1. There are two possible solutions on this matter, Belgium or Germany could have jurisdiction on the divorce as detailed below.

Art. 3 (1) a) of *the Council Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation* (hereinafter: Brussels II Regulation) deals with the general jurisdiction over proceedings concerning divorce, legal separation and marriage annulment.

In our case the couple decided to divorce on 15 April in 2007. Before that time Franz moved to Germany on 15 March in 2007 for living and establishment. Because they do not have the same habitually residence – Franz moved to an other MS – that is why we can use Art 3. (1) a) ii: "the spouses were last habitually resident, insofar as one of them still resides there". With regard to the fact that their last common habitual residence was Belgium and Roza still resides there that is why the jurisdiction could be Belgium.

Neither the Brussels II Regulation, nor the Brussels IIA Regulation provides an explicit definition of habitual residence. According to the Borras Report habitual residence where the person had established, on a fix basis, his permanent of habitual centre of interest, with all the relevant facts being taken into account for the purpose of determining such residence. As a matter of fact that Franz Becker and Rosa Neeskens moved to Brussels with the children in 17 January 2007, therefore Belgium became their habitual residence.

On the other hand jurisdiction can also be based on Art 3. (1) a) iii.: "the respondent is habitually resident". Regarding the fact that Franz moved to live in Germany – if he is the respondent – the jurisdiction lies with the courts of Germany as well.

So according to the above mentioned regulations, both Belgium and Germany could have jurisdiction – it's up to the choice of the plaintiff.

Although there is an other *Regulation (No 1259/2010) about enhanced cooperation in the area of the law applicable to divorce and legal separation,* in this case it can not be used because at the time when Roza and Franz got divorced – in 2007 – this regulation was not in force yet, so we have to rely upon the regulations of the Brussels II regulation.

2. Belgium or Germany has alternative jurisdiction depending on the choice of the applicant.

Jurisdiction of maintenance obligation falls within the scope of *Council Regulation 44/2001/EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* (hereinafter: Brussels I. Regulation). The Brussels I. Regulation offers two choices of forums for the applicant in this case.

First, according to the Art. 2., a maintenance claim could be brought, on the applicant´s decision, where the debtor – Franz – is domiciled. Domicile is determined in accordance with Art 59. So in this case – according to the Art 2. – Germany has jurisdiction.
The second possible solution could be Belgium according to Art 5. (2). The maintenance claim may alternatively be brought, on the applicant´s option, in the courts for the place where the maintenance creditor is domiciled (in accordance with Art. 59) or habitually resident. In our case the children are the creditors of the maintenance, therefore the jurisdiction could be based on their habitually residence, which is Belgium.

Mediation

According to Article 6 of *Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters* (hereinafter in this point: Directive) 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. The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability. Therefore, if Franz and Rosa reach a settlement agreement on the maintenance payments, they can request it to be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in any Member State. *[med. dir. art. 6 (2)]* The agreement could then be recognized and declared enforceable throughout the European Union in accordance with rules of the Brussels I Regulation or the Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims *[see (20) Preamble of the med. dir.]*.

3. Brussels II Regulation deals with jurisdiction over proceedings concerning parental responsibility in Sections 2 and 3 of Chapter II. According to the rules of Art.8. (1), general jurisdiction, is based on the habitual residence of the child which is, in our case, Belgium.
Regarding the fact that the term “parental responsibility” includes rights of custody and rights of access – in accordance with Art. 2. (7) – Art. 8. (1) is applicable on the jurisdiction.
According to Art. 12. (1) there is on other option. If a Member State has jurisdiction by virtue of Article 3 on an application for divorceit 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 courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders

of parental responsibility, at the time the court is seised, and is in the superior interests of the child. So if the Franz and Roza agree about the acceptance of that MS´s jurisdiction which has the jurisdiction by Art 3 on application for their divorce, the jurisdiction on the parental responsibility would be either Belgium or Germany.

