

Title	Transfer of jurisdiction under the 1996 Child Protection Convention (Arts 8 and 9)
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Annexes	Annex I: Questionnaire circulated to members of the IHNJ in June 2023. (in English only).
Related Documents	N/A

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Transfer of jurisdiction under the 1996 Child Protection Convention (Arts 8 and 9)

I. Introduction

- 1 In June 2023, a questionnaire was circulated to members of the International Hague Network of Judges (IHNJ),¹ asking them to share their practical experiences with the process of transferring jurisdiction (as a requested and / or requesting judge) under Articles 8 and 9 of the *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* (1996 Child Protection Convention), Article 15 of the Brussels IIa Regulation² or Articles 12 and 13 of the Brussels IIb Regulation.³ Both Regulations provide for transfer mechanisms similar to the 1996 Convention.
- 2 This document is based on the responses received from IHNJ members to the questionnaire⁴ and aims to share the information and experiences collected on the practical implementation and operation of transfers of jurisdiction under the 1996 Convention as well as the Brussels IIa and IIb Regulations. Contracting States may be able to extract good practices from the practical experiences reported by IHNJ members in this area.

II. Background

- 3 At its meeting in 2017, the Special Commission (SC) concluded and recommended the following:

“51. The Special Commission supports the collection of information by the Permanent Bureau concerning the implementation and operation of Articles 8 and 9 of the 1996 Convention with a view to disseminating this information to interested States to consider in their implementation of the Convention. **The Special Commission invites the Permanent Bureau to prepare a report on this issue for the attention of the next Meeting of the Special Commission.**”⁵ [emphasis added]

III. General overview of cases involving a transfer of jurisdiction

- 4 Members of the IHNJ reported on a total of 24 cases, 15 of which pertained to Article 15 of the Brussels IIa Regulation,⁶ five of which pertained to Article 9 of the 1996 Convention,⁷ three of which pertained to Article 8 of the 1996 Convention⁸ and one of which pertained to Article 12 of the Brussels IIb Regulation.⁹ Contracting States may be able to draw from the practical experiences of transfers under Article 15 of the Brussels IIa Regulation, in particular, and adopt similar good practices for transfers of jurisdiction under the 1996 Convention.

¹ See Annex I (available in English only).

² [Council Regulation \(EC\) No 2201/2003](#) of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

³ [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).

⁴ The Permanent Bureau (PB) is extremely grateful for the input received from IHNJ members from Belgium, Croatia, the Czech Republic, Germany, Italy, Lithuania, Spain and the United Kingdom (England and Wales).

⁵ “Conclusions and Recommendations of the Seventh Meeting of the Special Commission on the practical operation of the 1980 Child Abduction Convention and 1996 Child Protection Convention (10-17 October 2017)”, available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Special Commission meetings” and “Seventh Special Commission meeting (October 2017)”.

⁶ Belgium (4 cases), Croatia (1 case), Czech Republic (2 cases), Lithuania (1 case), Spain (7 cases).

⁷ Belgium (1 case), Spain (2 cases), United Kingdom (England and Wales) (2 cases).

⁸ Spain (1 case), United Kingdom (England and Wales) (2 cases).

⁹ Italy (1 case).

- 5 Based on the responses to the questionnaire, it appears that most cases involving a request for a transfer of jurisdiction concerned matters relating to parental authority / responsibility¹⁰ and contact rights.¹¹ Requests for a transfer of jurisdiction were also submitted in the context of return proceedings under the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (1980 Child Abduction Convention).¹² It was reported that a change of habitual residence of (one of) the parents or (one or more of) the child(ren) gave rise to a request for a transfer of jurisdiction,¹³ as did the wish of the child to be reunited with (one of) their parents, their siblings and / or extended family in another State.¹⁴ Other cases that involved requests for a transfer of jurisdiction concerned matters relating to custody rights / arrangements¹⁵ and child support.¹⁶
- 6 The most common reasons, cited by IHNJ members, justifying requests for a transfer of jurisdiction were a closer / substantial connection of the party(ies) or the child(ren) to the other State¹⁷ and the courts of the other State being better placed to make a decision on the matter at hand.¹⁸ Other common reasons for transfer requests include the child relocating¹⁹ or acquiring a new habitual residence in the other State²⁰ and alleged child neglect, the resolution of which necessitated a transfer of jurisdiction.²¹ The wishes of the parties to have jurisdiction transferred or the wish of the child to relocate to the other State were also cited as reasons, as was the transfer being in the child(ren)'s best interests.²² In a few cases, a transfer of jurisdiction was requested in order to avoid potential conflicting decisions, due to ongoing proceedings in the other State,²³ the fact that the children were located in different States²⁴ or to homologate (custody) agreements / decisions between the requesting and requested States.²⁵ In one of the cases, it was noted that citizenship alone is not a sufficient ground / basis for a transfer of jurisdiction.²⁶

A. Article 8 or 9 of the 1996 Convention

- 7 Out of the eight cases²⁷ reported on transfers of jurisdiction under Article 8 or 9 of the 1996 Convention, six of those cases concerned a civil matter (*i.e.*, cases relating to a private family law issue such as custody rights, parental authority, contact rights, relocation, property of the child)²⁸ and two cases concerned child protection matters (*i.e.*, cases relating to public measures of protection such as alternative care arrangements, including institutional care).²⁹

¹⁰ Croatia, Czech Republic, Spain.

¹¹ Croatia, Czech Republic (2 cases), United Kingdom (England and Wales) (2 cases).

¹² Belgium, Italy, Lithuania.

