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International Child Abduction cases
through Judicial Cooperation and Family
Medication
iCare

WP 2 Research, Data Collection and
Methodology

WP leader: Defence for Children - Italy

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1. Introduction

International child abduction refers to situations where one parent removes their child – or children – to another State, or retains them there, without the consent of the other parent.¹ These situations arise typically when families are facing crisis and are often connected to the fact that the family members are spread over or have bounds with more than one country.

In 2015, the Hague Conference on Private International Law identified 2,270 return applications to Central Authorities in international child abduction cases, involving 2,997 children. The majority of cases concerned single children with an average age of just under 7 years old.²

Missing Children Europe reports that across the EU, international child abductions constitute the second largest group of children considered missing, as well as the large majority of cross-border cases handled by the Europe-wide network of 116000 hotlines for missing children. In 2020, national hotlines of 15 European countries opened 664 such cases.³

Having recognised the complexity and significant scale of these cases, the international community has developed standards and procedures for addressing them. Even though a legislative framework exists at the international and European levels, preventing and responding to international child abduction remains challenging. The complexity of these cases is related to several factors:

The cross-border nature of the cases requires the collaboration of State authorities, service providers and professionals across different national legal and judicial systems, as well as systems for social welfare and child protection. They have to cooperate and communicate across different languages and cultures. Significant differences still exist: as an example,

¹ The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction defines in Article 3, under which conditions the removal or retention of a child is to be considered wrongful:

The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

² International Centre for Missing and Exploited Children, Hague Conference on Private International Law, *Part I — A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Global report*, Provisional edition pending the completion of the French version, The Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention – October 2017, p. 10. The data are based on a survey with Contracting States and concern the return applications received by Central Authorities during the year 2015. Responses were received from 76 of the 93 Contracting States at that time.

³ Missing Children Europe (2021), [International child abduction](#), website. Missing Children Europe (undated), [Figures and trends 2020 from hotlines for missing children and cross-border family mediators](#), p. 2.

child abduction is a criminal offence in some EU Member States and this makes it difficult for the abducting parent to return to that country.

Against this background, the iCare project aims at improving the situation of children by strengthening judicial cooperation and supporting International Family Mediation (IFM) as complementary to judicial proceedings.

International Family Mediation is understood as “a process conducted by one (or several) impartial, qualified third person(s), the mediator. The mediator has no power to decide but helps the parties to regain communication and assists them in resolving their problem themselves. The agreement reached is a tailor-made solution for their dispute that ensures that their parental decisions take account of the best interests of the child, if a child is concerned.”⁴

This document represents a compilation of recommendations and proposals for action, which have been identified in the course of project activities. They are targeted at different actors in the EU multi-level governance system who have responsibilities in relation to international child abduction cases. The overall goal is to identify measures suitable to secure the rights of the child in the context of international child abduction. The recommendations shall help to improve the handling of international child abduction cases through stronger judicial cooperation and international family mediation.

This compilation of recommendations is based on

- the information collected during the first phase of the project where the partnership gathered data through survey questionnaires with key stakeholders in the project partner countries Belgium, Bulgaria, Germany, Greece and Italy, as well as Poland and The Netherlands;
- the “ Stakeholder needs and a comparative analysis report” developed on the basis of the information gathered;
- consultations of international, European and national key stakeholders and institutions between May and December 2021; as well as
- national seminars involving stakeholders from various backgrounds in the partner countries Belgium, Bulgaria, Germany and Italy, as well as a series of European seminars, which were held between April and May 2022.

2. International and European standards

International and European standards relevant for preventing and responding to international child abduction include public and private law treaties and secondary law, as

⁴ European Justice (2020), *Family mediation*, [What is cross-border family mediation?](#), Last update: 8/10/2020.

well as policy instruments in the fields of family law having cross-border implications, human rights and child rights. The following instruments are particularly relevant:

Conventions:

- the 1989 UN Convention on the Rights of the Child;
- the 1950 European Convention on Human Rights and Fundamental Freedoms;
- the 1980 Hague Convention on the Civil Aspects of International Child Abduction;
- the 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;
- 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 1996 European Convention on the Exercise of Children's Rights.

EU law:

- the EU Charter of Fundamental Rights (2007);
- the EC Regulation n. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing EC Regulation n. 1347/2000 ("Brussels IIa Regulation");
- the EU Regulation 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (hereafter Regulation EU 2019/1111, also referred to as Regulation "Brussels IIa Recast" or, unofficially, as Brussels II ter Regulation), applying as from 1 August 2022 and replacing the Brussels IIa Regulation (in particular its Article 5);
- the Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

European policy instruments:

- the Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation;
- the Council of Europe Guidelines on child-friendly justice of 2010;
- the Council of Europe Strategy for the Rights of the Child (2022-2027) and the European Strategy on the Rights of the Child 2021-2024 (COM(2021)142), in particular the thematic areas promoting child-friendly justice.

Soft law instruments and guidance for practitioners⁵:

⁵ See: Stefan, O.A., Avbelj, M., Eliantonio, M., Hartlapp, M., Korkea-aho, E., Rubio, N., (2019), [EU soft law in the EU legal order: A literature review](#), King's College London Law School Research Paper.

