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EU Guidelines on International Family Mediation in International Child Abductions

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Table of content

Introduction

International child abduction refers to situations where a parent removes the own child – or children – to another State, or retains them there, without the consent of the other parent. These situations typically arise when families are in crisis and are often related to family members being spread across or having ties to more than one country.

Missing Children Europe reports that in the European Union (EU), internationally abducted children represent the second largest group of missing children, as well as the vast majority of cross-border cases handled by the Europe-wide network of missing children hotlines. In 2024, 19% of the missing children cases handled by the hotlines concerned parental abductions (1,040 children). 42% of the abductions were made between EU Member States[1].

Even though a legislative framework exists at the international and European levels, preventing and responding to international child abduction remains a challenge. At the same time, family mediation has shown its advantages and is fostered as an effective tool to administer child abduction cases taking into primary consideration the best interests of the child.

At the supranational level, much evidence has been presented about the advantages of international family mediation in parental child abduction cases[2]. Although being challenged by numerous practical difficulties (such as geographical distance, time constraints and criminalization of the conduct of the abducting parent in the State of habitual residence of the child)[3], it is considered that correctly taking into account the specificities of cross-border cases would conduce to an effective and swift administration of family disputes of this kind.

[1] Missing Children Europe, Figures and Trends 2024.

[2] Hague Conference on Private International Law, *Mediation, Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, 2012, pp. 21-26. See also the European Parliament resolution of 5 April 2022 on the protection of the rights of the child in civil, administrative and family law proceedings (2021/2060(INI)), 2022/C 434/02.

[3] See *infra* at p. 16.

The purpose of the present Guidelines

The scope and purpose of the present Guidelines is to complement – to the maximum extent possible – the legal framework of reference on international family mediation in child abduction cases. In the light of the boundaries of the EU's competences in the field of family (substantial) law, but also of the potential of EU law to promote mediation as a valid tool to solve family disputes in the best interests of children, the Guidelines are intended to serve as a practical tool to:

- **direct and assist individuals** in their work to mediate child abduction cases;
- **inspire and assist national authorities and lawmakers** in the regulation and promotion of family mediation within their legal systems;
- **support and assists stakeholders** engaged in the promotion of children's rights and in the promotion of a culture of family mediation.

Recognising the intrinsic interdependence of EU policies aimed at protecting and promoting the fundamental rights of the child, these Guidelines are consistent with **the Union's integrated, child-centred and rights-based approach** as embodied in the EU Strategy on the Rights of the Child[4]. They therefore endorse a comprehensive and multidisciplinary framework for international family mediation which ensures that the best interests of the child constitute a primary consideration, that children are enabled to express their views in accordance with their age and maturity, and that procedures remain accessible, protective and supportive of the child's long-term well-being and development.

[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU strategy on the rights of the child*, COM/2021/142 final.

International Family Mediation Across EU and Domestic Legal Frameworks

Family mediation in the EU Judicial Space

The promotion of mediation in general – and, in particular, of family mediation – for the resolution of civil disputes represents one of the objectives that the EU has settled within the exercise of its competences in the field of judicial cooperation in civil matters. **Article 81 TFEU** establishes the legal basis for the adoption of measures ensuring, *inter alia*, the "development of alternative methods of dispute settlement" (para. 2, lit. g)).

In 2004, the **European Code of Conduct for Mediators** have been launched, providing some principles to which individual mediators in civil and commercial mediation may commit themselves on a voluntary basis and under their responsibility[5].

In 2008, the EU adopted the **European Mediation Directive** (2008/52/EC) with a view to provide a legal framework to promote amicable settlement of disputes, including mediation[6]. The Directive applies to cross-border disputes in civil, including family law, and commercial matters. The rationale behind this instrument was that access to justice encompass also extrajudicial dispute resolution methods.

The Mediation Directive defines mediation as "*processes whereby two or more parties to a cross-border dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator*" (recital 10). It points out the benefits of mediation, which are that (i) it is a "*cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties*" and also that (ii) the "*agreements resulting from mediation are more likely to be complied*

[5] The European Code of Conduct for mediators is available here https://e-justice.europa.eu/sites/default/files/2020-12/Code_of_conduct_EU_EN.pdf?id=c0ec51ee-bf0f-4b6b-8cc9-01b305b90d68

[6] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, in OJ L 136, 24.5.2008, pp. 3–8.

with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties" (recital 6)[7].

With specific reference to **family matters**, in other pieces of legislation the EU has fostered recourse to mediation. The **Regulation 4/2009** on maintenance obligations, for instance, provides that Central Authorities shall "*encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes*"[8]. A model form of agreement for the recovery of maintenance is provided[9].

As concerns **parental responsibility** cases, promotion of alternative dispute resolution mechanisms (hereinafter ADRs), with mediation always be reserved a central role, is undertaken in synergy by the EU and the international legal framework. As concerns the latter, both the **1996 Hague Convention** on child protection measures[10] and the **1980 Hague Convention** on the civil aspects of international child abduction[11] contain explicit references to family mediation.

The **Guide to Good Practice on Mediation**, published under the aegis of the Hague Conference of Private International Law[12], has identified specific benefits arising from mediation in family matters: (i) securing of the child's right of contact with both parents because they have been able to reach an agreement; (ii) the simultaneous consideration of legal as well as extra-legal issues; (iii) the flexibility of the process; (iv) the improvement of communication between the parents; (iv) the empowerment of the parties and (v) the cost-effectiveness of the process.

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[7] A similar definition, focusing more on the role of the mediator, is provided by the Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Mediation of the Hague Conference of Private International law (available at https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf), where mediation is defined as "*a voluntary, structured process whereby a mediator facilitates communication between the parties to a conflict, enabling them to take responsibility for finding a solution to their conflict*".

[8] 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, in OJ L 7, p. 1–79, Article 51(1)(d).

[9] An amicable agreement form under Regulation (EC) No 4/2009 is available at https://e-justice.europa.eu/sites/default/files/2023-11/standard_form_on_amicable_solutions_EU_EN.pdf?id=2defc531-4207-4ba9-8f10-56ddec13728f.

[10] Art. 31 b) of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

[11] Art. 7 of the Hague Convention of 25 October 1980 on the civil aspects of international child abduction, stating that the Central Authorities "*shall take all appropriate (...) to secure the voluntary return of the child or bring about an amicable resolution of the issues*".

[12] See footnote 7.

Within the EU, the **Regulation (EU) 2019/1111 (Brussels IIb Regulation)**[13] has strengthened the role of family mediation in cross-border disputes and explicitly promotes it during proceedings for the return of a child in cases of international abduction. In particular, the Regulation has introduced under art. 25 a specific provision dedicated to family mediation, which is included in the chapter III concerning international child abduction, as well as two (non-binding) recitals, which provides guidance on the application of art. 25. Beside the latter rule, Art. 79 gives to the Central Authorities the specific task of facilitating mediation.

Regulation (EU) 2019/1111 (Brussels IIb Regulation)

Article 25 Alternative dispute resolution

As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.

Recital 43

In all cases concerning children, and in particular in cases of international child abduction, courts should consider the possibility of achieving solutions through mediation and other appropriate means, assisted, where appropriate, by existing networks and support structures for mediation in cross-border parental responsibility disputes. Such efforts should not, however, unduly prolong the return proceedings under the 1980 Hague Convention. Moreover, mediation might not always be appropriate, especially in cases of domestic violence. Where in the course of return proceedings under the 1980 Hague Convention, parents reach agreement on the return or non-return of the child, and also on matters of parental responsibility, this Regulation should, under certain circumstances, make it possible for them to agree that the court seised under the 1980 Hague Convention should have jurisdiction to give binding legal effect to their agreement, either by incorporating it into a decision, approving it or by using any other form provided by national law and procedure. Member States which have concentrated jurisdiction should therefore consider enabling the court seised with the return proceedings under the 1980 Hague Convention to exercise also the jurisdiction agreed upon or accepted by the parties pursuant to this Regulation in matters of parental responsibility where agreement of the parties was reached in the course of those return proceedings.

[13] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), OJ L 178, 2.7.2019, p. 1–115.

Recital 35

This Regulation defines at what time a court is deemed to be seised for the purposes of this Regulation. (...) Taking into account the growing importance of mediation and other methods of alternative dispute resolution, also during court proceedings, in accordance with the case-law of the Court of Justice, a court should also be deemed to be seised at the time when the document instituting the proceedings or an equivalent document is lodged with the court in cases where the proceedings have in the meantime been suspended, with a view to finding an amicable solution, upon application of the party who instituted them, without the document instituting the proceedings having yet been served upon the respondent and without the respondent having had knowledge about the proceedings or having participated in them in any way, provided that the party who instituted the proceedings has not subsequently failed to take any steps that he or she was required to take to have service effected on the respondent. According to the case-law of the Court of Justice, in the case of lis pendens, the date on which a mandatory conciliation procedure was lodged before a national conciliation authority should be considered as the date on which a "court" is deemed to be seised.

