



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

LEGAL AFFAIRS

CIVIL LAW AND JUSTICE FORUM
with the participation of
National Parliaments
**"Cross-border activities in the EU - Making
life easier for citizens"**

Opening

09:30 - 09:40 Welcome and opening remarks

Pavel Svoboda, Chair of the Committee on Legal Affairs

09:40 – 09:50 Using EU private international law to facilitate the
free movement of citizens

R.L. Valcarcel Siso, Vice-President in charge of relations with
National Parliaments

09:50 - 10:00 The Latvian Council Presidency - agenda for the
area of civil law

Inese Libina-Egnere, Vice Speaker of the Saeima and Vice Chair of
the Legal Affairs Committee



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Workshop on Civil Law and Justice

DOCUMENTATION

The final study and briefing notes will be available the day after the meeting on the EP website under "Committees"; "JURI", "Events", "Workshops":

<http://www.europarl.europa.eu/committees/en/juri/events.html?id=workshops>



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Session I: Less paper work for mobile citizens

10:10 - 10:30 Opening remarks

Jan von Hein, Professor, Freiburg University

10:10 - 10:30 Promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the EU and beyond

Pierre Callé, Professor, Paris Sud University

Michael P. Clancy, Solicitor, UK, The Law Society of Scotland



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Session I: Less paper work for mobile citizens

10:30 – 11:00 Debate opened by Mady Delvaux, MEP,
rapporteur for the proposal on public documents

11:15 - 11:25 Towards European Model Dispositions in Family
and Succession Law

Christiane Wendehorst, Professor, Vienna University

11:25 – 11:45 EU Regulation 650/2012 on successions and on
the creation of a European Certificate of
Succession



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Session I: Less paper work for mobile citizens

Kurt Lechner, Notary Chamber of Palatine, Germany

Eve Potter, Legal advisor of the Estonian Chamber of Notaries

11:45 - 12:30 Debate



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END OF SESSION I

SESSION II
RESUMES AT 14:30



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Session II: Cross border families and families crossing-borders

14:30 - 14:40 Opening remarks

Mairead McGuinness, Vice-President, European Parliament
Mediator for parental child abduction

14:40 - 14:50 Presentation of the study: "Cross-border parental
child abduction in the EU"

Ilaria Petrelli, Swiss Institute of Comparative Law, Lausanne

14:50 – 15:00 Mediating International Child Abduction Cases

Spiros Livadopoulos, Lawyer and Mediator, European Cross-
border Family Mediators' Network



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Session II: Cross border families and families crossing-borders

15:00 – 15:30 The Brussels Ila Regulation: towards a review?

Hans van Loon, The Hague, Member of the Institut de Droit International, Former Secretary General of the Hague Conference on Private International Law

Michael Shotter, Head of Unit Justice Policy, DG Justice EC

15:30 - 16:00 Debate



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Session II: Cross border families and families crossing-borders

16:00 - 16:10 Name Law – is there a need to legislate?

Paul Lagarde, Professor, Université Paris I (Panthéon-Sorbonne)

16:10 - 16:30 Debate

END OF SESSION II

SESSION III

RESUMES AT 16:30



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Session III: Business and consumer's concerns

16:30 - 16:40 Opening remarks on private international law as a regulatory tool for global governance

Harm Schepel, Professor of Economic Law, Brussels School of International Studies, University of Kent at Brussels

16:40 – 16:50 The European Small Claims Procedure and the new Commission proposal

Pablo Cortés, University of Leicester



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Session III: Business and consumer's concerns

16:50 - 17:10 Debate opened by Lidia Geringer de Oedenberg, MEP, rapporteur for the review of the Small Claims regulation

17:10 – 17:20 Mediation as Alternative Dispute Resolution (the functioning of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters)

Giuseppe De Palo, Professor, ADR Center Srl



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Session III: Business and consumer's concerns

17:20 – 17:30 The 2005 Hague Convention on Choice of Court Agreements and the recast of the Brussels I Regulation

Gottfried Musger, judge at the Austrian Supreme Court

17:30 – 17:50 Debate

17:50 - 18:00 Conclusions



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Workshop on Civil Law and Justice

European Parliament –

Committee on Legal Affairs
Policy Department C – Citizens' Rights
& Constitutional Affairs

With the support of the
Directorate for Relations
with National Parliaments



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Towards a European Code on Private International Law?

