

# Questionnaire concerning the Practical Operation of the 1996 Child Protection Convention

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1996 Child Protection Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit: <sup>2</sup>	Spain
<i>For follow-up purposes</i>	
Name of contact person:	Please insert text here
Name of Authority / Office:	
Telephone number:	Please insert text here
E-mail address:	

## PART I – FOR CONTRACTING PARTIES

### 1. Recent developments in your State

1. Have there been any significant developments in your State regarding the **legislation** or **procedural rules** applicable in cases of international child protection? Where possible, please state the reason for the development and the results achieved in practice.

- No  
 Yes

Please specify:

In the field of parental responsibility, in a broad sense, Spain has improved its domestic legislation in a very relevant way. In 2015, Law 4/2015, of 27 April, on the Statute of the Victims of Crime, and Organic Law 8/2015, of 22 July, and Law 26/2015, of 28 July, both amending the system for the protection of children and adolescents, were published. Following these legal reforms, Spain moved towards comprehensive child protection regulations and, as a result, Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence, was published. Following Organic Law 8/2021, the best interests of the child have been reinforced in the new Art. 92 of the Civil Code, and Art. 154 of the Civil Code already specifies that parental authority includes... "3º Deciding the habitual place of residence of the child, which can only be modified with the consent of both parents or, failing that, by judicial authorization". In Art. 158 of the Civil Code, section 6 has also been modified, which now adds to the protection measures already contemplated, the precautionary suspension in the exercise of parental authority and/or in the exercise of custody, the precautionary suspension of the visiting and communications regime established in a judicial decision or judicially approved agreement. The preamble of Organic Law 8/2021 also states that: "except for suspension, deprivation of parental authority or exclusive attribution of this power to one of the parents, the consent of both parents or, failing this, judicial authorization is required for the transfer of the child, regardless of the measure that has been adopted in relation to custody or guardianship, as has already been explicitly established by some autonomous communities".

With regard to joint custody, Law 16/2022, of 5 September, on the reform of the consolidated text of the Insolvency Act, published in the "BOE" no. 214, of 6 September 2022, introduced in its first final provision an amendment to section 7 of Article 92 of the Civil Code, stating that: "Joint custody shall not be applicable when

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<sup>2</sup> The term "State" in this Questionnaire includes a territorial unit, where relevant.

either of the parents is involved in criminal proceedings initiated for attempting to harm the life, physical integrity, freedom, moral integrity or sexual freedom and indemnity of the other spouse or of the children who live with both of them. Nor will it proceed when the judge notices the existence of well-founded indications of domestic or gender violence. The existence of mistreatment of animals, or the threat of causing it, as a means of controlling or victimizing any of these persons, will also be considered". This measure was already contemplated in Art. 94.4 of the Civil Code for not establishing access in these same situations. In a recent ATS 581/2023 - 1st Chamber Supreme Court, a question of unconstitutionality has been raised with respect to the new 92.7 Civil code insofar as it is considered that, being imperative and automatic, without admitting any exception, it would be sufficient for either parent to be involved in criminal proceedings, not yet prosecuted, for joint custody to be prohibited.

In Spain, also the year 2015 marked a legislative leap in quality in the field of international legal cooperation. On 20 August 2015, Law 29/2015, of 30 July 2015, on international legal cooperation in civil matters (BOE, no. 182, of 31 July 2015) came into force, and on 23 July 2015, Law on voluntary jurisdiction no. 15/2015, 2 July, came into force (BOE 03/07/2015), which introduced such relevant novelties in the Civil Procedure Act as the new Chapter IV bis LEC, arts. 778 quater, 778 quinquies and 778 sexies on "Measures relating to the restitution or return of minors in cases of international abduction", as well as amendments to Articles 525.1 and 749.1 of the Civil Procedure Act in relation to the suppression of the possibility of provisional enforcement and in relation to the greater safeguard entrusted to the Public Prosecutor's Office.

Law 29/2015, of 30 July, on international legal cooperation in civil matters introduced into the Spanish legal system a regulation of direct judicial communications in Art. 4 and established a modern and updated regulation of the exequatur procedure. Subsequently, Law 16/2022, of 5 September, on the reform of the consolidated text of the Insolvency Act, published in the "BOE" no. 214, of 6 September 2022, has developed art. 4 of Law 29/2015 by adding four new descriptive sections on how to establish such communications, to ensure the effectiveness of the provisions contained in Regulation (EU) 2015/848, on insolvency proceedings and in line with the provisions of art. 86 of the Brussels IIb Regulation.

