also Suceava County Court, civil decision no 1502 from 8 October 2015, refusing recognition of a divorce judgement originating from Spain, on the ground that the claimant did not proved that the judgment is final and also did not produce the certificate from art. 37, 39 of the regulation. The applicant launched an appeal, produced the requested certificates and the decision was quashed by Suceava Court of Appeal, 1st civil Division, civil decision no 77 from 26 January 2016.
[360] Bacău County court, civil decision no 2404 from 2 November 2012.
[361] Bacău Court of Appeal, 1st Civil Division, civil decision no 334, from 20 February 2013.

[362] Brăila County court, 1st Civil Division, civil decision no 426 from 21 May 2015.
[363] Braşov Juvenile and Family County Court, civil decision no 438/S, from 22 November 2013.
[364] See footnote 330.
[365] See footnote 330.
[366]Law of 1 August 1895 on the exercise of jurisdiction and the competence of ordinary courts in civil cases (Jurisdiction Norm) [Gesetz vom 01.08.1895 über die Ausübung von Gerichtsbarkeit und die Zuständigkeit der ordentlichen Gerichte in bürgerlichen Rechtssachen (Jurisdiktionsnorm)], RGBl [Reichsgesetzblatt] 1895/111, last amended by BGBl [Bundesgesetzblatt] I 2015/87.
[367] Vgl Austrian Supreme Court [OGH] 11.07.2005 7 Ob 61/05d ECLI:AT:OGH0002: 2005:0070OB0006105D. 0711.0000 (Serbian divorce); for mirror image application see also Austrian Supreme Court [OGH] 23.10.2006 7 Ob 199/06z ECLI:AT: OGH0002:2006: 0070OB001999.06Z.1023.000 (Texan divorce).
[368] That means, it is not a consensual divorce.
[369] See footnote 366.
[370] See footnote 366.
[371] See footnote 366.
[372] See footnote 330.
[373] M. P. Wójcik, Komentarz aktualizowany do art.1146 Kodeksu postępowania cywilnego, in: A. Jakubecki (ed.), J. Bodio, T. Demendecki, O. Marcewicz, P. Telenga, M. P. Wójcik, Komentarz aktualizowany do ustawy z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, LEX/el., 2016.
[374] LEX No. 7941.
[375] OSNC 1980, No. 12, item 233.
[376] LEX No. 52393.
[377] OSNC 1979, No. 1-2, item 12.
[378] Prokuratura i Prawo - wkł. 2002, No. 5, item 39.
[379] LEX No. 253427.
[380] Under the Romanian law, the fraud exists when the judgment intervened in a matter which is not of (free) disposition of the parties, obtained in a foreign country with the exclusive purpose of avoiding the applicability of the competent law, as determined by Romanian PIL norms.
[381] Art. 1097.2 Civil procedure code clearly states that the recognition cannot be denied for the sole reason that the foreign court applied a law different from the one designated by the Romanian PIL (except in cases regarding the civil status and the legal capacity), and thus the final decision differs from the one that would have been rendered by a Romanian court.
[382] See *Decision Cp 11/2004*, 12.6.2014; *VSRS Decision Cp 8/2016,* 12.5.2016.
[383] Hodson D '*Recognition of Foreign Divorces'* IFLG (2013) (available at http://www.davidhodson.com/userFiles/recognition_of_foreign_divorce.pdf accessed 20.10.16)
[384] Ibid.
[385] Ibid. 'The divorce must be valid in the country in which it was obtained; at the time the divorce was obtained either spouse must have been resident or domiciled or a national of the country where it was obtained; both spouses must have had notice of the proceedings.'
[386] Ibid.
[387] Cour de Cassation 21 November 2007, *Revue@dipr.be* 2008/1, 78.
[388] Court of Appeal Brussels 28 November 2006, *Revue trimestrielle de droit familial* 2008, 90.
[389] Court of Appeal Brussels 4 April 2007, *Revue trimestrielle de droit familial 2008,* 508.
[390] Court of First Instance Brussels (kortgeding) 30 May 2007, *Revue de Jurisprudence de Liège, Mons et Bruxelles* 2008, 845.
[391] Case C‑215/15 Gogova v Iliev, Judgment (Summary), see more in paras 26, 27, 29, 35, operative part 1.
[392] E. Blidaru, *op. cit., p. 3-4.*

[393] They are very similar to those existing in the Romanian legal system, where the concept parental responsibility encompasses a collection of rights and duties regarding the identity of the child (civil status, name, citizenship), the care and protection, the provision of education, the personal relationships with the child, the determination of the child's place of living, the maintenance, the representation or assistance of the child (for the conclusion of certain patrimonial or personal acts), the administration of the child property - see art. 483 Civil code and the following. Due to the exclusions in article 1.3 of the regulation, not all these aspects enter into the applicability sphere of Brussels IIbis regulation. The case law refers frequently to the European definitions : see Bucharest Court of Appeal, III[rd] Civil Juvenile and Family Division, civil decision no 1799 from 22 October 2012; Brasov Juvenile and Family County Court, civil decision no 193/S from 28 May 2015; Bucharest Court of Appeal, III[rd] Civil Juvenile and family division, civil decision no 594 from 2 April 2012; Iasi Local Court, Civil Division, civil decision no 15152 from 25 November 2013; Bucharest Court of appeal III[rd] Civil Juvenile and family division, civil decision no 483-A from 07.11.2014; Bacău Local Court, Civil Division, civil decision no 2105 from 02 April 2015.

[394] E. Blidaru, *op. cit., p* 4. L.M Andrei, *Instituțiile implicate în protecția juridică a minorilor. Elemente privind rezolvarea litigiilor vizând minorii din perspectiva internațională*, p. 14-15. (http://www.grefieri.ro/Docs/20100211manual%20min3.pdf).

[395] ECJ, 2 April 2009, **C-523/07;** ECJ, 27 November 2007, **C-435/06; ECJ, 5 October 2010 C-400/10 PPU; ECJ, 6 October 2015;** ECJ, **21 October 2015, C-215/15.**

[396] Zakon o zakonski zvezi in družinskih razmerjih (Marriage and Family Relations Act (hereinafter: MFRA)): Uradni list RS, no. 69/04 OCV with later changes.

[397] Ustava Republike Slovenije (Constitution of the Republic of Slovenia (hereinafter CRS)): Uradni list RS, no. 33I/91 with amendments.

[398] "Parental right" (slo. roditeljska pravica) is still applicable term in Slovenia, but new Family Code will use new and more appropriate term "parental care".

[399] Op cit n 36.

[400] Lamont R and Fenton-Glynn C 'Cross-border public care and adoption proceedings in the European Union' (2016) *Journal of Social Welfare and Family Law* 38 (1) 94-102 at p.100.

[401] Court of appeals of Thessaloniki 722/2003, *Armenopoulos* 2004, p. 1157.

[402] Journal of Laws 2000 No. 6 item 69.

[403] In Romanian private international law, the law applicable to natural persons is their national law (art. 2572 Civil code.), but the first degree renvoi is admitted (art. 2559 Civil code). The substantial law states that the parental responsibility is to be exercised until the child reaches the capacity to exercise legal rights (art. 484 Civil code). In principle, that means the age of 18; exceptionally, this capacity may be acquired prior to this age, by marriage (art. 39 Civil code) or by a judiciary decision (art. 40 Civil code)

[404] http://ec.europa.eu/justice/civil/files/brussels_ii_practice_guide_ro.pdf, at p. 19.

[405] E. Blidaru, *op. cit.*, p. 4.

[406] For example: As mentioned CRC applies to children under the age of 18 years, but The Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention (1980) only applies to children until the age of 16.

[407] Austrian Supreme Court [OGH] 30.05.2011 2 Ob 19/11z ECLI:AT:OGH0002:2011: 0020OB80000.19.11Z.0530.000; RIS- Justiz RS0127153 ECLI:AT:OGH0002:2011:RS0127153.

[408] Court of Appeal Brussels 16 May 2012, *Revue trimestrielle de droit familial 2008,* 829.

[409] Court of Appeal Brussels 25 June 2013, *Revue@ipr.be* 2013, 59.

[410] Court of Appeal Brussels 16 December 2013, *Actualités du droit de la famille* 2015, 55.

[411] See Municipal court Split Pob – 384/14 of 8.1.2016. (CRF20160108), available at EU Fam's project database (www.eufams.unimi.it) under specified code.

[412] Court of first instance of Thessaloniki 9312/2014, Nomos, *Arm.* 2014, p. 2098, obs. ANTHIMOS Apostolos.

[413] Op cit at n 280.

[414] Scott J M *''Choice of Forum- Jurisdictional Issues Within the UK'* (Conference Paper – Advanced Family Law Conference, Law Society of Scotland, 2007) p 4 citing *De Dampierre v De Dampierre* [1988] AC 92; *Mitchell v Mitchell* [1992] SC 372.

[415] Ibid.

[416] Ibid.