European PIL – present state

- European PIL as it currently stands is
 - not codified in single instrument
 - not even embodied in a single type of instrument.
- Instead, it is scattered across various instruments of a different legal nature, including
 - EU Regulations
 - EU Directives and
 - international conventions.

European PIL – deficiencies

- As the result of the multitude of legal sources, European PIL is characterized by
 - gaps
 - redundancies and
 - incoherences.
- Conclusion: European PIL in its present state does not exhaust all possibilities to facilitate and foster cross-border trade and life.

Codification – advantages/obstacles

- **Advantages** of a codification would be gains with regard to the
 - visibility,
 - accessibility and
 - coherence of European PIL.
- But at present, there are **obstacles** that cast the actual feasibility of such a project into doubt:
 - institutional obstacles
 - Different legislative competences for family matters, opt-in rights, enhanced cooperation
 - practical obstacles
 - Political will, aversion against a “code”

Codification – realistic way forward

- It follows that, for the time being, the only realistic way forward is:
 - the adoption of (more) sectoral codifications limited to specific legal areas of PIL,
 - accompanied by measures designed to ensure the coherence of European PIL in the long term.



Three-pillar-model

- We propose developing a three-pillar-model of legislative measures:
 - 1. completing the acquis
 - 2. consolidating the acquis
 - 3. improving the institutional framework
- This may in turn pave the way for a comprehensive European Code on PIL in the long term.



Presentation by

- Prof. Dr. Jan von Hein,
University of Freiburg (Germany)
- Prof. Dr. Giesela Rühl, LL.M. (Berkeley),
University of Jena (Germany)



Policy Department C
Responsible Administrators:
Email: udo.bux@ep.europa.eu
Celine.chateau@ep.europa.eu



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**Towards
European Model Dispositions
for Family and Succession Law?**

European citizens in the 21st century ...

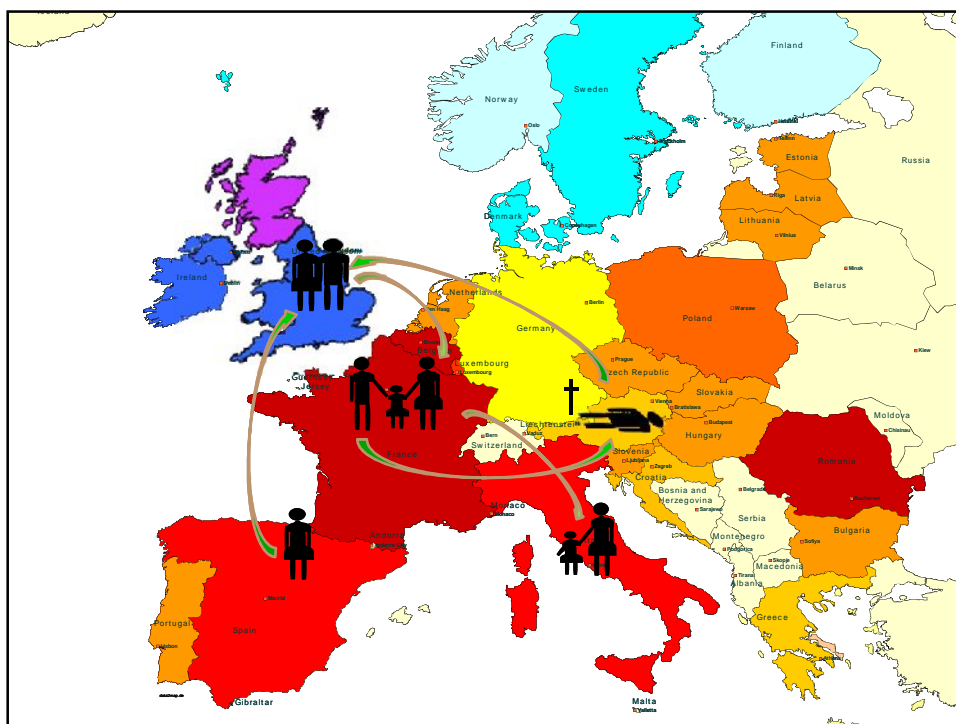
➡ ... make active use of their freedom of movement and work, live, marry, have children, get divorced, die ... outside their country of origin.

