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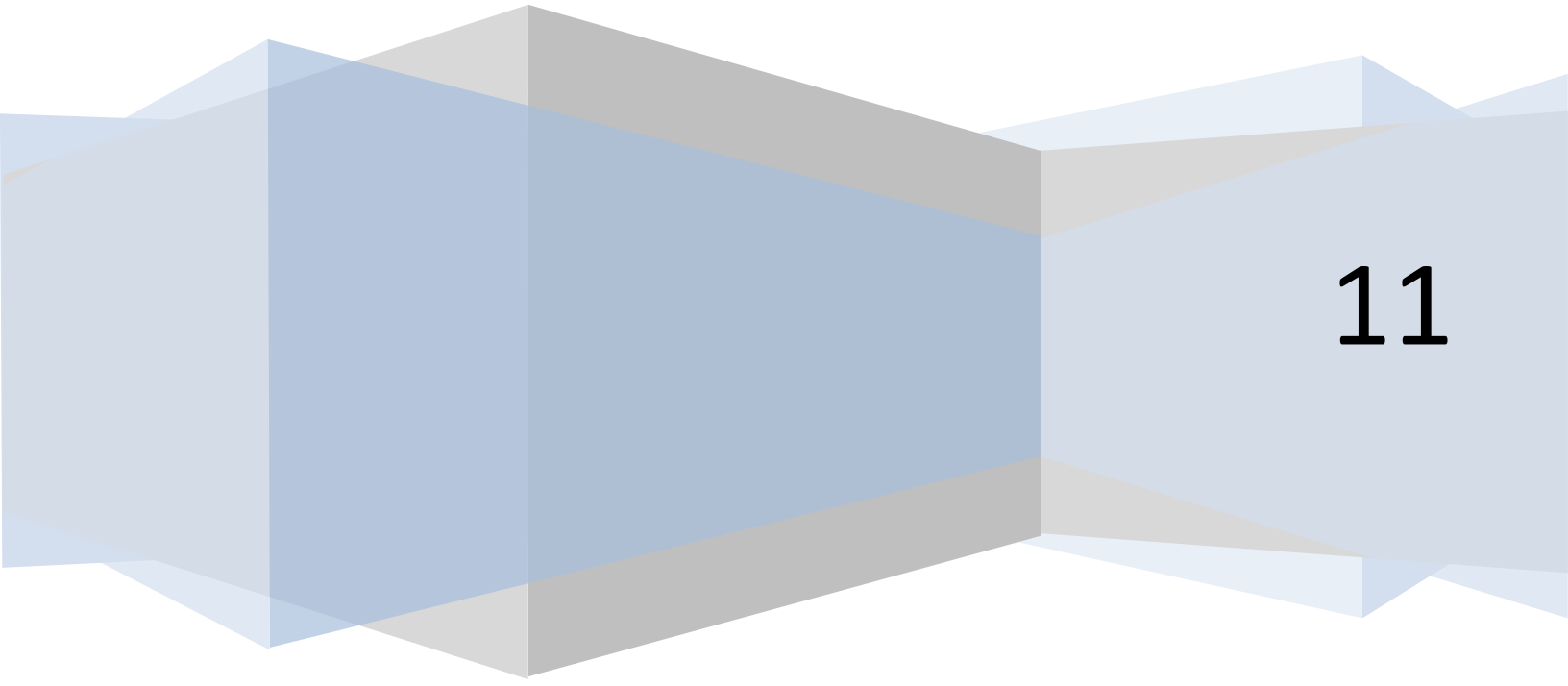
Themis Competition

Legal practical case on international cooperation in commercial and civil matters



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1. Court which has jurisdiction over the divorce

FRANZ BECKER is German and ROSA NEESKENS is Deutsh. They married in Rotterdam on the 17th October 2004. They lived in Milano before moving to Belgium on 16 January 2007 where they established their residence. FRANZ moved to Berlin on 15 March 2007 for his job and the couple decided to divorce on 15 April 2007. The question is to determine which Court is competent for the divorce of FRANZ and ROSA.