Article 79 Specific tasks of requested Central Authorities

Requested Central Authorities shall, acting directly or through courts, competent authorities or other bodies, take all appropriate steps to: (...) (g) facilitate agreement between holders of parental responsibility through mediation or other means of alternative dispute resolution, and facilitate cross-border cooperation to this end.

The introduction of Art. 25 has been considered as a **turning point** in affirming the central role of family mediation for resolving international child abduction cases, being it the very first uniform rule at the EU level introducing a precise obligation upon national authorities and, in particular, judges in promoting mediation.

Moreover, the provision has the potential to be applied not only in child abduction cases, but in all disputes concerning parental responsibility and covered by the Brussels IIb Regulation.

At the same time, the capacity of EU law to **influence** national legal systems is to be appreciated outside the scope of application of the instruments such as the Brussels IIb Regulation. Although covering civil matters having cross-border implications, EU instruments on judicial cooperation in civil matters have the capacity to exercise an influence on national law[14]. By promoting a "level playing field", EU law may have the capacity to promote a convergence of Member State's civil law and procedure. In this context, Human Rights Law – and particularly the EU Charter of Fundamental Rights – provides minimum standards that indirectly shape national civil procedure in all cases, including purely internal ones. While it is necessary to consider the specificities of cross-border situations and international family

[14] See E. Bergamini, *Human Rights of Children in the EU Context: Impact on National Family Law*, in E. Bergamini, C. Ragni, *Fundamental Rights and Best Interests of the Child in Transnational Families*, Cambridge-Antwerp-Chicago, 2019, p. 5 ff.

mediation, it should be highlighted that fostering mediation in those peculiar contexts cannot be separated from the broad promotion of mediation within each country considered, in the overall realm of family disputes.

It shall be pointed out that there is **no specific case-law** of the Court of Justice of the European Union concerning mediation in family matters as well as mediation in child abduction proceedings.

Further guidance on Art. 25 of the Brussels IIb Regulation is provided in the **Practice Guide** for the application of the Regulation[15].

4.3.7. Alternative dispute resolution - Article 25 and Recital 43

As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, should invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, is not appropriate in the particular case (for example in cases of domestic violence), or would unduly delay the proceedings. The court may refer to existing networks and support structures for mediation in cross-border parental responsibility disputes (see Recital 43).

The mediation or the other means of alternative dispute resolution may take place in the Member State of origin or in the Member State of refuge, remotely or in presence. The parties may agree on the return or non-return, and also on matters of parental responsibility (for example custody, access, place of residence). The court of the Member State of origin has jurisdiction to give binding legal effect to the agreement based on Article 7. The court of the Member State of refuge can do this if chosen by the parties pursuant to Article 10. Both courts may either incorporate the agreement of the parties into a decision, approve it or use any other form provided by their national law and procedure. It is most likely that the parties will avail themselves of the court of the Member State of refuge as the child is located there, and the agreement will directly end the pending return proceedings. In order to achieve this result, the Member States which have concentrated jurisdiction should consider enabling the court seised with the return proceedings under the 1980 Hague Convention to also exercise the jurisdiction agreed upon or accepted by the parties pursuant to the Regulation in matters of parental responsibility where agreement of the parties was reached in the course of mediation and other means of alternative dispute resolution (see Recital 43).

Beside mediation, Brussels IIb Regulation contributes also (i) to prevent child abduction proceedings by encouraging lawful relocation (art. 8) and (ii) to de-escalate the conflict between the holders of parental responsibility by envisaging party autonomy with reference to the choice of court (art. 10).

[15] Practice Guide for the application of the Brussels IIb Regulation, 2022, available at https://e-justice.europa.eu/topics/trainings-judicial-networks-and-agencies/european-judicial-network-civil-and-commercial-matters/ejns-publications_en.

As suggested by Recital 22 of the Brussels IIb Regulation, Member State may further enhance party autonomy by allowing their courts seised with return applications to exercise also jurisdiction (agreed upon or accepted by the parties) on matters of parental responsibilities, where the agreement of the parties was reached in the return proceedings.

Article 8 – Continuing Jurisdiction in relation to access rights

1. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child's former habitual residence shall, by way of exception to Article 7, retain jurisdiction, for three months following the move, to modify a decision on access rights given in that Member State before the child moved if the person granted access rights by the decision continues to have his or her habitual residence in the Member State of the child's former habitual residence.

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted 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.

Article 10 Choice of court

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility where the following conditions are met: (a) the child has a substantial connection with that Member State, in particular by virtue of the fact that: (i) at least one of the holders of parental responsibility is habitually resident in that Member State; (ii) that Member State is the former habitual residence of the child; or (iii) the child is a national of that Member State; (b) the parties, as well as any other holder of parental responsibility have: (i) agreed freely upon the jurisdiction, at the latest at the time the court is seised; or (ii) expressly accepted the jurisdiction in the course of the proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction; and (c) the exercise of jurisdiction is in the best interests of the child. (...)

Recital 22

In cases of the wrongful removal or retention of a child, and without prejudice to a possible choice of court pursuant to this Regulation, the courts of the Member State of the habitual residence of the child should retain their jurisdiction until a new habitual residence in another Member State has been established and some specific conditions are fulfilled. Member States which have concentrated jurisdiction should consider enabling the court seised with the return application under the 1980 Hague Convention to exercise also the jurisdiction agreed upon or accepted by the parties pursuant to this Regulation in matters of parental responsibility where agreement of the parties was reached in the course of the return proceedings. Such agreements should include agreements both on the return and the non-return of the child. If non-return is agreed, the child should remain in the Member State of the new habitual residence and jurisdiction for any future custody proceedings there should be determined on the basis of the new habitual residence of the child.

Family mediation in the EU Member States

Despite the momentum provided at supranational level, the practical implementation of (international) **family mediation in domestic legal systems** has been uneven across EU countries. The instruments at disposal at the legislative and practical levels are very different, as well as different is the degree of "integration" of family mediation in daily practice of national courts and authorities dealing with family matters. There are, indeed, some legal systems that can be considered "mediation-friendly" and, with their strong tradition, could be considered a good example of integration of family mediation in day-to-day practice.

Ireland – The Family Mediation Service

The Family Mediation Service is the first publicly funded and free-of-charge family mediation scheme in Europe which is now provided by the Legal Aid Board (an independent, publicly funded organization). It is present in 16 cities and towns in Ireland as well as in 3 courts and it has registered 2,500 closed mediation cases in 2024.

The main objective of the Service is to help separating couples and parents whose relationship has broken down to negotiate their own agreement.

The Netherlands – The Het Mediation Bureau (Center IKO)

The Het Mediation Bureau is part of the International Child Abduction Center (Center IKO) and offers cross-border family mediation services in international child abduction cases, as well as in other international family cases (including prevention ones). Child abduction cases are administered before the Central Authority or during the proceedings before the Court of The Hague (during the pre-trial hearing, where the Bureau is present). Mediation is subsidised by the Ministry of Justice and Security.

Germany - MiKK

MiKK (International Mediation Centre for Family Conflict and Child Abduction) is an independent NGO based in Berlin offering cross-border family mediation services worldwide. MiKK is specialized in the co-mediation model, which is defined as bi-cultural, bi-lingual, bi-gender and bi-professional, in line with the HCCH Guide to Good Practice on Mediation of 2012.

In other EU Member States, there is a **varied degree of integration** of international family mediation in the legal system and practice. Some legal orders, such as France and Poland, register a high degree of integration of family mediation in the framework of the resolution of family disputes. In other countries (such as Italy and Bulgaria) the introduction of a specific legal discipline on mediation had the objective to promote the use of it in family disputes, in order to enhance a culture of mediation.

Analysing the law and practice of certain Member States[16], it emerges that family mediation is regulated and applied with different degrees of intensity, in the light of the specificities of certain family situations and in particular cross-border cases.

A **general regime on mediation** may be present in national legal systems (also by way of implementation of the Directive 2008/52/EC), covering civil matters and even including family matters. The general regime of mediation may reflect the overall approach of the legal system towards ADRs and mediation. These general regimes influence whether mediation is seen as first-line, complementary or exceptional to court proceedings.

A **special regime on family mediation** may also be present, at various degrees. Some Member States, such as France or Italy, have progressively integrated family mediation into family law. Different approaches on family mediation may result from the type of services offered and their accessibility: while in some States family mediation may constitute a public, even free-of-charge institutional service, in other legal orders, it is mainly offered by private professionals. The existence and design of these family-specific regimes may also affect the training mediators must have, and how children's rights and needs are handled in practice.