- ➡
- There are currently 16 million international couples in the EU
 - 13% of new marriages in the EU concern bi-national couples
 - 20% of registered partnerships concern bi-national couples
 - Each year, 450,000 successions with an international dimension are opened for a value of 123 billion euros

Source: http://www.notaries-of-europe.eu/plan2020/pdf/CNUE_Brochure2020_WEB_En.pdf

➡ Financial costs created by various problems associated with the property relations of international couples are estimated at 1.1 billion euros per annum.

Source: http://ec.europa.eu/justice/civil/files/ia_on_mpr_main_report_en.pdf



Problem No 1: Parties taken by surprise after moving to another jurisdiction

Franz, living in Austria with his Austrian wife, Theresia, and their children, takes on a new permanent position in Germany and instigates his family to follow him. In Germany, he falls in love with another woman and files an action for divorce under German law after one year of factual separation. German law has, under the Rome III Regulation, become the law applicable to divorce. Theresia is taken by surprise as she is familiar only with the Austrian fault principle under which she would have been entitled to object to the divorce for up to six years of separation.

Nik and Lara, two Slovenian citizens, have been cohabiting without being formally married in Ljubljana for more than three years. The couple later moves to Austria. Some years later, Lara is killed in a car accident and dies intestate. Under Slovenian law, Nik would have enjoyed the same inheritance rights as a spouse. However, according to the Successions Regulation, Austrian law has become the law applicable to succession, and Nik does not have any rights whatsoever under Austrian law.

Problem No 2: Forum shopping and a 'rush to court'

Herbert, a German widower, and UK citizen Mary, who has been living in Germany for a long time, enter into a marriage in Germany. As both Herbert and Mary own a considerable estate, and as Herbert would like to pass this estate on to the four children from his previous marriage, Herbert and Mary conclude a pre-nuptial agreement according to which there shall be no mutual obligations whatsoever in the case of a divorce. When the couple breaks up, Mary quickly re-establishes her UK domicile and starts proceedings for divorce before a London court. The court in London will not consider the pre-nuptial agreement as strictly binding, and may even disregard it, whereas it would have been fully upheld by a German court.

Problem No 3: Patchwork of forums and applicable laws

Stefan and Monika marry in Germany. Soon after their marriage, they move to Austria, together with their daughter. In Austria, they buy a family home, which is solely owned by Stefan. In the course of his midlife crisis, Stefan leaves the family and starts a new life in the Netherlands. A year later, Stefan files a petition for divorce in Amsterdam. Throughout the duration of the marriage, Stefan paid a fair portion of his income into private pension schemes in Germany and in Austria. Monika, who stopped working when her daughter was born, has not acquired any pension rights of her own.

Matter:	Jurisdiction:	Applicable law:
Divorce	Netherlands	Netherlands
Maintenance	Austria/Netherlands	Austria
Property in general	Netherlands (according to 2011 Proposal)	Germany (according to 2011 Proposal)
Family home etc.	Netherlands (according to 2011 Proposal)	Germany/Netherlands(?) (according to 2011 Proposal)
Pension schemes	Germany(?)	Germany(?)
Parental responsibility	Austria/Netherlands	Austria

The potential of European model dispositions

- ➡ Those who start an international family, or families who move to a different country, are 'flying blind' into a storm of unexpected legal effects.
- ➡ Many of the problems encountered by international families could be avoided by
 - early choice of court and applicable law under the existing EU instruments (plus, ideally, under the pending Regulations on property relations and a revised Brussels IIA Regulation)
 - pre-nuptial and post-nuptial agreements, and corresponding agreements for registered partnerships and cohabiting couples, as far as such agreements are enforceable in the relevant forum state.