In the terms of **Article 1-1(a), the Council Regulation 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, this regulation is applicable to the scope of divorce in cross-border situations.

Article 3-1 of the regulation provides that in matters relating to divorce, the jurisdiction shall be determined according to two main criteria: the habitual residence of the spouses, and the common nationality of the spouses.

The concept of "*habitual residence*" has an autonomous meaning in community law. It can be defined as the place where the person has fixed the permanent or habitual centre of his/her interests, with the attention to vest it with a stable character[1]. Its determination depends on every particular case.

As a result, the "*habitual residence"* of FRANZ can be situated in Berlin (**Germany**). Indeed, he relocated in Berlin because of his job where he still has the majority of his family. Concerning ROSA, her "*habitual residence*" can be located in Brussels (**Belgium**) where she works and lives with her children. Moreover, the agreement concerning children's custody shows her intention to stay in Brussels in a long term perspective, and Franz's intention to stay in Germany for the moment.

Spouses do not have the same nationality, they do not have a common habitual residence and they have lived in their habitual residence for less than six months year. As a result, only three criteria can be applied to the case according to **Article 3-1 a), paragraphs 2, 3, and 4**:

- It is possible to designate the country where the spouses were last **habitually resident** in so far as one of them still resides there, which is Belgium in our case.
- It is possible to designate the country where the **respondent is habitually resident**, so Belgium or Germany, depending on who is the applicant.
- If both spouses make **a joint application**, jurisdiction shall lie with the courts of either of the spouses is habitually resident: Germany or Belgium.

To conclude, the jurisdiction shall lie with the courts of Belgium or Germany. However, since Franz and Rosa agree on the divorce and its consequences, it is highly probable that they decide to bring the case before Belgian Courts located in the country where the children live.

[1] Marinos c/ Marinos, [2007] EWHC 2047

2. Jurisdiction and mediation concerning children maintenance obligations

Because the spouses agreed that FRANZ would pay to ROSA a monthly amount of 700 euros as maintenance payments for the children, we can consider that FRANZ is the respondent and ROSA the applicant for the maintenance obligations matters. The question is to determine the jurisdiction competent in relation to the maintenance payments of the children (**a**) and to find out which procedures to follow if the spouses need to enforce an agreement on the maintenance obligations reached through mediation (**b)**.

a) The determination of the jurisdiction

The Council Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations in force since the 18th June 2011, is applicable to this question (art 1-1). **Art 3 of this Regulation** gives two pertinent criteria concerning the case:

- *"(b) jurisdiction shall lie with the court for the place where the creditor is habitually resident".*

Since ROSA is the creditor and habitually resident in Belgium, it possible to consider that Belgium would have jurisdiction to deal with that question.

- " *(c) the court which according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties*." As it was said, Belgium is likely to have jurisdiction for the divorce. Divorce is a proceeding concerning the status of a person, the matter relating to maintenance is ancillary to this proceeding, and finally that jurisdiction is not based solely on the nationality of one of the parties.

In conclusion, the implementation of this Regulation leads to designate Belgian Courts as competent.

b) The enforcement of the agreement reached through mediation by the spouses

The question is to determine which procedures the spouses would have to go to enforce an agreement reached by mediation about the maintenance payments of the children.

The Directive No 2008/52/EC of the European parliament of the 21 May 2008 on certain aspects of mediation in civil and commercial matters should apply to cases where a court refers parties to mediation or in which national law prescribes mediation. This Directive could benefit to the spouses because **Article 6** provides that all the member States shall ensure that it is possible for the parties or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. Actually, Belgium had to transpose this directive before 21 May 2011.

Moreover, the **Regulation No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claim** shall apply to judgments, court settlements and authentic instruments on uncontested claims. This Regulation creates a European enforcement order for uncontested claims if the debtor has not objected to the claim in the course of court proceedings or has not appeared in court or has expressly agreed that the claim exist. In the terms of the Regulation, the definition of an authentic instrument includes "*an **arrangement relating to maintenance obligations** concluded with administrative authorities or authenticated by them*" (**Article 4 of the Regulation No 805/2004)**.