At the European Union level, since 1st August 2022, Spain has been effectively applying the new Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) or new Regulation Brussels IIb.

Spain had implemented the previous Regulation Brussels IIa domestically in 2015 in the Final Provision 22nd LEC on measures to facilitate the application of the Brussels IIa Regulation in Spain, but the future new legislative development of the Brussels IIb Regulation is currently pending. Only in cross-border placement of a child, the new Organic Law 8/2021 has introduced in the Organic Law 1/1996 on the protection of minors the new Articles 20 ter to 20 quinquies to regulate conditions and procedure applicable to requests for cross-border placement of children under Regulations Brussels IIa (art. 56), Brussels IIb (art. 82) and HC 19.10.1996 (art. 33).

2. Please provide the three most **significant decisions concerning the interpretation and application of the 1996 Convention** recently rendered by the relevant authorities<sup>3</sup> in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
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<sup>3</sup> The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1996 Convention. Whilst in the majority of Contracting Parties such "authorities" will be courts (i.e., judicial), in some Contracting Parties administrative authorities remain responsible for decision-making in Convention cases.

Nº of appeal: 1879/2016	Supreme Court, Civil Chamber	Cassational level	ATS 138/2017 - ECLI:ES:TS:2017:138 <sup>a</sup> Judgement dated 18/01/2017: modification of definitive measures and lack of international jurisdiction.
Nº of appeal: 5281/2019	Supreme Court, Civil Chamber	Cassational level	STS 532/2021 - ECLI:ES:TS:2021:532, judgement dated 17/02/2021. Divorce of French nationals in Spain. International jurisdiction of the Spanish courts and law applicable to the claim for alimony. Regulation (EC) No 4/2009. Hague Protocol of 23 November 2007. Application of the HC 1996 to determine the law applicable to protection measures.
Nº of appeal: 8870/2021	Supreme Court, Civil Chamber	Cassational level	ATS 581/2023 - ECLI:ES:TS:2023:581A, judgment dated 11 January 2023. In this Order raising a question of unconstitutionality, the Supreme Court recalls that again "the best interests of the child" is qualified as a "primary consideration" in the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, done at The Hague on 19 October 1996, ratified on 28 May 2010.

3. Please provide a brief summary of **any other significant developments** in your State relating to international child protection, including any regional instruments or bilateral agreements that have been negotiated or which your State has signed and ratified or acceded to (e.g., Memorandum of Understanding on the placement of children abroad):

The integration of the HC 1996 into the Spanish legal system is very clearly reflected in the current wording of Articles 9.4 and 9.6 of the Civil Code. These precepts establish that the law applicable to the content of filiation, by nature or by adoption, and to the exercise of parental responsibility, will be determined in accordance with the Hague Convention of October 19, 1996, on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. It is also stated that the law applicable to the protection of children will be determined in accordance with the Hague Convention of 19 October 1996. As indicated above, the most relevant novelty in this field has been the entry into application on August 1, 2022 of the new Brussels IIb Regulation insofar as it establishes a new relationship with the 1996 Hague Convention in its new Article 97.

## 2. Scope of application (Arts 2, 3 and 4, and C&R No 29 of 2017 SC)

4. Have competent authorities in your State experienced any challenges, or have questions arisen, in determining the scope of the 1996 Convention (e.g., which measures of protection fall within the scope of the 1996 Convention)?

- No  
 Yes  
 Please specify:  
 Please insert text here

### 3. Jurisdiction to take measures of protection

#### Habitual residence (Art. 5 and C&R No 31 of 2017 SC)

5. Have competent authorities in your State experienced any challenges when determining the habitual residence of the child in cases falling within the scope of the 1996 Convention?

- No  
 Yes  
 Please specify:

The question of habitual residence as an autonomous concept which is based on the application of national and international law and treaties and which has to be decided on a case-by-case basis raises general problems of application, as is shown by the extensive case law of the Court of Justice of the European Union in preliminary rulings concerning the Brussels IIa Regulation, the parameters of which are similar to those of the 1996 Hague Convention on habitual residence.

#### International child abduction (Arts 7 and 50)

6. Have competent authorities in your State experienced any challenges, or have questions arisen, in **making a determination whether to exercise jurisdiction** in cases of wrongful removal or retention of the child?

- No  
 Yes  
 Please specify:  
 Please insert text here

#### Pending divorce or legal separation of the child's parents (Art. 10)

7. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise **jurisdiction** in cases where there is a pending divorce or legal separation of the child's parents (**Art. 10**)?