A **special regime on international family mediation** may or may not be provided at the national level, addressing the specificities of cross-border cases, such as: the geographical distance between the parties (which may require the use of videoconferences instead of in-person meetings and may also require the condensation of mediation in a short timeframe, such as one or more weekends), cultural distance, language barriers, private international law issues, the need to have the mediation agreement circulating and producing its effects in the States concerned, etc. Not every Member State – including the ones providing special regimes on family mediation – seems to have introduced specific provisions for international family mediation. The formal presence of an international mediation regime (for instance, central contact points[17], recognised lists of cross-border mediators, and recognition mechanisms for mediated agreements) varies between countries. In this case as well, the matter affects the contents and requirements of the training of family mediators.

Lastly, more specific rules and tools may be adopted to address **the specificities of international child abduction**. In addition to the ones described above, further

[16] See the National Reports developed under the iCare2 project, as well as the Transnational Report, available at https://project-icare.eu/deliverables-icare2/.

[17] Central Contact Points for family mediation are forecasted within the system of the 1980 Hague Child Abduction Convention, even though not all EU Member States have activated one. The list of Central Contact Points is available on the website of the Hague Conference on Private International Law: https://www.hcch.net/en/publications-and-studies/details4/?pid=5360&dtid=52.

specificities may concern the high degree of conflict between the parents, the pending of criminal sanctions upon the abducting parent in the country of origin (which may negatively impact over the return of the child in his/her habitual residence and even on the possibility itself to try cross-border family mediation), the time factor (since acting expeditiously is necessary in order to avoid further harm to the abducted child and the mediation process needs to coordinate with the timing of the judicial proceedings).

There are other features which may characterise the different national legal framework, such as:

- The existence and characteristics of pre-mediation services providing a preliminary assessment of the case in order to understand whether it is suitable for mediation;
- The background of family mediators.

Advantages of international family mediation in child abduction proceedings

As highlighted by the Hague Conference on Private International Law[18], **international family mediation** is an effective tool to ensure that the best interests of children involved in international child abductions is taken into primary consideration. International family mediation:

- Can be helpful to assist in securing the child's right to maintain on a regular basis **personal relations and contacts with both parents** (Article 10.2 of the UN Convention on the Rights of the Child);
- Can give rise to **agreed solution**, which are capable of establish a less conflictual framework for the exercise of the parental responsibility duties and are also **likely to be respected by the holders of parental responsibility,** who do not perceive themselves as the winning or losing parties.
- Given its **confidential character** also makes the parents more prone to engage in open dialogue to address and resolve the issues at hand, even if they are particularly sensitive and complex.

[18] See Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, cit., paras 32-34. See also R. Shuz, *The Hague Child Abduction Convention. A critical analysis*, Oxford, 2013, pp. 410-411; S. Vigers, *Mediating international child abduction cases. The Hague Convention*, 2011, pp. 60-75.

- usually **improves the relationship and communication between the parents**, who start talking and listening to each other again and develop skills to analyse and resolve their situation and to understand the consequences of their decisions and actions for the child. They are therefore equipped for a medium and long-term collaboration for a shared responsibility over their child.
- Given its **flexibility** can be easily adapt to the needs of the individual case, allowing discussion for legal and extra-legal considerations as well as allowing for the involvement of third persons;
- can allow parents to **address also issues that would not be considered relevant in court proceedings (especially in child abduction proceeding focusing on the issue of the return of the child)** and this can help resolving matters relating to a longer history of family disputes.
- may be **less costly than judicial proceedings**. True is that differences in costs exist from one country to another as well as from one mediator to another, however, mediation should bring to a sustainable and possibly durable solution, which may therefore avoid the need of further judicial proceedings;
- Can be **faster than judicial proceedings**: it is true that return proceedings under the 1980 Hague Convention and the Brussels IIb Regulation shall respect a precise and fast timeframe, it is equally true that this is not always the case in practice and that mediation may be faster;
- can allow the parents to reach an **agreement which is a tailor-made solution to the parental dispute**, which can give primary consideration to the **best interests of the child**.

It shall however be stressed that not all family crisis where an abduction may take place as well as not all cases of a child abduction has already occurred can be solved through mediation. The assessment of the suitability of a case for mediation is a very delicate issue.

Beside this, barriers to mediation in family matters and, in particular, in child abduction proceedings exist as pointed out in the next paragraph.

Addressing the challenges

As results from the research undertaken under the iCare2 project, international family mediation in child abduction proceedings faces many challenges. The National Reports on Italy, France, Bulgaria and Poland, as well as the works of the Train the Trainer Event held in Brussels on 6th and 7th November 2025, have pointed out the challenges currently existing in the selected Member States and in other jurisdictions, mostly resulting not only in the lack of consolidated practices, but also in the overall mild diffusion of international family mediation as a dispute resolution mechanism institutionally integrated in child abduction procedures.

At the same time, the Methodologies and orientations on Mediation in International Child Abduction, also developed within iCare2, have the objective to enhance the understanding of the Regulation's provisions, with a focus on the best interests of the child, the child's right to be heard, and gender considerations in family disputes.

Updates will be added at the end of the project, with a view to take stock of the information collected during the national seminars scheduled during the year 2026 as well during the iCare2 Final Conference in Brussels and of the practice of the pre-mediation desks.

Pointing out the challenges

General barriers to mediation:

1. Lack of knowledge by the abducting parents of the legal relevance of their conduct as well as of the consequences and impact on the family life and, in particular, on the child/children's life;
2. Lack of knowledge about the existence of family mediation services, of their relevance as means to solve family crisis (mediation is frequently perceived as a second-best solution in respect of judicial proceedings);
3. Not in all Member States there is a social, cultural and also legal environment favouring mediation;
4. Not in all Member States there is a consistence presence of available mediation services;
5. Costs of mediation: on the one side, free of charge mediation might be an incentive, but on the other side, it might make the holders of parental

responsibility to believe that it is a second-best solution in respect of legal assistance from lawyers.

Specific barriers to mediation in child abduction proceedings:

1. The cross-border element inherent to the cases at stake (i.e. the fact that the holders of parental responsibility are in two different countries) and the opportunity to consider the possibility of on-line mediation as well;
2. The time factor: acting expeditiously is necessary in order to avoid further harm to the abducted child, to restore as soon as possible the relationship with the left-behind parent and to avoid consolidation of an illicit situation. Both the 1980 Hague Convention and the Brussels IIb Regulation impose a precise timing to the judicial proceedings and mediation should be included in this timeframe[19];
3. The fact that conduct of the abducting parent might amount to a crime, with the consequence that the abducting parent might not find reasonable to start a mediation process;
4. The high level of conflict existing in child abduction proceedings;
5. A certain level of uncertainty as regards the legal framework of reference and, in particular, the three limits to envisaged by Article 25 of the Brussels IIb Regulation (opportunity to mediate, domestic violence and the aforementioned respect of the time limits);
6. The content of the mediation agreements: with reference to their content, it has to be clarified whether it is limited to the return issue or extended to all aspects concerning parental responsibility);
7. The recognition of the mediation agreements: once that the parties have reached a mediation agreement, there might be issues concerning their recognition in other countries.

Setting the methodology

In order to strengthen and promote a child-centred international family mediation in child abduction cases, the following methodological aspects should be taken into account and be object of further effort at the supra-national and national level.

The following elements should be integrated in the legal instruments and practical tools regulating mediation in child abduction. They should also be considered in interpreting and applying the current legal framework of reference.

1. Mediation *ex ante*, during and *ex post* an international child abduction

[19] See Article 11(2) of the 1980 Hague Convention and Article 24 of the Brussels IIb Regulation.

Given its specific features, family mediation in child abduction cases is often perceived as a dispute resolution method aimed at deciding on the return of the child to his/her country of habitual residence. Since mediation occurs within the tight framework of return proceedings disciplined by the 1980 Hague Convention and the Brussels IIb Regulation, the general idea might be that mediation can only solve the immediate and urgent issue of the return. As a matter of fact, the abduction and the request for the return of the child are the reasons giving rise to the dispute and because the parents decide to undergo mediation. At the same time, the **abduction is only the top of the iceberg of a family crisis**, which is usually addressed as a whole within the mediation process. It is very difficult to limit mediation to a defined issue, when the management of the conflict means going in depth into the family relationship as a whole.

In light of the above, it should be recommended to valorise the relevance of family mediation not only when an abduction is ongoing, but also ***ex ante*** as a preventive tool. For instance, this may happen when a parent is about to move with the child to another country, mediation could be useful to come to an agreed relocation.

At the same time, mediation may be useful as an ***ex post*** tool, after an abduction, both in the case where there has been a judicial decision at the end of the return proceeding as well as in the situation where an agreement has been reached. Parents need help to cope with the negative impact of the abduction as well as to respect the decision or agreed solution and, possibly, to change them in accordance with the *rebus sic stantibus* principle[20]. *Ex post* mediation could also be the place to address issues that the parents did not have the time to address during the tight time-frame of the abduction proceedings.