¹³ Belgium, Germany. It should be noted that, under Art. 5(2) of the 1996 Convention, jurisdiction changes at the time a new habitual residence is acquired, whereas under the Brussels IIa and IIb Regulations, the principle of *perpetuatio fori* requires a transfer of jurisdiction despite the acquisition of a new habitual residence.

¹⁴ Belgium.

¹⁵ Germany, United Kingdom (England and Wales) (2 cases).

¹⁶ Croatia.

¹⁷ Belgium, Czech Republic, Lithuania, Spain, United Kingdom (England and Wales).

¹⁸ Belgium, Czech Republic, Lithuania, Spain.

¹⁹ Croatia, Germany, Spain.

²⁰ Czech Republic, Germany, Spain. See explanation in note 13.

²¹ Italy.

²² Belgium.

²³ Germany, United Kingdom (England and Wales).

²⁴ United Kingdom (England and Wales).

²⁵ United Kingdom (England and Wales).

²⁶ United Kingdom (England and Wales).

²⁷ Belgium (1 case), Spain (3 cases), United Kingdom (England and Wales) (4 cases).

²⁸ Belgium (1 case), Spain (1 case), United Kingdom (England and Wales) (4 cases).

²⁹ Spain (2 cases).

8 IHNJ members from three States³⁰ reported on five cases,³¹ all of which involved a request for a transfer of jurisdiction under Article 9 of the 1996 Convention. In three of those cases,³² IHNJ members shared their practical experience from the perspective of the requested court and, in two of those cases,³³ they shared their experience from the perspective of the requesting court. IHNJ members representing two States³⁴ reported on three different cases³⁵ which involved a transfer of jurisdiction under Article 8 of the 1996 Convention, all of which were from the perspective of the requested court.

B. Article 15 of the Brussels IIa Regulation

9 IHNJ members from five States³⁶ reported on 15 different cases³⁷ involving a request for a transfer of jurisdiction under Article 15 of the Brussels IIa Regulation. In nine of those cases,³⁸ IHNJ members shared their practical experience from the perspective of the requested court and in six of those cases,³⁹ they shared their experience from the perspective of the requesting court.

10 Of the 15 cases reported, 13 cases concerned a civil (*i.e.*, private family law) matter⁴⁰ and two cases were child protection proceedings (*i.e.*, public measures of protection).⁴¹

C. Article 12 of the Brussels IIb Regulation

11 One IHNJ member reported on a case involving a transfer of jurisdiction under Article 12 of the Brussels IIb Regulation, from the perspective of the requested court.⁴² The case concerned a civil (*i.e.*, private family law) matter.

IV. Practicalities of the transfer

12 This section will provide information as to who initiated the request for a transfer of jurisdiction and by what means, how the response to the request was communicated, by what means the initial contact was made between the relevant courts involved, whether the request was subject to an appeal, whether a time frame was foreseen for the response to the request and how long the entire process took, as well as what information was initially furnished and whether any additional information was needed subsequently.

A. Article 8 or 9 of the 1996 Convention

13 In all cases reported by members of the IHNJ pertaining to Article 8 of the 1996 Convention, the transfer of jurisdiction was requested by one of the parties.⁴³ In one of the cases, the other party agreed with and consented to the transfer request, while in another case, the other party contended that the original court should retain and exercise its established jurisdiction.⁴⁴

³⁰ Belgium, Spain, United Kingdom (England and Wales).

³¹ Belgium (1 case), Spain (2 cases), United Kingdom (England and Wales) (2 cases).

³² Spain (2 cases), United Kingdom (England and Wales) (1 case).

³³ Belgium, United Kingdom (England and Wales).

³⁴ Spain, United Kingdom (England and Wales).

³⁵ Spain (1 case), United Kingdom (England and Wales) (2 cases).

³⁶ Belgium, Croatia, Czech Republic, Lithuania, Spain.

³⁷ Belgium (4 cases), Croatia (1 case), Czech Republic (2 cases), Lithuania (1 case), Spain (7 cases).

³⁸ Belgium (2 cases), Spain (7 cases).

³⁹ Belgium (2 cases), Croatia (1 case), Czech Republic (2 cases), Lithuania (1 case).

⁴⁰ Belgium (2 cases), Croatia (1 case), Czech Republic (2 cases), Lithuania (1 case), Spain (7 cases).

⁴¹ Belgium (2 cases).

⁴² Italy.

⁴³ Spain (1 case), United Kingdom (England and Wales) (2 cases).

⁴⁴ United Kingdom (England and Wales).

- 14 In three out of the five cases reported pertaining to Article 9 of the 1996 Convention, the request was made *ex officio* (i.e., by the court),⁴⁵ while in the other two cases, the transfer was requested by one of the parties.⁴⁶ In one of those two cases, the other party objected to the request for a transfer of jurisdiction.⁴⁷ In one of the cases where the transfer of jurisdiction under Article 9 was requested *ex officio*, the parties appear to have affirmatively consented to the transfer request.⁴⁸ In the two other cases, it was not specified whether or not the parties consented to the transfer requests.⁴⁹
- 15 Courts appear to use a plethora of tools to make (and respond to) requests for a transfer of jurisdiction in the context of the 1996 Convention, including e-mail,⁵⁰ court decisions,⁵¹ as well as via the IHNJ.⁵² One IHNJ member further noted that, in their experience, the majority of requests for a transfer of jurisdiction appear to be made through the relevant Central Authorities.⁵³ It was also noted that preliminary contact between the courts is usually carried out directly⁵⁴ or via the IHNJ.⁵⁵
- 16 From the cases shared by IHNJ members, most requests for a transfer of jurisdiction under the 1996 Convention were not subject to an appeal.⁵⁶
- 17 Courts do not appear to indicate a specific time frame for a response to requests for a transfer of jurisdiction under the 1996 Convention⁵⁷ and the request appears to take anywhere between five days and nine months to be processed and resolved.⁵⁸
- 18 Upon making the initial request for a transfer of jurisdiction under the 1996 Convention, courts appear to supply as much relevant information as possible pertaining to the case. This can include a (translated) copy of the decision by the requesting court (if there is one), outlining the reasons for requesting the transfer and any other relevant factual information.⁵⁹ It seems that there is generally no need for additional information to be shared subsequently,⁶⁰ although in some cases, some follow-up information proved useful.⁶¹