- No  
 Yes  
 Please specify:

The new parameters under art. 97 Brussels IIb Regulation will help to get through these topics. Connected to this type of question, it is relevant to stress that the judgement CJEU of 14 July 2022, delivered for a preliminary ruling in Case C-572/21, held that Article 8(1) of the Brussels IIa Regulation, read in conjunction with Article 61(a) thereof, must be interpreted as meaning that a court of a Member State seized of a dispute in matters of parental responsibility does not have jurisdiction to hear and determine the case. Brussels IIa, read in conjunction with Article 61(a) thereof, must be interpreted as meaning that a court of a Member State seized of a dispute concerning parental responsibility has no jurisdiction to rule on that dispute under Article 8(1) of that Regulation where the habitual residence of the child concerned has been lawfully transferred, in the course of the proceedings, to the territory of a non-member State which is a party to the 1996 Hague Convention. This seems to be

consistent with the EU legislator's intention not to undermine the provisions of the HC 1996.

### Transfer of jurisdiction (Arts 8 and 9)

8. How often have competent authorities in your State experienced cases of transfer of jurisdiction under **Articles 8 and / or 9** of the 1996 Convention?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

If possible, please provide supplementary information:

There are serious problems at the international and national level of retrieving statistics that are not available in the detail needed to answer such questions.

9. Has your State developed any **good practices, procedures, guidelines or protocols** to facilitate the transfer of jurisdiction?

Yes  
 Please specify and provide the links to relevant documents whenever possible:

No  
 Please specify any reasons:  
 At the EU level, such issues have been addressed by the practical guides produced by the European Commission on the Brussels IIa and Brussels IIb Regulations and Spain takes advantage of that practical guides.

## 4. Special types of measures of protection

### Urgent measures of protection (Art. 11)

10. Have competent authorities in your State experienced any challenges, or have questions arisen, with respect to the application of **Article 11** (e.g., the definition of "urgency"; scope, nature and duration of measures)?

- No  
 Yes, in cases of international child abduction.  
 If possible, please provide more details about the experience of your State using Article 11 in cases of international child abduction:  
 Statistically speaking, it is not possible to cite cases where only HC 1996 is applicable to resolve a return case and Article 11 has been used in the State of refuge to order the return of the child as an urgent measure or cases where the State of habitual residence has agreed to return the child and that decision is to be enforced in the State of refuge by the application of Articles 7 and 26 of HC 1996. However, this second possibility seems very safe and unproblematic in legal terms.  
 Yes, in other situations.  
 Please describe in which other situations a competent authority in your jurisdiction has applied Article 11:  
 Please insert text here

### Provisional measures (Art. 12)

11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 12** (e.g., definition as to what may constitute a "provisional character"; scope, nature and duration of measures)?

- No  
 Yes

Please describe:

[Please insert text here](#)

## 5. Applicable law (Chap. III)

12. Have competent authorities in your State experienced any challenges, or have questions arisen, in relation to the applicable law rules provided by **Articles 15, 16 and 17** of the 1996 Convention?

- No  
 Yes

Please describe:

[Please insert text here](#)

## 6. Recognition and enforcement

13. Have competent authorities in your State experienced any challenges, or have questions arisen, in relation to the **recognition of measures of protection**, from the perspective of the requested State?

- No  
 Yes

Please describe:

[Please insert text here](#)

## Advance recognition (Art. 24)

14. How often have competent authorities in your State experienced cases of requests for **advance recognition**?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

If possible, please provide supplementary information:

The exequatur system designed in Spain under Law 29/2015, of 30 July, on international legal cooperation in civil matters, provides for various forms of recognition, such as incidental, partial, and even the possibility of adaptation of measures with equivalent effects in the event that a decision contains a measure that is unknown in the Spanish legal system, but there is no regulated figure that fits exactly in the provisions of the model of recognition of Art. 24 of the HC 1996 (preventive action only for measures to be dealt with in a national contentious procedure).

15. Have **judicial or administrative procedures, guidelines, or protocols** been adopted in your State to facilitate the application of Article 24?

- Yes, but there have been no changes since the last SC meeting  
 Yes, with changes since the last SC meeting.

Please specify:

Please insert text here

No

### Declaration of enforceability or registration for the purpose of enforcement (Arts 26, 27 and 28)

16. In relation to the **simple and rapid procedure** for declaring enforceable or registering for the purpose of enforcement of measures of protection taken in another Contracting Party (Art. 26), what is the practice in your State?

