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EPAPFR

EUROPEAN PLATFORM FOR THE ACCESS TO PERSONAL AND FAMILIAL RIGHTS

Partner Report
on the questionnaire

Drafted by
(International Social Service - Bulgaria)

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1. INTRODUCTION

International Social Service – Bulgaria participates in the EPAPFR project on behalf of the International Social Service (ISS) global network[1] on the level of the European Union (EU).

International Social Service – Bulgaria was involved in the preparation of the following three parts of the questionnaire: parental responsibility, child abduction and mediation.

It was agreed between the project partners that the questionnaire shall be drafted in English. International Social Service – Bulgaria used the English version and did not translate it into Bulgarian. The reason for this is that the questionnaire was planned to be disseminated mainly amongst the members of the ISS global network on European level, where English language is one of the three official languages.

The questionnaire was disseminated by the ISS General Secretariat in Geneva via e-mail sent in February 2019 to 35 ISS members and members ad interim, of which: 27 members based in the EU (Czech Republic, UK, Italy, Greece, Romania, Belgium, Bulgaria, Germany, Ireland, Malta, Netherlands, Portugal, Croatia, Cyprus, France, Hungary, Luxembourg, Slovakia, Slovenia, Lithuania, Latvia, Spain, Estonia and Finland), 6 members in Europe but outside the EU (Albania, Moldova, North Macedonia, Ukraine, Bosnia and Herzegovina, Norway and Serbia), one member in Africa (Morroco) as well as in Turkey as a candidate country negotiating its accession to the EU. All the respondents were given the freedom to choose how to respond to the questions in the different sections of the questionnaire, i.e. to use the template of the questionnaire, to use a separate file or in another manner. They were encouraged to provide information and to share their practices by answering all the questions. They were also given the possibility of filling out the entire questionnaire or only these thematic sections with which they were familiar in view of their professional experience. Though, it was clear from the very beginning that some of them will not be able to cover all thematic groups due to the lack of expertise and/or lack of competence. It has to be noted that ISS network members have different background and competence within their own countries as some of them are NGOs and others are public bodies also acting as Central Authorities under the EU Regulations and the Hague Conventions related to protection of children and their families.

At a later stage, the questionnaire was presented in detail by ISS-Bulgaria during the annual ISS Casework Coordinators Meeting held between 15th and 17th of April 2019 in Berlin, Germany. This presentation reached 25 senior ISS casework coordinators from Europe, Asia, Africa, America and Australia, dealing with inter-country cases involving children and families in cross-border situations. During this meeting it was decided that the Technical Committee of International Social Service – Bulgaria as project partner shall include casework coordinators from 7 EU based ISS members – United Kingdom, Ireland, France, Spain, Netherlands, Germany and Bulgaria.

[1] https://www.iss-ssi.org/index.php/en/home/network

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The process of collecting information ended up in the end of August 2019. International Social Service – Bulgaria received responses from ISS members and members ad interim in 8 EU countries including Romania, Czech Republic, United Kingdom, France, Germany, Latvia, Spain and Bulgaria. However, it has to be noted that these 8 responses encompass the efforts of more than 50 caseworkers (lawyers, social workers and psychologists), who are part of the ISS teams that handle inter-country cases involving children and their families. Beside these 8 participants ISS-Bulgaria received feedback from Malta, Greece and Turkey that their ISS teams have been introduced to the questionnaire but will not be able to provide information for various reasons.

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2. GENERAL PART

Only one respondent did not fill out the general part of the questionnaire.

2.1. The main findings in this section can be summarized as follow:

– *Participant background*

The majority of the respondents, acting on behalf of their organization, report a legal background including master degree in law, qualification to practice as a lawyer as well as one practicing lawyer. There is also one practicing social worker, one post-graduate in social work and one has university degree in psychology.

When asked to clarify their function in the organization, it should be emphasized that they all belong to the ISS network. What differs them from each other, are the variety of their roles, responsibilities and competences in the hierarchy of the represented organizations. In particularly there is a director of ISS member organization, a director of inter-country casework department in the ISS member organization, a social worker, a technician, a lawyer and a mediation programme supervisor.

The vast majority of the respondents indicate that they work for an NGO including the Red Cross, which has a special status and only two are representing governmental agencies acting as Central authority under the EU Regulations and the Hague Conventions regarding children and their families.

All respondents report to have international scope of action and two of them clarify three levels of geographical scope of action including national, European and international through local and foreign partners. This is completely explainable as all participants are representing organizations that are members of the ISS global network. ISS as one of the oldest non-governmental organization worldwide focuses on protecting the rights of children in transnational legal and social disputes as to ensure the well-being of children. In view of this the main services described by the participants are: counseling of individuals on family conflict issues and counseling for professionals on all issues related to children and families, provision of legal advice, cross-border casework, training and sensitizing of professionals on children and families in transnational situation, international mediation, drafting of articles, commenting draft laws and international legal instruments.

Half of the participants receive governmental funding of their services. Two rely on mixed funding coming from the state as well as from private donors and one collects fees from the clients of the services provided. One respondent clarifies that beside the money coming from the state budget they receive funding at the moment from the European social fund.

Most of the respondents inform that their services are free of charge for the beneficiaries. However, two participants indicate different approaches depending on the type of the beneficiary and the type of the service requested. They report that counseling is free of

charge but casework is paid and describe different models. One participant reports that if the enquiry comes from the social service, the amount is defined as a lump sum and if it comes from the Courts, they charge it per hour. The other indicates that they collect fees only from the Courts.

- *Knowledge of private international law in family matters*

  All ISS participants describe the following areas of their daily work: parental responsibility and access rights in the light of parental divorce and/or separation with international element; family reunification, international child abductions, international adoptions, cross-border maintenance recovery, international mediation. And in the framework of this daily cross-border casework the respondents are often confronted with variety of questions: which law is applicable (EU law, international private law and/or domestic law); which substantive and procedural law is applicable within the framework of the EU Regulations; differences in the legislations of the different countries concerning the parental responsibility and etc. However, the respondents report that in their practice they come across with many questions when working with individuals and especially with parents: who has parental rights, don't these rights go with nationality and can I as a parent go to my own court with my case; can I as parent leave the country with my child without consent of the other parent and what will be the consequences; questions related to child protection issues like who is responsible for this child in this particular case and etc.

  When asked about how they proceed to get access to foreign law and especially to foreign family law, all participants refer to Internet – the official EU website (https://europa.eu/), countries official websites as well as other specialized websites that provide for foreign law. However, they point out two main problems when working with Internet. One is the language barrier. The other one is the fee they have to pay to receive access to the needed information, which sometimes they cannot afford due to the lack of resources. If they cannot get access to the foreign law by means of Internet, the respondents very often refer to their colleagues from the ISS network to receive the necessary information. Some of the participants are subscribed to online or paper law journals (for instance Bergmann/Ferid print collection of worldwide family laws; "family legal news" from "Dalloz"; "HeinOnline"; https://boe.es/). Another source of information are reported to be the Ministries of Justice or the Embassies/the Consulates of the respective country in their own countries. ISS respondents also rely on working partners from the country of origin as well as volunteers.