B. Article 15 of the Brussels Ila Regulation

- 19 Based on the input received from IHNJ members, it appears that most requests for a transfer of jurisdiction under Article 15 of the Brussels Ila Regulation are made *ex officio* (11 out of 15 cases reported).⁶² In four of those cases, it was noted that the parties did not consent to the request

⁴⁵ Belgium (1 case), Spain (2 cases).

⁴⁶ United Kingdom (England and Wales) (2 cases).

⁴⁷ United Kingdom (England and Wales) – The other party asserted that the other court had more advantages and that, since the children’s first language was that of the other jurisdiction, their voices could be better heard there.

⁴⁸ Belgium.

⁴⁹ Spain.

⁵⁰ Belgium (1 case), Spain (1 case), United Kingdom (England and Wales) (3 cases).

⁵¹ Belgium (1 case), Spain (1 case), United Kingdom (England and Wales) (3 cases).

⁵² Belgium (1 case), Spain (1 case), United Kingdom (England and Wales) (1 case).

⁵³ United Kingdom (England and Wales).

⁵⁴ Spain (2 cases).

⁵⁵ Belgium (1 case), Spain (1 case), United Kingdom (England and Wales) (4 cases).

⁵⁶ Belgium (1 case), United Kingdom (England and Wales) (3 cases).

⁵⁷ Belgium (1 case), Spain (3 cases), United Kingdom (England and Wales) (4 cases).

⁵⁸ Art. 8 of the 1996 Convention: The United Kingdom (England and Wales) reported that in one case, the entire process of the transfer of jurisdiction took approximately five months and, in another, it took approximately nine months. Art. 9 of the 1996 Convention: The United Kingdom (England and Wales) reported that one case took five days and Belgium reported that another case took six days. On the other hand, the United Kingdom (England and Wales) reported that another transfer process took approximately three months to be resolved.

⁵⁹ Belgium (1 case), United Kingdom (England and Wales) (4 cases).

⁶⁰ Belgium (1 case), United Kingdom (England and Wales) (3 cases).

⁶¹ United Kingdom (England and Wales) (1 case) – More information on the basis of the requesting court’s exercise of jurisdiction, the current stage of the proceedings before the requesting court, whether the matter was listed for further hearing and the anticipated timescale for the determination of the proceedings.

⁶² Belgium (2 cases), Croatia (1 case), Czech Republic (1 case), Lithuania (1 case), Spain (6 cases).

being made,⁶³ while in one of those cases, it was specified that the parties did consent to the request.⁶⁴ As for the rest of the cases requested *ex officio* under Article 15 of the Brussels IIa Regulation, it is unclear whether or not the parties consented to the request for a transfer of jurisdiction.

- 20 In three out of the remaining four cases reported under Article 15 of the Brussels IIa Regulation, the request for a transfer of jurisdiction was made by one of the parties.⁶⁵ In all three of those cases, it appears that the other party did not consent to such a request being made. Finally, one case was reported where both parties made the request jointly.⁶⁶
- 21 As with the 1996 Convention, in the context of requests for a transfer of jurisdiction under Article 15 of the Brussels IIa Regulation, courts appear to utilise a wide range of communication tools. E-mail,⁶⁷ court decisions⁶⁸ and the IHNJ⁶⁹ seem to be the most favoured methods to make (and respond to) requests for a transfer of jurisdiction. Some courts also make use of formal letters⁷⁰ and regular post⁷¹ to communicate. It was also noted that the Central Authority may make a request for a transfer of jurisdiction, via post.⁷² It appears that preliminary contact between the courts is carried out primarily through direct judicial communications via the IHNJ⁷³ and the European Judicial Network (EJN).⁷⁴ In some cases, it seems that the Central Authority is also involved in the preliminary contact.⁷⁵
- 22 It was noted that the request for a transfer of jurisdiction under Article 15 was subject to an appeal in four cases.⁷⁶ In three other cases, IHNJ members indicated that the request was not subject to an appeal.⁷⁷ As for the rest of the cases reported (eight cases), it is unclear whether or not they were subject to an appeal.
- 23 In most cases involving a request for a transfer of jurisdiction under the Brussels IIa Regulation, courts appear to provide for a specified time frame for a response.⁷⁸ Some IHNJ members made particular reference to the six-week deadline foreseen under Article 15(5).⁷⁹ In some cases, the existence of a prescribed time frame seems to assist with the overall efficiency of the process⁸⁰ while, in other cases, despite the best efforts of all actors involved, matters take longer to be resolved due to appeals⁸¹ or other factors contributing to the complexity of the case.⁸²

⁶³ Belgium (2 cases) - One party was not present at the hearing, one party contested the transfer, one party alleged an omission on the part of requested court; Czech Republic - One of the parties thought the other party was only applying for transfer to prolong the proceedings and made an objection due to the well-being of children and the belief that justice would not be carried out in the Requested State; Lithuania - The other party expressed concerns about the impartiality of the court to which jurisdiction was to be transferred.