In the case, we assume that ROSA and FRANZ reached an arrangement by a mediation that can enter into the scope of the European Enforcement Order Regulation**.** In compliance with the Regulation, ROSA and FRANZ will address to the Belgian jurisdiction that is seized, to require the certification of the agreement. The Court will control the conditions of the regulation about the maintenance obligations agreement listed at **Article 6 of the Regulation** and the minimal standards in the judicial procedure in the original State that have to be complied by the member States.

ROSA can use the certificate to get an enforcement of the agreement in Belgium and in Germany.

3. Court which has jurisdiction over parental responsibility

According to **Article 8-1 of the Regulation No 2201/2003 of 27 November 2003,** the competent court in matters of parental responsibility is the one of the State where the child is habitually resident. According to the case-law of the Court of Justice of the European Union (CJEU), the concept of "*habitual residence*" must be interpreted as the place which reflects some degree of integration by the child in a social and family environment[2].

However this provision is subject to the provisions of **Article 12** according to which: when a Court exercises jurisdiction by virtue of Article 3 of the Regulation on an application for divorce, it shall have jurisdiction in any matter relating to parental responsibility connected with that application, where at least one of the spouses has parental responsibility in relation to the child ; and the jurisdiction of the court has been accepted expressly or by the holders of parental responsibility, and is in the superior interests of the child.

We assume that Belgian Courts have been seized as far as the question of divorce is concerned and that FRANZ and ROSA have both parental responsibility in relation to their children. Moreover, as they agreed that the children's custody had to be kept by ROSA and that FRANZ would visit the children in Brussels, the spouses may accept the jurisdiction of Belgian courts, which are the courts of the children's habitual residence. It appears to be in their superior interests that the same Belgian judges,

[2] A case C-523/07: Judgment of the Court -Third Chamber of 2 April 2009 and Mercredi Case EUCJ, 22 December 2010 C-497/10

best placed to assess their concrete situation, decide on the divorce and all its consequences. Lastly, according to **Article 1 and Article 2§7 of the Regulation**, parental responsibility includes rights of custody and rights of access.

So, Belgian courts have jurisdiction in relation to parental responsibility and the visits to the children by FRANZ.

4. The Court that has jurisdiction over the right of use of the apartment

The couple had bought an apartment in Brussels that was granted to ROSA as she continued living there with the children and the amount of the mortgage of 1.000 euros by month was to be covered by both, with a 2/3 part by ROSA and half by FRANZ.

As a preliminary remark, it is important to consider that the right of use of the apartment is not a property right but can be qualified as a consequence of the divorce on the property of the spouses, and is linked to the measures specified in the divorce procedure.

There is no specific European Regulation directive or Convention about the jurisdiction in matters of the property consequences of the divorce. Even the **Council Regulation No 2201/2003 of 27 November 2003** is not applicable to this question[3]. As a consequence, the law of the forum is to be applied to determine which Court has jurisdiction over the use of the apartment. Belgian conflicts of jurisdiction rules are to be applied[4].

Those rules provide that the Belgian Courts are competent for the request concerning the divorce and its consequences, in case there is a joint request and that one of the spouses has his habitual residence in Belgium at the time of the request, or when the habitual residence of the spouses was in Belgium less than 12 months before.

Either one of these criteria designates Belgium Court as competent over the right of use of the apartment being a consequence of the divorce on the property of the spouses. They should add the question on the right of use of the apartment to the principal litigating question on the divorce procedure.

5. Determination of the law that could be applied to the divorce

There is currently no multilateral convention or applicable European regulation on the question of applicable law to divorces. The determination of the applicable law will thus depend on Belgians' conflict-of-law rules. Those rules allow the parties to choose the law applicable to their divorce, between the law of the nationality of either spouse or the Belgian law. In the absence of choice, the applicable

[3] Paragraph 8 of the Whereas: "*this regulation … should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures*"

[4] Loi portant Code de droit international privé Belge, 16 Juillet 1004, art 42 1 et 2

law will be determined on the basis of a scale of connecting factors: the law of the state of habitual residence of the spouses, failing that, the law of the State where the spouses were last habitually resident, insofar as one of them still have its habitual residence there and so on[5].