- the Hague Conference of Private International Law adopted a Guide to good practice on mediation in child abduction;⁶
- for the EU context, the European Commission published a practice guide on the application of the Brussels IIa Regulation.⁷

Having recognised the need to strengthen the rights of the child in the context of parental separation and care proceedings, the Council of Europe entrusted in 2020 a Committee of Experts with the development of a policy instrument on the rights and the best interests of the child in these contexts.⁸ The forthcoming instrument is expected to promote the rights and best interests of the child in private law matters and proceedings and clarify their connection with child protection matters under public law, including in relation to international child abduction and international family mediation.

3. The rights and best interests of the child in EU law and institutions: relevance for international child abduction

The UN Convention on the Rights of the Child (UN CRC) sets out that “the best interests of the child shall be a primary consideration” in all matters concerning the child (Article 3.1.). To support the application of this general principle in practice, the Committee on the Rights of the Child provided guidance on the meaning and interpretation of the best interests of the child, as a substantive right, a rule of procedure and an interpretative legal principle.⁹

All EU Member States have ratified the UN Convention on the Rights of the Child, which is therefore applicable to all children in the EU, irrespective of the child’s nationality, immigration status or other circumstances.

Beside this, the EU’s commitment to the protection and promotion of children’s rights not only within the EU, but also in the relations with the wider world, is expressed in Article 3 of the Treaty on the European Union (see in particular para. 3 and para. 5). The EU Charter includes a distinct article on the rights of the child (Article 24, see box below), where the reference to the best interests principle is worded even stronger than in Article 3 UN CRC, since the Charter provides that the best interests of the child “must” be a primary consideration. In accordance with Article 51(1), the Charter applies to EU Member States when they are implementing Union law, such as the Brussels IIa Regulation. The EU

⁶ HCCH (2012), *Guide to good practice under the Hague Convention of 25 October 198 on the Civil Aspects of International Child Abduction*, [Mediation](#), The Hague.

⁷ European Commission (2014), [Practice Guide for the application of the Brussels IIa Regulation](#), EU Publications Office.

⁸ Council of Europe, [Committee of Experts CJ/ENF-ISE](#).

⁹ Committee on the Rights of the Child, General Comment No. 14 (2013) on the best interests of the child

Charter, the Treaty on the European Union and the Treaty on the Functioning of the European Union are sources of EU primary law.

EU Charter, Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

The rights of the child have progressively gained a prominent role within the European Union. Recently adopted EU secondary legislation, indeed, expressly makes reference to the rights of the child, in particular to the UN CRC and Article 24 of the European Charter of Fundamental Rights, but also to the European Convention of Human Rights (ECHR), especially Article 8 on the right to respect for private and family life, and the corresponding case law issued by the European Court of Human Rights.¹⁰

In particular, according to the Grand Chamber judgment of 26 November 2013, in the case *X v. Latvia* (application n. 27853/09), "... [I]n the area of international child abduction the obligations imposed by Article 8 on the Contracting States must be interpreted in the light of the requirements of the Hague Convention ... and those of the Convention on the Rights of the Child of 20 November 1989 ..., and of the relevant rules and principles of international law applicable in relations between the Contracting Parties ... This approach involves a combined and harmonious application of the international instruments, and in particular in the instant case of the [European] Convention [on Human Rights] and the Hague Convention, regard being had to its purpose and its impact on the protection of the rights of children and parents" (paragraphs 93-108).

The new Regulation EU 2019/1111, which replaces Brussels IIa Regulation as from 1 August 2022, reflects this trend. As a way of example, it refers besides the ECHR also four times to the UN CRC and to the EU Charter, and thirty-six times to the best interests of the child, whereas the previous Brussels IIa Regulation did not refer to the UN CRC and to the ECHR at all, and only twice to the EU Charter, at the end of the preamble, and only mentioned the best interests of the child six times.

¹⁰ See, among others, ECtHR judgments of 25 January 2000, *Ignaccolo-Zenide v. Romania* (application n. 31679/96), of 28 October 2014, *Cavani v. Hungary* (application n. 5493/13), of 14 May 2020, *Rinau v. Lithuania* (application n. 10926/09).

Against this background, the iCare recommendations promote respect for the rights of the child and the principle of the best interests of the child in international child abduction cases and related family mediation.

European Commission and Parliament: the Coordinators for the Rights of the Child

The Commission Coordinator for the rights of the child was created in 2007 as a result of the 2006 Communication "Towards an EU strategy on the rights of the child", integrated within the DG Justice.¹¹ The Communication established an EU strategy to promote and safeguard the rights of the child in the European Union's internal and external policies and to support Member States' efforts in this field, ensuring that such EU policies respect children's rights in accordance with the principles of EU law, and that they are fully compatible with the principles and provisions of the UNCRC and other international instruments ("mainstreaming").

The Coordinator's main role is to carry out such mainstreaming activities, coordinating the work among all the departments of the European Commission to ensure that the rights of the child are properly ("horizontally") considered in all relevant policies and actions, also in those which do not directly concern children. It goes without saying that the role played by the European Coordinator also in the field of international child abduction is of utmost importance: on the eve of the application of Regulation EU 2019/1111, its role will be, among others, to encourage coordinated action towards its proper implementation.

A Coordinator on Children's Rights has been established also at the level of the European Parliament. The Coordinator is mandated to ensure the promotion and protection of the rights of the child in all EU policies and legislation, by acting as a central contact point to monitor and actively promote the rights of the child in EU policies, ensuring coherence and visibility of the Parliament's actions in this area.