[417] For example, divorce courts in Scotland retain jurisdiction over children of the marriage in divorce proceedings under the Family Law Act 1986, s. 11 and divorce proceedings continue until the child reaches the age of 16 (18 in the rest of the UK). The Regulation would give jurisdiction to the court of the child's habitual residence. (ibid, p 5).
[418] Family Law Act 1986 s15(2).
[419] Scott op cit n 85 p 6.
[420] See for example the Scottish case *Surowiak v Denny* [2006] Fam LR 66, 2007 SLT (Sh Ct) 37, and the Northern Ireland case *Re C and C* [2005] NI Fam 3.
[421] Ibid p 6.
[422] Ibid p 9.
[423] There is no forum necessitatis according to § 28 (1) no. 2 of the JN, if the international jurisdiction - as for procedures relating parental responsibility (cf. § 110 JN), is expressly and conclusively regulated (*Garber* in Fasching/Konecny, Commentary [see footnote 120] third edition, volume I § 28 JN note 83).
[424] See footnote 366.
[425]*Nužna nadležnost, čl.59.* Ako se primjenom odredbi ovoga Zakona ili drugih zakona Republike Hrvatske ili međunarodnih ugovora na snazi u Republici Hrvatskoj ne može zasnovati nadležnost u odnosu na tuženika koji ima prebivalište u državi koja nije članica Europske unije, a postupak se ne može voditi u inozemstvu ili je to nerazumno očekivati, sud Republike Hrvatske je nadležan, ako je predmet postupka dovoljno povezan s Republikom Hrvatskom da bi bilo svrsishodno voditi ga u Republici Hrvatskoj.
[426]V. Tomljenović, „Kako pomiriti odbacivanje međunarodne nadležnosti i članak 6. Europske konvencije za zaštitu ljudskih prava" (How to Reconcile the Decline of International Jurisdiction and Article 6 of the EHRC?) presented at inerantional conference Legal Culture in Transition: Supranational and International Law in National Courts, Opatija 17-18.6.2011.
[427] Župan, M., „Određivanje međunarodne nadležnosti u obiteljskopravnim stvarima", u Garašić, J. (ur.), Europsko građansko procesno pravo – izabrane teme. (Narodne novine Zagreb 2013.) p. 147-171 at.p.165.
[428]Ines Medić, Uredba 650/2012, u Lazić, V., Medić, I., *Priručnik za suce* (Pravosudna akademija Republike Hrvatske 2015).
[429] Article 402(6) CPA defines: »*Actions concerning the relations between parents and children shall include paternity and maternity suits and actions concerning the care, education and maintenance of minors and of adults subject to protracted paternal rights (hereinafter referred to as: 'children'), irrespective of whether they are heard independently or jointly with matrimonial actions an/or paternity or maternity suits*."
[430] Court of Appeal Ghent, 10 December 2009, *Revue@dipr.be* 2010/1, 64.
[431] Article 1253ter/7 Belgian Civil Code of Procedure.
[432] Cour de Cassation 21 November 2007, *Revue trimestrielle de droit familial* 2008, 176.
[433] Court of Appeal Brussels, 11 March 2013, *Revue@dipr.be* 2013/2, 40.
[434] See at County Court Dubrovnik, Gž 1336/14 of 14.10.2015. (CRS20151014), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[435] Municipal Court Zagreb had to resolve an international jurisdictional issue in a situation where upon separation of parents (both lived in Croatia at the time) the child was ordered to live 30 days with the mother and 30 days with the father. After some time, father has moved to live in Serbia, while the child kept on maintaining the previously set arrangements on joined parental care. At the time child reached the age to enroll to elementary school mother seeks of a Croatian court to modify that previous order. Determining the habitual residence of a child is under challenge here as the child has its center of life equally balanced in two states. (Unreported, First Instance Court of Zagreb P2 2256/13 of 3 December 2013).
[436] KRANIS Dimitrios, art. 8, ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 92-100.
[437] KRANIS Dimitrios, art. 8, ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], p. 96, nº 4.
[438] Court of first instance of Kavala 24/2009, *Armenopoulos* 2009, p. 566, obs. FOUNTEDAKI Ekaterini, *Armenopoulos* 2009, p. 566, obs. TAMAMIDIS, Court of first instance of Thessaloniki 22101/2011, *Armenopoulos* 2014, p. 1377, Court of appeals of Athens 2712/2011, Areios Pagos 63/2001.
[439] LEX No. 2009583.

[440] LEX No. 1842420.
[441] LEX No. 508528.
[442] LEX No. 1717279.
[443] POSAG 2013/2/3-22, LEX No. 1324450.
[444] POSAG 2011/3/81-83, LEX No. 1087212.
[445] LEX No. 1714373.
[446] POSAG 2010/1/75-86, LEX No. 563037.
[447] Ex. Iași County court, 1st Civil Division, civil decision no 1802/2015 from 15 December 2015. Suceava Local court, civil decision no 3185 from 5 June 2015; Viseu De Sus Local Court, civil decision no 1606 from 10 September 2014: application filled by the mother, Romanian citizen residing in Italy; the father (Romanian citizen residing in Romania), was legally cited but does not appear before the court, nor formulate a defence. The court declares herself as incompetent to hear the case). Constanta Local court, Civil Division, civil decision no xxxxx from 01 October 2015 (application filled by the mother, Romanian citizen habitually resident in Spain, against the father, Romanian citizen residing in Romania; the court refused to retain its jurisdiction, since the habitual residence of the child was in Spain). Petrosani Local Court, civil decision no 2559/2015 from 30 September 2015 (Romanian citizens living in Austria; application filled by the mother, regarding the custody, the father being absent in the proceedings; the courts refused to retain jurisdiction).
[448] Comp. *VSL Decision IV Cp 615/2010*, 3.3.2010.
[449] Phillimore S 'What's Really in the best interests of children from other European countries involved in care proceedings?' *Family Law Week* (06.05.16) (available at http://www.familylawweek.co.uk/site.aspx?i=ed160679, accessed 30.09.16), adding that 'it seems clear now that we apply the principles set out in *A v A and Another (Children: Habitual Residence)* [2013] UKSC 60 and to be 'habitually resident' in a country you will require some degree of integration in that country. The test approved by the Supreme Court is the place which reflects some degree of integration by the child in a social and family environment in the country concerned. This depends upon numerous factors, including the reasons for the family's stay in the country in question. It is possible that a child may have no country of habitual residence at a particular point in time but the courts have said this will be exceptional. It is obviously in a child's interests to have an identifiable habitual residence.'
[450] EWHC 1844 (Fam).
[451] Namely, *Proceedings brought by A* [2010] Fam 42 (esp. [34]-[41]), *Mercredi v Chaffe* (Case C-497/10PPU) [2012] Fam 22, [47], and the Supreme Court's decisions in In the matter of *A v A* [2013] UKSC 60.
[452] Op cit n 36.
[453] The mother had, a year before her departure, effectively made up her mind to join her husband in England on a permanent basis, in an attempt to provide her daughter with a better life and escape the crisis in Ukraine.
[454] Per Cobb J, at para 26.
[455] Para 30.
[456] Para 33.
[457] EWHC 2174 (Fam).
[458] Ibid, Per Hayden J, at para 19. See paras 16 and 17 for a useful summation of the current jurisprudence.
[459] Flowers, V. 'Hayden J expresses concern about preparation of 'habitual residence' cases' (2016) *Family Law Week*.
(available at http://www.familylawweek.co.uk/site.aspx?i=ed162780, accessed 12.10.16)
[460] Court of First Instance 17 November 2011, *Actualités du droit de la famille* 2011/10, 222.
[461] Court of Appeal Ghent, 6 November 2008, *Revue@dipr.be* 2010/1, 83.
[462] Court of Appeal Brussels, 11 March 2013, *Revue@dipr.be* 2013/2, 40.
[463] Court of Appeal Ghent, 5 September 2005, *Revue@dipr.be* 2005/3, 26.
[464] Municipal court Beli Manastir, P-60/2014 of 4.3.2014. (CRF20140304) available at EU Fam's project database (www.eufams.unimi.it) under specified code.

[465] Court of appeals of Thessaloniki 22101/2011, *Armenopoulos* 2014, p. 1377, Court of first instance of Kavala 24/2009, *Armenopoulos* 2009, p. 566.
[466] KRANIS Dimitrios, art. 9, ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003,* SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], p. 106, nº 5.
[467] See J. Zatorska, op. cit.
[468] Bucharest sector 2 Local Court - Civil Division, Court Conclusion in the closed session from 03.06.2014.
[469] Brasov Local Court, civil decision no 7442 from 11 June 2014.
[470] Bistrita Năsăud County Court, 1st Civil Division, civil decision no 118/R/2015, from 16 September 2015, quashing a previous decision of Bistrita Local Court (no 583/2015) (who wrongly interpreted the departure date).
[471] Renton C 'Orders Relating To Children Within The European Union Under BIIR' (2009) *Family Law Week (*available at http://www.familylawweek.co.uk/site.aspx?i=ed35440&f=35440 accessed 09.10.2016).
[472] (2008 Fam Law 105).
[473] Ibid.
[474] 2 FLR 1358.
[475] Renton op cit at n 471.
[476] *Re B* [2016] op cit at n 36, ibid at para 72, adding that 'The courts have had no difficulty in accepting these as obvious propositions of fact. Advocate General Kokott in *Proceedings brought by A* (Case C-523/07) acknowledged that "abandoning the old residence and employment and notifying the authorities of departure suggest that habitual residence in the former state is at an end" (para 44) and that "in exceptional cases… during a transitional stage there will no longer be habitual residence in the former state while the status in the new state has not yet crystallised into habitual residence" (para 45). She thought that such situations would be exceptional, but in the nature of things they can be no more exceptional than the facts which give rise to them.'
[477] 2 AC 562, at para 578-579.
[478] Para 73. His Lordship highlighted how in *A v A,* (at para 39) Lady Hale had similarly criticised the courts' tendency to "overlay the factual concept of habitual residence with legal constructs," an admonition repeated in *In re L (A Child) (Custody: Habitual Residence)* [2014] AC 1017 (paras 20-21). Lord Reed too was equally critical of this in *In re R (Children)* [2016] AC 76 (para 17).
[479] See however Lady Hale's opinion (at para 57) 'At the risk of appearing pedantic, we would prefer to describe it as a mixed question of fact and law, because the concept is a matter of law but its application is a matter of fact.'
[480] Para 75. 'Article 13 of the Council Regulation provides for residual jurisdiction to lie with the courts of the country where the child is present in a case where a child's habitual residence "cannot be established". As Advocate General Kokott pointed out at para 45 of her advice *in Proceedings brought by A,* supra, Article 13 was included precisely in order to cover the situation where a former habitual residence has been lost but the child's status in her new home "has not yet crystallised into habitual residence." A similar provision appears in Article 6(2) of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. Jurisdiction based on presence is also provided for by sections 2 and 3 of the Family Law Act 1986 in cases where neither the Council Regulation nor the 1996 Hague Convention applies, and it serves the same function in that context.' (para 76).
[481] Para 76.
[482] 'The Council Regulation assumes that it will normally have been acquired in three months: see article 11(7); and in *A v A,* Baroness Hale declined to assume that it could not be acquired in a single day.'
[483] Per Lord Wilson *op cit* at n 36, p 56.
[484] Farrer & Co., 'Non-biological mother wins international child custody appeal in Supreme Court' (03.02.16) available at http://www.familylaw.co.uk/news_and_comment/gay-parent-wins-international-child-custody-appeal-in-supreme-court#.WAIi3_krKM9 (accessed 01.10.16). Simon Bruce (of Reunite - International Child Abduction Centre) notes further that: 'This judgement is of huge practical significance – and is a remarkably humane and modern judgement. The court has sent out a message that a parent with sole legal rights will no longer succeed in avoiding proceedings by abducting a child. The child's pre-existing habitual

residence will rarely be lost until a new habitual residence has been gained. In a case involving unilateral action by an abducting parent, this is unlikely to be accomplished instantaneously but will require a period of time to elapse.' See also Laing A 'A very legal playground: *Re B (A Child) (Habitual Residence: Inherent Jurisdiction*) and the habitual residence seesaw' (22.02.16) available at http://www.familylaw.co.uk/news_and_comment/a-very-legal-playground-Re-B-A-Child-Habitual-Residence-Inherent-Jurisdiction-and-the-habitual-residence-seesaw#.WAInsfkrKM8 (accessed 30.09.16).

