

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

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Petitions

**Cross-border exercise of
visiting rights**

NOTE



DIRECTORATE-GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C:
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS
LEGAL AND PARLIAMENTARY AFFAIRS

Cross-border exercise of visiting rights

NOTE

Summary

The right of access is a key aspect of the basic right of contact between parents and children. The inadequacy, in many cases, of relevant means of enforcement throws up major problems with regard to cross-border rights of access in particular. Multilateral conventions are concerned primarily with the recognition and efficient implementation of decisions by national courts. The EU considers that it needs to enact its own legislation in the realm of family and succession law, as elsewhere: legislation which, in its field of application, will supersede the multilateral conventions.

As well as being concerned with the recognition of decisions, this legislation should place more emphasis on the establishment of international institutions and machinery to assist in negotiating and making arrangements for cross-border visiting rights.

This note was commissioned by the European Parliament's Committee on Legal Affairs.

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LANGUAGE VERSIONS

Original: DE

Translations: BG, CS, DA, EL, EN, ES, ET, FI, FR, HU, IT, LT, LV, MT, NL, PL, PT, RO, SK, SL, SV

ABOUT THE PUBLISHER

To contact the Policy Department or subscribe to its monthly newsletter, please write to: poldep-citizens@europarl.europa.eu

Manuscript completed October 2010

© European Parliament, Brussels 2010

This document is also available on the Internet at:

<http://www.europarl.europa.eu/studies>

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Abbreviations

AußStrG (Austrian) Code on Non-contentious Matters (*Ausserstreitgesetz*)

BGB German Civil Code (*Bürgerliches Gesetzbuch*)

BVerfG German Federal Constitutional Court (*Bundesverfassungsgericht*)

ECRCC European convention on restoration of custody of children (full title: European convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children), of 20 May 1980, European Treaty Series No 105

HCICA Hague Convention on the civil aspects of international child abduction, of 25 October 1980, UN Treaty Series vol. 1343, No I-22514

iFamZ (Austrian) *Interdisziplinäre Zeitschrift für Familienrecht*

FamZ *Zeitschrift für Familienrecht*

IPRG German Federal Act on International Private Law of 15 June 1978, BGBl 1978/304 as amended by BGBl I 2004/58

LGZ Regional Civil Court (*Landesgericht für Zivilrechtssachen*) Vienna

HCPA Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants, UN Treaty Series, vol. 658, No I-9431

OGH Austrian Supreme Court (*Oberster Gerichtshof*)

'new Brussels II Regulation' Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters of parental responsibility, repealing Regulation (EC) No 1347/2000

Summary

The task of the courts in this field is to implement the fundamental right of contact between parents and children, enshrined in Article 8 of the European Convention on Human Rights. One aspect of this is the maintenance of contact between the child and one of his or her parents despite the fact that the other parent has moved to another Member State. In the European Union it is becoming increasingly apparent that different decisions on the applicable rules, under individual Member States' provisions on conflict of laws and choice of law, are creating legal uncertainty and complicating freedom of movement within the Union. For that reason, the EU considers that it needs to enact its own legislation in the realm of family and succession law, legislation which will take primacy over the relevant multilateral conventions among states. As well as being concerned with the recognition of decisions, the EU legislation should place more emphasis on the establishment of international institutions and machinery to assist in negotiating and making arrangements for cross-border visiting rights.

Legal sources

used to evaluate decisions on visiting rights (access decisions) include, in particular the following:

1) the 'new Brussels II Regulation'

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters of parental responsibility, repealing Regulation (EC) No 1347/2000;

2) ECRCC

European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children, of 20 May 1980;

3) HCICA

Hague Convention on the civil aspects of international child abduction, of 25 October 1980.

On the subject of visiting or access rights, with which this paper is concerned, the multilateral child abduction convention (HCICA) and the new Brussels II Regulation are particularly relevant.

The new Brussels II Regulation enjoys precedence of application between EU Member States and it is directly applicable in all of them, with the exception of Denmark – where it applies only to proceedings initiated after its entry into force.

The new Brussels II Regulation contains no rules of substantive law, and specifically no provisions on conflict of laws, but rather is primarily concerned with providing for standard rules on jurisdiction, recognition and enforcement in civil cases concerning the attribution, exercise, transfer and complete or partial withdrawal of parental responsibility (Article 1(1)(b) new Brussels II Regulation).

