Child support formulae and the enforcement of child support obligations are notoriously problematic issues within a single jurisdiction, and even more so in an interstate or international context. In this article we consider the regulation of cross-border child support within federated systems, and compare the differing approaches taken to this issue in the United States, Canada and the European Union. We discuss the legal and administrative frameworks governing cross-border child support issues in the federal systems of Canada and the United States, as well as the more recent developments in this area in the European Union. We focus particularly upon the specific legal and administrative mechanisms in place to regulate the ubiquitous problems of determining legal jurisdiction, both to make and modify child support orders; and of ensuring recognition and enforcement of child support orders between states, provinces or EU Member States.

I. THE LEGAL AND ADMINISTRATIVE FRAMEWORK

A. The United States

In the United States, family law rules are almost exclusively based on state law. However, in recent years, family law reforms have derived from uniform laws drafted by the National Commission on Uniform State Laws. Current interstate child support regulation is one example of such reform. Cross-border child support disputes are now governed by the Uniform Interstate Family Support Act (UIFSA). This law has been adopted in some form in all states.

Each state has some form of child support guidelines, with a formula or chart to be used to calculate the presumptive child support award. Some states employ an approach based on the income of the non-resident parent. The parent’s income is multiplied by a specified percentage, based on how many children are to be supported. For example, in Texas the presumptive amount is 20% of the parent’s net income for one child, 25% for two children, or 30% for three children.

The most common child support approach in the US, however, is the ‘Income Shares’ approach. States adopting this approach take into account the income of both parents when calculating the amount of a child support award. Each state using this approach has created a chart which sets out the presumptive total parental support amount based on how many children are involved and the total parental income. The parents’ incomes are added together and the presumptive total parental support obligation is found from looking at the chart. The parents then share that total support obligation based on their relative incomes. So, if the total parental income is $100,000 and the primary carer earns $30,000, the other
parent would bear 70% of the total parental support obligation.

**B. Canada**

Under Canada’s Constitution Act 1867 jurisdiction over family law and child support is split between the federal government and the provincial governments. The federal Parliament has jurisdiction to enact laws on marriage and divorce, including the jurisdiction to make orders for ‘corollary relief’ that arise out of a divorce. This gives the federal Parliament jurisdiction over child support on divorce. The provinces have jurisdiction over child support when parents separate but are not divorcing, over child support in cases where the parents have not married each other, and over the enforcement of all child support orders. In the event that there is both federal and provincial jurisdiction over a matter and there are inconsistent court orders made, the Canadian constitutional doctrine of paramountcy provides that an order under the federal Divorce Act will take precedence over an order under provincial legislation.

Every child in Canada has the right to support from both biological parents, regardless of whether born in or out of wedlock. Child support obligations also extend to those who have acted as a parent towards the child, either through marriage to a biological parent or by assuming responsibility for the child in other ways. Although there is a degree of variation across Canada in models for determining the amount of child support a parent is obliged to pay, issues that arise in relation to the making, modification and enforcement of child support orders when parents are located in different provinces are now resolved in a uniform and effective way, largely as a result of the Divorce Act 1985 and the introduction of Child Support Guidelines in 1997.

Canada developed child support guidelines significantly later than comparable jurisdictions. This delay was a result of the fact that child support is an area of concurrent federal and provincial jurisdiction. It was considered highly desirable to have federal and provincial agreement about the contents of any guidelines before they were introduced, so that all parents and children would be treated in the same way, regardless of whether their cases were resolved under federal or provincial legislation. However, the discussions between the two levels of government and various professional and advocacy groups dragged on for almost a decade; the resulting Child Support Guidelines being a good example of what is often known in Canada as ‘co-operative federalism’. While there remain important areas of family law where there is significant variation in Canada in terms of both substantive law and jurisdictional rules, for example in regard to marital property, there is now uniformity in regard to child support jurisdictional issues, and a substantial degree of commonality in regard to child support regimes.

These federal Child Support Guidelines apply on divorce. The federal government has also allowed provinces to introduce their own model of guidelines, which apply to proceedings in that province under either the federal Divorce Act, or to child support proceedings under provincial legislation, for example involving unmarried parents.

