Article 27(5) Brussels II ter and Protective Measures in Child Return Proceedings

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Abstract

Article 27(5) of Regulation (EU) 2019/1111 (Brussels II ter) allows a court that orders a child's return to take provisional, including protective, measures that are recognised and enforced in the State of return. It was designed to close a gap left by Brussels II bis, under which urgent measures taken in the State of refuge had effect only in that State. More than four years after the Regulation began to apply, published decisions applying the provision are difficult to find. This article reads Article 27(5) closely, together with Article 15, recitals 30, 45 and 46 and the preparatory work, and argues that the measures can be understood as part of the assessment of grave risk rather than as a step after it. It suggests that Articles 27(3) and 27(5) can be read as a closed system: a court that orders return in reliance on protection would either find that adequate arrangements have been made in the State of return or make them itself. The drafting history lends support to this reading, since the Commission's proposal framed the return court's measures as a duty serving the rule on adequate arrangements. Case law from Spain, the Netherlands, Germany, Bulgaria and, before Brexit, England and Wales suggests that courts often consider measures that are Article 27(5) measures in substance, but leave them in the reasons, record them as undertakings or turn them into recommendations. In those forms, the protection is unlikely to have effect in the State of return. The article considers why this may be so, addresses the protection of the returning parent under Regulation (EU) No 606/2013, notes the HCCH's current work on the cross-border recognition of protection orders, and sets out how the provision might be applied as it stands.

Keywords: international child abduction; Brussels II ter; Article 27(5); protective measures; grave risk; domestic violence; Regulation 606/2013; 1996 Hague Child Protection Convention

1. Introduction

The 1980 Hague Child Abduction Convention rests on a simple promise. A child who has been wrongfully removed or retained is returned promptly, and the courts of the State of habitual residence decide on the child's future. The grave-risk exception in Article 13(1)(b) qualifies that promise, but in practice it is often answered not by refusing return but by pointing to protection. The left-behind parent undertakes to behave, the authorities of the State of return are said to be able to act, or a child protection service is notified. Whether that protection exists once the child has crossed the border, and whether it binds anyone there, is a different question.

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The question matters most in cases involving domestic violence. Most taking parents today are mothers who are the child's primary carers, and many of them allege violence by the left-behind parent.[1] When a court orders return in reliance on protection, the period immediately after return may be the period of greatest risk, and the protection relied on is what the returning parent and child need to be able to invoke at that time.

The EU legislature addressed this problem in Regulation (EU) 2019/1111 (Brussels II ter). Article 27(5) allows the court that orders return to take provisional, including protective, measures to protect the child from the grave risk referred to in Article 13(1)(b). Unlike ordinary provisional measures taken by a court without jurisdiction over the substance, these measures are treated as decisions. They are recognised and enforced in the State of return until its courts have acted. In the words of the Commission's 2016 proposal, they can "travel with the child".[2]

The Regulation has applied to proceedings instituted since 1 August 2022.[3] Yet published decisions applying Article 27(5) are hard to find. A search of openly accessible case law and commentary in several Member States yielded one published decision expressly ordering measures under the provision and one expressly refusing them. Because many first-instance return decisions are never published, this says little about how often the provision is used in practice. The wider case law nevertheless points in a similar direction. Courts appear to protect returning children in substance, through undertakings, notifications and trust in the State of return, rather than through measures that circulate.

This article asks what Article 27(5) requires, how courts have dealt with protection on return since the provision began to apply and shortly before, and why protection that is adequate in substance may have no effect in the State of return. Section 2 traces the provision's origins, including its drafting history, and section 3 reads its wording closely. Section 4 addresses the question the text leaves open: when measures can be taken, and how the provision relates to Article 27(3). Section 5 turns to practice, and section 6 to the questions on which the cross-border effect of measures depends, including the protection of the returning parent. Section 7 briefly notes the HCCH's work on the cross-border recognition of protection orders. Section 8 draws the threads together and considers how the provision might be applied as it stands.

The analysis is doctrinal. It draws on case law from Spain, the Netherlands, Germany, Bulgaria and, before Brexit, England and Wales. For the Netherlands, it

[1] In return applications received in 2021, 75% of taking persons were mothers, and 94% of the taking mothers were the primary or joint-primary carer of the child: N.V. Lowe and V. Stephens, 'Global Trends in the Operation of the 1980 Hague Abduction Convention: The 2021 Statistics' (2025) 59(1) *Family Law Quarterly*. See also Human Rights Council, *Custody, violence against women and violence against children: Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem*, A/HRC/53/36 (2023), paras 36–39.

[2] Commission, Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), COM(2016) 411 final, 30 June 2016, explanatory memorandum, section 5.

[3] Art. 100(1) Brussels II ter.

also draws on a study of published Dutch return decisions involving domestic violence.[4] The case law is illustrative rather than representative. Its value lies in showing the range of approaches and the points at which protection may be lost. Return courts decide under strict time limits, often with little information about the State of return, and Article 27(5) is new. The decisions discussed are therefore assessed for their reasoning against the text, not for the diligence of the courts that gave them, many of which took evident care to protect the child.

2. From territorial measures to measures with cross-border effect

Regulation (EC) No 2201/2003 (Brussels II bis) already narrowed the grave-risk exception for returns within the EU. Under Article 11(4), a court could not refuse return on the basis of Article 13(1)(b) "if it is established that adequate arrangements have been made to secure the protection of the child after his or her return". The provision did not say who was to make those arrangements, or how the return court could secure them. The return court's own powers were limited. Article 20 allowed a court without jurisdiction over the substance to take, in urgent cases, the provisional, including protective, measures available under its own law for a child present in its territory, and those measures ceased to apply once the court with jurisdiction over the substance had acted.

Whether such measures could circulate was settled in *Purrucker*. Advocate General Sharpston identified the cost of a purely territorial rule: the efficacy of urgently necessary measures would be easy to avoid "if their enforceability were to evaporate as soon as the child was taken across a national border".[5] She nevertheless concluded from the legislative history that such measures fell outside the Regulation's rules on recognition and enforcement, and the Court held that those rules did not apply to provisional measures relating to rights of custody taken under Article 20.[6] The result was a gap. A return court could identify the protection that would make return safe, but it had no instrument under the Regulation to make that protection binding in the State of return. It could rely on arrangements already made there, or on undertakings by the left-behind parent.