  Half of the ISS participants list difficulties in the application of the EU regulation and international instruments in the field of international private law amongst which are: interpretation of the term "habitual residence" as many children and/or families are based in two countries; lack of knowledge of the judges which law is applicable in the respective case;

lack of information on how to get social reports from abroad; lack of knowledge how to use the certificates Article 39 and 41 of Brussels II Regulation; various specified competency criteria under the Brussels II Bis Regulation; ambiguity for professionals with respect to the "La passerelle mechanism'' (Articles 11-6 and 11-18 of Brussels II Regulation); different conditions in Europe to access legal aid; preference for the application of the domestic law instead of the rules of private international law and EU law and etc. Furthermore, many ISS clients seek the possibility to handle their case in their home country for many reasons: no trust in the impartiality of the judicial system and costs, lengthy procedure under the Hague Convention on the Civil Aspects of International Child Abduction, differences in the national legal systems, the amount of the fees and etc.

While those of the respondents who are Governmental structures acting as Central Authorities do not report errors in the application of Brussels II Regulation, the rest provide variety of examples:

ISS – Germany: *The Brussels II bis Regulation seems to be unknown to many professionals in the EU, even judges. We still hear about court decisions not taking account of the rules on jurisdiction. Also, many lawyers and most social work professionals do not know it yet and therefore provide improper counseling*.

ISS – Bulgaria: *A Court in Bulgaria refers to the ISS-Bulgaria to assist in getting a social report about a father who lives in EU-country. The ISS- Bulgaria refers to the respective ISS in the EU, which provides the requested report. When ISS-Bulgaria sends the report to the judge, she terminates the Court proceedings due to the lack of competence of the Bulgarian Court*.

ISS – France: *Even if a parent moved on with his child, there are some judges that do not apply the criteria of "habitual residence" and remain competent whereas they're not (in application of the EU instruments). It is not such as a result of inefficiency on access to laws in this field but more in a way to not cross-refer to a foreign judge. Because the child moved on with one of the parent, the judge became incompetent but he prefers to remain competent*.

All participants feel they know well the legal tools in the field of private international family law (European regulations, international conventions, etc.) as they work with them on a daily basis. They also add they try to update and deepen their knowledge through seminars, online courses, conferences and other events.

All participants also discuss what kind of information concerning private international family law could be helpful in order to better help their public. They propose different ideas in this respect: basic information and free of charge access to foreign law (for instance an English translation of civil codes, family code, civil procedures code on the website of foreign ministries of justice); access to the practice of the Courts in the EU countries, the European Court of human rights the Court of Justice of the EU in Luxemburg in all EU languages; short explanation of the dynamic of "habitual residence" and jurisdiction in all languages; any

information on unaccompanied children; clear information about the legal aid in each EU country as to be able to inform the beneficiaries about the whole process (not only tell them to send a form to the legal aid office and wait for a response). Awareness, trainings, webinars, production of training films, creations of free of charge websites, legal advice, prevention working groups, team buildings and multidisciplinary working groups of professionals are determined as forms in which the information shall be provided.

- *Initial and continuing training*

ISS participants who represent post-communist countries report that the "International private law" is a mandatory subject in the Law Faculties (for instance in Bulgaria and Czech Republic). On the contrary, this subject in not obligatory in Spain whereas in France it depends on the university – in some it is mandatory, in others not. In Germany it is mandatory for the law students to understand the basics of international private law. There are also special lessons on international private law in family matters but they are not mandatory. For judges and lawyers training both initial and continuing is offered but not mandatory (one respondent clarifies that the newly selected judges who enter the justice system for the first time have an obligatory introductory 6-months training in the so called National Institute for Justice and the future judges have courses in international private law in the framework of this training). Master degree courses for professionals with legal background are also offered in family law, international law as well as private international family law. Respondents also indicate that seminars and conferences are also training opportunities. However, the vast majority of the participants share their concerns that the trainings in private international family law are not sufficient and they recommend that these trainings become mandatory for judges and lawyers specialized in the field of family law. Some of the respondents inform about multidisciplinary trainings to practitioners that are organized by NGOs. Others are not aware of such training opportunities. When asked about the need of additional advanced training courses all participants point out the need to improve knowledge and skills and some of them even list particular training topics such as international divorce, parental responsibility and access rights, child's maintenance, child abduction, matrimonial property, succession law and etc. It has to be noted that all recommend and stress on the need to discuss the practice as well as to organize workshops on real cases and share and learn good practices with other countries.

- *Access to law and justice*

The majority of the respondents report that they do not identify a lot of professionals specialized in the field of private international family law in their own countries. Some indicate they know a few professionals in law firms, universities and in public authorities but

mainly in the big cities, which is not enough. That is why they say "*We need a bigger network*". When they need for their clients a lawyer from abroad, in another European country or elsewhere, they look websites especially of the embassies and the International Academy of Family Lawyers or ask ISS colleagues for information. Very often however, these lawyers are terribly expensive.

The respondents inform that they do not provide cross-border legal aid but some of them assist families to apply for it directly to the state of destination. One participant report that clients tell them cross-border legal aid is a "*nightmare*". They also add that many specialized lawyers refuse to provide cost-free counseling, cost-free legal representation and to take clients under legal aid.

Vast majority of the respondents identify obstacles in access to justice in the field of private international family law: slow procedures and delays caused by necessity to ensure information from abroad, organize translation of documents and to serve the documents abroad; bad or lack of knowledge of the relevant legal instruments by the professionals including judges and lawyers; incorrect application of the legal instruments. They also report that the international nature of the procedure slow down the judgment of court decision. Three of the respondents provide information on the length of procedures related to the implementation of EU regulations and The Hague Convention. The first one summarizes that the length of the procedure is very individual (could be months, but also years) and it depends on many circumstances such as the cooperation of parties, the relevant court and judge, cooperation with another state and etc. The other two provide for concrete figures. In particularly the second one informs that for international divorce, marriage annulment, transfer of parental responsibility and recognition and declaration of enforceability (only the first instance Court), the procedure takes from a few months in the countryside to more than a year in the capital city, and for enforcement application and request for child repatriation (only the first instance Court), the procedure is more than a year. The third one gives other figures: from 3 to 36 months for international divorce, 18 months on average for marriage annulment, up to 6 months for recognition and declaration of enforceability (EU countries), from 1 to 3 months (after the decision of return) for request for child repatriation and from 3 to 12 months for transfer of parental responsibility.

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3. MATRIMONIAL MATTERS

Six out of eight respondents provide information in this specific section related to the matrimonial matters.