The federal Guidelines adopt a ‘Percentage of obligor’s income’ model, presumptively establishing the amount of child support based on the number of children and the non-custodial parent’s income, but allowing some discretion to raise or lower the amount from the presumptive ‘Table amount’. Quebec is the only province to have adopted a different model of Guidelines, using an ‘Income Shares’ model that is based on the number of children and the income of both parents, and which takes much greater account of the time that a child spends with the non-custodial parent. The Quebec Guidelines apply to both
divorces and non-divorce cases in that province. If the parents are divorcing and one party lives in Quebec and the other lives outside Quebec, the federal Guidelines apply.

In all provinces except Quebec, the federal Guidelines apply to all child support applications under the Divorce Act. Further, each province except Quebec has adopted Guidelines that are very similar to the federal Guidelines to apply to child support proceedings under provincial law, and that have the same jurisdictional rules as the federal Guidelines. There is some variation between provinces in the actual percentage of income that is the presumptive amount of child support, reflecting the fact that income tax rates vary by province, so the presumptive amounts are higher in provinces with lower tax rates, and vice versa. The federal Guidelines, take into account these variations between the provinces, so that the rules governing child support are the same in all provinces, but the actual quantum awarded against payors with the same income varies.

C. The European Union

It is beyond the scope of this article to give detailed consideration to the ways in which child support is dealt with in the various Member States of the European Union, but it is nonetheless possible to identify two main approaches. In many Member States, the amount of child support payable is calculated on a case by case basis according to the circumstances of the parents and the needs of the child. In others, child support is calculated according to mathematical formulae. As the European Union expands, there is increasing potential for diversity among the child support regimes in force within the member states.

Until recently, family law issues including child support were considered to lie entirely outside the remit and jurisdiction of the institutions of the European Union. Questions of family law were, however, covered by a range of bi-lateral agreements and international legal instruments aimed at streamlining procedures for the determination of jurisdiction, and the recognition and enforcement of orders. Expert bodies have also been established in various countries to offer legal advice and assistance to individuals seeking to enforce the child support obligations of parties living in other countries.

In recent years, however, the EU has begun to take steps towards developing an approach to child support and other family law issues which will seek to minimise the impact of divorce and parental separation on the movement of individuals, and the consequent development of the market economy. Under the auspices of promoting cross-national co-operation in civil and commercial matters (Title IV EC), Council Regulation (EC) No 44/2001 on jurisdiction and the recognition of judgments in civil and commercial matters was implemented in 2002. Regulation 44/2001 provides, inter alia, for the mutual recognition and enforcement of child support measures between the EU Member States. Essentially, it renders an order for child support issued in one Member State enforceable in any other Member State to which either the custodial or non-custodial parent subsequently moves. It also streamlines procedures for determining which jurisdiction will be competent to decide on support issues where parties are already living in different Member States. It does not, however, impose new rules or procedures in relation to the substance of the support assessment, which remains within the sole competence of individual national courts.

II. DETERMINING JURISDICTION

One of the principal problems to arise in relation to securing a child support order where parties are living
in different jurisdictions within a federated system is that of determining which court has jurisdiction. The different ways in which this issue has been resolved in the United States, Canada and the European Union are examined below.

A. The United States

In the United States, the established rule in relation to child support is that the court must have ‘personal jurisdiction’ over the non-custodial parent. To have such jurisdiction, the non-custodial parent must either have sufficient contacts with the forum, so that it is not perceived as unfair for him or her to respond to suit there, or he or she must have been served with papers relating to the litigation in the forum (the so-called ‘transient personal jurisdiction’).

Prior to relatively recent attempts to improve the situation, United States law was open to the criticism that it permitted forum-shopping, and with that, choice of applicable law. This was of great significance, not only because a party could be forced to litigate an action in an inconvenient forum, but also because the rules regarding child support vary greatly from state to state. For example, in some states child support continues through university graduation; in many others, support ends on the child’s eighteenth birthday. In addition, there is considerable variation among the states in the formulae for determining the presumptive amount of child support. The decision that a particular state has jurisdiction can thus have a significant impact upon the amount and duration of support received.