In the light of this long-standing relevance of mediation in child abduction cases, Article 25 of the Brussels IIb Regulation shall be read as a duty on the national

[20] See T. Kruger, *Article 25*, cit., at p. 261 where the A. points out that "(t)he duty to stay conscious of the possibility of mediation is not limited to the early stages of the proceedings. The world "and" suggests that courts should, in addition, consider at any time to propose that the parties attempt mediation in order to find an amicable solution. It might be that at some point during the proceedings the judge has the impression that an amicable solution might be possible. Mediation could also be used at the time of enforcement. Whether a court, bound by this provision, is involved at the time of the enforcement would however depend on national law. It does seem that enforcement can be considered part of the procedure, so that a judge could recommend that bickering parties attempt mediation". On the usefulness of mediation at any stage of the proceedings, see also Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, para. 30.

authorities, both the courts as well as the legislator, to **promote mediation**[21]. This duty could also be read in a broader sense, comprehending the opportunity to mediation not only as a tool to solve the urgent return/non-return issue, but also to address (even in a subsequent moment) the other pending issues, including the merits of parental responsibility.

At the same time, it might also be considered the possibility to **review the Mediation Directive** and, in particular, its rules concerning mediation in family matters, which were tailored on a EU legal framework on family matters just limited to those considered by Regulation No. 2201/2003 (Brussels IIa).

From the adoption of the Mediation Directive, many things have, in fact, changed: not only the Brussels IIb Regulation has replaced the Brussels IIa one, but many instruments have been adopted directly and indirectly impacting on family matters (such as Regulation 4/2009, Regulation 1215/2010, Regulation 650/2012), but even before the Lisbon Treaty has been adopted giving a new "soul" to the EU, to the role of human rights in the EU's legal order as well as to the relevance of the area of freedom, security and justice, under Article 3.2 TEU.

2. Human rights-based mediation

A core objective of the EU action is the protection of fundamental rights of children (art. 3 TEU). The **Charter of Fundamental Rights of the EU** enshrines this principle, guaranteeing the protection of children's rights by all European institutions and bodies when implementing Union law (art. 24). The EU strategy on the rights of the child (2021), among its priorities, has the creation of a "Child-friendly justice: An EU where the justice system upholds the rights and needs of children". A **child-friendly justice** requires that children should feel comfortable and safe to participate effectively and be heard: judicial proceedings must be adapted to their age and needs, must respect all their rights and give primary consideration to the best interests of the child, in the light of standards stated by Child-friendly Justice Guidelines developed by the Council of Europe. For this purpose, Member States have been invited to "develop robust alternatives to judicial action: from alternatives to detention, to the use of restorative justice and mediation in the context of civil justice", as well as to "enhance cooperation in cases with cross-border implications, to ensure the full respect of the rights of the child".

[21] See C. Honorati, E. di Napoli, *Guida alla mediazione familiare internazionale*, Pisa, 2025, available at https://aldricus.giustizia.it/wp-content/uploads/2025/07/GUIDA-MFI.pdf, where the A. observe that "In cases of international abduction, mediation is not an alternative to legal proceedings, which aim to avoid trial and resolve the dispute outside the courtroom, but rather a complementary means to it" (translation provided by the Authors of the present EU Guidelines).

An action to promote recourse to family mediation in international child abductions should therefore be guided by the following core principles:

- Children's rights-based approach: a child (namely, any human being below the age of 18) is an independent rights holder under international human rights law. Children should not be viewed only as passive actors, but they should be made aware of their rights: their voice should be heard, in accordance with their age and maturity, and their needs addressed.
- Best interests of the child: the best interests of the child should be taken into primary consideration in any decision-making process having an impact on the lives of children. This is stated by Article 3 UNCRC and by Article 24 EU Charter of fundamental rights.
- Respect for family life - right of the child to maintain personal relations and direct contact with both parents on a regular basis: as provided by Article 8 ECHR and by Article 24 EU Charter of fundamental rights, to be intended as the final goal of the mediation process, when in line with the best interest of the child(ren).
- Right of the child to be heard and have their voice given due weight: Any child has the right to express his or her views freely in all matters affecting them and those views shall be given due weight in accordance with the age and maturity of the child (Article 12 UNCR; Article 24 EU Charter of fundamental rights). The General Comment on the Right to be Heard (by the Committee on the Rights of the Child) underlines that, in judicial and administrative proceedings, the right needs to be respected also where proceedings involve ADRs, such as mediation[22].
- Non-discrimination: The general principle of non-discrimination (Article 14 ECHR; Article 21 EU Charter of fundamental rights) should inspire the overall family mediation process (and the access to it). This means that mediators should ensure that all parties are treated fairly, regardless of nationality, gender, culture, language, or immigration status. It requires the mediator to avoid biases and ensure neither parent is advantaged or disadvantaged because of their background. The child's rights and best interests must also be considered without prejudice linked to origin or identity.
- Protection from harm, violence and abuse: children – as well as all the parties involved in the mediation process – should always be protected in the enjoyment of their fundamental rights to life, survival and development (Article 2 ECHR; Art. 2 EU Charter; Article 6 UNCRC); right to be free from

[22] Committee on the Rights of the Child, General Comment No. 12 (2009), the right of the child to be heard, CRC/C/ GC/12, 2009, para. 32, 33, 52.

any form of torture, degrading treatment, violence, or abuse (Article 3 ECHR; Article 4 EU Charter; Articles 19 and 37 UNCRC).

Some of the afore-mentioned fundamental rights would need to be further specified in the context of international family mediation.

3. A child-centred family mediation: the need for an *ad hoc* best interests of the child assessment

The best interests of the child (as stated in Article 3(1) UNCRC and in Article 24 of the EU Charter of fundamental rights) is a principle with the overall aim to promote the integrity and dignity of the child, ensure the child's holistic physical, mental, spiritual, moral, psychological and social development and the full and effective enjoyment of all his/her fundamental rights.

Mediators are often confronted with situations where the parental dispute over the child is based on different views on the child's best interests[23]. The mediators have therefore the duty to support the parents in assessing the best interests of their child(ren) as a primary consideration in their mediation agreement[24].

At the same time, the mediators need to conciliate the best interests of the child (which enjoys the primary consideration) with the rights of the persons involved (which are not necessarily just the parents, but any person holding the parental responsibility of the child at stake), under different perspectives.

As for the child, a **best interests of the child assessment** is required and it should be fostered and supported at the national level. At the moment, not all Member States provide (in the legal framework or in practice) a structured methodology on how to effectively provide a central role to the best interests of the child in mediation proceedings[25]. Although the best interests of the child is certainly included in the legal framework, by way of a general principle for all issues concerning children as enshrined in Article 24 of the EU Charter of fundamental rights, the lack of more specific and tailored provisions, as well as of a structured methodology to which mediators could rely on, risks to undermine the effective application of this guiding principle and substantial right.

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23 See for further reference the *Methodology and orientations for mediation in international child abduction*, cit., p. 44 ff.

24 See also the Council of Europe Committee of Ministers' Recommendation CM/ Rec(2025)4 on the protection of the rights and best interests of the child in parental separation proceedings, which provides guidance on conducting private law proceedings, mediation and other alternative dispute resolution processes in accordance with the best interests of the child.

25 See the National Reports developed under the iCare2 project, as well as the Transnational Report, available at https://project-icare.eu/deliverables-icare2/.

As known, the best interests of the child is a context-dependent principle. The existing practice, case-law as well as studies concerning the best interests of the child in child abduction proceedings is surely an important starting point, which however shall be evaluated in light of the different context of mediation.

The Methodologies and Orientations for Mediation in International Child Abduction

The Methodologies and Orientations developed as part of the iCare project and updated in the iCare2 project aim to promote a child-centred approach in cases of international abduction. The methodologies (an English version, as well as the national methodologies adapted to the national contexts of four Member States – FR, PL, IT, BG) are conceived as tools providing mediators a step-by-step procedure to conduct a best interests of the child assessment and integrate it into the mediation process.

4. The key role of "pre-mediation" and of the first stage of mediation. The issue of family abuses and domestic/gender-based violence.

Not all disputes are to be mediated.

The specific features of the case are analysed at the earliest stage of the mediation process, with the necessary screenings, to understand whether there is an opportunity to engage in mediation. The willingness of the parents to voluntarily undertake a mediation process is of course essential, but there are other elements which could prevent a successful mediation.

The **pre-mediation stage** is therefore essential.

Pre-mediation in international family mediation cases is a service that occurs during the preparatory phase of the mediation process[26]. During this phase, the parties involved, especially parents, are informed and supported in preparation for the upcoming mediation. An analysis of the situation is made in order to assess its suitability for mediation.

The case is subsequently oriented to mediators – using the already established contacts that the pre-mediation organization have with the identified mediators in each country involved. Moreover, it is also possible to find temporary agreements, as well as other ways to preserve the family relationships while waiting for mediation.