3.1. MAIN FINDINGS

- *Polygamy*

  Half of the participants report they have never been approached for issues related to polygamous marriage. In addition, 2/3 of the respondents clearly state that polygamous marriage is not recognized in their countries. One clarifies that polygamy in general is not recognized as such but at the same time it is partially recognized for the consequences, for instance when it refers to children. Another one indicates that polygamous marriage is recognized in their country if it has been validly celebrated abroad. And continues that in order to ensure the union is valid, it should be verified that the national laws of the spouses authorize it. There is only one respondent that has idea where to refer clients to help them with the issue concerning polygamous marriage. And there is only one participant who reported that polygamous marriage falls into the scope of Brussels II bis Regulation and Rome III Regulation (demand for nullification of marriage or demand of divorce) after amendments in their national law. No one reports experience in using Brussels II bis Regulation to seek annulment of a polygamous marriage.

- *Forced marriage*

  Five participants discuss the issue of the forced marriages. They all inform about the existing legislation that provides for measures to tackle this phenomenon that concerns mainly minors and Roma but also adults who are forced to marry against their will. Most of the respondents indicate that forced marriages can be annulled within a certain period of time. Some of them provide detailed information regarding their civil and criminal law as well as the existing protective measures that can be put into force. Only one of the respondents informs to deal with these situations but only rarely and only providing legal support and sheltering. The rest refer the victims to other specialized organisations for support. Usually the respondents use their domestic law for annulment of the forced marriage and not the rules of Brussels II bis Regulation. Half of the respondents report the following obstacles to the protection of the forced marriage's victims in their own countries: low number of shelters for victims of violence including victims of forced marriages, difficulties to people, who are victims of forced marriages and who have to go into hiding; hardships to identify forced marriages as they are mostly arranged "*behind closed doors*".

- *International divorce, repudiation, principle of equality between women and men*

  When asked about international divorce and separation majority of the respondents clarify that they deal with many cases. However, one of the participants clarifies that they are not

experts in marital details but only with regard of children. Most of the respondents indicate that they can provide advice and information about shelters and specialized organizations to help a woman who is a victim of repudiation abroad. In general all participants consider that European regulation Brussels II bis and Rome III are efficient tools to protect the principle of equality between women and men in access to divorce.

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4. PARENTAL RESPONSIBILITY

As expected the section regarding the parental responsibility was answered by all ISS respondents with no exception.

4.1. MAIN FINDINGS

- *Contact points*

  When asked about Contact points for cross-border parental responsibility disputes, half of the participants refer to their "Central Authorities" determined under the EU Regulations (basically Brussels II bis and Maintenance Regulation No 4/2009) and the Hague Conventions (1980 Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention, 1993 Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption and 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children or Hague Convention. The other half inform that there are structures in their countries, beside the Central Authorities, that serve like Contact points to provide mainly counseling and mediation services in cross-border parental responsibility disputes. In three of countries – Bulgaria, Germany and Romania, International Social Service is determined as Contact points to provide free of charge counseling, advice and mediation services. They have expertise in cross-border social and legal work and have access to overseas services through ISS network to process and manage cross-border family cases. Some of the ISS contact points report to also have free of charge advice line.

- *Services and actors involved in PR cross-border disputes*

  All ISS respondents report that Central authorities, ISS network members, lawyers, NGOs (most of them provide the names of specialized NGOs) and local social services provide counseling as well as information to parents on their rights and obligations and on legal proceedings in cross-border disputes. However, they indicate that lawyers are the professionals who can legally represent the parents in individual parental responsibility cross-border cases. Furthermore, they report that ISS counseling and provision of general information is free of charge but lawyers usually collect fees for their special counseling and legal representation. Some ISS participants also inform that legal aid is available only for cross-border disputes in their countries and not abroad and clarify that the claimer of the legal aid can be local citizen or European citizen, foreigner citizen residing ordinarily and lawfully in the respective country, resident of another Member State of the European Union. Other report that legal aid is not available in the field of cross-border family disputes. ISS respondents point out that all listed bodies and professionals (embassies/consulates, immigration authorities, courts, social services, police officers, prosecutors, notaries and psychologists) can be involved at different stages in the parental responsibility cross-border

disputes depending on the family situations. ISS participants inform about variety of existing cross-border cooperation or communication mechanisms in family cross-border disputes amongst which are the following: the system of the Central Authorities which has legal base in the EU Regulations and the Hague Conventions regarding children and families; the Hague network of judges; the network of the International Social Service; direct cooperation between jurisdictions of the different countries; direct cooperation between social services of the different countries; Missing Children Europe. With respect to the network of the International Social Service they give a concrete example: if there is a need for a social report from abroad, for instance about the situation of the father who lives in a foreign country, they can provide it through the ISS partner in the respective country. Most of the respondents are satisfied by the existing cooperation mechanisms but some comment that they can be improved. ISS participants, however, differ in their answers when being asked about the need for additional opportunities and/or services in their countries for cross-border family disputes. Those who are acting also as Central authorities do not see such a need. However, the rest provide a wish-list: more staff; setting up of data base; improved access to specialized lawyers; harmonized conditions to get legal aid in the EU; formal recognition and funding of the ISS network when mediating between Courts and social services of the different countries; more training of professionals (especially judges and lawyers) when dealing with cross-border parental responsibility disputes; more information materials available about the rights and the legal proceedings in cross-border family disputes. The majority of the respondents agree that there are delays in these disputes due to the fact that there is a need for information from abroad (serving of documents, collection of evidences, providing social reports and etc.). Outside the legal delays they provide many other examples: a parent will have to wait between 4 and 8 months for a hearing before a judge, except in case of emergency; an answer for the legal aid demand, except in the case of emergency, can take several months; to organize a visitation in a neutral place can take more than a month; the intervention of authorities to make application for a justice decision can take months.

- *Rights of children in cross-border parental responsibility disputes*

  ISS respondents provide information that the children have access to justice in their countries and provide variety of examples. It can be concluded that participation of children in Court proceedings may depend on the type of the proceedings and the age of the particular child in the different countries. In Germany, in family proceedings, a person as of the age of 14, is able to be party in a court proceeding on issues concerning them. In any case in which it is obvious (from the kind of the case) that the parents are in danger not to represent the child's best interest, the child is appointed a curator (similar to "Guardian at Litem") to present the child's wishes and interest at court. In France, until 18 years or emancipation at 16 years old, a child is represented by a person acting in his name and on his behalf, and always in his interest

