RESEARCH NOTE

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Protective measures in Dutch return *proceedings*

under the 1980 Hague Child Abduction Convention

Assessment, form and cross-border effect in the case law, 2015–2026

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A research project supported by the MoGa Foundation · nadiarusinova.com/research

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01 Introduction

This note examines the protective measures relied upon in Dutch return proceedings under the 1980 Hague Child Abduction Convention in which domestic violence is alleged. For each element of the applicable framework, it sets out what the international and European standards require and what the published Dutch decisions show.

It is intended for judges, lawyers, Central Authorities and others concerned with return proceedings, in the Netherlands and elsewhere. In its structure and approach, it draws on the fact sheets on protective measures published in 2025 by the Judiciary of England and Wales and the Judiciary of Scotland, the development of which for other jurisdictions was encouraged at the Second HCCH Forum on domestic violence and Article 13(1)(b).[1]

Like the research report on which it is based, this note rests on all 93 published decisions of the District Court of The Hague (51) and the Court of Appeal of The Hague (42), delivered between 26 January 2015 and 6 August 2026, in return proceedings in which domestic violence or child abuse was alleged. Together, these decisions concern 59 proceedings. Of the 93 decisions, 63 ordered return, 29 refused it and one was an interim decision; protective measures were discussed, in whole or in part, in 68 of them. Figures refer to decisions unless proceedings are mentioned, and only aggregate results are reported. The full analysis, the method and the list of decisions

are set out in the research report, published at nadiarusinova.com/research.[2] The analysis records what the published reasons state: where the reasons do not mention a step, that step may nonetheless have been taken, and the finding is then that it does not appear in the reasons on which the parties, and the authorities of the State of return, are able to rely. All Dutch decisions cited are published in full on uitspraken.rechtspraak.nl; quotations are given in the original Dutch with a translation by the author.

The findings bear on questions currently under consideration within the Hague Conference, where the Council on General Affairs and Policy mandated a Working Group in March 2026 to explore the feasibility of a possible future convention on the cross-border recognition and enforcement of protection orders.[3] This note may be of use in that context.

This note provides general information only and does not constitute legal advice. It does not set out Dutch procedural law in full and does not suggest the outcome of any individual case.

KEY FINDINGS

68 of 93
decisions discussed protective measures, in whole or in part

36 of 63
return orders relied on protection in the State of return

43 of 59
proceedings concerned a State party to the 1996 Convention

1 Protection forms a regular part of the reasoning.

Protective measures were discussed in 68 of the 93 decisions, and 36 of the 63 return orders relied on protection in the State of return. In most of these, the court had already concluded that a grave risk had not been shown, and protection served as an additional ground. It was therefore addressed in general terms, with its availability verified with a concrete source in one decision and in part in eight. Where return was refused, the courts examined the protection on offer concretely, for this child and this parent (Chapter 03).

2 Protection rests mainly on arrangements recorded in the reasons.

The return orders relied mainly on voluntary commitments of the left-behind parent (14), on practical arrangements such as the care notifications of the Child Care and Protection Board (12), and on the protection system of the State of return. The Dutch courts already take provisional measures concerning the child during the proceedings, and the care notification supports continuity of care after return. The protection relied upon is recorded in the reasons rather than in the operative part, and measures of the return court under Article 27(5) Brussels IIb or Article 11 of the 1996 Convention have not yet been used (Chapters 04 and 05).

3 The instruments for cross-border effect offer further potential.

In 43 of the 59 proceedings, the State of return was a party to the 1996 Convention, so that Brussels IIb or that Convention offered a route by which protection could accompany the child. These routes, and Regulation 606/2013 for the returning parent, have not yet been used for that purpose. Whether protection would be accessible to the returning parent, and could be obtained in time, was assessed in two of the 36 return orders, in one of them only in part (Chapter 06).

4 Protection is given in forms that do not cross the border.

The protection relied on in return orders is provided in forms, such as national measures, voluntary commitments recorded in the reasons and care notifications, that do not accompany the child across the border. Article 27(5) Brussels IIb offers the form that does, but its link to a grave risk that the return orders do not find has left it unused (Chapters 04, 06 and 08).

02 The Dutch return procedure

Under the International Child Abduction Implementation Act (*Uitvoeringswet internationale kinderontvoering*), jurisdiction over return applications is concentrated in the District Court of The Hague, which deals with them as a matter of priority. An

appeal lies to the Court of Appeal of The Hague and must be lodged within two weeks; the appeal is a full rehearing of the facts and the law, assessed as at the date of the appellate decision. Since the revision of the Act in 2012, no ordinary remedy lies against the decision of the Court of Appeal, so that an appeal in cassation to the Supreme Court is, in principle, excluded.[4]

The procedure typically includes an early hearing at which cross-border mediation through the Mediation Bureau of Centrum Internationale Kinderontvoering (Centrum IKO) is offered, and frequently the appointment of a special curator (*bijzondere curator*) to represent the interests of the child. The Child Care and Protection Board (*Raad voor de Kinderbescherming*, "the Board") may be asked to report and, where return is ordered, may notify the child-protection authorities of the State of return through the Central Authority (*zorgmelding*, "care notification"). The courts may also place the child under a provisional guardianship or supervision order while the proceedings are pending; such a measure was in force in 25 of the 93 decisions.