Some courts found a route outside the Regulation. The High Court of England and Wales used Article 11 of the 1996 Hague Child Protection Convention, which gives the authorities of the State where the child is present jurisdiction to take necessary measures of protection in cases of urgency. Under Article 23 of that Convention, such measures are recognised by operation of law in the other Contracting States. In *B v B*, a return to Lithuania, Mostyn J ordered return and, in the same order, provided that the child would remain in the mother's custody after return. In light of the father's admissions of violence, no contact order was to be made in his favour

[4] N. Rusinova, *Domestic Violence and the Protection of the Child in Dutch Return Proceedings under the 1980 Hague Child Abduction Convention: An Empirical Analysis of Published Dutch Case Law, 2015–2026* (research report, MoGa Foundation research project, October 2026). The study covers the 93 published decisions of the District Court and the Court of Appeal of The Hague delivered between January 2015 and August 2026 in which domestic violence or child abuse was at issue.

[5] Opinion of Advocate General Sharpston in Case C-256/09 *Purrucker*, 20 May 2010, point 170.

[6] Ibid., points 173–175; Case C-256/09 *Purrucker*, judgment of 15 July 2010, operative part.

pending an order of the Lithuanian court, and he was not to molest the mother or approach within 100 metres of her flat; the mother, for her part, was not to remove the child from Lithuania pending a Lithuanian order. The judge used these measures expressly to satisfy Article 11(4) and so to take the grave-risk defence "off the table": "it is possible for me, under Article 11 of the 1996 Convention, to impose those very safeguards. The safeguards which I will impose will ensure that there is no risk as mentioned in Article 13(b), so that defence will not be available."[7]

A year later, in *RB v DB*, the same judge described such orders as having become common, at least in his own court, while protective measures under Article 20 for that purpose had been, to his knowledge, "almost unknown".[8] The order in that case, for a return to Austria, left the children in the care of the taking father pending the Austrian court's decision. It required the mother to vacate the former family home and to use her best endeavours to keep its tenancy available, imposed mutual non-molestation orders, required her not to prosecute the father "subject to the requirements of Austrian law", and obliged both parents to cooperate with the Austrian court and child protection services. The practice raised questions of its own. Article 61 Brussels II bis gave the Regulation precedence over the 1996 Convention where the child was habitually resident in a Member State, and neither judgment addresses whether Article 11 of the Convention was available between two Member States.[9] *RB v DB* also states that Article 20 measures would be recognised under Chapter III of Brussels II bis, which is difficult to reconcile with *Purrucker*. The practice nonetheless shows what a return court can do when it has an instrument that circulates.

The Commission's 2016 proposal took up the idea. Its explanatory memorandum explained that urgent protective measures ordered by the court of refuge could, if necessary, accompany the child to the State of habitual residence, be recognised there by operation of law, and lapse once that State's courts had acted. Its example was a return court granting access rights to a parent, enforceable in the State of habitual residence until its courts ruled on access. The proposal placed this power inside the rule on adequate arrangements. Proposed Article 25(1) repeated that a court cannot refuse return on the basis of Article 13(1)(b) "if it is established that adequate arrangements have been made to secure the protection of the child after his or her return", and continued: "To this end the court shall: (a) cooperate with the competent authorities of the Member State where the child was habitually resident immediately before the wrongful removal or retention […], and (b) take provisional, including protective, measures in accordance with Article 12 of this Regulation, where appropriate." Proposed recital 29 described the sequence. Before refusing return, the court should "consider whether appropriate measures of protection have been put in place or may be taken to eliminate any risks", consult the

[7] *B v B* [2014] EWHC 1804 (Fam), Mostyn J, 21 May 2014.

[8] *RB v DB* [2015] EWHC 1817 (Fam), Mostyn J, 4 June 2015.

[9] Art. 61(a) Brussels II bis.

authorities of the State of habitual residence and, “in appropriate cases, order any measures of protection necessary […] to ensure the safe return of the child”.[10]

The European Parliament’s committee report proposed no change to this provision. Its amendments to the general rule on provisional measures added that such measures “should not unduly delay the proceedings and final decisions on custody and access rights”, which may be the origin of the proviso in Article 27(5), and named “domestic or gender-based violence” as an example of the urgent cases in which such measures may be taken. That example was not retained in the adopted text.[11]

The adopted text kept the substance but changed the structure. Article 27(3) carries forward the rule on adequate arrangements, now with the alternative that the court is “otherwise satisfied” that they have been made. The two obligations that followed it in the proposal became powers in separate paragraphs: the court “may” communicate with the authorities of the State of habitual residence (Article 27(4)), and “may, where appropriate” take provisional, including protective, measures (Article 27(5)). At the same time, the adopted text departed from the proposal’s general rule that urgent measures taken by a court without jurisdiction over the substance should be recognised and enforced in all other Member States. Under recital 30, such measures are not recognised and enforced in other Member States under the Regulation, with one exception: measures taken to protect the child from the grave risk referred to in Article 13(1)(b). The return court’s protective measures thus became the only provisional measures of a court without jurisdiction over the substance that are recognised and enforced under the Regulation. Recitals 30, 45 and 46 explain the scheme, and Article 2(1), second subparagraph, point (b), together with Article 36(1)(c) and Annex IV, gives the measures the status of decisions.

3. What Article 27(5) requires

Article 27(5) reads: “Where the court orders the return of the child, the court may, where appropriate, take provisional, including protective, measures in accordance with Article 15 of this Regulation in order to protect the child from the grave risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention, provided that the examining and taking of such measures would not unduly delay the return proceedings.” Almost every element of the sentence carries meaning.

The provision opens with a condition: the court orders the return of the child. The power belongs to the return court, is tied to a return order and is exercised in the return proceedings themselves. It is not a power to take measures instead of

[10] COM(2016) 411 final (above), explanatory memorandum, section 5; proposed Article 25(1); proposed recitals 17 and 29. The words omitted from proposed Article 25(1)(a) are “either directly, with the assistance of Central Authorities or through the European Judicial Network in civil and commercial matters”; those omitted from proposed recital 29 are “pursuant to Article 12 of this Regulation”.