The EU Parliament Coordinator, however, differently from the EU Commission's Coordinator, has a more incisive competence on international child abduction: the mandate includes action to promote cross-border mediation in international family disputes, including international child abduction, and to serve as a central information point for EU citizens in international parental child abduction and other cross-border family disputes.¹² The EU Parliament Co-ordinator on Children's Rights has been co-operating closely for some 15 years with international mediation NGOs, such as MiKK e.V International Mediation Centre for Family Conflict and Child Abduction (Germany). The cooperation focused on promoting mediation in international child abduction cases on a policy and practical level, including referring parents to MiKK.

¹¹ Commission of the European Communities, [Towards an EU Strategy on the Rights of the Child](#), Communication from the Commission, COM(2006) 367, Brussels, 4 July 2006.

¹² The position was first created in 1987 as "Mediator for Children Victims of International Parental Abduction". See: European Parliament, [The European Parliament Coordinator on Children's Rights](#).

With a view to operationalising this function in a more systematic way throughout the European Union and making it meaningful for parents, children and professionals involved in international family mediation and international child abduction cases, more specific guidance may be needed to facilitate the full implementation of the functions in practice and making them accessible for EU citizens, including adults, children and professionals. The access may need to be scaled particularly in countries where leading non-governmental actors, such as MiKK e.V., are currently not in place.

There is an additional, and more political, body working on children's rights at the European Parliament's level: the Intergroup on Children's Rights represents the first formal body in the European Parliament tasked to mainstream children's rights and to assess the impact of EU legislative and non-legislative work on children. The Intergroup is a cross-party and multi-national group of committed Members of the European Parliament, who work together with child-focused organisations to keep children's rights on top of the EU agenda. The aim of the Intergroup is to promote children's rights and ensure that the best interests of the child are taken into account in EU internal and external action.¹³

Considering the connections between these functions and the role of the EU Commission Coordinator, it would be sensible for the two Coordinators to work hand in hand. From the consultations held in the context of the iCare project thus far, it appears that this cooperation could be strengthened, as well as the cooperation between the European Parliament Coordinator on Children's Rights and the Child Rights Intergroup created within the European Parliament itself.

An occasion to revisit and, where appropriate, strengthen these roles and functions, could be the newly established EU Network for Children's Rights: the Network aims at reinforcing the dialogue and mutual learning between the EU and Member States on children's rights, and it will support the implementation, monitoring and evaluation of the EU Strategy on the Rights of the Child (2020-2024). The network is composed of national representatives, and will include, in some of its activities, children, international organisations, NGOs, representatives of local and regional authorities and other relevant stakeholders.¹⁴ Whereas the Network does not specifically focus on matters of international child abduction, it may address this theme among others and contribute to reinforce dialogue and mutual learning between the EU and Member States also in this field.

The iCare consortium of NGOs will continue to liaise and consult with all these actors to involve them actively in the project activities and inform them about progress and outcomes.

¹³ See the website of the Child Rights Intergroup at <https://www.childrightsmanifesto.eu/ep-intergroup/>.

¹⁴ European Commission, [EU Network for Children's Rights](#).

2. Recommendations

The following actions are recommended to promote the effective implementation of the existing international and European law and policy framework while strengthening a child-centred and rights-based approach in accordance with the principle of the best interests of the child:

A. General implementation measures

1. Action concerning the legal framework of reference

One of the most important actions relates to the legal framework of reference, which includes different international and European treaties and policy instruments related directly to international child abduction, as well as human rights and child rights instruments more generally.

The legal framework is aimed at preventing international child abductions and at managing these cases in a way, which best protects the rights of the child, also by enhancing dialogue between the parents. To this end, the legal framework provides

- a) rules aimed at promoting lawful relocation, such as rules on jurisdiction;
- b) rules aimed at ensuring the return of the child after international abduction occurred, in accordance with the rights and the best interests of the child; and
- c) rules on mediation.

In all the above fields the legal framework tends to be improved not only by the revision of the existing binding instruments, such as the new Brussels II ter Regulation, but also through the development of soft law instruments. The case-law of European and, where applicable, national courts is helpful for the interpretation and application of existing rules in accordance with the rights and the best interests of the child.

It is necessary to better clarify the interaction between the existing sources of law at the international and EU levels, including public and private international law, as well as their impact on national legal orders.

At the European and national levels, further clarification of the legal framework of reference may derive from the adoption of specific laws, policy instruments and guidance. Legal clarity and guidance is considered particularly useful for the application of the rights of the child, the best interests determination procedure and child-sensitive procedural safeguards in the context of international child abduction, including in judicial proceedings and in (international) family mediation.

In several EU Member States, international child abduction is a criminal offence. The conduct is criminalised where both, the abducting and the left-behind parent hold full parental responsibility (Croatia, Denmark, Cyprus, Finland, France, Germany, Greece,

Ireland, Italy, the Netherlands), or where the abducting parent holds limited parental responsibility (Austria, Belgium, Hungary, Lithuania, Poland, Portugal, Slovenia, Spain, Sweden).¹⁵

With regard to Italy, for instance, the Committee on the Rights of the Child recommended in its 2019 concluding observations that “the State party, in order to ensure the right of the child to maintain personal relations with both parents and in the light of the Hague Convention on Civil Aspects of International Child Abduction and Return of Abducted Children to the State party, [should] consider revising the provisions of the Penal Code criminalising international child abduction in order to make it easier for an abducting parent to return to the State party together with the abducted child”.¹⁶

It may be useful to ensure that any measure considered to address the Committee’s recommendation is informed by appropriate research and evidence. Research should be considered to inform national and European debates on how to approach different forms of criminalisation of international child abduction, possible provisions for non-prosecution under certain conditions, and the impact of the relevant criminal laws and any enforcement on the children concerned.