⁶⁴ Croatia.

⁶⁵ Belgium, Czech Republic, Spain.

⁶⁶ Belgium.

⁶⁷ Belgium (4 cases), Czech Republic (2 cases), Germany, Lithuania (1 case), Spain (7 cases).

⁶⁸ Belgium (4 cases), Spain (1 case).

⁶⁹ Belgium (1 case), Czech Republic (2 cases), Germany, Spain (1 case).

⁷⁰ Croatia (1 case), Lithuania (1 case).

⁷¹ Spain (3 cases).

⁷² Spain (1 case).

⁷³ Belgium (4 cases), Czech Republic (2 cases), Lithuania, Spain (2 cases).

⁷⁴ Belgium (1 case), Croatia (1 case).

⁷⁵ Belgium (1 case), Spain (6 cases).

⁷⁶ Belgium (3 cases) - But the communication of the request did not wait for this, the court of appeal confirmed and sent the transfer request; Czech Republic (1 case) - The requesting court issued the decision of terminating proceedings due to transfer jurisdiction under Art. 15 of Brussels II *bis* on 17 September 2021, the court of appeal upheld this decision on 9 November 2021.).

⁷⁷ Croatia, Czech Republic, Lithuania.

⁷⁸ Belgium (3 cases), Croatia (1 case), Czech Republic (2 cases), Spain (7 cases).

⁷⁹ Belgium (1 case), Czech Republic (2 cases), Spain (2 cases).

⁸⁰ Belgium (24 days, 40 days, 54 days), Czech Republic (approximately one month).

⁸¹ Belgium (27 weeks - including appeal), Czech Republic (over 5 months - including appeal).

⁸² Croatia (over 5 months), Lithuania (2 months), Spain (4-5 months, 7 months - due to COVID-19 pandemic).

24 IHNJ members indicated that the information furnished along with the initial request for a transfer under Article 15 includes any existing court decisions pertaining to the case,⁸³ any reports from the police or social / welfare authorities,⁸⁴ a clear description of the facts of the case and any information on the situation of the child, along with the reasons for the proposed transfer.⁸⁵ In at least one case, it was deemed necessary to share the entire case file.⁸⁶ From the cases reported, it appears that no additional information was needed subsequently.⁸⁷

C. Article 12 of the Brussels IIb Regulation

25 The only case reported in the context of Article 12 of the Brussels IIb Regulation was a transfer of jurisdiction requested *ex officio*, to which the parties were not asked to consent.⁸⁸ The request was made via a court decision. Preliminary contact was made via the Central Authority.⁸⁹ The IHNJ member indicated that there was no time frame prescribed for the response to that particular request.⁹⁰ A full report on the situation of the child, along with details about how the child was heard during proceedings, were provided with the request for transfer. It appears that no additional information was required subsequently. It is, however, unclear whether the request was subject to an appeal and how long it took for the request to be processed.

V. Scope of the transfer

A. Article 8 or 9 of the 1996 Convention

26 Based on the input of IHNJ members, most requests under the 1996 Convention appear to concern transfers of jurisdiction in relation to a specific issue rather than a general transfer of jurisdiction. Six out of the eight cases reported involved a transfer of jurisdiction limited to a specific issue,⁹¹ while the other two cases were requests for a general transfer of jurisdiction.⁹²

B. Article 15 of the Brussels IIa Regulation

27 Out of the 15 cases reported pertaining to Article 15 of the Brussels IIa Regulation, seven cases involved a request for a transfer of jurisdiction regarding a specific issue.⁹³ In six cases, the requests were for a general transfer of jurisdiction.⁹⁴

C. Article 12 of the Brussels IIb Regulation

28 The only case reported in the context of the Brussels IIb Regulation involved a request for a general transfer of jurisdiction.⁹⁵

⁸³ Belgium (1 case), Spain (2 cases),

⁸⁴ Belgium (1 case).

⁸⁵ Croatia (1 case), Czech Republic (2 cases), Lithuania (1 case), Spain (1 case).

⁸⁶ Belgium.

⁸⁷ Belgium (4 cases), Croatia (1 case), Czech Republic (1 case), Lithuania (1 case), Spain (3 cases).

⁸⁸ Italy.

⁸⁹ Italy - The Central Authority sent the court decision from the other country and the Italian court channeled its decision through the Italian Central Authority.

⁹⁰ Bearing in mind the six-week deadline under Art. 12(2) of the Regulation for a decision to be made on these matters.

⁹¹ Spain (3 cases), United Kingdom (England and Wales) (3 cases) – Transfer limited to a contact application or the homologation of an amended custody agreement between parents.

⁹² Belgium, United Kingdom (England and Wales).

⁹³ Croatia (1 case) (parental authority / contact rights), Czech Republic (1 case) (access rights), Spain (5 cases).

⁹⁴ Belgium (4 cases), Czech Republic (1 case), Lithuania (1 case).

⁹⁵ Italy.