[485] See footnote 330.

[486] See footnote 330.

[487] See footnote 330.

[488] Austrian Supreme Court [OGH] 16.03.2006 2 Ob 272/05x ECLI:AT:OGH0002:2006: 0020O00272.05X.0316.000; Austrian Supreme Court [OGH] 15. 05. 2012 2 Ob 228/11k ECLI:AT:0002OGH:2012:0020OB00228.11K.0515.000.

[489] Court of Appeal Brussels, 28 November 2016 *Revue trimestrielle de droit familial* 2007, 223.

[490] Court of Appeal Brussels, 28 November 2006, *Revue trimestrielle de droit familial* 2008, 90.

[491] Court of Appeal Brussels, 25 June 2013, *Revue@dipr.be* 2013/3, 59 and Court of Appeal Brussels, 21 June 2012, *Revue trimestrielle de droit familial* 2013, 263.

[492] Court of Appeal Brussels, 6 April 2006, *Revue trimestrielle de droit familial* 2007, 22.

[493] Court of Appeal Brussels, 28 November 2006, *Revue trimestrielle de droit familial* 2008, 90.

[494] Court of Appeal Antwerp, 12 January 2011, *Tijdschrift voor Vreemdelingenrecht*, 2001, 341.

[495] Court of Appeal Brussels, 28 November, 2006, *Revue trimestrielle de droit familial* 2008, 90.

[496] Natov, Nikolai&Museva, Pandov, Tsenova, Sarbinova, Yordanski, Tsanev, Stankov, Regulation Brussels IIa, Comment, Ciela, 2014, p. 194.

[497] Ruling №1270 from 26.11.2012 Civil case №1317/2012 SCC, IV.

[498] Natov, Nikolai& Museva, Pandov, Tsenova, Sarbinova, Yordanski, Tsanev, Stankov, Regulation Brussels IIa, Comment, Ciela, 2014, p. 193.

[499] Case C‑215/15 Gogova v Iliev, Judgment (Summary), see more in paras 42, 43, 47, operative part 2.

[500] Municipal Court Dubrovnik Gž.1366/14 of 15.10.2014. (CRF20141015), available at EU Fam's project database (www.eufams.unimi.it) under specified code.

[501] Court of first instance of Kyparissia 76/2015 (not published) cited in KRANIS Dimitrios, art. 12, ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003,* SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], p. 146, note 20.

[502] The Court of Appeals of Lithuania decision of 22-05-2015 in civil case No 2T-68-307/2015.

[503] Op. cit. n 467.

[504] M. Pilich, Glosa do wyroku TS z dnia 12 listopada 2014 r., C-656/13. Teza nr 3, LEX/el 2015, 277099/3.

[505] LEX No. 2009583.

[506] LEX No. 1842420.

[507] Iași County court, 1st civil division, civil decision no 258/2016 from 08 June 2016; see also Braila Local Court, Civil Division, civil decision no 59 from 23 January 2013, deciding that the defendant accepted unequivocally the Romanian courts' competence, since her lawyer are present in court without contesting it.

[508] Targu Mures Local Court, Civil Division, civil decision no 3588 from 30 June 2016, denying competence of the Romanian courts in a case concerning the parental responsibility over a Romanian child residing in Belgium.

[509] Mures County Court, Civil Division, civil decision no 172 from 25 February 2016; the case regarded both the divorce of a Romanian couple and the parental responsibility over their children, having all their habitual residence in Italy.

[510] Galați Court of Appeal, civil decision no 106/R from 05 March 2014.

[511] Bistrita Local court, civil division, civil decision no 10314 /2013, from 19 December 2013, confirmed by Bistrita Nasăud County court, 1st civil division, civil decision no 76/A/2014 from 28 May 2014. Buzău County Court, 1st Civil Division, civil decision no 57/2016, from 21 March 2016.

[512] Bacau Local Court, Civil Division, civil decision no 2105 from 02 April 2015.

[513] Moreni Local Court, civil decision no 1098 from 17 December 2012; Moreni Local Court, civil decision no 311, from 23 June 2014; Bacău Local Court, Civil Division, civil decision no 2105 from 02 April 2015 (application concerning the parental responsibility over a child habitual resident in Greece, made by the Romanian mother, residing in also Greece; the father, legally cited, did not participate in the proceedings).
[514] Bucharest Court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no 1054 from 7 June 2012.
[515] The Brussels IIa Regulation uses in Article 12 the term "the superior interests of the child" and not the term introduced by CRC "*the best interests of the child*" (comp. Article 3(1) CRC). The Slovenian translation of the term "*the superior interests of the child*" is more inappropriate, because it is just translated as "*child interest*" (slo. *otrokova korist).*
[516] UKSC 10.
[517] Hale LJ's interpretation concurs with *The Practice Guide to the Regulation*. Differing judicial views were expressed over article 12.3's meaning in terms of whether express or unequivocal acceptance by all of the parties to the proceedings 'at the time the court is seised' was required. See also *Re H (Jurisdiction)* [2015] 1 FLR and MA v MN [2015] EWHC 3663 (Fam).
[518] [2012] EWHC 1246 (Fam); [2013] 1 FLR 244
[519] Ibid.
[520] *Neumayr* in *Fasching/Konecny*, Commentary (see footnote 120) , second edition, volume V/2, Art 13 EuEheKindVO note 25.
[521] Natov, Nikolai&Museva, Pandov, Tsenova, Sarbinova, Yordanski, Tsanev, Stankov, Regulation Brussels IIa, Comment, 2014, p. 198-199.
[522] One of the cases related to a child aged about 12 months, with no established OIB or citizenship. Child was accompanied by an alleged mother. Special guardian was appointed to that child and child was placed in a Children's Home Zagreb (Nazorova Zagreb). The child's alleged mother was placed to a reception center for foreigners (Obedišće Ježevsko Dugo Selo) and a procedure for establishing motherhood by DNK is pending.
Before other social welfare authority two procedures relating to refugee children or unaccompanied children were reported. In both cases they have appointed a special guardian for the child (age 15, a citizen of Bangladesh / age 17, a Syrian national). Children were placed to the house for the education of children and youth Dugave Zagreb.
Before the social welfare service branch Zagreb two procedures pertaining to merging of families were reported. A child from Afghanistan was first appointed a guardian and then it was escorted to Germany on expense of UNHCR. In the second case a child from Afghanistan was temporarily situated and then escorted to Norway. Report of Social Welfare Service dated on 29.12.2016.
[523] D. Lapaš, *Međunarodnopravna zaštita izbjeglica* (Hrvatski pravni centar, Zagreb 2008) p. 3, 19, 68.
[524] Government Ordinance no 102/2000, regarding the statute and the regime of refugees in Romania, Official Gazette no 436 from 3 September 2000.
[525] EWHC 2550 (Fam).
[526] EWCA 789 (Fam). As Moore (2014) summarises, the Court of Appeal noted that Brussels IIa applies when determining jurisdiction of the English Court in care proceedings irrespective of whether the other country is a Member state of the European Union. The issue of jurisdiction must be addressed from the start of proceedings, and dealt with procedurally in an appropriate manner. The Court must not make a final determination on habitual residence until proper opportunity has been given to all relevant parties to adduce evidence and make submissions. See further http://www.familylawweek.co.uk/site.aspx?i=ed130403 accessed 18.10.16
[527] [2013] UKSC 60.
[528] Hartley C – Case summary (2014) *Family Law Week* (available at http://www.familylawweek.co.uk/site.aspx?i=ed135833, accessed 20.10.16). See further European Union Committee '*Children in crisis: unaccompanied migrant children in the EU'* (2016) available at http://www.publications.parliament.uk/pa/ld201617/ldselect/ldeucom/34/3402.htm accessed 18.10.16).
[529] Austrian Supreme Court [OGH] 14.6.2015 9 Ob 14/15x ECLI:AT:OGH0002:2015:0090OB00014.15X.0624.000.
[530] Austrian Supreme Court [OGH] 25.8.2016 5 Ob 80/16z ECLI:AT:OGH0002:2016:0050OB00080.16Z.0825.000.
[531] Court of Appeal Brussels, 4 April 2007, *Journal des tribunaux* 2007, 623; Court of Appeal Brussels 21 February 2008, *Revue trimestrielle de droit familial* 2008, 515 and Court of Appeal Brussels 27 June 2011, *Revue trimestrielle de droit familial* 2012, 653.