2. Action concerning best interests determination and the rights of the child to be heard

In its General Comment No. 13 (2014), the Committee on the Rights of the Child clarifies that the best interests of a child have to be determined in each individual case, taking into account the views of the child concerned, through a three-step process involving

- a) the best interests assessment as a comprehensive case assessment taking into consideration a number of established criteria;
- b) the best interests determination as a formalised and regulated decision making process, respecting child-sensitive procedural safeguards, and conducting an ethical and rights-based balancing of different rights, interests and duties involved in the case; and
- c) a medium or longer term process of follow-up and impact evaluation after the decision on the best interests of the child has been taken and implemented, ensuring the adjustment

¹⁵ Specjalski, M. (2019), *Criminalization of „parental kidnappings” in some European countries and human right to respect private and family life*, HDIM.CS/0348/19, 24 September 2019. Kosonoga-Zygmunt, J. (2021), *Odpowiedzialność karna rodziców za uprowadzenie lub zatrzymanie małoletniego dziecka (Art. 211 K.)*, [Ius Novum](#), 3/2021.

¹⁶ Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Italy, CRC/C/ITA/CO/5-6, 1 February 2019, par. 26

of assessments, decisions and service provision in accordance with the rights of the child and their evolving needs.¹⁷

The best interest determination procedure shall be carried out by a multi-disciplinary group of professionals relevant for the case.

There is currently no unified practice in EU Member States to ensure that the rights of the child are respected and safeguarded in the context of international family mediation, particularly with regard to the hearing of the child and the best interest determination.

In some cases, the different judicial practice of EU Member States regarding the hearing of the child and the best interest determination, have prompted competent national courts to decide against the return of the child to the State of habitual residence.¹⁸

In this respect, the Regulation EU 2019/1111 stresses the importance of the hearing of the child in general under art. 21 and with specific reference to child abduction under art. 26. It acknowledges the existing differences in national laws with regard to the hearing of the child and that such differences should not pose obstacles to the recognition of decisions (Recital 57).

Additional research, including consultations with children, parents and professionals, would be useful to identify good practice examples in securing the rights of the child in the context of international family mediation. Where applicable, it would be important to facilitate the collaboration of the judiciary and international family mediators with the authorities or services responsible for assessing and determining the best interests of the child in the public law field, such as social workers or child protection services.

Safeguarding the children's right to be heard in all matters concerning them, as afforded under Article 12 UN CRC and Article 24 of the EU Charter, requires specific training and tools for child-sensitive communication and interviewing in the context of administrative and judicial proceedings and international family mediation. In particular, the child's views or, in the case of very young children, their perspectives, should be heard and taken into consideration in any undertaking to assess or determine the best interests of the child.

Whereas throughout the EU, social and child protection services or courts of law are typically competent to carry out a best interest determination in family matters under public law, such as care proceedings, it is currently not as clearly regulated how the competent authorities could ensure that the best interests of the child are a primary consideration in

¹⁷ United Nations Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013.

¹⁸ For an overview, see W. Schrama, M. Freeman, N. Taylor, M. Bruning, *International Handbook on Child Participation in Family Law*, 2021, Intersentia.

the context of private law proceedings, in particular those involving international family mediation. Specific agreements, multi-disciplinary approaches and operational guidance should be in place to regulate the best interest determination in the context of international family mediation, in accordance with the guidance available from the Committee on the Rights of the Child, and to clarify the relation between family mediation and court proceedings in a transnational context.

3. Action concerning policy planning and coordination

Within the EU legal order, different institutions, bodies and authorities have competences in matters concerning children, including with regard to international child abduction cases. From the investigations made by the partnership, it results that the coordination between such institutional actors, as well as families' access to them, could be strengthened. It is therefore recommended to better clarify and define the actions, which each institutional actor is entitled and responsible to pursue in relation to international child abduction. The cooperation and coordination between them and with private service providers should also be strengthened, with a view to offering – directly or, more likely, by virtue of the involvement of specialised entities – effective assistance to the families involved in international child abduction cases. Such entities include, among others, organisations of professionals specifically trained in handling international child abduction cases and international family mediation.¹⁹

4. Action concerning international family mediation services

The provision of international family mediation services is organised differently in EU Member States and, as a result, the approaches and practices differ from country to country. This results in unequal access and highly fragmented standards of mediation, in relation to several matters, such as

- the consideration mediation gives to the rights and the best interests of the child;
- questions relating to the (mandatory or optional) information on international family mediation to be given to parents before proceedings start;
- questions of access to international family mediation, including associated costs and mediation aid;
- the moments at which international family mediation can be initiated before, during or after court proceedings;
- the manner by which the international family mediation process is connected and coordinated with judicial proceedings;
- provisions concerning the cross-border circulation of mediated agreements among Member States (i.e. recognition and enforcement in a Member State different from the one in which the agreement was reached);

¹⁹ See for instance ICALI – International Child Abduction Lawyers Italy (<https://icali.it/>).

- questions concerning the training and licensing of international family mediators, including specialised qualifications required for interacting with children;
- the provision and admission of digital mediation services within or outside court proceedings.