- a) Which authority declares enforceable or registers a measure of protection taken in another Contracting Party? Please specify:

This is a matter governed in Spain by Law 29/2015, of 30 July, on international legal cooperation in civil matters, published in "BOE" no. 182, of 31/07/2015. According to art. 52:"1. Jurisdiction to hear applications for exequatur corresponds to the Courts of First Instance of the domicile of the party against whom recognition or enforcement is sought, or of the person to whom the effects of the foreign judicial decision refer. Alternatively, territorial jurisdiction shall be determined by the place of enforcement or by the place where the judgment is to produce its effects, in the latter case the court of first instance before which the application for exequatur is brought shall have jurisdiction. 2. The jurisdiction of the Commercial Courts to hear applications for exequatur of foreign judgments relating to matters within their jurisdiction shall be determined in accordance with the criteria laid down in paragraph 1. 3. If the party against whom the exequatur is sought is subject to insolvency proceedings in Spain and the foreign judgment has as its object some of the matters within the jurisdiction of the insolvency judge, jurisdiction to hear the application for exequatur shall correspond to the insolvency judge and shall be dealt with by the insolvency proceedings. 4. The Spanish court shall control ex officio the objective competence to hear these proceedings.

- b) What time frames are applied to ensure that the procedure is rapid? Please explain:

The procedure is fairly streamlined but allowing for two possible levels of appeal could lengthen the duration of the proceedings. Basically, the application for recognition and the application for enforcement may be joined in the same document. However, enforcement will not take place until a decision has been taken on the exequatur. The adoption of precautionary measures may be requested, in accordance with the provisions of the Law on Civil Proceedings, to ensure the effectiveness of the judicial protection sought. The claim and documents presented shall be examined by the court clerk, who shall issue a decree admitting the claim and transferring it to the defendant so that he may oppose it within a period of thirty days. Once the opposition has been formalised or once the period for doing so has elapsed without it having been formalised, the court shall rule by means of an order as appropriate within a period of ten days. The Public Prosecutor's Office shall always intervene in these proceedings, to which end it shall be notified of all the proceedings. An appeal may only be lodged against the order of exequatur in accordance with the provisions of the Civil Procedure Act. If the order appealed against is upheld, the court may suspend enforcement or make such enforcement subject to the provision of the appropriate security. Against the decision handed down by the Provincial Court in the second instance, the party entitled to do so may lodge an extraordinary appeal for procedural infringement or an appeal in cassation in accordance with the provisions of the Code of Civil Procedure.

- c) Is legal representation required? Please explain:

Yes. Parties must be represented by Procurador and defended by a Lawyer.



17. Are you aware of any challenges, or have questions arisen, in applying **Articles 26, 27 and / or 28** in your State?

- No
  - Yes
- Please describe:  
Please insert text here

**7. Cooperation (Chap. V)**

**Central Authority practice**

18. Are you aware of any challenges, or have questions arisen, in applying **Article 30** in your State (e.g., in relation to the timeliness of responses to requests)?

- No
  - Yes
- Please describe:  
Please insert text here

**Services available**

19. If your State answered the 2016 Questionnaire, please indicate whether since then there have been any changes in relation to the services provided by your Central Authority:

- No. Please proceed to question No 22
- Yes. Please continue answering the following questions

20. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, does your Central Authority provide assistance to **individuals habitually resident in your State** who request it in connection with the following matters? If so, please specify the nature of the assistance provided.

Matter	Service(s) provided
a) A request to organise or secure effective exercise of <b>rights of access</b> in another Contracting Party (requested State) <sup>4</sup>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input checked="" type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input checked="" type="checkbox"/> 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access</li> <li><input type="checkbox"/> 7. Assistance in providing or facilitating the provision of legal aid and advice</li> </ul>

<sup>4</sup> See in this context, e.g., the [Practical Handbook](#) on the Operation of the 1996 Child Protection Convention, sections 11(E)(d) and 13(B) (2014).