VI. “Exchange of views” under Article 8(3) or Article 9(2) of the 1996 Convention

A. Article 8 or 9 of the 1996 Convention

- 29 According to IHNJ members, the “exchange of views” in the context of a request for a transfer of jurisdiction under the 1996 Convention was fast, effective⁹⁶ and proved useful before the formal transfer request was sent, as it helped ensure that the requested court had all the information needed to facilitate a timely decision.⁹⁷
- 30 One IHNJ member noted that the exchange of views was limited to the request for a transfer of jurisdiction and the response,⁹⁸ as opposed to the case in general. Another member of the IHNJ mentioned that, in one case, the process of exchanging views would have been better facilitated if there was a designated member of the INHJ representing the other State.⁹⁹

B. Article 15 of the Brussels IIa Regulation

- 31 Although the Brussels IIa Regulation does not provide for an “exchange of views” *per se*, two members of the IHNJ indicated that such an exchange was nevertheless carried out.¹⁰⁰ In this regard, views were exchanged between judges on both a formal and informal basis, with the best interests of the child(ren) at the centre of all discussions.¹⁰¹ Another IHNJ member noted that there was an exchange of views pertaining to the child protection matters of the case as well as the requested transfer.¹⁰² In other cases, it was determined that prior direct judicial communications and the views expressed in previous court decisions were sufficient and that no additional exchanges were needed.¹⁰³

VII. Best interests determination in the context of a transfer of jurisdiction request

A. Article 8 or 9 of the 1996 Convention

- 32 When determining whether or not the transfer of jurisdiction is in the best interests of the child, one IHNJ member noted that the courts took into consideration the existence of any agreement between the parents.¹⁰⁴
- 33 In one case, although it was found that both courts were equally well placed to assess the best interests of two siblings residing in separate States, it was ultimately held that having a single proceeding for both children was in their best interests, as separate proceedings could result in conflicting decisions.¹⁰⁵
- 34 In another case, it was held that any decision regarding a child’s welfare is best made by the competent authorities of the jurisdiction of the child’s social and family environment. This is because the majority of evidence and information relevant to assessing the best interests of the child can be found in that jurisdiction.¹⁰⁶

⁹⁶ Germany, Spain.
⁹⁷ Germany, United Kingdom (England and Wales).
⁹⁸ Belgium.
⁹⁹ United Kingdom (England and Wales).
¹⁰⁰ Belgium.
¹⁰¹ Lithuania.
¹⁰² Belgium.
¹⁰³ Belgium.
¹⁰⁴ Belgium.
¹⁰⁵ United Kingdom (England and Wales).
¹⁰⁶ United Kingdom (England and Wales).

B. Article 15 of the Brussels Ila Regulation

35 In determining whether a transfer of jurisdiction under Article 15 of the Brussels Ila Regulation was in the child(ren)'s best interests, IHNJ members indicated that the environment and welfare needs of the child(ren) were taken into consideration,¹⁰⁷ as was their background,¹⁰⁸ their connection to both States,¹⁰⁹ whether proceedings were pending in the other State,¹¹⁰ the potential for delays,¹¹¹ the closeness of the child to their parent(s) / relative(s) in either State,¹¹² the need to ensure stability for the child¹¹³ and the child's own wishes.¹¹⁴ In one case, it was determined that the transfer was in the best interests of the child because the other court was better placed to hear the child and evaluate their interests.¹¹⁵

VIII. Implications and outcome of the transfer

A. Article 8 or 9 of the 1996 Convention

36 Out of the three cases reported involving a request for a transfer of jurisdiction under Article 8 of the 1996 Convention, a transfer was ultimately carried out in one case,¹¹⁶ while in another case, the request was rejected.¹¹⁷ In that case, although the requested court found that there was a connection between the children and the requesting State, the requesting court was not better placed to assess their best interests, as nationality / citizenship was not, in and of itself, sufficient to justify a transfer. One member of the IHNJ was not in a position to report on the outcome of the request for a transfer of jurisdiction under Article 8.¹¹⁸

37 Out of the five cases reported involving a request for a transfer of jurisdiction under Article 9 of the 1996 Convention, a transfer was ultimately carried out in three cases.¹¹⁹ In the two other cases, the IHNJ member was not able to report on the outcome of the requests.¹²⁰

38 In two out of eight cases, IHNJ members indicated that it was clear to all actors involved that the transfer under the 1996 Convention would trigger fresh proceedings¹²¹ and, in one case, it was specified that this was not clear.¹²² As for the other five cases, no particular indication was made in this regard.

B. Article 15 of the Brussels Ila Regulation

39 Out of the 15 cases reported, a transfer of jurisdiction was carried out in seven cases,¹²³ while a transfer did not ultimately go through in three cases.¹²⁴ In five cases, an IHNJ member was not in a position to report whether or not a transfer took place.¹²⁵

¹⁰⁷ Belgium.
¹⁰⁸ Czech Republic.
¹⁰⁹ Czech Republic.
¹¹⁰ Czech Republic.
¹¹¹ Belgium.
¹¹² Belgium, Lithuania.
¹¹³ Belgium.
¹¹⁴ Belgium.
¹¹⁵ Croatia.
¹¹⁶ United Kingdom (England and Wales).
¹¹⁷ United Kingdom (England and Wales).
¹¹⁸ Spain.
¹¹⁹ Belgium, United Kingdom (England and Wales) (2 cases).
¹²⁰ Spain.
¹²¹ United Kingdom (England and Wales) (2 cases).
¹²² United Kingdom (England and Wales) - Proceedings were already ongoing in the requesting State.
¹²³ Belgium (3 cases), Czech Republic (2 cases), Lithuania (1 case), Spain (1 case).
¹²⁴ Belgium, Croatia, Spain.
¹²⁵ Spain (5 cases).

40 In five cases, IHNJ members indicated that it was clear to all actors involved that a transfer under Article 15 of the Brussels IIa Regulation would trigger fresh proceedings.¹²⁶ In three cases, IHNJ members reported that this was not clear.¹²⁷ As for the other seven cases, no particular indication was made in this regard.