What is more, child support awards in the United States are generally modifiable, and it was historically the case that any court with personal jurisdiction over the non-custodial parent could make a child support award, or hear an action to modify an existing award. This led to problems in those instances where more than one state had jurisdiction over the non-custodial parent. For example, where parents lived in different states, the non-custodial out-of-state parent was discouraged from visiting the children due to the concern that he or she might be served with process on entering the state, thereby giving that state the power to modify the existing support order, rendered in another state. With no clear rules regarding which court had the power to modify, multiple orders proliferated. If an order from the court making the original order (state #1) was modified by a court in another state (state #2), the court in state #1 then needed to decide which order to enforce.

Given that it has long been accepted that the substantive rules of family law should be a matter for states, and not the federal government, and that state law rules continue to differ in many significant respects, there was no realistic prospect of solving these problems by attempting the Canadian approach of creating a uniform set of rules applicable to child support issues. Instead, the Uniform Interstate Family Support Act has sought to address cross-border problems by placing significant limitations on the circumstances in which a given state may make or modify an order. According to UIFSA, if a court in a particular state makes a family law order in accordance with the appropriate jurisdictional rules, that state will have exclusive continuing jurisdiction to modify the order, as long as the state maintains some minimum connection with the parties. This system has significantly reduced the chaos in family law orders that previously existed in the United States.

1. Jurisdiction to Make a Child Support Order

Under UIFSA, the general rule is that any state with personal jurisdiction over the non-custodial parent may make an initial child support order. Participation in a UISFA proceeding in a state does not confer
personal jurisdiction over the petitioner in another proceeding, and a petitioner may not be served with process in any other matter while present in the state to participate in the proceeding.

Other than the requirement of personal jurisdiction, the only restriction regarding the making of initial orders arises where petitions for an order are filed in two states at about the same time. In such an instance, if both states have personal jurisdiction over the obligor, priority is given to the child’s home state, even if the action in that state is filed after the other proceeding, as long as the action in the home state is filed before the time expires for a responsive pleading in the action first filed, and the jurisdiction of the first state is challenged. If there is no home state, courts must defer to the court where the first action was filed, if that state has personal jurisdiction over the non-custodial parent.

American law regarding family law jurisdiction in cases of relationship breakdown is based on the assumption that it is appropriate for such actions to be heard in the state of last common domicile. This is true even when one party has moved away as long as the legal action is filed fairly soon thereafter. This reduces the likelihood of forum-shopping when relationship breakdown occurs.

Where the custodial parent lives in one state and the non-custodial parent in another, UIFSA provides two means of obtaining a child support order from the courts of the state where the non-custodial parent resides, assuming that personal jurisdiction exists only in the state where the non-custodial parent resides. One option is to file an action in that state; the other is to initiate proceedings in the state where the custodial parent lives. That state (the ‘initiating state’) then forwards the matter to the state where the non-custodial parent lives (the ‘responding state’), and a court in the responding state will make an order.

Under UIFSA, the court making the order applies its law to determine the amount of support. All questions pertaining to the construction of the order, such as the ‘age of majority’, are to be based on the local state law.

2. Jurisdiction to Modify a Child Support Order

Once an initial order has been made in a particular state, that state becomes the state with the exclusive continuing jurisdiction to modify the order until either:

(i) all parents file a written consent that another forum would be more appropriate, or
(ii) all parents and the child have permanently moved from the forum. Even if all parents and the child have moved from the forum, however, the court will retain its jurisdiction to modify if all parties consent to the continuing exercise of jurisdiction by the court. In addition, a state can recover exclusive jurisdiction to modify if one party moves back to the state, and no modification has occurred during the period when all parties were gone.

As long as one party remains in the state making the initial order, therefore, that state has exclusive continuing jurisdiction to modify. What if everyone permanently leaves? UIFSA contemplates that in such an instance the best result is that a person should be sued where he or she resides. If both parents move to the same state, that state would become the state with jurisdiction to modify. If they move to different states, the situation becomes more complicated. If, after the making of the original child support order in state #1, the non-custodial parent moves to state #2, and the custodial parent to state #3, the following rules apply:
(a) If the custodial parent wanted to file an action to increase support, he or she would need to bring proceedings in state #2. State #2 would apply its law to determine the amount of support. Even though all parties have left state #1, and even though state #3 might have personal jurisdiction over the non-custodial parent, the custodial parent could not file a modification action in state #3 (other than a two-state procedure whereby state #2 would be the initiating state);

(b) Conversely, if in this situation the non-custodial parent desired a reduction in support, he or she would need to bring proceedings in state #3, the custodial parent’s state of residence.