Where both States are bound by Regulation (EU) 2019/1111 (Brussels IIb), the Regulation supplements the 1980 Convention: it requires a decision within six weeks at each instance, save in exceptional circumstances (Article 24), requires that the child be given a genuine and effective opportunity to express his or her views (Article 26), and governs adequate arrangements and protective measures (Article 27(3) to (5)). Proceedings instituted before 1 August 2022 remained subject to Regulation (EC) No 2201/2003 (Brussels IIa), Article 11(4) of which contained the rule on adequate arrangements. Of the 36 return orders that relied on protection, 30 concerned a return to another EU Member State, under Article 11(4) Brussels IIa (18) or Article 27(3) Brussels IIb (12); five concerned a Contracting State outside the EU and one a State not party to the 1980 Convention.

03 Protection within the grave-risk assessment

THE STANDARD

Under Article 13(1)(b) of the 1980 Convention, the court of the requested State is not bound to order the return of the child if the person opposing return establishes that there is a grave risk that return would expose the child to physical or psychological

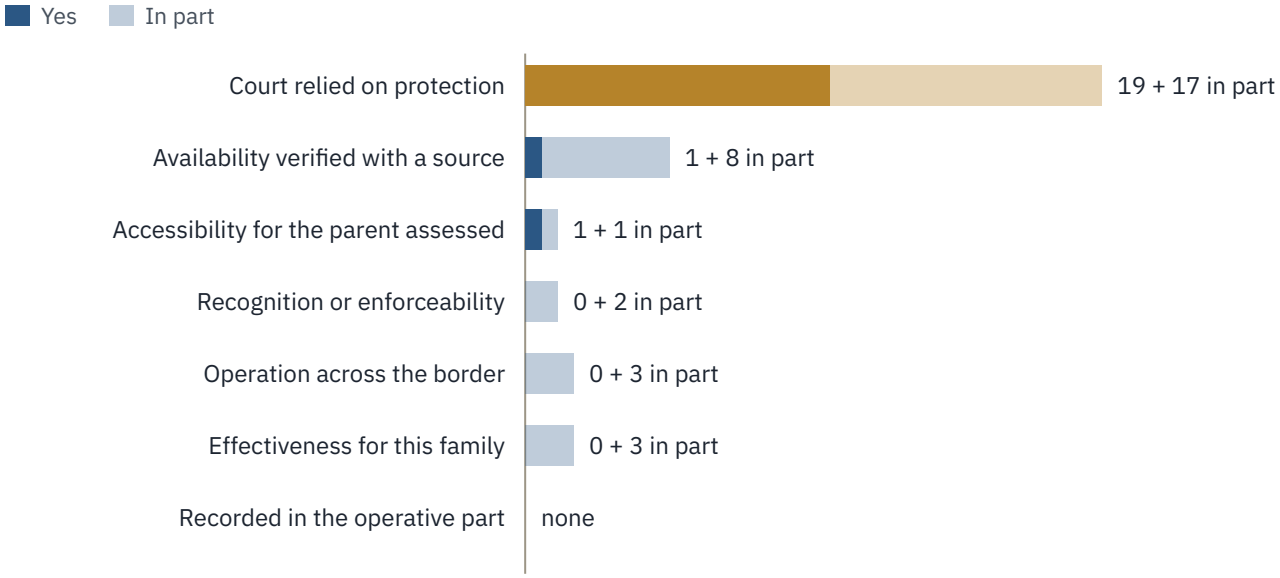
harm or otherwise place the child in an intolerable situation. The HCCH Guide to Good Practice on Article 13(1)(b) (2020) describes the analysis in three steps: whether the assertions are of such a nature, and of sufficient detail and substance, that they could constitute a grave risk; whether the grave risk is established, examining the evidence and taking protective measures into account; and, where it is established, the exercise of the court's discretion.[5] Protective measures are thus part of the determination of the grave risk itself. The Guide encourages courts to consider whether such measures are available, accessible, timely, enforceable and likely to be effective in the circumstances of the case.[6] At the Second HCCH Forum, the exercise was described by a judge of the Court of Appeal of England and Wales as "risk assessment and risk management – not risk elimination".[7] The European Court of Human Rights requires that arguable allegations under the exceptions be genuinely examined and that the decision give specific reasons;[8] in *O.C.I. and Others v. Romania* (2019), it held that the national courts should at least have ensured that specific arrangements were made to safeguard the children.[9]

THE DUTCH DECISIONS

In the Dutch return orders, protection typically appears as an additional ground, after the court has concluded that a grave risk has not been shown. In 30 of the 36 return orders relying on protection, the court held that the alleged violence had not been established, and in all 36 it found no sufficient link between the alleged violence and a grave risk for the child. Since the outcome did not turn on the protection, the courts had less occasion to examine it in detail (Figure 1).