(both parents, one parent, curator, tutor). In the UK child protection proceedings called 'care proceedings' where the State in the form of the Local Authority makes an application to share parental responsibility with the parents, or supervise the child, a child is always separately represented by a Guardian ad Litem and a solicitor, irrespective of the child's age. In family law proceedings, children can be made a party to proceedings at the court's discretion, if the court considered this to be in the child's best interests. This representation can be by way of the child having a Guardian ad Litem and a solicitor. If the child is competent to instruct a solicitor directly himself, he can do so. In proceedings for recognition and enforcement of orders under Brussels II a, Guardians are often appointed to represent the child. However separate legal representation is not obligatory. A court may consider it sufficient for the child's wishes to be communicated through a CAFCASS report (CAFCASS officers are trained social workers who are tasked with ascertaining children's wishes and making recommendations to the court in court proceedings concerning them). In Romania, any child who is temporarily or permanently deprived of the protection of his or her parents or who, in order to protect his or her interests, cannot be left to their care, is entitled to alternative protection, which includes establishment of guardianship, special protection measures and etc. In Latvia, participation of the child depends on his age and maturity level, which is evaluated by psychologist. In Czech Republic, the minor child is a party in care proceeding and is represented by a guardian ad litem (usually by the Youth Welfare Office or the Central Authority, but it could be a lawyer as well). In Bulgaria, the child is not a party in parental responsibility disputes including cross-border disputes. This means that the child does not participate and respectively is not represented in these court proceedings. However, as the child rights and interests are concerned, the judge is obliged by the law (Child Protection Act) to request a report by social services about the situation of the child. This means that a social worker shall meet the child and explain his/her situation in the report for the Court.

All ISS participants also report that the child's right to be heard is guaranteed in their countries. In most of the countries it depends on the age, maturity and understanding. However, Bulgaria and Romania fix a certain age for the child to be heard – 10 years. If the child has not reached the age of 10, he may be given a hearing depending on the level of his development but the decision of the judge to hear the child shall be motivated. In France, the judge can hear the child but he can also delegate this task to another person, who must have activity in the social, psychological or medico-psychological field. The hearing can also be made during a social or psychological expertise of the family. In Germany, in addition to a report provided by a social worker, any child which can express its view must be heard in person by the court itself. Some judges hear children beginning with the age of three, others only older children. In Czech Republic the judge can hear the child himself, or it could be the child's guardian ad litem or other professional, e.g. psychologist. In Romania and Bulgaria the court shall provide the child with the necessary information, which would help him to form his or her opinion. The Court shall also inform the child about the possible consequences of his or

her desire, of the opinion supported by him or her, as well as about all the decisions made. Bulgarian legislation also stipulates the court to ensure appropriate surroundings for the hearing of the child in accordance with his age. The hearing and the consultation of a child shall mandatorily take place in the presence of a social worker from the social service and when necessary, in the presence of another appropriate specialist. The court shall order that the hearing of the child shall take place also in the presence of a parent, tutor, curator, other person who takes care of the child, or another close person known to the child, except where this does not correspond to the child's interest.

- *Practical difficulties in implementation of the EU instruments that regulate cross-border PR disputes*

1/3 of the ISS respondents report practical difficulties in the implementation of the EU legal instruments regarding cross-border family disputes. The main difficulties under the Brussels II bis seems to be the following: the very different understandings of the term “habitual residence” and the way it changes (from some days to six months) among member states; lack of knowledge of the judges in some countries judges about the rules on jurisdiction; rules on acknowledgement by law are almost not known EU wide (not only by judges but also on the level of the authorities); lack or very little mutual trust in the abilities of the authorities of the other country; hardships to get evidences and especially social reports from abroad.
1/3 of the participants also indicate difficulties in the application of the General Data Protection Regulation summarizing that this tool is almost not known in some countries. They also add that sometimes parents refuse to provide their consent to the ISS to process their personal data and the personal data of their children.

- *National law*

All respondents inform about the definition of “parental responsibility” and clarify that some of them use different terms in their legislation such as parental rights and obligations; parental custody, rights and duties; parental authority that are comparable with the term “parental responsibility” of the Brussels II bis. The participants report that they do not have definition of the term “custody” except one, who indicates that it is slightly different from the term used by the Brussels II bis. In addition, one respondent comments that the domestic law relating to this matter seems to have a different terminology and gives examples with the court orders in his country and their legal consequences that are similar to the term “custody” (special guardianship order, care order, supervision order, emergency protection order). Majority of the respondents state they do not have a definition of the term “rights of access” or analogous as it is more or less a right of the child to maintain contacts with the parents. Regarding the term “protective measures” all participants report to use criteria to determine if a child is at risk or in need of protection to impose protection measures rather than to have a legal definition.
1/3 of the respondents report only parents can be holders of parental rights. The rest indicate that beside the parents holders of parental rights can be other third persons, both individuals

or entities, for instance a legal guardian (a person or a youth welfare authority) and other cares who are not parents.

Parental responsibility after divorce or separation of parents provide for both joint and sole custody in all countries. However, all respondents report different models that are regulated by their own domestic legislation. Half of the participants state that joint custody after divorce or separation is the principle, except for cases when this is not in the best interest of the child. Others report variations that depend on the situation of the family and the child. For instance, in Bulgaria, if parents can agree on joint custody upon the child after their divorce or separation, the judge can approve their agreement, but if they cannot reach agreement about the child and they go to the court, the judge can order only sole custody. On the contrary, shared residence is not a principle. However, judges may order alternative residence of the child as well the parents may agree that after their divorce or separation they will have a shared residence upon the child.

All respondents report that mediation is possible in cross-border family disputes but nowhere is mandatory.

1/3 of the ISS respondents report they have Family Courts in their countries for parental responsibility disputes. One respondent provides further details how it is arranged under the domestic law. Two respondents clarify they have specialized Family Courts that deal only with cross-border family disputes or international child abduction.

- *Good practices*

  6 respondents provide good practices (UK, Germany, Romania, Germany, Czech and Bulgaria).

- *Kafala*

  ISS respondents provide quite different answers being asked if they take over cases of family situation or of child protection of an international nature and especially minors taken by kafala. Half of the participants report they have had very few cases involving minors taken by kafala whereas the other half clearly state they never had to deal with such cases. Two of the participants relate kafala with intercountry adoption and another one makes connection with unaccompanied minors.

  Majority of the respondents clearly argue kafala is not recognized by virtue of law in their countries. One participant (UK) however refered to a concrete case with respect to a child in the guardianship of an EU citizen under the kafala system in Algeria: there were court proceedings and in consequence, the child in this case was able to benefit from the law of free movement by falling within the alternative provision laid down in Article 3(2)(a) of Directive 2004/38 as an “other family member”.

  Half of the participants report they are aware of conflicts’ rules and the cooperation measure provided by The Hague convention of 1996. The rest are not. One respondent states they work with their central authority on those issues by exchanging information situations and best practices.

  Finally, only one respondent reports about progress in their country regarding minors taken by kafala by saying this is under discussion since several years and on a good way in terms of

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finding case by case solutions. And it concludes that a clear definition on the status as “family” could help in this discussion.
ISS has a fact sheet on kafala that is available on the global network website.

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5. CHILD ABDUCTION

Child abduction as parental responsibility is a topic of high priority for the whole ISS network not only on EU level but also worldwide. For that reason this section was answered by all ISS respondents except only one. They all provided information related to their experience and practices when dealing with child abduction cases.