It is therefore suggested that



- **European model dispositions concerning (i) choice of court, (ii) choice of applicable law, and (iii) submission to family mediation** be introduced, which citizens must be made aware of and get access to whenever a marriage or partnership is concluded, a cross-border change of residence is registered, and in similar situations. They would offer to the parties a limited set of recommended 'one-stop shop packages'.
- **European model agreements on substantive family law issues** be developed, which would ideally be made enforceable in all (participating) Member States of the EU.

In any case, they could serve as a useful tool for parties and their legal advisers, together with information about what is enforceable where, which could be made available on the European e-Justice Portal and similar platforms.

Presentation by

Christiane C. Wendehorst

christiane.wendehorst@univie.ac.at

University of Vienna, Department of Civil Law



Policy Department C

Responsible Administrators:

Email: udo.bux@ep.europa.eu

Celine.chateau@ep.europa.eu



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Cross-border parental child abduction in the European Union

Limitations of statistics

- **Disparity between countries** in how data is collected
- Statistics are often **dated**
- Available data **will not include all cases** of child abduction



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International marriages and divorces across the EU

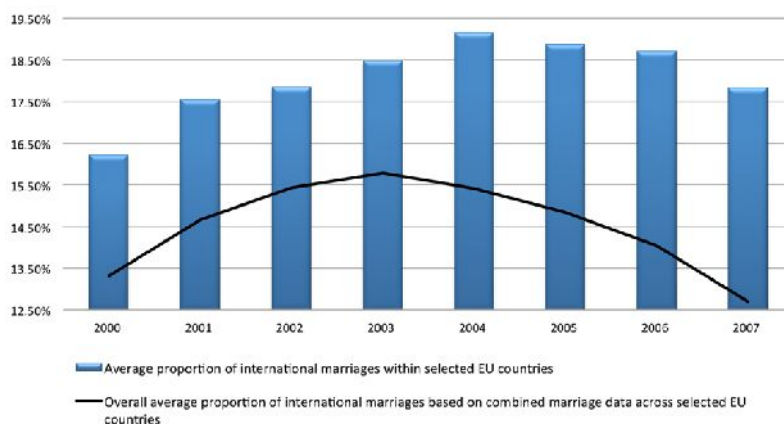
- **International marriages** as a proportion of all marriages (2000-2007 and 2012)
- **Divorces of international couples** as a proportion of all divorces (2000-2007 and 2012)
- **Almost no data** on dissolutions of international marriages **involving children**



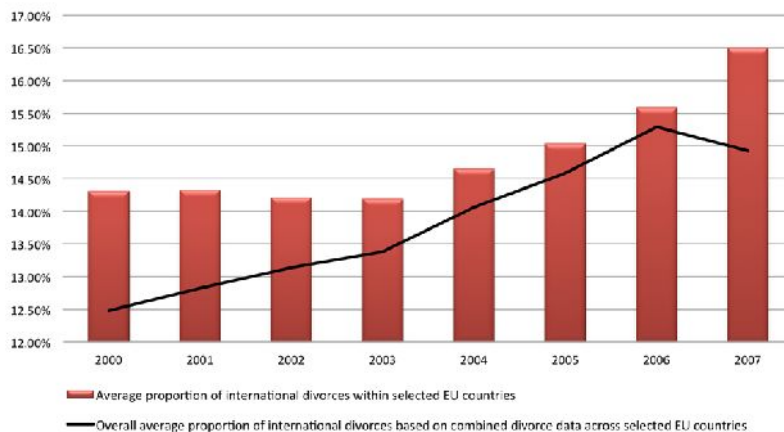
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Overall international marriages as a % of all marriages



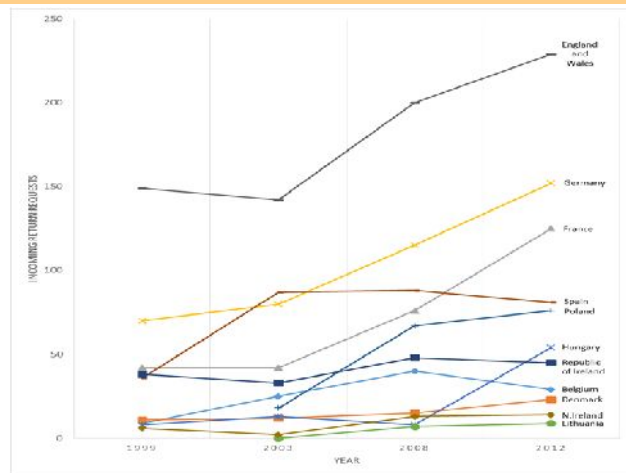
Overall divorces of international couples as a % of all divorces