C. Article 12 of the Brussels IIb Regulation

41 The IHNJ member that reported on the case involving a request for a transfer of jurisdiction under Article 12 of the Brussels IIb Regulation indicated that, ultimately, no transfer had taken place, as the court deemed there was no basis for the transfer.¹²⁸ The IHNJ member also specified that, in that case, it was not clear to all actors involved that a transfer under Article 12 would trigger fresh proceedings.

IX. Other matters

42 IHNJ members representing four States¹²⁹ shared some additional comments relating to their practical experiences pertaining to requests for transfers of jurisdiction under the 1996 Convention and the Brussels IIa Regulation. One IHNJ member noted that, generally, the involvement of a liaison judge considerably facilitates and accelerates the entire procedure of transferring jurisdiction.¹³⁰

A. Article 8 or 9 of the 1996 Convention

43 An IHNJ member indicated that the process of transferring jurisdiction under Article 9 of the 1996 Convention was an expeditious and easy experience, which admittedly was assisted by the fact that there was an agreement between the parties involved.¹³¹

44 One IHNJ member noted that they experienced delays in obtaining responses to requests for a transfer of jurisdiction and that speed of decision making in this regard is critical.¹³²

45 In cases where it is proposed that the child move to the other State, an IHNJ member suggested that, in order to avoid delays, the request for the transfer of jurisdiction should be considered at the same time as the arrangements which need to be in place to enable the child to move.¹³³ They also noted that, in cases concerning institutional care, they have experienced difficulties in engaging the child protection agencies in the other State, particularly where no proceedings have been instituted there.¹³⁴

46 From the responses of some members of the IHNJ, it appears that Central Authorities are quite involved in the process of requests for a transfer of jurisdiction. Given this phenomenon, it may be useful that the PB collects information from Central Authorities in the future, via a similar questionnaire. The questionnaire can be distributed to all Contracting States to the 1996 Convention. Based on the responses received, this document can be updated in the light of any further practical insight gained from Central Authorities.

¹²⁶ Belgium, Croatia, Czech Republic, Lithuania, Spain.

¹²⁷ Belgium - One cannot conclude from the documents whether the actors saw this transfer as the start of a new proceeding, Czech Republic, Spain.

¹²⁸ Italy.

¹²⁹ Belgium, Croatia, Germany, United Kingdom (England and Wales).

¹³⁰ Germany.

¹³¹ Belgium.

¹³² United Kingdom (England and Wales).

¹³³ United Kingdom (England and Wales).

¹³⁴ United Kingdom (England and Wales).

B. Article 15 of the Brussels IIa Regulation

47 One IHNJ member highlighted that, in one case, exchanges took place between the Central Authorities and members of the IHNJ, which further facilitated cooperation.¹³⁵ The IHNJ member also noted that, in another case (which involved highly exceptional circumstances), the transfer proceedings were a way to avoid time-consuming complexities, as a delayed resolution of the case would not be in the best interests of the child.¹³⁶

48 Another IHNJ member mentioned that, in practice, there are not many cases involving a request for a transfer of jurisdiction, as the procedure is too long and complicated.¹³⁷

49 It was also noted that requests for transfer of jurisdiction are more complex in the cases involving a child protection element. Issues often arise in this regard because States have different domestic procedural rules.¹³⁸

X. Conclusion and proposal from the PB

50 This document has set out to raise awareness of any current practices across jurisdictions pertaining to transfers of jurisdiction under the 1996 Convention as well as the Brussels IIa and Brussels IIb Regulations.

51 Generally, based on the responses received from IHNJ members, it appears that requests for a transfer of jurisdiction under the 1996 Convention and the Brussels IIa and IIb Regulations most often take place in the context of civil cases (*i.e.*, private family law matters), most notably in relation to matters of parental authority / responsibility and contact rights.

52 It also seems that it is most common for the request for a transfer of jurisdiction to be made *ex officio* and that, in most cases, e-mail is the preferred mode of communication to make (and respond to) such requests. The facilitating role played by Central Authorities in requests for a transfer of jurisdiction is also interesting to note.

53 Notwithstanding the aforementioned trends, it is clear that there is great divergence from State to State in the practical operation of requests for transfers of jurisdiction. It would, therefore, seem sensible to maintain a level of flexibility in this regard. Depending on the case, judges may need to take some preliminary steps to ensure that the way in which they intend to approach a request for a transfer of jurisdiction is compatible with the procedural framework of the other State concerned.

54 Based on the information provided by the IHNJ members, there appears to be a need to improve the processing times of requests for a transfer of jurisdiction under the 1996 Convention as well as under the Brussels IIa and IIb Regulations. The SC may wish to discuss the ways in which processes can be streamlined and optimised under the 1996 Convention, in the best interests of the children involved.

55 The SC may wish to consider adopting the following Conclusions and Recommendations:

- a. The SC invited Contracting States, which have not done so already, to consider designating, in accordance with the Emerging Guidance regarding the Development of the IHNJ, one or more members of the judiciary for the purpose of direct judicial communications within the context of the IHNJ.
- b. Recalling Article 44 of the 1996 Convention, the SC encouraged Contracting States to designate the authorities to which requests under Articles 8 and 9 are to be addressed, as

¹³⁵ Belgium.
¹³⁶ Belgium.
¹³⁷ Croatia.
¹³⁸ Germany.

such a designation could greatly assist in improving the processing times of requests for a transfer of jurisdiction. Depending on domestic policies and requirements relating to the judiciary, Contracting States may choose to designate a member of the IHNJ (if applicable) and / or the Central Authority to receive requests for transfers of jurisdiction.