The right of access is one aspect of parental responsibility.

International jurisdiction:

The main problem in resolving international cases is that of determining at the outset whether the court before which a case is brought has international jurisdiction. The approach taken in the new Brussels II Regulation, of assigning jurisdiction to the courts of a child's habitual place of residence and providing, where a child moves lawfully to another Member State, for the courts of the former habitual place of residence to retain jurisdiction

during a three-month period following the move, is designed to ensure that the court already dealing with the case should continue to be responsible for it.

The intention is to afford a parent granted visiting rights the possibility of applying to the court already familiar with the case – which is generally also the most convenient court for the parent concerned – to have the terms of the decision on such rights amended or adjusted to reflect the child's and the parents' new circumstances.

In cases where a child is unlawfully removed to, or kept in, another Member State, the courts of the previous habitual place of residence retain jurisdiction for a full year (Articles 9-15 of the new Brussels II Regulation).

Automatic recognition and enforcement of decisions on access:

Decisions on access are afforded a high degree of continuing effectiveness through the provision that where such a decision is taken in one Member State, and provided it is certified in accordance with Article 41(1) (and Annex III), it becomes immediately enforceable, without need for a declaration of enforceability and without its recognition being open to challenge.

The new Brussels II Regulation has thus created a 'European visiting right', in advance of the introduction of a European right of enforcement. It applies provided that the decision in question is enforceable in the Member State in which it was originally delivered and that the certification confirms its enforceability as well as compliance with certain basic procedural requirements, namely that:

1. all the persons concerned have had the opportunity to be heard;
2. the child has had the opportunity to be heard, unless this appears inappropriate having regard to his or her age or degree of maturity;
3. in the case of a judgment given in default, the defaulting party was served with the document instituting the proceedings or indicated that he or she accepted the decision (Articles 40 and 41, new Brussels II Regulation).

Abolition of the requirement for an exequatur procedure has the effect of precluding objections to enforcement under Article 23 of the new Brussels II Regulation. The need to confirm that decisions comply with the 'public policy' of the state in which enforcement is sought is thus entirely removed.

Enforcement procedures are nonetheless subject to the law of the state in which enforcement is sought. This is the last stage at which an objection on grounds of non-compliance with public policy may be effective, if the enforcement sought violates basic rights which that state is required to observe.

Provisions on means of enforcement differ from one Member State to another. In many countries, including Austria, there is no possibility of having a child removed from one of its parents if visiting rights are denied. Member States' rules on whether parents should be required to visit their children also differ. For example, in Germany, unlike Austria (see AuBStrG, Article 108), the right of access is framed so as to entail an obligation on the parent's part (BGB, Article 1684(1)).

The right of access and child abduction:

Article 21 HCICA complements the new Brussels II Regulation by providing for cooperation between the central authorities of the contracting states in assisting with applications to make arrangements for organising or securing the effective exercise of rights of access. Article 21(2) HCICA is primarily concerned with guaranteeing rights of access in such a way as to ensure that they may be exercised without jeopardising custody rights.

Visiting rights are indispensable to the maintenance of contact in cases of child abduction; during proceedings to secure a child's return, visiting arrangements should therefore be made for the parent left behind, in order to prevent estrangement. Temporary visiting

rights, granted as a provisional measure, serve to maintain the relationship and the bond between parent and child.

Corresponding provisions should also be made for financially supporting parents on low incomes, so that high travel costs and, possibly, hotel bills do not pose an insuperable obstacle to the exercise of visiting rights: this is something that states could provide for from their domestic budgets for legal assistance.

In many cases, the negotiation of visiting arrangements could entail recourse to international mediation. For example, the fear of a counter-abduction may be assuaged by an arrangement for accompanied visiting in a neutral location.

There is a provision on jurisdiction in respect of provisional measures (provisional visiting rights to prevent the breakdown of contact) in Article 20 of the new Brussels II Regulation.

In addition, after the child's return, a rapid new decision on amended access rights may be required so that contact can be maintained between the child and the parent responsible for the abduction. The substance of the new arrangement should be worked out or established in advance of the child's return.

In many cases it will be necessary, too, to re-establish a right of custody or joint custody for the parent responsible for the abduction, with arrangements to eliminate the risk of a fresh abduction.