Child abduction data

- Statistics collected by INCASTAT for the years **1999, 2003 and 2008**
- For **years since 2008**, available data obtained directly from some EU countries
- Focus is on numbers of « **return requests** » received by Central Authorities

International child abduction return requests 1999-2012



The legal framework in force

Three overlapping sources dealing with “the phenomenon”:

- The 1980 Hague Convention on Child Abduction
- EU Regulation 2201/2003
(also known as Brussels II bis or IIa)
- Bilateral covenants

What “phenomenon”?

3 Extreme Scenarios ...

- Kidnapping resulting in the abrupt end of the relationship between mother and child (DPP -v- Moustafa Iasmæil [2012] IECCA 36).
- Kidnapping resulting in the abrupt end of the relationship between father and child (ECHR, 13 January 2015, Manic v. Lithuania, app. 46600/11)
- Fleeing domestic violence through kidnapping (Re S (A Child)(Abduction: Rights of Custody), [2012] UK Supreme Court 10)

... 2 “Typical” Scenarios

Separated parents living or wishing to live in different countries tend to fight a “battle over the residence of the child”

- The parent holding visiting rights removes or retains the child in violation of a judicial decision or of a legal rule in force
- The parent holding (sole or shared) custody moves abroad with the child

Conclusions and recommendations of the study:

- The same legal framework is applied to *extreme* and *typical* situations
- The principle of equal treatment calls for *ad hoc* solutions
- The system proposed aims at “filtering” child abduction cases according to their gravity and the concrete possibility of treatment

A system based on the interaction of lawyers, judges and mediators

- 1st filter: Extreme situations require extreme speed and efficiency
- 2nd filter: “Typical” situations require the active collaboration of parents, coached by mediators. Mediation shall identify the best interests of the child with modalities respecting the parents’ autonomy
- 3rd filter: High-conflict dissolutions – unresolvable through mediation - require extreme prudence and a judge equally distant from each parent

Presentation by

Dr. Ilaria Pretelli

John Curran, LLM



Institut suisse de droit comparé
Schweizerisches Institut für Rechtsvergleichung
Istituto svizzero di diritto comparato
Swiss Institute of Comparative Law

Policy Department C

Responsible Administrators:

Email: udo.bux@ep.europa.eu

Celine.chateau@ep.europa.eu



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**Mediating International
Child Abduction Cases**

Legal framework within EU

- Brussels II bis Regulation (Art. 55 (2)(e)) and the 1980 Hague Convention (Art. 7 (2)(c)) foresee the possibility of mediation in family proceedings and encourage central authorities to work towards an amicable settlement
- EU Parliament Mediator on International Child Abduction
- EU Directive No. 2008/52/EC - the Mediation Directive (Art. 5 gives judges the right to invite parties to try mediation first, Art. 6 ensures the enforceability of settlement agreements)
- European Code of Conduct for Mediators



How cross – border family mediation works

- Cross - Border Family Mediation can be used at any stage of a dispute (during litigation or prior to it), usually takes two working days and is conducted in a NEUTRAL place. It usually takes place in the country where the child is retained.
- At mediation, the persons who are present are the MEDIATORS and the parties involved, WHOSE attorneys support them but they are not usually present. Mediation is conducted in the parties' language or English. In some cases it is necessary to hire interpreters.
- During Mediation, the Mediators will meet with the parties at joint or separate sessions. The Mediators, who is selected by the parties, will ensure that the participants voice their point of view EQUALLY and negotiate FREELY. The parties themselves find a solution. Mediation is confidential and voluntary.



Phases of mediation

Preparation (screening - suitability control of the case – necessary contacts)

- 1) Introductions, agreement to mediate.
- 2) Defining the issues setting the agenda.
- 3) Exploration (understanding the dispute).
- 4) Negotiation (generating possible solutions).
- 5) Final agreement.