[532] Court of Appeal Brussels 21 June 2012, *Revue trimestrielle de droit familial* 2013, 263, comment by C. Henricot, "Litispendance et compétence internationale en matière de responsabilité parentale".
[533] In some cases the courts reached their ruling without discussing the best interest of the child or whether the other courts were better placed to hear the case. For example: Court of Appeal Brussels 11 March 2013, *Revue@dipr.be* 2013/2, 40.
[534] Court of Appeal Brussels, 4 April 2007, *Journal des tribunaux* 2007, 623.
[535] Court of First Instance Eupen, 9 December 2005, *Revue de jurisprudence de Liège, Mons et Bruxelles* 2006, 1331.
[536] Court of Appeal Brussels, 4 April 2007, *Revue trimestrielle de droit familial* 2008, 505. In this case, it was difficult for the court seized to obtain the required information. Therefore, the other court was better placed to hear the case.
[537] Court of Appeal Brussels 4 April 2007, *Revue trimestrielle de droit familial* 2008, 508.
[538] Court of Appeal Brussels 21 February 2008, *Revue trimestrielle de droit familial* 2008, 515, comment by C. Henricot, "Le méchanisme de renvoi dans l'article 15 du règlement Bruxelles IIbis".
[539] Court of Appeal of Ghent, 5 September 2005, *Revue@dipr.be* 2005/3, 26.
For a critical comment, see T. Kruger, "Kinderhandel: welke rechters moeten/mogen de zaak horen?", *Tijdschrift voor Vreemdelingenrecht* 2006, 171-174.
[540] Municipal Court Sisak R1-eu-2/16 of 19.2.2016. (CRF20160219), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[541] The Court of Appeals of Lithuania decision of 22-05-2015 in civil case No 2T-68-307/2015.
[542] Wiwinius, J.-C., "L'impact…, *op. cit.*, p. 200. Wiwinius, J.-C., *Le droit international privé au Grand-Duché de Luxembourg*, 3rd ed., Editions Paul Bauler, Luxembourg, 2011, p. 326.
[543] V. Timis County court, Civil Division, civil decision no78/R from 28 January 2014. See also Iași Local Court, Civil Division, civil decision no 1979 from 05 February 2013; Iași Local Court, Civil Division, civil decision from 05 March 2012 (dispute between Romanian citizen regarding the parental responsibility of a child residing in Italy); Iasi Local court, Civil Division, civil decision no 624 from 21 January 2015 (child habitually resident in Germany, dispute between his Romanian parents). Focsani Local Court, Civil decision no 2753 from 06 June 2013.
[544] See *VSM Decision I Ip 623/2010*, 20.7.2010; *VSL Decision IV Cp 3438/2009*, 17.3.2010.
[545] McCarthy and Twomey op cit n 56.
[546] Ibid, adding that this incorrect approach had grown up around the view that the words of Lady Hale in *Re I (A Child) (Contact Application: Jurisdiction)* [2009] UKSC 10; [2010] 1 AC 319 [at para. 31] that the best interests task for the judge "will not depend upon a profound investigation of the child's situation and upbringing but upon the sort of considerations which come into play when deciding upon the most appropriate forum" apply to Article 15.1 decisions just as much as they do to Article 12.3 decisions. As Lady Hale noted however, the question before the Court was not '..what eventual outcome to the case will be in the best interests of the child but whether the transfer will be in her best interests. Subject to that, the scope of the inquiry will depend upon all the circumstances of the case. I would therefore proceed on the basis that the meaning of art 15.1 is acte clair, albeit not yet éclairé, and we are merely applying it to the facts of the case, which is the task of the national courts.' See further Jones N 'Care Proceedings and the European Dimension: Article 15 Transfers' (2014) *Family Law Week* (available http://www.familylawweek.co.uk/site.aspx?i=ed132601, accessed 13.10.16) on how transfers of proceedings are seldom inevitable: 'the courts will come to a final decision in relation to transfer based on the application of the Article 15 criteria and any foreign state seeking repatriation of a subject child should be prepared to actively involve itself in the ongoing proceedings if invited by the court to do so… with the courts having to ensure that "no stone is left unturned."
[547] UKSC 15.
[548] Ibid at para 42. On the issue of defining 'exceptional' (i.e. whether non-habitually resident children might have their case dealt with by the jurisdiction in which they were then present) the Court relied upon *Somafer SA v Saar- Ferngas AG* (Case C-33/78) [1978] ECR 2183; [1979] 1 CMLR 490, (para 7) to decide that 'it is expected that exceptions will be narrowly construed and applied.' The Court also accepted that secondary EU legislation, such as the Regulation, must be interpreted in line with the Treaties, i.e. the Charter of Fundamental Rights, as in *Criminal Proceedings Against Lindqvist* (Case C-101/01) [2003] ECR I-12971, and *Ordre Des Barreaux Francophones Et Germanophone V Conseil Des Ministres* (Case C-305/05) [2007] ECR I-5395.

[549] Ibid at para 55.
[550] Op cit n 471, adding that this '…appeared to have arisen out of considering what 'best interests' meant in regard to a different article entirely (article 12.3).'
[551] Per Lady Hale at para 44.
[552] Mc Carthy and Twomey op cit n 560.
[553] It is difficult to see how the removal of the children from their psychological/social parents at that stage of their lives would have amounted to anything other than a decision with profound best interests implications.
[554] McCarthy and Twomey op cit n 56.
[555] Phillimore op cit n 449.
[556] Lamont R and Fenton-Glynn C 'Cross-border public care and adoption proceedings in the European Union' (2016) *Journal of Social Welfare and Family Law* 38 (1) 94-102 p 98.
[557] Kruger T and Samyn L 'Brussels II bis: Successes and suggested improvements' (2016) *Journal of Private International Law* 12 (1) 132-168 p 133.
[558] Ibid p 141.
[559] Pranevičienė K 'Unification of judicial practice concerning parental responsibility in the European Union – Challenges applying Regulation Brussels II bis' *Baltic Journal of Law and Politics* (2014) 7 (1) 113-127 p 115.
[560] T. Kruger and L. Samyn, "Brussels IIbis: successes and suggested improvements", *Journal of Private International law* 2016, Vol. 12, issue 1, 132-168.
[561] Court of Appeal Brussels, 25 June 2013, *Revue@dipr.be* 2013/3, 59.
[562] Court of Appeal Brussels, 16 May 2012, *Revue trimestrielle de droit familial* 2012/3, 829.
[563] *Study on the assessment of Regulation (EC) No 2201/2003 and the policy options for its amendment*, http://ec.europa.eu/justice/civil/files/bxl_iia_final_report_evaluation.pdf p. 27.
[564] David Hiez, Gilles Cuniberti and Céline Camara, "National Report for Luxembourg, External Assessment of Regulation No. 2201/2003/EC (Brussels IIa Regulation) for the European Commission", 2014.
[565] As in Article 7 of the Maintenance Regulation 4/2009.
[566] As above mentioned, Slovenian literature on Brussels IIa Regulation is very modest.
[567] Fenton-Glynn C, '*Adoption Without Consent: Study for the PETI Committee'* (EU Parliament) (2015) (available http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU(2015)519236_EN.pdf accessed 19.09.16)
[568] McEleavy P 'The European Court of Human Rights and the Hague Child Abduction Convention: Prioritising Return or Reflection?' *Neth Int Law Rev* (2015) 62 pp 365–405, p 373.
[569] Court of Appeal Ghent 27 May 2010, *Revue@dipr.be* 2010/3, 62.
[570] KAPETANYIANNI Maria, article 23, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 256-268, Court of first instance of Hania 39/2006, Nomos; ANTHIMOS Apostolos, "Recognition and enforcement of foreign decisions of parental responsibility in Greece – Legal framework and case law", in GEORGIADES Georgios-Alexandros (ed.), *Divorce and its consequences on family relations – Issues of substantial and private international law*, SAKKOULAS, Athens-Thessaloniki, 2016, pp. 185-200, esp. pp. 193-196, 200.
[571] Court of first instance of Thessaloniki 27688/2008, Court of first instance of Thessaloniki 16238/2013, (not published.)
[572] (Court of first instance of Thessaloniki 21646/2013, (not published, Court of first instance of Thessaloniki 14927/2015, (not published).
[573] Court of first instance of Thessaloniki 9037/2010, Court of first instance of Hania, 39/2009.
[574] ANTHIMOS Apostolos, *Armenopoulos* 2004, p. 834, 851.
[575] See Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no 1173 from 19 August 2009. The public policy exception cannot be used as a tool to control the competence of the courts of origin, to censure any differences in the substantial law applied by the courts or to re-discuss the case on the merits. The submission is

that only when the custody was established taking into account as a sole ground the sex or the age of the child or the religion of parents, the foreign judgement may appear as entailing discrimination and the public policy exception can be used in this regard.

[576] See Bucharest County court, 4th Civil **division**, civil decision no 1532 from 30 December 2014: recognition of Czech custody decisions in Romania. The court discusses *ex officio* the grounds for refusal of recognition: the public policy was not violated; the hearing of children, aged of 16 months was not mandatory, nor possible; the defendant accepted the judgement; no other person contested the judgment as being contrary to his custody rights, the judgement was nor irreconcilable with another Romanian or foreign judgement (already recognized locally). See also Brasov Family and Juvenile County court, civil decision no 193/S from 28 May 2015; Dambovita County Court, 1st Civil Division, civil decision no 997 from 9 September 2014.

[577] Cluj Court of Appeal, 1st Civil Division, civil decision no14/A/2016 from 06 January 2016.

[578] Bucharest Court of Appeal, **Civil Division, decision** no 953 from 02 June 2009.

[579] Suceava Court of Appeal, Civil Division, civil decision no 61 from 22 October 2013 (recognition of an Italian decision regarding the parental responsibility over a two years old child who was not heard by the courts).

[580] Buzau County Court, 1st Civil division, civil decision no 213 from 27 February 2014 : the recognition of a custody Spanish judgement (2013) must be done according to the provisions of the civil procedure code (even if the documents accompanying the application, were, according to the court, the ones mentioned in the regulation 2201/2003; Vaslui County Court, Civil Division, civil decision no 999 from 20 October 2014, referring in parallel to the Civil procedure code and to the regulation in a case concerning the recognition of a divorce and custody Italian judgement rendered by Torino Local Court in 2013.

[581] Allman M '*Conflict of Laws: Children'* (2016) Westlaw - Insight p 12, para 27, highlighting Moylan J's guidance in *re P (Recognition and Registration of Orders)* [2014] EWHC 2845 (Fam).

[582] Ibid p 9.

[583] Ibid p 10.

[584] *Re E (A Child)* [2014] EWHC 6 (Fam) per Munby J at para 20.

[585] Austrian Supreme Court [OGH] 19.11.2014 3 Ob 195/14v RIS-Justiz RS012913 ECLI:AT:OGH0002:2014:RS012913.

[586] Court of Appeal Antwerp 22 June 2011, no. 2011/AR/1143, http://www.eurprocedure.be (consulted 6 September 2016).