Even in cases where the child's return is refused, a right of access needs to be established so as to prevent the breakdown of contact with the parent left behind.

In such cases, jurisdiction rests with the courts of the Member State to which the application in respect of access rights was originally made.

This is another scenario in which arrangements for supervised contact may be useful in order to prevent problems of counter-abduction.

Organisation and implementation of the right of access:

The way in which the right of access is organised and implemented is of prime importance in the case of international relationships because of the physical distances and the associated difficulties involved.

Successful implementation hinges on international cooperation between the authorities of the different countries and on the increased use of international mediation bodies to work out appropriate arrangements.

However, the financial burden on parents exercising international access rights also needs to be taken into consideration, and specific provision ought to be made for state support to be available in such cases.

It is to be hoped that the smooth implementation of cross-border access rights will be facilitated through the increasing use of modern means of communication.

1. Legal sources

The right of access is a fundamental right inherent in the parent-child relationship and is one of the universally recognisable human rights protected under Article 8 of the European Convention on Human Rights.

The task of the courts is to grant and enforce this fundamental right, one aspect of which is the maintenance of contact between the child and one of his or her parents despite the fact that the other parent has moved to a different Member State.

International private law rules on conflict of laws and choice of law determine the law to be applied in cases that have an international dimension.

The main practical problems for international private law lie not, however, in the application of the conflict-of-laws rules as such, but rather in the application of foreign law

in court proceedings, and further discussion is therefore needed on possible approaches to a solution based either on promoting reference to the law of the child's place of residence or on using modern technology to facilitate the identification and necessary interpretation of the foreign law that is to be applied.

National law will be applicable only insofar as it is not superseded for reasons of speciality by international law or for reasons of precedence by EU law.

International agreements obviate the problem of cases being referred back or referred on to third countries. Family law, in particular, is a field in which many international-private-law issues are provided for in international agreements.

Multilateral conventions are in place inter alia in respect of maintenanceⁱ, child abduction (HCICA)ⁱⁱ, measures for the protection of minors (HCPA)ⁱⁱⁱ and vulnerable adults^{iv} and adoption^v.

EU law: The EU has created an Area of Freedom, Security and Justice, which can function only if there is basic confidence in the courts of other Member States, and which is premised – at least in principle – on decisions delivered in one Member State being recognised and enforceable in all the others. However, these rules are concerned with much more than indirect jurisdiction, and they lay down specific provisions (through the principle of precedence) on the jurisdiction applicable. With regard to legal sources, there is currently what might be seen as a major fault line running through family law, as maintenance proceedings are subject to the provisions of the 'Brussels I' Regulation, whereas matters of divorce and parental responsibility (including custody and visiting rights) are the subject of the new Brussels II Regulation^{vi}.

Of particular importance in relation to visiting rights – the issue that concerns us here – are:

1. the multilateral Convention on Child Abduction (HCICA) and
2. the new Brussels II Regulation, i.e. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

The new Brussels II Regulation enjoys precedence of application between EU Member States and it is directly applicable in all of them, with the exception of Denmark – where it applies only to proceedings initiated after its entry into force.

The new Brussels II Regulation contains no rules of substantive law, and specifically no provisions on conflict of laws, but rather is primarily concerned with providing for standard rules on jurisdiction, recognition and enforcement in civil cases concerning the attribution, exercise, transfer and complete or partial withdrawal of parental responsibility (Article 1(1)(b) new Brussels II Regulation).

The right of access is one aspect of parental responsibility^{vii}.

2. Direct jurisdiction (Articles 8-15 new Brussels II Regulation)

The basic principle (laid down in Article 8) is that jurisdiction should rest with the courts of the child's habitual place of residence.

Where a child moves lawfully to another Member State (Article 9) the courts of the former habitual place of residence retain jurisdiction during a three-month period following the move. The approach taken by the new Brussels II Regulation in this respect is designed to ensure that the court already dealing with the case should continue to be responsible for it.

The intention is to afford a parent granted visiting rights the possibility of applying to the court already familiar with the case – which is generally also the most convenient court for the parent concerned – to have the terms of the decision on such rights amended or adjusted to reflect the child's and the parents' new circumstances.

In cases where a child is unlawfully removed to, or kept in, another Member State, the courts of the previous habitual place of residence retain jurisdiction for a full year (Articles 9-15, new Brussels II Regulation).