Dynamics of international cases involving child abduction.

- → Cultural differences become threatening during breakdown
- → Both parents want to be active in their children's lives
- → One parent feels trapped and wishes to return home after a separation or divorce
- → Illegal retainment or abduction (usually of young children)
- → Reaction of left-behind parent: anger, disbelief, feelings of helplessness and powerlessness
- → Danger of re-abduction
- → Both parents are afraid of losing their children
- → The children are caught in the middle



Issues settled in the mediation

- Return of the child, future living arrangements
- Custody, visitation, contact to absent parent
- Holidays and birthdays
- Religious and cultural/bilingual upbringing
- (Child support, alimony, division of assets)
- (Separation and divorce)
- Contact to absent parent during mediation



Framework of the mediation

- Can be initiated by parties, lawyers, judge, Central Authority, Ministry of Justice or consular staff
- Timeframe: short notice, often just before court hearing
- Characteristics of child abduction cases:
 - – Time-consuming preparation, travel, contact to lawyers
 - – Long, sometimes open-ended sessions, usually 2 to 3 days
 - – Highly escalated conflict dynamics, lack of trust, fear of losing child, feelings of anger and betrayal, pressure to make far-reaching decisions at short notice, influence of likely outcome of court case, high level of insecurity, very intense



How we mediate

- Co-mediation according to Wroclaw Declaration by mediators from:
 - both cultures
 - both languages
 - both genders
 - the legal and the psychosocial professions
- Focus on the child, facilitate contact to absent parent, separate sessions, developing scenarios for possible solutions



Workshop on cross - border family mediation (Berlin 2012)



Cross-border Family Mediators' Network



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Cross-border Family Mediators' Network

- Task Force with MiKK – Child Focus – Missing Children Europe
- Annual 50-hour training course for new member-mediators (Next training: June/July 2015 – Sesimbra – Portugal)
- Annual advanced training and supervision for members
- Future projects:
 - The voice of the child in mediation
 - Training 116000 Hotlines in dealing with abduction cases & mediation
 - The psychological effects of an international child abduction on the well-being of abducted children.



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Presentation by

Spiros Livadopoulos

www.crossbordermediator.eu



**Cross-Border
Family
Mediators**

Policy Department C

Responsible Administrators:

Email: udo.bux@ep.europa.eu

Celine.chateau@ep.europa.eu



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Brussels IIa Regulation Application report and the outcomes of the public consultation

Michael Shotter
European Commission
DG Justice and Consumers
Civil Justice Policy Unit



Review of the Brussels IIa Regulation 2014 Developments

Application report from the the Commission
adopted on 15 April 2014

Launch of the campaign

Evaluation study

Public consultation 15 April – 18 July 2014

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Brussels IIa - Application report

- I. Jurisdiction matters
- II. Recognition and enforceability
- III. Cooperation between Central Authorities
- IV. Cross-border parental child abduction
- V. General enforcement issues
- VI. Placement of a child in another Member State

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Public consultation

Addressed to the broadest public possible; interested individuals, legal practitioners, academics, organisations, courts, central authorities and Member States

36 questions

Almost 200 contributions received

On-going analysis: quantitative and qualitative

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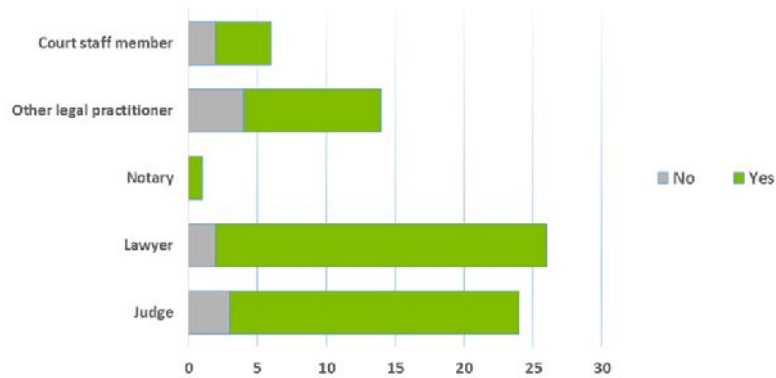