5.1. MAIN FINDINGS

- *Contact points*

  When asked about Contact points for international parental child abduction (IPCA) disputes, again half of the participants refer to their "Central Authorities" determined under the EU Regulations and the Hague Conventions with respect to children and their families (Spain, Latvia, Czech Republic and France). The rest report that there are other structures in their countries that are involved in IPCA disputes beside the Central Authorities. In Germany for instance, ISS-Germany is a Central Contact Point and offers counseling in any state of a situation concerning children, based on the principle 'the sooner the better'. The counseling service is free of charge. However, they do not provide support in terms of legal representation in proceedings. The situation in Bulgaria is similar: there is no formal Contact point for IPCA disputes in Bulgaria. But one can refer to the ISS-Bulgaria for information, which service is also free of charge. In Romania the National Police has Special Departments/ Services, which are dealing with this issue. During the investigation the service is free of charge but legal assistance is paid.

- *Services and actors involved in IPCA disputes*

  All ISS respondents report that Central authorities, specialized NGO organizations (some of the participants provide the names of such organizations and websites), lawyers and members of the ISS network provide information to parents on their rights, obligations and legal proceedings in IPCA disputes. When it comes to counseling, majority of ISS respondents refer to lawyers and Central authorities. In France, there are the so called Access points to the law. The French Ministry of Justice website provides a list of those points in the country where legal advices are provided and lawyers can counsel parents for free. With respect to the legal representation, 1/3 of the ISS respondents state that lawyers can represent parents in individual IPCA disputes (Spain,Latvia and Germany). In Czech Republic it is the Central authority that legally represents the parents. In Bulgaria, both lawyers and the Central authority can represent the parents whereas in France, parents in IPCA disputes can be represented either by lawyers and prosecutors.

Travel expenses, translation, provision of shelter, food and non-food items, costs for lawyers and for the legal proceedings are amongst the costs that ISS respondents associate in IPCA disputes.

ISS participants inform that if IPCA disputes are proceeded through the Central authorities the services (provision of information, counseling, legal representation) are free of charge for applicants of the incoming cases. For the respondents however there are two options: either to involve lawyers, who collect fees for counseling and legal representation, or to ask for legal aid, if it is possible in their country. ISS respondents indicate that legal aid in IPCA disputes is available in Romania, Latvia, Germany, Czech Republic and France.

Majority of the ISS respondents agree that all listed bodies and professionals (embassies/consulates, immigration authorities, courts, social services, police officers, prosecutors, notaries and psychologists) can be involved at different stages in the IPCA disputes depending on the characteristics of the case. In addition, ISS participants indicate that mediators, specialized organizations and ISS network can be involved in the IPCA disputes.

As in the parental responsibility section, ISS participants inform about variety of existing cross-border cooperation or communication mechanisms in IPCA disputes amongst which are: the system of the Central Authorities which has legal base in the 2201/2203 EU Regulation and the 1980 Hague Convention on the civil aspects of international child abduction; the Hague network of judges; the network of the International Social Service; direct cooperation between jurisdictions of the different countries; direct cooperation between social services of the different countries; the “116 000” European number (hotline) can be contacted in 26 EU countries also in case of parental abduction.

Most of the respondents are satisfied by the existing cooperation mechanisms. Some of them however discuss issues that can bring improvements: more technical support by institutions and professionals to the families; provision of training to professionals (prosecutors, magistrates, judicial services, lawyers, psychologists) who have to deal with IPCA disputes especially on procedural and financial difficulties of the victim parents; more staff available in the authorities that are involved in IPCA disputes.

Some of the ISS respondents state that there are delays and indicate various reasons for these delays: lack of cooperation of the parties; difficulties in cooperation with another state; long serving the documents; whether or not the parents consented to mediation and etc. In view of this they also comment that the length of the procedure is very individual but Courts that deal with IPCA disputes shall stick to the terms and conditions of the 1980 Hague convention.

- *Children’s rights in IPCA disputes*

All ISS respondents provide information regarding the rights of the children in IPCA disputes. In Czech Republic the child is a party in IPCA proceedings and is represented by the guardian ad litem (usually by the Youth Welfare Office). On the contrary, the child is not party to the Hague proceeding in Germany, but depending on the situation, the child can be represented by a curator (guardian at litem) in this procedure. The child is not a party in these proceedings also in Bulgaria. This means that the child does not participate and respectively is not represented in the court proceedings. However, as the child rights and interests are concerned, the judge is obliged by the law (Child Protection Act) to request a report by social services about the situation of the child. This means that a social worker shall meet the child and explain his/her situation in the report for the Court. In Spain, the child is represented by the parents, by a legal guardian or by the person that the authority confers as a representative. The minor may request legal assistance and the appointment of a judicial defender to take necessary judicial and administrative actions aimed at the protection and defense of his rights and interests.

As in the parental responsibility cross-border dispute ISS participants report that the child's right to be heard is guaranteed in their countries and it depends on the age, maturity and understanding of the child. This, as in other cases, is understood in a variety of interpretations: The French respondent quotes Court practice in this regard: "*children aged of 9 years and a half and 6 years and a half, did not have the necessary discernment*". (Civ.1ère, 12 avr. 2012, n°11-20.357) and "*the only opposition of the children could not justify the refusal of the request for return.*"(Civ.1ère, 14 févr.2006, n°05-14.646).

Only one ISS respondent reports about IPCA dispute under art. 20 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction: it was only one case with Ukraine, when Latvia ordered not to return the child to Ukraine due to the military conflicts in the country.

– *Practical difficulties in IPCA disputes*

ISS respondents report to encounter a variety of difficulties in implementing EU Regulation 2202/2003: they don't gain the impression that principle of mutual trust in the ability of all member states to protect a child really is practiced; there are very different understandings on hearing a child in the member states; principle of the last word is not practiced; the certificate within the Article 39 and the requests within the Article 56; refusals to execute the judgment and refusals to recognize the court decision; the issue of the "habitual residence" of the displaced child, which constitutes the central element of the qualification of a wrongful removal of a child, and the difficulties that there is no definition of the term habitual residence.

When it comes to the costs and the delays in proceedings arising among EU Member States implementing this Regulation, ISS respondents inform about the following problems: legal aid causes problems: delays to fill in forms and provide documents; to go via the cost free system may take much more time until the case goes to court than if one can afford to hire a lawyer; high costs in some countries; difficulties in cooperation with other EU countries.

Only one respondent provides information about forthcoming amendments to the law that regulates the judicial and/or administrative proceedings in the field of IPCA disputes (France).