In this context, there is of course the central problem of **domestic violence, as well as the presence of any significant risk to safety, especially of the child.** This, with

[26] For further details, see the *Methodology on pre-mediation* developed within the iCare2 project, available at https://project-icare.eu/deliverables-icare2/.

the specification that a screening on violence could better be fitted not in the purely pre-mediation stage, but in the initial stage of the actual mediation, where the mediators will conduct all the necessary preliminary and preparatory assessments that are, nevertheless, already part of the mediation process.

In accordance with national law, cases where domestic violence is identified the case could be excluded from family mediation. On the other hand, this is not always the case in all legal systems.

Where mediation is an option, safeguards have to be in place to ensure parents who freely choose mediation can do so in a protected space and on equal terms. More specifically: (i) an assessment must be made on the suitability of the case for mediation; (ii) where the case is suitable, the safeguards required in the case must be clarified.

Some Member States do not allow family mediation in any cases where domestic violence is alleged (this means that any allegation, whether true or not, may exclude recourse to mediation). For instance, this is the case of France and Italy: while **French Law** excludes any recourse to judicial mediation when violence against the other parent or the child is alleged by one of the parents, or in cases of "manifest control" within the couple, a recent reform in **Italian Law** ("Cartabia" Reform) has introduced in the code of civil procedure an express prohibition to initiate family mediation even where a mere allegation of family abuses, domestic violence or gender-based violence have been alleged[27]. It is also provided that, if allegations or information concerning family abuses or domestic/gender-based violence emerge during a mediation that has already begun, the mediator must immediately terminate the process. In other Member States, such as Bulgaria and Poland, mediation is not radically prohibited in cases of violence. The **Bulgarian Law** on Protection Against Domestic Violence[28] prevents courts from encouraging mediation or settlement, yet it does not impose a categorical prohibition on mediation itself. Mediation may occur only when both parties explicitly consent, when the violence has not impaired their ability to express their will freely, and when protective safeguards, such as the presence of lawyers, psychologists, or child protection professionals, are ensured. In **Poland**, mediation is allowed in cases involving domestic violence, but mediators

[27] Article 473-bis.43 of the Italian code of civil procedure. It should be pointed out that the new provisions introduced by the Cartabia Reform do not formally extend to international child abduction proceedings *per se*. Nevertheless, it is also pointed out that the measures of protection against violence may be activated within any judicial proceedings in which family abuses, as well as domestic or gender-based violence allegations are presented (being it committed by one party against the other or against minor children). All in all, they represent the general attitude of the Italian legal framework on the opportunity of mediation in cases of family abuses or violence.

[28] Article 15(1) of the Bulgarian Law on Protection Against Domestic Violence, Promulgated SG No. 102/2009, effective 22 December 2009.

are required to be extremely cautious. The law makes voluntariness, equality, and informed participation as essential conditions; mediators must terminate the process if coercion, intimidation, or significant power imbalances prevent fair participation.

Overall, even in legal systems where family mediation is not radically excluded in presence of violence (or allegations to it), what seems to be lacking is a clear and systematic domestic-violence screening before mediation begins. Organizations offering international family mediation services such as MiKK have long emphasized that cross-border cases often involve complex power imbalances, safety concerns, and communication barriers, which make the identification of violence and the protection of victims especially challenging. Their practice shows that mediation may be feasible only when rigorous screening, strict safeguards, and specialized mediators are in place.

Addressing the challenges

As pointed out in the project, the present Guidelines' aims are: (i) to direct and assist individuals in their work to mediate child abduction cases; (ii) inspire and assist national authorities and lawmakers in the regulation and promotion of family mediation within their legal systems; (iii) support and assists stakeholders engaged in the promotion of children's rights and in the promotion of a culture of family mediation.

In light of the above aims, three main "directions" which the EU could follow in its action to promote mediation in family matters and, in particular, in child abduction cases.

1. Further development of the legal framework of reference

It shall be considered whether to further develop the relevant legal framework of reference, taking into account on the one side the specific features of family mediation (and, in particular, of mediation in child abduction cases), which needs *ad hoc* rules or, al least rules (to a certain extent) different from the ones regulating mediation in other civil matters as well as in commercial matters and, on the other side, the strong differences still existing from one Member State to another as regard the mediation environment.

Whilst in some Member State mediation is perceived not only as an available avenue to solve family crisis, but also an advantageous one, other legal orders need to provide incentives for mediation, since it is still considered as a second-best solution as compared to judicial proceedings.

The adoption of an *ad hoc* instrument at international level has been authoritatively proposed[29].

In this respect, the EU context is surely a good laboratory for an instrument of regional dimension concerning family mediation, including specific rules on mediation in child abduction. However, the legal framework of reference is far from complete.

More precisely, further guidance is necessary with regard to the limits set by Article 25 of the Brussels IIb Regulation concerning (i) the opportunity of mediation, (ii) mediation in cases of domestic violence and (iii) mediation respecting the time constraints. Such guidance could perhaps be provided in a soft law instrument, taking into account also the practice deriving from the application of Article 25 in the Member States.

On the procedural aspects concerning mediation, the approach followed by the EU lawmaker (both in the Mediation Directive and under Article 25 of the Brussels IIb Regulation) is that they are under the competence of the Member States. However, at this stage of EU integration, it is perhaps possible to make steps forward in the direction of developing common *de minimis* procedural rules/principles, as an example, on the following aspects:

❖ Child's participation

Looking at the law and practice of some Member States, it results that including the child in family mediation is not subject to a uniform approach. In most cases, the legal framework does not regulate the involvement of children in mediation. Most of the times, it depends on the training received by the mediator and on the approaches and techniques followed by the different "schools" and traditions.

[29] R. Shuz, *The Hague Abduction Convention. A Critical Analysis*, cit., p. 413.

A focus on current practice

In **Italy**, there are family mediators/schools who exclude direct participation of children, and therefore no contact is foreseen between them and the mediator. In most cases, the physical absence of children is compensated by the fact that they are seen as constantly "present" in the mediation room: the mediator actively contributes to recreating the virtual presence of the child. (e.g. with an empty chair). At the same time, from the point of view of children's rights, this does not seem to be fully satisfactory. Some mediators adhering to the systemic model which invite the child at the first or second meeting, together with the parents. This in order: i) to let the parents acknowledge the resonance of the conflict on the children, with possible effects of mitigation of the tension between them; ii) to enable the mediator to gain a better knowledge of the family context; iii) to enable the children to listen to the story of their parents acknowledging a "before" and "after" the crisis and acquiring a sense of evolution of the family; iv) most importantly, to give the children some information about the mediation and to relieve children from the role of third parties in the conflict between parents. For instance – as concerns this last aspect – the mediator may tell the child that the parents have decided to address the disputes between them by undertaking a mediation process and that, from this moment on, the child does not have any responsibility in managing this conflict.

In **Poland**, the law remains silent about whether and how the child's views or interests should be actively represented or included in the process. In practice, whether and how children are involved in family mediation, especially IFM, depends on the mediator's training and approach. Mediators trained in international family mediation are more likely to include the child's perspective, either indirectly (through parental reflection exercises or child-focused methods), or via child-inclusive mediation models, involving a trained child consultant who speaks with the child and conveys their views.

No rules or established practices seems to exist in **France** as concerns child participation in the mediation process, even though it results that some mediators are inclined to include children in mediation, depending on the circumstances of the specific case. Only in matters of "educational assistance," Article 1189-1 of the French Code of Civil Procedure sets up a special regime and provides that the mediator is allowed to hear a child who consents, subject to the parents' agreement and the child's best interests.

In **Bulgaria**, child participation in mediation seems to be more an exception than a rule. To fill these gaps, the National Network for Children in Bulgaria, in collaboration with the Professional Association of Mediators in Bulgaria, the Institute for Social Activities and Practices, the Parents Association, and the "For Our Children" Foundation, developed and published a Unified Methodology for Assessing the Best Interests of the Child.

As a result of the different approaches and the lack of a specific (uniform) legal framework, the risk is that child participation in mediation remains more an exception than a rule. In the light of the above, **participation of children in family mediation**

needs to be addressed: under human rights law, it is necessary to shape a child-inclusive mediation (Article 12 UNCRC; Article 24 EU Charter of fundamental rights). Moreover, it should be considered that the lack of hearing of the child may amount to a ground for not enforcing the mediated agreement.

On the other hand, it might however not be necessary or safe for the child to take part to mediation. It is an assessment to be done on a case-by-case basis.

It has been suggested the solution of a report on the child's view to be used starting from the mediation phase and which might be also used in court proceedings, if necessary[30]. On the other hand, it is equally true that the report on the child might be prepared by professionals who interview the child, buy the child should always have the right to be heard directly by the decision maker[31].

All in all, enabling children's participation in mediation requires careful planning and it would be necessary for the family mediator to be specifically trained in this sense. All the safeguards which apply to hearing children in court shall nevertheless be applied in the mediation process[32].