	<ul style="list-style-type: none"> <li><input type="checkbox"/> 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State</li> <li><input type="checkbox"/> 9. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input type="checkbox"/> 10. Provision of regular updates on the progress of the application</li> <li><input type="checkbox"/> 11. Other, please specify: <a href="#">Please insert text here</a></li> </ul>
<p>b) A request to secure the return to your State of a child subject to <b>international abduction</b> where the 1980 Convention is <u>not</u> applicable</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input checked="" type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input checked="" type="checkbox"/> 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained</li> <li><input type="checkbox"/> 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child</li> <li><input type="checkbox"/> 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue</li> <li><input type="checkbox"/> 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child</li> <li><input type="checkbox"/> 10. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input type="checkbox"/> 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child</li> <li><input type="checkbox"/> 12. Assistance in obtaining private legal counsel or mediation services</li> <li><input type="checkbox"/> 13. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input type="checkbox"/> 14. Regular updates on the progress of the application</li> <li><input type="checkbox"/> 15. Other, please specify: <a href="#">Please insert text here</a></li> </ul>
<p>c) A request to secure the return to your State of a <b>runaway child</b> (see <b>Art. 31(c)</b>)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input checked="" type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input checked="" type="checkbox"/> 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input checked="" type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input checked="" type="checkbox"/> 6. Assistance in discovering the whereabouts of a runaway child</li> <li><input type="checkbox"/> 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child</li> <li><input type="checkbox"/> 8. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input checked="" type="checkbox"/> 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child</li> <li><input type="checkbox"/> 10. Assistance in obtaining private legal counsel</li> <li><input type="checkbox"/> 11. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input checked="" type="checkbox"/> 12. Regular updates on the progress of the application</li> <li><input type="checkbox"/> 13. Other, please specify: <a href="#">Please insert text here</a></li> </ul>

<p>d) A request for a <b>report on the situation of a child</b> habitually resident in another Contracting Party (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see <b>Art. 32(a)</b>)</p>	<p><input checked="" type="checkbox"/> 1. None  <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention  <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State  <input type="checkbox"/> 4. Establishment of contact with the Central Authority and/ or the competent authorities in the requested State to find out the kind of assistance such authorities could provide  <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State  <input type="checkbox"/> 6. Other, please specify:  <a href="#">Please insert text here</a></p>
<p>e) A request that the competent authorities of another Contracting Party decide on the <b>recognition or non-recognition</b> of a measure taken in your State (see <b>Art. 24</b>)</p>	<p><input type="checkbox"/> 1. None  <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention  <input checked="" type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State  <input checked="" type="checkbox"/> 4. Establishment of contact with the Central Authority and/ or the competent authorities in the requested State to find out the kind of assistance such authorities could provide  <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State  <input type="checkbox"/> 6. Assistance in obtaining private legal counsel  <input type="checkbox"/> 7. Regular updates on the progress of the request  <input type="checkbox"/> 8. Other, please specify:  <a href="#">Please insert text here</a></p>
<p>f) A request that the competent authorities of another State Party <b>declare enforceable or register for the purpose of enforcement</b> measures taken in your State (see <b>Art. 26</b>)</p>	<p><input type="checkbox"/> 1. None  <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention  <input checked="" type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State  <input checked="" type="checkbox"/> 4. Establishment of contact with the Central Authority and/ or the competent authorities in the requested State to find out the kind of assistance such authorities could provide  <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State  <input type="checkbox"/> 6. Assistance in obtaining private legal counsel  <input type="checkbox"/> 7. Regular updates on the progress of the request  <input type="checkbox"/> 8. Other, please specify:  <a href="#">Please insert text here</a></p>

21. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, if your Central Authority were to receive a request of assistance from **another Central Authority** on behalf of an individual residing abroad, in connection with the following matters, please specify the nature of the assistance that your Central Authority provides or would provide if the situation were to arise.

Matter	Service(s) provided
<p>a) A request to organise or secure effective exercise of <b>rights of access</b> in another</p>	<p><input type="checkbox"/> 1. None  <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention  <input checked="" type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</p>

<p>Contracting Party (requested State)<sup>5</sup></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access</li> <li><input type="checkbox"/> 7. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input type="checkbox"/> 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State</li> <li><input type="checkbox"/> 9. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input type="checkbox"/> 10. Provision of regular updates on the progress of the application</li> <li><input type="checkbox"/> 11. Other, please specify: <a href="#">Please insert text here</a></li> </ul>
<p>b) A request to secure the return to your State of a child subject to <b>international abduction</b> where the 1980 Convention is <u>not</u> applicable</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input checked="" type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input type="checkbox"/> 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained</li> <li><input type="checkbox"/> 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child</li> <li><input type="checkbox"/> 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue</li> <li><input type="checkbox"/> 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child</li> <li><input type="checkbox"/> 10. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input type="checkbox"/> 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child</li> <li><input type="checkbox"/> 12. Assistance in obtaining private legal counsel or mediation services</li> <li><input type="checkbox"/> 13. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input type="checkbox"/> 14. Regular updates on the progress of the application</li> <li><input type="checkbox"/> 15. Other, please specify: <a href="#">Please insert text here</a></li> </ul>
<p>c) A request to secure the return to your State of a <b>runaway child</b> (see <b>Art. 31(c)</b>)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input checked="" type="checkbox"/> 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> </ul>

<sup>5</sup> See in this context, e.g., the [Practical Handbook](#) on the Operation of the 1996 Child Protection Convention, sections 11(E)(d) and 13(B) (2014).