[11] European Parliament, Committee on Legal Affairs, Report on the proposal for a Council regulation (recast), A8-0388/2017 (rapporteur T. Zwiefka), 30 November 2017, Amendments 11 (recital 17) and 40 (Article 12(1)). The report proposed no amendment to Article 25(1). The example does not appear in recital 30 of Regulation (EU) 2019/1111.

ordering return, and recital 46 confirms that the measures are taken "when ordering the return of the child". The power is then framed as a discretion. The court "may, where appropriate" take measures; it is not obliged to do so, and the text does not require an application by a party. Recital 46 ties the discretion to necessity, since it should be possible for the court to take the measures "which it considers necessary". This suggests that measures ordered as a matter of routine fall outside the provision. The HCCH Guide to Good Practice on Article 13(1)(b) makes a similar point when it stresses that protective measures should be strictly necessary, should not be imposed automatically and should be limited in time.[12]

The reference to Article 15 does three things. First, it identifies the kind of measure: the provisional, including protective, measures "available under the law" of the Member State whose court takes them (Article 15(1)). The return court's own law therefore sets the range of possible measures. Second, it imports the duty in Article 15(2) to inform the court with jurisdiction over the substance where the child's best interests so require. Third, it imports Article 15(3), under which the measures cease to apply once that court has taken the measures it considers appropriate. Article 27(5) measures can therefore be described as a bridge to the court of the merits rather than a substitute for it. Whether the urgency required by Article 15(1) must be shown separately is not settled by the text, but it may be argued that urgency is inherent in a grave risk that would materialise on return.

The purpose clause is specific. The measures are taken "in order to protect the child from the grave risk referred to in point (b) of Article 13(1)", and are thus meant to address a risk of the kind that provision describes. The wording does not refer to a grave risk that has been established; it uses the definite article to refer to the risk defined in the Convention, a point to which section 4 returns. Finally, the proviso requires that neither the examination nor the taking of measures unduly delay the return proceedings, and recital 46 extends this to the measures' circulation. This suggests that the measures belong in the return decision itself, so that the two can be certified together.

What sets Article 27(5) measures apart from other provisional measures is their status. Recital 30 states that provisional measures taken by a court without jurisdiction over the substance should not be recognised and enforced in other Member States, "with the exception of measures taken to protect the child from a grave risk as referred to in point (b) of Article 13(1)" of the Convention. Article 2(1), second subparagraph, point (b), accordingly treats measures ordered under Article 27(5) read with Article 15 as decisions for the purposes of Chapter IV. They are recognised without any special procedure (Article 30(1)). For enforcement, the party seeking it produces the decision and a certificate attesting that the measure was ordered in accordance with Article 27(5) read with Article 15 (Article 35(2)(b)). The certificate is the one in Annex IV, which covers the return decision together with any accompanying measures (Article 36(1)(c)), and it is issued on application

[12] HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part VI: Article 13(1)(b)* (2020), paras 44 and 47.

by a party (Article 36(1)). Point 9 of Annex IV asks whether the decision includes such measures and, if so, requires them to be described.

Enforcement then takes place under the law of the Member State of enforcement, on the same conditions as a domestic decision (Article 51(1)). It is subject to the Regulation's own grounds for refusal, which include the failure to give the child an opportunity to express views, unless there were serious grounds for this, in particular the urgency of the case (Articles 39(2) and 41). Where a decision on access lacks sufficient practical arrangements, the authorities of the State of enforcement may supply them, provided the essential elements of the decision are respected (Article 54).

Two consequences seem to follow for the form of the measures. A measure that is to be certified and enforced would need to appear in the operative part of the decision, precisely enough to be described under point 9 of Annex IV and acted on by an enforcement authority in the State of return. The Regulation does not say so in terms, but a measure that appears only in the reasons is difficult to certify, and is therefore unlikely to have the effect the mechanism is designed to achieve. Conversely, the label is arguably not decisive. A measure ordered in the operative part may be certified even if the judgment does not cite Article 27(5), provided it was in substance taken under that provision read with Article 15.

The scope of the measures follows from their nature. They are measures of parental responsibility, and maintenance obligations fall outside the Regulation altogether (Article 1(4)(e)). The examples in recital 46 are characteristic: the child continues to reside with the primary care giver, or the court determines how contact with the child is to take place after return, in each case until the court of habitual residence has acted. These examples mirror the examples of adequate arrangements in recital 45, which include a provisional measure in the State of return allowing the child to stay with the abducting parent who is the primary carer, and an order prohibiting the applicant from coming close to the child. The same protection can thus come from either source: from the State of return under Article 27(3), or from the return court under Article 27(5). Two further limits may be noted. A measure would need to bind someone over whom the return court has authority, so an order addressed to an authority that is not a party, such as a prosecution service, is unlikely to be effective. And a measure should not decide the substance of custody, which remains with the court of habitual residence.

Article 27(5) measures must finally be distinguished from urgent measures taken in the State of refuge that work against return. Measures taken under Article 20 Brussels II bis, and now under Article 15 Brussels II ter, have been relied on to resist return and even to deny that a retention was wrongful.[13] Article 27(5) measures do the opposite: they accompany the return and protect the child after it.

[13] Cass. civ. 1re, 8 July 2010, no. 09-66.406; Rb Den Haag 30 January 2020, ECLI:NL:RBDHA:2020:781.

4. When measures can be taken

Article 27(5) links the measures to “the grave risk referred to in” Article 13(1)(b), but it does not say whether that risk must first be established. Two readings are possible. On a strict reading, the court first decides whether a grave risk exists. If it does not, there is nothing to protect against and no measures can be taken. The Gerechtshof Den Haag adopted this approach in 2025, refusing measures because it had found no grave risk.[14] The difficulty is that this leaves the provision little room. Where a grave risk is established and cannot be addressed, the court refuses return; where adequate arrangements exist in the State of return, Article 27(3) already obliges it to order return. Article 27(5) would then apply only in the narrow band of cases in which the risk has been established and the return court itself supplies the protection. On an integrated reading, by contrast, the court asks whether the risk on return would reach the Article 13(1)(b) threshold without protection, and then whether protection, if secured, would remove it. Measures then form part of the assessment of risk rather than a step after it.

Several features of the text point towards the integrated reading. The first is the definite article already noted. Article 27(5) refers to “the grave risk referred to in” Article 13(1)(b), that is, to the kind of risk the Convention describes, and not to a grave risk that has been established, although the legislature could have said so. The second is the counterfactual in recital 46, which describes “the grave risk of physical or psychological harm entailed by the return which would otherwise lead to a refusal of return”. “Otherwise” is most naturally read as “without the measures”: the risk the measures address is the risk as it would stand in their absence. Recital 45 has a similar structure, since which arrangements are adequate “should depend on the concrete grave risk to which the child is likely to be exposed by the return without such arrangements”. Both recitals appear to measure the risk before protection, not after it. The third feature is the trigger in Article 27(3), which applies “where a court considers refusing to return a child solely on the basis of” Article 13(1)(b). The trigger is the court’s contemplation of refusal, not a completed finding, and recital 46 offers the court in that position an alternative to refusal. The preparatory work points in the same direction. Proposed recital 29 asked the court, before refusing, to consider whether protective measures “have been put in place or may be taken”, and the two halves of that phrase correspond to Articles 27(3) and 27(5).