3. Automatic recognition and enforcement (Articles 40 and 41, new Brussels II Regulation)

The continuing effectiveness of decisions on access is ensured through the provision that where such a decision is taken in one Member State, and provided it is certified in accordance with Article 41(1) (see Annex III), it shall be immediately enforceable, without need for a declaration of enforceability and without its recognition being open to challenge.

In advance of the introduction of a European right of enforcement, the new Brussels II Regulation has thus created a 'European visiting right', abolishing the requirement for an exequatur procedure and removing the possibility of objections to the recognition of a decision (which might have been regarded as a pre-condition for its enforceability).

The right is conditional on presentation of a certificate in accordance with Article 41 of the new Brussels II Regulation, proving that the decision on access rights taken in one Member State is immediately enforceable (see Annex III)^{viii}.

It must be certified that the rights of all those entitled to be heard in the case have been observed (Article 41(2) and Article 42), i.e. that:

- all the persons concerned have had the opportunity to be heard;
- the child has had the opportunity to be heard, unless this appears inappropriate having regard to his or her age or degree of maturity.

In the case of judgments given in default, it must be established either that the person defaulting was served with the document which instituted the proceedings in sufficient time and in such a way as to enable that person to arrange for his or her defence, or that he or she accepted the decision unequivocally.

Failure to observe these procedural safeguards nullifies the direct recognition and enforceability of the decisions concerned – thus making an exequatur procedure necessary.

4. Determining how access rights will work (Article 48, new Brussels II Regulation)

Article 48 establishes the authority of the courts in the state where the decision is to be enforced to determine practical arrangements for the exercise of access rights, including in cases where the original judgment contains insufficient information about such arrangements, or where they need to be adjusted to reflect new circumstances. This provision applies provided that the essential elements of the original judgment are respected.

It does not entail the courts in the state of enforcement acquiring (international) jurisdiction.

The practical arrangements thus made cease to apply pursuant to a later judgment by the courts of the Member State having jurisdiction as to the substance of the matter.

5. Problems in enforcing decisions on access rights

Enforcement procedures are subject to the law of the state in which enforcement is sought.

This is the last stage at which an objection on grounds of non-compliance with public policy may be effective.^{ix}

By way of example of the issues arising at this stage, in many countries, including Austria, the removal of a child from one of its parents if visiting rights are thwarted is not an option. Member States' rules on whether parents should be required to visit their children also differ. For example, in Germany, unlike Austria (see AußStrG, Article 108), the right of access is framed so as to entail an obligation on the parent's part (BGB, Article 1684(1)).

Questions therefore arise as to whether there is an additional obligation to provide for stricter means of enforcement in cases with an international dimension and whether the insufficiency of a Member State's means of enforcement could be challenged on grounds of unconstitutionality^x.

6. Access rights in cases of child abduction

Making arrangements for and smoothly implementing access rights in cases where children have been abducted not only poses organisational problems owing to the physical distances involved, but also necessitates safety measures to prevent the risk of counter-abduction. The process of establishing and adjusting visiting rights in such cases could be facilitated through international mediation.

However, the financial burden on parents exercising international access rights also needs to be taken into consideration, and specific provision ought to be made for state support to be available in such cases. It is to be hoped that the smooth implementation of cross-border access rights will be facilitated through the increasing use of modern means of communication.

6.1. Delimiting the scope of Article 21 HCICA

Article 21 HCICA provides for cooperation between the central authorities of the contracting states in assisting with applications to make arrangements for organising or securing the effective exercise of rights of access.

Article 21(2) HCICA is concerned with securing rights of access without jeopardising custody rights.

Safety measures that might be envisaged in this regard include, for example, the removal of the child's name from the passport of the parent who has visiting rights or a requirement, in cases of cross-border visiting, that the address of the premises where the visiting right is exercised be communicated to the central authorities.

There is no provision in the new Brussels II Regulation for central authorities to provide assistance with enforcement proceedings.

6.2. Enabling a child to be visited by the parent left behind, pending a court decision on the child's return

The new Brussels II Regulation requires courts hearing applications in cases of child abduction to use the most expeditious procedures available in national law and to issue their judgment no later than six weeks after the application is lodged (Article 11(3)).

In most countries, however, there are provisions in national law under which return orders can be challenged, thus impeding the enforcement of decisions and making it difficult for courts to meet the six-week deadline.