	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input checked="" type="checkbox"/> 6. Assistance in discovering the whereabouts of a runaway child</li> <li><input type="checkbox"/> 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child</li> <li><input type="checkbox"/> 8. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input checked="" type="checkbox"/> 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child</li> <li><input type="checkbox"/> 10. Assistance in obtaining private legal counsel</li> <li><input type="checkbox"/> 11. Referral to other governmental and/or non-governmental organisations for assistance</li> <li><input type="checkbox"/> 12. Regular updates on the progress of the application</li> <li><input type="checkbox"/> 13. Other, please specify: Please insert text here</li> </ul>
<p>d) A request for a <b>report on the situation of a child</b> habitually resident in another Contracting Party (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see <b>Art. 32(a)</b>)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input type="checkbox"/> 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Other, please specify: Please insert text here</li> </ul>
<p>e) A request that the competent authorities of another Contracting Party decide on the <b>recognition or non-recognition</b> of a measure taken in your State (see <b>Art. 24</b>)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input checked="" type="checkbox"/> 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in obtaining private legal counsel</li> <li><input type="checkbox"/> 7. Regular updates on the progress of the request</li> <li><input type="checkbox"/> 8. Other, please specify: Please insert text here</li> </ul>
<p>f) A request that the competent authorities of another Contracting Party <b>declare enforceable or register for the purpose of enforcement</b> measures taken in your State (see <b>Art. 26</b>)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input checked="" type="checkbox"/> 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in obtaining private legal counsel</li> <li><input type="checkbox"/> 7. Regular updates on the progress of the request</li> <li><input type="checkbox"/> 8. Other, please specify: Please insert text here</li> </ul>

**Mediation, conciliation or similar methods (Art. 31(b))**

22. How does your Central Authority (either directly or through public authorities or other bodies) take appropriate steps under **Article 31(b)** to facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the 1996 Convention applies?

Please explain:

Please insert text here

**Placement and provision of care abroad (Art. 33)**

23. Have authorities in your State experienced any challenges, or have questions arisen, in relation to:

a)  the **scope of application of Article 33** (e.g., in case of placement with relatives, migrant children)

Please provide further details, if possible:

Please insert text here

b)  **time frames** of consultations under Article 33

Please provide further details, if possible:

Please insert text here

c)  the availability of **equivalent measures** of protection in the other Contracting Party or differences in the applicable domestic legislation

Please provide further details, if possible:

Please insert text here

d)  **financial costs** involved in the placement / provision of care abroad

Please provide further details, if possible:

Please insert text here

e)  other **practical issues** arising from the placement / provision of care abroad (e.g., documentation, immigration matters)

Please provide further details, if possible:

Please insert text here

f)  other issues relating to Article 33.

Please specify:

As it was answered under question n° 1, in cross-border placement of a child, the new Organic Law 8/2021 has introduced in the Organic Law 1/1996 on the protection of minors the new Articles 20 ter to 20 quinquies to regulate conditions and procedure applicable to requests for cross-border placement of children under Regulations Brussels IIa (art. 56), Brussels IIb (art. 82) and HC 19.10.1996 (art. 33).

24. Have **judicial or administrative procedures, guidelines, or protocols** been adopted in your State to deal with the placement procedure under Article 33?

No

Yes

Please describe and also provide a link or attach any relevant documents, preferably translated into English or French:

Aside from our national domestic law implementing art. 33 HC 1996, at the EU level, such issue has been addressed by the practical guides produced by the European

Commission on the Brussels IIa and Brussels IIb Regulations and Spain takes advantage of that practical guides and the work developed by the EJM-civil (information sheets and material under e-Justice Portal).

25. After the placement of the child abroad to another Contracting Party, does your State seek **follow up information on the situation** of that child?

- No  
 Yes

Please describe:

Please insert text here

### Reports (Arts 32, 33 and 34)

26. Have authorities in your State experienced any challenges, or have questions arisen, in providing or obtaining reports or information under **Article 32, 33 or 34**?