Consequently, Franz and Rosa will be able to choose to apply the Belgian, Dutch or German law to their divorce. If they do not make this choice, since they don't have a common habitual residence, the applicable law will be the Belgian law where Franz and Rosa were last habitually resident and where Rosa lives.

However, the **Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation** in which Belgium is taking part, will apply from the 21st June 2012. Article 5 provides a limited choice to the spouses to choose the applicable law, for instance they designate the law of the State where they are habitually resident at the time the agreement is concluded or the law of the *forum*. In absence of choice, successive connecting factors apply according to article 8.

Consequently, under this regulation, solutions would be the same: Franz and Rosa would also be able to choose to apply the Belgian, Dutch or German law to their divorce. In absence of choice, since they do not have a common habitual residence, the applicable law will be the Belgian law where Franz and Rosa were habitually resident less than one year before the request.

6. The applicable law to the custody and visitation of the children

The parties agreed on certain points about the custody and visitation of the children. The question is to determine the applicable law for these questions in front of a Court.

The applicable law could be determined by 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.** Belgian has not ratified this Convention. Because the Belgian Court is seized on parental responsibility, this Convention is not to be applied. So, Court will apply the provisions of the Belgian conflict-of-law rules. In terms of the Article 56, the same criteria as the question 5 will be applicable to determine the applicable law concerning the custody and visitation of the children.

7. Applicable law on maintenance and right of use of the apartment

a. Law to be applied in relation to the maintenance

The **Council Regulation (EC) No 4/2009 of 18 December 2008**, states that the applicable law shall be determined in accordance with the **Hague Protocol of 23 November 2007 on the law applicable to**

[5] Article 55 Loi du 16 juillet 2004 portant le Code de droit international privé

maintenance obligations in the Member States bound by that instrument, including Belgium[6]. According to article 3 of the Convention, maintenance obligations shall be governed by the law of the State of the habitual residence of the creditor (ROSA), which is Belgium in the present case.

Article 4 adds other applicable laws in case children are unable to obtain maintenance from their parents (law of the forum, law of the State of their common nationality) which won't be relevant in the case.

Finally, Franz and Rosa could choose another applicable law according to articles 7 and 8 which states the debtor and creditor can designate the applicable law among different possibilities, including the law of any State of which either party is a national or has his habitual residence at the time of the designation or the law designated by the parties as applicable, or the law in fact applied, to their divorce or legal separation.

b. <u>The determination of the law to be applied in relation to the right of use of the apartment</u>

The right of use of the apartment is qualified as a consequence of the divorce on the property of the spouses.

The **Regulation of 1259/2010** which will enter into force in 2012, is not applicable to the property consequences of the divorce. In the present case, the applicable law will thus be determined by the national private international rules of the competent Court, which is Belgium for the divorce. But it is important to mention that there is 2011 Proposal on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of matrimonial property regimes.

Belgian law on International private law code (2004) provides in its article 56 that the applicable law to the property consequences of the divorce is the same than the applicable law of the divorce.

Thus, according to what was said in question 5, the applicable law will depend on the law chosen by FRANZ and ROSA (between Belgian, Dutch or German law) or failing that, it will be the Belgian law.

8. <u>Possible procedures for the enforcement of any disruption of child maintenance payments</u>

The **Council regulation (EC) No 4/2009 of 18 December 2008** only applies to "*decisions*", "*court settlements*" and "*authentic instruments*" as defined in its article 2.

Thus, Rosa needs a court decision or a court settlement concerning the maintenance obligation to benefit from this regulation, specifically from its Chapter IV on recognition, enforceability and enforcement of decisions. Since Belgium is a member of the 2007 Hague Protocol, such decision or court settlement would be recognized in another Member State without any special procedure being required and without any possibility of opposing its recognition. Moreover, if it is enforceable in the State of origin

[6] *Council decision of 31 March 2011 on the signing, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2011/220/EU)*, which states that only Denmark will not be part to the Convention.