Certain measures may be taken while decisions are pending, namely:

- the breakdown of parent-child contact may be prevented through the establishment of temporary visiting rights;
- financial support may be provided from a budget for travel costs;
- international mediation may be used;

- accompanied visiting may be permitted at specific (neutral) locations;
- the terms of enforceable decisions may be adjusted in accordance with Article 48;
- the provision, in Article 20 of the new Brussels II Regulation, for jurisdiction in respect of provisional measures may be used.

Article 20 does not include a provision establishing jurisdiction. Any provisional measures taken pursuant to it will therefore cease to apply when the court having jurisdiction has taken the measures it considers appropriate.^{xi}

6.3. Maintaining contact, following a child's return, between the child and the parent responsible for the abduction

Following the return of an abducted child, his or her contact with the parent responsible for the abduction remains subject to the decisions on access that applied before the abduction.

If the terms of such decisions have been changed because of the abduction, new decisions on amended access rights will have to be taken swiftly. The proposed new arrangements should be communicated to those involved and legally established in advance of the child's return.

Where a right of custody or joint custody has to be re-established for the parent responsible for the abduction, measures must be taken to eliminate the risk of a fresh abduction^{xii}.

6.4. Visiting rights for the parent left behind following refusal of a child's return

Following refusal of a child's return, the courts of the Member State which originally had jurisdiction in the case are responsible for ruling on the substance of the matter and thus on rights of custody and access. In the course of the proceedings it may become necessary to take evidence via a request for legal assistance (so that the child and the parent responsible for the abduction may be given a hearing)^{xiii}.

Again in these circumstances, supervised contact may be necessary to prevent a counter-abduction.

Annex

Austrian decisions on the new Brussels II Regulation

OGH 16.03.2006, 2 Ob 272/05x

OGH 29.08.2007, 7 Ob 153/07m

The new Brussels II Regulation came into force on 1 August 2004, as provided for in Article 72(1), and has been fully applicable since 1 March 2005, Articles 67-70 having been applicable since the date of entry into force. Article 8(1) provides that the courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

OGH 23.10.2007, 3 Ob 213/07f

Refusal of return under Article 13(1)b HCICA as a decision in an individual case, not subject to review by the OGH in the absence of a manifest error of interpretation.

The premise underpinning Article 9 of the new Brussels II Regulation is the existence of a judgment on access rights issued by the courts of the Member State of the child's former habitual residence, rather than the fact of proceedings pending at the time of the change of residence.

OGH 28.10.2009, 7 Ob 171/09m

Only the court before which the case was first brought can review the question of jurisdiction; whether its jurisdiction is affirmed on the basis of the new Brussels II Regulation or (appropriately or otherwise) on the basis of *lege fori*, is, in the eyes of the second court applied to, immaterial, and not amenable to correction by that court. The second court applied to has, in principle, no discretion in the matter.

OGH 01.09.2010, 6 Ob 148/10y

The right of personal contact between a minor child and a parent not living in the same household, as provided for in Article 148(1), ABGB, is a basic right inherent to the parent-child relationship and one of the universally recognisable human rights protected under Article 8 of the European Convention on Human Rights

Decision of the German Federal Constitutional Court on the parental duty of contact with a child

BVerfG, 1 BvR 1620/04, judgment of 1 April 2008

Unlike the corresponding Austrian provisions (Article 108 AußStrG), German law defines access rights (visiting rights) in such a way as to include a parental duty of contact with the child (Article 1684(1) BGB). Moreover, according to most of the case law, the duty of contact may not only be imposed but may also be enforced by means of fines. In a recent judgment (1 BvR 1620/04), the German Federal Constitutional Court ruled that the Constitution required a restrictive interpretation of the law here because its enforcement entailed a violation of the privacy of the parent unwilling to engage in contact. While it was constitutionally permissible to impose a duty of contact where it was in the child's best interests to do so, the use of coercive measures to enforce it was ruled out, unless in an individual case there were sufficient indications that, exceptionally, this too would serve the interests of the child.