In light of the fragmented situation and as systematic consideration for the best interests principle, in accordance with the UN Convention on the Rights of the Child, the ECHR and EU law, is still a rather new approach in international family mediation, which is stronger developed in some Member States and less so in others, the iCare Consortium has endeavoured to develop a methodology for family mediation in international child abduction cases, which proposes measures and considerations for a more unified, child-centred and right-based approach, also in light of the entry into application of the Regulation EU 2019/1111, see art. 25, recitals 35, 42, 43, 74, 75.

At the European and national levels, the development of strategic plans or action plans may be considered to build up a family mediation infrastructure with national and international dimensions. It would be useful both at the EU and national levels, particularly in those Member States where consistent consideration for the rights of the child in family mediation is still weak, and with a view to fostering exchange and joint learning among EU Member States pursuing different approaches to organising family mediation services.

5. Action concerning judicial cooperation

Also, in view of the application of Regulation EU 2019/1111, the European Judicial Network in civil and commercial matters (EJN - civil and commercial matters)²⁰ should provide for stronger support to judicial authorities on international family mediation. In particular, the EJN - through its national contact points - should foster direct and indirect cooperation, i.e., respectively, direct contacts within courts of different Member States, and through the assistance of national central authorities appointed under the relevant EU Instruments and International conventions on judicial cooperation in civil matters. Projects aimed at strengthening the European as well as the national perspective of EJN should also be promoted, also among all legal professionals involved in international child abduction cases (judges, lawyers, bailiffs, civil registrars etc.).²¹

²⁰ See https://e-justice.europa.eu/431/EN/about_the_network.

²¹ From the Italian perspective, see for instance the EU co-funded project “EJNita – Building Bridges”, coordinated by the Italian Ministry of Justice, aimed at strengthening the Italian dimension of the EJN in civil and commercial matters and at disseminating information on the EJN and judicial cooperation among legal professionals (www.aldricus.giustizia.it).

6. Action concerning training

Professionals involved in parental separation and international child cases, within the judiciary, social services and mediation, require training on international family mediation, and specific training on the rights of the child, including in particular the right of the child to be heard, the best interests of the child, principles of child-friendly justice and child-sensitive communication and information.

In addition to technical competence, working with international child abduction cases requires a diverse set of skills, knowledge and tools, for instance with regard to conflict resolution, intercultural and linguistic competences, communication skills, multi-professional collaboration and teamwork. Training on these matters should be included in academic and professional education and continuous professional training. Training should be provided also as multi-professional and joint training of legal professionals, mediators, professionals from social and child protection services, (child) psychologists, guardians and other relevant professions, as well as transnational training. Training should also be carried out in a comparative perspective, looking at the experience available in different countries: learning from best practices should also help fostering the uniform and effective functioning of the applicable EU and international normative instruments.

7. Action concerning information and awareness raising

Public information and awareness raising strategies and campaigns are needed to promote information on and access to international family mediation and other support services for families involved in these cases or who are at risk. Information and awareness raising campaigns should be developed for different target groups, such as the abducting and left-behind parent, children, and professionals. Child-friendly information material, including in digital form, is required to inform children about their rights and where to seek help.

This need is even stronger given the application of the new Regulation EU 2019/1111 as of 1 August 2022, which introduces significant novelties on the child abduction regime, e.g. on the timing of the proceedings (articles 23 and 24), on the strengthening of the child's right to be heard (art. 26), and on the invitation of parties by courts and, "where appropriate, with the assistance of the Central Authorities" to mediation and to other alternative dispute resolution mechanisms (art. 25).

A specific information service should be in place in each EU Member State to ensure children and parents who are involved in mediation or proceedings have access to information, in a language and manner that they understand, taking into due consideration the age, maturity, gender and culture of the recipients and users of the information service. For purposes of effective operation, the information service should establish, which institution or service provider is responsible for providing information to children and parents involved in international child abduction cases, when such information is provided, and ensure child-friendly information material is available and accessible. In this regard, national Ombudspersons for the rights of the child, national human rights institutions, and other

human rights structures, as well as the European Network of Ombudspersons for Children (ENOC) at the regional level, might play an important role.

8. Action concerning monitoring

National Ombudspersons for the rights of the child, national human rights institutions and other human rights structures have an important monitoring function and are, in several EU Member States, mandated to receive individual complaints and to hold State authorities accountable for implementing human rights and child rights standards in practice, including those deriving from EU law. The actions of these monitoring mechanisms in relation to international child abduction and international family mediation could still be strengthened. In particular, they could take on a leading role, where relevant and appropriate, to promote national regulatory frameworks for international family mediation, develop quality standards for a child-centred and rights-based approach in family mediation, and monitor their application in practice. National human rights institutions may be well placed to identify solutions for the coordination of actors operating under private and public law in each specific country.

The European Network of Ombudspersons for Children (ENOC) would have a strong potential to advocate for these goals at EU level and for the EU region.

9. Action concerning data, research and dissemination of the results

Despite the growing practice and evolving adaptation of EU legal instruments such as the Brussels IIa Regulation, further research is needed to analyse and improve the situation of children involved in international child abduction cases and of their families.