- No  
 Yes

Please describe:

Please insert text here

27. Do authorities in your State use a standard template when providing a report on the (situation of the) child under Article 32 or 33?

- No  
 Yes

Please attach the template to your response (preferably translated into English or French):

Please insert text here

### Assistance from the authorities of another Contracting Party

28. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 35**?

- No  
 Yes

Please describe:

Please insert text here

29. Have judges in your State used direct judicial communications in cases falling under the 1996 Convention?

- No  
 Yes

Please specify in relation to which specific matters (e.g., transfer of jurisdiction, placement of a child)::

Although we do not have statistical data or specific cases, the truth is that there is no inconvenience for the use in Spain under HC 1996 of the Direct Judicial Communications that are specifically developed in the Law on International Legal Cooperation in Civil Matters 29/2015, of 30 July, which in its article 4 generally empowers all judges and courts to establish direct judicial communications.

## 8. General provisions

### Article 40 Certificates

30. How often have competent authorities in your State issued **Article 40 certificates** indicating the capacity in which a person having parental responsibility or entrusted with the protection of the child's person or property is entitled to act and the powers conferred upon him or her?

- Do not know
- Never
- Rarely
- Sometimes
- Very often
- Always

31. Has your State experienced any challenges, or have questions arisen, in relation to **requests under Article 40**?

- No
  - Yes
- Please describe:  
Please insert text here

### Issues in relation to the property of the child (Arts 55 and 60)

32. How often have competent authorities in your State dealt with **measures for the protection of the property of the child by using the framework of the Convention**?

- Do not know
- Never
- Rarely
- Sometimes
- Very often
- Always

If possible, please provide supplementary information:  
Please insert text here

## 9. Special topics

### International family relocation

33. Has your State adopted specific procedures for international family relocation?

- Yes
- Please describe such procedures, if possible:  
In Spain, Organic Law 8/2021, of 4 June. Ref. BOE-A-2021-9347, has modified the Civil Code clarifying the cases of relocation. The preamble of the Organic Law 8/2021 states that: "except in the case of suspension, deprivation of parental authority or exclusive attribution of such authority to one of the parents, the consent of both parents or, failing that, judicial authorization is required for the relocation of the minor, regardless of the measure that has been adopted in relation to his/her guardianship or custody, as has already been explicitly established by some Autonomous Communities". Furthermore, the new Art. 154 of the Civil Code states that parental authority includes... "3º Deciding the habitual place of residence of the



minor, which may only be modified with the consent of both parents or, failing that, by judicial authorization". These new legal amendments consolidate previous consistent judicial practice and in terms of case law, we can cite the STS, First Civil Chamber, 748/2014, 11 December, can be cited as relevant.

No

Please describe how the authorities deal with international family relocation cases, if possible:

Please insert text here

34. Are you aware of any use being made of Article 24, which provides for advance recognition, in lieu of or in connection with international family relocation?

No

Yes

Please explain:

Please insert text here

35. Are you aware of any use being made of other provisions of the 1996 Convention in cases where a parent wishes to relocate with his or her child to another State?

No

Yes

Please explain:

Please insert text here

#### Children subject to international abduction

36. Have authorities in your State experienced any challenges, or have questions arisen, in relation to the application of the 1996 Convention (e.g., Art. 50) in cases of child abduction where the 1980 Convention was not applicable (see Questions 20(b) and 21(b) above)?

No

Yes

Please describe:

Statistically speaking, it is not possible to cite cases where only HC 1996 is applicable to resolve a return case and Article 11 has been used in the State of refuge to order the return of the child as an urgent measure or cases where the State of habitual residence has agreed to return the child and that decision is to be enforced in the State of refuge by the application of Articles 7 and 26 of HC 1996. However, this second possibility seems very safe and unproblematic in legal terms.

37. In cases of child abduction where both the 1980 Convention and the 1996 Convention were applicable, have authorities in your State made use of provisions under the 1996 Convention (e.g., Art. 50) in addition to or instead of provisions of the 1980 Convention?

No

Yes

Please specify the provisions and explain:

In some cases HC 1996 is used in conjunction with HC 1980 in cases of safe return providing provisional measures to be recognized and enforced in the Country of habitual residence.

38. In cases of child abduction, whether or not the 1980 Convention is applicable, have authorities in your State used the cooperation provisions in Chapter V of the 1996 Convention to determine whether adequate measures of protection are available in the State of the habitual residence of the child (e.g., to facilitate the safe return of the child)?

