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THE RIGHT OF ACCESS TO CHILDREN IN EUROPE

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This document contains a summary of replies to the questionnaire on access prepared by the Committee of experts on family law (CJ-FA). The summary has been prepared on the basis of the replies to the questionnaire on access received from the following 29 States: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom. It also includes information provided by the International Social Service.

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I. INTRODUCTION

The Third European Conference on family law on the subject "Family law in the future" (Cadiz, Spain, 20-22 April 1995) noted the importance of the question of access to children, in particular transfrontier access, and recommended the Council of Europe to give further consideration to this matter, in order to improve the machinery for international co-operation especially as regards the establishment of safeguards for the return of children after a period of access.

Following this proposal, the Committee of experts on family law (CJ-FA), under the authority of the European Committee on legal co-operation (CDCJ), was instructed to deal with the question of the right of access to children and to improve international co-operation and machinery in cases of transfrontier access and custody.

To carry out its terms reference, the CJ-FA decided to prepare a questionnaire on access to children in order to take full account in its work of the existing legislation and practice in this matter in the member States of the Council of Europe. This questionnaire was sent to member States of the Council of Europe in November 1995. Twenty nine member States have replied to the questionnaire. Some member States have revised their replies due to changes in their internal laws.

The CJ-FA also set up the Working Party on custody and access (CJ-FA-GT1) to deal specifically with these questions. This Working Party is currently preparing a draft Convention on contact (access) concerning children.

II. QUESTIONNAIRE ON ACCESS TO CHILDREN
PREPARED BY THE COMMITTEE OF EXPERTS ON FAMILY LAW (CJ-FA)
OF THE COUNCIL OF EUROPE

I. SUBSTANTIVE LAW ON ACCESS

1. Give the name of any legislation in your country regulating the law of access and summarise its contents.
2. Indicate the persons who may apply for access to the child and the required conditions:
 - .the parent with whom the child does not reside after a divorce
 - .the parent who does not have custody after the breakdown of cohabitation
 - .the parent of a child born out of wedlock
 - .parents who have been deprived of their parental responsibilities
 - .Grand-parents
 - .foster parents
 - .third parties (eg: relatives: a spouse of a parent, brother, sister, uncle, aunt or other persons)
3. Does the child
 - a. have a right of access? If so, who are the persons concerned and under what conditions?
 - b. have a right to oppose access? If so, under what conditions and with which consequences?
4. Do other persons or bodies have a right or the possibility to oppose access? If so, under what conditions?
5. Which body decides upon access and how access is to be exercised? Who is heard during this procedure? Is the order for access limited for a period of time (eg until the child reaches the age of 16), either by the order itself or ex lege?
6. Do parents have the possibility to make an agreement on access? If so, does such an agreement have to be approved by a court?

7. What provisions are normally contained in an order for access concerning the exercise of access:

- .at the child's habitual residence?
- .at the home of the person exercising the access?
- .at a third party's home or other premises?
- .in an institution?
- .abroad?
- .other (please specify)?

8. What is the role of eg youth authorities or welfare officers, if any:

- .during the proceedings concerning the application for access?
- .during the exercise of access?

9. Once an order for access has been made, what are the remedies in the following circumstances:

- .if the child opposes access?
- .if the parent or any other person with whom the child resides opposes access?
- .if the person exercising access does not respect the conditions for access (eg time limits) indicated in the order for access?
- .if one or both parents wish to alter the arrangements contained in the order for access?

10. What happens in practice if a parent does not exercise his/her right of access?

11. Is mediation used where problems arise concerning access and, if so, what is your experience in this field?

II. TRANSFRONTIER ACCESS

A. Normal case

12. Does your law contain provisions on transfrontier access? If not, could a court grant such access if transfrontier access is sought by the non-custodial parent?

13. Are preventive and other measures taken to ensure, as far as possible, compliance with the conditions contained in an order for access and in particular the return of the child after access? If so, by whom?

14. Who takes the decision concerning the conditions for transfrontier access and remedies in the case of the breach of such conditions? Is the decision taken

- .when access is granted?
- .when a period of access begins?
- .at the end of the period of access when the child has not been returned?
- .in the case of a breach of one of the other conditions of the access order?
- .other (please specify)?

15. What form can these preventive measures take:

- .provisions in the order for access (give examples)?
- .recognition of a foreign custody or access order?
- .supervision by a social worker/welfare authority during the period of access?
- .written undertakings ("affidavit") by the parents (consequences if the non-custodian parent does not comply with these undertakings)?
- .detailed information about the place where the access is to be exercised (address, telephone number)?
- .deposit of passports to prevent the non-custodian parent together with the child from leaving the country where the transfrontier access takes place?
- .bank and other guarantee ordered by the competent authority?
- .other (please specify)?

16. Would your authorities refrain from starting custody proceedings if the child, who habitually resides abroad, is on your territory only for access purposes?

17. Would your courts refrain from hearing custody proceedings if the child, who habitually resides abroad, is on your territory only for access purposes?

B. After an abduction

18. If the child is returned, does the person who has abducted the child still retain right of access after the return?

19. If so, are special guarantees requested before a new access period? Which ones? (See list under n° 15)

20. a) After the country to which the child has been removed rejects a request for the return of the child or if such country retains the child due to a lack of procedures for return, what steps may be taken:
.by the person who has custody?
.by the authorities of your country if the child is normally habitually resident in your country by virtue of a custody order?
- b) If the child is retained in your country for reasons given in paragraph a, what measures may the authorities in your country take?

C. Recognition in advance of a foreign custody order

21. Does your law contain provisions (eg for the registration of foreign orders) to enable foreign custody orders to be recognised in advance (ie before access is exercised)?
22. If so, what are the conditions for such a recognition if the child is not habitually resident in your country and the non-custodian parent has been given the possibility to have access to the child in your country?
23. Which is the competent authority for such a prior recognition?
24. What steps can be taken in your country to register an order abroad?

D. Cost of transfrontier access

25. According to your law or practice, who pays for the travelling expenses of the child when transfrontier access is exercised?
26. When transfrontier access is exercised, what happens if there is no money for the return of the child? Does the other parent have to pay? Is it possible to get financial help if neither parents are able to meet the costs of the child's return travelling expenses?

III. INTERNATIONAL CO-OPERATION

27. How would you characterise your experiences with the European Custody Convention with respect to the right of access and the exercise of access?
28. In your opinion should Article 3 paragraph 2 of the Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children [ETS 105] be extended by adding the possibility for requests for co-operation/assistance to be transmitted from the competent authorities of the child's habitual residence to the authorities of the country where access is to take place?
29. To which authority in the State in question should such requests be addressed?
30. What should be the content of such a request:
.for information in general about the measures available in the requested State to prevent a breach of the conditions for access?
.for information on how to organise transfrontier access in the individual case?

31. Could such requests be made in advance or only after a decision has been taken by the competent authority in the State of the child's habitual residence and after information about the beginning of the period of the exercise of transfrontier access has been given?
32. Should such machinery for co-operation be established (on an optional basis) if the competent authority in the State of the child's habitual residence feels the necessity for a request for assistance?
33. Should measures be available in all states for organising and securing the effective exercise of transfrontier access to children?
34. If so, to what extent?
35. How could a system of co-operation be organised if difficulties arise in connection with the exercise of access? (eg if the child objects to visiting his/her parent abroad)? Should it be possible to transmit specific requests- through the channels of the central authorities concerned- for assistance (hearing of the non-custodian parent, asking for social reports)?
36. Has mediation been used in cases where problems have arisen concerning transfrontier access and, if so, what is your experience in this field?
37. Give details of any cases where international co-operation in the field of access works well (eg under any bilateral agreements).
38. Any other information (eg. any other steps which are taken to ensure that access can take place when the parent with custody moves or proposes to move far away from the other parent to another region, country or continent).

III. SUMMARY OF THE REPLIES TO THE QUESTIONNAIRE ON ACCESS

SUBSTANTIVE LAW

1. The outlook adopted in national legislation and case-law: different points of view on the right of access

In some States the right of access is considered from the parents' point of view and is therefore exercised in the form of a parental right. In others the right of access is recognised as being additionally or solely a right of the child, and this principle is put into practice by permitting children to institute legal proceedings under certain conditions (as is the case in the Netherlands and the United Kingdom) and/or by making the child's interests the principal consideration when regulating access (Finland, Sweden). Most States have nevertheless opted for a half-way solution, in that the parents enjoy a right of access in so far as it is in the child's interest. The balance sought in this way results *inter alia* in a parental duty to visit the child (Italy, Hungary), a conditional right of access and/or, in the majority of cases, more or less extensive or systematic consideration of the child's feelings and any objections the child may have.

According to the International Social Service, the increasing importance placed on children's relationships with their parents, in both the psychological and the legal sense, has led on an international level to adoption of the child's perspective and to the view that the child's interests come before all else, or are at least as important as the parents' rights. This trend is reflected in the United Nations Convention on the Rights of the Child of 1989, which regards access as a fundamental right of the child, making it possible to safeguard children's relationships and contacts with parents from whom they live apart.

2. Those enjoying a right of access: the nuclear family, the extended family, third parties

The group of persons whose right of access may be recognised varies from one country to another. In all countries parents enjoy a right of access no matter what the relationship of descent (except in cases of abuse or where there is a potentially serious risk of harm to the child), in principle even where they have been deprived of parental responsibility and/or the child has been placed in care. However, close relations are not always entitled to access (this applies for instance in Cyprus, Denmark, Finland, Norway (except as an alternative in the event of the death of the father and/or mother) and Sweden (unless the Welfare Committee requests access on their behalf)). Conversely, some countries even allow the right to be conferred on certain third parties who are close to the child (examples are Liechtenstein, Luxembourg, Malta, the Netherlands, Spain, Switzerland and the United Kingdom).

On the basis of its experience in welfare matters, the International Social Service maintains that a child benefits in his or her psychological development from an open, positive relationship with persons who count for him or her or with family members in the widest sense.

3. The child's role: party, participant or active/passive object of access proceedings and subsequent arrangements

Whether or not a child has a right of access depends on the country. This difference is normally indicative of the country's position when regulating access, ie whether the parent's right or the child's interest prevails. But the difference in outlook does not necessarily have any practical consequences since in virtually all countries children are not themselves entitled to assert a right of access or challenge an access decision in the courts. However, a small number of countries allow a child to be a party to proceedings: in the Netherlands children who have reached the age of twelve are allowed to bring legal proceedings themselves; in the United Kingdom they can do so at any age, and possibly be awarded legal aid, if the High Court grants them leave in view of their maturity; in Luxembourg and Ireland the possibility is envisaged, subject to certain conditions, but solely where a child is under special protection; in Germany a child, in appropriate cases represented by a guardian ad litem, can request the Family Court to start proceedings for contact with a parent. The child's opinion is, however, taken into consideration in almost all countries. Depending on the country, children may be interviewed by the body making a decision either at that body's own discretion or as a mandatory measure, in person or through the intermediary of social services, in the course of the proceedings and/or after their conclusion, and at all events subject to the child's age and/or maturity. In particular, in practically every country forced execution of an access decision is impossible where a child is opposed to access (subject to age, maturity and/or the genuineness of the child's refusal in some cases).

4. Opposition to access by persons other than the child: access as a matter for the parents and/or a question of public interest

In some countries there is no means of challenging an access decision, while in others this possibility is open solely to the parents, whether they are entitled to do so whatever the circumstances or only on certain grounds (abuse of the right of access, risk of unacceptable interference with the child's relationship with the parent awarded custody). Other countries allow action by third parties representing the public interest, such as supervisory authorities, welfare organisation officials and/or State Counsel, where the child is subject to protection measures and/or has been placed in care outside the family home (in Denmark the Municipal Council or the Welfare Committee may in such circumstances take measures to control visits or suspend them temporarily; in Finland the social services are empowered to decide on what conditions parents have the right to remain in contact with a child) or on a more general level where the child's interest so requires (Cyprus, Italy, Liechtenstein, Malta, the Netherlands, Spain, Sweden). Lastly, a small number of countries permit action by other third parties (in Liechtenstein foster parents are given a hearing; in Malta anyone who can prove his or her interest in the child is entitled to oppose a decision; in Switzerland anyone who is aware of a situation that threatens the child's wellbeing may inform the supervisory authorities; in the United Kingdom anyone may apply to the court to be named as a party to contact proceedings).

5-6 Bodies deciding on access, persons heard during the proceedings, period for which the decision is valid: do the parents have a deciding role or do outside bodies (courts, supervisory authorities) predominate?

In all countries parents are able to make their own access arrangements. Nevertheless, the validity and scope for enforcement of such arrangements varies. In four countries (Italy, Malta, Spain, Turkey) to be valid an agreement must always be approved by a court or another

authority. In some other countries approval by an authority is not mandatory but gives full legal effect to an agreement (for instance, in Austria an agreement is not in itself legally binding; in Denmark the sheriff's assistance in having a child handed over can be obtained only where the agreement has been entered in the judgments register; in Finland arrangements approved by the Welfare Board are valid and enforceable in the same way as court decisions; in Liechtenstein agreements are enforceable only once they have been approved by a Guardianship Court; in Switzerland an agreement may be altered at any time by whoever has parental authority where the child's interest so requires). Elsewhere agreements that have not been officially approved are valid only in the alternative, where an outside authority is not required to make a decision (approval of arrangements made in connection with a procedure of divorce by mutual consent must be sought in Bulgaria, Greece and Hungary; in Switzerland there is a more general requirement of approval in all cases where access has to be decided by the authorities). Lastly, the authorities may become involved either because the parents request their approval in practice (Cyprus) or because a dispute and/or the child's interest so requires (Germany, the Netherlands, the United Kingdom).

In an important number of countries the sole external decision-making body, which intervenes either automatically or only where the parents have failed to reach an agreement, is the civil court in all circumstances. In the other countries the court may have partial jurisdiction (in Hungary it has jurisdiction in the event of divorce or placement proceedings; in Switzerland the court has jurisdiction in cases of divorce or where measures are being taken to protect the marriage, but the supervisory authority is competent in other cases; in Ireland the Health Board has jurisdiction if the child has been placed under its protection). The courts may also have jurisdiction in parallel with another authority (in Norway the County Governor is also competent if the parents so wish). Lastly, the courts may have jurisdiction only to deal with an appeal (in Denmark an appeal lies to the Private Law Department of the Ministry of Justice against decisions by the administrative authorities; in Ireland an appeal lies against decisions by the Health Board; and in Switzerland the supervisory authorities' decisions may be appealed against).

Those seeking access are heard in the course of the procedure, and in most countries the child's opinion is also sought although the arrangements vary: hearing of the child may be obligatory or optional, take place as a matter of course or at the child's request, be automatic or subject to the child's age and/or maturity and/or the absence of any risk of harm to the child, and the child may be heard in person or through the intermediary of the social services or a representative. Less frequently, any third parties who have a close relationship with the child, experts and/or the social services or other child welfare authorities may also be heard (in Finland, Germany, Hungary, Ireland (the Health Board), Liechtenstein, Sweden and the United Kingdom (the local authority)).

In most countries a decision is no longer valid once the child comes of age or marries. Apart from this, a decision may or may not be taken for a limited period depending on the country, but this distinction has few practical consequences: in countries which allow a decision's effect to be limited in time the time-limit is not determined by law but dictated by the circumstances of the case; in countries where a provisional decision seems to be ruled out it is in any case possible to vary the decision if the situation and/or the child's interest requires.

7. Provisions included in access decisions: adaptation to the specific circumstances

It is not possible to give a general indication of the content of access decisions since in all countries their provisions are adapted to the specific circumstances. On the other hand, it can be noted that the frame of a decision is more or less flexible depending on the country. Although in some countries it is mandatory that the decision specify the access arrangements in greater or lesser detail (this is the case in Bulgaria, Cyprus and Hungary, and in Germany there is a constant line of precedents on the clarity of decisions, which must give full details of how access is to take place), in other countries the degree of precision is left to the discretion of the decision-making authority (in Denmark the place where visits take place is normally not specified; in Liechtenstein the court will determine how the right is to be exercised only if there is a disagreement between the parents; in Norway the person concerned is usually free to define how and where access takes place; in Sweden a decision normally only lays down the day(s) and time of visits; in Switzerland the usual practice is for the parent granted access to receive the child at home and then agree with him or her on where they will stay). The most frequent arrangement seems to be for the child to visit the parent having access in that parent's home but other possibilities (the home of the parent given custody, an institution, etc.) can always be envisaged.

The International Social Service considers that when implementing international access decisions a flexible arrangement must be found, which can be adapted to any change of circumstances. In particular, the length of the stay must be sufficiently long. It may sometimes be necessary to take control measures or provide for a child to be accompanied when visiting the home of a parent who does not have custody, so as to guard against any risk of the child's being subjected to physical or psychological duress.

8. The role of youth welfare authorities or services: active, secondary or non-existent

In some countries the welfare authorities or services are either not expected to become involved (Greece and Turkey) or do so only exceptionally (Denmark). In the other countries they are involved in a number of ways, assuming either a single role or several, simultaneous roles: participation in proceedings (being heard by the court, interviewing the child, submitting observations and reports, and in Sweden filing applications for access on behalf of persons having a close relationship with the child), supervision of access, which may sometimes include being present during visits if the court has decided this shall be the case, the role of mediator and/or counsellor and helping parents in the course of proceedings or after their conclusion (in Germany, the Netherlands and the United Kingdom; in Switzerland the authorities may appoint a supervisor to monitor access in the most difficult cases).

9. Remedies against access decisions: a range of possibilities from cases where no appeal lies to legal remedies and solutions involving greater or lesser means of coercion

Where a child is opposed to access the solutions vary greatly depending on the country: in some countries the decision cannot be enforced (Sweden, Finland (if the child is over twelve or sufficiently mature) and Greece (where the child shows unyielding resistance), in others a visit may be imposed on the child where psychological counselling has taken place to no avail (Bulgaria), elsewhere the decision may be varied after psychologists have attempted to reason with the child (Hungary, the Netherlands, Cyprus) or children who have reached a certain age and/or are sufficiently mature may themselves challenge decisions in the courts (Liechtenstein, the Netherlands, the United Kingdom).

Both parents, the one having custody and the one granted access, always enjoy a right of appeal. Where a parent fails to abide by an earlier decision the courts dispose of a range of measures: the decision may be varied, often to the point where the right of access is withdrawn, an access order may be issued, criminal penalties may be imposed (fines, imprisonment), or the decision may in certain circumstances be executed by force or threat of force. Finland has an original system, whereby the official in charge of enforcing decisions may, at the request of the parent awarded custody, help that parent to recover the child or, at the request of the parent granted access, launch a mediation process with the parent having custody, failure of which may result in that parent's being fined. However, a bill presently before parliament provides for direct enforcement of access in some cases.

If a change in the arrangement is desired by either parent or by both, they may, depending on the country, reach a new agreement (approval of which is mandatory in some countries) or apply for the court to revise the decision, an application which may be allowable subject to certain conditions such as a change of circumstances (Austria, Denmark, Germany, Greece, Sweden).

10. Failure to exercise the right of access does not carry a direct, automatic penalty

Failure to exercise the right of access does not have any direct, automatic consequence. In some countries it may nevertheless have repercussions ranging from variance of the decision - possibly with withdrawal of access - (examples are Denmark, Norway, Italy, Switzerland, Malta, where the parent in question must re-apply to the courts if the parent having custody subsequently refuses to allow access, and Germany, the Netherlands and the United Kingdom, where the child may bring legal proceedings) to possible deprivation of parental authority (Bulgaria) or even, in practice, the requirement that potential beneficiaries must apply to the authorities for the decision to be enforced (Turkey). In other countries the only solution is an out-of-court arrangement (action by the social services in Cyprus, voluntary recourse to mediation in Finland).

11. Mediation, an instrument used to differing degrees and in a wide variety of forms

Most countries seem to rely on a procedure similar to mediation but, except in the Nordic countries and Luxembourg, its use is not institutionalised and/or is rarely systematic. In countries where mediation is a common practice it does not appear to be mandatory, except in Norway (where conciliation must take place before any decision in connection with a divorce or separation procedure). A number of countries (Cyprus, Finland, Hungary, Germany, Luxembourg, the Netherlands, Spain) pointed out the role played by social workers in this sphere, but their activities seem to bear more resemblance to counselling than to formal mediation. It can be noted that use of mediation, whether institutionalised or not, will undoubtedly develop in future as a number of countries are currently engaged in mediation experiments and/or reforms (Austria and Germany in the first case, and the Netherlands, Switzerland and the United Kingdom in the second).

The International Social Service has emphasised that where access has to be afforded in a country other than the child's country of residence mediation has proved to be a very effective tool in separation or divorce proceedings. The parents' acceptance of advice from an institution or a locally based authority (ideally in the child's country of residence) helps them to understand the importance of access and to reach an agreement as to the practical arrangements.

TRANSFRONTIER ACCESS

A. Normal case

12. The existence of provisions on transfrontier access in national legislation and the possibilities for courts to grant such access even in the absence of relevant provisions

Among the States, which have replied to the Questionnaire, only Turkey mentioned the existence of specific provisions concerning transfrontier access. However, it appears that in practically all States courts may grant transfrontier access according to the general provisions on access, depending on the specific circumstances of the case and, namely, the best interests of the child. As to the procedural aspects of obtaining a decision on transfrontier access and its subsequent recognition and enforcement, reference was frequently made to the relevant provisions of the Custody Convention (Article 11) and of the Hague Convention on the Civil Aspects of International Child Abduction (Article 21).

13. Provisions and practice concerning preventive measures to ensure compliance with the conditions of the access order

Preventive and other measures to ensure the return of the child after a period of access and, as far as possible, compliance with the conditions set out in an access order can be taken in most States. From the answers received it can be understood that, when examining the possibility of transfrontier access, the competent judicial and administrative authorities very thoroughly consider the risk of a retention of the child at the end of the period of access abroad. In Ireland, the courts would probably only grant transfrontier access if they were assured that there was no risk at all of abduction or retention. In case of such a risk, access would be restricted to the territory of the State of the child's habitual residence where the access order was made (also in France and Italy). Other countries considered the fact that the State where transfrontier access was supposed to take place was a Party to the Custody Convention and/or the Hague Child Abduction Convention or other agreements concerning recognition and enforcement of foreign decisions as almost being a "preventive measure" in itself, ensuring the return of the child (eg. Denmark, Finland, the Netherlands, Slovenia). In Luxembourg, Norway, Poland and, apparently, Spain, no specific measures are available under private law apart from the possibility to fix conditions as set out under No. 14 below. The answers given by those States whose legal system provides for such measures vary from "In a normal case, no preventive measures at all will be taken" (eg. Denmark, France) to more or less detailed enumeration of measures taken regularly or occasionally in connection with transfrontier access.