The HCCH Guide is consistent with this reading. It treats protective measures as part of the forward-looking analysis of grave risk. Courts should consider whether adequate protection exists or could be put in place, may assess measures alongside the alleged risk or after it has been identified, and, where measures can address the risk, should order return.[15] One passage seems to point the other way. The Guide states that the requested court should not make orders that are not needed to address an established grave risk, and it mentions urgent financial assistance as a

[14] Hof Den Haag 8 September 2025, ECLI:NL:GHDHA:2025:1827, para. 5.27.

[15] HCCH Guide (above), paras 41, 45 and 61.

measure where a grave risk is established.[16] These passages can be read as expressions of necessity and proportionality: measures should answer a risk that the court has actually identified, not a speculative one. They do not appear to require the court to find, before it considers protection, that return would be refused without it.

Read together, Articles 27(3) to 27(5) suggest a sequence. The court first considers refusing return because of a concrete risk to which the child would be exposed on return without protection. At this stage it identifies that risk, but makes no final finding. It then asks whether adequate arrangements to address the risk have been made in the State of return, relying primarily on the parties and, where necessary, communicating with the authorities of that State (Article 27(4); recital 45). If they have, the court shall not refuse return. If they have not, or address the risk only in part, the court may take measures of its own under Article 27(5) and order return with those measures in the operative part. Only where no protection can address the risk does refusal remain, accompanied by the certificate under Article 29.

The sequence is logical rather than chronological. Because the proviso in Article 27(5) covers the examination as well as the taking of measures, and the Guide recommends raising measures early, the court can seek information from the State of return while the parties propose measures. The steps can also be combined, with the return court addressing whatever part of the risk the arrangements in the State of return leave open. The sequence is confined to Article 13(1)(b). Article 27(3) applies only where refusal would rest “solely” on that provision, and Article 27(5) measures address only the risk it describes, so a refusal that also rests on the child’s objections under Article 13(2) falls outside it. The Audiencia Provincial de Barcelona followed the whole sequence in 2023, turning to Article 27(5) after finding Article 27(3) not satisfied. The Gerechtshof Den Haag, in 2025, treated its conclusion that no grave risk had been shown as the end of the inquiry (section 5).

The sequence reveals an asymmetry. Article 27(3) is mandatory: the court “shall not refuse” return if adequate arrangements have been made. Article 27(5) is permissive: the court “may, where appropriate” take measures, and recital 46 says that it “should be possible” for the court to do so. A court that considers refusing, finds no adequate arrangements in the State of return and refuses without considering measures of its own does not breach the wording of either provision.

The asymmetry may be explained by the different functions of the two paragraphs. Article 27(3) can be understood as a rule of deference. It carries forward Article 11(4) Brussels II bis and expresses mutual trust: where the Member State whose courts have jurisdiction over the substance has already protected the child, the court of refuge may not override that protection by refusing return. Article 27(5), by contrast, is a power. It allows a court without jurisdiction over the substance to make orders that take effect in another Member State until the courts of that State act. Several features of the measures may explain why the adopted text prefers a power to a duty. The measures are those available under the return court’s own law,

[16] Ibid., paras 47 and 60.

which differs between Member States. Whether a measure is necessary and proportionate is a judgment made in each case. And assessing protection that exists is a different task from creating protection that does not. The preparatory work suggests, however, that the asymmetry was not part of the original design. In the Commission's proposal, the court "shall" take provisional, including protective, measures "where appropriate", as one of the means ("to this end") of securing the adequate arrangements without which return could not be refused. Proposed recital 29 likewise asked the court to consider, before refusing, whether measures "have been put in place or may be taken". The adopted text turned that duty into a power and placed it in a separate paragraph. The change did not come from the European Parliament, whose committee report proposed no amendment to the provision. It appears to have been made in the Council, whose revised draft of December 2018 was submitted to the Parliament for reconsultation and approved by it in March 2019. The public documents examined here do not record the reasons for it.[17]

The asymmetry may nonetheless be smaller than it appears, because the discretion in Article 27(5) is arguably bounded by the threshold in Article 13(1)(b). On the integrated reading, the question under Article 13(1)(b) is whether a grave risk remains once the protection available is taken into account. If measures that the court can itself take would bring the risk below the threshold, Article 13(1)(b) would not be satisfied and could not ground a refusal. The court is not obliged to use Article 27(5), but it would be difficult to justify refusing return because of a risk that measures available to it would remove. It is therefore suggested that a court which considers refusing return under Article 13(1)(b), and finds no adequate arrangements in the State of return, should examine whether measures under Article 27(5) could address the risk before it refuses, and should give reasons if it concludes that they could not. This applies with particular force where a party has asked for such measures. It is also, in substance, close to what the Commission's proposal would have required.

On this basis, it is suggested that Articles 27(3) and 27(5) can be read as a closed system. Where the court's conclusion that return is safe depends on protection, that protection would either have been put in place in the State of return or be ordered by the return court. General trust in the authorities of the State of return, and undertakings that bind no one there, are neither. The principle of mutual trust allows a court to presume that the State of return can protect the child, but Article 27(3) requires more: arrangements that "have been made" and are adequate to the concrete risk. On this reading, Article 27(5) serves those cases in which return can be ordered because specific measures reduce the risk below the threshold. The reading also reflects the structure the Commission proposed, in which the court's own measures were one of the means of securing the adequate arrangements that rule out refusal.

[17] COM(2016) 411 final (above), proposed Article 25(1) and recital 29; Report A8-0388/2017 (above); Council, amended draft for reconsultation, doc. 15401/18, 12 December 2018; European Parliament legislative resolution of 14 March 2019, T8-0206/2019 (procedure 2016/0190(CNS)).

The reading also brings out a possible circularity in practice. A court may find that there is no grave risk because it assumes protection in the State of return, and then decline measures because there is no grave risk. The Dutch study referred to above illustrates the pattern. Of the 63 return orders it examined, 36 relied on protection in the State of return in whole or in part, and 27 of these record no verification of its availability; in all 36, the court found no sufficient link between the alleged violence and a grave risk for the child.[18] Where the absence of a grave risk depends on assumed protection, that protection is meant to address an Article 13(1)(b) risk, and Article 27(5) offers a means of securing it.