In other words, if a parent wants to modify the order, and the parents now live in different states (neither of which is the state which issued the original order), that parent must bring proceedings in the respondent’s state of residence, not his or her own, regardless of whether both states have personal jurisdiction over both parties.

Once an order has been modified by a court in another state in an instance consistent with UIFSA, that state becomes the new state with continuing exclusive jurisdiction and its guidelines or formula would be used to determine the appropriate amount of support. Recent amendments to UISFA, however, have made it clear that the duration of a modified order should be based on the law of the state which made the original order. It was apparently thought that the certainty and predictability that would result from such a rule was desirable.

**B. Canada**

Since the enactment of a new Divorce Act in 1985, and the introduction of child support guidelines in 1997, many of the jurisdictional problems relating to child support orders have been resolved. In order to deal fully with the question of jurisdiction to make child support orders in Canada, it is necessary to consider both the jurisdictional rules relating to divorce, and those arising from the Interjurisdictional Support Orders statutes that have been enacted in each province. There are, however, substantial similarities between the two regimes, with the quantum of child support usually established by the Child Support Guidelines in the province where the payor resides.

**1. Jurisdiction over Divorce**

Under the Divorce Act 1985, the Superior or Unified Family Court in every Canadian province has jurisdiction to grant a divorce if ‘either spouse has been ordinarily resident’ in that province for at least one year immediately preceding the commencement of the proceedings; the jurisdiction to grant a divorce includes the authority to make a child support order for any ‘child of the marriage’. If the spouses have been ordinarily resident in different provinces for at least one year, the spouse who files a divorce application first can choose the province in which the case is to be heard; if both divorce applications are filed on the same date, the proceedings will be transferred to the Federal Court. Where the parents live in different provinces at the time of the application for divorce, a provisional child support order may be made in the province where the applicant ordinarily resides, and transmitted to the court where the respondent resides, so that a hearing can be held to determine the appropriate amount of child support.

Under the federal Child Support Guidelines the amount of child support is to be determined according to the Table of the province in which the non-custodial parent ‘ordinarily resides’. If the non-custodial parent moves to another province, either parent may seek a variation in accordance with the Table of that
province. Similarly, if a court is satisfied that the non-custodial parent will ‘in the near future … ordinarily reside’ in another province, the court may use the Table of that province to calculate the child support.

Following the making of a child support order under the Divorce Act, the courts of the province in which either former spouse is ‘ordinarily resident’ have the jurisdiction to vary the order, provided that there is not a previously commenced variation application underway in another province. If either the initial or variation proceedings involve custody or access issues, they may be transferred by the court where the proceedings were commenced to a court in the province with which the child is ‘most substantially connected’.

2. The Interjurisdictional Support Orders Act

Provincial child support legislation governs cases where the parents are not married to each other, or the parents are married and have separated, but are not seeking a divorce. Historically, there were significant problems when parents lived in different provinces, with differences in legislation between the provinces resulting in potential duplication of proceedings, uncertainty as to which province’s laws applied, and difficulties with enforcement. Provinces tried to address these problems by enacting Reciprocal Enforcement of Support Orders statutes. However, in order to obtain or vary support under these statutes, two hearings were required: one in the applicant’s province and another in the respondent’s province.

In 2001, the provinces began implementing a uniform and simplified regime for the making of inter-provincial support orders in cases not involving divorce, with each province undertaking to enact a virtually identical Interjurisdictional Support Orders Act (ISO). These statutes apply if the parents live in different Canadian provinces, but are not getting a divorce or are not married. They also apply, with some modifications, to cases in which a respondent (or claimant) lives outside Canada in a ‘reciprocating’ jurisdiction.