14. The competent body for fixing conditions for transfrontier access and remedies in case of their breach as well as for ordering preventive measures

In most States, it is up to the court to fix at least some basic conditions for transfrontier access (such as time, place and duration), if not more, and remedies in case of their breach. This may be the court required by law to take a decision in connection with other proceedings (eg. the divorce court in Bulgaria and Luxembourg) or a court requested to rule specifically on custody and/or access. In some States, other courts or authorities, namely those competent for measures of social welfare, might act in this field as well, as this is the case in Switzerland, Norway and Denmark (in the latter State only the competent local government office is competent to take

decisions on custody and access with a possibility to appeal to the Department of Private law at the Ministry of Justice). In most cases, the court (or, as in Denmark, the administrative authority) competent to make an access order is also competent to order preventive measures. However, some States pointed out that a court decision only has to be sought if the parents do not come to an agreement themselves. This is the case in the Czech Republic, Germany, Liechtenstein, the Netherlands and the United Kingdom. Even if parties come to an agreement, the Dutch Government moreover pointed out that is recommended having such an agreement confirmed by a declaratory judicial decree.

In general, the national legislation is very flexible as to when such conditions may be fixed: As a rule, they will be included in the access order at the moment when this order is made. If necessary, however, conditions may be ordered, changed or amended any time. Courts, though, normally order remedies in case of a breach, only after such a breach has occurred (Austria, Czech Republic, Cyprus, Ireland, Italy, the Netherlands and Turkey).

15. Possible forms of preventive measures

Out of the range of preventive measures mentioned in the Questionnaire, any appropriate measure may be ordered in the Czech Republic, Cyprus, Liechtenstein, the Netherlands and the United Kingdom.

As to the other States, the situation is as follows:

Written undertakings seem to be known, apart from the countries just mentioned, only in Switzerland, where they have to be given before the justice of the peace.

A second group of measures appears to be practised in more States: Bank or other financial guarantees (Austria, Italy, and Turkey), supervision of the access by a social worker or welfare authority (Belgium, Germany, Italy, Luxembourg, and Switzerland (in German- and French-speaking Switzerland access would take place under the supervision of a social worker at a "judicial meeting place")) and the deposit of passports of the child and/or the parent entitled to access (Austria, Denmark, France, Italy, Switzerland, and also Finland if a bill submitted to Parliament in late 1995 concerning the revision of the Act on Enforcement has been accepted). The close link of this subject matter to public law requires some restrictions, though, in certain countries: In Italy only the deposit of the child's passport could be ordered because as to the parent's passport, this could interfere with freedom of movement. In the United Kingdom the courts may only order the surrender of UK passports issued to or containing particulars of the child concerned. However, the surrender of any other passport can be made a condition of a contact order. In both cases, the basis for the surrender of a passport would be a previous order or injunction prohibiting the removal of the child from the UK without the consent of all those who have parental responsibility or the court, respectively. In Germany, the surrender of passports has been ordered sometimes by civil courts but there is no explicit legal basis for this and recently higher courts have expressed some doubts as to whether this would be lawful in civil law matters. In any case it has to be kept in mind that the efficiency of this measure might be diminished as far as States Parties to the Schengen Agreement are concerned. It might be added that in Bulgaria, a passport will only be issued to a child who is habitually resident in Bulgaria and supposed to travel abroad for the exercise of transfrontier access, if both parents consent or the court so decides.

Turkey has referred to the recognition of a foreign custody order, in addition to the States mentioned above. Furthermore, Austria, Switzerland and Germany explicitly mentioned in advance-recognition (and, probably, registration and/or declaration of enforceability) of a custody and access order in the State where access is to take place. Ireland pointed out that this would be equivalent to the existence of a second custody order, given in the State where access shall be exercised, which awards custody to the parent who also has custody according to the Irish order. As to prior recognition, Swiss authorities sometimes practise a less formal way: They deliver a copy of the Swiss judicial decision and its translation into the language of the State where access is supposed to take place to a diplomatic representative of that State in Switzerland.

It is quite common that the competent judicial or administrative authority would require the person entitled to access to give details about the place where access is to be exercised such as address and telephone number (Austria, Denmark, Italy, Turkey) or that it would itself specify in the order where access should take place (Germany, Italy, Sweden, Luxembourg).

As additional measures not mentioned in the Questionnaire, some States referred to the presentation of a return ticket for the child before he or she leaves for transfrontier access, the obligation of the person entitled to access to report any change of residence, or the presence of other persons such as certain family members during access. For all measures mentioned so far - except recognition of a foreign order -, it appears to be most common that they will be included in the access order itself.

Furthermore, some States (France, Luxembourg and the United Kingdom) stressed the possibility of measures under criminal or police law, which could include an alert of border officers. In France, the custodial parent can lodge an objection against the other parent leaving France with the Ministry of the Interior. This provisional measure, however, must be followed by a court order to remain in force.

16/17. Jurisdiction and self-restraint of authorities and courts to start or hear custody proceedings concerning a child habitually resident abroad which is present on the territory only for access purposes

The answers to these two questions can once again be grouped. In some States, courts and/or administrative authorities would have no jurisdiction at all or only for emergency measures in order to protect a child which is temporarily in that State for the purpose of transfrontier access. In other States, full jurisdiction exists, and the authorities would or would not abstain from exercising it with respect to custody proceedings concerning such a child.

To the first group belong mainly those States where jurisdiction depends primarily on the habitual residence of the child, eg. those who are Parties to the 1961 Hague Convention on the Protection of Minors. If the child is habitually resident in another State Party to that Convention, the courts and authorities of such a State, in their interpretation of the Convention, consider themselves either to have no jurisdiction (Finland, Sweden [except for divorce cases] or jurisdiction only to take emergency measures in urgent cases which might be based on the child's presence or nationality (Austria, Germany and Italy, as far as children of foreign nationality are concerned, further France, Luxembourg, the Netherlands, Spain, Switzerland and, apparently, the authorities in Belgium). The same applies for States where jurisdiction is based on nationality, when minors of foreign nationality are concerned (Czech Republic: only emergency jurisdiction).

In some countries, jurisdiction may exist (eg. based on nationality [this applies also under the 1961 Hague Convention on the Protection of Minors] or on habitual residence of one of the parties), but courts and authorities would abstain from exercising it to avoid conflicts with the authorities in the States of the child's habitual residence which would be equally competent unless an emergency measure is required (Austria and Italy, as far as children of Austrian or Italian nationality, respectively, who are habitually resident abroad are concerned; Norway, Cyprus), taking into account also the Custody Convention and, namely, Article 16 of the Hague Child Abduction Convention. In the United Kingdom and Ireland, a court would consider to decline jurisdiction under the forum non conveniens-rule in these cases.

A third group of States, finally, would not see any obstacles for exercising jurisdiction (which might be based on nationality of the child or the parents or the habitual residence of one of the parties) in these cases at all (Denmark, Turkey; Czech Republic and Liechtenstein for minors of Czech or Liechtenstein nationality, respectively) or apart from Article 16 of the Hague Child Abduction Convention (Germany for children which are not habitually resident in one of the States Parties to the 1961 Hague Convention; Poland). The position of Turkey and Poland is remarkable because they are both Parties to the 1961 Hague Convention on the Protection of Minors which favours jurisdiction of the State of the child's habitual residence. In Belgium, apparently, courts would hear such a case unless an objection to jurisdiction is raised by one of the parties.

The analysis shows that legal opinion and practice on this point is far from uniform in the European States. One distinctive factor is the 1961 Hague Convention on the Protection of Minors, which contains jurisdictional rules concerning children habitually resident in one of the Contracting States. Outside its scope, States are free to apply the rules on jurisdiction contained in their national laws, and the analysis shows that these national laws vary considerably on this point. Moreover, even within the scope of the 1961 Hague Convention, the interpretation of its provisions is not uniform. Some States give almost absolute priority of jurisdiction to courts and authorities at the State of the habitual residence of the child while others see Article 4 of that Convention (jurisdiction based on the nationality of the child) as subsidiary or even equivalent even in cases where ordinary measures outside emergency situations are to be taken.

B. After an abduction

18/19. The future development of the right of access of an abductor after the child has been returned: punishment of the abductor or best interests of the child?

Apparently there is no State where a parent who has abducted or retained a child will automatically be deprived of his or her right of access once the child has been returned. However, the competent authority, in most cases the court, can, upon request of the custodial parent or on its own motion (eg. Bulgaria, Czech Republic), restrict, suspend or withdraw this right, depending on the individual circumstances of the case and the best interests of the child. Non-compliance with previous conditions for access and the abduction itself will be taken into account.

In Germany, Liechtenstein and Switzerland, though, access is considered a fundamental right of the parent-child-relationship, and it is generally supposed to be in the child's best interest to maintain relations with both parents. Therefore, it is stressed that "punishment" of the abductor will not play a role in the decision-making. Other countries, on the other hand, especially the Scandinavian States, but also Ireland and Luxembourg, noted that the main interest when making

the new access order will be to prevent another abduction and that future access therefore is quite likely to be restricted (eg. to the territory of that State) or withdrawn. In Poland, the right of access of a parent may only be withdrawn if, at the same time or previously, this person is also deprived of parental responsibility. In Bulgaria, the abduction might lead to the deprivation of parental authority as a whole; the respective court decision may be taken upon request by the other parent, by the public prosecutor or on the court's own motion.

It appears that after abduction, the same additional measures or guarantees, which could be ordered when access is granted, are available in the various legal systems. In practice, though, they will be applied more frequently if abduction has occurred and the abductor still retains a right of access after the return of the child. Restriction of access to the State of the child's habitual residence has been mentioned frequently (Czech Republic, Denmark, Finland, Germany, Ireland, Luxembourg, Poland, Turkey), followed by supervision (Denmark, Germany, Luxembourg) and deposit of passports (Denmark, Turkey). Access might also be suspended for a while and then gradually intensified again, eg. starting with phone-calls and letters, then passing on to occasional visits within the country before, after a certain time, transfrontier access will be allowed again (Switzerland and, apparently, Germany).

20. Possible reactions in case of a non-return of the child, either due to a lack of return procedures or following a judicial or administrative refusal to return the child

Concerning the case where another State refuses to return a child to his or her State of habitual residence after an unlawful removal or retention, a number of States pointed out that it is up to the custodial parent to take the necessary steps in the State which does not return the child. Such steps might consist in an application for recognition and enforcement of a custody order or for new custody and/or access proceedings in that State (Austria, Belgium, Bulgaria, Cyprus, Poland, Spain, and United Kingdom). Even more countries mentioned that their authorities might grant diplomatic assistance as a last resort (Czech Republic, Denmark, Finland, Ireland, Luxembourg, the Netherlands, Norway, Switzerland, and Turkey). Along the same lines seem to be the references made to international co-operation (Italy) and to political interventions (Switzerland). In Norway and, apparently, Switzerland, however, diplomatic assistance is only available in relation to States not Parties to either the Hague Convention or the Custody Convention. Because of the fundamental principle of the separation of powers, if the courts of a State Party to one of those Conventions refuse to return the child, the Norwegian authorities can only help by obtaining and transmitting information about the other State's court system and by helping the person concerned to find a lawyer there. In addition, the following more formal steps have been mentioned: the issue of an adequate decision of courts the State of the child's habitual residence (Czech Republic, Germany), letters rogatory aiming at a return of the child (Liechtenstein), mutual assistance between courts in criminal matters by instituting criminal proceedings in the State of the child's habitual residence (Switzerland). Switzerland, finally, even though confirming the importance of the principle of separation of powers, also referred to the possibility to inform the authorities supervising the application of the two Conventions in the other State if a court decision made in that State and refusing return seems doubtful.

Austria explicitly stated that its authorities would not act on their own motion. In Belgium, the authorities apparently would not even have jurisdiction to intervene. Others (Bulgaria, Cyprus, Liechtenstein in case of a decision refusing return) simply mentioned that their authorities would or could not take any action in such cases.

Concerning the opposite case, i.e. the non-return of a child from their own territory, the States Parties to either the Custody Convention or the 1980 Hague Convention of course mentioned that in their States there were proceedings available in order to obtain a return order. In those States the reference made to the separation of powers was even more pronounced than in the first group of cases. Belgium, the Czech Republic, Germany, Ireland, Italy, Liechtenstein, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom stressed that, in case of a court decision taken in the respective country not to return the child to the country of his or her habitual residence, authorities have to comply with such a decision. This means in particular that no further steps directed at obtaining a return of the child to the other State are available. However, protective measures can be taken (Finland, Germany, Luxembourg), the foreign custody and access order may be adapted to the new circumstances (the Netherlands - upon request of the person who opposed return) or new custody and/or access proceedings may be instituted once jurisdiction - based on nationality or the establishment of a new habitual residence, in particular - exists (Finland, Germany, Norway, Poland).

C. Recognition in advance of a foreign custody order

21/22. Recognition in advance of foreign custody orders

When asked about the possibility of preventive recognition of foreign custody orders (i.e. before the child comes to that State for access purposes only), Liechtenstein replied that no recognition in advance could be obtained there. Many other States stated that no specific provisions existed (Austria, Belgium, Bulgaria, Czech Republic, Luxembourg, Poland, Spain, and Switzerland). However, this does not necessarily mean that prior recognition cannot be obtained. First it has rightly been recalled by France, Norway and Sweden, all Parties to the Custody Convention, that, under the Convention, recognition is by operation of law, i.e. at the moment the order is made it is to be considered as being legally valid in all the other contracting States without any formal procedure or registration. However, also in those States it is possible to have recognition confirmed by a declaratory judgement, and insofar, again there are different opinions whether such a decision can be obtained in advance before the child comes to the country concerned.

Prior recognition by declaratory judgement seems to be possible in Cyprus, Finland, France (in the form of a preventive declaration of enforceability), Germany, Ireland, Italy, the Netherlands, Poland, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom, either according to the general provisions on recognition and enforcement of foreign decisions or according to special provisions on this matter. It has to be noted that among the States Parties to the Custody Convention, Cyprus, Ireland, the Netherlands and Sweden referred to the Convention as a possible basis for prior recognition while in Austria (if the child is of foreign nationality) and Belgium there would be no jurisdiction under this Convention before the child actually comes to that country and Norway, equally a contracting State, does not see any legal possibility for prior recognition, either. These differences in the application of the Custody Convention are due to the fact that the Convention itself does not contain any provisions on jurisdiction, which are left to national law and other international instruments.

Where a decision on recognition in advance may be obtained, the conditions depend on the Custody Convention in the States Parties to this Convention. While it does apparently not depend on the child already being present in France or Sweden, Norway stressed that it is up to the competent judicial authority in Norway to assess whether the criteria for recognition are fulfilled, such assessment thus being possible only after the child has entered the country. Unlike

in the cases mentioned above, the presence of the child here is no precondition for jurisdiction but for the assessment of the facts which constitute a ground for refusal of recognition. Italy and Switzerland, equally Parties to the Custody Convention, a specific interest for recognition in advance is required in addition to the conditions set out in international conventions and under private international law. In France, such a specific interest is required in order to obtain a declaration of enforceability which may also be sought in advance. In Germany, it is only necessary in cases outside the scope of the Custody Convention and would generally be constituted by the fact that the requested decision would facilitate future transfrontier contact and provide a safer legal basis..

Outside the scope of the Custody Convention, recognition may depend on whether the foreign court had jurisdiction (in Austria, apparently also in Denmark and Bulgaria) or even on a full *révision au fond*, i.e. a control whether it has been lawfully achieved according to the law of the State where it was made (in the Netherlands), or, like in Poland and the Czech Republic, a control for reciprocity, enforceability in the country of origin, respect of the parties' right to defence in the proceedings abroad and the absence of prior internal court decisions on the same subject. Poland would furthermore check for the application of Polish law if applicable in the case and, going even further, for conformity with Polish laws and public policy. Some States recalled that a request for recognition and enforcement, lodged by the interested party, was necessary (Spain, Turkey, United Kingdom). Other countries stated that custody orders could be amended upon recognition, depending on the child's best interests (Netherlands).

When it comes to enforcing a foreign order, a declaration of enforceability will be necessary in many or most States, eg. also in France and Luxembourg. France specified that this could also be obtained in advance; in any case, however, a specific interest of the applicant would be required.

23. The competent body for prior recognition

In the United Kingdom, it is for the Lord Chancellor's Department to decide on prior recognition. In all the other countries, which have given a positive reply to the previous questions, the courts are competent in this respect. Jurisdiction *ratione loci* are sometimes centralised in one court per country (eg. in Spain), but more frequently it lies with the local court of the place where access is to be exercised.

24. Steps available to obtain registration of an order abroad

In cases covered by the Custody Convention, central authorities of Contracting States would accept and transmit the request to the central authorities of the other Contracting State concerned. In States not Parties to that Convention and in cases not covered by it, the interested party him- or herself will have to take the necessary steps in the State where recognition, a declaration of enforceability or registration for this purpose is to be obtained. This applies to Austria, Belgium, Bulgaria, Cyprus, Finland, Germany, Italy, the Netherlands, Norway, Turkey and the United Kingdom. The Netherlands furthermore referred to the possibility of informing the authorities of the minor's State of habitual residence and/or nationality under Article 11 of the 1961 Hague Convention on the Protection of Minors.

D. Cost of transfrontier access

25/26. The travelling expenses of the child - primary and subsidiary debtors

Apparently there are no legal provisions on who has to pay for the travelling expenses of the child who goes abroad for the purpose of exercising a right of access. Very much depends on the will of the parties who seem to be free to make agreements on this point in most States. In practice, in the majority of States it seems to be the parent or person entitled to access to the child who will bear the child's travelling expenses. However, the economic situation of both parents will be taken into account in general (eg. in Austria and Belgium) or when parents cannot reach an agreement and ask for a court order on this point.

If the child then is abroad for access purposes and the parent entitled to access who was supposed to bear these costs for some reasons is not able to pay for the return of the child, diplomatic or consular authorities might advance these costs (eg. in Belgium, Finland and Switzerland). However, such advances will have to be reimbursed - in most cases by the custodial parent who also is the one who would have to pay immediately in Austria, Denmark, Finland, Germany, and Liechtenstein. In Cyprus, Italy, the Netherlands, Poland and, apparently, Turkey, this parent will in practice also be the one to pay, but without any legal obligation. In some countries, funding might be obtained from charity organisations if both parents are unable to pay (Czech Republic, Switzerland, United Kingdom) while other countries - mostly through social welfare agencies - would go as far as funding the return (Austria in exceptional circumstances, Cyprus for children who are citizens of that State, Czech Republic, Denmark, Liechtenstein, Norway, Sweden. In Ireland, people receiving social welfare payments might obtain financial assistance, depending on the discretion of the Social Welfare Officer. However, in return cases under the Hague and Luxembourg Conventions, if the applicant is in need and no other assistance available, the Irish central authority will bear the costs.

INTERNATIONAL CO-OPERATION

27 - 38. Experiences with the Custody Convention with respect to the right of transfrontier access and possible amendments, in particular the improvement of co-operation between central and other authorities

In general, experience with transfrontier access under the Custody Convention is limited to a relatively small number of cases. The Convention is seen as a good starting point. However, concerning access, States now feel the need for more appropriate and simpler provisions going beyond those applicable to custody. This could concern jurisdiction, co-operation between the authorities involved before making an order and/or afterwards when it comes to its implementation (ie. recognition and enforcement, but also safeguards and guarantees ensuring compliance with the order and thus avoiding enforcement).

With a view to improving transfrontier co-operation in access cases, it has been stressed that the primary jurisdiction should lie with the authorities in the State of the child's habitual residence. Furthermore, there has been some support for the proposal to provide explicitly for the possibility for requests for co-operation/assistance to be transmitted from the competent authorities of the child's State of habitual residence to the authorities of the country where access is to take place. Moreover, a simple and speedy solution for mutual recognition and enforcement of custody and access orders has been mentioned as a very important step. In order to ensure the implementation of the order, there is a certain need for measures, i.e. safeguards and guarantees, to ensure compliance with the order. These measures could be the same as in internal cases.

The requests for co-operation and assistance mentioned above could either be directed to obtaining information on the law and measures available in this field in the State addressed in general, or they could concern an individual case. While some States were of the opinion that both kinds of requests are already now covered implicitly by the Custody Convention, others considered the possibility for such requests as being a new element. Among the latter, some would like to limit these requests to assistance in the individual case while others, on the contrary, would prefer to allow only requests for general information on the legal system - mainly due to the fear that assistance in individual cases would create an even bigger workload for the central authorities. However, among the States that are in favour of allowing requests for assistance in individual cases there is unanimity that such a system should be optional only. In general, there is agreement that all requests should be channelled through the central authorities. As to the possible location of a respective amendment to the Custody Convention, it has been pointed out that Article 3 would be the right place to provide for an exchange of general information on the laws concerning the right of access and the recognition and enforcement of foreign orders in this field while requests concerning individual cases should be dealt with under Article 4.

While a majority of States is of the opinion that requests for general information on measures available for the implementation of a foreign access order and the related practical arrangements should be possible at any time, there seem to be different views when it comes to requests in individual cases. Some countries stress that, in these cases, the request for assistance should preferably be made before making the contact order, thus making it possible to take the information received into account. Other countries, however, would prefer to restrict requests for

assistance in individual cases to the recognition and enforcement procedure concerning an already existing order.

Mediation does not seem to be widely used in cases concerning transfrontier access, so far. However, in those States where mediation is used, experience appears to be positive (Belgium, France, Germany, Poland, Switzerland) - also because there is no other system or mechanism available which could lead to satisfactory results in problematic cases concerning internal and transfrontier contact, with the exception of a Nordic Convention and some Nordic uniform laws on the recognition and enforcement of Nordic judgements in civil matters to which most Scandinavian States are Parties.