The suggested reading has limits. It does not help where the facts are not established: if the alleged violence is held unproven and no other risk is identified, there is nothing for measures to address on any reading. Measures directed at a risk that never approaches the threshold are not Article 27(5) measures; at most, they are ordinary Article 15 measures with territorial effect. And measures should be necessary. That last limit marks the opposite error. In *RB v DB*, the High Court described its orders as "protective measures which dissolve the defences", and held that efficacious measures of protection under Article 11 of the 1996 Convention "overreach" a child's objections, even if validly expressed. Transposed to Brussels II ter, which did not yet exist, that approach would go beyond the text. Article 27(3) concerns only Article 13(1)(b), not the child's objections under Article 13(2), and recital 46 confines measures to those the court considers necessary. The integrated reading can thus be seen as a middle course between a strict gate that leaves Article 27(5) almost no room and an automatic neutralisation of every defence.

5. Practice: protection in substance, not in form

One decision that expressly orders measures under Article 27(5) is a judgment of the Audiencia Provincial de Barcelona of 7 March 2023.[19] The child had been born in Germany in 2020 to parents who had married in Kyiv. The mother travelled with her to Kyiv with the father's consent for two months and did not return. After the outbreak of war, she left through Poland for Spain, where a court in Badalona allowed her to keep the child on condition that she did not disappear again, and the child's passport was retained. The court of first instance refused return under Article 13(1)(b). On appeal, the Audiencia Provincial held the mother's allegations of violence unproven, but had "no doubt that the situation of war and the refugee status of mother and daughter may place them in an intolerable situation if they do not receive due support". It added that, "although this is not the meaning of the provision, the reality described allows the possibility of wide-ranging precautionary measures to be examined". Since nothing showed that the German authorities had arranged protection, Article 27(3) could not be satisfied, and the court decided to impose measures itself. It gave reasons specific to the child: her age of two years and five months, the mother's role as her primary carer, her unfamiliarity with her

[18] Rusinova (above), ch. 10.2.

[19] SAP Barcelona (Sección 18) 126/2023, 7 March 2023, ECLI:ES:APB:2023:2226; first instance: Juzgado de Primera Instancia nº 19 de Barcelona, 27 December 2022, proc. 654/2022. The court obtained information through the European Judicial Network during the appeal.

father, doubts about his capacity for co-parenting, and the disparity in the parents' incomes.[20]

Once return had been agreed, the court explained, it "cannot take place automatically, with the mere authorisation of the father to take the daughter away". Expressly under Article 27(5) read with Article 15, and until the competent court decided, the operative part provided that the mother would return with the child within 15 days of the father confirming that housing was available, and that the father would provide separate housing for mother and child within 15 days. It ordered the father to pay €1,000 a month as maintenance for the child and support for the mother as carer, and allowed him to see the child two hours a week under public supervision, requesting the German court's cooperation under Article 81. If the mother did not return within 15 days, the father could collect the child with police assistance; International Social Service and the police were notified, and the retention of the child's passport continued until return. The judgment was to be notified without delay to the court in Offenbach am Main.

In form and procedure, the decision comes close to what the provision envisages. The measures accompany a return order, are limited to the period until the German court acts, were taken about six weeks after the appeal was assigned to the chamber, and are set out in the operative part with amounts and deadlines. The court had obtained information through the European Judicial Network and ordered the judgment to be communicated to the competent court. Its reasons for residence with the mother, housing and supervised contact are concrete and specific to the child. The decision also illustrates how the scope of the provision can be exceeded. Residence with the primary carer and supervised contact are recital 46's own examples, and contact was the Commission's example in 2016. The housing obligation is arguable. Maintenance, and certainly support for the mother as carer, falls outside the Regulation (Article 1(4)(e)). Collection with police assistance and the safeguards against renewed flight seem better understood as enforcement of the return order itself under national law than as Article 27(5) measures. The court's account of the risk is also unsettled: it relied on a risk it described as lying outside the usual meaning of Article 13(1)(b), immediately after holding that provision not satisfied. The integrated reading may offer a more coherent basis for what the court did. Without income, housing or support, return might have exposed a two-year-old to a risk of the Article 13(1)(b) kind, and the measures are what made return possible. The court's reasoning points in this direction, and the integrated reading would give it a firmer basis. The same chamber had already noted, in a custody appeal fourteen months earlier, that Article 27(5), not yet applicable, would introduce protective measures on return.[21]

[20] Ibid., FD 3–6. The passages quoted read in the original (author's translation in the text): "No tenemos duda de que la situación de guerra y el estatuto de refugiadas de madre e hija pueden situarlas en una situación intolerable si no reciben el debido soporte y aunque no es este el sentido del precepto, la realidad descrita permite analizar la posibilidad de amplias medidas cautelares" (FD 5); "Acordada la restitución, entendemos que no puede producirse de forma automática, con la sola autorización al padre para que se lleve a la hija" (FD 6).

[21] SAP Barcelona (Sección 18) 12/2022, 17 January 2022, ECLI:ES:APB:2022:931, FD 2.

An express refusal of such measures comes from The Hague. In a return to Poland, the mother alleged coercive control and asked that the return be accompanied by conditions: contact only through the Polish court, and a contribution to travel and housing costs of up to €1,000 a month. The Rechtbank ordered return and refused the conditions, for which it saw “no basis”. On appeal, the mother requested measures under Article 27(5), including a period to comply. The Gerechtshof affirmed and declined to take measures because it had found no grave risk. It held coercive control not established, because the screening instrument relied on had been administered to the mother only, and added that even established coercive control would require a showing that the child’s own safety was at risk.[22] The first-instance ground is difficult to reconcile with the direct applicability of Article 27(5), which provides a legal basis in every return to another Member State. The appellate ground is consistent with the strict reading and with the Guide’s focus on the effect of violence on the child,[23] but it treats the threshold as a gate and does not ask whether any risk would arise without protection. Not every measure requested could have qualified, since the costs contribution is close to maintenance and a period to comply concerns the execution of the return. A refusal on those grounds might have been better founded and would have shown what could properly be requested. Within one case, the provision was thus read first as unavailable and then as available only after a grave risk had been established.

Where protection already exists in the State of return, no Article 27(5) order is needed, and German case law illustrates that route. In a return to France, the Oberlandesgericht Celle rejected the grave-risk defence because concrete measures had been prepared there, including a temporary placement and school support requested by the French public prosecutor and psychological follow-up, and relied on Article 27(3) and (4).[24] At the other end of the spectrum, the Sofia Court of Appeal refused return to the Czech Republic in 2026 because the children would have no housing or income with their father and too little space with their mother, without considering consultation with the Czech authorities or any measure that might have made return feasible.[25] Its refusal rested independently on the children’s objections, so Article 27(3) would not have barred it. But the case is in a sense the mirror image of recital 46, whose own example of a measure is that the child continues to reside with the primary care giver.