[30] See S. Vigers, *Mediating International Child Abduction Cases. The Hague Convention*, cit., p. 89.
[31] R. Shuz, *The Hague Child Abduction Convention*, cit., p. 415. On this topic, see also Canadian Department of Justice, *The Voice of the Child in Separation/Divorce Mediation and Other Alternative Dispute Resolution Processes: A Literature Review*, 2009, available at https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/vcsdm-pvem/pdf/vcsdm-pvem.pdf.
[32] For more details, see the *Methodologies and Orientations for Mediation in International Child Abduction*, available at https://project-icare.eu/wp-content/uploads/2025/11/DCI-iCare-Metodologia-ENG-WEB.pdf.

Child-inclusive mediation at Reunite (UK)[33]

Reunite is a leading mediation service provider in international child abduction cases in the UK, practicing child-inclusive mediation, based on:

- a first preparatory meeting with the parents, discussing the possibility of hearing the child. Both parents need to sign an informed consent form;
- the rights of the child to be informed, to be heard and to have his/her views given due weight in decisions concerning the child;
- a confidential and neutral space: the principle of confidentiality also applies to the hearing of the child. Towards the end of the conversation (which usually happens between the first and the second meeting with the parents), the mediator agrees with the child what information the mediator should convey to the parents.
- knowledge and availability of support services for the child before, during and after the hearing and throughout the mediation process (child protection services, as well as other relevant support and counselling services).
- specialized training for child-inclusive mediators.

❖ Lawful relocation

In order to prevent international child abductions, the effort of the EU institutions and of Member States could converge on **strengthening the legal framework on (lawful) relocation.**

The Council of Europe's Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation[34] recognises the inherent risks which may occur whether parents do not reach an agreement on relocation, namely the "risk that a child would lose contact or experience a significant disruption of contact due to relocation".

It is therefore recommended that national law of relocation should i) offer sufficient legal certainty to prevent and resolve disputes; ii) provide sufficient flexibility to satisfactorily resolve individual disputes; iii) encourage the reaching of friendly agreements. It is also highlighted that any decision on relocation should take into primary consideration the best interests of the child over the needs and interests of the parents. Therefore, the Recommendation puts great emphasis over the necessity

[33] Those information are retrieved from the *Methodologies and Orientations for Mediation in International Child Abduction*, cit., p. 41.
[34] Available at https://rm.coe.int/16807096c9.

to prevent, as much as possible, disputes on relocation, adopting adequate measures such as mediation.

The more recent Recommendation CM/Rec(2025)4 on the protection of the rights and best interests of the child in parental separation proceeding reaffirms the afore-mentioned recommendations highlighting the link existing between the management of relocation disputes and the prevention of international child abduction:

> **Explanatory Memorandum to the Recommendation CM/Rec(2025)4 of the Committee of Ministers to member States on the protection of the rights and best interests of the child in parental separation proceedings (extract)**
>
> 216. The Hague Conference on Private International Law observes that parents tend to consent to relocation if their contact with the child is settled through mediation prior to relocation and recommends therefore mediation in parental separation cases involving disputes on cross-border contact and relocation. It may help, therefore, to prevent international child abduction. A mediated agreement on child relocation approved by a court, or a court decision based on a mediated agreement, will be recognised and enforceable in all other Contracting States 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 (Articles 23 and 28).

In the light of the above – also highlighting in the management of relocation cases the best interests of the child is strongly linked his/her right to maintain personal relations and direct contact on a regular basis with both parents – the implementation in national legislation of the principles set by the Recommendations of the Council of Europe should be closely monitored and eventually object of further action.

❖ Criminalization of parental child abduction

International child abduction is a crime in some Member States' legislation. Under EU law, the Member States retain full sovereign competence in the field of criminal law and therefore enjoy autonomous discretion to determine which conducts constitute criminal offences and to define the corresponding penalties. Therefore, each Member States determine whether an illicit transfer or retainment of a child in a State different from his/her habitual residence in criminally sanctioned.

At the same time, criminalization of international child abduction has an impact over civil (return) proceedings: it is well known that the risk of criminal prosecution is a factor which may prevent the abducting parent to come back to the State of the

child's habitual residence. This could also obstacle mediation, for several reasons. The abducting parent may refrain from participating to a hearing in the very same State in which he/she risks to be prosecuted and therefore this could constitute an obstacle for the judge in inviting the parties to consider the possibility of mediation pursuant to Article 25 Brussels IIb Regulation. The mediation process itself could be impacted: geographically speaking, it would not be possible to organize mediation sessions in the State in which criminal prosecution is ongoing (in this case, online mediation could be preferred). The definition of the mediation agreement (i.e. including the return/non-return issue) could be influenced by the same circumstances.

Without impacting over the sovereign competences of Member States, possibilities could be explored on how to accommodate the promotion of family mediation with the fact that the abducting parent could face criminal proceedings and sanctions. As an example, undergoing a family mediation process may be considered as a factor enabling a reduction of the criminal sanction. Other possibilities could include a feasibility study on an international cooperation among Member States in order to agree on measures which could better coordinate the international family mediation process with the criminal proceedings, among which:

- Temporary suspension or deferral of criminal proceedings to allow mediation to take place;
- Temporary suspension of existing arrest warrants;
- Procedural rules to be applied within the mediation process ensuring confidentiality and protection from use of mediation information in criminal proceedings;
- Mechanisms allowing criminal authorities to be notified about the fact that a mediation process is ongoing.

❖ Procedural aspects

International family mediation in child abduction cases follows a peculiar route, which is necessarily different from ordinary family mediation. If the latter may even extend to a period of several months, the strict time-frame of child abduction proceedings require a different organization of the process. Mediation needs to respect the same requirements of rapidity which characterize return proceedings, especially to ensure the respect of the fundamental rights of the children involved. This may require the use of videoconference instead of in-person meetings and may also require the condensation of mediation in a short timeframe, such as one or more weekends.

The research conducted within the iCare2 project shows that there is no consistent practice in the Member State considered, especially with specific reference to international family mediation in child abduction cases. Even States who have a more comprehensive discipline on family mediation usually lack a specific legal framework devoted to international family mediation. There are not settled or uniform protocols or methodologies at the national or international level.

One of the aspects which should be addressed is the place in which mediation should occur. As mentioned, the abducting parent could be prevented to physically return to the State of former habitual residence of the child in order to undergo mediation. At the same time, it is equally true that the left behind parent could have difficulties (e.g. lack of economic resources) in travelling to the State of refuge for this purpose. The same problems may occur if mediation is organized in a third State. Those and other reasons result in several international mediation services to recur to online mediation, through video-conference.

To date, there is one model for international family mediation which has been developed at the supra-national level by three leading organizations offering mediation services in the European area: reference is made to Reunite International, to The Mediation Bureau / Center IKO, and to the International Mediation Centre for Family Conflict and Child Abduction (MiKK), which have developed the model called "Mediators in Court"[35]. The method is tailored to the tight and pressing deadlines of the legal proceedings for the return of the abducted child, being based on concentrated mediation sessions in 2-3 days, and is already being diffused in other Member States by way of pilot-projects[36].

The consolidation of structured models such as the 'Mediators in Court' model should be actively supported and strengthened in order to promote a coherent and reliable EU methodology for international family mediation in child-abduction cases. Enhancing such institutionalised frameworks would contribute to greater uniformity of practice, improved procedural safeguards, and more effective coordination between courts, central authorities, and specialised mediators across Member States.

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[35] For further reference, see the *Best Practice Models - Mediators-in-Court Model - Specialised mediation in international child abduction cases in connection with return proceedings under the 1980 Hague Convention*, within the EU co-funded project AMICABLE, available at https://www.amicable-eu.org/amicable-eng/mediation.html.

[36] See E. di Napoli, C. Honorati, *Il procedimento di mediazione familiare nei casi di responsabilità genitoriale e di sottrazione internazionale*, in C. Honorati, E. di Napoli, *Guida alla mediazione familiare* internazionale, cit., p. 69. The A. point out the advantages of having mediators at disposal in courts or even at the first hearing in return proceedings. Moreover, it is highlighted how the strict timeframe would require the prompt availability of family mediators, who should be available with short notice and able to work even on weekends.

❖ Mediation settlement – legal value and enforcement

In the context of international child abduction, an agreement reached through family mediation does not always hold a clear legal status[37].

In the majority of cases, a mediated agreement would need to be homologated by a judicial body, or incorporated into a judicial decision, in order to be provided with legal and binding effects. Those agreements would possibly include the regulation of rights and duties on parental responsibility, which are normally not at disposal of the parties and may need to be subject to a judicial control/homologation. On the other hand, agreements concerning patrimonial aspects would need to be enforceable. This happens through various methods in the Member States' legislation and practice: some Member States do not even provide clear rules, eventually relying on the fact that the judge will take into account the agreement between the parties in the final decision. It has also been authoritatively proposed the adoption of specific clauses within the mediation agreement, with a view to facilitate their recognition[38].