Figure 1. Examination of the protection relied upon

Return orders relying on protection that addressed each element (n = 36)



Source: research dataset. The operative parts were checked against the published text of all 63 return orders.

For the same reason, the judgments do not, as a rule, specify the risk that the protection was intended to address. The child's exposure to violence between the adults, for example, was alleged in 12 of the 36 decisions; it was held partly established in one, not established in five and not addressed in the remaining six. Whether violence would continue or recur after return was expressly addressed in one of the 36 and in part in eight.

Where return was refused, the courts examined protection in depth. All 15 decisions in which the court assessed concretely whether the measures on offer would protect this child and this parent in this place are refusals; in the 63 return orders, a partial assessment of this kind is found in three. In these refusals, the reasons identify the risk, the protection on offer and the grounds on which it does or does not address that risk. In a 2018 decision, the Court of Appeal held that the arrangements on offer were not adequate "in these circumstances and for these minors" ("onder deze omstandigheden en voor deze minderjarigen") (Court of Appeal The Hague, 14 February 2018, ECLI:NL:GHDHA:2018:296).

Between these two outcomes, a return in reliance on general availability and a refusal on a concrete finding that protection is lacking, lies the intermediate option envisaged by the Guide and by Article 27(5) Brussels IIb: a return accompanied by specific, verified and enforceable protection. This option offers further scope for development in the cases to which it applies.

04 Three mechanisms and the Dutch practice

Protection relied upon in return proceedings may take three legally distinct forms. They are to be classified by their function rather than by their label, and the Dutch return orders draw on each of them to a different extent.

Mechanism	Character	In the 36 Dutch return orders relying on protection
Adequate arrangements in the State of return Art. 27(3), recital 45 Brussels IIb	Exist, or will be put in place, in the State of return. The return court verifies them but does not create them; they operate under the law of that State and require no recognition.	Identified with some specificity in 4; a general reference only in 6; availability verified with a concrete source in 1 and in part in 8
Measures of the return court Art. 27(5) with Art. 15 Brussels IIb; Art. 11 of the 1996 Convention	Ordered by the court that orders return, temporary and directed at the grave risk identified. They circulate as decisions and lapse once the competent authorities of the State of habitual residence have acted.	None. Article 27(5) was invoked once and declined
Practical arrangements Implementation of the return order	Organise the journey and the arrival. They do not, as such, address a grave risk and acquire no cross-border effect of their own.	Relied upon as protection in 12, mainly care notifications and "warm handovers"

Undertakings of the left-behind parent, relied upon in 14 return orders, are discussed in Chapter 05. The categories overlap.

The same arrangement may fall into different categories in different cases. Temporary accommodation, for example, is a practical matter in one case but a protective measure in another, where homelessness or exposure to the alleged perpetrator forms part of the grave risk.[10]

ADEQUATE ARRANGEMENTS IN THE STATE OF RETURN

THE STANDARD

Article 27(3) Brussels IIb provides that return may not be refused under Article 13(1)(b) if the party seeking return satisfies the court, by providing sufficient evidence, or the court is otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after return. Recital 45 gives as examples an order of the State of habitual residence prohibiting the applicant from coming close to the child, a provisional measure of that State allowing the child to remain with the abducting parent who is the primary carer until a decision on custody has been taken, and the demonstration that medical facilities are available for a child in need of treatment. The emphasis lies on concrete arrangements for the family concerned rather than on the general availability of protection in the State of return.

THE DUTCH DECISIONS

Arrangements actually existing in the State of return and identified with some specificity were relied upon in four return orders: a restraining order against the mother's former husband, a third party; the involvement of the German youth welfare office (*Jugendamt*), established at the hearing in one case and relayed through the applicant's lawyer in another; and a Polish court decision provisionally entrusting the children to the mother. In only one return order did the court find it established that a foreign child-protection authority was already involved with the family.[11] Where the children had been provisionally entrusted to the mother by the Polish court, the Court of Appeal held in 2023 that it "must be assumed" ("aangenomen moet worden") that adequate protection was available (Court of Appeal The Hague, 9 February 2023, ECLI:NL:GHDHA:2023:213, paras 5.26–5.27).

No return order relied on a protection order against the left-behind parent in force in the State of return. Elsewhere, the courts frequently referred to the fact that the State of return is an EU Member State, that it is bound by the same human-rights treaties, or that it has agencies and legal measures for victims of domestic violence.[12] In the eight decisions in which availability was verified in part, the source was a letter from a foreign agency or centre produced by, or addressed to, the left-behind father; a statement relayed through the applicant's lawyer; an inference from an earlier response of the foreign authorities; or a statement by the Board at the hearing that it would notify the services of the State of return.

MEASURES OF THE RETURN COURT

THE STANDARD

Article 27(5) Brussels IIb allows the court ordering return to take provisional, including protective, measures under Article 15 in order to protect the child from the grave risk, for example the residence of the child with the primary carer pending a decision in the State of return, a no-contact or no-approach order, or supervised contact. For returns to Contracting States outside the EU, and to Denmark, Article 11 of the 1996 Convention allows urgent measures to the same end. Which measures are available depends on the law of the return court.