Under these provincial Acts, an applicant for child support must complete a comprehensive package of forms that are sworn as an affidavit and sent from officials in the applicant’s province to a justice official in the respondent’s province. The application will then be dealt with by the courts of the respondent’s jurisdiction. The ISO regime eliminates the need for a hearing in the applicant’s jurisdiction. It has also streamlined the process for registration and variation of support orders when the parents live in different jurisdictions.

Entitlement to child support under the ISO regime may be based either on the law of the child’s ordinary residence or of the respondent’s residence, but within Canada the quantum of child support is determined under the Child Support Guidelines of the respondent’s residence. While the variation process is more cumbersome than for original applications, within Canada the quantum of child support is determined by the Child Support Guidelines where the respondent resides, and hence may be varied if the respondent moves or his income changes.

C. The European Union

The rules governing the jurisdiction of EU Member States to make child support orders are laid down in Regulation 44/2001. Since its implementation in 2002, this Regulation has been directly applicable in EU
Member States, with the effect that its provisions can be relied on in court actions in those states. According to the Regulation, jurisdiction to make a maintenance or child support order is to be determined by the domicile of the maintenance debtor, or the domicile or habitual residence of the maintenance creditor. Where parents are domiciled in different Member States, therefore, the courts of each State will have jurisdiction to deal with child support. Whether or not a person is domiciled in a Member State is to be determined according to the internal law of that State.

Where competing proceedings are commenced in different Member States, the proceedings in all courts except the court ‘first-seised’ must be stayed until the jurisdiction of the latter court is established. Once such jurisdiction is established, any other court must decline jurisdiction. A court is deemed to be seised either i) when the document initiating the proceedings, or an equivalent document, is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps required to have service effected on the defendant; or ii) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court. Once a court in a particular Member State assumes jurisdiction and makes a child support order, that court will retain jurisdiction, regardless of continuing contact between the parents and the forum.

The combined effect of these rules is that if a parent were so inclined, if no action has yet been commenced, he or she could move between Member States in order to take advantage of a legal system more favourable to his or her case. Practical considerations aside, the only checks on this would be that the parent would have to acquire domicile or habitual residence in the State in which he or she wished to bring proceedings, and would have to ensure that a court in that State was seised of the matter before a court in any other Member State.

III. CROSS-BORDER ENFORCEMENT OF CHILD SUPPORT ORDERS

Once a child support order is made, the parties face a fresh set of potential difficulties concerning effective and ongoing enforcement of the order across jurisdictional boundaries. The following section sets out the approaches of the United States, Canada and the European Union towards the enforcement of cross-border child support orders.

A. The United States

Historically, to enforce a support order in another state it was necessary to file an action in the other state and obtain an order from a local court. This was burdensome, time-consuming, and expensive.

UIFSA addresses the issue of enforcement in various ways depending upon the remedy. So, an income withholding order issued by a court of one state is automatically enforceable in another. The non-custodial parent may, however, initiate proceedings in the second state to contest the validity of the order. For other remedies, such as licence suspension, the order must generally be registered in the second state. This registration does not affect the continuing exclusive jurisdiction of the court which made the order. The tribunal in which the order is registered is instructed to notify the non-registering party. That party may contest the validity of the order. As an alternative to registration, the order may be sent by a party or a support enforcement agency to a support enforcement agency in the state where the order is to be enforced.
**B. Canada**

A child support order made under the federal Divorce Act, has legal effect throughout Canada and can be enforced under the provincial law of the province where the non-custodial parent resides simply by registering the order in that province. An order validly made under provincial legislation, because the non-custodial parent was ordinarily resident within that province when the order was made, is enforceable by registration under the ISO regime in any other province to which the parent has moved, or in which he or she has assets.

All provinces in Canada have public agencies to enforce child support orders without charge to the recipient, including taking responsibility for extra-provincial enforcement.

**C. The European Union**

A child support order made in an EU Member State will, save for some limited exceptional circumstances, be automatically recognised in another Member State, and will be enforced on completion of certain formalities (otherwise known as ‘exequatur’ - a term which refers to the intermediate measures required to render an order made in one state enforceable in another) within the applicable ‘receiving’ Member State. National courts are precluded from reviewing the substance of the foreign order before declaring it enforceable.