[587] Court of first instance of Thessaloniki 6179/2008, Court of first instance of Thessaloniki 3655/2009, *Isokratis data base*, Court of first instance of Thessaloniki 1779/2012, (not published), Court of first instance of Thessaloniki 15947/2012, (not published), Court of first instance of Thessaloniki 26085/2012, (not published), ANTHIMOS Apostolos, "Recognition and enforcement of foreign decisions of parental responsibility in Greece – Legal framework and case law", in GEORGIADES Georgios-Alexandros (ed.), *Divorce and its consequences on family relations – Issues of substantial and private international law*, SAKKOULAS, Athens-Thessaloniki, 2016, pp. 185-200, esp. p ANTHIMOS Apostolos, "Recognition and enforcement of foreign decisions of parental responsibility in Greece – Legal framework and case law", in GEORGIADES Georgios-Alexandros (ed.), *Divorce and its consequences on family relations – Issues of substantial and private international law*, SAKKOULAS, Athens-Thessaloniki, 2016, pp. 185-200, esp. p. 194.

[588] Court of first instance of Thessaloniki 8089/2010, *Isokratis data base*.

[589] Court of first instance of Thessaloniki 15269/2015, (not published), ANTHIMOS Apostolos, "Recognition and enforcement of foreign decisions of parental responsibility in Greece – Legal framework and case law", in GEORGIADES Georgios-Alexandros (ed.), *Divorce and its consequences on family relations – Issues of substantial and private international law*, SAKKOULAS, Athens-Thessaloniki, 2016, pp. 185-200, esp. p. 196.

[590] LEX No. 2076740.

[591] LEX No. 1648183, OSNC-ZD 2016/2/29.

[592] OSNC 2015/7-8/95, LEX No. 1537544, Biul.SN 2014/12/11-12.

[593] LEX No. 1084559.

[594] Galaţi Court of Appeal, 1st Civil Division, civil decision no 195/A/16 November 2015, confirming Braila County Court, civil decision no 559/2015.

[595] Braşov County Court, civil decision no 91/S from 04 March 2013.

[596] The court insisted on *the absence of the proofs* regarding (1) the final character of the Italian decision, (2) the nature of the Italian proceedings, (3) the information of the mother (residing in Spain) about the Italian proceedings, (4) the transmission to the mother to the documents related to the proceedings (the application, the judgement), and (5) the unequivocal acceptance of the judgement by the mother.
[597] Article 100 PILPA: "*A foreign court decision shall not be recognised if the effect of its recognition would be contrary to the public order of the Republic of Slovenia*." And comp. to Article 22(a) Brussels IIa Regulation.
[598] J Kramberger Škerl, 'Javni red pri priznanju in izvršitvi tujih sodnih odločb, 2005, *Zbornik znanstvenih razprav,* 267-273.
[599] *VSRS II Ips 462/2009*, 28.1.2010.
[600] Allman op cit at n 581 p 12.
[601] EWCA [2016] Civ 12.
[602] Allman op cit at n 581 p 13. See further *In A v B* (2015) (C-184/14) European Court of Justice (Third Chamber), 16 July 2015.wherein the CJEU confirmed that even where 'one court is seised of divorce proceedings, and another court is seised with parental responsibility proceedings involving the same couple, an application for child maintenance is…ancillary to the PR proceedings… not to the divorce.: where a divorce hearing was first 'in time, maintenance for children should be dealt with in the place where the children are resident' and must take into consideration the best interests of the children concerned.
[603] See footnote 330.
[604] See footnote 330.
[605] See footnote 330.
[606] Regional Court for Civil Law Vienna [LGZ Wien] 19.09.2008 43 R 605/08a EFSlg [Ehe-und familienrechtliche Entscheidungen]122.329.
[607] See footnote 330.
[608] See footnote 330.
[609] However, the survey may also be carried out by a person or authority named in § 105 (1) sentence 2 of the AußStrG.
[610] See footnote 330.
[611] See footnote 330.
[612] See footnote 330.
[613] See footnote 330.
[614] General Civil Code [Allgemeines Bürgerliches Gesetzbuch], JGS [Justizgesetzsammlung] 1811/946, last amended by BGBl [Bundesgesetzblatt] I 2016/43,
[615] See footnote 614.
[616] See footnote 330.
[617] See footnote 366.
[618] See footnote 366.
[619] Michel Neyens, "Comparative study on enforcement procedures of family rights. National Report Luxembourg" (JLS/C4/2005/06), 2007.
[620] Op. cit. n 602 at p 14.
[621] Ibid.
[622] UKSC 75 (as cited by Allman, ibid).
[623] CJEU 2 April 2009, No. C-523/07, ECLI:EU:C:2009:225, *A*; CJEU 22 December 2010, No. C-497/10 PPU, ECLI:EU:C:829, *Mercredi/Chaffe* and CJEU 9 October 2014, No. C-376/14 PPU, ECLI:EU:C:2014:2268, *C/M*.
[624] High Court Family Law (Ireland) 26 July 2013, No. 10 HCL, [2013] IEHC 549, http://www.bailii.org/ie/cases/IEHC/2013/H549.html (consulted 10 October 2016), § 21-29.
[625] Court of First Instance Antwerp 24 February 2014, No. 14/476/A, unpublished but discussed in S. Den Haese, "Parentale ontvoeringen: de rol en positie van het kind", masterthesis Law Ghent University, 2015-16, 130 p.

[626] Court of First Instance 23 October 2013, No. 13-3627-A, unpublished but discussed in S. Den Haese, "Parentale ontvoeringen: de rol en positie van het kind", masterthesis Law Ghent University, 2015-16, 130 p.
[627] Article 373-374 Belgian Code Civil.
[628] Court of First Instance Antwerp 15 July 2014, No. 14-908, unpublished but discussed in S. Den Haese, "Parentale ontvoeringen: de rol en positie van het kind", masterthesis Law Ghent University, 2015-16, 130 p.
[629] Court of First Instance Antwerp 15 July 2014, No. 14-908, unpublished but discussed in S. Den Haese, "Parentale ontvoeringen: de rol en positie van het kind", masterthesis Law Ghent University, 2015-16, 130 p.
[630] Municipal Court of Dubrovnik no. P-.R/1 2/2014, of 8 January 2014, unreported.
[631] E. Perez Vera, *Explanatory Report on the 1980 Hague Child Abduction Convention*, 1982.
[632] Bucharest Court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no 96 from 26 January 2010.
[633] Bucharest County Court, 5th Civil Division, civil decision no 732 from 11 June 2015.
[634] Bucharest Court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no .229 A from 02 June 2014.
[635] In its decision no 896 from 24 June 2009, Bucharest County Court, 5th Civil Division, stated that the retention of the child was not illegal because it did not violate the father's custody rights, which were not established by a judgment, by an agreement; the Court of Appeal admitted the appeal and quashed this decision.
[636] Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no1695 from 09 December 2009. For similar decisions, see Bucharest Court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no 148 from 4 February 2010; Bucharest Court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no 71 from 21 January 2010.
[637] Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, decision no**. 311/A/16 July 2014; Bucharest Court of Appeal, 3rd Juvenile and Family Division,** decision **no 316 from 22 March 2011.**
[638] Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, decision no 874 from 11 September 2015; Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, decision no 211 from 15 February 2010. Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, decision no 231 from 18 February 2010.
[639] Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, decision no **300/A from 09 July 2014.**
[640] Harrison R, Reardon M, Perrins J and Bruce S, 'In the Matter of B (A Child): Habitual Residence and the Child-Centric Approach to Jurisdiction' *Family Law Week* (14.02.16) (available at http://www.familylawweek.co.uk/site.aspx?i=ed158964, accessed 30.09.16).
[641] The lower courts had initially looked to timing and the 'see-saw' analogy, to find that the child had lost her habitual residence upon arrival in Pakistan. It was also noted that the use of the court's inherent jurisdiction (to order the child's return, for example) should only occur in circumstances which were "dire and exceptional." As these were not evident here, Article 8 was not engaged, and because the focus of the case was deemed to be the issue of child-parent contact, it was not considered appropriate to invoke the court's inherent *parens patriae* powers.
[642] See for example *A v A (Children: Habitual Residence)* [2013] UKSC 60; [2014] AC 1.
[643] Wopera Z 'Brief Evaluation of Development of European Family Law: Successes and Failures' *European Integration Studies* (2013) 10 (1) pp 5-16, p 12.
[644] Renton J '*International Children Law* Update: June 2016' *Family Law Week* (2016) (available at http://www.familylawweek.co.uk/site.aspx?i=ed161189 accessed 23.09.16).
[645] Green S 'Case Comment: *In the matter of B (A child)* [2016] UKSC 4' 16.08.16 (available at http://ukscblog.com/case-comment-in-the-matter-of-b-a-child-2016-uksc-4/, accessed 29.09.16).
[646] *Ibid*.
[647] *Re B* op cit n 36 per Lord Wilson, at para 56.
[648] *Ibid*, per Lord Sumption, at para 65.
[649] *Ibid* at para 66.
[650] See footnote 614.
[651] Ruling №61 from 15.01.2015, PCC №5795/2014, SCC, III.