**IV. REPLIES TO THE QUESTIONNAIRE ON ACCESS
FROM 29 MEMBER STATES OF THE COUNCIL OF EUROPE**

PART A -REPLIES TO THE QUESTIONNAIRE ON ACCESS: SUBSTANTIVE LAW IN FORCE (questions 1 to 5)

| | Austria | Belgium | Bulgaria |
|---|---|---|---|
| 1 - Name of the applicable law | Art. 148 of the Civil Code | The Civil Code, as amended by the law of 13 April 1995: Articles 374, 375 bis, and 387 bis. Article 1288 of the Judicial Code | The Family Code |
| 2 - Persons who may apply for access | A parent without custody except where there is a risk of unacceptable interference with the relationship between the child and the parent with custody. Grandparents if the child's relationship with the parents is not disrupted. | A parent not awarded custody, except if deprived of all parental responsibility, grandparents and anyone else who can prove a special emotional tie with the child. | Parents without custody (if not deprived of parental authority) where this is in the child's interest (restriction is possible, for example, if the parent suffers from a mental or contagious illness). Grandparents if in the child's interest. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | No Children over 14 cannot be forced to sustain a personal relationship with a person granted access. | No No | Children have a right of access but apparently are not entitled to bring proceedings themselves. Children apparently do not have a legal right proper, but their opinion can be taken into consideration (see below). |
| 4 - Can other people oppose access? | The parent having custody may apply to the courts if visits are likely to constitute an unacceptable interference with his or her relationship with the child. | The parent awarded custody and Crown Counsel may request a court to change access arrangements or even withdraw a right of access in the child's interest. | Parents may express opposition during proceedings, but in the end the court takes a decision based on the child's best interests. |
| 5 - Which body decides on access? Who is heard during the procedure? Is the decision limited to a period of time? | The court The parents, the child (by the court itself if over 10 or, otherwise, through social services) except where there is a risk of serious harm to the child. Not specified | The judicial authorities The parties to a dispute, including a minor who is sufficiently mature. If necessary the judge may decide to institute a social investigation or obtain an expert opinion from a child psychiatrist. There is no-time limit on an access decision. | The District Court Parents and children over 14 must be heard; children under 10 and people close to the child at the court's discretion Not specified |

| | Croatia | Cyprus | Czech Republic |
|---|--|---|---|
| 1 - Name of the applicable law | Family Act | Relationship between Parents and Children Act of 1990 | Section 27 of the 1994 Family Act. |
| 2 - Persons who may apply for access | <ul style="list-style-type: none"> - Non-custodial parent or parent who does not live with the child. - Grandparents. | Parents not granted custody. According to the case-law, parents deprived of parental responsibility retain a right of access except where the child is in danger of harm. | Only parents have a right of access. But other persons, such as grandparents, may be granted access with the parents' consent. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | <p>The child has the right of access with parent who does not live with her/him. The child has the general right to be consulted before the judicial authority makes a decision.</p> <p>Judicial authority has to give due weight to the views expressed by the child according to his/her age, maturity and well-being. The decision must be in the best interest of the child.</p> | <p>Children do not have a legal right proper but their opinion is taken into consideration where they are sufficiently mature.</p> <p>Children do not have a legal right proper but their opinion is taken into account if they are sufficiently mature.</p> | <p>The parents' right of access is matched by the child's right to be visited.</p> <p>A child is represented by a guardian in proceedings, but it is not clear whether he or she has a legal right proper. The child's opinion must be sought and taken into account.</p> |
| 4 - Can other people oppose access? | Parents and guardians are entitled to request from the judicial authority to make such decision. In such cases the judicial authority decides <i>ex officio</i> , taking into account the best interest of the child. | No, but if a parent does not properly carry out his or her parental responsibilities the Director of Social Services or the other parent may apply to the court. | Only parents and guardians are entitled to challenge a decision. However, it must be borne in mind that in many cases the guardian is a child welfare authority. |
| 5 - Which body decides on access? Who is heard during the procedure? Is the decision limited to a period of time? | <p>Court during divorce and paternity proceedings. In all other cases the decision is made by the Centre for Social Welfare.</p> <p>The parents and the child.</p> <p>Not specified.</p> | <p>The Family Court of the district where the child lives</p> <p>There is no express legal provision. Parents are usually heard and sometimes other people. The child is heard if sufficiently mature.</p> <p>A time-limit is possible. Otherwise access ceases on the child's majority or marriage</p> | <p>The Child Protection Court</p> <p>The parents and the child</p> <p>Not specified.</p> |

| | Denmark | Finland | France |
|---|--|--|---|
| 1 - Name of the applicable law | Act of 14 June 1995 on Legal Custody and Access Rights | The Child Custody and Right of Access Act (no. 361/83) | Civil Code (Articles 288, 374, 375 -7, 377, 371-4) |
| 2 - Persons who may apply for access | Those with parental authority, including adoptive parents. | The parent who does not live with the child. | The non-custodial parent or the parent with whom the child will not reside on cases of children born out of wedlock. This right may be refused only on serious grounds. Both parents in the case of placement of the child with a third party. The judge for family affairs can grant access to grandparents and in exceptional circumstances to other relatives. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | Children do not have a legal right proper. Children do not have a legal right proper, but beyond the age of 12 (or less if a child is sufficiently mature) their views are heard. | Children's right of access is acknowledged, but although all decisions are taken in their interest they do not have a legal right proper. Children are not entitled to oppose access, but are heard, and for a child aged 11-12, or less if mature, access will normally be refused if the child is against it. | No Children are not entitled to oppose access but are heard. |
| 4 - Can other people oppose access? | If a child is placed outside the family home, the Municipal Council or the Child Welfare Committee can regulate or temporarily suspend (but not extend) access rights. | No unless the child has been removed from the family under the Child Protection Act, which empowers social services to decide on what conditions parents may remain in contact with a child. | Each of the parents or the third party acting as guardian and the public Prosecutor's Office may request the competent judge to arrange, modify or withdraw the right of access. |
| 5 - Which body decides on access? Who is heard during the procedure? Is the decision limited to a period of time? | The local authority (an appeal lies to the Department of Private Law at the Ministry of Justice) The parent with parental authority; the child if over 12. In special cases expert and other relevant opinions are sought. No binding legal provision. No point in issuing a decision for young people over the age of 14 -15. | The local court of the child's usual place of residence. The parents, and the child through social services or exceptionally in person. The Welfare Board usually files a report on the child's wishes. Limitation is possible but rare in practice. Decision not valid once a child becomes 18. | The judges for family affairs or juvenile. The parents, the child may request to be heard or if no such request is made, the judge may personally hear a child of forming his own views or designate a third party for this purpose. A person's right of access remains effective until the child comes of age. |

| | Germany | Greece | Hungary |
|---|--|---|---|
| 1 - Name of the applicable law | Civil Code: Articles 1684 to 1686 . | Article 1250 of the Civil Code | Law no. 4 of 1952 on marriage, the family and guardianship. Decrees nos. 51/1986 and 12/1987 |
| 2 - Persons who may apply for access | Both parents of a child born in or out of wedlock and independent of who has custody; grand-parents, brothers and sisters if this is in the child's best interests; spouses or former spouses of a parent having <i>de facto</i> family ties with the child; former foster parents. | Parents, except foster parents. Grandparents, brothers and sisters, but some argue that their rights depend on the custodial rights of the parents, who must encourage family relations for the child's good. | Parents (even a parent deprived of parental responsibility may exceptionally be granted access). Grandparents and, in certain cases, brothers, sisters, uncles and aunts. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | Yes, a right to contact with parents. As to the other persons mentioned under 2, the law gives a guideline to parents saying that it is normally in the child's best interest to have contact with those people. No, but the child's wishes are taken into consideration if they are justified and genuine, as is the applicant's interest. | Children themselves apparently do not have a right of access, but their opinion is sought and considered, depending on their maturity, before any decision affecting their interests is made. Children themselves apparently do not have a right of refusal, but their opinion is sought and considered, depending on their maturity, before any decision affecting their interests is made. | Children have a right of access in so far as parents are under a duty to exercise their right of access. Children do not themselves have a right to oppose access, but a mature child's refusal may, if justified, lead to withdrawal or limitation of access. |
| 4 - Can other people oppose access? | No. Parents are even obliged to promote contact between the child and the other parent and other people mentioned under 2, assuming that this is in the child's best interest. | No, apart from the parents. | Since access is a duty for the parents, they should not be able to oppose it, but in practice no specific penalty is laid down should they fail to exercise their right. |
| 5 - Which body decides on access? Who is heard during the procedure? Is the decision limited to a period of time? | The Family Court. The parents, the child welfare services and children over 14 (younger if capable and where necessary), in person unless there are serious grounds not to. Foster parents if relevant. Limitation possible but usually not necessary, since the court can vary its decision if need be. | The courts The parents, the child and any person or expert who has taken care of the child. Limitation is possible. | The supervisory authority if the parents cannot agree. A court dealing with divorce or placement proceedings. The parents, the child and, if necessary, a psychologist, an educational counsellor or a family welfare officer. Limitation is possible depending on the circumstances. |

| | Ireland | Italy | Liechtenstein |
|---|---|---|--|
| 1 - Name of the applicable law | Guardianship of Infants Act (1964, 87), Child Care Act (91), Family Law Act (95), Children Act (97) | Article 155 of the Civil Code 1970 Divorce Act | Article 148 of the Civil Code (Allgemeines Bürgerliches Gesetzbuch) |
| 2 - Persons who may apply for access | Unmarried, separated and divorced parents, if not living together and designated guardians; other relatives or persons who have acted <i>in loco parentis</i> . | A divorced parent not given custody. A natural parent not living with the child. Parents deprived of parental responsibility. Foster parents, grandparents, brothers and sisters have no direct right unless the court decides otherwise. | A divorced or unmarried parent not granted custody. A parent deprived of parental responsibility. Grandparents and others close to a child. In any case, access must not be harmful to a child's interests. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | No but the court must reach a decision based above all on the child's interests. No, but beyond a given age the child's opinion may be decisive. The same applies to children in the Health Board's care. In some circumstances a child may be joined to proceedings and oppose access, at the court's discretion. | Persons granted access are duty-bound to exercise it. To this extent children have a right of access. The court may decide to hear the child, but in the end it takes a decision based on what it regards as the child's best interest. | Children do not have a right of access, but they are heard, if possible in person, by the court (or through an intermediary if under 10). Children are heard, if possible in person, by the court or indirectly (through the youth welfare department or another body) if under 10. |
| 4 - Can other people oppose access? | No. | Only parents and State Counsel have a formal right to oppose access, but State Counsel and welfare agents may ask a court to vary an earlier decision on account of a change in circumstances that is harmful to the child in question. | Social services and the youth department. Foster parents may be heard by a court deciding on access. |
| 5 - Which body decides on access? Who is heard during the procedure? Is the decision limited to a period of time? | The courts or the Health Board (with a possibility of appeal) for children in its care. A court hears all parties, including the child and the Health Board, where applicable. The Health Board must examine access requests from parents, persons acting <i>in loco parentis</i> and those with a real interest. Limitation is possible. The decision ceases to be valid when the child becomes 18 or marries. | The court dealing with a divorce or separation. The Juvenile Court for children born out of wedlock. The courts apparently hear parents and may hear the child, in person, at the child's request. No, but the decision ceases to take effect once the child is 18 and the court may vary it at any time. | The Court of First Instance acting as Guardianship Court The parent having custody, children over the age of 10, the youth department and foster parents, where appropriate. No but the decision can be varied if the child's interest so requires. |

| | Luxembourg | Malta | Moldova |
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| 1 - Name of the applicable law | The Civil Code and the Youth Protection Act of 10 August 1992 | Civil Code (Articles 47, 56, 60, 61 and 57 §§ 2 and 3) | Code on Marriage and the Family |
| 2 - Persons who may apply for access | Separated or divorced parents (Divorce Court followed by Juvenile Court), unmarried parents (Guardianship Court), grandparents or third parties (Civil Court). The court always decides in the child's interest. | A natural father who has recognised paternity, parents deprived of parental responsibility (if access is in the child's interest). Grandparents, adoptive parents, third parties and family members in the broadest sense may not be banned from accompanying a visiting parent. | A parent living apart from underage children, irrespective of the parents being or having been married or cohabiting has a right of access; so have grandparents. Parents whose parental responsibilities have been withdrawn may apply for access, providing that the contact will not have harmful effects on the child. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | Children do not have a right of access, but may apply to the Juvenile Court to be heard (and be assisted by counsel). Children themselves do not have a right to oppose access, but may be heard by the Juvenile Court (where they are assisted by council). They are a party to child welfare proceedings. | The child's right of access is derived from the parent's. A child can only oppose access through the parent having custody or a guardian, where opposition is in the child's interest. | No. Not specified |
| 4 - Can other people oppose access? | A parent granted custody may oppose an access decision, seeking the suspension or withdrawal of the right. | The parent having custody, the Attorney General, the Welfare Director and any other persons who can prove their interest in the child's wellbeing. | Parents may oppose to access rights of grandparents. The authorities responsible for supervision and guardianship which may also challenge any right of access that would have harmful effects on the child can overrule this. Furthermore, the Public prosecutor may intervene on behalf of a minor. |
| 5 - Which body decides on access? Who is heard during the procedure? | The courts (see question 2). The Juvenile Court in child welfare cases. The parties. A child is a party to child welfare proceedings. A child can always be heard and a social investigation can be ordered to ascertain the child's views. | The first two divisions of the Court of First Instance (the "family courts"). Not specified. It seems that there are no specific legal provisions on hearing of children. | The authorities responsible for supervision and guardianship decide if the parents cannot reach an agreement. In case of non-compliance with the decision, the authority as well as each of the parents may seize the court. The parents |

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| Is the decision limited to a period of time? | A decision is in principle valid for as long as the child is a minor. | The decision ceases to be valid when the child comes of age (at 18) or marries. | Decisions on access only cover underage children up to the age of eighteen. |
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| | Netherlands | Norway | Poland |
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| 1 - Name of the applicable law | First Book of the Civil Code, articles 377a - 377b. | Law no. 7 of 8.4.1981 on children - parent relations | The Family and Guardianship Code |
| 2 - Persons who may apply for access | In principle a right of access is conferred on children and parents without parental responsibility (following a divorce or separation of an unmarried couple; natural parents). Other persons (including third parties having a close personal link with the child) have a right to apply for contact. Such contact may be granted unless contact is contrary to the interest of the child, or if the child having reached the age of 12 objects. | A parent not granted custody (after a divorce or separation of an unmarried couple) or a natural parent. In the event of the father's or mother's death relatives or persons close to the child may apply to the courts for access. | Parents of the child in all cases. Foster parents have the right of access. Third parties, particularly grand-parents and other relatives. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | A child has a right of access. Persons concerned: parent seeking for contact and the parent having custody. Yes, if from the age of 12 the child has serious grounds to object to access for his parent. The court can deny access in such a case (no obligation for the court to do so; in the case of third parties seeking for contact, see 2 in fine). | Children aged 12 or over will be heard before a decision is taken but cannot themselves bring proceedings, although they are considered to have a right of access. Idem. As children grow older, their opinions are increasingly taken into account. | The child's right of access remains outside legislative regulations. It is agreed, however, that the child has such right with regard to all persons listed in the answer to question n° 2. The child has not a formal right to oppose access which would automatically result in a prohibition of access. The child may, however, express his or her opinion. |
| 4 - Can other people oppose access? | The parent having custody and the Child Care and Protection Board: -if access would constitute serious harm to the child, - if the parent seeking access is obviously unable or unfit to exercise access, - if access is in any other respect contrary to the interest of the child. | Parents may oppose access granted to other persons or bodies. If the child is in welfare authority care the grandparents can obtain access. | No person or institution has the right to oppose access in any way which would result in an immediate prohibition of access. |
| 5 - Which body decides on access? Who is heard during the procedure? Is the decision limited to a period of time? | The Court. All people having a legitimate interest (incl. parent and child; if the child is under the age of 12, then under the condition of "having sufficient understanding". A decision may be made for a limited period of time and ceases in any event to have effect when the child reaches the full | In the event of disagreement parents may apply to the County Governor, or failing this to the courts. The parents and children aged 12 or over. A decision may be provisional. Otherwise it may be varied by the party who made it where the specific | A custody court in a non-litigious proceedings. The decision on access could also be taken by the court deciding on a divorce case. The parents, and less often grand-parents. The child may express his/her opinion. As a rule, the court decision does not determine in advance the duration for which the access is granted or denied. |

legal capacity.

circumstances require.

| | Slovakia | Slovenia | Spain |
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| 1 - Name of the applicable law | Family Code of 1963 as amended (in particular Section 27) | Marriage and Family Relations Law; Social Security Law | Civil Code (in particular Articles 160 and 161) |
| 2 - Persons who may apply for access | Only parents can apply for access i.e. parents who do not have personal care of the child. The fact that the child was born in or out of wedlock is irrelevant. | A Parent not living with the child, whether after a divorce or in the case of a child born out of wedlock, will be granted access rights. In the latter case, though, the acknowledgement of paternity is a precondition for the father's right of access Access of grandparents and foster parents are only possible upon arrangements with the parents. | Parents (except the natural parents of an adopted child), other relatives or persons who are very close to the child. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | Yes, although this right cannot be enforced. The parent(s) cannot be forced to maintain contact with the child. No. | The child has a right of access according to Article 9 par. 3 of the UNCRC, which, by virtue of Article 8 of the Constitution, is directly applicable. However, in practice this provision is almost never applied. A new law on civil procedure is in preparation, which will give a child of at least 15 years of age who is sufficiently mature the right to act independently in court. If the child's interests conflict with those of the parents, the child has the right to be represented by a guardian who may also bring lawsuits on behalf of the child against the parents. It is not clear, though, whether the child has a legal right to oppose access. | Children aged 12 or over are always heard before a decision is taken but apparently cannot themselves initiate proceedings. The court decides in the end. |
| 4 - Can other people oppose access? | Yes. In particular parents. But also welfare authorities, expert witnesses can oppose. The only ground to oppose is the danger to the child's health. | Not specified | Yes, but the final decision lies with the court. State Counsel and the child welfare services may oppose access if they consider it harmful to the child. |
| 5 - Which body decides on access? Who is heard during the procedure? | The court. Parents, child's guardian at litem, the child (if it is suitable), witnesses and expert witnesses. | Upon divorce of the parent s, the divorce court decides upon the attribution of custody and access. The non-custodial parent is granted a right of access. Parents have to make subsequent agreements concerning the manner of the exercise. If they fail to reach such an agreement, the competent social services centre decides after a mediation process. As to persons to be heard by the court, no details have been specified. The social service centre has to hear the parents, a child capable of expressing his or her wishes and an expert commission. | The courts. The parents and children aged 12 or over. |

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| Is the decision limited to a period of time? | No. | Not specified. | A decision is in principle valid until the child comes of age, but it may be varied. |
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| | Sweden | Switzerland | Turkey |
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| 1 - Name of the applicable law | Children and Parents Code | Civil Code (Art. 273 & 274a) Access rights will be amended by the divorce reform bill. | The Civil Code |
| 2 - Persons who may apply for access | A parent without custody (after a divorce or separation of an unmarried couple) or a natural parent, even if deprived of parental responsibility. Also a parent who shares custody but does not live together with the child can apply for a contact order. The Welfare Committee may seek access for anyone particularly close to a child. | Parents without custody or parental authority, whatever their status, including in cases of withdrawal, unless access is against the child's interests. A right to a personal relationship may be conferred on any other person (grandparents, brothers, sisters, foster parents, etc.) under statutory criteria. | A parent not granted custody (after a divorce, where a child is born out of wedlock or where the parent has been deprived of parental responsibility). Grandparents. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | Children apparently cannot themselves bring proceedings, but access is the child's and not the parent's right. Parents cannot, however, be obliged to accept access. A child is not expressly permitted to oppose access. However, the court must take the child's views into account when deciding on access and consult the child if possible. | Children apparently cannot initiate proceedings themselves and legal theory denies the child a right to be visited. However, the majority view is that the parent's right is also a duty. No, the child must comply with instructions from the person having parental authority, but the Federal Court has precluded forced execution where a child is capable of discernment or proceedings to amend an access decision are pending. | Children do not themselves have a right of access. Children cannot oppose access. |
| 4 - Can other people oppose access? | The parent having custody and the Welfare Committee, but the final decision lies with the courts. | No, not directly. However, they may report a situation where the child's development is at risk and the parents are unable to find a solution. The supervisory authorities will take measures to protect the child ex officio. | No other persons or organisations have the right or possibility of opposing access. |
| 5 - Which body decides on access? Who is heard during the procedure? Is the decision limited to a | The courts in the event of disagreement between the parents. The applicant, persons having custody, the child, if possible, and the Welfare Committee. Other persons or bodies at the court's discretion. A decision may be for a limited period | The courts (divorce proceedings or marriage protection measures), the supervisory authority of the child's place of residence (if not part of the judiciary an appeal lies to the courts). The parties, ie the parents, have a formal right to be heard. In practice, a mature child's views are taken into account. The parents' right to a personal | The civil courts Beneficiaries of the right of access. A decision is no longer valid when the |

period of time?