– *National law*

In general, ISS respondents report about 'protective measures' in their legislation to prevent harmful effects against the child during the Court proceedings. The German court for instance can make provisional orders in order to avert risks from the child and especially to secure the child's abode during the proceedings, or to prevent the child's return from being obstructed or made difficult. The court in Czech Republic can also order measures such as: judicial supervision of the movement of a child in the territory of the country; preventing the child from leaving the territory of the country without the consent of the court; preventing rupture of personal ties between the child and the left-behind parent. In Bulgaria, if the child is at risk, the Child protection departments can impose child protection measures in or outside the family. It is similar in France, where social services can intervene if there is a risk for the child (situation of danger). The juvenile judge also can take all necessary measures to protect the child, can require investigation measures and take temporary measures such as measures prohibiting the child of leaving the country. However, only two ISS respondents provide information about 'protective measures' to prevent damages for the left-behind parent (Germany and Czech Republic).

All ISS respondents report that they do not have in their national legislations legal definition of the term 'grave risk of harm' within the context of IPCA. Only in Romania they can associate it with the term "risc de prejudiciere grava" that can be translated as moral damages or non-pecuniary damage, for which term they have definition. Also, there are no legal definitions of the terms 'parental acquiescence' and 'habitual residence' but with respect to the latter jurisprudence establishes factors that shall be considered such as the child's social center of life: school, doctors, extracurricular activities, where he sleeps daily and etc.

There are only two ISS respondents that report about a specific agreement for relocation in their national legislation: In Bulgaria and Czech Republic, if a parent wants to relocate the child in another country and the other parent refuses to agree, he/she shall refer to the Court and ask the judge to allow relocation of the child without the consent of the other parent.

Only half of the ISS respondents indicate that in their countries there are specialized Courts that handle IPCA disputes between parents (France, Germany, Czech Republic and Bulgaria).

- *Good practices*

  Two ISS respondents provide information about good practices in their countries: Germany and Czech Republic.

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6. MAINTENANCE

The section on maintenance received responses only by half of the ISS participants, two of which are acting also as Central authorities under the EU regulations. The respondents however did not provide information to many of the questions. This is quite understandable as practice shows that ISS does not deal with matters related to maintenance and does not have experience on the Council Regulation (EC) No. 4/2009.

6.1. MAIN FINDINGS

- *Debtor-related information*

  Only one of the respondents comments the non-judicial means to obtain information concerning the financial situation of the debtor. The respondent reports that the competent authority dealing with maintenance matters in the country and acting also as a Central authority under the Council Regulation (EC) No. 4/2009 has rights to request data from State Revenue Service, state social insurance agency, state land service and the land registry, road traffic safety directorate and the register of enterprises. The rest three refer only to the judicial means, during the court proceedings, when the Court may request information either upon request of the party or *ex officio* from other entities and bodies, including the employer of the debtor.
  In granting access to the obtained information the regulations of the EU Data protection Regulation shall be considered.
  Only one ISS respondent comments how the obtaining information concerning the financial circumstances of the debtor could be improved, especially in cross-border maintenance cases. In particularl, the respondent argue that If the debtor has legal incomes and all owned properties are registered in data bases no other improvement is needed. But, if the debtor hides incomes and properties no data base will improve the enforcement.
  Being asked about how they verify the serviceable address of the debtor, the respondents indicate that the court may check it with various state authorities (e.g. population register municipality, social security administration, labour office, police).

- *Specific problems regarding maintenance recovery*

  Only 2 respondents provide information to the question whether it would be desirable that the ground of jurisdiction laid down in Art. 3(b) of Regulation 4/2009 to be clarified, so that it applies also to public bodies.
  Half of the respondents report their countries grant public benefits if the debtor fails to pay maintenance and respectively indicate that the state has recourse against the debtor. The other half provides negative responses.

- *Recognition, enforceability and enforcement under Chapter IV of Regulation 4/2009*

  The majority of respondents provide very little information in this part of the section and for that reason it is very difficult to comment each single question. The only common answer that

all participants agree upon is that they have never applied for recognition and enforcement of a maintenance decision without asking the Central Authority for assistance.

- *Cooperation between Central Authorities under Chapter VII of Regulation 4/2009*

  Only those respondents that are central authorities provide information in this sub-section. They comment that they face particular difficulties regarding the implementation of the Regulation 4/2009. In particularly, they comment that sometimes it takes long time without positive results (mainly southern EU states) and that sometimes the central authority rejects to give the information about the incomes, assets and property in accordance with the Regulation. Most of the replies to all questions are positive with the following “but they vary from state to state”.

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7. UNACCOMPANIED MINORS

Only one ISS respondent did not provide any information on the section related to the unaccompanied minors.

7.1. MAIN FINDINGS

The majority of ISS participants simply provide positive reply to the question if their countries fulfill the obligations towards the 1996 Hague convention, the 1989 UN Convention on the Rights of the Child (UNCRC) and the 1950 European Convention on Human Rights (ECHR). Two explain in details the situation in their countries. ISS respondent from the United Kingdom expresses concerns whether and how the 1996 Hague Convention will continue to apply in the United Kingdom after it leaves the EU, particularly in a scenario of a "no deal" Brexit, and whether the agreement of the EU and all the remaining EU Member States will be necessary for this to happen. With respect to the UNCRC, the UK respondent comments that although frequent judicial reference is made to its provisions (and the Committee on the Rights of the Child's General Comments), it has not been directly incorporated in domestic legislation and the Government frequently relies on this lacuna when trying to avoid its direct application. On the contrary, the ECHR has been brought into the domestic law through the Human Rights Act 1998, which mirrors the convention but it contains procedural rules, which reduce the effectiveness it would have, if it had simply been fully incorporated. The French ISS respondent also provides detailed information on this topic by stating that France does not entirely fulfill its obligations, notably because the child protection services are under the direction of each French departments and not the national State. Some departments are more protective towards the unaccompanied minors than others. Some departments see more the unaccompanied minors as migrants than children. Some of the unaccompanied minors thus do not have access to the proper medical and housing care, nor have access to education. Recently the French state was declared in breach of the article 3 of the ECHR regarding the treatment of an unaccompanied minor in Calais. Furthermore, some judges decide not to summon an unaccompanied minor at his hearing when they are unsure that the complainant is indeed a minor. This is in contradiction with article 12 of the UNCRC, the right to be heard regarding all proceedings concerning the child. In view of this, a new decree has been passed supposedly in order to diminish those disparities, as it asks the department to send the child to the prefecture for its prints and photography to be taken and then state whether the child was declared underage or over age. But if the applicant is deemed overage then he will be transferred in the file for adults without a residency permit and might be asked to leave the French territory. As this procedure is linked with the immigration services, it does not seem to be in the child's best interest. Two French departments (Paris and Seine Saint Denis) have already said they would not apply it. The situation could be improved if a legal guardian is automatically designated but requires more resources to be allocated.