Topics which need to be further explored are, for example,

- (i) the balance between the rights and best interests of the child, the rights, duties and responsibilities of parents, and the obligations of States in international child abduction cases;
- (ii) the lawful relocation of children and how its promotion could help to prevent international child abduction;
- (iii) the provision of mediation services with continuity not only once child abduction has occurred, but also before, to support prevention for families at risk, and, where relevant and appropriate, supportive post-mediation assistance and follow-up services after a case of international child abduction has been resolved and any related court proceedings have been closed, to ensure the parties follow the terms of the mediation agreement and contacts between the parents and the child are maintained accordingly.

Data collection by EU Member States should be harmonised according to a common set of indicators to enable monitoring of trends and of progress made in promoting a prevention-

oriented, child-centred and rights-based approach to international child abduction and international family mediation, in accordance with the existing legal framework of reference.

Starting from the data published by the Hague Conference on Private International Law,²² it is certainly important to understand: whether the specific Member State is the country of origin or the country of destination/refuge; in the first place, whether the court has adopted the trumping order and ordered the return also in case of a decision not to return the child from the country of destination; in the second place, whether the return has been ordered or not and in the negative what are the reasons for refusing return. In addition, disaggregated data on the children concerned, such as age, sex, whether the child has been heard, how and by whom the hearing has been conducted, the presence of siblings or step-siblings, and other relevant indicators.

10. Action concerning law enforcement

Where law enforcement services intervene to enforce decisions, such as, for instance, a child's return to the country of habitual residence, the officers should be specifically trained for this purpose and have the necessary qualifications to communicate with children and provide information in a child-friendly manner. Law enforcement officers should behave in an appropriate manner (e.g. avoiding wearing uniforms), and be accompanied, where applicable, by a social worker or child-psychologist trained specifically for this purpose. The use of force must be a measure of last resort and specific care should be taken to prevent the secondary victimisation, intimidation and any (re-)traumatisation of the child.

11. Action concerning media reporting

Further action is required to ensure the media and journalists abide with existing codes of conduct and legal regulations to respect ethical standards and privacy rules when reporting about cases of international child abduction. This includes a mandate of journalists and the media to ensure public information is conveyed in accordance with the rights and the best interests of the child, respects the rights of the child and the parents to privacy, and is neutral, refraining from any reporting that would convey stereotypes about citizens from different countries, with different social or religious backgrounds.

12. Action concerning budget allocation

Pursuing the application of these proposals for action, budgetary support is required at the EU and national levels. Specific funds need to be allocated, in particular to pursue the goals related to research and training. In light of the evidence of the harmful impact of

²² See for instance Prof. Nigel Lowe's work on data published regularly for the Hague Conference of Private International Law, Hague Conference on Private International Law, *Statistics*, <https://www.hcch.net/en/publications-and-studies/details4/?pid=6598&dtid=32>.

international child abduction on children, often with life-long consequences,²³ investing in this area is considered cost effective, whereas the cost of inaction would be higher for societies and states, and the individuals concerned.

13. Action concerning prevention measures and alternative dispute resolution mechanisms

In light of the costs and duration of judicial proceedings, it is important to emphasise the opportunities offered by prevention measures and appropriate alternative dispute resolution mechanisms in international child abduction cases.

It is essential to raise awareness on the possibilities for preventing international child abduction cases by favouring lawful relocations, also by virtue of agreements, capable of granting regular contacts of the child in particular with the non-custodial parent.

Whereas mediation is surely the main instrument for alternative dispute resolution, which is strengthened and promoted also by the new Brussels IIa recast Regulation, some countries combine different approaches and methods. In some countries and contexts, “conciliation” is used, where a third party, who could be the judge or a social worker, may help the parents to find an agreement. The difference between the two alternative dispute resolution methods is however not clear. Regardless of the approach chosen, the rights of the child should be upheld at all times. Further research may be helpful to explore the safeguards that should be in place where mediation is pursued in high conflict parental separation and international child abduction cases.

14. Action concerning the enforcement of agreements, in particular mediation agreements

The mutual recognition and enforcement of agreements, including mediation agreements in family matters remains a challenge. In particular, there continues to be a need for consistency and predictability of both national and cross-border family mediation within the national legal system of Member States and a need for mediation agreements in family matters to be recognised and enforced within the EU.

The challenges relate in particular to the following matters²⁴:

- Being a cross-border situation, the mediation agreement shall be “valid” under the law of State A and the law of State B (not necessarily both EU Member States).

²³ See for instance Freeman, M. (2006), *International child abduction, The effects*, Reunite International Child Abduction Centre, http://takeroot.org/ee/pdf_files/library/freeman_2006.pdf.

²⁴ HCCH (2012), *Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Mediation*, The Hague, p. 79. There is an ongoing project under the aegis of the Hague Conference of Private International law on this very topic (the so-called package agreements concerning many family issues all together), see here: <https://www.hcch.net/en/projects/legislative-projects/recognition-and-enforcement-of-agreements>

- Not all States make it possible for the parents to make private agreements on matters concerning parental responsibility, since a check on the best interests of the child may be required. In consequence, an agreement taken in one State might not be recognised in another State.²⁵
- Typically, agreements made in relation with international child abduction cases include also other aspects, such as, for example, maintenance of the child, payment of the expenses for the child's travel to visit the left behind parent, and these aspects are not all covered by the same instrument. Within the EU, for instance, Regulation IIa Brussels and, as from 1 August 2022, Regulation EU 2019/1111 may be applied together with Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.
- Under Article 65 Regulation EU 2019/1111, "agreements in matters of parental responsibility" shall have "binding legal effect" and shall be "enforceable" in the Member State of origin in order to be recognised in another EU Member State "without any declaration of enforceability being required". However, a specific certificate shall be issued by the court of origin or by "the competent authority".
- As a consequence, the mediation agreement shall be included in a court order in international child abduction cases, to circulate more easily, and it needs to involve – at some stage – a person capable of providing legal assistance.