[22] Rb Den Haag 22 July 2025, ECLI:NL:RBDHA:2025:14296 (“geen grondslag”); Hof Den Haag 8 September 2025 (above), paras 5.19 and 5.27.

[23] HCCH Guide (above), para. 58.

[24] OLG Celle 27 January 2026, 15 UF 246/25, ECLI:DE:OLGCE:2026:0127.15UF246.25.00.

[25] Апелативен съд – София, Решение № 467, 15 April 2026, в. гр. д. 309/2026, reversing Софийски градски съд, Решение № 6785, 10 November 2025, гр. д. 8522/2025, which had ordered the children’s return and their handover to the mother. The children, aged 14 and 13 at the time of the appeal, had lived with their father under a Czech court order; after a Czech decision of February 2025 required him to leave the family home, he moved with them to Bulgaria. The Court of Appeal refused return under Article 13(1)(b) and, independently, because of the children’s objections under Article 13(2). Although the case concerned a return to a Member State in 2025, the court applied Regulation (EC) No 2201/2003, which had been repealed with effect from 1 August 2022 (Art. 104(1) Brussels II ter), and the decision does not mention the certificate that Article 29 requires on a refusal under Article 13(1)(b) or 13(2). The decision states that it may be appealed to the Supreme Court of Cassation.

Between these express decisions lies a larger body of case law in which courts consider measures that are Article 27(5) measures by their nature, such as residence with the primary carer, contact arrangements, housing and keeping the applicant away from the child, but give them a form in which they are unlikely to have effect in the State of return. Dutch case law shows protection confined to the reasons. According to the study referred to above, the operative parts of the 63 return orders examined set the return date, require the child to be handed over with travel documents and deal with costs and enforceability; six also place the child under a provisional guardianship, mainly to secure the execution of the return. None records an undertaking, a condition, a contact arrangement or a measure under Article 27(5), and the undertakings relied on in 14 return orders appear only in the reasons.[26] Requests by mothers for conditions have been declined. In 2017, the Gerechtshof held that it was "not in keeping with the spirit of the Convention to attach additional conditions to the return", and in 2023 it saw no reason to attach safe-return conditions under Article 27(3).[27] The limits of conditions also appear from a case not involving domestic violence, in which the Rechtbank had attached conditions under Article 27 to a return order, requiring the Dutch and Belgian prosecuting authorities to adjust the mother's probation terms and not to detain her on return. The Gerechtshof upheld the return but set the conditions aside, because those authorities were not parties and could not be bound.[28]

Bulgarian practice shows protection turned into recommendations. In a return to Norway, the father had kept the child in Bulgaria and alleged sexual abuse by the mother's partner, and a Bulgarian court had issued an immediate protection order in favour of the child. The Sofia City Court ordered return. It treated the protection order as temporary, since it had been issued without hearing the respondents, and held that protection in Norway had not been shown to be ineffective. In the operative part, it instructed the Bulgarian Central Authority to inform its Norwegian counterpart of the protection order, so that the Norwegian child protection authorities could consider protective measures if necessary.[29] On appeal, the Sofia Court of Appeal asked the mother's lawyer what measures for a safe return she was prepared to take, and asked whether the child could initially live with the father in Norway, which the father declined. The father, for his part, argued that the mother's proposed "measures for a safe return" were "declarative, not guaranteed by the Norwegian authorities and practically unenforceable". In its reasons, the court considered it "advisable that both parents consider the child being accompanied" by the father, and recommended that the mother not pursue criminal proceedings in Norway over the retention if that depended on her, and that she ensure the father's effective presence in the child's life. None of this was

[26] Rusinova (above), ch. 10.2.

[27] Hof Den Haag 18 October 2017, ECLI:NL:GHDHA:2017:3025, para. 26 ("niet in lijn met de geest van het HKOV om aanvullende voorwaarden te stellen aan de teruggeleiding"); Hof Den Haag 25 July 2023, ECLI:NL:GHDHA:2023:1400.

[28] Hof Den Haag 25 May 2023, ECLI:NL:GHDHA:2023:990, paras 5.26–5.28; see also N. Rusinova, *Practical Handbook on EU Family Law, Part 2: Litigating International Child Abduction Cases under the 1980 Hague Convention in the EU* (2026), p. 327.

[29] Софийски градски съд, Решение № 3698, 12 June 2025, гр. д. 2462/2025.

ordered. The operative part “supplements” the decision with measures that consist of transmitting information.[30] Norway is outside the EU, so Article 27(5) did not apply. But both States are parties to the 1996 Convention, and Article 11 of that Convention might have allowed provisional residence and contact arrangements to be recognised in Norway. The court identified measures of an Article 27(5) kind and asked the parties for proposals, but the measures it identified remained in a form without effect abroad.

What reliance on protection that binds no one in the State of return can mean for the returning parent appears from a decision in such a State. A United States federal court had ordered a child’s return to Spain. It found coercive control, which it described as a serious form of domestic abuse, but no grave risk, and it attached no conditions, trusting that the Spanish courts would take its findings into account. In the subsequent Spanish custody proceedings, the mother argued that the US court had set safeguards the Spanish courts had to follow. The argument failed. As the Audiencia Provincial observed, the US judge “did not set conditions for the return, since she found no grave risk under Article 13 of the Convention, and simply expressed confidence that the Spanish court would appreciate the implications of the facts”. The Audiencia Provincial de Barcelona took the US findings into account on appeal, about seventeen months after the return, and noted that Article 27(5), not yet applicable, would introduce protective measures on return.[31]

The English orders described in section 2 show an alternative. In *B v B* and *RB v DB*, residence, contact, non-molestation and occupation of the family home were placed in the operative order, under an instrument that gave them effect in the State of return. The difference between those cases and the decisions in this section appears to lie less in what the courts thought the child needed than in the form they gave it. Even there, the question of scope was visible. In *RB v DB*, the judge ordered the mother to keep the family home available, while emphasising that “financial security is not in my view strictly within the remit of the arrangements for the protection of the children referred to in Article 11.4”.