The measures accompany a return order and do not apply where return is refused; they are discretionary, provisional and taken under the law of the return court; their purpose is to protect the child from a grave risk that would otherwise lead to refusal; they must not unduly delay the proceedings or encroach on the jurisdiction of the

court of habitual residence; and they continue to apply until that court has acted. Recital 46 mentions, as examples, the continued residence of the child with the primary care giver and arrangements for contact after return.[13]

THE DUTCH DECISIONS

Measures of this kind have not yet been taken in the return orders studied. In 2025, the Court of Appeal declined to take measures under Article 27(5) because it had found no grave risk; in the case law studied, the provision has been invoked once and has not been applied.[14] The Dutch courts do, however, take provisional measures concerning the child while return proceedings are pending: a provisional guardianship or supervision order was in force in 25 of the 93 decisions. These measures served mainly to secure the handover of the child and the travel documents rather than to protect the child or the parent after arrival. In four decisions, the intended transfer of such a measure to the authorities of Bulgaria, Germany or Belgium was announced, assumed or said to be possible in principle; the legal basis for its continuation after the child's return is not specified in these decisions.[15]

These measures share some features of Article 27(5) measures: they are provisional, concern the child, are ordered in the course of the return proceedings and were, in some cases, accompanied by supervised contact. Resting on Dutch child-protection law and directed mainly at the execution of the return, however, they have effect in the Netherlands and end, or remain confined to the Netherlands, once the child has returned; the four intended transfers mentioned above were all decided before Brussels IIb applied. Two questions follow from Article 27(5). The first concerns function: whether a measure addresses the grave risk the child would face after return, or only facilitates or secures the return itself; the same arrangement may fall on either side, depending on its role in the case. The second concerns form: a measure that addresses the grave risk can accompany the child only if it is ordered in accordance with Article 27(5) in conjunction with Article 15 (Chapter 06). The Dutch measures studied mostly serve the return; the protection directed at the risk after return, such as the voluntary commitments relied on, has not been given the form that would allow it to travel.

PRACTICAL ARRANGEMENTS

THE STANDARD

Arrangements for the journey and the arrival, such as tickets, an escort, the handover and travel documents, facilitate the implementation of a return order but do not, as

such, address a grave risk. They acquire protective significance only where they are directed at an identified risk.

THE DUTCH DECISIONS

Since around 2019, the Board has regularly undertaken to notify the child-protection authorities of the State of return through the Central Authority, in some cases arranging a “warm handover” or “soft landing” with local services. The practice promotes continuity of care. As a notification, it does not in itself oblige the foreign services to act, and its focus is the welfare of the child. Practical arrangements of this kind were relied upon as protection in 12 return orders. In five appeal decisions, a care notification formed part of the basis on which the court found, or in one case presumed, that adequate arrangements under Article 11(4) Brussels IIa or Article 27(3) Brussels IIb existed; a confirmation from the services of the State of return of the steps they would take is recorded in one decision of 2020.

05 Voluntary commitments, conditions and the operative part

THE STANDARD

The Guide observes that voluntary undertakings are not easily enforceable and may therefore not be effective in many cases.[16] The 2023 Special Commission added that protective measures should be considered or ordered only where necessary, that their efficacy depends on whether they can be made enforceable in the State of habitual residence, that undertakings should where possible be included in the return order, and that information on the measures of protection available in that State should be obtained.[17]

UNDERTAKINGS IN DIFFERENT LEGAL SYSTEMS

In common-law jurisdictions, undertakings given to the court are enforceable through contempt proceedings and may be treated as protective measures. In civil-law systems, a promise made to the court is generally not in itself an enforceable instrument, and protection is more commonly given through statutory civil orders. In either case, an undertaking that appears only in the reasons of a judgment is not a measure, has no cross-border effect of its own, and circulates under none of the instruments described in Chapter 06 unless it is incorporated into a measure.

The voluntary commitments (*toezeggingen*) relied on in the Dutch decisions perform a function close to that of undertakings in English practice: they are promises by the left-behind parent intended to address the risks of return. Unlike undertakings, however, they are not given as formal promises to the court, they are not recorded in the order, and they carry no sanction if they are not honoured.