Respondents from the EU

STAKEHOLDERS	NUMBER OF CONTRIBUTIONS
Private individual	39
Judge	24
Court staff member	6
Lawyer	26
Other legal practitioner	16
Central authority staff member	7
Academic	14
Member State	9
Other	39

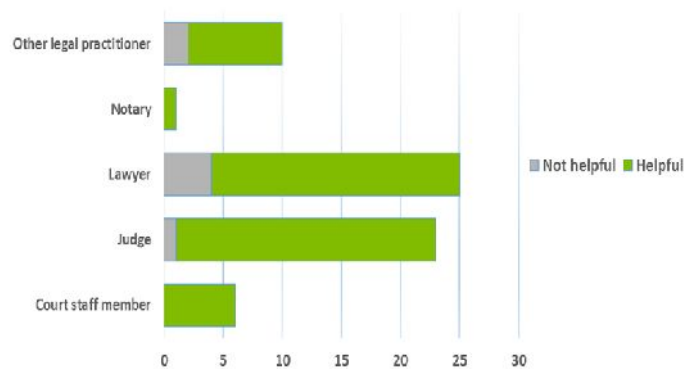
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Legal professionals with practical experience with the Regulation



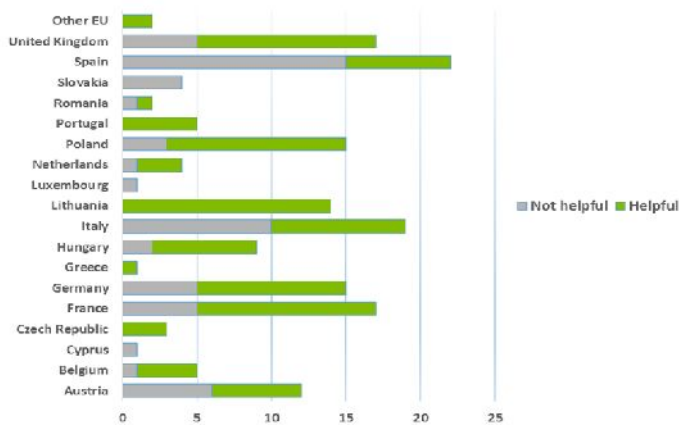
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Helpfulness of the Regulation in cross-border custody cases and access rights



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Helpfulness in cross-border parental child abduction

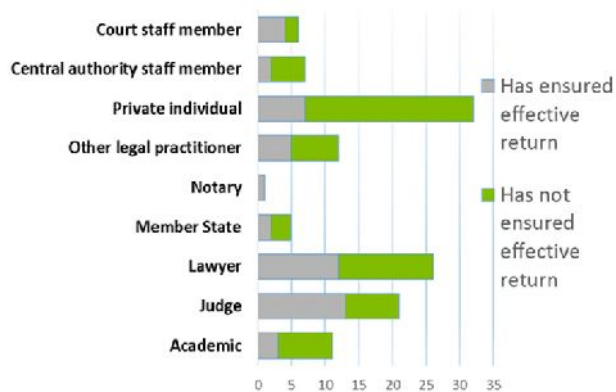


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Do you think that the Regulation has ensured the immediate return of the child within the EU?

61% - No

39% - Yes



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Suggested improvements to the procedure of the return of the child

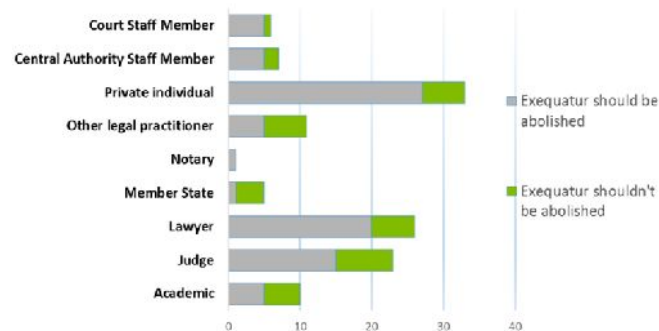
- automatic enforcement of judgements
- stricter time-frame for compliance
- sanctions for non-compliance
- greater use of mediation