[652] Judgment №1 from 12.11.1974 г., SCC №3/1974 г.
[653] Article 5.
[654] M. Župan, "The best interest of the child: A guiding principle in administering cross-border child related matters?", in: T. Liefaard and J. Sloth-Nielsen (eds.) *The United Nations Convention on the Rights of the Child : taking stock after 25 years and looking ahead* (Leiden-Boston, Brill/Nijhoff, 2016) p. 215.
[655] Adopted by the Committee of Ministers of the Council of Europe on 17 November 2010.
[656] Journal of Laws 2015, item 2082.
[657] LEX No. 508528.
[658] See Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, decision no 1816, from 14 December 2011: action regarding the return of a 2 years old child, abducted by the mother from the Czech Republic ; the court declared that the superior interest of the child should be taken into account when deciding on the return; this suppose an examination of the child's relations with his parents and the potential impact of the parents' attitude on the child's physical and psychological integrity ; regarding the « adequate measures » from art. 11.4 of the regulation, the court verified if the parent applying for the return has an appropriate home and resources to sustain the maintenance of the child.
[659] see *Dobrovodský, R.*: Ambície rodinnoprávnej úpravy platnej od 1. 1. 2016. In: Sociálna prevencia : deti, mládež a niektoré nežiaduce sociálne a sociálnopatologické javy. Roč. 11, č. 1 (2016), s. 4-6; *Dobrovodský, R.*: K prevenčnej a sanačnej funkcii rodinnoprávnej úpravy od 1. 1. 2016. In: Sociálna prevencia : dospelí, seniori a sociálnopatologické javy. Roč. 11, č. 2 (2016), s. 30-33.
[660] S.1.(3) of The Children Act 1989 (See also The Children (NI) Order 1995).
[661] s.1(4) of the Adoption and Children Act 2002.
[662] Court of Appeal Brussels 30 July 2014, *Revue trimestrielle de droit familial* 2016, 174-191.
[663] See for example County Court Zagreb Gž Ob-103-15-2 of 12.6.2015. (CRS20150612), or Općinski građanski sud Zagreb R1 Ob-198/16-13 of 24.3.2016. (CRF20160324), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[664] Municipal Court Zagreb, P2-142/13-15 of 16.7.2014. and County court Zagreb 68Gž2-501/14-2, of 2 December 2014 (CRF20140716), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[665] Areios Pagos 873/2010, *Nomiko Vima* 2011, pp. 564-570, obs. MOLOSSI Maria, KRANIS Dimitrios, art. 10, ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003,* SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 107-113. See also Court of appeals of Athens 180/2012, *Efarmoges Astikou Dikeou* 2012, p. 775, obs. APALAGAKI, where courts of the habitual residence have considered having concurrent jurisdiction with the courts of the wrongful removal to decide also on the issue of the return.
[666] M. Radwan, Wybrane zagadnienia postępowania wywołanego przez bezprawne uprowadzenie lub zatrzymanie dziecka w innym państwie członkowskim, Europejski Przegląd Sądowy 2011, No. 2, p.11.
[667] K. Weitz, Jurysdykcja krajowa w sprawach małżeńskich oraz w sprawach dotyczących odpowiedzialności rodzicielskiej w prawie wspólnotowym, Kwartalnik Prawa Prywatnego 2007, vol. 1, p. 134.
[668] J. Zatorska, op. cit.
[669] In a case from 2016, Campina Local Court, decision no. 226 from 21 January 2016, refused to retain jurisdiction in a case regarding the custody of a child abducted by the mother from Italy three months prior to the introduction of the custody application.
[670] See *VSM I Ip 623/2010*, 20.7.2010.
[671] EWCA Civ 1101.
[672] *In the matter of A (Children)* [2013] UKSC 60.
[673] Easton A (Case summary) *Family Law Week* (available at http://www.familylawweek.co.uk/site.aspx?i=ed131345, accessed 20.10.16).
[674] Applying (*Re I (A Child)(Contact Application: Jurisdiction)* [2009] UKSC 10).
[675] Following *Re C (Children)(Residence Order: Application Being Dismissed at Fact-Finding Stage*) [2012] EWCA Civ 1489.
[676] Easton op cit n 673.

[677] See footnote 330.
[678] See Austrian Supreme Court [OGH] 12.01.2011 6 Ob 2/11d ECLI:AT:OGH0002:2011:006OB00002.11D.0112.0000 (four year old child); Austrian Supreme Court [OGH] 22.04.2013 6 Ob 75/13t ECLI:AT:OGH002:2013:006OB00075:13T.042.000 (five year old child).
[679] Austrian Supreme Court [OGH] 12.05.2009 5 Ob 47/09m ECLI:AT:OGH002:2009:0050OB00047.09M0000.0000. Critical *Miklau*, "Not without my daughter "in the middle of Europe - or the reintroduction of patria potestas through the back door ["Nicht ohne meine Tochter" mitten in Europa – oder die Wiedereinführung der väterlichen Gewalt durch die Hintertür,] iFamZ [interdisziplinäre Zeitschrift für Familienrecht] 2010 pages 133, 136.
[680] *Official Gazette* 27 September 2013.
[681] P. Senaeve, "Het hoorrecht van minderjarigen sinds de wet op de familie- en jeugdrechtbank", *Tijdschrift voor familierecht* 2014/8, 176.
[682] T. Kruger and L. Samyn, "Brussels II bis: successes and suggested improvements", *Journal of Private International Law* 2016, Vol. 12, issue 1, (132) 156.
[683] I.g. Court of Appeal Brussels 5 June 2012, No. 2011/AR/3129, unpublished and Court of First Instance Antwerp, No. 14-476-A, unpublished but discussed in S. Den Haese, "Parentale ontvoeringen: de rol en positie van het kind", masterthesis Law Ghent University, 2015-16, 130.
[684] Article 13 para 2 Hague Child Abduction Convention.
[685] I.g. Court of First Instance Antwerp 23 October 2013, No. 13-3627-A, unpublished and Court of First Instance Antwerp 15 July 2014, No. 14-908, unpublished.
[686] ECtHR 1 July 2014, No. 54443/10, *Blaga/Romania*, § 80.
[687] In some situations, particularly in relation to divorce by mutual consent, it is hard to identify whether the child was given an opportunity to express its views. Judges proposed amendments of the Form of the Plan of joint parental care in the section of methods and ways that have been used to reach the voice of a child. Plan is a product of a mandatory counselling, but it is subsequently verified by a judge and produces effects of a court decision. If a judge has more information on hearing of a child he could decide to check the voice of a child and hear the child that has not been properly heard. It that situation judge would not only verify the Plan of joint parental care, but reopen it.
[688] KRANIS Dimitrios, art. 11, ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], p. 125, nº 11.
[689] *Ibid.*
[690] Article 238, para.3 and Article 244[5], para.2 of the Civil Procedure Law.
[691] M. Radwan, op. cit., p. 11.
[692] J. Zatorska, op. cit.
[693] Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, decision no 1A from 07 January 2015.
[694] See also Bucharest court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no 1799 from 22 October 2012, refusing to quash the inferior court decision who ordered the return without hearing the children aged of 8 and 4 years old, respectively.
[695] M Končina Peternel, 'Mednarodna ugrabitev otrok' (2013) 3 *Pravosodni bilten*, p. 53.
[696] *VSM Decision III Cp 1721/2010*, 5.12.2010; Judgment *IV R 528/2011*, 28.12.2011.
[697] Zakon o izvršbi in zavarovanju (Claim Enforcement and Security Act (hereinafter: CESA)): Uradni list RS, št. 3/07 OCV with later changes.
[698] S Kraljić, '12. člen KOP - pravica otroka do svobodnega izražanja v sodnih in upravnih postopkih' (2016) 1 *Pravosodni bilten*, p. 11-30.
[699] EWCA Civ 1557.
[700] Chokowry K, (Case summary) *Family Law Week* (2014) (available at http://www.familylawweek.co.uk/site.aspx?i=ed137660&f=137660, accessed 21.10.15).
[701] Ibid.
[702] Ibid.
[703] Ibid.
[704] Austrian Supreme Court [OGH] 13.30.2009 1 Ob 176/09b ECLI:AT:OGH0002:2009:0010OB00176.09B.1013.000; Austrian Supreme Court [OGH] 28.08.2013 6 Ob 134/13v ECLI:AT:OGH0002:2013:0060OB00134.13V. 0828.000; Austrian Supreme Court [OGH] 08.05.2013 6 Ob 86/13k ECLI:AT:OGH0002:2013:0060OB00086.13K.0508.000; Austrian Supreme Court [OGH] 27.04.2015 6 Ob 67/15v ECLI:AT:OGH002:2015:0060OB00067.15V.0427.000.

[705] *Kaller-Pröll* in Fasching/Konecny, Commentary (see footnote 120) second edition, volume V/ 2 Art 11 EuEheKindVO note 14.
[706] Austrian Supreme Court [OGH] 27.04.2015 6 Ob 67/15v ECLI:AT:OGH002:2015:0060OB00067.15V.0427.000.
[707] I.g. Court of Appeal Mons 5 March 2007, *Revue trimestrielle de droit familial* 2008, 166-171.
[708] Court of First Instance Brussels 9 January 2009, *Tijdschrift voor Vreemdelingenrecht* 2009, 737-742.
[709] Municipal Court Osijek (number missing) – to be inserted.
[710] Areios Pagos 745/2011, *Nomos data base.*
[711] KRANIS Dimitrios, art. 11, ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003,* SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 127-128.
[712] Decision of Riga City Vidzeme Suburb's Court of 2nd July, 2012, Case No.C30623712; Decision of Riga City Vidzeme Suburb's Court of 28th December, 2012, Case No.C30602212.
[713] Bucharest Court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no 1816 from 14 December 2011.
[714] Bucharest Court of Appeal, 3rd Civil Juvenile and Family Division, civil decision no 483 from 19 March 2012.
[715] 1 FLR 1923.
[716] Renton C 'Orders Relating To Children Within The European Union Under BIIR' (2009) *Family Law Week*.
[717] EWHC 2016 (Fam) [2008] 1 FLR 289
[718] Renton op cit n 716.
[719] *Miklau,* Not without my daughter "in the middle of Europe - or the reintroduction of patria potestas through the back door [„Nicht ohne meine Tochter" mitten in Europa- oder die Wiederinführung der väterlichen Gewalt durch die Hintertür,] iFamZ [interdisziplinäre Zeitschrift für Familienrecht] 2010 pages 133, 139.
[720] Similarly, Article 11 (8) is "problematic" *Posani,* The best interest oft he child can be opposed to the enforcement of a return order [Das Kindeswohl kann der Vollstreckung einer Rückführungsanordnung entgegenstehen], ÖJZ [Österreichische Juristenzeotung] 2011page 267 (note to Austrian Supreme Court [OGH] 1 Ob 178/10y).
[721] T. Kruger and L. Samyn, "Brussels II bis: successes and suggested improvements", *Journal of Private International Law* 2016, Vol. 12, issue 1, (132) 159.
[722] Court of Appeal Brussels 17 June 2010, *Actualités du droit de la famille* 2010, 191.
[723] Court of appeal Brussels 30 July 2014, *Revue trimestrielle de droit familial* 2016, 185.
[724] T. Hoško, „Child Abduction in Croatia: Before and After the European Union Legislation" in M. Župan (ed.) *Private International Law in the Jurisprudence of European Courts – Family at Focus* (Osijek 2015), p. 174-175.
[725] Wiwinius, J.-C., *Le droit…, op. cit*., p. 380.
[726] J. Zatorska, op. cit.
[727] Renton op cit n 716.
[728] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279303/reunite-evidence.pdf at para 18 (accessed 21.10.16).
[729] McEleavy P 'The European Court of Human Rights and the Hague Child Abduction Convention: Prioritising Return or Reflection? *Netherlands International Law Review* (2015) 62 (3) pp 365–405 p 373.
[730] Reference: *Fucik/Mokres*, Statistical Analysis of All Cases of Child Abduction Relating to Austria [Statistische Auswertung aller Kindesentführungsfälle mit Österreichbezug,] iFamZ [interdisziplinäre Zeitschrift für Familenrecht] 2015 pages 307 ff .
[731] M. Župan / T. Hoško, „Operation of the Hague 1980 Child Abduction Convention in Croatia" in M. Župan (ed.) *Private International Law in the Jurisprudence of European Courts – Family at Focus* (Osijek 2015), p. 227-243.
[732] Suggestions for improvement of a systems relate to concentration of jurisdiction, limitation of reasons of appeal and its duration, specail procedural rules etc. More in Župan / Hoško, ibid, p. 240-242.
[733] Vujica v. Croatia (application no. 56163/12).
[734] Article 644.[19] para 1 of the Civil Procedure Law