THE DUTCH DECISIONS

Voluntary commitments of the left-behind parent were relied upon in 14 of the 36 return orders: the withdrawal of a criminal complaint, housing, a car or maintenance, leaving the family home, visa sponsorship, or cooperation with assistance. The courts generally took them into account as offered. In two cases, the Court of Appeal stated:

> *"Het hof gaat er van uit dat de man zijn toezeggingen gestand zal doen."*
>
> "The court assumes that the husband will honour his commitments."
>
> Court of Appeal The Hague, 6 February 2017, ECLI:NL:GHDHA:2017:246; 5 February 2026, ECLI:NL:GHDHA:2026:188

In five return orders, the commitment was the withdrawal of a criminal complaint offered to avert the prosecution of the mother, the discontinuance of a prosecution being ultimately a matter for the public prosecutor. In a 2019 decision, the Court of Appeal examined such a commitment more closely and held that it had not been shown that the withdrawal of the father's complaint would bring the prosecution of the mother to an end.[18]

The commitments are recorded in the reasons. The operative parts of the 63 return orders do not include such commitments, conditions attached to the return, residence, contact or no-contact arrangements, or protective measures. The operative parts set the return date, require the child to be handed over with travel documents,

and deal with costs and enforcement; six also place the child under a Dutch provisional guardianship, mainly to secure the return itself. In four decisions, the mother asked the court to attach conditions to the return, and each request was declined. In 2017, the Court of Appeal held that it was "not in keeping with the spirit of the [1980 Convention] to attach additional conditions to the return" ("niet in lijn met de geest van het HKOV om aanvullende voorwaarden te stellen aan de teruggeleiding") (Court of Appeal The Hague, 18 October 2017, ECLI:NL:GHDHA:2017:3025, para. 26).

The other requests were declined in 2023 and 2025.[19] Commitments recorded only in the reasons are not, as such, enforceable before a court or the police in the State of return.

06 Cross-border effect

Whether protection relied upon by the return court can operate in the State of return depends on the mechanism used and on the instruments in force between the two States. Those instruments were available in most Dutch proceedings and offer scope for further use; in the decisions studied, they have not yet been applied for that purpose.

Route	Applies to	Effect in the State of return	Use in the Dutch decisions
Art. 27(5) with Art. 15 Brussels IIb	Returns between EU Member States other than Denmark	Decisions within the meaning of the Regulation (Art. 2(1)); recognised without any special procedure (Art. 30), enforceable without a declaration of enforceability (Art. 34), with the certificate in Annex IV (Art. 36(1)(c)); lapse when the court with jurisdiction on the substance has acted (Art. 15(3))	Invoked once; not applied. 38 of 59 proceedings concerned EU Member States
Arts 11, 23 and 26 of the 1996 Convention	Returns to Contracting States outside the EU, and to Denmark	Urgent measures recognised by operation of law (Art. 23), with advance recognition possible (Art. 24); enforcement requires a declaration of enforceability or registration (Art. 26) and follows the law of the requested State (Art. 28); lapse once the State of habitual residence has acted (Art. 11(2))	Not yet used. 5 of 59 proceedings; the Convention was cited in 3 decisions, only under Art. 16

Route	Applies to	Effect in the State of return	Use in the Dutch decisions
Regulation (EU) No 606/2013	Civil protection measures for an adult, including the returning parent, between EU Member States other than Denmark	Recognised without any special procedure and enforceable without a declaration of enforceability, on the basis of a standard certificate; effects of recognition limited to twelve months	Not referred to
Mirror order or recognition procedure	States not party to the 1996 Convention	No treaty route; protection can take effect only if it already exists there or is given effect there before the return	Not addressed. 13 of 59 proceedings

Measures under Brussels IIb do not circulate where return is refused, nor to States outside the European Union, and recognition does not in itself guarantee effective enforcement, which continues to depend on the authorities of the State of return. The 1996 Convention was referred to in three of the 93 decisions, in each case to determine the law governing parental responsibility under Article 16.[20] The recognition or enforceability of a measure in the State of return was addressed in five decisions, in four of them only in part.

FROM MEASURE TO CERTIFICATE

A measure of the return court travels with the child only in a particular form. Provisional, including protective, measures are decisions recognised and enforced in the other Member States only where they are ordered by a court with jurisdiction as to the substance of the matter, or "in accordance with Article 27(5) in conjunction with Article 15"; a provisional measure taken under Article 15 alone by a court without such jurisdiction does not circulate under the Regulation.[21] The measure must therefore be ordered as such, forming part of what the court decides rather than a consideration in the reasons, and its legal basis must be identifiable as Article 27(5). The court issues the certificate in Annex IV, covering the return decision and any accompanying measures under Article 27(5), upon application by a party; on request, the certificate may also be issued in another official language of the institutions of the European Union, such as a language understood by the authorities of the State of return.[22] In the decisions studied, the protection relied on is recorded in the reasons and no measure has been ordered under Article 27(5), so that no protective measure could accompany the return under Annex IV. Where protection rests on voluntary commitments of the left-behind parent, a measure under Article 27(5), such as the

continued residence of the child with the returning parent or supervised contact until the court of habitual residence has acted, would be one way of giving that protection effect in the State of return.

THE RETURNING PARENT

The 1996 Convention and Brussels IIb concern measures for the protection of the child. Regulation 606/2013 covers civil protection measures for an adult between EU Member States; it was not referred to in any of the decisions. The mother was the taking parent in 50 of the 59 proceedings. Whether protection would be accessible to the returning parent, and could be obtained in time, was assessed in two of the 36 return orders, in one of them only in part.