4. The right of use of the apartment is a part of matrimonial property rights. Matrimonial property regimes are the sets of legal rules relating to the spouses' financial relationships resulting from their marriage, both with each other and with third parties, in particular their creditors. The Hague Convention on the law applicable to matrimonial property regimes of 14 March 1978 has been ratified only by France, Luxembourg and the Netherlands. Brussels II Regulation does not cover the property consequences of the dissolution of the marriage. Brussels I. Regulation expressly excludes this issue in Art. 1. (2) a). Therefore, matrimonial property regimes are excluded from EU instruments adopted so far, so the court seized needs to apply its own domestic private international law when determining the law of jurisdiction on the right of use of the apartment.

5. Since there are no multilateral international conventions or EU instrument regulating law applicable to divorce,*[this situation will change after 21 June 2012 when Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation comes into effect. This Regulation contains uniform rules on the law applicable to divorce and legal separation]* the court seized needs to apply its own domestic private international law when determining the law applicable to divorce.

6. Under Article 17 of the *Hague Convention 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (hereinafter in this point: Convention) exercise of parental responsibility is governed by the law of the State of the child's habitual residence. In this case, Belgian law will be appicable to the custody and visitation of the children.

7. According to Art. 4 of the *Hague Convention 2. October 1973 on the law applicable to maintenance obligations* "The internal law of the habitual residence of the maintenance creditor shall govern maintenance obligations referred to in Art. 1."

Art. 1 states that the convention apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child who is not legitimate.

So the applicable law of the maintenance obligation – according to the Convention – is Belgium, because the children´s habitual residence is Belgium and they are the maintenance creditors.
The right of use of the apartment is a part of matrimonial property rights. Matrimonial property regimes are excluded from EU instruments adopted so far, so the court seized needs to apply its own domestic private international law when determining the applicable law on the right of use of the apartment.

8. In case a court has decided on the maintenance, Rosa can request the enforcement of the decision under Article 38 of the Brussels I Regulation. The procedure for making the application shall be governed by German law in which enforcement is sought. The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 of the Regulation without any review under Articles 34 and 35.
If their agreement has been formally drawn up or registered as an authentic instrument and is enforceable in Belgium, it can be declared enforceable in Germany with the procedures provided for in Articles 38 et seq of the Regulation.
Finally, in case their agreement falls under the scope of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims and meets the requirements of Article 6 of this Regulation, Rosa can initiate enforcement under this instrument as well.
9. In matters of parental responsibility Belgian or German courts might have jurisdiction (detailed in question 3. above).
In case of Belgian jurisdiction, the issue of the decision's enforcement remains an internal issue, as both the state of origin, and the place of enforcement is Belgium. The fact, that Franz is domiciled in Germany, doesn't make the matter to be a cross-border one. Thus, the procedure of the enforcement would be governed by the domestic, Belgian law.
In case of German juriscdiction, the Brussels IIA Regulation applies. The Section 4. of the Regulation has special rules for enforcement judgements relating to rights of access. As to the Art. 41, such an enforcable judgement of a Member State – which has been certified in the Member State of origin – shall be recognised and enforced in an other Member State without a need for further declaration of enforeability. Besides there is no ground to oppose the recognition of the judgement.
With regard to Art. 41 (3) the state of origin – in our case Germany – has to issue ex-officio a certificate of the enforceable decision on Franz's right to access to the children, while the cross-border situation involves at the time of the delivery.

On these ground kérheti a végrehajtást.

10. In this case, general regulations of the *Hague Convention 25 October 1980 on the civil aspects of international child abduction* (hereinater in this point: Convention) have to be applied, supplemented by Brussels IIA Regulation. Art. 10 of the Brussels IIA Regulation defines the jurisdiction in cases of child abduction and Art. 11 is about the return of the child. According to Art. 10, Belgium has jurisdiction in our case of child abduction, because their habitual residence is Belgium.

Roza could apply, according to the Art. 8 of the Convention, either to the Central Authority of Belgium – the children´s habitual residence – or to the Central Authority of any other Contracting State for assistance in securing the return of the children. In accordance with Art. 11 (3) of Brussels IIA Regulation, a court to which Roza´s application for return of the children is made, shall act expeditiously in proceedings on the application, using to most expeditious procedures available in national law. The court shall issue its judgement no later than six weeks after the application is lodged.