(Belgium), it would be enforceable in another Member State without the need for a declaration of enforceability (Article 16). **Rosa would be able to get the enforcement of this judgment in Germany with the help of the Belgian Central Authority and could even benefit from German provisional measures.**

9. Procedures to follow by FRANZ if he's not given access to the children by ROSA

ROSA is living in BELGIUM with the children. She has been refusing to present them to their father for more than two consecutive months, although the spouses had agreed that FRANZ would keep them every second weekend of each month.

We assume that this agreement is neither an authentic one, nor an enforceable one. As a consequence, we can't resort to the procedure dealing with the enforceability of certain judgments concerning rights of access, as established by Articles 40 and followings of the **Regulation No 2201/2003 of 27 November 2003**, since that article 7 requires such an instrument. As a consequence, FRANZ must obtain a judgment on its right of access by Belgian courts, which are competent due to the argument developed in question 3. Besides he may think about bringing a criminal action against ROSA.

ROSA has now moved to FRANCE with the children for a new job. But the competent court considers the need to hear the children. Actually, according to Article 41 of the Regulation, it will be able to issue a certificate, which will allow its future judgment to be recognized and enforceable in another Member State only if the children were given the opportunity to be heard, unless a hearing was considered inappropriate having regard to their age or degree of maturity, which is not the case. Paragraph 19 of the Regulation states that it is not intended to modify national procedures and that the hearing of a child in another Member State may take place under the arrangements laid down in **Council Regulation No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.** As a consequence and according to Article 2 of that Regulation, Belgian courts may transmit their request directly to Lille's Court (competent taking into account information of the European Judicial Atlas in Civil Matters available on the internet), translated into French (Article 5) and using the forms included in the Annex.

The request may be executed by Lille's Court, potentially with the presence and participation of representatives of Belgian court, or directly by the Belgian court (which should then request the *Bureau de l'entraide civile et commerciale internationale* of the French Ministry of Justice), according to Article 10 to 18. Besides, LILLE's Courts will apply French rules[7]. The French judge may hear the children, if the he considers that they are able to understand. If he does so, children would be informed that they

[7] Articles 388 to 388-3 of the French Civil code; Articles 338-1 to 338-12 of the French Code of civil procedure.

have the right to be assisted by a lawyer or a person of their choice and would be summoned by a simple letter. The judge may hear the children himself or delegate an association to do so.

10. Procedures to follow in case of child abduction

FRANZ has taken the children to GERMANY during the summer 2011, and does not want to bring them back to BRUSSELS. To the extent that this question arises four years after Belgian Courts have been seized on the divorce, we assume that they have issued a judgment on ROSA's right of custody and FRANZ' right of access.

Article 2§11of the Regulation No 2201/2003 defines the term "*wrongful removal or retenti*on" as when *(a) it is in breach of rights of custody acquired by judgment; (…) (b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone"*. Consequently, the behavior of FRANZ has to be qualified as child abduction.

The Convention on the civil aspects of international child abduction of the 25 October 1980, which continues to apply, as complemented by the provisions of this Regulation. **As a preliminary**, all requests may be dealt directly by judicial authorities, whereas under the Convention people had to apply first to the Central Authorities designed by the States.

In the case, Belgian Courts shall retain their jurisdiction, to the extent that the conditions required to transfer the jurisdiction to the courts of the country where the children have been removed to, are not fulfilled (Article 10 of the Regulation). Actually, ROSA must not have acquiesced in the removal, and the length of the children's residence in GERMANY is inferior to one year. **Besides**, the Hague Convention allows the Courts of the Member State to which the child has been wrongfully removed to oppose his return in specific cases. These latter become more framed under the Regulation. For instance, a court cannot anymore refuse to return a child on the basis of Article 13b of the Hague Convention[8], if it is established that adequate arrangements have been made to secure the protection of the child after his return.