6. Giving protection effect in the State of return

Whether protection reaches the State of return also depends on four further questions: who brings measures into the proceedings, which law governs them, whether their cross-border effect can be anticipated, and who benefits from them. A

[30] Апелативен съд – София, Решение № 150, 6 February 2026, в. гр. д. 3089/2025 (final). The information transmitted included the fact that the protection order had meanwhile been revoked as regards the mother. The passages quoted read in the original (author’s translation in the text): “предложените от нея „мерки за безопасно връщане“ са декларативни, негарантирани от норвежките власти и практически неизпълними” (the father’s submissions, as summarised by the court); “е препоръчително двамата родители да обмислят придружаване на детето именно от него”.

[31] SAP Barcelona 12/2022 (above), FD 2–3. The US return order was made on 11 March 2020 and the child returned in August 2020. The passage quoted reads in the original (author’s translation in the text): “no estableció condiciones para el retorno, al no apreciar riesgo grave del art. 13 del Convenio y expresó simplemente la confianza de que el tribunal español apreciaría las implicaciones de los hechos” (FD 2).

fifth question, the protection of the parent who returns with the child, lies partly outside Article 27(5) altogether.

Article 27(5) does not require an application, so under the Regulation the court can act of its own motion. National procedural law may nonetheless stand in the way. Writing before the Regulation applied, Kubicka-Grupa pointed out that under the Polish Code of Civil Procedure a court may grant provisional measures of its own motion only in proceedings that it could itself have opened, and that return proceedings can be opened only on application; she concluded that Polish courts would have to apply the Regulation directly.[32] In practice, the parties are likely to be the main source of measures. Recital 45 states that a court establishing whether adequate arrangements have been made "should primarily rely on the parties", and the HCCH Guide recommends that protective measures be raised early, so that both parties can adduce evidence on their need and enforceability.[33] Central Authorities, child protection bodies, network judges and a child's representative may also contribute, and the Sofia Court of Appeal's request to the mother's lawyer for safe-return proposals shows how a court can bring measures into the proceedings. A well-formulated request would state its legal basis, Article 27(5) read with Article 15, and propose wording for the operative part. It would identify who must do what, provide that the measures apply until the court of habitual residence has acted, and ask for the Annex IV certificate, which is issued on application by a party (Article 36(1)).

Article 15(1) refers to the measures "available under the law" of the Member State whose court takes them, so the return court's own law sets both the range of possible measures and the procedure for taking them. The measures must, however, operate in the State of return, whose law governs their enforcement (Article 51(1)). For access, Article 54 allows the authorities of the State of enforcement to supply practical arrangements that the decision lacks, provided its essential elements are respected. A return court may therefore be well advised to choose measures known in both systems and to formulate them by their effect: where the child lives, who may have contact with the child and on what terms, and who may not approach whom.

The cross-border effect of a measure can, to a large extent, be anticipated. Only a measure taken under Article 27(5) read with Article 15 is a decision that is recognised without special procedure and enforceable with the Annex IV certificate. It needs to concern parental responsibility, since maintenance is excluded and orders addressed to persons or authorities that are not parties are unlikely to be effective. It should also appear in the operative part, specific enough that an enforcement authority in the State of return could act on it from the decision and the certificate. The court may consider whether recognition or enforcement could be refused, for instance because the child was not given an opportunity to express views, although urgency may justify the absence of a hearing (Article 39(2)(b)). And the measure lapses once the court of habitual residence has acted, which may be

[32] Z. Kubicka-Grupa, *Acta Iuridica Resoviensia* 2(37)/2022, 210, at 214–216.

[33] HCCH Guide (above), para. 45.

soon after return; an Article 27(5) measure is a bridge rather than lasting protection. Outside the EU, measures taken under Article 11 of the 1996 Convention are recognised by operation of law in the other Contracting States and may be declared enforceable there (Articles 23 and 26). Where the State of return is not a party, a mirror order obtained there before the return takes place is the main option.[34] Undertakings, and measures that appear only in the reasons, have no cross-border effect of their own.

The measures exist “to protect the child”, and the child is their primary beneficiary. The applicant benefits procedurally, because measures can make return possible where refusal might otherwise follow, but the obligations usually fall on the applicant, as the housing, payments and supervised contact did in the Barcelona case. The taking parent, often the person alleging violence, benefits substantively: enforceable protection after return, residence with the child and regulated contact. Article 27(5) measures can therefore be seen as a bargain, in which the applicant obtains return and the taking parent and the child obtain enforceable protection. This may point to an incentive problem, offered here as a hypothesis rather than a finding. Applicants may prefer to offer undertakings, which are the established instrument and easier to give, but bind no one abroad. Taking parents may prefer to argue for refusal rather than for measures, which might seem to concede that return can be ordered. Article 27(5) falls between the two strategies. A request for measures in the alternative, without conceding the return, is one way out.

The protection of the parent who returns with the child raises a separate problem. In cases involving domestic violence, that parent is often the person most directly exposed on return. Orders protecting that parent, such as a prohibition on approaching the parent’s home, are not measures of parental responsibility. They fall outside Brussels II ter and therefore outside Article 27(5). The instrument for such orders within the EU is Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters. It covers decisions that prohibit or regulate the person causing the risk from entering the place where the protected person resides, works or regularly visits or stays, from contacting that person, or from approaching that person closer than a prescribed distance. Such a measure is recognised without any special procedure and is enforceable without a declaration of enforceability. The issuing authority issues a certificate at the request of the protected person, and the effects of recognition are limited to 12 months from the issue of the certificate.[35] The Regulation does not apply to protection measures falling within the scope of Brussels II bis (Article 2(3)), a reference now to be read as one to Brussels II ter (Article 104(2) Brussels II ter). The division of labour thus appears clear in principle. Measures concerning the child, including residence, contact and keeping the applicant away from the child, are measures of parental responsibility and circulate under Article 27(5). Measures protecting the returning parent from the applicant circulate, if at all, under Regulation 606/2013.

[34] HCCH Guide (above), para. 47.

[35] Regulation (EU) No 606/2013, Arts 3(1), 4(1), 4(4) and 5(1); recital 22.