[735] Article 644.[21] para 1 of the Civil Procedure Law
[736] In first example, the request for return was registered at 28.04.2015; the Bucharest County court gave its judgement (no 1098) on 01 October 2015; the non-devolutory appeal was launched against it on 24 November 2015 and the court of appeal finalized the case on 17 February 2016 (decision 152/17 February 2016). In another example (2) the application was filled at the first instance court on 24.04. 2014 who gave its judgement in 12 August 2014; the court of appeal, subsequently seized, gave its judgment on 7 January 2015 (civil judgement. no. 1/7 January 2015). In a 3rd example, the application was registered at the court in 31 July 2013, first instance decision was given on 10 December 2013; the court of appeal decision on 4 June 2014. In a 4th example, the parent contacted the central authority on 22 November 2014; the first instance decision was rendered on 02 July 2015; the court of appeal pronounced on 11 September 2015 (decision no 874/11 September 2015).
[737] Act no 369/2004, republished in the Romanian Official Gazette, I, no 468 from 25 June 2014.
[738] Renton C 'Practical Case Management of Child Abduction Cases' (2006) *Family Law Week* (Available http://www.familylawweek.co.uk/site.aspx?i=ed2255&f=2255 accessed 28.10.16) (Requests for information from local practitioners yielded some anecdotal information, which suggested that times often varied considerably – very few of the smaller firms had dealt with cases of this nature, however).
[739] Michel Neyens, "Comparative study on enforcement procedures of family rights. National Report Luxembourg" (JLS/C4/2005/06), 2007.
[740] Resolution 'The functioning of the Brussels IIa Regulation (EC 2201/2003): Resolution's response to the European Commission'
(2014) (available http://www.resolution.org.uk/site_content_files/files/resolution_response_council_regulation_ec_2201_2003.pdf accessed 222.10.16).
[741] See for example *in Re H (A Child)*[2009] EWHC 2280 (Fam) where, after a year and a half of Spanish proceedings, a non-return order was made. A subsequent English application (under Article 11) ended two years later with a Contact Order which was not adhered to. (ibid.) See further the dicta of Thorpe LJ in *Vigreux v Michel* 2006 EWCA Civ 630.
[742] T. Kruger and L. Samyn, "Brussels II bis: successes and suggested improvements", *Journal of Private International Law* 2016, Vol. 12, issue 1, (132) 161.
[743] European Commission, *Practice Guide for the application of the Brussels IIa Regulation*, 2014, 56.
[744] Op. cit. n 739.
[745] Thierry Hoscheit, First Vice-President of the 'Tribunal d'arrondissement de et à Luxembourg'. Interviewed on September 29, 2016.
[746] This was shown by an informal question round organized by the Belgian department in the European Judicial Network in 2012 among Belgian judges in the juvenile court ("jeugdrechtbank"): I. Couwenberg, "Brussel I-Vo: Quo vadis exequatur?" in *CBR Jaarboek 2012-2013*, Antwerp, Intersentia, 2013, 170; Court of Appeal Ghent 6 November 2008, *Revue@dipr.be* 2010/1, 83 and Court of Appeal Ghent 10 December 2009, *Revue@dipr.be* 2010/1, 64.
[747] Court of Appeal Ghent 6 November 2008, *Revue@dipr.be* 2010/1, 83 and Court of Appeal Ghent 10 December 2009, *Revue@dipr.be* 2010/1, 64.
[748] E.g. President of the Court of First Instance Brussels 30 May 2007, *Revue de jurisprudence de Liège, Mons et Bruxelles* 2008/19, 845; Court of Appeal Ghent 6 November 2008, *Revue@dipr.be* 2010/1, 83 and Court of Appeal Ghent 10 December 2009, *Revue@dipr.be* 2010/1, 64.
[749] The Court of Appeal Brussels has this practice: I. Couwenberg, "Brussel I-Vo: Quo vadis exequatur?" in *CBR Jaarboek 2012-2013*, Antwerp, Intersentia, 2013, 171.
[750] I. Couwenberg, "Brussel I-Vo: Quo vadis exequatur?" in *CBR Jaarboek 2012-2013*, Antwerp, Intersentia, 2013, 169.
[751] T. Kruger and L. Samyn, "Brussels II *bis*: successes and suggested improvements", *Journal of Private International Law* 2016, Vol. 12, issue 1, (132) 160.
[752] CJUE, 11.07.2008, *Inga Rinau*, C-195/08, PPU, CJUE, 01.07.2010, *Povse v. Alpago*, C-211/10 PPU, CJUE, 22.12.2010, *Zarraga v. Pelz*, C-491/10 PPU.
[753] STAMATIADIS Dimitrios, articles 40-45, in ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003,* SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 356-372, KRANIS Dimitrios, art. 11, ARVANITAKIS Paris, VASSILAKAKIS Evangelos (eds), *Commentary of Regulation (EC) 2201/2003*, SAKKOULAS, Athens-Thessaloniki, 2016, [in Greek], pp. 134-138.
[754] OSNC 2015/7-8/95, LEX No. 1537544, Biul.SN 2014/12/11-12.
[755] Gazeta Prawna 2014/185/11.
[756] Resolution, ibid (n 740).
[757] Ibid, adding that 'there are also issues in relation to service. The various certificates include questions as to whether the judgment was obtained in default of appearance. On some but not all of the certificates there is a question about service but it does not really identify how service is to be judged. It would be useful to add a question if the judgment

has been obtained in default of appearance…there is a huge scope for certificates not to be accepted overseas when they have been served in accordance with the rather less formal and much less technical rules of service in England and Wales.'

[758] *Sengstschmid* in Fasching/Konecny, Commentary (see footnote 120), second edition, volume V/2, Art 41 EuEheKindVO note 5.

[759] *Sengstschmid* in Fasching/Konecny, Commentary (see footnote 120), second edition, volume V/2, Art 41 EuEheKindVO note 6.

[760] Court of Appeal Ghent 6 November 2008, *Revue@dipr.be* 2010/1, 91.

[761] Court of Appeal Ghent 10 December 2009, *Revue@dipr.be* 2010/1, 64. In a case were the judge delivered an Article 42 certificate, he did not hear the children since he found they did not have the required level of maturity given their young age, and they had been subject to manipulation by their mother's family: President of the Court of First Instance Brussels 9 January 2009, *Revue du droit des étrangers* 2008/151, 737.

[762] Court of Appeal Brussels 20 February 2015, *Revue@dipr.be* 2015/3, 30.

[763] President of the Court of First Instance Brussels 30 May 2007, *Revue de jurisprudence de Liège, Mons et Bruxelles* 2008/19, 845.

[764] In this case the children were 10 and 14 years old: Court of First Instance Brussels (kortgeding) 13 February 2007, *Revue trimestrielle de droit familial* 2007/3, 792.

[765] OSNC 1998, No. 6, item 108.

[766] P. Telenga, in: A. Jakubecki (ed.), J. Bodio, T. Demendecki, O. Marcewicz, P. Telenga, M. P.Wójcik, Komentarz aktualizowany do ustawy z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, LEX/el., 2016, A. Czerederecka, Psychologiczne kryteria wysłuchania dziecka w sprawach rodzinnych i opiekuńczych, Rodzina i Prawo 2010, No. 14-15, p. 22, M.M. Cieśliński, Wysłuchanie dziecka procesie cywilnym (art. 216^1 k.p.c.), PS 2012, No. 6, p. 63-72.

[767] Baia Mare Local Court, Civil division, Conclusion no 3173 from 21 March 2013. See also Turda Local Court, Civil Conclusions no 1562 from 23 March 2012 – admitting the request and delivering the certificate; the court mentioned the art. 41's requirements and considered them fulfilled (without giving precise details on the child's age or its hearing).

[768] Braila Local Court, Civil division, Civil judgement, no 559 from 23 January 2013.

[769] Langdale R and Robottom J 'The Participation and Involvement of Children in Family Proceedings' *Family Law Week* (2012) (available at http://www.familylawweek.co.uk/site.aspx?i=ed96057&f=96057, accessed 25.10.16).

[770] 1 FLR 681.

[771] EWCA Civ 445, [2010] 1 FLR 509.

[772] Langdale and Robottom op cit n 769.

[773] Ibid, adding that, as Baker J observed in *WF v FJ, BF & RF* [2010] EWHC 2909 (Fam), [2011] 1 FLR 1153, 'it is a feature of the abduction jurisdiction that a child's wishes and feelings and objections to summary return are central to proceedings.'

[774] EWCA Civ 520, [2010] 2 FLR 1165, per Wilson LJ,at para. 17.