(rare). It ceases to be valid when the child reaches 18 or when a new decision is taken.

relationship lasts for as long as the child is a minor.

child comes of age or if annulled by a court (where there is a risk of cruelty by the person having access).

| | Ukraine | United Kingdom |
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| 1 - Name of the applicable law | Code on Marriage and the Family (henceforth CMF) | The Children Act of 1989 |
| 2 - Persons who may apply for access | In accordance with Article 65 CMF of Ukraine the questions of upbringing of children are decided by both parents. One of the parents, who lives separately from the children, is obliged to take part in their upbringing and has the right to communicate with them. The parent with whom the children live has no right to interfere with the other parent to communicate with the children and to participate in their upbringing. According to the Article 65-1 CMF grandparents have the right to contact the infant grandchildren. In the case where the parents do not grant the grandparents the right to communicate with the grandchildren, the bodies of guardianship can oblige the parents to give to the grandparents an appointment, in the order established by these bodies, if such appointments do not interfere with the normal upbringing of the children. When the parents do not obey the decision of the body of guardianship, the grandparents have the right to turn to the Court. According to the Article 73 CMF the bodies of guardianship can allow the parents dispossessed of the parental rights, to have appointments with the child, if such appointments are not harmfully reflected on the child. The decision of bodies of guardianship can be appealed by the parents in court. | Parents (whether married or not). Guardians. In some circumstances grandparents, foster parents and third parties. Otherwise the courts may grant access to the latter if the nature and consequences of their request and their relationship with the child permit. |
| 3 - Does the child have: a) a right of access? b) a right to oppose access? | No he/she doesn't. Is not defined by the legislation. However, part 3 of the Article 61 provides that in case of inadequate executing by the parents (one of them) of their duties on education, or of abuse by the parent rights, children have the right to address asking protection of their rights and interests to bodies of guardianship. | Where given leave (in view of their maturity) children can initiate proceedings (always in the High Court) and apply for legal aid in order to obtain or challenge access. If a child is in local authority care, the child may apply to the court for access to be suspended (in principle it is maintained by the local authority). |
| 4 - Can other people oppose access? | According to Article 65-1 and Article 73 CMF under the decision of a body of guardianship the following can be deprived of access: the grandparents, if such appointments interfere with normal upbringing of the child; the parents dispossessed of the parental rights under the same conditions. The decision of a body of guardianship can be appealed in court. | Persons exercising parental responsibility may be parties, as may those initially a party. A large number of notices are provided for. Anyone may apply to be joined or cease to be a party. This is a matter for judicial discretion, unless the party has parental responsibility. |
| 5 - Which body decides on access? Who is heard during the procedure? | Bodies of guardianship and court decide upon access. The parents are heard during the procedure. The written decision of the bodies of guardianship, concerning with whom of the parties the child should live is necessary. The participation of the representative of bodies of guardianship and prosecutor in session of the court are obligatory. Besides, in conformity with Article 69 CMF of Ukraine, concerning the decision making process on disputes relating children, the court decision must be based on the interests of children and conditions of their normal development and education. Thus, if the child has reached ten years of age, the court should find out from him/her, with which parent she/he wishes to live. The desire, stated by the child, is not compulsory for court, if the court recognises, that leaving the child with the parent specified by him/her does not answer his/her best interests. | The courts take action only in the event of disagreement between the parents or for the child's good, particularly when the child is in local authority care. The parties to contact proceedings (including the child if necessary), the local authority and the reporting official, if any. |

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| <p>Is the decision limited to a period of time?</p> | <p>The decision on the right of access stays in force before achievement by the child of lawful age (18 year's age in Ukraine).</p> | <p>A decision may be limited in time and ceases to be valid when the child reaches 16, unless exceptionally extended to the age of 18.</p> |
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PART B - REPLIES TO THE QUESTIONNAIRE ON ACCESS: SUBSTANTIVE LAW IN FORCE (questions 6 to 11)

| | Austria | Belgium | Bulgaria |
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| 6 - Are agreements between parents valid? | Yes, but not legally binding. Agreements made in the course of legal proceedings must be approved by the court. | Yes, but they must be approved by the judge. | Yes, and even mandatory in cases of divorce by mutual consent. The court approves the agreement. |
| 7 - What provisions does an access decision normally contain? | If necessary, the court fixes the conditions of access; usually the right is exercised without the parent given custody being present, and the parent granted access comes to collect the child from his or her home. | The arrangements depend on the circumstances. Some decisions provide that access can only take place at the home of the person exercising the right if certain other persons are not present. On the other hand, it may be a requirement that certain persons be present or that access take place on the premises and under the supervision of a specialist institution. | The arrangements depend on the circumstances. The parent who has access usually collects the child. Sometimes visits take place in the home of the parent with custody (where the other parent is mentally ill, the child is under 5, etc.). Such conditions must be specified. |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | During proceedings the court may request them to give an opinion. Subsequently, they may be asked to be present during visits or to supervise access in the most difficult cases. | The relevant social services may, at the instigation of Crown Counsel or the court, be asked to carry out a social enquiry to gather all useful information on the children's moral and material circumstances. | Not specified |
| 9 - What remedies are available once a decision has been handed down? | Filing of a new application with the court if the situation changes. | The Juvenile Court is empowered to order or vary any measure affecting parental authority, in the interests of the child. An application to the court may therefore be made where the parent with custody is opposed to access by the other parent, where the parent not granted custody does not abide by the access conditions or where one or both parents wish to modify the access arrangements. Moreover, failure to hand over the child carries a criminal penalty. | As a last resort the child can be handed over by forced execution (under an order of the judge responsible for enforcement), after child psychology experts have been called upon if the opposition comes from the child. A parent preventing enforcement of the decision is criminally liable. A request for amendment of a custody decision is possible. The final decision lies with the court. |
| 10 - What happens if the right of access is not exercised? | Nothing | No criminal penalty is laid down. Parents having custody have sometimes been awarded pecuniary compensation. In extreme cases the parents with custody may apply for withdrawal of access. | The parent may be deprived of parental authority. |

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| 11 - Is mediation used where a problem arises? | Mediation experiments by two courts (Vienna and Salzburg) are currently being assessed. | Yes, the courts increasingly have recourse to family mediation, but cannot impose it. | Not specified |
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| | Croatia | Cyprus | Czech Republic |
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| 6 - Are agreements between parents valid? | In the process of passing a decision on custody or access, the judicial authority will take into account the agreement between the parents, if it is not contrary to the child's interests. | Yes. Approval is not necessary although the parents usually seek it. | Yes, the law basically regards access rights as an arrangement between the parents. An agreement need not be approved by the court. However, an approved agreement is enforceable in the same way as a court decision. |
| 7 - What provisions does an access decision normally contain? | An access decision may contain the following elements: time prescribed for contacts; who will take over the child and where; place of contacts (if contacts are held under the supervision of an expert person et sim.) | The provisions always specify who is responsible for collecting and returning the child, the days, time and place of visits, and sometimes that a social worker must be present during visits. | The right of access is normally exercised in the child's usual place of residence, that is to say the home of the parent awarded custody. However, the other possibilities mentioned in the questionnaire are permitted. |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | The Centres for Social Welfare protect the interests of the child. They also provide opinion at the request of the court during divorce proceedings. They are authorised to make decisions regarding access, especially during the mediation procedure prior to the divorce proceedings and if the parents are not married and are living separately. Moreover, a Centre for Social Welfare will make a new decision if, after the court decision has been passed, the circumstances are changed to such an extent that the best interests of the child require so. | During proceedings a report is submitted by a welfare officer, who ensures the child is kept informed of what is happening. The welfare officer's subsequent role depends on the decision's content. | The youth welfare services have a very important role in proceedings and during exercise of the right of access. They always work closely with the relevant administrative authorities. |
| 9 - What remedies are available once a decision has been handed down? | <u>Court proceedings:</u> The party who has been delivered a court decision has the right to appeal against it. <u>Administrative proceedings:</u> After the second-instance decision in administrative proceedings is made, the party can institute court proceedings before the Administrative Court. | A dissatisfied parent must appeal to the courts to have a decision revised or to complain that it is not being implemented. A child can only take action through the parent given custody, who has authority to act in the child's name. | A decision granting access may be varied by the court at any time if there is a change in circumstances. |
| 10 - What happens if the right of access is not exercised? | No express provisions if the non-custodial parent does not exercise his/her right. As a rule the Centre for Social Welfare makes efforts, through family counseling, to arrange for contacts between the child and the parent, if it is in the interest of the child. | This is a rare occurrence in practice. The welfare services attempt to solve the problem. | The court does not require the right of access to be exercised if the parents have agreed otherwise, but only if such an agreement is not harmful to the child or if the child does not attempt to exercise his or her right of access. |
| 11 - Is mediation used where a problem arises? | Mediation is compulsory only before divorce proceedings if the spouses have children. Center for Social Welfare tries to use | Mediation by the welfare services is used during the transition period and they also provide long-term | The youth welfare services are responsible for mediation in all cases. |

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| | mediation whenever it is needed in family conflicts. However, mediation is held only if the parties accept to participate in it. | counselling where there is hostility between parents. | |
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| | Denmark | Finland | France |
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| 6 - Are agreements between parents valid? | Yes. Approval is possible in the form of a local authority order. If the sheriff's assistance is required to have the child handed over the agreement must be entered in the judgments register. | Yes, and if they have been approved by the Municipal Welfare Board they are valid and enforceable in the same way as a court decision. | The judge must take agreements between the parents into account as far as possible, but also has an obligation to verify the terms of such agreements in relation to the child's interests. |
| 7 - What provisions does an access decision normally contain? | The arrangements are determined by the local authority according to the circumstances. Usually the place of access is not fixed. In some cases the place (an institution, the child's home, etc.) and those required to be present may be specified. | All the options can be envisaged depending on what is in the child's interest. Commonly, contacts take place in the home of the parent granted access. Where this is abroad, access is usually only granted in exchange for reasonable guarantees of the child's return. | Arrangements for access (frequency, duration, payment of travel expenses, place) are set out in varying detail in court decisions. Usually the right is exercised at the domicile of the holder of that right, more rarely at the home of a third party or the custodial parent or abroad, sometimes in neutral premises known as "meeting point". |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | As a general rule they have no part to play. The administrative authorities may exceptionally ask the local authority for an opinion on the family's social circumstances. | During proceedings the social services normally submit a report. Subsequently, they are involved only if the decision requires their presence when access rights are exercised. | The child protection services operating under the Ministry of Health may act on a preventive basis, but they may also act on a decision by the juvenile court judge where a danger exists. They may be turned to outside proceedings, during proceedings and after judgement is given. |
| 9 - What remedies are available once a decision has been handed down? | If its decision is infringed the local authority may, at a parent's request, vary or cancel the arrangements. Otherwise, a parent wishing to change the arrangements must prove that the circumstances have changed before the local authority will amend the decision, if a change is in the child's interest. | Decisions are not enforced against the will of a child who is over 12 or sufficiently mature. Where there is genuine opposition the court's decision may also be varied. The official in charge of enforcing decisions can help a parent with custody to recover a child or mediate on behalf of a parent granted access (the parent refusing access can be fined if the mediation attempt fails). A 1995 bill proposes direct enforcement of access rights. Legal action is always possible. | The parent or person with whom the child resides may lodge an appeal against the order granting a right of access or subsequently apply to the judge to have that right modified or withdrawn. The child has no means of appeal against an order granting access to an individual he does not wish to see. |
| 10 - What happens if the right of access is not exercised? | The decision may be varied or annulled (this requires five years without contact) | The only possibility is voluntary mediation. | There is no provision expressly penalising failure to exercise a right of access. Failure to exercise a right of access may constitute further evidence of the lack of interest by the parent in question in the framework of proceedings aimed at depriving him of parental authority. |
| 11 - Is mediation used where a problem arises? | Specialist counselling can be arranged to solve disputes before the decision is given. After, it is available at the parent's | See question 10. Social workers can help parents to overcome problems and frequently do so. | Mediation in civil affairs was enshrined in the law of 8 February 1995. Mediation in this connection may |

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| | request or at the authority's proposal, to allow hands-on evaluation. | frequently do so. | be ordered at any time by the judge, with the agreement of the parties. |
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| | Germany | Greece | Hungary |
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| 6 - Are agreements between parents valid? | Parents determine access rights. The court only intervenes where there is a disagreement (even in divorce proceedings) or where it learns that the arrangements are harmful to the child. | Yes. No approval except in cases of divorce by mutual consent, which can only be granted on the basis of an agreement approved by the court. | The parents' agreement takes priority. In divorce or child placement proceedings, it would seem that the court's approval is required. |
| 7 - What provisions does an access decision normally contain? | Under the case-law a court decision must give full details of the access arrangements (the principle of certainty). Usually contacts take place in the home of the parent entitled to access but other solutions are possible. Visits are usually grouped if the homes are far apart. | All the solutions are possible if they are in the child's best interest. Contacts usually take place at the home of the parent granted access. Contacts abroad or in another town or city may be permitted, but such requests are subject to greater scrutiny. | The decision must specify the frequency, length, place, date and how the child will be collected and returned. Visits generally take place in the visiting parent's home, but the place of access may also be the child's home, a third party's home or an institution. |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | The Youth welfare office (YWO) is to be heard during proceedings. Parents and children are entitled to support and advice of the YWO to facilitate the conclusion of agreements on parental responsibilities including contact. Pending divorce proceedings, the court has to inform the YWO thereof if there are minor children in order to enable the YWO to give such advice. | The social services do not have any role to play. | During proceedings the guardianship authority or the court makes an attempt at conciliation; if that fails the decision is taken according to the interests at stake. Subsequently, the authority is empowered to summon the parties to a hearing and to fine them. |
| 9 - What remedies are available once a decision has been handed down? | Children over 14 possessing legal capacity can themselves lodge an appeal. The parent given custody can appeal. Upon admission by the court of appeal, a further appeal is available. At any time, a decision can be revised if the situation has changed. If a court gives a decision on access by third parties with whom the child habitually resides, such party has a right of appeal. Coercive measures may be taken to enforce a decision after prior warning: fines or forced return of the child under certain conditions. However, the use of force against a child is explicitly prohibited if the child is to be handed over for the purposes of contact. | If there has been a change in circumstances, the court must vary its decision in the child's best interest on an application from the parent(s), the child's nearest relatives or State Counsel. Where the child vehemently opposes access, the parent having custody is not obliged to bring pressure to bear, and the court may be led to refuse access in extreme cases in so far as the child's interests would be harmed. | If a child opposes access the guardianship authority attempts to persuade him or her through psychological counselling. Where the child has good reason to refuse, the authority can amend/withdraw the right. Unjustified opposition by the parent with custody can lead to a fine or to custody being awarded to the other parent. A parent having access who fails to abide by the decision can be given a warning and the authority may limit/suspend access. Any party may request amendment of a decision. |
| 10 - What happens if the right of access is not exercised? | The child has a right to contact with each parent and may take steps to implement that right, i.e. seek advice and/or mediation by the YWO or an order by the Family court. | No consequences. There is no legal obligation to exercise the right. | There is a duty of contact, but no statutory penalty |
| 11 - Is mediation used where a problem arises? | A pilot project to help separated or divorced parents reach an agreement, | The court must make a conciliation attempt at the first hearing. However, | Some educational counselling units and family help centres can mediate if |

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| | particularly concerning access, has been successfully carried out by the child welfare services. Mediation is voluntary. It is offered by NGOs and YWOs. | failure to make such an attempt will not invalidate the decision and, in practice, conciliation is rare. | there is a problem, but such mediation is not systematic. It brings good results. |
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| | Ireland | Italy | Liechtenstein |
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| 6 - Are agreements between parents valid? | Yes. They are not subject to approval, but the court's approval may be sought. | Yes, and court approval is mandatory. However, in practice, the parents can reach an arrangement modifying what the court decided. | Yes, and agreements are enforceable once they have been approved by the Guardianship Court. |
| 7 - What provisions does an access decision normally contain? | There are no usual provisions; it all depends on the circumstances. Contacts may take place in the home of the parent having custody or in that of the parent granted access. Sometimes a court imposes a condition that the child should not meet new partners when access rights are exercised. | The decision specifies the place and time of access and can even ban vis its abroad. Contacts usually take place in the home of the parent granted access, but in the event of a serious dispute another place may be specified and the presence of the other parent or a third party may be required. | The court will specify access arrangements only if the parents fail to agree. |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | The court may, of its own motion or at a party's request, obtain a written report from a probation officer, a Health Board representative or any other person. Sometimes, access will be supervised by a social worker, a probation officer or a Health Board official. | During proceedings welfare officers may be asked to report on the child's circumstances. Subsequently, they may be asked to be present during visits or to monitor the situation and report on it to the court. | The social services and child welfare office may be heard in the course of proceedings. |
| 9 - What remedies are available once a decision has been handed down? | A parent with custody may ask the court to vary its decision on the ground of the child's opposition. Children can themselves lodge such a request where they are in care and are hence a party to proceedings. A parent with custody may be sentenced to a fine and/or prison for refusal of access. Where a parent awarded access is in the wrong, the matter may be referred to the court by certain authorised persons. The police have the power to detain a child being removed from Ireland in breach of a decision. | In the event of opposition the court orders an investigation (by an expert or a welfare officer). The welfare authorities or the police may be asked to intervene. If this fails the court may order forced execution. Forced execution or amendment of the decision may be applied for where the decision is not adhered to. The defaulting party may be given a prison sentence of up to three years. | The parent awarded custody, the child, the parent granted access and, where appropriate, the grandparents, other persons close to the child or foster parents have fourteen days in which to appeal against a court decision. A decision may be varied on an application by any of the parties. Parents are free to alter the arrangements specified in the decision. |
| 10 - What happens if the right of access is not exercised? | No direct consequence. The court may take this into consideration in future decisions. | The court may be petitioned to amend the access rights or even to withdraw parental responsibility. | No consequences. |
| 11 - Is mediation used where a problem arises? | Married couples may have recourse to mediation concerning access before or during judicial separation or divorce proceedings or applications for access, custody or guardianship. | There is no statutory provision for mediation as such, but it is sometimes used by the Juvenile Courts. | There are no formal mediation arrangements, but a court may attempt to facilitate an agreement between the parents. |

| | Luxembourg | Malta | Moldova |
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| 6 - Are agreements between parents valid? | Yes. The parents may seek the court's approval, which will be granted if the agreement is in the child's interest. | Yes, but subject to court approval. | Yes, the law considers arrangements between the parents to be the essential instrument. |
| 7 - What provisions does an access decision normally contain? | Contacts usually take place in the home of the parent granted access, but other solutions can be envisaged: the home of the parent awarded custody in the presence of another person, an institution abroad, etc. | Contacts may take place solely in the child's home, at the home of the parent having access (without a third party's presence if harmful to the child), in a third party's home (provided that party's rights are not infringed) or abroad (the child must be returned on the scheduled date). | When making the order, the competent authorities specify all the details deemed necessary in the individual case (place, period of time etc.). |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | During proceedings the child welfare services carry out social investigations and endeavour to facilitate an agreement. Subsequently, they may direct and supervise access as an exceptional measure. | During proceedings the authorities or the child welfare services ensure that the child's interests are safeguarded. Subsequently, they are rarely involved, except where their presence is warranted. | If parents cannot reach an agreement on access, the authorities responsible for supervision and guardianship, with the participation of the parents, will decide. They may also, for a certain period, withdraw the access right of the parent not living with the child if the exercise of access has a harmful effect on the child. |
| 9 - What remedies are available once a decision has been handed down? | In all cases the remedies are application for suspension, cancellation or amendment of access rights. | Genuine opposition by a child will be taken into account where possible. Where other parties express opposition, the outcome depends on the grounds put forward. If the parent granted access fails to abide by the decision, it may be varied or set aside. If one or both parents wish to alter the arrangements, an application may be made to the court. | A decision on access made by the authorities responsible for supervision and guardianship may be challenged in court. If any person concerned opposes the exercise of access as defined in a decision made by the authorities responsible for supervision and guardianship, these authorities may, with consent of both parents, replace the order by another one. |
| 10 - What happens if the right of access is not exercised? | No consequences; access is a right not an obligation. | If the parent awarded custody refuses further access to the other parent, the latter must bring a new legal action. | No sanctions exist because the parents' right of access is considered as a right rather than an obligation. |
| 11 - Is mediation used where a problem arises? | There is always a mediation attempt by both the social services, who carry out the investigation, and the court, if the parties appear before it. | It may be used if both parties decide to request a third party to help in solving their difficulties. | No |

| | Netherlands | Norway | Poland |
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| 6 - Are agreements between parents valid? | Yes. An agreement on access does not have to be approved by a court. | Yes. Court approval is not necessary. | The parents may enter suitable settlement before the court. The court will examine if this agreement on access is not contrary to law. |
| 7 - What provisions does an access decision normally contain? | The decision often specifies periods when access rights are to be exercised (holidays, weekends). It may require a meeting on neutral ground if the relationship is difficult (in a third party's home or an institution). | Usually the person concerned chooses how and where access takes place. The court or the County Governor may decide that a third party should be present or that contacts should take place in the child's home where the child's interest so requires. | The decision on access must regulate the place where the access is to be exercised, the frequency of contacts and duration of particular contacts, and possibly indicate persons who are to be present during the contacts. |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | The court can seek the Child Care and Protection Board's opinion. Subsequently, if implementation of the decision raises problems, this Board may facilitate a few contacts on a temporary basis or mediation. | During proceedings experts, the child welfare services and the social services must be heard if necessary. Subsequently, their presence may be required during visits, if the child's interest so requires. | The court may use services of a court guardian who is the court's auxiliary authority. The role of the court guardian may include, at this stage of proceedings, preparing a report, providing essential evidence for deciding on the case. During the exercise of the right of access, the court guardian might be the person who supervises the exercise of the right. |
| 9 - What remedies are available once a decision has been handed down? | In the event of opposition by the child, the RIAGG or the AMW may be of assistance. Children may also bring legal proceedings if they have reached the age of 12 or at least are of sufficient understanding. If the parent with whom the child resides opposes access, a possible (but ultimate) remedy would be the removal of custody. If the person exercising access does not comply with the conditions for access the ultimate remedy would be access to be denied. If either parent wishes to change the arrangement they or one of them may apply to the court. | The Enforcement Act empowers the relevant court to impose a fine for failure to comply with a decision, except where the child is responsible. The parents may alter any agreement or arrangements without seeking the court's approval. | If the child opposes access: mediation either in or out of court ordered by the court. The parent with whom the child resides opposes access: mediation or compulsory enforcement of the court decision in the form of court execution. The person entitled to access does not respect condition for access: mediation or changing the content of the decision. Parents or one of them want to change conditions of access: application for changing the decision. |
| 10 - What happens if the right of access is not exercised? | Children may seek a court decision calling on the parent to exercise his or her right, but the parent cannot be forced to do so. | The parent with custody may apply to the court for withdrawal of the other parent's access right. | Not automatically consequences attached. However the parent may be deprived of parental responsibilities. |
| 11 - Is mediation used where a problem arises? | Mediation could take place where problems arise concerning access. | A conciliation attempt takes place before any access proceedings commence. It is obligatory before divorce or separation proceedings if the children are under 16. | Mediation is applied in solving problems which arise in connection with exercising the right of access (see answer question 9). |