- No  
 Yes

Please explain:

Yes as a possibility but we do not have statistical data

39. In cases of child abduction, have competent authorities in your State taken measures of protection under Article 11, as an alternative to measures of protection in the form of mirror orders or undertakings, to facilitate the safe return of the child?

- No  
 Yes

Please explain:

As it was previously said, in some cases HC 1996 is used in conjunction with HC 1980 in cases of safe return providing provisional measures to be recognized and enforced in the Country of habitual residence, but mirror orders and undertakings are figures not used in continental law systems.

#### Unaccompanied and separated children<sup>6</sup> and emergency situations (Art. 6)

40. How often have competent authorities in your State dealt with **cases involving refugee children, internationally displaced children, or children whose habitual residence cannot be established** by using the framework of the 1996 Convention?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

If possible, please provide supplementary information:

Please insert text here

41. Where the **habitual residence of a child present in your State could not be established**, have authorities in your State used any of the cooperation provisions of the 1996 Convention in determining the child's place of habitual residence?

- No  
 Yes

Please specify:

Yes as a possibility but we do not have specific data to share.

42. Have competent authorities in your State had experience with providing assistance to **discover the whereabouts of children** that went missing due to disturbances occurring in their State of habitual residence by using the framework provided by the 1996 Convention?

- No  
 Yes

Please specify:

Please insert text here

<sup>6</sup> In relation to this section of the Questionnaire, see [Prel. Doc. No 7 of February 2020](#), "The application of the 1996 Child Protection Convention to unaccompanied and separated children".

43. Have **procedures, guidelines, or protocols** been adopted in your State to deal with the protection of unaccompanied or separated children in the context of the 1996 Convention?

- No  
 Yes

Please describe and also provide a link or attach any relevant documents, preferably translated into English or French:

At the EU level, such issue has been addressed by the practical guides produced by the European Commission on the Brussels IIa and Brussels IIb Regulations and Spain takes advantage of that practical guides and the work developed by the EJN-civil (information sheets and material under e-Justice Portal.

44. In emergency situations, such as a humanitarian crisis, have authorities in your State experienced any challenges, or have questions arisen, in regard to the **exchange of information** among authorities of the Contracting Parties, in particular taking into account Articles 36 and 37 of the 1996 Convention?

Please insert text here

45. Are you aware of whether **Preliminary Document No 7 of February 2020, “The application of the 1996 Child Protection Convention to unaccompanied and separated children”**, has been brought to the attention of the competent authorities in your State?

- No  
 Yes

Please specify:

Please insert text here

### International access / contact cases involving children

46. Should your State also be a Contracting Party to the 1980 Convention, are you aware of any use being made of provisions of the 1996 Convention, including those under **Chapter V**, in lieu of or in connection with an application under **Article 21** of the 1980 Convention?<sup>7</sup>

- No  
 Yes

Please explain:

Please insert text here

### Practical Handbook

47. Do you have any observations or comments to share concerning the **Practical Handbook** on the Operation of the 1996 Child Protection Convention?

- No  
 Yes

Please specify:

It is an excellent handbook.

### Agenda items for the next SC meeting

<sup>7</sup> The Explanatory Report (Lagarde) on the 1996 Convention notes that cooperation under Art. 35(1) between authorities of States Parties with respect to rights of access “serves in a certain way to complete and reinforce the co-operation, which is not always effective, provided for the same purpose between Central Authorities” under Art. 21 of the 1980 Convention. Explanatory Report, para. 146 (1997).

48. Are there any **particular issues** that your State would like the SC meeting to discuss in relation to the 1996 Convention? Please specify and list in order of priority:

Please insert text here

## PART II – FOR NON-CONTRACTING PARTIES

49. Is your State currently considering **signing and ratifying or acceding to the 1996 Child Protection Convention**?

- Yes  
If possible, please provide further information:  
[Please insert text here](#)
- No  
If possible, please provide further information:  
[Please insert text here](#)

50. In considering how your State would **implement the 1996 Child Protection Convention**, have you encountered any **issues of concern**?

- No
- Yes  
Please explain:  
[Please insert text here](#)

51. Are there any **particular issues** that your State would like the SC meeting to discuss in relation to the 1996 Child Protection Convention?

- No
- Yes  
Please specify and list in order of priority:  
[Please insert text here](#)

52. Do you have any observations or comments to share concerning the **Practical Handbook** on the Operation of the 1996 Child Protection Convention?

- No
- Yes  
Please specify:  
[Please insert text here](#)