STATES NOT PARTY TO THE 1996 CONVENTION

In the three return orders to States not party to the 1996 Convention that relied on protection, to the United States (2019), the United Arab Emirates (2025) and Thailand (2025), the protection consisted of a general reference to the legal measures available in the United States; of the father's offers of separate housing, a visa application and maintenance in the United Arab Emirates; and of the father's promises of financial support and assistance with housing in Thailand, together with a care notification, although the Board stated that it had no contacts there. The decisions do not address how those commitments would take effect in the State of return.[23] In a comparable situation, the High Court of England and Wales stayed a return order to Mauritius until the protective measures had been made enforceable there by exequatur or an equivalent process.[24]

07 Information from the State of return

THE STANDARD

The verification of protection depends on information from the State of return. The Special Commission has underlined the importance of obtaining information on the measures of protection available in the State of habitual residence, and has encouraged Contracting Parties to complete Section 11.2 ("Provisions for safe return") of the Country Profile for the 1980 Convention.[25]

CHANNELS FOR OBTAINING INFORMATION

- Article 13(3) of the 1980 Convention: information on the social background of the child provided by the authorities of the State of habitual residence.
- Central Authorities under Article 7 of the 1980 Convention, in particular points (b), (e) and (h), and Articles 76 to 80 Brussels IIb.
- Article 27(4) and Article 86 Brussels IIb: communication with the authorities, and between the courts, of the State of habitual residence.
- Direct judicial communication through the International Hague Network of Judges and the European Judicial Network in civil and commercial matters.
- Articles 32, 34 and 36 of the 1996 Convention, and the recommended model form for cooperation requests under that Convention approved in March 2026.

THE DUTCH DECISIONS

The 36 return orders relying on protection do not record a request to the authorities of the State of return for information on the protection that would be available; such a request may have been made without being mentioned. The Dutch procedure gathers extensive information about the child: in most of the 36 decisions, a special curator was appointed, the Board reported or advised, or the child was heard. Information from the State of return plays a smaller role. In 35 of the 93 decisions, no cooperation instrument is mentioned; where one is mentioned, it is predominantly the Central Authority in its administrative function of receiving and transmitting the application. Direct judicial communication is not recorded in any decision as a means of establishing facts concerning protection, although it may have taken place without being mentioned.

Where the Dutch authorities did make enquiries, the response, or its absence, proved significant. In three refusals, the Board or a family guardian approached the State of return, through the Central Authority, by contacting local institutions or by repeated requests to the child-protection services, and the absence of cooperation, of registration for housing and assistance, or of a substantive response was among the reasons for which adequate arrangements were held not to be established. In a fourth refusal, the absence of any contact between the Dutch and the foreign youth services was itself a reason.[26]

08 Observations

The Dutch decisions show a well-equipped procedure in which protection in the State of return forms a regular part of the reasoning. The existing instruments offer scope for giving that protection a form in which it can be verified, recorded and carried across the border. Several observations follow.

THE CONTENT OF A CONCRETE ASSESSMENT

The refusals in which protection was examined concretely show what such an assessment comprises: the risk is identified, the protection on offer is identified, and the reasons explain whether that protection addresses the risk. An assessment of this kind may be framed around four questions: what protection will be in place, which authority or person is responsible for it, from when and until when it will operate, and what follows if it fails.

ELEMENTS OF A RETURN ORDER THAT RELIES ON PROTECTION

In the light of the Guide, the 2023 Conclusions and Recommendations and Brussels IIb, a return order that relies on protection may contain the following elements:

- the return of the child to the State of habitual residence, rather than to the applicant, by a stated date;
- any protective measures of the return court, with their legal basis, operative until the competent court of the State of return has acted;
- where appropriate, confirmation before travel that an arrangement in the State of return, such as a shelter place or a protection order, is in place;
- the practical arrangements for the journey and the handover;
- the certificate or other route by which the measures will take effect in the State of return; and
- the transmission of the relevant record to the court of the State of return once the decision is final.

RETURN WITH PROTECTION: THE SCOPE OF ARTICLES 27(3) AND 27(5) BRUSSELS IIB

Articles 27(3) and 27(5) Brussels IIb concern the same situation: return would otherwise be refused under Article 13(1)(b), but the protection of the child after return can be secured. Recital 46 describes the measures as necessary "to protect the child from the grave risk of physical or psychological harm entailed by the return which would otherwise lead to a refusal of return", and provides that the return court should, if necessary, consult the court or competent authorities of the Member State of habitual residence, with the assistance of Central Authorities or network judges.[27] In the Dutch decisions, cases tend to fall on either side of that situation: the return orders relying on protection found no sufficient link between the alleged violence and a grave risk for the child, and the refusals rest most often on the separation of the child from the primary carer or from siblings, a risk that, in the courts' assessment, no measure in the State of return could address. Where protective measures are considered as part of the assessment of whether a grave risk exists, as the Guide suggests, Article 27(5) may find application precisely in the cases in which the facts cannot be resolved within the summary procedure.