The majority of the respondents answer in the affirmative way when being asked if the tools of private international law of the family (Brussels II bis Regulation and the 1996 Hague Convention) constitute efficient tools to improve unaccompanied minors protection. They comment that although not containing specific provisions in relation to unaccompanied minors, the 1996 Hague Convention and the Brussels II bis Regulation, one the one hand, provide national authorities with jurisdiction to take measures for the adequate protection of children, with a potential impact in the status determination of unaccompanied children. On the other hand, these instruments also establish mechanisms for cross-border cooperation between authorities, which are essential in accelerating family reunification procedures and prioritising the protection of unaccompanied and separated children. However, there are concerns related to the practical implementation of these tools, which sometimes encounters difficulties. In particularly, the German ISS respondent states that both instruments offer tools for communication and cooperation between authorities, to inform about a situation or ask for information to better decide e.g. about sustainable solutions for minors. They naturally could be one way to sort out, for example, whether a family reunion with a relative is appropriate from the psycho-social point of view, to inform youth welfare authorities about minors in need of protection coming to their country and etc. However the present experience shows that there is almost no to no communication between asylum/foreigner authorities and youth welfare authorities, and the ISS network is asked for support in this kind of cases. The French ISS participants inform that these two tools are interesting but are not used by French courts. In addition, the Spanish experience shows that the tools are good but there is a lack of willingness from the countries regarding their application.

The majority of the ISS respondents also indicate that their countries have provided a legislation implementing the relevant EU Directives concerning the international protection and the right to family reunification, which also addresses cases involving unaccompanied minors. In addition, some of them cite the titles of the domestic legislation.

Most of the respondents inform that the local social services are specifically tasked with taking care of unaccompanied minors (Bulgaria, Germany, Czech Republic, Romania, Spain, France and UK). They also clarify that unaccompanied minors can be placed in a foster family, in an institution, in special facilities for children of foreign nationals and even in the family of volunteers. In addition, respondents report that a legal guardian has to be appointed to the minor.

Half of the ISS participants report that in their national legal order there are specific private international law rules concerning unaccompanied minors. The rest inform that they apply the EU and Hague Conference instruments and are not aware of specific tools of their international private law.

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8. INTERNATIONAL PROTECTION

The section on international protection alongside with the section on maintenance received responses only by half of the ISS participants. Furthermore, the respondents do not provide detailed information to many of the questions.

8.1. MAIN FINDINGS

Only 2 out of 3 ISS respondents report that the access services to laws regarding asylum are able to respond to the international civilian aspect raised by these issues. The Latvian ISS respondent informs that as far as asylum seekers and refugees are concerned, there have so far been no cases involving aspects of private international law. In addition, the respondent notes that stateless persons reside in Latvia in accordance with the Immigration Law and enjoy the rights set out in the 1954 Convention on the Status of Stateless Persons.

In Germany, there are lots of programs regarding different possible situations including volunteer return programs etc. In Romania, only the asylum application is subject to support. According to the domestic law on asylum in Romania, legal representatives are appointed to the asylum seekers minors and the latter benefit the same rights as Romanian children.

One respondents reports that migrants have access to an interpreter only on the decision making level, e.g. at court and it very much depends on the counseling level. Another respondent state that in its country the migrants have access to an interpreter but only in theory and for that reason they have to provide an interpreter for a fee almost each time they go to a hearing with a migrant minor.

Only one ISS participant indicates how the tools of private international law take into account the situations of refugees, stateless person or asylum seekers. In particularly, the respondent state that if jurisdiction depends on habitual residence, this can cause problems. It is the same with respect to the civil status and in especially regarding marriage and parental status.

Two participants respond to the question regarding the notion of habitual residence of displaced persons in their countries. One respondent informs that this is up to courts: some courts very much focus on the person's right to remain in the country and not so much on the likeliness the person really will be deported. The other indicates that there is no specific definition of the concept of habitual residence of displaced persons in its country.

Being asked about improvements regarding the international displacements of children in context of asylum, one of the respondents considers that authorities should provide more facilities to children asylum seekers, such as: assistance services adapted to the needs of each beneficiary, a necessary sum of money per day to allow child to buy food for at least three meals per day and also clothes, because most of them come with ruffled slippers and damaged clothes and do not have any money etc. Another one recommends to always keep a contact between parents and children displaced in context of asylum as it is difficult to find them after.

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9. MEDIATION

This section of the questionnaire alongside with the section on parental responsibility is covered by all 8 ISS respondents. They all provided information based on their expertise and practice in providing mediation services and services based on mediation approach when handling cross-border cases with children and families over the years within the ISS network.

9.1. MAIN FINDINGS

– *Cross-border family mediation*

Half of the ISS participants report that they have list a of certified cross-border family mediators in their countries (France, Czech Republic, Bulgaria and Romania). There is international family mediation cell in the Ministry of Justice in France and a list of certified cross-border family mediators available online. The office of ISS Czech Republic, which is also a Central authority for the EU regulations, has free of charge cross-border Child inclusive family mediation programme and reports that no other certified cross-border family mediators are being listed. ISS-Bulgaria indicates that it does not have information regarding a list of certified cross-border family mediators but in some inter-country cases it can serve as a cross-border family mediation point. 3 of the respondents inform they have a list with certified mediators without clarifying if they are cross-border mediators (UK, Spain and Latvia). ISS-Germany reports that there is no official list and no official (governmental) certification but they know the appropriate actors to refer their clients. The ISS respondents report that usually the local social service refer families facing cross-border situations to the ISS unit in their country and the ISS unit can either provide mediation service (Czech Republic, Romania and in some cases Bulgaria) or send the client to a cross-border mediator, to another ISS unit or to a specialised structures that provide cross-border family mediation (UK, Spain, Latvia, Germany and France). In general, if the ISS unit provide the mediation service it is free of charge (Czech Republic, Bulgaria and Spain). In other countries the domestic law stipulates that mediation is paid (Germany, Romania and UK). In Latvia it depends of fundings but certain number of the mediation sessions may be for free. In France the international family mediation cell in the Ministry of Justice in France is free of charge but when cross-border family mediation is made by independent mediators, it's not free of charge and only the first session is free. In Bulgaria cross-border family mediation is not covered by legal aid. On the contrary, in the UK legal aid may be possible in some instances. In particularly, the first meeting with a mediator will be called a Mediation Information & Assessment Meeting (MIAM) and legal aid will cover this as well as the cost of the first full mediation session. In France If cross-border family mediation is ordered by a judge, depending on the income of the person, it can be also covered partially or totally by legal aid. All respondents except one provide information and names of regional or global networks of professionals dealing with cross-border family conflict that they are aware of: the global network of the International Social Service; Reunite International Child Abduction Centre; Cross-Border Family Mediators, which is a network of family mediators worldwide trained to deal with cross-border family conflicts; Reunit; Mikk. In addition, they also provide websites: https://www.asemed.org/gu%C3%ADa-de-mediadores-profesionales-de-espa%C3%B1a-2018-2019/; www.crossbordermediator.eu; www.ifm-mfi.org.