A focus on current practice

In **France**, there seems to be no consolidated data as concerns the legal value of mediated agreements in the specific context of international child abduction. In general, once the parties reach an agreement, a judge must approve it in order to ensure enforceable status.

In **Bulgaria**, mediation settlements are formally confirmed by a court, who must nevertheless ascertain that the agreement does not violate mandatory law or public policy (substantive legal scrutiny). Also in this case, specific practice does not seem to concern international child abduction.

In **Poland**, the mediated agreement must be validated by the court, but the scrutiny seems more formal than substantial.

In **Italy**, if the parents reach a mediated agreement in child abduction cases, the latter is taken into account by the judge by taking note of this circumstance in the decree which declares the

[37] On the topic C. Honorati, *La circolazione dell'accordo di mediazione familiare negli Stati UE*, in C. Honorati, E. di Napoli, *Guida alla mediazione familiare internazionale*, cit., p. 77.
[38] See T. Kruger, *International Child Abduction*, cit.

"non luogo a procedere" (no case to answer). This practice refers in particular to cases in which the Italian courts are seized for the return of the child.

It should be highlighted that situations falling within the scope of application of the Brussels IIb Regulation may be subject to the so-called "trumping order": the judicial authorities of the State of the former habitual residence of the child may overturn the non-return decision of the courts of the State where the child has been taken after the abduction (or where he/she has been retained) within a ruling on the merits of parental responsibility[39]. It would therefore be necessary for the mediation agreement to reach the competent foreign court, in order for it to acknowledge the existence of the settlement. On the contrary, if the situation is not subject to EU law, the 1980 Hague Convention regime applies. The non-return of the child determines a shift in his/her habitual residence[40].

In most cases, even when it occurs in the particular and difficult context of a child abduction, mediation represents the opportunity for the parents to address the overall family situation and all the aspects concerning their present and future lives (without limiting to the issue of return/non-return). The various content of those "package agreements" may be subject to one or another applicable law, and its effects may depend on different rules.

In child abduction cases, **it would be particularly advisable for the parties to incorporate the agreement in a judicial decision**. Here, the choice is between the courts of the child's habitual residence before the abduction, the courts of the State of refugee and/or the courts of a third State (for instance, the country in which the parents agree to transfer the child's new habitual residence). Since, as mentioned, package agreements may define different issues – such as for example return, parental responsibility and maintenance – for the decision to circulate according to the relevant international or EU regime it would, in principle, be necessary for the court to have jurisdiction on all the matters included in the agreement[41].

It has been proposed that the issue of recognition and enforceability of mediated agreements may justify itself a supra-national instrument regulating cross-border mediation[42]. The current regime, requiring a careful coordination of international and

[39] Article 29 Brussels IIb Regulation.

[40] As it is known, 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 (eventually applicable between the ratifying countries), does not provide for a mechanism similar to the trumping order. Moreover, the third situation to be considered is the one in which the 1980 Hague Convention does not apply at all and recourse to diplomatic channels is necessary.

[41] On the topic C. Honorati, *La circolazione dell'accordo di mediazione familiare negli Stati UE*, in C. Honorati, E. di Napoli, *Guida alla mediazione familiare internazionale*, cit., p. 116.

[42] See R. Shuz, *The Hague Child Abduction Convention. A critical analysis*, cit. p. 413.

EU rules on private international law, would benefit of the adoption of a dedicated legal framework which would enhance the effectiveness, predictability, and cross-border enforceability of consensual solutions in international family disputes.

- Privacy – respect of the child's rights

In the administration of international family mediation proceedings, mediators may be frequently required to manage complex cross-border cases remotely, particularly in the context of online co-mediation. In such settings, the protection of the child's fundamental rights, including the right to privacy and to the safeguarding of personal data, assumes a central role. Mediators must therefore ensure that the handling of sensitive information complies with stringent confidentiality standards and that all procedural steps respect the dignity, security, and best interests of the child. This obligation is heightened in virtual environments, where multiple actors located in different jurisdictions may have access to case materials.

Accordingly, mediators responsible for administering international cases must implement robust data-protection measures to preserve the confidentiality of both parents and the child. This includes adopting secure document-management practices such as the use of encrypted files, password-protected platforms, and controlled access systems, as well as exercising caution when transmitting information by email or other digital means. Specific safeguards, ranging from secure storage protocols to restrictions on the circulation of documents and clear rules on data retention, are essential to prevent unauthorised disclosure and to ensure compliance with applicable privacy regimes.

2. Developing a mediation friendly environment in the EU Member States: raising awareness, providing information, training activities

Under Art. 25 of the Brussels IIb Regulation, the courts are under a duty to invite the parties to consider mediation. No further clarification on how this invitation shall be made is provided. However, the parties should be duly informed as regard the mediation and its benefits. Information is of a key importance.

As the iCare2 Transnational Report and the works of the Train the Trainer event in Brussels (6-7 November 2025) showed, there are Member States where a favourable environment for mediation or other ADRs could be further improved. As mentioned in the Transnational Report, even though the Brussels IIb Regulation is directly applicable in the national legal systems of the Member States and no

implementation provision is required for its operativity, national provisions may have the role of supporting and fostering the correct and effective application of EU secondary law.

❖ Raising awareness

In the Member States where promotion of international family mediation is not strongly incorporated in the legal system, to raise awareness on the existence family mediation and on its benefits as compared to judicial proceedings, on the mediation services existing, is *a fortiori* important. In such jurisdictions, disseminating information on (i) existing mediation services, (ii) accredited mediators and (iii) available cross-border support structures is therefore essential in order to foster a culture of consensual dispute resolution and to ensure that families are able to access appropriate, child-centred alternatives to litigation.

The Italian Central Authority's work for the promotion of international family mediation in child abduction cases

The Italian Central Authority has issued detailed Guidelines on the transmission of requests under several provisions of the Brussels IIb Regulation, including Article 25. As concerns the latter, this is the content of the Guidelines (translation elaborated with recourse to Artificial Intelligence):

"The provision is applicable at any stage – introductory, hearing, investigation, pre-decision, enforcement – of proceedings for the return of minors brought before juvenile courts – in cases of intra-European international abductions – and, more generally, in the course of any other proceedings relating to matters of parental responsibility characterised by one or more international elements.

Article 25 requires the judge to inform the parties of the possibility of resorting to cross-border family mediation, a tool that differs in its specialised nature from "purely internal" family mediation. The specific role of cross-border family mediator, requiring specific professional skills, is not yet covered by our legal system nor is it referred to in Ministerial Decree No 151/2023, which regulates the professional conduct of family mediators. In order to enable the effective implementation of Article 25 of the Brussels IIb Regulation, the first advanced training course in cross-border family mediation was held in 2024, sponsored by the Italian Central Authority itself, resulting in the training of ten cross-border family mediators.

Judges who recognise the conditions for mediation may contact the Central Authority to receive information to be forwarded to the parties and to request the services of a cross-border family mediator who can facilitate the reaching of an agreement, even a partial one, on the issues in dispute. To this end, they may send a request to *autoritacentrali.dgmc@giustizia.it* or *prot.dgmc@giustiziacert.it*, indicating in the subject line

'Cross-border family mediation (Article 25 of Regulation 2019/1111)' and briefly outlining, in the text of the request, the facts of the case, supplemented by any information that may be useful in identifying the most suitable cross-border family mediator to handle the case."

❖ Information

As mentioned, Article 25 of the Brussels IIb Regulation has the potential of enhancing recourse to family mediation in any cross-border dispute relating to parental responsibility. The provision does not give further guidance on how courts should provide information about mediation, as well as on how they could promote mediation or convey the parties to an information session. It remains silent on matters such as the procedural stage at which referral should occur, the form and content of judicial information to be provided to the parties, the criteria for determining the appropriateness of mediation in individual cases, and the mechanisms for accessing qualified mediators or mediation services.

All those aspects are to be disciplined by Member States, in light of their sovereign competences in national civil procedural law. At the same time, this paves the way to fragmented practice in the Member States.

As concerns the current situation in some Member States, for instance in **Italy** it results that the judge seized in separation, divorce or parental responsibility proceedings includes the invite to the parents to undergo family mediation within the order fixing the first hearing: in this context, express reference to mediation as a possible alternative is made[43]. Even if this provision does not directly apply to return proceedings following an international child abduction[44], this practice could be extended to those situations as well. A proper training of judges would be necessary on the fact that mediation can be complementary to the strict timings of return proceedings. In **Bulgaria**, under the national rules on proceedings for the return of a child or the exercise of rights of access, the court is encouraged to assist parties in voluntarily resolving their dispute and it may refer parties to mediation at any stage of the proceedings, provided this does not delay the case and remains consistent with the time limits set out in Article 24(2) of the Brussels IIb[45].