**IV. DISCUSSION**

There are two key problem areas in relation to the regulation of cross-border child support within federal or federal-like systems. First, there are difficulties caused by the substance and procedures of the mechanisms used to determine jurisdiction and applicable law. Secondly, ensuring ongoing observance of orders can be highly problematic. The various approaches adopted towards these issues in the United States, Canada and the European Union and their implications may be summarised as follows.

In the United States, there is a good deal of divergence between states in the substantive rules governing child support, so that the amount and duration of child support orders may vary considerably from state to state. The making, variation and enforcement of cross-border child support orders, however, are now dealt with in a uniform way under UIFSA. Jurisdiction to make a child support order is based upon personal jurisdiction over the non-custodial parent.

The system in the United States tries to ensure that child support (and indeed custody) issues are resolved in the last matrimonial domicile. Where proceedings are commenced in two states, priority is given to the child’s ‘home state’. Once an initial order has been made in a particular state, the courts of that state retain exclusive continuing jurisdiction to modify the order, unless the parents declare in writing that another state should have jurisdiction, or both parents and the child have permanently moved from the state making the original order. The steps necessary to achieve cross-border enforcement vary according to the remedy; sometimes no action is required, sometimes the order must be registered, or forwarded to an enforcement agency in the appropriate state.

While the rules on jurisdiction to make child support orders are now clear, different jurisdictional rules
will apply in the United States in relation to other desired remedies. It is not uncommon for a court to have the power to grant some relief (say, to grant a divorce) but not resolve other matters. This aspect of United States law has been criticised, because it could lead, for example, to a situation where a state can have jurisdiction to make a custody determination (which does not require personal jurisdiction), but cannot order child support (which does).

Unlike in the United States, in Canada there is now a near uniform approach among the provinces to the question of determining the amount of child support payable. Further, at least within Canada, there is a uniform approach to jurisdictional, variation and enforcement issues. The federal Child Support Guidelines are mirrored by the provincial Guidelines in every province except Quebec, which has its own model of guidelines that apply to all proceedings in that province. The quantum of child support is determined by the Guidelines where the respondent payor ordinarily resides. While there are differences in the actual amounts payable from province to province, there is no child support-based economic incentive to move between provinces, as provinces with lower child support amounts have higher tax rates.

The approaches of Member States of the European Union towards child support vary widely. The questions of jurisdiction to make an order, recognition and enforcement of orders, are, however, dealt with uniformly within the EU under Regulation 44/2001. Jurisdiction under the Regulation is based upon the domicile of the parents. Where competing proceedings are issued, the court ‘first seised’ takes jurisdiction. Jurisdiction is retained by the court making the original order. Orders may, however, be enforced in other Member States, if the appropriate formalities have been complied with.

The development of effective, uniform child support laws in Canada is noteworthy. The provinces and federal government have been able to co-operate to establish a comprehensive child support regime, albeit allowing for Quebec (and any other province that might choose to do so) to have its own model of child support for cases where both parents reside in that province. This effective, uniform approach to child support stands in sharp contrast to what has happened in most areas of law in which there is provincial, or concurrent federal and provincial, responsibility, where it has been much more difficult to achieve uniform laws, despite economic pressures to do so. The diversity of approach to many legal issues in Canada may in part reflect the tensions between the common law jurisdictions and Quebec, with its civil law traditions, as well as political tensions and the desire for provincial autonomy. In regard to child support, however, policymakers have been prepared to make compromises to achieve a coherent regime, against the background of which matters of cross-border jurisdiction, recognition and enforcement become relatively unproblematic. Such legal coherence is not, however, a realistic prospect in either the United States or the European Union at the present time.

In both the United States and the European Union, the variety of child support regimes in operation, means that questions of jurisdiction, recognition and enforcement of child support orders may have far greater impact than in Canada. In the United States and the European Union such questions are resolved according to uniform criteria to be applied in each state or Member State. Various potential problems have been identified as arising from this sort of approach.