The Brussels IIA Regulation supplements the regulations of the Convention in a way that in Art 11. gives new, complementary provisions comparing to the Convention: 1. the child is given the opportunity to be heard during the proceedings, 2. court shall act expeditiously, and shall issue its judgement no later than six weeks after the application is lodged, 3. refusal of the return of the child is limited by the Brussels II. Regulation, so the court cannot refuse to return a child on the basis of Art. 13b of the Convention, if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

11. According to Art 8. of Brussels II Regulation the general jurisdiction in matter of parental responsibility over a child is based on the child´s habitual residence. Regarding the fact that the children´s habitual residence is in Belgium, it has jurisdiction to request for changes of the measures specified in the divorce procedure. As stated in the question 2., Brussels I Regulation offers two choices of forum for the applicant attached to the maintenance payment in this case, the applicant – Franz – could choose from the 2 options.

First, according to Art. 2. of the Regulation, a maintenance claim could be brought, on the applicant´s option, where the defendant – Rosa – is domiciled. So in this case – according to the Art 2. – Belgium has jurisdiction.

The second possible solution could be Belgium according to Art 5. (2). The maintenance claim may alternatively be brought, on the applicant´s option, in the courts for the place where the maintenance creditor is domiciled (in accordance with Art. 59) or habitually resident. In our case the children are the creditors of the maintenance, therefore the jurisdiction could be based on their habitually residence, which is Belgium.

12. In order to take the testimony of FRANZ's parents living in Munich, the Belgian Court must request legal assistance from the German judicial authorities according to *Council Regulation (EC) 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* (hereinafter in this point: Regulation).

Pursuant to Article 2 of the Regulation, requests are to be transmitted not via central bodies but directly from the Belgian to the German court by the swiftest possible means [Article 6].

The request has to contain the details of the requesting court and the parties and their representatives [Article 4 (1) (a) and (b)], the nature and subject matter of the case and a — brief — statement of the facts are required [Article 4(1)(c)], more specifically the questions to be asked or the facts in connection with which Franz's parents are being examined must be indicated [Article 4(1)(e)]. Also, information must be forwarded concerning any possible rights to refuse to give evidence under Belgian law, given the prerogative of Franz's parents to invoke such rights [Article 14(1)(b)].

Given that the form and the content of the request meets the requirements laid down in the Regulation, and the German court is competent to take evidence, it must then execute the request within 90 days [Article 10(1)] in accordance with the law of its Member State [Article 10 (2)], but the Belgian court may call for use of a special procedure provided for by the Belgian law [Article 10(3)].

After execution of the request, the files containing the minutes of questioning must be returned to the Belgian court together with an acknowledgement of receipt (form H) in accordance with Article 16 of the Regulation.

Alternatively, the Belgian Court can request direct taking of evidence pursuant to Article 17 of the Regulation. The request must be submitted to the competent authority designated by Germany. The competent authority must then inform the Belgian court within 30 days using whether, and under which circumstances the taking of evidence is authorised. The possibilities for the direct taking of evidence abroad are restricted on a number of counts. It may only take place on a voluntary basis [Article 17 (2)]. Thus, the Belgian court may under no circumstances impose coercive measures of any sort in Germany. Franz's parents must be expressly informed that any statements made will be on a voluntary basis. Moreover, the competent authority of Germany may set conditions for the taking of evidence [Article 17(4)]. Finally, in addition to the grounds of refusal which apply to requests of evidence to be taken, direct taking of evidence may be refused if it is contrary to fundamental principles of law in the requested State [Article 17(5)(c)].

On the other hand, if Franz's parents move to Zürich, Council Regulation 1206/2001 would not be applicable, since Switzerland is not a member of the European Union. In this case the testimony may be obtained under the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Pursuant to the Convention, the Belgian judicial authority must send a letter of request to appropriate cantonal Central Authority which then forwards it to the competent authority. The execution of the letter is then regulated by Swiss law. Franz's parents are entitled to assert a privilege or duty to refuse to give evidence under either the law of Belgium or the Swiss law. The letter of request shall be executed "expeditiously" and may be refused only in specific cases.
Chapter Two of the Convention also allows diplomatic or consular agents and commissioners to take evidence and may be subject to the prior permission of the appropriate authority of the State in which the evidence is to be taken. Subject to the relevant permission, the representative or commissioner may take evidence, insofar as their proposed actions are compatible with the law of the State of execution and may also have power to administer an oath or take an affirmation. The consular or diplomatic agent or commissioner may not exercise any compulsion against the person concerned by the request. *[lábjegyzetbe]The Convention provides, however, that States may, by declaration, authorize foreign persons permitted to take evidence to apply to the Competent Authority for appropriate assistance to obtain the evidence by compulsion.[]* Unlike letters of request, the taking of evidence is as a rule performed in accordance with the manner required by the law of the court before which the action is initiated. However, if the manner in which the evidence is taken is forbidden by Swiss law, it may not be used. Last, the person required to give evidence may, in the same way as pursuant to a letter of request, assert a privilege or duty to refuse to give evidence.