To overcome problems of recognition and enforcement, it would be important to continue promoting the use of "mirror orders" in the different EU Member States, where appropriate. A mirror order is an order which "mirrors" the contact arrangements ordered by the judge deciding upon relocation.²⁶ Mirror orders are used primarily in international child abduction cases handled under the Hague Convention and continue to be relevant therefore also for EU Member States, in particular where cases with third countries outside the EU are handled under this instrument.

Against this background, recommended actions are:

- to raise awareness among judges and lawyers specialised in international child abduction cases, as well as other professionals working in the field, such as social workers and staff of Central Authorities, on the issues concerning mediation and the recognition of mediation agreements, in accordance with the HCCH Guide to Good Practice and the rights of the child;
- to conduct further research on the topic.

²⁵ See the EU co-financed AMICABLE project, which has developed a Best Practice Tool to assist judges, lawyers and mediators.

²⁶ See Hague Conference of Private International Law, [Transfrontier Contact Concerning Children](#), General Principles and Guide to Good Practice, 2008, p. 19.

EU institutions:

- to clarify how mediation – as well as other alternative dispute resolution mechanisms – in family matters may work and to clarify in particular the specific problems arising in cross-border cases within the EU judicial area where it is likely that the parties to a dispute are located in different countries;
- to clarify when and how the different EU instruments adopted in the field of judicial cooperation in family matters having cross-border implications apply; to this end, soft law instruments elaborating further on these questions and providing guidance would be helpful.

National legislators:

- to clarify – at the national level – the rules concerning mediation in family matters, what is disposable and areas where law and policy reform is needed to strengthen consideration for the rights and the best interests of the child in family mediation, including in cross-border cases.
- EU Member States have adopted internal legislation to transpose the Mediation Directive 2008/52, which mentions matters of parental responsibility in the Preamble, but on the other hand it applies to “civil and commercial matters” and not to matters which are not under the disposal of the parties. It shall therefore be clarified if and how the Mediation Directive and its principles may play a role also in proceedings concerning family matters and children. Since the exercise of competences in the field of cross-border family matters requires unanimity of consents, the Mediation Directive may not apply as this has not been required for its adoption.

B. Specific implementation measures: proposals for action by specific EU and national actors on international family mediation

To EU Member States:

Each Member State should ensure that the following measures are in place:

- a) an established legally binding national framework for international family mediation with due consideration for the rights and the best interests of the child and
 - regulating the best interests determination for each child involved in an international child abduction case;
 - specifying the competent authority responsible for the best interest determination and their coordination with the mediation process and any proceedings, if and as appropriate;
 - providing for the right of the child to be heard and practical guidance for the hearing of a child by a specifically trained professional and in a child-friendly environment;

- qualifications and accreditation of family mediators;
 - access to mediation at all phases of the proceedings;
 - regulations clarifying the relation between mediation and judicial proceedings, including with regard to confidentiality of mediation and any enforcement of agreements;
 - monitoring of international family mediation services, including independent monitoring;
 - access to an effective, independent complaint mechanism, including a child-sensitive complaint mechanism;
- b) a central national register or database of lawyers specialised in representing parents in international child abduction cases;
 - c) a central national register or database of qualified mediators offering international family mediation services;
 - d) a standardised training programme for a child-centred and rights-based approach to international family mediation;
 - e) information and counselling services for parents and families involved in or at potential risk of international child abduction, including on lawful relocation, family mediation, judicial proceedings, the rights of the child and the harmful impact of international child abduction on the health, wellbeing and development of children;
 - f) the prompt appointment of a qualified and independent guardian *ad litem* for the child;
 - g) information on international family mediation services for families involved in international child abduction, including information on the possibility for mediation to be initiated at any stage of a proceeding, as well as facilitated access to mediation services, for instance through the presence of mediation services in court buildings, and mandatory information on mediation services by lawyers;
 - h) a rule providing for legal aid for parents in mediation procedures.

To the European Commission:

- To support the development of a mechanism for family mediation in cross-border situations and, especially, in international child abduction cases;
- To clarify and guide legal professionals and practitioners towards the application of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, to clarify its scope of application with regard to parental responsibility matters and to define its relationship with mediation as foreseen under Article 25 of Regulation EU 2019/1111;
- To promote the organisation of judicial training and the training of contact points within the European Judicial Network in civil and commercial matters (EJN);
- To promote the cooperation between the European Commission Coordinator for the rights of the child and the European Parliament Coordinator on Children's Rights (e.g. inviting them to participate in the new EU Network for children's rights);

- To allocate funds for projects aimed at developing research, quality standards and guidance on child-centred international family mediation in international child abduction cases, in accordance with the rights and the best interests of the child, including through the use of digital devices and internet-based mediation;
- To promote research on child-centred and rights-based approaches to preventing international child abduction, such as enhancing lawful relocation.

To the European Parliament:

- To foster the collaboration between the European Commission Coordinator for the Rights of the Child and the European Parliament Coordinator on Children's Rights;
- To restore the competence of the European Parliament Coordinator on Children's Rights in the field of international child abductions, to strengthen its public visibility and to raise awareness of its role;
- To disseminate information on the European Parliament Coordinator on Children's Rights among citizens, parents, lawyers and all professionals involved in international child abduction cases, and in particular a tool to facilitate their direct communication.