One potential consequence of the United States and European Union approach is that parents may relocate from one state or Member State to another in order to take advantage of a more favourable child support regime. In Canada, there is no problem of parents relocating to take advantage of lower child support rates because the jurisdictions with the lowest child support rates (Newfoundland and Quebec) have the highest tax rates, so even if a parent were able and inclined to move for this reason, there would
be no advantage in doing so. There is no such systematic disincentive within either the United States or the European Union. Regarding initial jurisdiction, the US approach gives priority to the child’s ‘home state’ (where the child has been for the last six months), and this priority helps reduce the likelihood of parents ‘shopping’ for a more favourable forum or applicable law. Also, in the US the rendering state must have ‘personal jurisdiction’ over the obligor, which further limits the potential for forum-shopping. In contrast, the EU system, which permits any state to exercise initial jurisdiction if it is the domicile of a parent, seems more likely to permit parents to ‘shop’ for a favourable legal system. While there has been some considerable debate in other contexts about the advantages and disadvantages of a system which allows litigants to select a legal regime in this way, in the context of child support, where levels of support are often closely linked to social security provision and the availability of other services for children and parents, it seems hard to resist the conclusion that such behaviour is generally undesirable.

The US and EU approaches of continuing exclusive jurisdiction can also give rise to problems relating to the appropriateness of the support order in the context of the substantive law and welfare provisions of the new state. Neither system addresses the different levels of family support provided by different states. This may not present significant issues in the US, where levels of family support do not vary greatly. In the EU, however, this point could be much more important. This can result in unfairness if a parent moves from a state with a comparatively low child support rate, but generous family support, to a state with higher child support rates, but less state support for the family. The parent and child would then receive much less state support, but the child support would be unchanged. In addition to the problem of potential unfairness, the fact that in the EU the state with initial jurisdiction never loses it can also lead to practical difficulties. For example, if all parties have moved away, it may be quite inconvenient to deal with agencies or courts in the former home. The US system allows for a change in exclusive jurisdiction if all parents leave the jurisdiction, or if they agree that another forum would be more appropriate. Such flexibility may be useful in the EU context.

It should be appreciated that practical difficulties abound in the context of cross-border child support. The problem of tracing parents who are resolute on hopping between jurisdictions in avoidance of their obligations is present in each of the systems under consideration. American states are experimenting with how to deal with situations when the non-custodial parent moves from one state to another, and ‘new hire reporting’ has been instituted, so that now there is a national data-base of newly-hired employees. This has helped courts keep track of migrating parents and their current employers, but has not removed the problem entirely. The answer to such difficulties may lie in increased harmonisation of national laws. Even in Canada, where federal-provincial co-operation has produced a uniform and effective approach to the resolution of jurisdictional issues concerning the making, variation and enforcement of child support orders, there remain great practical problems when non-custodial parents move. Although legislation gives recipient parents and public enforcement agencies access to extra-provincial and national data banks to help locate non-custodial parents and to enforce child support orders, practical problems related to child support enforcement are often exacerbated when the non-custodial parent moves.

Practical difficulties notwithstanding, there may well be benefits in moving towards increased harmonisation of national child support laws. Such harmonisation would at least ensure financial security and consistency for children faced with the upheaval, trauma and uncertainty that typically characterises relationship breakdown and parental separation. At least in the short-term, however, there is no prospect of such harmonisation in either the US or the EU. There is, however, potential for greater co-ordination and co-operation between the authorities in each Member State responsible for dealing with issues relating to cross-border child support orders. In the EU context there have been calls for the
establishment of a centralised body to oversee such issues. In the US, the National Child Support Enforcement Association helps states develop best practices relating to child support. The most imminent development in this field in the European Union relates to the enforcement of orders. At present, there are intermediate steps to be taken, under the process known as ‘exequatur’, before a child support order becomes enforceable in another Member State. In November 2000, however, the Justice and Home Affairs Council adopted a programme aimed at abolishing ‘exequatur’ for all measures taken under Title IV. This was followed by a Commission proposal in April 2002 recommending the abolition of the ‘exequatur’ procedure to render all uncontested decisions taken within the scope of Regulation 44/2001 automatically enforceable between Member States. Such a step has already been taken in relation to access orders and orders for the return of the child from one Member State to another following abduction. If implemented in relation to child support, these measures would significantly improve the position of a custodial parent seeking immediate enforcement of a foreign support order in his or her Member State of residence.