| | Slovakia | Slovenia | Spain |
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| 6 - Are agreements between parents valid? | Yes. In fact the court decides on access only if the parents do not agree. Such an agreement does not require approval by the court. But a private agreement, which has not been approved by the court, is not, in principle, enforceable. | The manner of the exercise of access rights is determined by agreement of the parents. However, a decision of the competent social services centre can be sought if the parents cannot reach an agreement. | Yes, subject to the court's approval. |
| 7 - What provisions does an access decision normally contain? | The provisions on access contain the modalities of the exercise of the access: the frequency and length and/or extent, the date (day) and time of surrender of the child at the beginning and at the end of such exercise, the place of exercise, the presence of other persons (the custodial parent, welfare authorities etc.) | The decision made by the competent social services centre contains the child's place of residence and the day(s), hour and location of the visit, including breaks and holidays. If necessary for the protection of the child's interests, further details may be included. | Provisions vary depending on the circumstances and the child's interests. Short visits usually take place in the child's home and long ones in the home of the parent granted access if it is far away. |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | During the proceedings they are usually involved as guardians ad litem. They investigate the circumstance in the family of both parents and, as the case may be, school attended by the child. They ascertain the views of the child. During the exercise they may be present if the court so orders, in particular if the custodial parent has objections to access (as having repercussions on the mental or physical health of the child). | The competent social services centre represents the interests of the child if the parents cannot reach an agreement. It ensures that the child maintains contacts with both parents unless, according to the opinion of an expert commission, this is contrary to the child's interest. During divorce proceedings, the centre submits an expert opinion to the court concerning the attribution of custody. | The authorities or the child welfare services can intervene by order of the court or where requested to do so by the parties. |
| 9 - What remedies are available once a decision has been handed down? | The access can be re-evaluated by the court upon a motion to that effect by the parties or even by the court on its own motion (if the health of the child is in danger). If the custodial parent does not comply with the decision, the decision may be enforced against his/her will. | A complaint against the decision of the social services centre may be lodged with the Ministry of Social Welfare by the parent or guardian not living with the child. The child's guardian is entitled to challenge a decision concerning the manner and conditions of the exercise of access rights. If the parent with whom the child is living does not comply with a decision granting an access right to the other parent, the latter may request the social services centre to issue a decision on the enforcement of access rights. The court according to the rules applying to non-substitute performance and taking into account the protection of the best interests of the child will ensure enforcement. | The court gives a decision depending on the circumstances. |
| 10 - What happens if the right of access is not exercised? | If the parent having the right of access from the decision does not exercise this right, he/she cannot be forced to exercise it. This circumstance can, however, be the reason for the court to restrict or to terminate such right of access. | No provisions exist if the parent entitled to access does not exercise it. | The court takes a decision in the child's interest. There are no express rules. |
| 11 - Is mediation used where a problem arises? | Mediation is at present not an integral part of family proceedings in Slovakia. Social workers (welfare officers) do, however, mediate between the parents and sometimes even the judge mediates. However, such "mediation" does not have a formal framework of a mediation as defined in the Council of Europe Recommendation R (98) 1. | The social service centre decides on access rights if parents are unable to reach an agreement. In the decision-making process the centre uses mediation. | Mediation is not institutionalised, but welfare officers intervene at the parties' request or by order of the court. |

| | Sweden | Switzerland | Turkey |
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| 6 - Are agreements between parents valid? | Agreements can be legally valid and binding. The agreement is valid if it is in writing and approved by the social welfare committee. Agreements are also often confirmed by the courts. But both the social welfare committee and the courts shall consider the best interests of the child. If the agreement is not in the best interests of the child the agreement shall not be approved/confirmed. | Yes, but they can be modified at any time by the person with parental authority, where the child's interest so requires. They are regarded as no more than an application where the supervisory authority or a court has to determine access. | Yes, but subject to court approval. |
| 7 - What provisions does an access decision normally contain? | The decision on access usually only specifies the days and time of visits. The parent concerned is free to decide where he or she will exercise the right. | The provisions depend on the circumstances. In practice, the parent having access usually takes the child to his or her home and they together decide where they will stay. In some cases contacts must take place at a given location or within a given geographical area. | The decision on access usually specifies whether contacts must take place at the child's usual place of residence or in the home of the person granted access. |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | At the court's request the Welfare Committee provides information on the family (before confirmation of arrangements) or conducts an investigation (in the event of a dispute). It may file an access application on behalf of a person close to the child. The court may order that a social worker be present during visits (a rare occurrence in practice). | Where the court has jurisdiction to rule on personal relations, the supervisory authority may be heard. That authority may counsel those concerned and is under an obligation to take measures to safeguard the child's welfare. In very difficult cases (e.g. where there is a risk of abuse) it may appoint a supervisor to monitor (but not modify) access arrangements. | Turkish legislation does not contain any provision on the role of child welfare services or the social services during proceedings or when the right of access is being exercised. |
| 9 - What remedies are available once a decision has been handed down? | The child has no remedy against an access decision. The court may issue an access order for the benefit of the parent not granted custody, and failure to comply with that order will lead to a fine or to the child's being handed over by the police. A similar order may be issued in favour of the parent with custody. A decision may be modified through an informal agreement between the parents or on an individual or joint application to the court. It can be noted that also a parent who shares custody can be granted a contact order. | A child may not challenge an access decision. Disregard of orders concerning access may lead to a limitation or withdrawal of the right, where this would be for the child's good. The parents or the supervisory authority may request amendment of an initial decision in the event of a change in circumstances. A proposed reform is that the supervisory authority should be free to change the arrangements except for decisions concerning parental authority and maintenance. | If a parent fails to abide by a decision, the other may apply to the relevant authorities to obtain its enforcement. Where one or both parents wish to change the access arrangements they have to request the relevant court's approval. |
| 10 - What happens if the right of access is not exercised? | The parent can not be forced to have contact with the child. But the contact order can be reversed (so that the child and the other parent do not have to arrange their lives in order to follow the decision when the parent who has been granted a contact order does | Access may be restricted or withdrawn. Where a spouse's child has been adopted, the defaulting parent's consent may be dispensed with. | No legal consequences. In practice, those entitled to access may apply to the authorities to have the decision enforced. |

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| | not show up). | | |
| 11 - Is mediation used where a problem arises? | Sometimes if there is a difficulty. It often helps solve problems and facilitates an agreement between the parents. | The Code does not contain any express provisions. As part of divorce law reform, it is proposed to set up mediation services, which might take a role in this field. | Mediation is not used where access problems arise. |

| | Ukraine | United Kingdom |
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| 6 - Are agreements between parents valid? | Yes. By the legislation of Ukraine the questions of upbringing and education of children are decided by both parents. Only in the case of absence of such a consent the decision is accepted by a body of guardianship, and at non-execution of its decision - court. | Yes. The court only intervenes in the event of a disagreement between the parties or where the child's welfare so requires. |
| 7 - What provisions does an access decision normally contain? | The conditions of access are defined by bodies of guardianship or by court, proceeding from conditions of each concrete case and the best interests of the child. | The decision's content is extremely variable. A child cannot be removed from the UK, if his or her residence has been fixed there by court order, without the consent of all those having parental responsibility or leave from the court. (As an exception the person awarded custody may do so but for less than one month). |
| 8 - What role do youth authorities or welfare officers have during proceedings and during the exercise of a right of access? | During hearing the case the presence of the written conclusion of a body of guardianship, and also the presence of its representative is obligatory. In the future bodies of guardianship will check the execution of the duties, assigned to the parents, on upbringing and education of children. | In the event of a dispute the court may in the course of contact proceedings ask the court welfare officer to submit a report and seek to facilitate an agreement. Social services may be required to conduct an investigation where supervision or taking into care is being envisaged or the child is already in care. Furthermore, welfare officers may at all times be appointed to assist the family. |
| 9 - What remedies are available once a decision has been handed down? | When the parents do not obey the decision of a body of guardianship, this body and also each parent has the right to turn to the court. In case of malicious failure to comply with the decision the parent, who lives separately, in the best interests of the child, has the right to address the claim to court about the transfer of the child to him/her. (Article 65 CMF). | In the event of a problem, the parties (including the child if sufficiently mature) may apply to the court, which will attempt to preserve access, except where it is against the child's interest (or the child is genuinely opposed to it). The court may order assistance measures such as supervision of access. Failure to comply with a decision carries a prison sentence, which will be imposed if it is in the child's interest. |
| 10 - What happens if the right of access is not exercised? | Non approbation in this case is stipulated, as the right of access is not a duty but a right. | Children who are sufficiently mature may themselves bring the matter before the court, which will take a decision in the child's best interest. |
| 11 - Is mediation used where a problem arises? | Mediation is not used. | In some County Courts over 80% of cases are solved before the final hearing through mediation and the production of reports. There are plans to make legal aid available for mediation. |

PART C - REPLIES TO THE QUESTIONNAIRE ON ACCESS: TRANSFRONTIER ACCESS (questions 12 to 14)

| | Austria | Belgium | Bulgaria | Croatia |
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| 12 - Possibilities and provisions for transfrontier access | No specific provisions. Courts may grant transfrontier access, depending on the circumstances of the individual case, according to the general provisions on access. | No specific provisions. Courts may grant transfrontier access, depending on the parties' rights to access and the overriding interests of the child. | No specific provisions. Courts may grant transfrontier access, depending on the circumstances of the individual case, according to the general provisions on access (see under No. 14). Foreign decisions granting transfrontier access to be exercised in Bulgaria require recognition and declaration of enforceability. | No specific provisions. Croatia is a party to the Hague Convention on Civil Aspects of Child Abduction. |
| 13 - Existence of preventive measures to ensure compliance with an access order, in particular the return of the child Who would take such measures? | Preventive measures may be ordered in the initial order or later, if necessary. The court competent for the access order | Preventive measures may be ordered, according to the circumstances of the case. The courts | Not specified | A competent body may order any appropriate measure which is in the child's best interest. Center for Social Welfare or court. |
| 14 - Which body decides on the conditions for transfrontier access and remedies in case of their breach? When is such a decision taken? | The court, when making the access order, may fix such conditions. Subsequent remedies in case of non-return of the child after an access period are applications under the Custody Convention and the Hague Child Abduction Convention. When access is granted | The courts Normally when the decision on custody and/or access is made. If necessary, however, conditions may be imposed or changed later. | The competent court when required to do so by law (e.g. in cases of action for divorce or annulment, action to establish whether or not a marriage exists, de facto separation, and action to establish legitimacy and deprivation of parental authority). Jurisdiction exists if a child of Bulgarian or other nationality habitually residing abroad has been illegally removed to or retained in Bulgaria by the parent residing there. | Not specified by law, but such a case would be considered as the case of changed circumstances. A court decision can be applied as a previous or temporary. It depends on circumstances. |

| | Cyprus | Czech Republic | Denmark | Finland |
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| 12 - Possibilities and provisions for transfrontier access | No specific provisions. Courts may grant transfrontier access, depending on the circumstances of the individual case, according to the general provisions on access. | No specific provisions. Courts may grant transfrontier access according to the general provisions on access. They also have jurisdiction concerning access to minors of Czech nationality living abroad. | No specific provisions. The competent local government office may grant transfrontier access, depending on the circumstances of the individual case, according to the general provisions on access. | No specific provisions. Courts may grant transfrontier access according to the general provisions if this is in the best interests of the child. |
| 13 - Existence of preventive measures to ensure compliance with an access order, in particular the return of the child | Preventive measures may be included in the access order. | The courts may order any appropriate measure which is in the child's best interest. | The competent authorities usually give permission to exercise access rights abroad only if they are assured that the authorities in the relevant country will co-operate to return the child in case of a retention following the period of access. In this respect, it is taken into consideration whether the other State is a party to the Custody Convention or the Hague Child Abduction Convention and, if so, if there is a risk that the child might be taken to a non-contracting State. | Preventive recognition is available. Recognition may also be granted according to internal law without international obligation. Furthermore, Finland is a Party to the Hague Child Abduction Convention and to the Custody Convention. There are also internordic provisions concerning recognition or enforcement of custody and access orders. |
| Who would take such measures? | The court competent for the access order | The court | The competent local government office | |
| 14 - Which body decides on the conditions for transfrontier access and remedies in case of their breach? | The competent court | If parents do not come to an agreement, the Court of Minors decides. | The competent local government office. Its decision can be appealed to the Department of Private Law at the Ministry of Justice | The courts. If the Helsinki Court of Appeal declares the enforceability of a foreign access order in Finland, it may alter or specify the conditions for access under that order. |
| When is such a decision taken? | Usually when access is granted. Decisions as to the remedies in case of breach of conditions set out in the order or in case of non-return are normally taken after the respective event has occurred. | Normally when access is granted. If the case becomes a transfrontier one after the decision, the court may amend or replace its order. In case of non-return of the child after the access period, the court will take steps to ensure the respect of its decision. | At the time the party entitled to access is granted permission for access abroad | If a Finnish court grants transfrontier access, it may at the same time establish conditions for the exercise, depending on the child's best interests. |

| | France | Germany | Greece | Hungary |
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| 12 - Possibilities and provisions for transfrontier access | Not specified | No specific provisions. Courts may grant transfrontier access according to the general provisions on access provided that they have jurisdiction. | -- | No specific provisions. Courts may grant transfrontier access according to the general provisions on access. |
| 13 - Existence of preventive measures to ensure compliance with an access order, in particular the return of the child Who would take such measures? | A priori no, as action cannot be taken against the non-custodial parent on the basis of assumptions (but see under No. 15). However, if a risk of removal or retention of the child is sufficiently established, such measures may be taken. The judge competent to make an access order. Furthermore, the custodial parent may lodge an objection against the other parent leaving France with the Ministry of the Interior. This provisional measure must be followed by a court order to remain in force. | Such measures may be ordered (as to their nature, cf. No. 15). The Family Court | -- -- | Not specified |
| 14 - Which body decides on the conditions for transfrontier access and remedies in case of their breach? When is such a decision taken? | The competent court If measures mentioned under Nos. 13 and 15 appear necessary, they can be taken at any time. | The Family Court, provided that jurisdiction of German courts exists. At any time | -- -- | Not specified |

| | Ireland | Italy | Liechtenstein | Luxembourg |
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| 12 - Possibilities and provisions for transfrontier access | No specific provisions apart from the Custody Convention and the Hague Child Abduction Convention. Courts may, upon request of the non-custodial parent, grant transfrontier access according to the general provisions on access. | No specific provisions. Courts may grant transfrontier access according to the general provisions if it is in the child's best interest. | No specific provisions. Courts may grant transfrontier access according to the general provisions on access, depending on the circumstances of the case. | No specific provisions. Courts may grant transfrontier access according to the general provisions on access, depending on the circumstances of the case. Due to the small size of the country, this occurs frequently. |
| 13 - Existence of preventive measures to ensure compliance with an access order, in particular the return of the child | In case of a risk that a child might not be returned to Ireland after a period of transfrontier access, the court would probably order the access to be exercised in Ireland. However, a possible condition could be the existence in the State where access is to take place of a custody order in favour of the custodial parent. | Yes, see under No. 15 | If necessary such measures can be taken by the court upon request of the custodial parent. | No specific measures under private law. However, provisions on criminal sanctions exist. |
| Who would take such measures? | The court when making the access order | Not specified | The guardianship judge | |
| 14 - Which body decides on the conditions for transfrontier access and remedies in case of their breach? | The court, which makes the access order, decides on the conditions at that time or later. As to remedies in case of non-return, see under No. 12. | The court, which makes the access order normally, decides on the conditions at the same time. The remedies in case of breach are set out in international conventions. The court takes decisions on such remedies. | In general, parents make arrangements concerning these conditions. If this does not seem to be sufficient: see under No. 13. | The judge may stipulate on such conditions. Decisions are taken by the same authorities which decide on access within the country, namely the urgent applications judge, the divorce judge, the juvenile judge and the guardianship judge. In case of a breach of conditions, application must be made to the judge who made the initial order. |
| When is such a decision taken? | See above. A remedy for the breach of a condition will only be ordered when such a breach has occurred. | | Before, during or after the period of access | Any time |

| | Malta - to be updated (bi ll) | Moldova - no answer yet | Netherlands | Norway |
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| 12 - Possibilities and provisions for transfrontier access | -- | -- | No specific provisions. Courts may grant transfrontier access according to the general provisions on access. | If the parents disagree as to who shall have parental responsibility or care of the child, the child may go abroad with either of them with the other's consent only. However, the court or the County Governor may grant transfrontier access. |
| 13 - Existence of preventive measures to ensure compliance with an access order, in particular the return of the child Who would take such measures? | -- | -- | Such measures are possible, depending on the concrete situation. Furthermore, the Netherlands is a Party to the Custody Convention and to the Hague Child Abduction Convention. In order to strengthen such measures, they ought to be taken by judicial decree - even a declaratory one. | No specific provisions. |
| 14 - Which body decides on the conditions for transfrontier access and remedies in case of their breach? When is such a decision taken? | -- -- | -- -- | Parents might conclude an agreement, which does not have to be approved by a court. If no agreement can be reached, a court decision can be sought with regard to the conditions. In case of breach, a court decides. Any time | The court or the County Governor may take such decisions. During access proceedings and in the access order. |

| | Poland | Slovakia | Slovenia | Spain |
|---|---|---|--|---|
| 12 - Possibilities and provisions for transfrontier access | No specific provisions except those contained in the Custody Convention and the Hague Child Abduction Convention. | The relevant law does not specifically regulate transfrontier access. It is not prohibited either. So, in principle, the court could decide on such an access. | No specific provisions exist. Transfrontier access may be granted according to the general provisions on access. | No specific provisions exist. Transfrontier access may be granted according to the general provisions on access upon request of a non-custodial parent. |
| 13 - Existence of preventive measures to ensure compliance with an access order, in particular the return of the child Who would take such measures? | Apart from the normal details set out in the order (see under No. 14), no further preventive measures exist under Polish law or practice. | The law does not provide for specific preventive measures in relation to cases of transfrontier access. If there were any preventive measures imposed, they would have to be ordered by the court in the original decision on the access (as part of the modalities for its exercise). | Slovenia is a Party to the Hague Child Abduction Convention. No further specification. -- | In general, such measures are not taken. Only the judge, if necessary. |
| 14 - Which body decides on the conditions for transfrontier access and remedies in case of their breach? When is such a decision taken? | The court when making the access order sets out duration, place and frequency of the access. | See the previous answer. | -- -- | The judge who pronounced the divorce judgement and established the right of access. At any time. |

| | Sweden | Switzerland | Turkey | Ukraine |
|---|---|---|--|---|
| 12 - Possibilities and provisions for transfrontier access | No specific provisions exist. However, the courts may grant such access upon request of a non-custodial parent. If the custodial parent with whom the child is living in Sweden opposes the exercise of transfrontier access, the non-custodial parent can request an execution order from the Swedish court. | No specific provisions exist. Transfrontier access may be granted according to the general provisions on access if this is in the best interest of the child. | Such provisions exist. | Is not specified by the legislation. |
| 13 - Existence of preventive measures to ensure compliance with an access order, in particular the return of the child Who would take such measures? | No specific provisions concerning transfrontier access. Under general provisions, access may be restricted to a certain place (see under No. 15). The court when access is granted | Such measures may be taken. They might include written undertakings (see No. 15); deposit of passports of the child and/or the parent entitled to access; supervision of the access; recognition and declaration of enforceability of a Swiss decision abroad or - less formal - its prior delivery to a diplomatic representative of the State concerned. The judicial and supervising authorities upon request of either party or of the central authority | Such measures may be taken. The court | Is not specified by the legislation. |
| 14 - Which body decides on the conditions for transfrontier access and remedies in case of their breach? When is such a decision taken? | The court When access is granted | The cantonal court or the court of the local area, the State Prosecutor or the State Council, supervising authorities with the assistance of the Youth Welfare Department or the cantonal office for minors, depending on the type of procedure chosen. Any time, depending on the circumstances of the case. | The court At the end of the access period when the child has not been returned or following a breach of other conditions of the access order. | In conformity with Article 194 CMF of Ukraine the foreign subjects have in Ukraine the same rights and bear the same duties in marital and family relations as the citizens of Ukraine. The stateless persons permanently living in Ukraine, have the same rights and bear the same duties in marital and family relations as the citizens of Ukraine. Thus, all above-stated rules referring the citizens of Ukraine are applicable to a situation with a foreign element. |