***Specific cases*^{xiv}**

Case 1

The father is English and the mother, who lived in England from the age of five, is Dutch. The couple met in London in 1995 and married there in 1998. They have two children, aged three and five. In May 2005 they divorced and the English divorce court granted custody of both children to the mother, with the proviso that they have sufficient contact with their father. The mother was also permitted to take the children with her to the Netherlands to undertake a year-long course of study there. At this stage the mother did not know whether she wished to remain in the Netherlands or not. The course started in October 2005.

Up to that point the father had had contact with his children every second weekend and sometimes also saw them during the week. This arrangement seemed to work well so the parents decided to keep up the weekend contact even after the mother's move to the Netherlands, which took place in September 2005. After one weekend, however, the mother refused the father any further contact.

At the beginning of November 2005 the father applied to the English courts for a change in the terms of the access arrangement (and for access to be fixed on specific dates). The mother made a counter-application to a court in the Netherlands for the access right to be terminated. Which court had jurisdiction?

The Brussels II Regulation does not provide a definition of the concept of habitual residence, which is the key to determining jurisdiction. In no case may it be interpreted under national law, the Regulation being, with regard to interpretation, an autonomous legal text, with the case law of the European Court of Human Rights as a fallback. As a rule, the fact of a move cannot, in itself, be conclusive in determining habitual residence – that concept requiring, rather, the existence of an intention to remain in a specific place, irrespective of the actual duration of residence there, including for purposes of study.

Case 2

The case of an Austrian mother and an Italian father, who had previously lived together in Italy and, by law, thus exercised joint custody of their children, came before the Austrian courts after the mother took a unilateral decision to move to Austria and the father applied, under the HCICA, for the children to be returned to Italy, an application which was eventually granted. Before the implementation of the return order, the children were 'counter-abducted' to Italy while the father was exercising visiting rights.

The case highlights the need for organisational arrangements to be put in place when visiting rights are being granted and implemented, with a view to the risk of child abduction.

Footnotes

ⁱ IPR: Convention of 24 October 1956 on the law applicable to maintenance obligations towards children, UN Treaty Series Vol. 510, No I-7412; Convention of 2 October 1973 on the law applicable to maintenance obligations, UN Treaty Series Vol. 1056, No I-15944, (not ratified by Austria). Recognition and enforcement: Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, UN Treaty Series Vol. 539, No I-7822; Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations, UN Treaty Series Vol. 1021, No I-15001 (not ratified by Austria).

ⁱⁱ Convention of 25 October 1980 on the civil aspects of international child abduction, UN Treaty Series Vol. 1343, No I-22514

ⁱⁱⁱ Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants, UN Treaty Series, Vol. 658, No I-9431; Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children (not ratified by Austria).

^{iv} Convention of 13 January 2000 on the international protection of adults, UN Treaty Series registration No I-46241.

^v Convention of 29 May 1993 on protection of children and cooperation in respect of intercountry adoption, UN Treaty Series registration No I-31922.

^{vi} Dr Robert Fucik, lecture notes, 'Internationales Familienrecht I', Head of Department 1C, Federal Ministry of Justice.

^{vii} Maria Kaller MA, 'Europaweite Durchsetzung von Obsorge und Besuchsrecht, Ein Überblick über die neue new Brussels II Regulation', *FamZ* 05/2006, p. 37.

^{viii} Certification in accordance with Article 41(1), concerning decisions on access rights, and Annex III of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L338/24 of 23 December 2003.

^{ix} Dr Neumayr/ Dr Thoma-Twaroch: 'Die elterliche Verantwortung im europäischen Zivilverfahrensrecht – Brüssel II und Unterhalt – ERA Tagung in Innsbruck, May 2006', *iFamZ* 2/2006, p. 112.

^x Point for discussion at the 27th meeting of the contact points, European Judicial Network in Civil and Commercial Matters (Council Decision 2001/470/EC of 28 May 2001) 8 June 2009, Prague.

^{xi} Practice Guide for the application of the new Brussels II Regulation:
http://ec.europa.eu/civiljustice/parental_resp/parental_resp_ec_vdm_en.pdf.

^{xii} In the United Kingdom, for example, there is a growing trend, when parents separate, towards the granting of joint custody under the residence order system, placing children in the primary care of the mother and giving the father visiting (secondary care) rights.

^{xiii} Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (the Evidence Regulation).

^{xiv} Nigel Lowe, 'Gewöhnlicher Aufenthalt, internationale Kindesentführung und VOBIa', *FamZ* 09/2006, pp 181 ff.

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**

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