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Abolition of exequatur

68% believe that all judgments, authentic instruments and agreements concerning parental responsibility should circulate freely between EU countries without exequatur



66

Hearing of the child

78% for the introduction of the common minimum standards

- problems with the definition of the child
- suitable age or capacity to be heard
- modes of the hearing

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Enforcement

83% of respondents highlighted enforcement as an important area for improvement

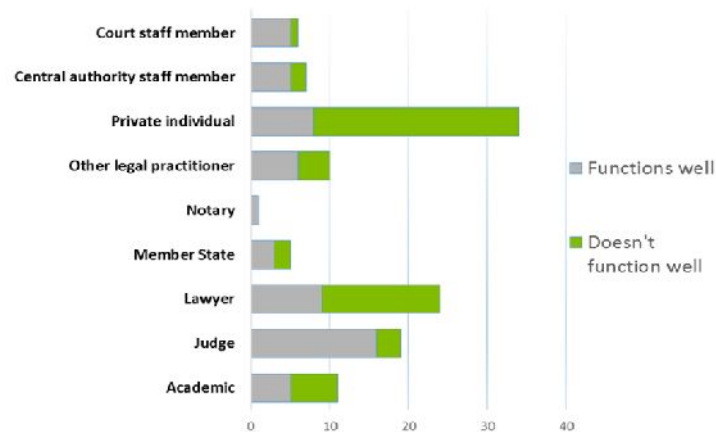
Recommendations:

- adoption of common minimum standards
- increased awareness, and
- specialised body/instrument dealing with enforcement

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Cooperation between Central Authorities



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Cooperation between Central Authorities and Child Welfare Authorities

43% of the practitioners think it is satisfactory vs.

82% of the individuals think that the cooperation does not function well

Recommendations:

- increased communication, training
- single information system
- mandatory reporting
- designated coordinator for cross-border issues

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Thank you!

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**The 2005 Hague Convention on
Choice of Court Agreements
and the Recast of the Brussels I
Regulation**

Commercial Disputes: State Courts or Arbitration?

- **Commercial contract: Legal security in case of a dispute**
 - Who will decide?
 - Will decision be enforced?
- **Arbitration: New York Convention**
 - Arbitration agreement excludes jurisdiction of State courts in all Contracting States
 - Arbitral Award will be enforced in all Contracting States
 - 151 Contracting States (of 193 UN Member States)



Commercial Disputes: State Courts or Arbitration?

- **Commercial contract: Legal security in case of a dispute**
 - Who will decide?
 - Will decision be enforced?
- **Jurisdiction of State Courts: Brussels I Regulation**
 - Choice of court agreement designating a court of a Member State excludes jurisdiction of courts of other Member States
 - Judgment of the chosen court will be enforced in other Member States
 - No rule on choice of court agreements designating a court of a third country



Competition of Systems: State Courts v. Arbitration

- Disputes involving only EU-States
 - New York Convention and Brussels I give legal security
 - Choice of court agreements are viable alternative to arbitration
- Disputes involving third countries
 - Arbitration gives legal security
 - Third country relations not covered by Brussels I
 - Lack of legal security as to choice of court agreements



Choice of Court Convention

- Scope
 - Exclusive choice of court agreements
 - Civil or commercial matters
 - International cases
- Three basic rules
 - Chosen Court has to hear the case
 - Courts of other Contracting States have to suspend or dismiss proceedings
 - Judgment of the chosen court must be enforced in all Contracting States
- Parallel to New York Convention



Recast of Brussels I

- Slightly different rule on choice of court agreements
 - Technical alignment with Choice of Court Convention
- New rule on *lis pendens*
 - Chosen court has precedence even if a court of another Member State was seised first
 - Parallel to Choice of Court Convention



Competition of Systems: State Courts v. Arbitration

- Choice of Court Convention brings legal security in commercial disputes involving third countries
- Viable alternative to arbitration on a worldwide level
- Caveat: Everything depends on further ratifications



Presentation by

Dr. Gottfried Musger
Supreme Court of Austria

Policy Department C
Responsible Administrators:
Email: udo.bux@ep.europa.eu
Celine.chateau@ep.europa.eu