- c. The SC encouraged authorities requesting a transfer of jurisdiction to, in the first place, informally consult their counter parts in the requested State, to ensure that their requests are as complete as possible and that all necessary information and documentation is furnished from outset to meet the requirements of the requested State.
- d. Recalling Principle 9 of the Emerging Guidance regarding the Development of the IHNJ,¹³⁹ the SC encouraged Central Authorities that are involved in a transfer of jurisdiction request and judges engaging in direct judicial communications pertaining to a request for a transfer of jurisdiction to keep one another informed regarding the progress and outcome of such a request. Doing so could further assist in addressing delays and enhance the efficiency of processing requests under Article 8 or 9 of the 1996 Convention.
- e. The SC invited the PB to circulate the questionnaire annexed to Prel. Doc. No 17 of August 2023 to all Contracting States to the 1996 Convention, with a view collecting information from judges and Central Authorities regarding requests under Article 8 or 9. The SC further invited the PB to review Prel. Doc. No 17, in the light of the responses from Contracting States, and to submit the revised version of Prel. Doc. No 17 to the Council on General Affairs and Policy (CGAP). The SC noted that it will be for CGAP to determine the next steps in this area (e.g., whether there is a need to form a Working Group consisting of judges and representatives from Central Authorities to identify good practices pertaining to requests for a transfer of jurisdiction under the 1996 Convention).

¹³⁹ [“Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges”](#), available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Judicial Communications”.

ANNEXES

Annex I

Transfer of jurisdiction under: Articles 8 and 9 of the 1996 Child Protection Convention, Article 15 of Brussels IIa and Articles 12 and 13 of Brussels IIb

Please complete one or more of the following tables, detailing your practical experiences with the process of transferring jurisdiction (as a requested and / or requesting judge).

Please provide as much practical detail as possible and / or permissible.

It would be highly appreciated if you can provide your experiences both as Requesting and Requested judge.

If possible, please share on a priority basis your experience under Articles 8 and 9 of the 1996 Convention.

Case 1:

1. Transfer requested under:	<input type="checkbox"/> Article 8 of the 1996 Convention <input type="checkbox"/> Article 9 of the 1996 Convention <input type="checkbox"/> Article 15 of Brussels IIa <input type="checkbox"/> Article 12 of Brussels IIb <input type="checkbox"/> Article 13 of Brussels IIb
2. My court was:	<input type="checkbox"/> The requesting court <input type="checkbox"/> The requested court
3. Nature of the case:	<input type="checkbox"/> The case was regarding a civil matter (e.g., custody rights, parental authority, contact right, relocation, property issue) <input type="checkbox"/> The case was a child protection proceeding (e.g., institutional care, alternative care arrangements)
4. Brief facts of the case:	Click or tap here to enter text.
5. Reason / basis for the transfer:	Click or tap here to enter text.
6. Who initiated the request for the transfer?	<input type="checkbox"/> One of the parties (e.g., parent, public prosecutor, public body responsible for youth and welfare issues) Did the other party consent that the request be made? <input type="checkbox"/> Yes <input type="checkbox"/> No, please explain, if possible: Click or tap here to enter text. <input type="checkbox"/> Both parties (please explain, if possible): Click or tap here to enter text. <input type="checkbox"/> The court, <i>ex officio</i> Did both parties consent that the request be made? <input type="checkbox"/> Yes <input type="checkbox"/> No, please explain, if possible: Click or tap here to enter text.
7. How was the request for transfer communicated?	<input type="checkbox"/> Through email <input type="checkbox"/> Through a formal letter

	<input checked="" type="checkbox"/> Through an affidavit <input type="checkbox"/> Through a court decision <input type="checkbox"/> Other, please elaborate: Click or tap here to enter text.
8. How was the response to the request for transfer communicated?	<input type="checkbox"/> Through email <input type="checkbox"/> Through a formal letter <input type="checkbox"/> Through an affidavit <input type="checkbox"/> Through a court decision <input type="checkbox"/> Other, please elaborate: Click or tap here to enter text.
9. From the requesting State perspective, was the request for transfer subject to an appeal?	<input type="checkbox"/> Yes, if possible, please specify the conditions of the appeal: Click or tap here to enter text. <input type="checkbox"/> No
10. How was the preliminary contact between the courts carried out? <i>Please tick all boxes that apply.</i>	<input type="checkbox"/> Via the IHNJ: Click or tap here to enter text. <input type="checkbox"/> Via another judicial network (e.g., the European Judicial Network, IberRed), please specify: Click or tap here to enter text. <input type="checkbox"/> Via the Central Authority, please explain: Click or tap here to enter text. <input type="checkbox"/> Directly: Click or tap here to enter text. <input type="checkbox"/> Other (please specify): Click or tap here to enter text.
11. Was the transfer limited to one specific issue or was the transfer of jurisdiction of a general nature?	<input type="checkbox"/> One specific issue, please specify(e.g., exercise of a contact right, a property issue, relocation issue): Click or tap here to enter text. <input type="checkbox"/> General transfer of jurisdiction regarding all matters concerning a child, please elaborate, if necessary: Click or tap here to enter text.
12. How did your court consider that the transfer was in the best interests of the child?	Click or tap here to enter text.
13. What was the outcome of the request for transfer of jurisdiction?	Click or tap here to enter text.
14. When a transfer is requested, is a specific time frame indicated for a response?	<input type="checkbox"/> Yes, please specify: Click or tap here to enter text. <input type="checkbox"/> No
15. Please indicate the time frame of the (request for) transfer (i.e., how long the entire process took).	Click or tap here to enter text.
16. What information was shared when the initial request for transfer was made?	Click or tap here to enter text.
17. Was there a need for additional information to be shared subsequently?	<input type="checkbox"/> Yes, please elaborate: Click or tap here to enter text. <input type="checkbox"/> No
18. Please elaborate on your experience with the “exchange	Click or tap here to enter text.

of views” under Article 8(3) or 9(2) of the 1996 Convention.	
19. Was it clear to all actors involved that the transfer would trigger fresh proceedings?	<input type="checkbox"/> Yes <input type="checkbox"/> No (please elaborate): Click or tap here to enter text.
20. Please share here any other comments on the transfer procedure:	Click or tap here to enter text.