PART D - REPLIES TO THE QUESTIONNAIRE ON ACCESS: TRANSFRONTIER ACCESS (questions 15 to 19)

| | Austria | Belgium | Bulgaria | Croatia |
|---|---|--|---|--|
| 15 - Possible forms of preventive measures | Bank or financial guarantees, information about where the access is to take place, presentation of the child's return ticket at the beginning of the access period, deposit of passports, in advance - recognition of the custody and access order in the State where access is to take place | Provisions in the access order; recognition of a foreign order (possibility to fix conditions upon recognition under the Custody Convention or - outside the Convention's scope - in a separate order); supervision by relatives or social workers/welfare authorities; restriction for access to be exercised at a certain place. | If a child habitually resident in Bulgaria is supposed to travel abroad for the exercise of transfrontier access, the application for a passport requires express consent of both parents. If one parent withholds consent, the case is referred to the District Court. | <ul style="list-style-type: none"> - Supervision by social workers - Access takes place in the Centre for Social Welfare premises, or in the house of custodial parent. - Deposit of passports, etc. |
| 16 - Would your authorities refrain from starting custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Yes, if the child has a foreign nationality. Jurisdiction is then based on habitual residence. If the child has Austrian nationality, jurisdiction exists but the authorities may abstain in accordance with Article 4 of the 1961 Protection of Minors Convention. | In principle yes. Jurisdiction concerning custody is based on the habitual residence of the child. However, if the child is at risk, measures may be taken at any time. | Not specified | This is the question of jurisdiction accordance to the Conflict Law Act. It depends on nationality and habitual residence of the child. Croatian authorities would refrain in all such situation except if Croatian jurisdiction was exclusive or in some emergency situation. |
| 17 - Would your courts refrain from hearing custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | See under No. 16. Furthermore, courts have to respect Article 16 of the Hague Child Abduction Convention. | Only if an objection to jurisdiction is raised by the interested party | Not specified | See question 16. |
| 18 - If the child is returned after abduction, does the abductor still retain right of access after the return? | The decision is up to the court in the individual case. | Yes, unless the right of access has been withdrawn by a judicial decision. If the parent entitled to access does not respect the conditions, the right of access may be withdrawn or conditions imposed, e.g. access restricted to Belgium. | After the return of the child, the abducting parent's access rights may be restricted or withdrawn. Upon application by the other parent or the public prosecutor or on its own motion, the District Court may also withdraw that parent's parental authority. | Yes. |
| 19 - If so, are special guarantees requested before a new access period? Which ones? | The same guarantees as mentioned under No. 15 may be ordered. | Not necessarily, but such guarantees may be ordered upon request of the custodial parent. | Not specified | Such guarantees may be required (see measures mentioned under Nos. 13, 14 and 15). |

| | Cyprus | Czech Republic | Denmark | Finland |
|---|--|--|--|--|
| 15 - Possible forms of preventive measures | Provisions in the access order, recognition of a foreign custody or access order, supervision by a social worker/welfare authority during access, written undertakings, deposit of passports, financial guarantees, information about time and place of access | Provisions in the order for access; recognition of a foreign order; supervision by a social worker/welfare authority during access; written undertakings; information about time and place of access; deposit of passports; financial guarantees may be ordered. However, no practical experience with bank guarantees and deposit of passports exists. | If the competent authority deems it safe to let the child go abroad for access, generally no special precautions will be ordered except the indication of a contact address during access. Upon request, the deposit of a passport can be ordered. | Deposit of a passport will be possible if a Bill concerning revision of the Act on Enforcement, which was introduced to the Parliament in late 1995, is accepted. As to other possible measures: no further specification |
| 16 - Would your authorities refrain from starting custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Normally yes, unless there is an emergency to prevent serious wrong being committed. | Independent of the habitual residence, jurisdiction is mainly based on the nationality of the minor and/or one or both parents. Apparently no self-restriction envisaged. Concerning minors of foreign nationality present in the Czech Republic: only emergency measures; priority for ordinary decisions is given to the court of the minor's nationality. | Apparently, if jurisdiction exists, Danish authorities would not refrain from exercising it. See further under No. 17. | Jurisdiction normally depends on the child's habitual residence, so this conflict is unlikely to occur. |
| 17 - Would your courts refrain from hearing custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Normally yes, unless there is an emergency to prevent serious wrong being committed. However, if a court makes a custody order, not knowing that the child is in Cyprus for access purposes only, this order may later be annulled. | See under No. 16. | See under No. 16. Jurisdiction exists if 1) the defendant is resident in Denmark, or 2) the plaintiff is resident in Denmark and has either lived there for the past two years or has had his or her residence there previously, 3) the plaintiff is a Danish national and for this reason unable to institute proceedings in the country of residence or 4) both parties are Danish nationals and the defendant does not oppose proceedings in Denmark. | See under No. 16. |
| 18 - If the child is returned after abduction, does the abductor still retain right of access after the return? | Yes, but in practice the person will have to apply to the court to have that right defined and/or confirmed. The court then may refuse to grant access or impose conditions. | A breach of rules and conditions of access may result in a limitation or withdrawal of the right of access for the parent concerned, depending on the child's best interests. The court may act on its own motion. | If the competent authority sees the risk of another abduction, the initial access order will generally be revoked. The decision depends on the circumstances of the case. | In principle yes. However, upon request of the custodial parent, the courts could amend the access order concerning a child habitually resident in Finland. |
| 19 - If so, are special guarantees requested before a new access period? Which ones? | The same guarantees as mentioned under No. 15 may be ordered. | Additional guarantees will very probably be required if, exceptionally, another period of transfrontier access is granted at all. | If a parent retains access right after abduction, the competent authority will try to ensure that the access be exercised in Denmark in future. Normally, the presence of a third party and the deposit of the passport of the person entitled to access will be ordered. | One possibility would be that future access has to take place in Finland. |

| | France | Germany | Greece | Hungary |
|---|---|--|--------|--|
| 15 - Possible forms of preventive measures | The court may order the access to be exercised in France and under specific conditions to be established by it with no appeal possible. The parent entitled to access may also be ordered to deposit his or her papers and travel documents, and the custodial parent may lodge an objection against him or her leaving France with the Ministry of the Interior. | Provisions in the order (it must contain detailed and enforceable regulations about time, duration, place and manner of the access, collection and return of the child); supervision by a third person (e.g. relative or social worker/welfare authority); duties of notification of time and place of access and changes of residence; recognition of a foreign custody or access order; deposit of the passport of the child and/or the person entitled to access (no legal basis available; doubtful if allowed in civil law matters) | -- | -- |
| 16 - Would your authorities refrain from starting custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Under French law, in such a case the authorities and courts at the child's habitual residence abroad have exclusive jurisdiction (see further under No. 17). | If German authorities are competent to exercise jurisdiction (e.g. concerning children of German nationality or in urgent cases) they could not be prevented from proposing custody proceedings concerning such a child before a court which has jurisdiction. | -- | -- |
| 17 - Would your courts refrain from hearing custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | See under No. 16. However, urgent protective measures may be taken, based on the presence of the child and/or his or her nationality (see Articles 4 and 9 of the 1961 Hague Convention on the Protection of Minors). | If German courts have jurisdiction the mere fact that the child is in Germany for access purposes only would not prevent the initiation of such proceedings. However, jurisdiction is limited, especially under the 1961 Hague Convention on the Protection of Minors. | -- | -- |
| 18 - If the child is returned after abduction, does the abductor still retain right of access after the return? | Yes. | The abduction may lead to restriction or exclusion of the right of access. However, a limitation or exclusion of this right or its exercise for a longer period of time or permanently may only be taken if otherwise the best interests of the child were endangered. | -- | In principle yes. However, depending on the circumstances, this right might subsequently be limited, withdrawn or suspended. |
| 19 - If so, are special guarantees requested before a new access period? Which ones? | Such guarantees may be required, see measures mentioned under Nos. 13 and 15. | Cf. No. 18. Such guarantees could be ordered, e.g. a supervisory curatorship or an order to exercise access on the premises of the youth welfare office. | -- | See under No. 18 |

| | Ireland | Italy | Liechtenstein | Luxembourg |
|---|---|--|--|--|
| 15 - Possible forms of preventive measures | Not specified | Provisions contained in the order (e.g. limiting period and place of access or prohibiting to take the child abroad); supervision by a social worker/welfare authority; information about time and place of access and changes of residence; deposit of the child's passport (as to the parent's passport, this could interfere with freedom of movement); bank or financial guarantees (legally possible but rarely used) | Any appropriate form | No separate preventive measures exist. However, the order itself may include regulations, i.e. about where the access is to take place or about supervision. |
| 16 - Would your authorities refrain from starting custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Custody proceedings under the Guardianship of Infants Act, 1964 are not normally started by authorities. In case of proceedings under the Child Care Act, 1991 it is unlikely that the health board would commence such proceedings. | Such proceedings could be started upon request of a party only. Jurisdiction may exist, especially if the child or one of the parents is an Italian national. However, the need to exercise it will be carefully evaluated, taking into account obligations deriving from international instruments such as the Hague Child Abduction Convention. | Yes, unless the child has Liechtenstein nationality. | In principle yes. Problems of jurisdiction would arise in this case. |
| 17 - Would your courts refrain from hearing custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Also in case of countries not Parties to the Hague Child Abduction Convention, courts would generally order the return of the child to his or her country of habitual residence. Only in exceptional circumstances, custody proceedings would be heard. | See under No. 16 | Yes, unless the child has Liechtenstein nationality. | See under No. 16 |
| 18 - If the child is returned after abduction, does the abductor still retain right of access after the return? | The decision is up to the court in the individual case. | In principle yes. However, depending on the circumstances, this right might subsequently be limited, withdrawn or suspended by a court order. | Yes. Access cannot be denied to the abductor because it is a fundamental right of the parent/child-relationship. | Initially yes. In practice, withdrawal of this right is often requested and granted. Furthermore, criminal sanctions apply. |
| 19 - If so, are special guarantees requested before a new access period? Which ones? | It is most unlikely that transfrontier access would be granted again after abduction. | See under No. 18 | The Guardianship Court may require appropriate guarantees; this may extend to a prohibition on the exercise of access. | See under No. 15. In this case, the new access order may restrict the exercise of access to the territory of Luxembourg or make it conditional on supervision. |

| | Malta - to be updated (bill) | Moldova - no answer yet | Netherlands | Norway |
|---|------------------------------|-------------------------|---|---|
| 15 - Possible forms of preventive measures | -- | -- | Provisions contained in the order; recognition of a foreign order; supervision by a social worker/welfare authority; written undertakings; information about time and place of access and changes of residence; deposit of passports; bank or financial guarantees and other measures are possible. | No specific provisions |
| 16 - Would your authorities refrain from starting custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | -- | -- | Yes (cf. the Custody Convention and the Hague Child Abduction Convention). | A conflict of jurisdictions may exist if the defendant is resident in Norway. |
| 17 - Would your courts refrain from hearing custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | -- | -- | Yes, along the lines of Article 16 of the Hague Child Abduction Convention. | See under No. 16. However, interim measures concerning a child present in Norway may always be taken. |
| 18 - If the child is returned after abduction, does the abductor still retain right of access after the return? | -- | -- | Yes, if he or she had such right before the abduction. If not, he or she can request the court to grant access rights. If the custodial parent and the person desiring an access right agree on an arrangement, no court decree is necessary. | Initially yes, but the custodial parent may alter the underlying agreement, request the court or the County Governor to amend a previous access decision or apply for a (first) decision. By this decision, the abductor may also be deprived of his/her right of access. |
| 19 - If so, are special guarantees requested before a new access period? Which ones? | -- | -- | All measures mentioned under No. 15 and others suggested by the parties may be ordered, depending on the circumstances of the case. | No specific provisions. The court or the County Governor may order such guarantees according to the circumstances of the case. |

| | Poland | Slovakia | Slovenia | Spain |
|---|--|---|----------|---|
| 15 - Possible forms of preventive measures | Apart from the details set out in the order (see under No. 14), no preventive measures exist (in particular, no supervision, no undertakings, no deposits or bank guarantees, no deposit of passports). | As stated above, no specific forms of preventive measures are regulated for the transfrontier access, nor does the law enumerate preventive measures in general. So it is up to the court to take the measure. Since there is no wide experience with granting transfrontier access, no "list" of applicable preventive measures has developed. The Court could order the deposit of the passports or the presence of welfare officers. It is not likely that the court would order bank or other monetary or property guarantees. | -- | Not specified |
| 16 - Would your authorities refrain from starting custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | This problem does not occur because in Poland, custody decisions are only decided in court proceedings and not by other authorities. | This would depend on the circumstances. Before Slovakia becomes the Party to the Hague Abduction Convention there is, strictly speaking, no prohibition on the exercise of jurisdiction by the Slovak authorities in such case. However, the Slovak authorities have jurisdiction to decide on the merits only if the child is a Slovak national. If the child is a foreign national they can take only urgent and protective measures if the child is in danger. However, if a foreign custody decision were (capable of being) recognised in Slovakia, the authorities would, in principle, refrain from taking action unless the protection of the child would require such steps be taken. | -- | Yes |
| 17 - Would your courts refrain from hearing custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Polish courts have jurisdiction if at least one of the persons concerned is a Polish national or a stateless person habitually resident in Poland. In such case, there are no formal obstacles to the exercise of this jurisdiction apart from Article 16 of the Hague Child Abduction Convention. | See also answer to the previous question. If there was a motion filed by the parent of a Slovak child for the court to decide on custody or if the interest of the child so requires, the court would hear the custody case. In cases of a foreign child the court would hear the case only if the child's domestic authorities would not take action in a reasonable delay and the protection of the child so requires. | - | Yes, if the Spanish courts are aware of this situation. Only the judge at the child's habitual residence would be competent then. |
| 18 - If the child is returned after an abduction, does the abductor still retain right of access after the return? | Yes. However, future access may be restricted to Poland or limited in other ways by the court on its own motion or upon request from the other parent. If the former abductor is a parent, the right of access may only be withdrawn if the person is simultaneously (or has already been) deprived of parental responsibilities. As to other persons, a court decision stating that further access would threaten the welfare of the child would be sufficient. | Yes. Unless his right is restricted or terminated if the health of the child so necessitates. | -- | Yes, unless the judge deprives him or her of this right. |

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| 19 - If so, are special guarantees requested before a new access period? Which ones? | If the person retains the right of access (see under No. 18), usually no special guarantees are required. The court may, however, change the conditions of access and restrict it to be exercised in Poland (see also under Nos. 13-15). | No. | -- | The judge may, upon request of a party, order such measures. |
|--|--|-----|----|--|

| | Sweden | Switzerland | Turkey | Ukraine |
|---|--|---|---|--|
| 15 - Possible forms of preventive measures | Provisions in the access order about where access is to be exercised. Deposit of passports, bank or other guarantees, undertakings and recognition in advance are not requested. | See under No. 13. In particular, the parent entitled to access has been required to give an undertaking to return the child at the prescribed time by making a written declaration before a justice of the peace at his place of residence. Financial guarantees have apparently not been ordered, yet. | Recognition of a foreign custody or access order; information about the place of access; if necessary, bank and other guarantees ordered by the competent authority | The given question is not particularly specified in the legislation. However, Article 66 CMF defines, that the bodies of guardianship assist the parents in the upbringing and education of children and will check the execution of the duties, assigned to the parents, on upbringing and education of children. If necessary the bodies of guardianship accept all measures, depending on circumstances, for rendering assistance to children and for protecting them from danger threatening to their physical or spiritual development. |
| 16 - Would your authorities refrain from starting custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Yes. Apart from divorce cases, custody proceedings concerning a child habitually resident abroad cannot be started in Sweden (see further under No. 17). | Yes. The jurisdiction in the State of the child's habitual residence is the principal jurisdiction; Swiss authorities would only take emergency measures, if necessary. | No, in accordance with Turkish law. | Is not specified by the legislation. |
| 17 - Would your courts refrain from hearing custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Yes (see under No. 16). Furthermore, the Custody Convention and the Hague Child Abduction Convention have to be respected. | Yes (see under No. 16), according to the Hague 1961 Protection of Minors Convention, the Child Abduction Convention and the Custody Convention. | No, according to Turkish law. | Is not specified by the legislation. |
| 18 - If the child is returned after an abduction, does the abductor still retain right of access after the return? | Yes, until there is a new court decision. Non-compliance with conditions set out in the original order can be a reason for future restrictions. | In principle yes, unless decided otherwise by a court (see under No. 19, though). The child's right to maintain relations with both parents is the primary consideration, not to punish the abductor. | Yes, unless the right is withdrawn by the Civil Court. | The given question is not particularly specified in the legislation. However, taking into account that, according to the criminal legislation of Ukraine only abduction of the another's parents child is considered to be a crime, the given question is decided regularly on the basis of Article 67 CMF ("at absence of the agreement between the parents dispute it is authorised by court, in the best interests of children and in view of their desire"). |
| 19 - If so, are special guarantees requested before a new access | No specific provisions for access in such a case. Upon request of the custodial parent, | Yes, definitely. Access might for instance be suspended for a while and then start again by phone and | Special guarantees may be requested such as deposit of passports, bank and other | Not specified |

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|---------------------|--|---|--|--|
| period? Which ones? | the court may order restrictions or suspend the other parent's right of access for a certain period. | letters only, then be restricted to Switzerland, followed by access abroad. | guarantees ordered by the competent authority or restriction of the access to be exercised in Turkey only. | |
|---------------------|--|---|--|--|

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|---|---|
| | United Kingdom |
| 15 - Possible forms of preventive measures | Any of the measures mentioned could be taken. The abduction of a child is a criminal offence and punishable by imprisonment. |
| 16 - Would your authorities refrain from starting custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Normally, such proceedings have to be commenced by the parties. The authorities do not commence them on their own motion unless the child is at risk of significant harm and social services have to act in an emergency. |
| 17 - Would your courts refrain from hearing custody proceedings if a child habitually residing abroad is on the territory only for access purposes? | Before examining the merits of the case, the court should consider whether this is a matter for the courts of the country of the child's habitual residence. |
| 18 - If the child is returned after an abduction, does the abductor still retain right of access after the return? | Yes |
| 19 - If so, are special guarantees requested before a new access period? Which ones? | The system is very flexible and any of the conditions mentioned under No. 15 may apply. |

PART E- REPLIES TO THE QUESTIONNAIRE ON ACCESS: TRANSFRONTIER ACCESS (questions 20 to 22)

| | Austria | Belgium | Bulgaria | Croatia |
|---|---|---|---|---|
| <p>20 - a) If the State to which the child has been removed or where he/she is being retained rejects a request for return of the child or does not dispose of procedures for a return, what steps may be taken:</p> <p>- by the person who has custody?</p> <p>- by the authorities of your country if the child is normally habitually resident there by virtue of a custody order?</p> <p>b) If the child is retained in your country for reasons given under a), which measures may the authorities in your country take?</p> | <p>The custodial parent has to take the necessary steps for recognition of the relevant custody order, for a return of the child under existing conventions and/or for new custody and access proceedings.</p> <p>No ex officio activities of Austrian authorities</p> <p>If Art. 8 par. 3 of the Custody Convention applies, the child has to be returned. In other cases, it is up to the custodial parent living abroad to lodge an application in Austria. No ex officio-proceedings.</p> | <p>The custodial parent may institute (new) custody proceedings in the country which has refused to return the child in order to obtain custody there (see Article 8 of the Custody Convention).</p> <p>No jurisdiction to intervene</p> <p>The courts can take no steps because they have refused to return the child to the custodial parent.</p> | <p>The Bulgarian parent has to institute proceedings in the other State according to that State's law.</p> <p>Apparently no activities of Bulgarian authorities</p> <p>Not specified</p> | <p>A custodial parent has the right to institute proceedings in the other State according to that State's law (court proceedings in accordance with the national legislation of the State which has refused to return the child).</p> <p>No ex officio activities of Croatian authorities.</p> <p>Not specified</p> |
| <p>21 - Provisions for recognition in advance of foreign custody orders</p> | <p>No specific provisions. Austrian courts lack jurisdiction if the child is a foreign national and neither neither habitually resident nor physically present in Austria at the moment of the request of recognition in advance.</p> | <p>No specific provisions; general provisions apply. Under the Custody Convention, however, recognition in advance of a foreign order is not possible because jurisdiction lies only with the court at the minor's place of residence (abroad) at the time the application is made.</p> | <p>No specific provisions on recognition and enforcement of foreign custody decisions.</p> | <p>--</p> |
| <p>22 - Conditions for such recognition if the child is not habitually resident in your country and the non-custodial parent has been granted access in your country by the foreign decision</p> | <p>In a case under the Custody Convention, the grounds for non-recognition set out in Article 10 apply. In other cases, jurisdiction of the foreign court which made the custody order is a precondition for recognition (cf., i.a., Article 7 of the 1961 Convention on the Protection of Minors).</p> | <p>For cases outside the scope of the Custody Convention, this depends on the law governing the relations between the two States concerned.</p> | <p>Foreign decisions in matrimonial matters are recognised and declared enforceable according to Articles 303 ff. of the Code of Civil Procedure (CCP) unless they are recognised by operation of law according to bilateral agreements. Under Article 303 par. 4 CCP, judgements against Bulgarian nationals are recognised if the defendant was resident in the country in question at the time the action was brought.</p> | <p>Recognition and enforcement of foreign authorities' decisions (including decisions about parents-children relations) is regulated by the Conflict of Laws Act ("Zakon o rje Šavanju sukoba zakona s propisima drugih država u određenim odnosima")</p> |

| | Cyprus | Czech Republic | Denmark | Finland |
|---|--|--|--|--|
| <p>20 - a) If the State to which the child has been removed or where he/she is being retained rejects a request for return of the child or does not dispose of procedures for a return, what steps may be taken:</p> <ul style="list-style-type: none"> - by the person who has custody? - - by the authorities of your country if the child is normally habitually resident there by virtue of a custody order? <p>b) If the child is retained in your country for reasons given under a), which measures may the authorities in your country take?</p> | <p>The parent having custody has to institute proceedings in the other State according to that State's law.</p> <p>No activities of Cypriot authorities possible</p> <p>No activities on Cypriot authorities' own motion. The central authority will assist any person wishing to institute return proceedings under the Custody Convention.</p> | <p>The Czech courts may issue an adequate decision. Furthermore, the activities of diplomatic bodies will be used.</p> <p>No legal measures available in cases of refusal of return and/or non-recognition of a foreign decision.</p> | <p>Where there are no conventional provisions, the competent authorities will normally refer the party to the Danish Ministry of Foreign Affairs with a view to obtaining diplomatic assistance.</p> <p>Diplomatic assistance</p> <p>Not specified</p> | <p>Diplomatic channels could be used.</p> <p>Diplomatic assistance</p> <p>Protective measures may be taken and interim orders concerning custody and access made, if necessary (jurisdiction based on the child's presence). Once the child's new habitual residence has been established in Finland, jurisdiction extends to final decisions on custody and access.</p> |
| <p>21 - Provisions for recognition in advance of foreign custody orders</p> | <p>Such provisions exist under the Custody Convention.</p> | <p>No specific provisions.</p> | <p>Not specified</p> | <p>Such provisions exist.</p> |
| <p>22 - Conditions for such recognition if the child is not habitually resident in your country and the non-custodial parent has been granted access in your country by the foreign decision</p> | <p>Those set out in the relevant articles of the Custody Convention.</p> | <p>Preconditions for recognition of foreign orders in general: A confirmation by the State of origin of the foreign order that it had come into effect; non-existence of any Czech decision or decision from a third State recognised in the Czech Republic on the same matter; respect of the parties' right to be heard; reciprocity. Normally, the decision on recognition is not taken in advance but together with the declaration of enforceability.</p> | <p>Foreign decisions on custody will normally be recognised under Danish private international law if the decision has been made in the country where the child is domiciled.</p> | <p>Under the Custody Convention, recognition may be refused under Articles 9 and 10, also in cases covered by Articles 8 and 9. Recognition of orders from non-contracting States may also be refused if Finnish courts in similar situations would not have jurisdiction. Under the Nordic Convention of 1931, recognition can in practice not be refused.</p> |

| | France | Germany | Greece | Hungary |
|---|---|--|--------|---------------|
| <p>20 - a) If the State to which the child has been removed or where he/she is being retained rejects a request for return of the child or does not dispose of procedures for a return, what steps may be taken:</p> <p>- by the person who has custody?</p> <p>- by the authorities of your country if the child is normally habitually resident there by virtue of a custody order?</p> <p>b) If the child is retained in your country for reasons given under a), which measures may the authorities in your country take?</p> | -- | <p>The custodial parent could bring court proceedings for a return order in Germany. Jurisdiction would in most cases be based on the habitual residence of the child which, until the removal, was in Germany.</p> <p>The youth welfare office and other authorities could not take any measures concerning this child after a removal or retention.</p> <p>Return procedures exist under the Hague Child Abduction Convention and the Custody Convention. If German courts refuse a return, German courts and authorities could take protective measures concerning that child if they have jurisdiction, eg. under Articles 13, 1 and 4 of the 1961 Hague Convention or internal law (eg. concerning children of German nationality).</p> | -- | Not specified |
| 21 - Provisions for recognition in advance of foreign custody orders | A preventive declaration of enforceability may be obtained. | Recognition in advance may be obtained by a declaratory judgement under section 7 par. 3 of the Implementing Act to the Custody Convention and, outside the scope of the Convention, in analogy to section 256 of the Code of Civil Procedure. | -- | Not specified |
| 22 - Conditions for such recognition if the child is not habitually resident in your country and the non-custodial parent has been granted access in your country by the foreign decision | Registration is unknown under French law. Recognition of foreign court orders regarding the status of individuals occurs by operation of law. For enforcement, a declaration of enforceability must be sought. The applicant must prove an interest in taking action, and the usual conditions for such procedure under domestic or treaty law must be fulfilled. | The conditions are set out in Article 10 of the Custody Convention, in Article 7 par. 1 of the 1961 Hague Convention on the Protection of Minors, in section 16a of the Non-Contentious Matters Act and, outside the scope of these Conventions, in section 256 of the Code of Civil Procedure (specific legal interest in a declaratory judgement which will in general arise from the | -- | Not specified |