Both kinds of measure can be ordered together. In *RB v DB*, the judge stated that, in so far as the measures he ordered were protection measures within the terms of Regulation 606/2013, they would be "doubly enforceable" in Austria; in *B v B*, the order included a prohibition on approaching the mother's flat alongside measures concerning the child. Three limits apply. Regulation 606/2013 governs recognition, not jurisdiction, so the return court would need power under its own law to issue a protection measure in favour of the parent, and not every return court has it. The certificate is issued only at the request of the protected person, who must therefore know to ask for it. And recognition lasts at most 12 months, although in most cases the court of habitual residence will have acted well before then. Outside the EU, Article 11 of the 1996 Convention concerns measures for the protection of the child, and it is not clear whether it extends to orders protecting the returning parent, as the order in *B v B* assumed. Directive (EU) 2024/1385 on combating violence against women and domestic violence, which must be transposed by 14 June 2027, requires Member States to make emergency barring orders, restraining orders and protection orders available, and to inform victims of the possibility of seeking their cross-border recognition (Article 19). It does not itself lay down rules on mutual recognition, so the cross-border effect of such orders will continue to depend on Regulation 606/2013.[36]

7. The HCCH work on protection orders

Outside the EU, no global instrument provides for the cross-border recognition of protection orders in favour of the parent who returns with the child; Article 11 of the 1996 Convention concerns measures for the protection of the child (section 6). The HCCH's Council on General Affairs and Policy added the recognition of foreign civil protection orders to the HCCH's agenda in 2011. Work by the Permanent Bureau, including an Experts' Group in 2014, followed until 2018, when the Council removed the topic from the agenda, with the understanding that it might be revisited. In 2026, on a proposal from the United Kingdom, the Council mandated the establishment of a Working Group on a potential future convention on the cross-border recognition and enforcement of protection orders, to explore its feasibility further, develop initial policy aims and report in 2027. For that purpose, the Permanent Bureau updated its 2012 questionnaire, and the responses have been published in a compilation. Further developments will depend on the Working Group's report and on the decisions of the Council.[37]

8. Conclusion

In *Purrucker*, Advocate General Sharpston described the risk that the enforceability of urgently necessary measures would "evaporate" at the border. Article 27(5)

[36] Directive (EU) 2024/1385, Art. 19.

[37] HCCH, Council on General Affairs and Policy, Conclusions and Recommendations of April 2011, No 23; Conclusions and Recommendations of March 2018, No 14; Conclusions and Decisions of March 2026, Nos 22–25; HCCH, *Compilation of Responses to the REPO Questionnaire*, Prel. Doc. No 2C of October 2026. The earlier work (2011–2018) on the recognition and enforcement of foreign civil protection orders is available on the HCCH website.

Brussels II ter answers that concern for return cases. Measures taken by the return court to protect the child from the grave risk in Article 13(1)(b) are decisions, and they are recognised and enforced in the State of return until the court of habitual residence has acted. Read closely, the provision, its recitals and its drafting history set fairly clear conditions and point to a coherent role. The counterfactual wording of recitals 45 and 46 suggests that the risk the measures address is the risk as it would stand without them. On that reading, Articles 27(3) and 27(5) can be read as a closed system, in which a court that orders return in reliance on protection would either find that adequate arrangements have been made in the State of return or make them itself.

Practice does not yet seem to reflect this, and the case law suggests several possible reasons, which may reinforce one another. The first is the threshold. Read as a gate that opens only once a grave risk has been established, Article 27(5) has little room, and courts that find no grave risk, sometimes because they assume protection in the State of return, conclude that there is nothing to protect against. The second is uncertainty about scope. The Barcelona order combined measures of parental responsibility with maintenance, enforcement steps and safeguards against renewed flight, and the requests refused in The Hague combined contact arrangements with costs and a period to comply. Uncertainty of this kind may make courts hesitant and invite requests that cannot be granted. The third is procedure. National law may provide no route, or may seem not to, as the Polish rule on provisional measures of the court’s own motion and the Dutch first-instance refusal for want of a legal basis suggest. The fourth is the asymmetry between the two paragraphs. A discretionary power placed beside a mandatory rule may invite courts to treat the power as optional. The fifth is habit. Return courts have long relied on undertakings and on trust in the State of return, while Article 27(5) is new. As late as 2026, a return to a Member State was decided at appellate level under the repealed Brussels II bis, while the Barcelona order came from a chamber that had drawn attention to the provision before it applied. Where the provision is used, familiarity with it may make the difference.

One contextual factor may add to these. On the account of one of its judges, it had become common, at least in his court in England and Wales, to order protective measures that circulated by way of Article 11 of the 1996 Convention. Brussels II bis ceased to apply there at the end of the Brexit transition period on 31 December 2020, before Article 27(5) applied. The practice that the provision codifies may therefore be least familiar in the jurisdictions where it now applies. This is offered as a hypothesis; testing it would require comparative data on the use of Article 11 of the 1996 Convention before 2021.

Much of the remedy may lie within the existing law. A court that considers refusing return under Article 13(1)(b) can begin by naming the risk concretely, asking what would happen to this child on return without protection, as recital 45 envisages and as the Barcelona court did. It can ask the parties early what protection they propose, and establish, through the Central Authorities or direct judicial communication, whether arrangements already exist in the State of return. Where

they do, Article 27(3) applies and no order of its own is needed. Where they do not, the court can consider Article 27(5) measures before turning to refusal or to general reliance on the State of return. The measures it chooses would be measures of parental responsibility, available under its own law and formulated by their effect. They belong in the operative part, precisely and with a time limit tied to the decision of the court of habitual residence, and that court should be informed. The Annex IV certificate can then be issued at a party's request. Where the risk concerns the parent returning with the child, the court can consider whether its own law allows a protection measure that can be certified under Regulation 606/2013. Outside the EU, the 1996 Convention or a mirror order can do similar work. And if return is refused under Article 13(1)(b) or 13(2), the certificate under Article 29 is to be issued. Until the IT systems planned for Regulation 606/2013 and Brussels II ter become operational, currently expected around 2030 and 2033 respectively, certificates will continue to be exchanged by conventional means, which makes it all the more important that they are issued together with the decision.[38]

Lawyers can do much of this work. Lawyers for applicants who wish to answer a grave-risk defence can offer concrete measures for inclusion in the order rather than undertakings. Lawyers for taking parents can request Article 27(5) measures in the alternative, without conceding that return should be ordered, and can apply for the Annex IV certificate and, where relevant, the certificate under Regulation 606/2013. Two questions remain for the Court of Justice and the EU legislature rather than for practice: the threshold for Article 27(5) and the precise scope of the measures it permits. Beyond the EU, the HCCH is exploring the feasibility of an instrument on the cross-border recognition and enforcement of protection orders. National legislatures, for their part, may wish to make clear that return courts can take such measures of their own motion.

The courts examined here often protect children in substance, through residence, contact, housing and keeping the applicant away, but they do so in the reasons, in undertakings or in recommendations. In those forms, the protection is unlikely to reach the State of return. Protection that a court relies on when it orders return should be protection that the child and the returning parent can invoke in the State of return.

[38] HCCH, Prel. Doc. No 2C (above), reply of the European Union, on the digitalisation of Regulation 606/2013 and Brussels II ter.