Turning to the third part of the question („in case the Court considers the need to hear the witnesses directly, which could be the procedure to follow to let the witnesses know the day, time and conditions for appearing before that Court"):

1. Service of the notification of the Belgian court to Franz's parents in Germany fall under the scope of Regulation (EC) 1393/2007 of the European Parliament and of the Council ont he service of Member States of judicial and extrajudicial documents in civil and commercial matters. The document is to be transmitted directly and as soon as possible between the Belgian „transmitting agency" and the German „receiving agency", accompanied by a standard form as shown in Annex I to the Regulation. The

receiving agency shall, as soon as possible, but in any event within seven days send a receipt to the transmitting agency within seven days and, if necessary, should contact the transmitting agency in connection with any missing information and/or documents. If the mode of transmission is inappropriate (outside the scope of the Regulation or not in the specified form), the documents are to be returned. The German receiving agency then serve the documents to Franz's parents in accordance with the German law or by a particular method requested by the Belgian transmitting agency, unless this method is incompatible with German law. Franz's parents may refuse to accept the document if it is drawn up in a language other than German or a language that they understand.

2. Since Switzerland is not a Member State of the European Union, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents needs to be applied when serving judicial documents from Belgium to Swizerland. In this case, the authority or judicial officer competent under Belgian law transmits the document to the Central Authority of Switzerland. The request to be transmitted must comply with the Model Form annexed to the Convention and be accompanied by the documents to be served. The German Central Authority then executes the request and serves the document to Franz's parents either by informal delivery to them if they accept them voluntarily; by a method provided for under the Swiss law; or by a method requested by the applicant, unless it is incompatible with Swiss law. Of course, alternative channels of transmission may also be used. *[lj-be]*

13. The testimony of Rosa's sister living in Portugal (Lisbon) can be acquired through the mechanisms provided by Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States, since the territorial scope of the Directive includes Portugal. Therefore, the procedure outlined in question 13 in connection with Council Regulation 1206/2001 must be followed.

With regards to Rosa's other sister living in Denmark (Copenhagen), only Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters could serve as a basis for legal assistance, since Denmark, – as referenced in (22) of the Preamble to Council Regulation 1206/2001 - in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, is not participating in the adoption of the 1206/2001 Regulation, and is therefore not bound by it nor subject to its application.

14. As Belgian courts have jurisdiction on the procedure – according to question 11. – and Franz is domiciled in Germany, the procedure is a cross-border dispute in the sense of the *2002/8/EC Directive to improve access to justice in cross-border disputes by estabilishing minimum rules relating to legal aid for disputes* (hereinafter: Directive) (Art. 2. (1)). The Directive had to be implemented until 30 November 2004 so the Member States' rules must meet the requirements mentioned below. According to the point 11. of the Directive's Preamble, and the Art. 3. (2), the legal aid must cover pre-litigation advice, legal assistance and representation in court, and exemption from, or assistance with, the cost of proceedings of the recipient. (Art. 3. (2) a), b).)

In Articles 7 and 8 the Directive strictly regulates the question of whether the sitting court's Member State, or the Member State of the applicant's domicile/habitual residence is to cover of the costs. The answer depends on whether the cost is related to the cross-border nature of the dispute.)

The legal aid shall be granted or refused by the Belgian courts. (Art. 12.)