Case 2:

1. Transfer requested under:	<input type="checkbox"/> Article 8 of the 1996 Convention <input type="checkbox"/> Article 9 of the 1996 Convention <input type="checkbox"/> Article 15 of Brussels IIa <input type="checkbox"/> Article 12 of Brussels IIb <input type="checkbox"/> Article 13 of Brussels IIb
2. My court was:	<input type="checkbox"/> The requesting court <input type="checkbox"/> The requested court
3. Nature of the case:	<input type="checkbox"/> The case was regarding a civil matter (e.g., custody rights, parental authority, contact right, relocation, property issue) <input type="checkbox"/> The case was a child protection proceeding (e.g., institutional care, alternative care arrangements)
4. Brief facts of the case:	Click or tap here to enter text.
5. Reason / basis for the transfer:	Click or tap here to enter text.
6. Who initiated the request for the transfer?	<input type="checkbox"/> One of the parties (e.g., parent, public prosecutor, public body responsible for youth and welfare issues) Did the other party consent that the request be made? <input type="checkbox"/> Yes <input type="checkbox"/> No, please explain, if possible: Click or tap here to enter text. <input type="checkbox"/> Both parties (please explain, if possible): Click or tap here to enter text. <input type="checkbox"/> The court, <i>ex officio</i> Did both parties consent that the request be made? <input type="checkbox"/> Yes <input type="checkbox"/> No, please explain, if possible: Click or tap here to enter text.
7. How was the request for transfer communicated?	<input type="checkbox"/> Through email <input type="checkbox"/> Through a formal letter <input type="checkbox"/> Through an affidavit <input type="checkbox"/> Through a court decision <input type="checkbox"/> Other, please elaborate: Click or tap here to enter text.

<p>8. How was the response to the request for transfer communicated?</p>	<p><input type="checkbox"/> Through email</p> <p><input type="checkbox"/> Through a formal letter</p> <p><input type="checkbox"/> Through an affidavit</p> <p><input type="checkbox"/> Through a court decision</p> <p><input type="checkbox"/> Other, please elaborate: Click or tap here to enter text.</p>
<p>9. From the requesting State perspective, was the request for transfer subject to an appeal?</p>	<p><input type="checkbox"/> Yes, if possible, please specify the conditions of the appeal: Click or tap here to enter text.</p> <p><input type="checkbox"/> No</p>
<p>10. How was the preliminary contact between the courts carried out?</p> <p><i>Please tick all boxes that apply.</i></p>	<p><input type="checkbox"/> Via the IHNJ: Click or tap here to enter text.</p> <p><input type="checkbox"/> Via another judicial network (e.g., the European Judicial Network, IberRed), please specify: Click or tap here to enter text.</p> <p><input type="checkbox"/> Via the Central Authority, please explain: Click or tap here to enter text.</p> <p><input type="checkbox"/> Directly: Click or tap here to enter text.</p> <p><input type="checkbox"/> Other (please specify): Click or tap here to enter text.</p>
<p>11. Was the transfer limited to one specific issue or was the transfer of jurisdiction of a general nature?</p>	<p><input type="checkbox"/> One specific issue, please specify(e.g., exercise of a contact right, a property issue, relocation issue): Click or tap here to enter text.</p> <p><input type="checkbox"/> General transfer of jurisdiction regarding all matters concerning a child, please elaborate, if necessary: Click or tap here to enter text.</p>
<p>12. How did your court consider that the transfer was in the best interests of the child?</p>	<p>Click or tap here to enter text.</p>
<p>13. What was the outcome of the request for transfer of jurisdiction?</p>	<p>Click or tap here to enter text.</p>
<p>14. When a transfer is requested, is a specific time frame indicated for a response?</p>	<p><input type="checkbox"/> Yes, please specify: Click or tap here to enter text.</p> <p><input type="checkbox"/> No</p>
<p>15. Please indicate the time frame of the (request for) transfer (i.e., how long the entire process took).</p>	<p>Click or tap here to enter text.</p>
<p>16. What information was shared when the initial request for transfer was made?</p>	<p>Click or tap here to enter text.</p>
<p>17. Was there a need for additional information to be shared subsequently?</p>	<p><input type="checkbox"/> Yes, please elaborate: Click or tap here to enter text.</p> <p><input type="checkbox"/> No</p>
<p>18. Please elaborate on your experience with the “exchange of views” under Article 8(3) or 9(2) of the 1996 Convention.</p>	<p>Click or tap here to enter text.</p>
<p>19. Was it clear to all actors involved that the transfer</p>	<p><input type="checkbox"/> Yes</p>

would trigger fresh proceedings?	<input type="checkbox"/> No (please elaborate): Click or tap here to enter text.
20. Please share here any other comments on the transfer procedure:	Click or tap here to enter text.