To the Fundamental Rights Agency:

- To coordinate research on child-centred and rights-based approaches to preventing and responding to international child abduction, including through international family mediation, and the practice in EU Member States;
- To raise awareness of the relevance of the fundamental rights and child rights approach in cases concerning parental responsibility and parental separation and, in particular, international child abduction;
- To raise awareness of the relevance of the best interests of the child in international child abduction cases in general (i.e. immediate return) and in specific cases through a best interests determination procedure taking into consideration the specific features of the case in hand;
- To support the dissemination of the mechanism of family mediation in international child abduction cases;
- To support the development of a standardised training programme in family mediation based on a child-rights approach, international standards and EU law.

3. At the national level

The following recommendations have been elaborated in the course of the project activities, in particular consultations and seminars held in iCare partner countries:

Belgium

To the Federal Mediation Commission

- To set up a registry of family mediators to facilitate parents' access, for instance through a database on the website of the Federal Mediation Commission, including information on specialisations of available family mediators;

Legislative authorities and judiciary

- To create a single French and Flemish central Hague Abduction Court with judges specialised in international child abduction cases, the applicable legal framework and in mediation;
- To review the existing legal framework and make any amendments required to ensure children concerned by international child abduction are supported by a *guardian ad litem* who represents the child throughout the proceedings, inspired by the model in place in the Netherlands;
- To strengthen the training of judges in relation to international child abduction cases, and judicial communication and cooperation

Central authority

- To facilitate communication between organisations involved in international child abduction cases;
- To disseminate information on and promote international family mediation;
- To raise awareness and inform parents and professionals about mediation and the possibility to access it at any state of the proceedings, encouraging recourse to mediation as early as possible and even before the first court hearing;
- To ensure parents have access to financial assistance for mediation;
- To support the provision of pre-mediation services (pre-mediation bureau);
- To recommend specific mediation models, such as the 4B model and the Wrocław recommendations for mediation 2007.

Bulgaria

To the Bulgarian Central Authority appointed under the Bruxelles IIa Regulation and the 1980 Hague Convention:

- To refer to lawyers specialised in International Child Abduction cases;
- To provide detailed and timely information about the possibility for mediation to both parties in International Child Abduction cases.

To the Supreme Bar Council of Bulgaria

- To organise specialized courses for lawyers on International Child Abduction cases;
- To organise specialized courses for lawyers on the specifics of International Family Mediation.

To the legislative authority - National Assembly/Ministry of Justice

- To envisage legislative measures and how to implement them in order to prevent the relocation of the child;

To the court authorities of Bulgaria (Sofia District Court and Sofia Court of Appeal)

- To synchronise the process for hearing the child during the court proceedings;
- To envisage video conferencing suites for hearing the child/parent when it is not possible for face to face hearing;
- To provide better information about the Hague liaison Judges for Bulgaria;
- To organise specialized courses for judges on the specifics of International Family Mediation.

Germany

To the German Central Authority appointed under the Brussels IIa Regulation and the 1980 Hague Convention:

- The Mediator attending court in the MiKK Mediator-in-Court Model should be remunerated for their time (and travel) in attending court and presenting mediation to the parents
- to expand the possibilities of financial aid for parents wanting to opt for mediation (even bearing the costs/part of the costs irrespective of the parents income as incentive to opt for mediation mediation, like in the Netherlands and in England)

To the German Family Courts

- all 600 family courts dealing with international child abduction cases should keep the details of MiKK in their administrative offices for judges and parents to be accessed

To the German Legislative

- better child abduction prevention through better provision of information to parents, lawyers and courts

To German Lawyers

- should undertake more specialized trainings and further education on the aspects of international family mediation and its implementation in cases of international child abduction
- lawyers and judges need to be better informed about liaison/network judges

Italy

To the Italian Independent Authority for Children and Adolescents:

- To *promote* a national ad hoc regime on family mediation (both in purely internal and cross-border situations), aimed at fostering predictability, in a cost-efficiency manner (e.g. creation of national registers of family mediators, national uniform training, accreditation, online mediation mechanisms);
- To *promote* and *ensure* the correct implementation of family mediation in international child abduction cases;
- To *promote* the revision of the provisions of the Italian Penal Code criminalizing international child abduction in order to make it easier for an abducting parent to return to the State party together with the abducted child, according to the UN Committee on the Rights of the Child's Concluding observations on the combined fifth and sixth periodic reports of Italy of 28 February 2019, paragraph 26.

To the Italian Central Authority appointed under the Bruxelles IIa Regulation and the 1980 Hague Convention:

- To *collect* information and statistics on the number of international child abduction cases;
- To analyse, also by virtue of cooperation with researchers, the data collected, in order to better understand the functioning of the legal instruments on child abduction existing at global, regional and bilateral level;
- To raise awareness on the duties and tasks of the Central Authorities under Regulation EU 2019/1111;
- To *implement* Article 25 of Regulation EU 2019/1111, also through the promotion of online mediation.

To the Superior School of the Judiciary

- To *organize* training courses among judges (and lawyers) on cross-border family mediation, also in collaboration to specialised organizations.²⁷

²⁷ Superior School of the Judiciary, see <https://www.scuolamagistratura.it/>.