[775] Ibid, stressing that 'children should be heard far more frequently in Hague Convention cases than has been the practice hitherto'.

[776] Ibid.

[777] Ibid ('… the gateway or threshold for taking into account a child's objections is 'fairly low').

[778] Ibid.

[779] *Sengstschmid* in Fasching/Konecny, Commentary (see footnote 120), second edition, volume V/2 Art 41 EuEheKindVO note.

[780] Although in this case the mother was not heard, since she never showed up at one of the five court hearings: Court of Appeal Brussels 20 February 2015, *Revue@dipr.be* 2015/3, 30.

[781] ECHR judgment of 12 July, 2011 "Šneersone and Kampanella v. Italy" (application no. 14737/09).

[782] See further Renton C '*Enforcement of Judgments in Children Cases'* (2008) on compliance (i.e. Family Court Practice page 3188) – where certified judgment was 'given in default, the person defaulting [must have] had good and sufficient notice so as to arrange a defence or where service did not comply with conditions, the defendant accepted the decision unconditionally; all parties were given an opportunity to be heard; the child was given an opportunity to be heard unless a hearing was considered to be inappropriate

having regard to age or maturity. (available at http://www.reunite.org/edit/files/articles/Enforcement%20of%20Judgements%20in%20Children%20Cases.pdf' accessed 28.10.16).

[783] Renton C (for Reunite) '*Child Abduction : Case Management In Practice'* (available at http://www.reunite.org/edit/files/articles/Child%20Abduction-Case%20Management.pdf accessed 29.10.16) (…'in many states there is no such thing as a mirror order or order in like terms. There may be concepts such as "friendly settlement" arrangements whereby the parties can agree to lodge a consent order in the foreign state which will be enforceable…[elsewhere] difficulties are different and more complex.'

[784] See footnote 330.

[785] See footnote 330.

[786] Austrian Supreme Court [OGH] RS0008614 ECLI:AT: OGH0002:1982:RS0008614; see Austrian Supreme Court [OGH] 16.10.2013 7 Ob 168/13a ECLI: AT:OGH0002:2013:0070OB00168.13A.1016.000, here an alienation was observed by the first and second instance because for eight months between the father and the child no contact has existed.

[787] Criticism of the decision referred to in the previous footnote was exercised by Nademleinski, The Recognition of Foreign Decision relating the right of Access is in Vain, [Anerkennung ausländischer Umgangsentscheidung läuft ins Leere], EF-Z [Zeitschrift für Familien- und Erbrecht] 2014/95, page 142 and *Fucik*, No Enforcement of a Polish Contact Title in Austria, if Changed Conditions Require a New Initiative [Keine Durchsetzung eines polnischen Kontakttitels in Österreich, wenn geänderte Verhältnisse eine Neuanbahnung erfordern]. iFamZ [interdisziplinäre Zeitschrift für Familienrecht] 2014/ 74, S 88.

[788] Kindschafts- und Namensrechtsänderungsgesetz [Childhood and Name Law Amendment Act] 2013, BGBl I 2013/15.

[789] Az alapvető jogok biztosának Jelentése az AJB-3070/2012. számú ügyben. See the webpage https://www.ajbh.hu/en/web/ajbh-en/.

[790] Act no 272/2004, republished, regarding the protection and promotion of child's rights, Romanian Official Gazette, no 159 from 5 March 2014.

[791] Department for Education '*Cross-border child protection cases: the 1996 Hague Convention Departmental advice for local authorities, social workers, service managers and children's services lawyers'* (2012) (available https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/280834/The_1996_Hague_Convention.pdf accessed 29.10.16) p 7. See further *Practice Direction 12B – Child Arrangements Programme* (available http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12b accessed 29.10.16) The Family Procedure Rules (England and Wales) provide that orders can be enforced on an interim basis once they have been declared enforceable (i.e. registered for enforcement) if necessary in terms of protecting child welfare.

[792] Permanent Bureau of the Hague Conference for Private International Law, "Conclusions and Recommendations of the Fourth Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (22–28 March 2001)", p. 10, https://www.hcch.net/en/publications-and-studies/details4/?pid=6232&dtid=57 (consulted on 31 August 2016).

[793] Bill concerning the implementation of the Brussels IIa Regulation, the Convention of Luxemburg and the Hague Child Abduction Convention, Parl. St. Kamer 2006-07, No. 3002/001, p. 44, http://www.dekamer.be/kvvcr/showpage.cfm?section=flwb&language=nl&rightmenu=right&cfm=/site/wwwcfm/flwb/flwbn.cfm?legislat=51&dossierID=3002&inst=K (consulted on 31 August 2016).

[794] Artilce 4 Zakona o područjima i sjedištima sudova (Narodne novine, broj 128/14).

[795]Strateški plan Ministarstva pravosuđa 2016-2020, p. 7. February 2016. (https://pravosudje.gov.hr/.../Strateski%20plan%20Ministarstva%20pravo**sudja**_2016).

[796] IZVJEŠĆE PREDSJEDNIKA VRHOVNOG SUDA O STANJU SUDBENE VLASTI ZA 2013. GODINU, Vrhovni sud RH, listopad 2014, Zagreb, p. 6; Izvješće za 2015., p. 72. (https://vlada.gov.hr/UserDocsImages//Sjednice/2016/24%20sjednica%20Vlade//24%20-%204c.pdf).

[797] Report for 2013, p. 87; report for 2015, p. 72.

[798] For Scotland, see further http://www.gov.scot/Topics/Justice/law/17867/fjms/FJMS-summit-responses (accessed 20.10.16).

[799] Hodson D 'Brussels II Encore - A summary of Brussels II bis' (2005) *Family Law Week* (available http://www.familylawweek.co.uk/site.aspx?i=ed347, accessed 10.09.16)

[800] Gillen LJ ' *Review Of Civil And Family Justice: The Review Group's Draft Report On Family Justice'* para 13.5 https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/fjc/guidance/familycourtguide/ p 28. On Northern Ireland, see also Long M (2014) '*Child Care Law: A Summary (Northern Ireland)*' BAAF: London.

[801] https://e-justice.europa.eu/content_about_the_network-431-hr-en.do?clang=hr.
[802] Uredba o unutarnjem ustrojstvu Minsitarstva pravosuđa, NN, br. 71/14.
[803] Official Gazette, No 102/13, 85/15.
[804] OJ L 7/1, 10.1.2009.
[805] Responses are based on publicly available data, legal background and a response upon our request of a Ministry of Demografy, Family, Youth and Social Policy (dated on 16.11.2016.).
[806] Law 63/2014, amending 369/2004 concerning the enforcement of The Hague Convention Child Abduction (entered in force in May 2014).
[807] See for example Resolution op cit n 269 p 11.
[808] http://www.reunite.org/pages/role_of_the_ministry_of_justice.asp (accessed 28.10.16).
[809] Munby J, *President's Guidance of 10 November 2014:* The International Child Abduction and Contact Unit (ICACU) (2014) *Family Law;* See http://www.familylaw.co.uk/news_and_comment/president-s-guidance-of-10-november-2014-the-international-child-abduction-and-contact-unit-icacu#.WBcJdS2LSM8 (accessed 29.10.16).
[810] Central Authority is to my knowledge actively participating in activities of two ongoing EU coofunded projects: "Planning the future of cross-border families: a path through coordination – EUFam's", JUST/2014/JCOO/AG/CIVI/7729 – where partner is University J.J.Strossmayer of Osijek, and „EU Judiciary Training on Brussels IIa Regulation: From South to East" JUST/2014/JTRA/AG/EJTR/6854 whith University of Rijeka as a partner.
[811] Župan, M., ed. *Private International Law in the Jurisprudence of European Courts – Family at Focus* (Pravni fakultet Osijek, Osijek 2015).
[812] For more see official website: http://www.mp.gov.si/si/izobrazevanje_v_pravosodju_cip/mednarodno_sodelovanje_cip/.
[813] Information provided by the Greek Central authority.
[814] District courts are in: Celje, Nova Gorica, Maribor, Ljubljana, Novo mesto, Slovenj Gradec, Ptuj, Koper, Krško, Kranj, Murska Sobota.
[815] Župan, M., Drventić, M., „Sustav središnjih tijela kroz europski model naplate prekograničnog uzdržavanja", u Bubić, S. ur., Zbornik radova, Treci medjunarodni naucni skup Dani porodicnog prava "Pravna sredstva za smanjenje siromastva djece", Pravni fakultet Univerziteta "Dzemal Bijedic" u Mostaru, Mostar 2015.
[816] Law no 369 from 15 September 2004 regarding the application of Hague Convention on the civil aspects of international child abduction (Hague, 25 October 1980) at which Romania adhered by Law no. 100/1992.
[817] Ministry of Justice's Order, no 3573/C from 9 October 2014, approving the Regulation regarding the exercise of the attributions of the Ministry of Justice, as central Authority, designated by the Act no 100/1992 on the Romania's adhesion to The Hague Convention from 25 October 1980 on the civil aspects of international child abduction, Romanian Official Gazette no 819 from 10 November 2014.
[818] Uradni list RS-MP, no. 23/04.
[819] The "Agentschap Integratie en Inburgering", see http://www.integratie-inburgering.be.
[820] Municipal Court Rijeka Posl. br. P-1638/2014 of 26.09.2014. (CRF20140926) and subsequent County Court Rijeka Posl. br. Gž-3397/2014, of 17.11.2014. (CRS20141117), available at EU Fam's project database (www.eufams.unimi.it) under specified code.
[821] Information provided by the Greek central authority.
[822] Information provided by the Greek central authority.
[823] Gillen op cit n 88.
[824] Ibid para 42.
[825] Lamont R 'Habitual Residence and Brussels IIbis: Developing Concepts for European Private International Family Law' (2007) *JPIL* (3) 2 pp 261-281 p 261.
[826] (EU Commissioner for Justice, Consumers and Gender Equality)http://ec.europa.eu/justice/newsroom/civil/news/160630_en.htm.
[827] Kruger T '*Brussels IIbis recast'* (June 30, 2016) (available at http://conflictoflaws.net/2016/brussels-iibis-recast/ accessed 07.10.16).
[828] Gillen op cit at n 88, para 16.2 page 133.
[829] Phillimore op cit n 449.