Moreover, thanks to the Regulation, a decision to refuse to return a child may be replaced by a subsequent decision by the Court of the Member State of habitual residence of the child prior to the wrongful removal, which will take the final decision. Should that judgment entail the return of the child, this one should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to which the child has been removed. In the present case, the judgment issued by Belgian courts shall be recognized and enforceable in GERMANY without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in BELGIUM. Even if German law does not provide for enforceability by operation of

[8] when "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation"

law of a judgment granting access rights, Belgian courts may declare that the judgment shall be enforceable, notwithstanding any appeal (**Article 41 of the Regulation**).

11. The determination of the jurisdiction competent if there a request for changes of the measures specified in the divorce procedure

FRANCK decided to introduce a request on 10th September 2010 asking new measures about his parental responsibility and maintenance obligations.

We first assume that the two children's habitual residence at that stage is still Belgium because they live with their mother in Brussels. So by application of **Article 8 of the Regulation No 2201/2003**, the Belgian Court is competent over the counter request of the father concerning the custody and visitation of the children.

There are different criteria on the jurisdiction to rule on maintenance obligations when there is a cross-border litigation according to Article **3 of the No 4/2009** Regulation:

(*d) "the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties."* This appears to be the most relevant criteria in the present case.

(b) the place where the creditor is habitually resident at the time of the request, that means Germany. However, if the father decides to seize the German Court, this latter would be able to apply article 15 of the Regulation No 2201/2003 to transfer to the Belgian Court, better placed to hear the case, since it is in the best interests of the child.

To conclude, the competent Court over the changes of the measures specified in the first divorce procedure should be the Belgian Court.

12 – 13. Possibility and procedure concerning the hearing of witnesses

1) Hearing of FRANZ' parents

If FRANZ' parents live in Munich, the Regulation 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters is applicable, to the extent that a judicial proceeding is pending before the Belgian Court. This latter may either ask German courts to hear FRANZ' parents (Article 1. 1a) or hear them directly in Germany (article 1. 1b).

In the first hypothesis, the Belgian Court transmit directly its request to the competent German Court according to the list established by Germany (Article 2.2) and, if necessary, with the help of the responsible German central body (Article 3). It must fulfill the form A of the Annex with all the necessary information (including especially the witnesses' name and address), in German which is the only language accepted by that State[1] (Articles 4 and 5). Representatives of the Belgian Court may ask to be present and participate in the

performance of the hearing by the German Court, which will notify it of the time, the place and the conditions of the hearing (Article 12).

In the second hypothesis, the Belgian Court has to submit a request to the German central body or competent authority, fulfilling form I in German (Article 17). The hearing may only take place if it can be performed on a voluntary basis, information which has to be given to the witness (Article 17-2). Within 30 days, the German authority will answer to the Belgian Court thanks to form J, given that few grounds for refusal exist (Article 12-5). Authorities may use communication technologies.

Lastly, the German Court will execute the Belgian request in accordance with the German law (notably concerning the conditions to let the witnesses know the day, time and conditions for appearing before the German Court).

If FRANZ' parents live in Zürich, the applicable text will be the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, ratified by Switzerland, which is not a member of the EU, in 1994 with declarations and reservations on articles 1, 2, 4, 8, 15, 16, 17 and 23.

At first, if the Swiss Court proceeds to the hearing: the Belgian Court shall directly transmit a Letter of request to the central body designated by Switzerland, which will transmit it to the competent judicial authority in order it to be executed. This document shall respect the conditions required by article 3 and be translated into German.

Then, the Hague Convention does not offer the possibility for a State to hear a witness directly in another country. According to article 8, the Belgian judicial personnel may go to Switzerland to be present during the execution of the Letter of request, with the prior authorization of Swiss authorities.

2) Hearing of ROSA's sister living in Denmark

Denmark has not participated in the adoption the Regulation 1206/2001, which cannot be applied. However, Denmark has ratified the 1970 Hague Convention with declarations and reservations for articles 4, 8, 15, 16, 23 et 27 a. The procedure is the same as the one described for Switzerland, except that the Letter of request must be translated into Danish, Norwegian or Swedish.