Majority of the ISS participants use Internet and refer especially to the following website www.ifm-mfi.org when asked how they access general information, evidence and data related to cross-border family mediation and cross-border family conflicts.

– *Legal aspects of cross-border family mediation*

Only two ISS respondents (UK and Romania) inform that their jurisdiction provide for arbitration in cases of parental separation/divorce and disputes over custody and access. However, both of them clarify that arbitrations refer only to legal proceedings with respect to domestic family disputes. For instance, family arbitration is possible in the United Kingdom. It is employed for people who want to resolve a family dispute without the delay and expense of the court process. Each partner will appoint an arbitrator. The arbitrator must apply the law of England and Wales. At the same time majority of the ISS participants (UK, Romania, Germany, Czech Republic, Bulgaria and France) indicate that the jurisdiction of their countries provides for conciliation and mediation for cases of cross-border family disputes as well as child abduction cases. When it comes to conciliation, in the first hearing at court in Germany this is suggested and if parents try they can at the end ask the court to ratify their result. In France, conciliation is not mandatory for the judge to suggest it, which means it can be ordered by the judge or suggested by a parent for both domestic and cross-border family disputes. Some of the ISS respondents indicate that their Central authorities refer to cross-border family mediation at any stage (Latvia, Germany, Czech Republic, France) whereas other provide negative responses (Romania, Bulgaria). Most of the ISS respondents report that they are not aware of any problems regarding the homologation or recognition of mediation agreements. On the contrary, ISS-Germany reports they have heard about some problems within Germany and that cross-border acknowledgement of mediation agreements is highly problematic. All ISS respondents refer to the ISS global network when they have to deal with non-EU and non-Hague countries in cases of child abduction or access disputes. Beside the ISS network, some of them use the embassies of the respective countries (Czech Republic) in their own country or get in direct contact with the abducting parent for instance (France). Being asked about a list of lawyers specialised in cross-border family disputes, there are mixed answers. Some of the ISS respondents report to use Internet and websites (UK and France). Other state they have a list of specialized lawyers and refer clients to them (Romania, Latvia, Germany). There are also ISS respondents who ask their ISS colleagues in the other country (Germany) for specialized lawyers or work with particular lawyers with whom they have worked together (Czech Republic). The question regarding judges who refer families to mediation in cross-border disputes also receives various replies. For instance, in the UK the Children Act 2014 stipulates “before making a relevant family application [to Court], a person must attend a family mediation information and assessment meeting.” This means that the potential parties are referred to mediation prior to the start of the procedure / application. In Latvia this is not a common practice whereas in Romania they do not have information in this regard. In Germany, this depends on the judge in practice. Some judges refer to mediation. However majority of judges would at least suggest counseling services, which offer different methods what may include mediation. Normally this would happen in the first oral hearing, but can be also at other stages. In Bulgaria the practice shows that judges do not have at their

disposal a list of cross-border family mediators and for that reason they do not refer to cross-border mediation. In France, judges can only suggest the mediation but they can't force the parties and it is proposed only in the beginning of the procedure. ISS respondents report to face many challenges in cross-border family mediation cases: difficulties to convince families to choose the variety of the alternative dispute resolution ways to resolve their problem; the skills and the knowledge of the cross-border family mediators that should be developed and integrated into the specific training for international mediation; parties are not usually interested; very often only one and not both parents are open to mediation; if both parents are interested it is very difficult to organize cross-border mediation either via internet or with high expenses at one place; how to make sure that the result is valid in both countries and to reach this in a relatively short timeframe especially in abduction cases; culture and the mentality of people to go to courts; communication and coordination are difficult; fees are also an issue.

- *Children's rights and child participation in cross-border family mediation*

  All ISS respondents report that children can be involved in mediation depending on the case and provide some examples in this direction. The Child inclusive family mediation programme provided by ISS-Czech Republic is strictly child inclusive from 5 or 6 years old children and above and it is child focused in the case of younger children. The Family Mediation Council's Code of Practice 2016 in the UK requires that all children and young people aged 10 and above should be offered the opportunity to have their voices heard directly during the mediation, if they wish.

- *Good practices*

  ISS respondent from the Czech Republic presents the child focused / child inclusive mediation programme at the Czech Central Authority (UMPOD) as a specific good practice related to international family mediation:

  Firstly there are pre-mediation conversations with each parent separately. The purpose is to orient parents, answer any questions they may have regarding the mediation and prepare them for the mediation (mediation coaching).

  Alongside to the pre-mediation conversation with parents there is a conversation of their child specialist with parents about their children followed by the conversation of the child specialist with the children beginning the age of 5 or 6 years. Children are informed about the court proceeding linked to the mediation and about mediation itself, it is explained to him/her who are the child specialist and what is their role (to support children during the mediation or to bring the voice of the children into the mediation so the parents can make decisions informed by the views and interests of the children), who are the mediators and what is their role, what can parents do during the mediation and what general outcomes may be. The experience and feelings of the children about the current situation are discovered. In a case children start to speak about it, possible outcomes or suggestions regarding the future arrangements are discussed. Children are provided with a chance to be part of the mediation in person (accompanied by the child specialist) or by proxy via the presence of the child

specialist. In a case of by proxy involvement of the children child specialist continually informs children about the ongoing sessions and particular results.

Mediation itself is organized at least in two sessions (each 3 hours long). The first is focused on the legal and practical issues of the case. At the beginning of the mediation there is a lawyer of the Office providing the legal overview for the parents and orient them in terms of what the court or any other authority may need if the result of the mediation shall be approved by the court. The lawyer of the Office is then available for the consultation at any time during the mediation. Second mediation session is focused on the psychological and developmental issues of the children concerning current parental conflict. The children with child specialist or just child specialist alone are present at the mediation, helping the voice of the child to be heard and helping the parents to be focused on it.

If required there are several more mediation sessions available (there is no strict limit regarding maximum number of sessions).

Mediation is provided in Czech, English and German language.

10. PUBLIC DOCUMENTS

Although 2/3 of the ISS participants provided responses regarding this section, very little problems can be analyzed in terms of the practical application of the EU Regulation 2016/1161 due to the fact the ISS network has limited experience in this respect.

10.1. MAIN FINDINGS

Most of the ISS participants report the EU Regulation 2016/1161 is still not very known as it is still very new.

While some of the respondents provide a list of the authorities in their countries that are empowered by the national law to establish certified copies, the others simply generalize that there are such authorities.

All respondents report that official translation of public documents can be obtained only from sworn interpreters and authorized translation offices. One respondent informs that there is a list of authorized interpreters at the courts of justice whereas another one clarifies that there is no national list as the sworn interpreters are locally registered in its country.

With respect to the administrative cooperation all respondents point out the central authorities chosen by their country for the Regulation's implementation but most of them inform they do not enough experience to comment other details in this matter.

Half of the ISS participants indicate they are fairly informed about the content of the regulation and in this respect they expect practical information available on the e-justice portal or on the websites of their national authorities.