WHY ARTICLE 27(5) BRUSSELS IIB HAS NOT BEEN USED

The decisions do not state why Article 27(5) Brussels IIb was not applied, but several features of the case law help to explain it. First, the opportunity has been limited: the Regulation applies to proceedings instituted on or after 1 August 2022, and since then twelve return orders to another Member State relied on protection in the State of return. Second, Article 27(5) is linked to "the grave risk referred to in point (b) of Article 13(1)", and in the return orders the court had found no sufficient link between the violence and a grave risk for the child; in the one decision in which the provision was invoked, the Court of Appeal declined to take measures for that reason.[28] Third, protection appears in these decisions as an additional ground, after the court has concluded that a grave risk has not been shown, so that the question of which measure would address the risk does not arise. Fourth, the courts often rely on the protection system of the State of return, referring to its membership of the European Union and its obligations under the same human-rights treaties, which reflects the mutual trust on which the Regulation is built. Fifth, the courts have been cautious about attaching conditions to a return, and the requests that were made took that form rather than that of protective measures; recital 46 itself requires that measures under Article 27(5) neither delay the return proceedings nor undermine the jurisdiction of the court of habitual residence. Finally, the measures and arrangements that the courts do use — Dutch provisional guardianships and

supervision orders, care notifications and voluntary commitments recorded in the reasons — take forms that do not accompany the child across the border (Chapter 04). The wording of Article 27(5) does not make such measures dependent on a request; in practice, its use may depend on its being raised by the parent opposing return, by the left-behind parent offering protection, by the special curator or by the Board.

IMPLICATIONS FOR CROSS-BORDER INSTRUMENTS

1 Measures accompanying a return

In return proceedings, the protected persons are sent, by court order, to the State in which the person they fear resides. An instrument confined to orders made in the State from which the protected person comes would not reach measures taken by the court ordering return, which are intended to take effect in the State of return from the day of arrival.

2 Protection of the returning parent

In the Dutch decisions, the assessment of protection focused on the child: whether protection would be accessible to the returning parent in time was assessed in two of the 36 return orders. The position of the parent who accompanies the child merits specific attention in the development of cross-border instruments.

3 Legal effect for voluntary commitments

Voluntary commitments were relied upon in 14 of the 36 return orders and appear only in the reasons. Provision for commitments given before the return court, once incorporated into an order, to be recognised and enforceable in the State of return would allow the returning parent to rely on them there.

4 A standard certificate

The certificate in Annex IV Brussels IIb and the certificate under Regulation 606/2013 illustrate the value of a standard form identifying the persons protected, the obligations imposed, the duration and the authority to be contacted, enabling the police and the courts of the State of return to act on a measure from the day of arrival.

5 Information before the return

A channel through which the return court, or its Central Authority, may ascertain promptly which protection is available and whether the authorities of the State of return will act would allow protection to be verified rather than assumed.

6 Continuity until the competent court acts

The period following arrival, before the court of habitual residence is able to act, is the period of greatest risk for a parent who returns after fleeing violence. Article 15(3) Brussels IIb and Article 11(2) of the 1996 Convention maintain the return court's measures until the competent authorities have acted, a principle capable of wider application.

The value of any instrument will depend on the ability of return courts to verify protection, record it in their orders and transmit it, and on the authorities of the State of return acting upon it. Participants in the Second HCCH Forum called for data on the effectiveness of protective mechanisms.[29] Systematic information on how protection operates after return, of the kind presented here for one jurisdiction, would serve both the courts and the work now under way within the Hague Conference on the cross-border recognition and enforcement of protection orders.

N Notes and sources

1. Judiciary of England and Wales, *Factsheet on protective measures available in England and Wales re: international child abduction* (October 2025); Judiciary of Scotland, factsheet on the protective measures available in Scotland in the context of international child abduction (October 2025); HCCH, Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, Fortaleza, October 2025, Prel. Doc. No 8B of January 2026, Annex, paras 30 and 133.
2. N. Rusinova, *Domestic Violence and the Protection of the Child in Dutch Return Proceedings under the 1980 Hague Child Abduction Convention*, research report (October 2026), in particular Chapters 3, 10, 11 and 14, nadiarusinova.com/research.
3. HCCH, Council on General Affairs and Policy, Conclusions & Decisions (March 2026), C&D Nos 22–25; HCCH, "About the REPO Project", hcch.net/en/projects/legislative-projects/repo.
4. International Child Abduction Implementation Act, Art. 13(7) and (8), as revised by the Act of 2011 (*Staatsblad* 2011, 530).

5. HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980, Part VI – Article 13(1)(b)* (2020), paras 38–42.
6. Guide to Good Practice (note 5), paras 43–47 and 59.
7. HCCH, Report on the Second Forum (note 1), Annex, para. 96.
8. ECtHR (GC) 26 November 2013, *X v. Latvia*, no. 27853/09, §§ 106–107.
9. ECtHR 21 May 2019, *O.C.I. and Others v. Romania*, no. 49450/17.
10. N. Rusinova, *Practical Handbook on EU Family Law, Part 2: Litigating International Child Abduction Cases under the 1980 Hague Convention in the EU* (2026), Chapter 5.9; European Commission, *Practice Guide for the Application of the Brussels IIb Regulation* (2023), pp. 44–47 and 121–122.
11. District Court The Hague, 26 January 2015, ECLI:NL:RBDHA:2015:751; 13 July 2018, ECLI:NL:RBDHA:2018:8810; Court of Appeal The Hague, 26 October 2020, ECLI:NL:GHDHA:2020:2063, paras 5.17–5.19; 9 February 2023, ECLI:NL:GHDHA:2023:213.
12. E.g. District Court The Hague, 22 February 2018, ECLI:NL:RBDHA:2018:2690; Court of Appeal The Hague, 15 September 2021, ECLI:NL:GHDHA:2021:1738; 16 July 2026, ECLI:NL:GHDHA:2026:2622.
13. Arts 15 and 27(5) and recital 46 Brussels IIb.
14. Court of Appeal The Hague, 8 September 2025, ECLI:NL:GHDHA:2025:1827, para. 5.27.
15. District Court The Hague, 27 January 2015, ECLI:NL:RBDHA:2015:1822; Court of Appeal The Hague, 18 March 2015, ECLI:NL:GHDHA:2015:586; District Court The Hague, 19 April 2017, ECLI:NL:RBDHA:2017:4043; Court of Appeal The Hague, 10 August 2018, ECLI:NL:GHDHA:2018:2098.
16. Guide to Good Practice (note 5), para. 47.
17. HCCH, Conclusions & Recommendations of the Eighth Meeting of the Special Commission on the 1980 and 1996 Conventions (October 2023), C&R Nos 28 and 30–33.
18. Court of Appeal The Hague, 10 April 2019, ECLI:NL:GHDHA:2019:3990, para. 22.
19. Court of Appeal The Hague, 25 July 2023, ECLI:NL:GHDHA:2023:1400; District Court The Hague, 22 July 2025, ECLI:NL:RBDHA:2025:14296.
20. HCCH status table of the 1996 Convention (consulted 28 September 2026); District Court The Hague, 31 January 2017, ECLI:NL:RBDHA:2017:1032; 26 June 2017, ECLI:NL:RBDHA:2017:7335; Court of Appeal The Hague, 19 October 2020, ECLI:NL:GHDHA:2020:2020.
21. Art. 2(1), second subparagraph, point (b), Brussels IIb; V. Lazić, 'Recognition and enforcement of decisions in the revised Brussels IIbis Regulation', *NIPR* 2021, p. 729, at pp. 740–741; C. Benini, 'Child Abduction Caused by Domestic Violence: How Private International Law Makes the Best of both the Child Abduction Convention/Brussels II-ter Regulation and the Istanbul Convention', *The Italian Review of International and Comparative Law* 2025/2, p. 167, at p. 199.
22. Art. 36(1)(c) and (2) Brussels IIb.
23. District Court The Hague, 30 December 2019, ECLI:NL:RBDHA:2019:14495; 20 May 2025, ECLI:NL:RBDHA:2025:9894; Court of Appeal The Hague, 3 December 2025, ECLI:NL:GHDHA:2025:2718, paras 5.24–5.26.
24. *S v Q* [2025] EWHC 2381 (Fam), paras 48–50.
25. HCCH, Conclusions & Recommendations (October 2023) (note 17), C&R Nos 23 and 33; HCCH, Conclusions & Decisions (March 2026) (note 3).
26. Court of Appeal The Hague, 18 March 2015, ECLI:NL:GHDHA:2015:586, para. 20; 15 June 2016, ECLI:NL:GHDHA:2016:1714, para. 13; 25 March 2020, ECLI:NL:GHDHA:2020:710, para. 5.24; 22 August 2018, ECLI:NL:GHDHA:2018:2254, paras 17–18.
27. Art. 27(3)–(5) and recital 46 Brussels IIb; on the Guide, see notes 5 and 6; research report (note 2), Chapter 10.5.
28. Art. 100(1) Brussels IIb; Court of Appeal The Hague, 8 September 2025, ECLI:NL:GHDHA:2025:1827, para. 5.27.
29. HCCH, Report on the Second Forum (note 1), Annex, paras 175–176.

ABOUT THIS NOTE

This note examines the protective measures relied upon in Dutch return proceedings in which domestic violence is alleged. For each element of the framework, from the grave-risk assessment to cross-border effect, it sets out the applicable international and European standards alongside the findings from the published decisions, and concludes with observations on return orders and on the development of cross-border instruments.

ABOUT THE RESEARCH

This note forms part of the research project *Domestic Violence and the Protection of the Child in Dutch Return Proceedings under the 1980 Hague Child Abduction Convention*, carried out from January to November 2026 with a research grant from the MoGa Foundation and with the support of Centrum Internationale Kinderontvoering (Centrum IKO). It rests on all 93 published decisions of the District Court and the Court of Appeal of The Hague, delivered between January 2015 and August 2026, in return proceedings in which domestic violence or child abuse was alleged.

The research report and all project publications: **nadiarusinova.com/research**