3) Hearing of ROSA's sister living in Portugal

The rules which apply to FRANZ' parents hearing, in the case where they live in Germany, apply to the hering of ROSA's sister living in Portugal, since Portugal is bound by the Regulation 1206/2001. The form can be fulfilled in Portuguese or Spanish.

14. <u>Procedure to follow concerning the changing of measures in case FRANZ loses his job and considers himself untitled to legal aid</u>

The **Directive 2002/8/CE of 27 January 2003** establishes minimum common rules relating to legal aid for cross border disputes. FRANZ is a citizen of the European Union and party in a cross-border dispute. As a result, according to that directive he will be entitled to legal laid if he fulfills the conditions relating

to financial resources (**Article 5**) and the conditions relating to the substance of disputes (**Article 6**) as transposed into the German law. FRANZ may submit his legal aid application either to the German competent authority, the transmitting authority, or to the Belgian competent authority, the receiving authority (**Article 13**). The German authority shall assist him in ensuring that the application in accompanied by all the necessary documents and help him to translate it into the language of the receiving authority.

15. The jurisdiction competent concerning the credit

The credit FRANZ had against "CONSTRUCTORA MANDANARES SA" compagny is a contractual obligation concerning either an **individual employment contract** or a **service delivery contract**.

The main center of interests of the company is located in Madrid, that is a member of the European Union who ratified the **Regulation No 44/2001 22 December 2010** on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

As a service delivery contract: In the absence of exclusive competence in the litigation, in the terms of **Article 22**, the general criteria of jurisdiction applies : the center of interest should determine the competence of the Court. The center of interest of the company is located in Madrid. Moreover, the option of competence has to be applied in the case of provision of services (**Article 5-1):** the competence of the court is then located where, under the contract, the services were provided or should have been provided. The "CONSTRUCTORA MANDANARES SA" provides the service in Madrid, jurisdiction over the credit being Madrid.

In the case of an individual employment contract, specific rules apply (**Article 18 and following**) : as the company is the defendant it can be the jurisdiction where the its center of interest is located, which is Madrid.

16. Law to be applied in relation to the Rosa's request against "CONSTRUCTORA MANZANARES SA"

The question concerns the applicable law to Rosa's request relating to the execution of a contractual obligation.

According to **Article 3 of the Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations**, the principle is that "*a contract shall be governed by the law chosen by the parties*". If the contract is an individual employment contract, **Article 8** states that this choice cannot have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable, which is: the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract (Madrid), the law of the country where the place of business through which the employee was engaged

is situated (Madrid) or where it appears from the circumstances as a whole that the contract is more closely connected with another country, the law of that other country shall apply.

If the contract is a contract for the provision of services, in absence of choice, the law applicable to the contract should be the one of the country where the service provider has his habitual residence (**Article 4-b**).

As a consequence, the applicable law will be the one chosen by Franz and the company. Failing that, applicable law may different if it is an individual employment contract (the Spanish law should apply) or a contract of provision of services (law of the country where the service provider has his habitual residence.

17. The admission of insolvency procedures against the CONSTRUCTORA MANZANARES SA company

An insolvency procedure has been opened in Madrid, center of the CONSTRUCTORA MANZANARES SA's principal interests. It is thus possible to consider that the **Regulation 1346/2000 of 29 May 2000 on insolvency proceeding** applied and that a secondary proceeding was opened subsequently according to **Article 3.3 of the Regulation**. Such a request is possible if this company has its center of interest on the Belgian territory, member State of the European Union (**Article 3.2**) but the effects of this secondary procedure will be limited to the goods of the company that are located on this territory. Thus, ROSA has to appreciate, regarding the consistency of these goods, if it's not better for her to declare the credit in the frame of the procedure opened in Madrid.

However, if ROSA wants to open a secondary procedure, she can act directly if she justifies, she has the right to do so in compliance with the Belgian law, failing that, she can open it through the liquidator in the main proceedings (**Article 29**).