The application might be submitted (The form of the application is regulated by the 2004/844/EC Decision) directly to the competent authority of Belgium, as the Member State in which the court is to be enforced (As to the Art. 14. of the Directive, each Member State have to designate their competent authorities recieve and transmit such applications. In case of Brussels, recieving authorities are „Federale Overheidsdienst Justitie" and „Bureau voor juridische bijstand"). Franz also has the opportunity to apply for assistance to competent authorities' in Germany, as Germany is the Member State in which the applicant is domiciled (according to the German designation, competent transmitting authorities on Berlin are „Amtsgericht Berlin-Mitte" and „Landgericht Berlin"). In this case, transmitting authorities shall ensure that the application is accompanied by all the supporting documents known by it to be required to enable the application to be determined. It shall also assist the applicant in providing any necessary translation of the supporting documents. (Art. 13. (4.)) The application is to be transmitted to the competent recieving authority whithin 15 days of the duly completed application's recieving. (The form of the transmission is governed by 2005/6/EC Decision)

Should his application be rejected, Frank has to have the right to appeal and Member States must ensure judicial review of decisions refusing or cancelling legal aid. (art. 15.)

15. As the case does not contain any reference that Franz would have been an employer of the Spanish company, the question is to be solved under the general and special jurisdictional rules of Brussels I Regulation. In absence of prorogation of jurisdiction, according to the

general rules of Art. 2. (1)– with regard to the Art. 60. (lábj: szabály –)the Spanish firm might be sued in Spain, as it is „domiciled" here. Although it is not mentioned in the case, whether the Spanish „address" of the firm is its statutory seat or centre of administration, according to the relevant available information – the performance of the obligation is in the same state with the adress of the procurer – this place is held to be the principal place of business. Special jurisdiction rules set up by Art. 5. (1) also points to the jurisdiction of Spanish courts. There is no information about the „work" Franz has done for the Spanish enterprise, so there is no ground to decide whether it is to be considered a „service" or not. If it is considered to be a service, point 1. b) of Art. 5. applies, if not, Art. 5. (1) a) must be followed. However, this question does not affect the issue of jurisdiction.

16.

While 593/2008/EC Regulation on the law applicable in contractual obligations (hereinafter: Rome I. Regulation) is applicable only to contracts concluded after 17 December 2009, the case is to be solved on the grounds of the *1980 Rome Convention on the law applicable to contractual obligations* (hereintafter in this point: Convention).

Franz, by transferring his credit of 100.000 Euros against a debtor, have assigned the credit to Rosa, therefore, Article 12. (2) of the Convention is applicable, which – in the matter of applicable law regarding the relationship between the assignee and the debtor – refers to the law governing the right to which the assignment relates. (lábj: 12. (2))

According to the rules set up by Art. 4. of the Convention, in absence of chosen law, the contract is to be governed by the law of the country with which it is mostly connected. (Art. 4. (1))With regard to Point (2) of this Article, the country where the party who is to effect the performance which is characteristic of the contract has – at time of the contract's conclusion – his principal place of business, is presumed have the closest connection in case the contract is entered into force of that party's trade or profession. In our case, Franz was the party „who is to effect the performance which is characteristic of the contract" and the contract entered into force of his trade. There is no information in the case on which's ground it could be stated, that Franz's principal place of business were in Spain. To the contrary, it can be submitted, that he worked for an Italian enterprise in Milano, where he lived, thus he had his principal place of business in Milano, Italy. Therefore, Italian law is applicable to the contract, and consequently it also governs the matter of Rosa's request.

However, in light of the provisions of Point 5. of Art. 4., the competent court might determine that the contract is more closely connected to the Spanish law, with regard to that the adress of the procurator, and the place of the performance was also in Spain.

17. With regard to the rules set up by the *1346/2000/EC Regulation on insolvency procedures*, according to Art. 3. (2) if the centre a debtor's main interests is situated within the territory of a Member State, a secondary insolvency procedure can be opened in an other Member State if the debtor possesses an establishment there. In our case, the Spanish firm's subsidiary is considered to be an „establishment" in the light of Art. 2. (1) h), so Rose might request the opening of a secondary insolvency procedure. Such a procedure could be opened even prior to the opening of the main insolvency procedure, as the creditor (Rose) is domiciled in Belgium, where the estabilishement is situated. However, such secondary insolvency procedures have only territorial effect and are restricted to the assets of the debtor situated in the territory of Belgium.