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| | | fact that the effective exercise of the right of access will be facilitated by the decision). | | |
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| | Malta - no answer yet | Moldova - no answer yet | Netherlands | Norway |
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| <p>20 - a) If the State to which the child has been removed or where he/she is being retained rejects a request for return of the child or does not dispose of procedures for a return, what steps may be taken:</p> <p>- by the person who has custody?</p> <p>- by the authorities of your country if the child is normally habitually resident there by virtue of a custody order?</p> <p>b) If the child is retained in your country for reasons given under a), which measures may the authorities in your country take?</p> | -- | -- | <p>If an application for the return of a child has been rejected by the competent authorities under the Hague Convention or European convention (1980) on recognition and enforcement of decisions concerning custody of children, the person who has custody can start a procedure in the country to which the child has been removed to obtain custody in this country. This person can also start a procedure again in the country to which the child has been removed, to obtain an access arrangement.</p> | -- |
| <p>21 - Provisions for recognition in advance of foreign custody orders</p> | -- | -- | <p>No specific provisions. The Dutch courts lack jurisdiction if the child is a foreign national and is not habitually resident in the Netherlands at the time of the recognition in advance of a foreign custody order.</p> | <p>No specific provisions. Recognition in advance is not possible.</p> |
| <p>22 - Conditions for such recognition if the child is not habitually resident in your country and the non-custodial parent has been granted access in your country by the foreign</p> | -- | -- | <p>Foreign access orders are recognised under the Hague and European Conventions. A precondition for this recognition is that the foreign court making the order has jurisdiction. In the Netherlands in most cases the</p> | <p>A foreign decision is (subsequently) recognised without any formal procedure or registration.</p> |

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| decision | | | foreign orders are accepted by virtue of Article 14 of the Hague Convention | |
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| | Poland | Slovakia | Slovenia | Spain |
|---|---|---|--|--|
| <p>20 - a) If the State to which the child has been removed or where he/she is being retained rejects a request for return of the child or does not dispose of procedures for a return, what steps may be taken:</p> <p>- by the person who has custody?</p> <p>- by the authorities of your country if the child is normally habitually resident there by virtue of a custody order?</p> <p>b) If the child is retained in your country for reasons given under a), which measures may the authorities in your country take?</p> | <p>The custodial parent could apply for recognition of the custody decision (assisted by the Polish central authority) institute custody proceedings in that State or file an application for access there (again assisted by the Polish central authority).</p> <p>See above (assistance provided by the central authority).</p> <p>The Polish court, upon request of the custodial parent, may carry out proceedings to declare enforceability of a foreign decision, and then proceed to enforcement. If Polish courts have jurisdiction to decide on the subject matter, they may also decide on custody and access themselves.</p> | <p>The person may seek either recognition of the custody order in that State or, if such order would not be recognisable, to file a motion on the merits in that other State.</p> <p>The Slovak authorities have no powers to take steps except for cases where a Slovak child is involved. In those cases Slovak embassies could be involved to try and seek solutions in the State of abduction.</p> <p>The authorities take measures of protection if necessary and if they have jurisdiction (see also answers to points 15 and 16) they would proceed on the merits of the case if the protection of the child so requires and if a motion to that effect has been filed.</p> <p>If a foreign custody order could be recognised, the Slovak authorities could enforce such an order upon a request by the party.</p> | <p>Not specified</p> <p>--</p> <p>--</p> | <p>The custodial parent person can request the judge at the child's habitual residence to establish a new right of access according to the new circumstances.</p> <p>--</p> <p>The administrative authorities cannot take any measures. They are not legitimated to act on behalf of the custodial parent.</p> |
| <p>21 - Provisions for recognition in advance of foreign custody orders</p> | <p>No specific provisions. Enforceability depends on a declaration of enforceability which may be sought in advance.</p> | <p>There is no specific exequatur proceeding available in Slovakia. Recognition of a foreign order is decided only in the context of the enforcement of the decision. So, if there is no enforcement sought, no decision on recognition can be given.</p> | <p>Not specified</p> | <p>No specific provisions exist. An "exequatur" must be requested.</p> |
| <p>22 - Conditions for such recognition if the child is not habitually resident in your country and the non-custodial parent has been granted access in your country by the foreign decision</p> | <p>The conditions set out in the Polish Code of Civil Proceedings are the same as for other foreign decisions: reciprocity, enforceability in the country of origin, conformity with Polish laws and ordre public, respect of the parties' right to defence in proceedings abroad, absence of prior Polish court decision</p> | <p>Not applicable.</p> | <p>Recognition of foreign access orders in general is possible. No further specification</p> | <p>A request of the interested party is necessary; no further specifications.</p> |

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| | on the same matter, application of Polish law if applicable in the case. Bilateral agreements may provide otherwise. | | | |
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| | Sweden | Switzerland | Turkey | Ukraine |
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| <p>20 - a) If the State to which the child has been removed or where he/she is being retained rejects a request for return of the child or does not dispose of procedures for a return, what steps may be taken:</p> <p>- by the person who has custody?</p> <p>- by the authorities of your country if the child is normally habitually resident there by virtue of a custody order?</p> <p>b) If the child is retained in your country for reasons given under a), which measures may the authorities in your country take?</p> | <p>Not specified</p> <p>Not specified</p> <p>Sweden is a Party to the Hague Child Abduction Convention. Court decisions concerning the (non-) return of a child to another contracting State have to be respected by the authorities.</p> | <p>After exhaustion of all other means, the custodial parent may try to obtain return of the child by means of mutual assistance between courts in criminal matters (by instituting criminal proceedings in Switzerland, first).</p> <p>Diplomatic assistance or political interventions (eg. contact between the competent ministers); furthermore they could provide information to the authorities supervising the application of the two Conventions in the other State if the court decisions refusing return appear doubtful. However, given the separation of powers, judicial decisions must be accepted.</p> <p>See previous answer.</p> | <p>Not specified</p> <p>Diplomatic assistance</p> <p>Not specified</p> | <p>Is not specified by the legislation.</p> |
| <p>21 - Provisions for recognition in advance of foreign custody orders</p> | <p>Special provisions concerning recognition of foreign custody and access orders in general exist in the Custody Convention and in agreements concerning custody orders with Switzerland and the Nordic countries.</p> | <p>No such provisions exist. However, if the competent court sees a legal interest in a prior recognition, such decision may be granted.</p> | <p>Such provisions exist.</p> | |
| <p>22 - Conditions for such recognition if the child is not habitually resident in your country and the non-custodial parent has been granted access in your country by the foreign decision</p> | <p>Custody and access orders from other States Parties to the Custody Convention are immediately valid in Sweden. No further specifications.</p> | <p>The conditions for the recognition of foreign decisions in general are set out in Articles 25 ff. of the Federal Act on Private International Law, subject to specific provisions in international treaties.</p> | <p>A request for recognition and enforcement must be lodged with the competent court. The court decides according to the provisions of the Code on Private International and Procedural Law.</p> | <p>Is not specified by the legislation.</p> |

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| | United Kingdom |
| <p>20 - a) If the State to which the child has been removed or where he/she is being retained rejects a request for return of the child or does not dispose of procedures for a return, what steps may be taken:</p> <p>- by the person who has custody?</p> <p>- by the authorities of your country if the child is normally habitually resident there by virtue of a custody order?</p> <p>b) If the child is retained in your country for reasons given under a), which measures may the authorities in your country take?</p> | <p>If there are no procedures for return in the other State, the party may start proceedings for custody (and subsequent return) of the child there; seek the extradition of the abductor in case of a criminal offence; take proceedings in England and Wales for contempt if an order has been breached in order to obtain an order for sequestration; seek forfeiture of any bond or security which has been given; ask for assistance from the Foreign and Commonwealth Office (only practical, not legal advice); address a self-help group.</p> <p>The Foreign and Commonwealth Office may give practical (not legal) advice.</p> <p>Procedures for return exist under the Hague Child Abduction Convention and the Custody Convention. If the courts refuse an application to return the child or if the other State is</p> |
| <p>21 - Provisions for recognition in advance of foreign custody orders</p> | <p>Such provisions exist. The mechanism for recording is registration, which is also a precondition for enforcement.</p> |
| <p>22 - Conditions for such recognition if the child is not habitually resident in your country and the non-custodial parent has been granted access in your country by the foreign decision</p> | <p>Upon an application, the central authority has to take all necessary steps including proceedings in the High Court to trace the child and secure recognition and enforcement of the custody order if the child is within the UK and the conditions of the Convention are satisfied.</p> |

PART F - REPLIES TO THE QUESTIONNAIRE ON ACCESS: TRANSFRONTIER ACCESS (questions 23 to 26)

| | Austria | Belgium | Bulgaria | Croatia |
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| 23 - Which body decides on such a prior recognition? | The competent District Court ("Bezirksgericht"). If the child is an Austrian national habitually resident outside Austria, the court of the habitual residence of the non-custodial parent has jurisdiction, in the absence of this condition the District Court for the Inner District of Vienna. | Orders concerning the enforcement of foreign orders fall within the jurisdiction of the Regional Courts. | The Sofia Court is competent for all applications concerning recognition of foreign decisions. | The competent court. |
| 24 - What steps can be taken in your country to register an order abroad? | The interested party has to lodge an application with the competent court of the State concerned (if need be through the channels of the central authorities). | Except in cases covered by the Custody Convention, the interested party has to take the necessary steps in the State concerned. | The interested party must apply for recognition of the Bulgarian order in the State concerned according to that State's procedure. | The interested party submits application to the central authority of his/her state, which applies to the central authority of the foreign state. |
| 25 - Who pays for the travelling expenses of the child in cases of transfrontier access under your law or practice? | A decision has to be taken in any individual case, depending very much on the economic situation of both parents. | No specific provisions. Practice varies, depending upon the circumstances, notably the parties' resources. | One or both parents, depending on their agreements. | Not specified. In practice, parents pay expenses. |
| 26 - What happens if there are problems to finance the return of the child after an access period? | Then it is up to the custodial parent to pay for the return. If this is not possible, a solution has to be found depending on the individual circumstances (eg. financial support by the Austrian consular post). | In special circumstances, diplomatic and consular authorities might advance the return costs, provided that one of the parties has agreed to reimburse these sums. | See previous answer. The money could be borrowed from a bank, provided by a sponsor, etc. No public body is legally required to cover all or part of these travelling expenses. | Not specified. There are no experiences from practice. In such a case the parent could apply to social welfare services for financial assistance. |

| | Cyprus | Czech Republic | Denmark | Finland |
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| 23 - Which body decides on such a prior recognition? | The court | The courts | Not specified | The Helsinki Court of Appeal |
| 24 - What steps can be taken in your country to register an order abroad? | The interested party may apply to the central authority under the Custody Convention. | Not specified | Not specified | If the requested State is a party to the Custody Convention, the services of central authorities granted under the Convention are available. In other cases, no special public services are offered. |
| 25 - Who pays for the travelling expenses of the child in cases of transfrontier access under your law or practice? | No specific provisions; however, the access order may contain provisions on this point. | No specific provisions. In practice, the parent entitled to access will bear the costs. | The parent entitled to access | If there is neither a court order nor an agreement between the parents, the parent entitled to access shall bear these expenses. |
| 26 - What happens if there are problems to finance the return of the child after an access period? | In practice, the parent who wants the child back will pay (without any legal obligation). If he/she can't pay either, the Government of Cyprus might pay if the child is a citizen of Cyprus. | The only possibilities are financial assistance of State welfare authorities granted on request or help by non-State organisations. | The parent entitled to access has to pay the return. If he/she does not have the means, public assistance under the Social Assistance Act may be sought in order to uphold an access decree concerning children under 18 years. The other parent cannot be obliged to pay. | The other parent has to pay if he/she wants to get the child back. No public funding available. Diplomatic or consular authorities may advance some money which later will be recollected from the custodian or other persons who agreed to pay. |

| | France | Germany | Greece | Hungary |
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| 23 - Which body decides on such a prior recognition? | The Regional Court | The Family Court (like in subsequent recognition and/or enforcement proceedings) | -- | Not specified |
| 24 - What steps can be taken in your country to register an order abroad? | No steps available | No domestic provisions exist on this matter. | -- | Not specified |
| 25 - Who pays for the travelling expenses of the child in cases of transfrontier access under your law or practice? | Not specified | According to the case law of German courts, such costs are borne by the parent entitled to access. | -- | Not specified |
| 26 - What happens if there are problems to finance the return of the child after an access period? | Not specified | If the parent entitled to access is unable to finance the return, the other parent is to pay. If there is a dispute between the parents regarding the expenses involved with access, the Family Court decides. | -- | Not specified |

| | Ireland | Italy | Liechtenstein | Luxembourg |
|---|---|---|---|--|
| 23 - Which body decides on such a prior recognition? | Not specified | The Juvenile Court if the case is decided under international conventions; otherwise the Court of Appeal. | -- | The President of the Luxembourg District Court |
| 24 - What steps can be taken in your country to register an order abroad? | Not specified | Under the operation of international conventions, the intervention of a central authority may be requested. | Not specified | Not specified |
| 25 - Who pays for the travelling expenses of the child in cases of transfrontier access under your law or practice? | No specific provisions. If parents have made an agreement on the matter, this is decisive; otherwise, the court may make an order concerning these expenses. | No specific provisions. In practice, parents pay these expenses, availing themselves of the co-operation of consular authorities. | The person entitled to such access will bear the costs. | In practice, the person entitled to such access will bear these costs, unless stipulated otherwise in the order. |
| 26 - What happens if there are problems to finance the return of the child after an access period? | See previous answer. In exceptional circumstances people receiving social welfare payments might obtain financial assistance for the return costs, depending on the discretion of the Social Welfare Officer. In cases under the implementing Act to the Hague and Luxembourg Conventions, the Irish central authority will pay for the return of a child to Ireland if the applicant is in need and no other assistance available. | No specific problem has occurred so far because the interested parent always paid for the return of the child. | It is for the other parent then to bear these costs. In case of need, he/she may apply for financial assistance from the State. | No provisions exist. |

| | Malta - to be updated (bill) | Moldova - no answer yet | Netherlands | Norway |
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| 23 - Which body decides on such a prior recognition? | A writ of summons has to be obtained from the First hall of the Civil Court; Possibility to appeal to the Court of Appeal. | -- | Prior recognition is not possible. | The competent court (judicial authority) decides on <u>subsequent</u> recognition (as to recognition in advance, see under No. 21). |
| 24 - What steps can be taken in your country to register an order abroad? | Not specified | -- | The interested party can make an application with the competent authority of the State concerned. Information on how such an application has to made can be obtained through the Central Authority. | Upon request of an interested parent, the Norwegian central authority can offer its services, eg. it could ask the central authority of the State concerned to provide information about that State's procedures for registration. |
| 25 - Who pays for the travelling expenses of the child in cases of transfrontier access under your law or practice? | Not specified | -- | A decision has to be taken in each individual case. The financial situation of the parties involved will be taken into account by the court. | The parent entitled to access will bear these costs unless the parents come to a different agreement. |
| 26 - What happens if there are problems to finance the return of the child after an access period? | Not specified | -- | The other party may pay. If the parents are not able to meet the costs they are suggested to make a request for financial help through a local social security agency. | No specific provisions. A court may decide that one of the parents shall bear these expenses; in special cases the parent residing in Norway might get financial support from the social security. |

| | Poland | Slovakia | Slovenia | Spain |
|---|--|--|---------------|--|
| 23 - Which body decides on such a prior recognition? | The court competent to declare enforceability of a foreign decision is the Provincial Court (Sad Wojewodyki) at the place where the access is to be exercised. | Not applicable. | The courts | The Supreme Court of Justice (Sala la) in Madrid |
| 24 - What steps can be taken in your country to register an order abroad? | No such steps exist. | None. Only the party can take steps in the respective foreign State. | Not specified | Not specified |
| 25 - Who pays for the travelling expenses of the child in cases of transfrontier access under your law or practice? | No legal provisions exist. However, the court may decide this question in its decision on access. Usually, the person entitled to access will bear the costs unless the parties concerned come to a different agreement. | It is a matter of agreement between the parents. | Not specified | Usually, an agreement between the parents or a court order decides upon this matter. |
| 26 - What happens if there are problems to finance the return of the child after an access period? | The person interested in the child's return might pay. If the child is a Polish citizen, the Polish diplomatic and consular authorities, upon request, may advance some money. | In serious cases the Slovak embassy could provide a loan to the custodial parent to cover the expenses for the return. | Not specified | A solution will be found by mutual agreement or judicial decision; it will depend on the financial situation of the parents. There are no legal provisions on financial support if neither of the parents is able to meet the costs of the child's return. |

| | Sweden | Switzerland | Turkey | Ukraine |
|---|---|--|--|--------------------------------------|
| 23 - Which body decides on such a prior recognition? | Not specified | The courts designated by the cantonal codes of procedure and, in addition, the judge who is generally empowered to authorise the enforcement of a judgement | The Civil Court | Is not specified by the legislation. |
| 24 - What steps can be taken in your country to register an order abroad? | Not specified | Not specified | A request for such registration may be made to the competent authorities of the country concerned. | Is not specified by the legislation. |
| 25 - Who pays for the travelling expenses of the child in cases of transfrontier access under your law or practice? | Since the 1 st October 1998 there are provisions on travelling costs. The parent with whom the child is living shall share the travel costs caused by the child's need of contact with the other parent. The amount the parent pays is determined in accordance with what is reasonable taking into account the financial capacity of the parents and other circumstances. | If not decided otherwise in the divorce settlement, in practice these costs will be borne by the parent entitled to access. If, however, distances are long and travelling expenses therefore high, the parties may apply to the competent authority for a decision on this matter if they cannot come to an agreement. The authority will take into account, i.a., the age of the child and the financial means of the parties. | The parent entitled to access shall bear these costs. | Is not specified by the legislation. |
| 26 - What happens if there are problems to finance the return of the child after an access period? | Financial might only be obtained from social welfare authorities. | No practical experiences exist. In two abduction cases, financial help was provided by private associations or charities. Financial assistance from the social services of the cantons and municipalities may be available; diplomatic and consular authorities might advance some money. | Turkish law does not oblige the other parent to pay for the return. No provisions on financial aid exist if neither of the parents is able to pay for the return of the child. | Is not specified by the legislation. |

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| | United Kingdom |
| 23 - Which body decides on such a prior recognition? | The Lord Chancellor's Department |
| 24 - What steps can be taken in your country to register an order abroad? | Where the child is now living in a contracting State to the Custody Convention or the Hague Child Abduction Convention, an application can be made to the central authority (Lord Chancellor's Department) which will communicate it to the central authority of the receiving country. Parties may also apply directly to that State. |
| 25 - Who pays for the travelling expenses of the child in cases of transfrontier access under your law or practice? | This depends on the will of the parties. |
| 26 - What happens if there are problems to finance the return of the child after an access period? | Help might be available from International Social Services. |

PART G - REPLIES TO THE QUESTIONNAIRE ON ACCESS: INTERNATIONAL CO-OPERATION (questions 27 to 31)

| | Austria | Belgium | Bulgaria | Croatia |
|---|---|---|--------------------------|-------------------------|
| 27 - Experiences with the Custody Convention concerning the right of access and its exercise | Encouraging experiences. As to access, the Custody Convention is more effective than the Hague Convention. | More appropriate provisions are needed. Reference to the same conditions as for custody orders in Article 11 of the Convention is inappropriate for access orders. | Bulgaria is not a Party. | Croatia is not a Party. |
| 28 - Should Article 3 par. 2 of the Custody Convention be extended to the possibility for requests for co-operation to be transmitted from the authorities of the child's habitual residence to the authorities of the country where access is to take place? | Yes. | This is already implicit in Articles 3, 4 and 11. | -- | -- |
| 29 - To which authority in the State in question should such requests be addressed? | They should be addressed to the central authorities and then dealt with by the competent authority (court or child welfare authority) at the residence of the person applying for transfrontier access. | To the central authority. | -- | -- |
| 30 - What should be the content of such a request - for general information on safeguards and guarantees for transfrontier access? - for information on how to organise transfrontier access in an individual case? | A combination of both aspects. | Information on possible measures should be available for the central authority of the applicant State. The requesting central authority should be allowed to ask for specific measures as part of the enforcement of the access order, eg. for safeguards and guarantees such as deposit of passport, supervision of access by a welfare authority or the determination of the place where access will take place. | -- | -- |
| 31 - Possibility of such request in advance or after a decision has been taken in the State of the child's habitual residence and after information about the beginning of the access period has been given | The request should be made before taking a decision on transfrontier access; later co-operation would be less effective. | Requests for general information: any time. Requests for specific measures: only within enforcement proceedings and depending on the specific circumstances. If safeguards against a breach of access conditions are contained in the initial order made in the child's State of habitual residence, the Convention should | -- | -- |