It should be important to avoid formalistic applications of Article 25 Brussels IIb Regulation. The effectiveness of the referral mechanism ultimately depends on the

[43] Article 473-bis.14 of the Italian Code of Civil Procedure.
[44] See the Italian National Report for further references.
[45] Article 22c of the Bulgarian Child Protection Act of 2000, amended in 2024. In the general discipline on proceedings in family matters Article 140(3) of the Bulgarian Code of Civil Procedure empowers judges, at the initial hearing, to suggest mediation or an amicable settlement and to temporarily suspend proceedings to allow for it: however, this is purely discretionary, as there is no legal obligation for judges to make such a referral

institutional capacity of domestic courts, the availability of specialised cross-border mediators, and the extent to which Member States have integrated mediation into their family-law systems.

In practice, information could be promoted by way of providing a more specific discipline within the phases, documents and instruments of the judicial procedure (as it currently happens in Italy), but also through more pragmatical means. In a different field, the one of air transport, the rights of air transport passengers are generally available also at the airport by virtue of poster which every passenger can see before entering the gate and taking the flight[46]. Analogous information about family mediation should be available not only in courts, but also in public places where people have access to medical and social services or schools.

Beside this, it is important to further explore the role of the pre-mediation desks in providing information on the mediation services and on the benefits of mediation[47].

❖ Training activities

The research at the national level have highlighted that, at least in the Member States concerned, there are many differences in how the training for family mediators is structured and in the extent to which international family mediation is recognized within national qualification frameworks. In some cases, the lack of specialized training requirements is particularly evident for cases with international dimensions: for instance, in the Member States considered by the research, there seems to be no specialized training for international family mediators.

[46] Article 14 of the Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ L 46, 17.2.2004, p. 1.

[47] See above, p. 23 and the *Methodology on pre-mediation* developed within the iCare2 project, available at https://project-icare.eu/deliverables-icare2/.

Specialized training for international family mediators

In **France**, the current training framework for family mediators (Decree of 19th March 2012, amended in 2024), includes "international and intercultural family mediation" within a main training unit. This is only one of the items required by the framework and there is no guarantee that a real training on international family mediation will be provided.

In **Bulgaria**, the legal regime (Ordinance No. 2 of 15 March 2007) does not impose mandatory specialization for family or international mediation. Since cross-border disputes are explicitly covered by the Mediation Act, the national research highlights that the lack of specialized training requirements is particularly evident in cases with international dimensions.

In **Poland**, international family mediators are subject to the same qualifications as domestic mediators. At the same time, the Social Council for Alternative Dispute Resolution (an advisory body) in its Resolution No 1/2023 of 23 March 2023 r. on Standards of Training of Mediators has highlighted "the lack of legally defined standards for mediator training". At the same time, the Resolution does not seem to address international family mediation specifically.

In **Italy**, the Ministerial Decree No. 151/2023, has introduced detailed professional requirements for family mediators. The Decree does not contain any indication of certified specializations (such as international family mediation), which nevertheless form part of the training programmes of many schools which refer to the main professional associations of family mediators. However, despite this specialization being indicated in the statute and regulations defining the educational offerings of the associations, in practice very few specialized courses result to have been activated in recent years. An advanced training course on Cross-Border Family Mediation has been organized in 2023/2024 by International Child Abduction Lawyers Italy (ICALI), the International Child Abduction Centre (REUNITE), Defence for Children International Italy (DCI Italy), the University of Genova and the University of Milan in collaboration with the Italian Central Authority (https://www.defenceforchildren.it/it/news-376/corso-di-alta-formazione-in-mediazione).

At the EU level, there are some courses for family mediators wishing to specialize in international family mediation[48]. What should be enhanced is: i) a uniform definition of training standards for international family mediators, to be introduced at the national level; ii) the uniform presence of accessible training courses in the EU territory, which should respect the aforementioned uniform standards.

3. Developing a contact point/platform at EU level for child abduction

Mediation in child abduction may be further enhanced by a dedicated EU contact point/platform.

[48] MiKK, for instance, organizes training courses for this purpose.

It frequently results that families do not exactly know what child abduction is and do not know what to do when it occurs. This happens to the parents/holders of parental responsibility as well as to the children who are abducted.

A contact point/platform where it is not only possible to obtain the necessary information to understand what is happening in case of child abduction, but it is also possible to receive information on the availability of mediation services in the Member States as well as on the possibility to ask the intervention of national Central Authorities, would be very helpful[49].

It shall be also considered whether such contact point/platform may also work as a **centralized pre-mediation desk** and, possibly, as a **provider of online mediation services**.

A similar service has been experimented by the EU in the field of consumer protection, i.e. the European Online Dispute Resolution platform. However, it has been recently discontinued[50], since it has proved not to be successful for the resolution of disputes among consumers and professionals.

However, in the field of child abduction proceeding, recourse to online mediation/online ADR should be considered, since, given the specific features of the cases at stake, it may on the contrary prove successful.

In this respect, it shall also be considered that the EU traditionally offered a mediation service by virtue of the Mediator for Children Victims of International Parental Abduction created in 1987. The Mediator has been recently replaced by the Coordinator for Children rights at the Parliament, who has a wider mission and cannot explore the possibility to mediate the intra-EU child abduction cases.

In light of the above, a pilot project for the development of an online platform for the pre-mediation and possibly mediation of intra-EU child abduction cases should be considered.

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[49] With specific reference to the information which might be made available at the contact point/platform, reference can be made to the 2010 Principles for the establishment of mediation structures in the context of the Malta Process, drawn by the Working Party under the aegis of Hague Conference of Private International Law, available at https://assets.hcch.net/docs/c96c1e3d-5335-4133-ad66-6f821917326d.pdf.

[50] Regulation (EU) 2024/3228 of the European Parliament and of the Council of 19 December 2024 repealing Regulation (EU) No 524/2013, and amending Regulations (EU) 2017/2394 and (EU) 2018/1724 with regard to the discontinuation of the European Online Dispute Resolution Platform OJ L, 2024/3228, 30.12.2024, ELI: http://data.europa.eu/eli/reg/2024/3228/oj.

Conclusions

Despite the efforts at international and EU level to prevent child abductions and to fight against them, statistics confirm that child abductions are not diminishing.

Whilst the legal framework of reference concerning the judicial proceedings has been successfully developed both at international and EU level, in recent times, attention is given to mediation as an instrument which may have strong benefits to prevent child abduction (*ex ante*), to deal with an ongoing case of child abduction as well as once that a child abduction has occurred (*ex post*).

From the National Reports developed within the iCare2 project, it results that family mediation, and in particular family mediation in international child abduction cases, is not currently uniformly accessible in all EU Member States at the domestic level. The instruments at disposal at the legislative and practical levels are very different, as well as different is the degree of "integration" of family mediation in daily practice of national courts and authorities dealing with family matters. There are no uniform methodologies or procedure, where existing, on how to raise awareness on family mediation and on how to effectively provide the parents with specific information. Access to mediation services sometimes encounters economic barriers: if the service is offered free of charge in some countries, in others it may be only available through private professionals. No uniform training standards exists for international family mediators. Lastly, different approaches concern the attribution of legal value to mediated agreements and their enforceability in the light of the current international and EU legal framework.

From the activities promoted within research projects devoted to family mediation in child abduction cases, it seems that further action shall be taken to enhance it.

A specific methodology shall be followed, aimed at granting the respect of the human rights of the persons involved and, in particular, of the child. In Member States' practice, as it results from the national researches, there are no uniform methodologies or protocols on how to include the best interests of the child assessment within the mediation process. As a consequence, including the child in family mediation is not subject to a uniform approach.

The EU is in the position to take action in this respect.

The following three directions of such an action have been identified:

1. Further development of the legal framework of reference (both the Mediation Directive and Article 25 of the Brussels IIb Regulation);
2. Development of a mediation-friendly environment (by virtue of different activities: raising awareness, raising awareness, providing information, training activities, incentives);
3. Considering the development of a EU contact point/platform dedicated to child abductions

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Annexes

International Human rights instruments

United Nations' Convention on the Rights of the Child (UNCRC)

Council of Europe

Recommendation CM/Rec(2025)4 of the Committee of Ministers to member States on the protection of the rights and best interests of the child in parental separation proceedings, 28 May 2025

Hague Conference of Private International law

Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

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

Guide to Good Practice Child Abduction Convention: Part V – Mediation

Practitiones' tool – Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children, 2022

Central Contact Points for international family mediation

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C. Caratsch, Resolving Family Conflicts: A Guide to International Family Mediation, ISS, 2014

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EU instruments

EU Charter of fundamental rights

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters

Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)

Practice Guide for the application of the Brussels IIb Regulation

European e-Justice Portal

Other relevant international commitments and instruments

EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ) European Handbook for Mediation Lawmaking as adopted at the 32th plenary meeting of the CEPEJ Strasbourg, 13 and 14 June 2019

European Code of Conduct for mediators