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| | | contain conditions for recognition of such decisions with respect to public policy. | | |
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| | Cyprus | Czech Republic | Denmark | Finland |
|---|--|------------------------------------|--|--|
| 27 - Experiences with the Custody Convention concerning the right of access and its exercise | Limited experience. One application for recognition of a foreign access order has been received; recognition was granted by courts. | The Czech Republic is not a Party. | Experience gained since entry into force (1991) is too modest to draw conclusions. | No such application received or transmitted since entry into force (1.8.1994). One case for transfrontier access in Finland pending in 1996 under the Hague Convention (child living in Canada); modest results. |
| 28 - Should Article 3 par. 2 of the Custody Convention be extended to the possibility for requests for co-operation to be transmitted from the authorities of the child's habitual residence to the authorities of the country where access is to take place? | Amendment not necessary because such competence is already implicit now. | -- | -- | Given the experiences with existing instruments, international co-operation should be improved in order to guarantee that transfrontier access can be exercised effectively. Premature to discuss technical solutions. However, authorities should not always be involved in this exercise of private and family life. |
| 29 - To which authority in the State in question should such requests be addressed? | To the central authority. | -- | -- | -- |
| 30 - What should be the content of such a request - for general information on safeguards and guarantees for transfrontier access? - for information on how to organise transfrontier access in an individual case? | Either or both and not necessarily limited to those. | -- | -- | -- |
| 31 - Possibility of such request in advance or after a decision has been taken in the State of the child's habitual residence and after information about the beginning of the access period has been given | Requests for information on measures available in general to prevent a breach of the conditions for access should be possible in advance so that the decision could include provisions to that effect. | -- | -- | -- |

| | France | Germany | Greece | Hungary |
|---|---|---|--------|--|
| 27 - Experiences with the Custody Convention concerning the right of access and its exercise | -- | Limited experience (2 out - going, 26 incoming applications 1992-1995). Enforcement of foreign orders has some -times been refused by German courts because the order had no "enforceable" (ie. sufficiently specified) content; sometimes because circus-stances had changed in the meantime (lapse of time; subsequent opposition of the child. The Convention mechanism appears to be too cumbersome and sophisticated. Courts often commission expert opinion reports as to the best interests of the child even in recognition proceedings; in general such proceedings are often too lengthy. | -- | Hungary only is a Party to the Hague Convention. |
| 28 - Should Article 3 par. 2 of the Custody Convention be extended to the possibility for requests for co-operation to be transmitted from the authorities of the child's habitual residence to the authorities of the country where access is to take place? | Yes | Article 3 would be the right place to provide for an exchange of general information on the right of access. Requests concerning individual cases should be dealt with under Article 4, which covers them already now, in accordance with Article 1 (c). Otherwise, no further objections to clarifying additions. | -- | -- |
| 29 - To which authority in the State in question should such requests be addressed? | To the central authority. | To the central authority. | -- | -- |
| 30 - What should be the content of such a request - for general information on safeguards and guarantees for transfrontier access? - for information on how to organise transfrontier access in an individual case? | Both | Both general informations on the situation in the requested State and on the organisation of transfrontier access in individual cases. | -- | -- |
| 31 - Possibility of such request in advance or after a decision has been taken in the State of the child's | Requests in advance only with the consent of the parties. Failing this, the applicant has to apply for a court order. | Any time | -- | -- |

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| habitual residence and after information about the beginning of the access period has been given | | | | |
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| | Ireland | Italy | Liechtenstein | Luxembourg |
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| 27 - Experiences with the Custody Convention concerning the right of access and its exercise | -- | The Hague Convention proved to be simpler and more effective, therefore the Custody Convention is used to a lesser extent. | Liechtenstein is not a Party yet. The exercise of a right to transfrontier access apparently does not create serious problems. | Reasonably satisfactory. |
| 28 - Should Article 3 par. 2 of the Custody Convention be extended to the possibility for requests for co-operation to be transmitted from the authorities of the child's habitual residence to the authorities of the country where access is to take place? | -- | If so, such requests should be channelled through the central authorities; direct contacts between local authorities are likely to create difficulties. | -- | Such extension would be difficult. |
| 29 - To which authority in the State in question should such requests be addressed? | -- | To the central authority. Subsequently, it will be dealt with by the competent local authority. | -- | Possibly by one central authority to another. |
| 30 - What should be the content of such a request - for general information on safeguards and guarantees for transfrontier access? - for information on how to organise transfrontier access in an individual case? | -- | It may contain both types. | -- | -- The request should contain information only on the case in question. |
| 31 - Possibility of such request in advance or after a decision has been taken in the State of the child's habitual residence and after information about the beginning of the access period has been given | -- | Any time, also in advance. | -- | The request should refer to a decision on detailed arrangements for transfrontier access. |

| | Malta - to be updated (bill) | Moldova - no answer yet | Netherlands | Norway |
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| 27 - Experiences with the Custody Convention concerning the right of access and its exercise | Malta is not yet a Party. | -- | Experience with the European custody convention is basically the same as the experience with the Hague Convention (1980). One an application has been made either under the European or Hague Conventions, Dutch internal law will be applied with respect to the determination of an access regulation. | Only few cases. Experience is positive, exercise of access was resumed as result of requests under the Convention. |
| 28 - Should Article 3 par. 2 of the Custody Convention be extended to the possibility for requests for co-operation to be transmitted from the authorities of the child's habitual residence to the authorities of the country where access is to take place? | -- | -- | Yes | No objection. |
| 29 - To which authority in the State in question should such requests be addressed? | -- | -- | They should be sent to the Central Authority and then dealt with by competent authorities. In the Netherlands the court (<i>Kinderrechter</i>) decides upon the application. | To the central authority. |
| 30 - What should be the content of such a request - for general information on safeguards and guarantees for transfrontier access? - for information on how to organise transfrontier access in an individual case? | -- | -- | Both may be requested. | The request ought to be limited to the central authority providing information in general on the measures available in the requested State to prevent a breach of the conditions for access. Requests concerning individual cases might result in a considerable increase of the central authorities' workload. |
| 31 - Possibility of such request in advance or after a decision has been taken in the State of the child's habitual residence and after information about the beginning of the access period has been given | -- | -- | A request for information can be made at any time. It is advisable to ask for information before a decision on transfrontier access is made. | It seems more practical to make a request after taking a decision in the State of the child's habitual residence. However, it is not necessary to wait until information about the beginning of the access period has been given. |

| | Poland | Slovakia | Slovenia | Spain |
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| 27 - Experiences with the Custody Convention concerning the right of access and its exercise | No practical experience so far (entry into force 1.3.1996). | Slovakia is not a Party to the Convention. Therefore answers to following questions are not relevant. | Slovenia is not a Party. | Not very positive experience. In the absence of agreement between parents, exercise of the right of access according to judicial decisions is very difficult. |
| 28 - Should Article 3 par. 2 of the Custody Convention be extended to the possibility for requests for co-operation to be transmitted from the authorities of the child's habitual residence to the authorities of the country where access is to take place? | If so, such requests should be channelled through the central authorities. | --- | -- | This would not be sufficient. Internal legislation would have to be amended, too. |
| 29 - To which authority in the State in question should such requests be addressed? | To the central authority . | --- | -- | Not specified |
| 30 - What should be the content of such a request - for general information on safeguards and guarantees for transfrontier access? - for information on how to organise transfrontier access in an individual case? | These requests should not be too formalised. It should be sufficient to indicate the requesting authority, to sufficiently define the scope of requested information and to present the status of the case with which the request is connected. | --- | -- | The request should aim at obtaining information in general about the measures available in the requested State to prevent a breach of the conditions for access. It should ask for information on how to organise transfrontier access in the case concerned. |
| 31 - Possibility of such request in advance or after a decision has been taken in the State of the child's habitual residence and after information about the beginning of the access period has been given | Any time | -- | -- | Such request should only be made after a decision has been taken in the State of the child's habitual residence. |

| | Sweden | Switzerland | Turkey | Ukraine |
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| 27 - Experiences with the Custody Convention concerning the right of access and its exercise | No experience yet. | Experience is limited; more cases fall under the Hague Convention. Outgoing applications for recognition and implementation of access rights have been successful, in particular, with respect to France, Spain and the UK. | Turkey is not a Party. | Ukraine is not a Party of this Convention. |
| 28 - Should Article 3 par. 2 of the Custody Convention be extended to the possibility for requests for co-operation to be transmitted from the authorities of the child's habitual residence to the authorities of the country where access is to take place? | Yes. This could be useful. | This power is considered to be implicit in the Convention already now. The amendment would only clarify this and facilitate the application of the Convention by the cantonal authorities, in particular. Its provisions are directly applicable because Switzerland did not pass any implementing legislation. | This could be done. | Ukraine is not a Party of this Convention. |
| 29 - To which authority in the State in question should such requests be addressed? | To the central authority. | In Switzerland, these requests should be sent to the competent authority in the canton concerned by the central authority. Further direct contact with the cantonal authority is possible, though. | The central authority (Ministry of Justice) | Ukraine is not a Party of this Convention. |
| 30 - What should be the content of such a request - for general information on safeguards and guarantees for transfrontier access? - for information on how to organise transfrontier access in an individual case? | The request should aim at getting information in general or information on how to organise transfrontier access in an individual case. | The request in individual cases seems to be of major importance. | It should be for information in general about the measures available in the requested State to prevent a breach of the conditions for access. | Ukraine is not a Party of this Convention. |
| 31 - Possibility of such request in advance or after a decision has been taken in the State of the child's habitual residence and after information about the beginning of the access period has been given | Any time. However, it is preferable to make such a request before a decision is made; thus the information given could be taken into consideration by the court in the State of the child's habitual residence when making the decision. | Any time | Such requests could be made after a decision has been taken in the State of the child's habitual residence and after information about the beginning of the access period has been given. | Ukraine is not a Party of this Convention. |

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| | United Kingdom |
| 27 - Experiences with the Custody Convention concerning the right of access and its exercise | In general, both Conventions work well. |
| 28 - Should Article 3 par. 2 of the Custody Convention be extended to the possibility for requests for co-operation to be transmitted from the authorities of the child's habitual residence to the authorities of the country where access is to take place? | This depends on what is meant by assistance. The central authority needs to be able to maintain a defined and objective role. |
| 29 - To which authority in the State in question should such requests be addressed? | Likely to be the central authority. |
| 30 - What should be the content of such a request - for general information on safeguards and guarantees for transfrontier access? - for information on how to organise transfrontier access in an individual case? | It should be for general information on the arrangements for contact in each country widely available. |
| 31 - Possibility of such request in advance or after a decision has been taken in the State of the child's habitual residence and after information about the beginning of the access period has been given | Any time |

PART H - REPLIES TO THE QUESTIONNAIRE ON ACCESS: INTERNATIONAL CO-OPERATION (questions 32 to 38)

| | Austria | Belgium | Bulgaria | Croatia |
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| 32 - Should an optional co-operation mechanism be established which enables the competent authority in the child's State of habitual residence to ask for assistance? | Yes | Such mechanism could be envisaged; it should then be optional. Moreover, as to judicial assistance, other conventions such as the 1954 Hague Convention relating to civil procedure may apply. | -- | -- |
| 33 - Should measures be available in all States for organising and securing the effective exercise of transfrontier access to children? | Yes. The system of co-operation should be flexible. | Such measures exist under the Custody Convention (Article 11 paragraph 3: organisation of access; enforcement proceedings). | -- | -- |
| 34 - If so, to what extent? | See above Nos. 15 and 33 | Assuming that the interpretation of the above-mentioned provisions of the Custody Convention is not uniform, specific provisions should be introduced. | -- | -- |
| 35 - How could a system of co-operation in problematic cases of transfrontier access be organised? Should it be possible to transmit specific requests, eg. For a social report or a hearing of a parent, through channels of central authorities? | See above No. 33 | Preferably, all measures should be taken in the State of the child's habitual residence. Apparently no general objection. However, if the decision is taken in the State of the child's habitual residence, such requests will be less frequent. | -- -- | -- -- |
| 36 - Use of mediation in problematic cases of transfrontier access and experience with it | No experience | The central authority has not yet used mediation through specialised institutions. In general, mediation in Belgium is set up by the parties' lawyers or by the judicial authorities. | -- | -- |
| 37 - Existing co-operation mechanisms concerning transfrontier access which work well | No general systems of co-operation in force; co-operation occurs on a case-by-case basis. | -- | -- | -- |
| 38 - Any other information | If the custodial parent moves to another place of residence with the child, the other parent cannot | Enforcement against the opposition of the child is not very likely. If the custodial | -- | -- |

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| | oppose. New arrangements/decisions have to be made, if necessary. | parent moves with the child, this can be a reason for a modification of the original order. | | |
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| | Cyprus | Czech Republic | Denmark | Finland |
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| 32 - Should an optional co-operation mechanism be established which enables the competent authority in the child's State of habitual residence to ask for assistance? | Yes. Central authorities could be used in this mechanism; supervision of access should be delegated to the competent local authority. | -- | -- | International co-operation should be improved in the field of transfrontier access; one possibility might be the extension of co-operation mechanisms already existing under the Custody Convention. |
| 33 - Should measures be available in all States for organising and securing the effective exercise of transfrontier access to children? | Once an access order has been recognised in the requested State that State should be in a position to take such measures, ie. to secure enforcement. | -- | -- | As a rule, transfrontier access should take place without the intervention of public authorities. |
| 34 - If so, to what extent? | To the extent necessary to ensure compliance with the order which has been recognised. | -- | -- | -- |
| 35 - How could a system of co-operation in problematic cases of transfrontier access be organised? | Such system could be organised with the central authorities. | -- | -- | -- |
| Should it be possible to transmit specific requests, eg. For a social report or a hearing of a parent, through channels of central authorities? | | -- | -- | -- |
| 36 - Use of mediation in problematic cases of transfrontier access and experience with it | -- | -- | -- | -- |
| 37 - Existing co-operation mechanisms concerning transfrontier access which work well | No experience | -- | -- | -- |
| 38 - Any other information | -- | -- | -- | -- |

| | France | Germany | Greece | Hungary |
|---|--|--|--------------|--------------|
| 32 - Should an optional co-operation mechanism be established which enables the competent authority in the child's State of habitual residence to ask for assistance? | Such mechanism might be established; it should then be optional. | Yes | -- | -- |
| 33 - Should measures be available in all States for organising and securing the effective exercise of transfrontier access to children? | French courts have complete latitude to organise access in France. Beyond this sphere, problems arise in connection with State sovereignty and recognition and enforcement of court orders abroad. | Yes | -- | -- |
| 34 - If so, to what extent? | -- | As much as possible | -- | -- |
| 35 - How could a system of co-operation in problematic cases of transfrontier access be organised? Should it be possible to transmit specific requests, eg. for a social report or a hearing of a parent, through channels of central authorities? | Co-operation could be pursued along the lines of the 1980 Hague Convention (social report, hearing of the parent etc.). | Difficulties should be resolved by discussions between central authorities. If the child opposes access, no coercive measures should be considered. No objection. As to social reports, they are expressly mentioned in Article 7 paragraph 2 d of the 1980 Hague Convention. | -- -- | -- -- |
| 36 - Use of mediation in problematic cases of transfrontier access and experience with it | Mediation is used with varying results, but often helpful to restore trust. | Mediation is used; no specific information available. | -- | -- |
| 37 - Existing co-operation mechanisms concerning transfrontier access which work well | -- | -- | -- | -- |
| 38 - Any other information | -- | -- | -- | -- |

| | Ireland | Italy | Liechtenstein | Luxembourg |
|---|---------|---|--|---|
| 32 - Should an optional co-operation mechanism be established which enables the competent authority in the child's State of habitual residence to ask for assistance? | -- | Yes, but only optional | -- | Yes, but only optional |
| 33 - Should measures be available in all States for organising and securing the effective exercise of transfrontier access to children? | -- | Yes | -- | It is difficult to cover all possible cases. |
| 34 - If so, to what extent? | -- | Judicial authorities should be enabled to make use of services offered by welfare officers to the greatest possible extent. | -- | See above |
| 35 - How could a system of co-operation in problematic cases of transfrontier access be organised? | -- | The possibility to request judicial assistance through the central authorities concerned should be promoted. | -- | In connection with the social reports which States may request from one another, social workers may try to secure an agreement between the parties if problems arise. |
| Should it be possible to transmit specific requests, eg. for a social report or a hearing of a parent, through channels of central authorities? | -- | | -- | |
| 36 - Use of mediation in problematic cases of transfrontier access and experience with it | -- | No cases reported | Formal mediation is not used. However, before making an access order the guardianship judge will seek a judicial settlement between the parties. | -- |
| 37 - Existing co-operation mechanisms concerning transfrontier access which work well | -- | -- | | -- |
| 38 - Any other information | -- | -- | | The custodial parent cannot be prevented from moving to another place with the child. In such a case, access arrangements might be changed from daily/weekly access to access during school holidays. |

| | Malta - to be updated (bill) | Moldova - no answer yet | Netherlands | Norway |
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| 32 - Should an optional co-operation mechanism be established which enables the competent authority in the child's State of habitual residence to ask for assistance? | -- | -- | Yes. | Yes |
| 33 - Should measures be available in all States for organising and securing the effective exercise of transfrontier access to children? | -- | -- | Yes. | This needs further consideration. |
| 34 - If so, to what extent? | -- | -- | The interests of the child should be respected. In most cases when an access regulation is enforced by obligatory measures, the child might have feelings of disloyalty to the unwilling parent. In the end access regulations can never be exercised unless there is a minimum of co-operation by the custodial parent of the child. | See above |
| 35 - How could a system of co-operation in problematic cases of transfrontier access be organised? | -- | -- | | See above |
| Should it be possible to transmit specific requests, eg. for a social report or a hearing of a parent, through channels of central authorities? | -- | -- | It should be possible to transmit specific requests. Whether these requests can be granted will however depend on the possibilities provided by the internal law of the state to which such a request is made. It is often up to the court for instance to decide if a social report on the child's background should be made and who should be heard in a case etc. | It appears problematic to channel such specific requests through central authorities. |
| 36 - Use of mediation in problematic cases of transfrontier access and experience with it | -- | | In the Netherlands mediation is at its starting point. In some cases mediation has been used. Mediation can be used when the parties involved are willing to accept the mediation process. The results of the cases in which mediation has been applied are encouraging. | No experience |
| 37 - Existing co-operation mechanisms concerning transfrontier access which work well | -- | | The requested details are not available. | A bilateral agreement concerning access exists with Tunisia; no practical cases yet. Furthermore, under a Nordic agreement of 1931 regarding the validity of judgements, decisions from other Nordic States are recognised. Enforcement of decisions from those States is possible under Nordic uniform laws concerning decisions in civil matters. |

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| 38 - Any other information | -- | | An existing court order can be adapted to the new circumstances (taking into account that the child will be living in another region, country, etc.). | -- |
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| | Poland | Slovakia | Slovenia | Spain |
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| 32 - Should an optional co-operation mechanism be established which enables the competent authority in the child's State of habitual residence to ask for assistance? | There are no obstacles to such requests being made. | -- | -- | Yes |
| 33 - Should measures be available in all States for organising and securing the effective exercise of transfrontier access to children? | There is a need for such measures. Their definition should be up to national law and they might be the same as for internal cases. | -- | -- | Yes, but in Spain the approval of a specific Law or an amendment of the Civil Code would be necessary. |
| 34 - If so, to what extent? | See above. | -- | -- | As much as necessary to ensure the effective exercise of transfrontier access. |
| 35 - How could a system of co-operation in problematic cases of transfrontier access be organised? Should it be possible to transmit specific requests, eg. for a social report or a hearing of a parent, through channels of central authorities? | A satisfactory system for co-operation in this field has been established under the 1980 Hague Convention. Under the Hague Convention, this is possible. | -- -- | -- -- | This could be useful if there is the possibility to accomplish such requests. |
| 36 - Use of mediation in problematic cases of transfrontier access and experience with it | Mediation is used in such cases. Although its effects are not entirely satisfactory, mediation appears to be the most appropriate way of solving problems in this field. | -- | -- | -- |
| 37 - Existing co-operation mechanisms concerning transfrontier access which work well | No such positive experience at the Ministry of Justice. Few cases reach the Ministry; proceedings are usually long, results unsatisfactory. Positive results can only be expected if the parties themselves come to a settlement. | -- | -- | -- |
| 38 - Any other information | The emphasis should be placed on reaching an amicable settlement. Specialised professional social services should be involved in solving conflicts. | -- | -- | -- |

| | Sweden | Switzerland | Turkey | Ukraine |
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| 32 - Should an optional co-operation mechanism be established which enables the competent authority in the child's State of habitual residence to ask for assistance? | Yes | Yes, but recourse to this mechanism should not be automatic. The will of the parties and the best interests of the child should be decisive. | Yes | Ukraine is not a Party of this Convention. |
| 33 - Should measures be available in all States for organising and securing the effective exercise of transfrontier access to children? | The best way to achieve an improvement would be a system of mutual recognition and enforcement of custody and access orders in the States concerned. | See above | Yes | Ukraine is not a Party of this Convention. |
| 34 - If so, to what extent? | See above | See above | Civil and administrative measures, criminal and other sanctions should be available. | Ukraine is not a Party of this Convention. |
| 35 - How could a system of co-operation in problematic cases of transfrontier access be organised? Should it be possible to transmit specific requests, eg. for a social report or a hearing of a parent, through channels of central authorities? | Yes | Authorities should only act on a subsidiary basis (see No. 32 above). Requests for social reports or for hearing the parents should remain linked to the modification of the original order by the authority having jurisdiction. | Such problems should be dealt with through the channels of central authorities. Yes | Ukraine is not a Party of this Convention. Ukraine is not a Party of this Convention. |
| 36 - Use of mediation in problematic cases of transfrontier access and experience with it | No experience | The authorities apparently use mediation and bodies mentioned under No. 37 and may help in some cases. | Mediation is not used under Turkish law in such cases. | Ukraine is not a Party of this Convention. |
| 37 - Existing co-operation mechanisms concerning transfrontier access which work well | Custody or access decisions from other Nordic countries except Iceland can under certain conditions be enforced under a 1977 law on recognition and enforcement of Nordic judgements in civil matters. | Central Swiss authorities co-operate with the cantonal bodies competent for the implementation of the Custody Convention and the 1980 Hague Convention and with the ISS. | -- | Ukraine is not a Party of this Convention. |
| 38 - Any other information | -- | If the custodial parent wants to move with the child, the other parent might apply to the competent authority for custody or changed access arrangements. If the move infringes the other parent's access rights, both the Custody Convention and the 1980 Hague Convention might be applied. | -- | Ukraine is not a Party of this Convention. |

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| | United Kingdom |
| 32 - Should an optional co-operation mechanism be established which enables the competent authority in the child's State of habitual residence to ask for assistance? | It should be up to each State. Such co-operation does not have to be onerous, eg. a factsheet containing details of the system in the country concerned and perhaps contact addresses and numbers where further information can be obtained. |
| 33 - Should measures be available in all States for organising and securing the effective exercise of transfrontier access to children? | Yes |
| 34 - If so, to what extent? | The role of central authorities should be to transmit applications to other countries and to provide information and advice to future applicants. They should not be involved with decision-making in individual cases which is up to the courts. |
| 35 - How could a system of co-operation in problematic cases of transfrontier access be organised? Should it be possible to transmit specific requests, eg. for a social report or a hearing of a parent, through channels of central authorities? | A system of co-operation should not be coercive. Central authorities should not try to influence judicial decisions. The will of parents and children and the individual circumstances should be decisive. |
| 36 - Use of mediation in problematic cases of transfrontier access and experience with it | It does not seem that mediation has been widely tried in such cases. |
| 37 - Existing co-operation mechanisms concerning transfrontier access which work well | -- |
| 38 - Any other information | -- |