



**COUNCIL OF
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NOTE

from:	the Presidency
to:	Coreper / Council
Subject:	Conclusions of the ministerial seminar organised by the Belgian Presidency concerning international family mediation in cases of international child abduction

Delegations will find in the annex the conclusions of the ministerial seminar organised by the Belgian Presidency concerning international family mediation in cases of international child abduction.

**Conclusions of the ministerial seminar on 14th of October 2010
concerning international family mediation in cases of
international child abduction**

Within the framework of the Belgian Presidency of the Council of European Union, a ministerial seminar concerning international family mediation in cases of international child abduction was held on 14th of October 2010 in Brussels, in the presence of Ministers and Member States' representatives in charge of child abduction, the European Commission, the European Parliament Mediator for International Parental Child Abduction and representatives of The Hague Conference on Private International Law. The purpose of this seminar is to promote international family mediation in cases of international parental child abduction.

In order to prepare this seminar, a non-paper and a questionnaire were sent to the delegations early July 2010. They gave rise to numerous replies and comments which were taken into account in the conclusions mentioned in part III of the present note.

I. INTRODUCTION

The promotion and the protection of fundamental rights are the foundation stone and the cradle of our democracy. The area of freedom, security and justice must be a unique area of protection for the fundamental rights, notably enshrined in the Charter of Fundamental Rights and the Convention on the Rights of the Child.

Today, European citizens, living in an environment of growing exchanges and mobility, are making more and more multinational marriages inside as well as outside Europe. If the citizens' everyday life is enriched by these new family compositions, problems due to this blended environment and to the rise in separations and divorces have also expanded, making the situations of international parental child abductions particularly hard and conflictual.

The Brussels IIa Regulation¹ within the European Union already overcomes many problems but it appears that there is an increasing need to find additional means to solve these conflicts.

II. BACKGROUND

The principle of access to justice is fundamental and, with a view to making it easier, the European Council, meeting in Tampere on 15 and 16 October 1999, called for extra-judicial procedures of dispute resolution to be created by the Member States. Moreover, the principle of mutual recognition of judicial sentences was approved as the cornerstone of this area of justice.

In May 2000, the Council adopted conclusions on alternative dispute resolution in civil and commercial law, stating that the establishment of basic principles in this area was an essential step to allow the appropriate development and operation of extrajudicial procedures for the settlement of disputes in civil and commercial matters, so as to simplify and improve access to justice.

In April 2002 the Commission presented a Green Paper on alternative dispute resolution in civil and commercial law.

The Directive 2008/52/CE of the European Parliament and of the Council on certain aspects of the mediation in civil and commercial matters was adopted on 21 May 2008.

¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

The Directive is based on the principle that “*mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements*”.¹

Within the framework of parental responsibility, the Brussels IIa Regulation holds that central authorities shall cooperate both in general manner and in specific cases, including for purposes of promoting the amicable resolution of family disputes, in matters of parental responsibility. This cooperation is notably based on their participation in the European Judicial Network in civil and commercial matters. In specific cases, the central authorities take all appropriate steps to “facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end”.

At international level, The Hague Conference has been working for a long time in order to facilitate negotiated solutions between parties in cross-border family disputes. On the one hand, a working party composed of experts – notably mediators from various countries – is making progress in elaborating a manual on best practices in mediation within the contractual framework. On the other hand, The Hague Conference promotes the creation of a mediation structure beyond this contractual framework.

Another working party has been set up, gathering States Parties or States not Parties of very different legal traditions. Their works suggest that the creation of central contact points in every country may be a major preliminary step as well as the adoption of a certain number of principles, which seems to facilitate the provision of information to the person subject to trial.

Moreover, the specific function of European Parliament Mediator for International Parental Child Abduction was created in 1987.

¹ See 6th recital of the Directive 2008/52/CE of the European Parliament and of the Council of 21 May 2008 on certain aspects of the mediation in civil and commercial matters.

III. CONCLUSIONS

These considerations being taken into account, the participants recognize the importance of the seminar organized by the Belgian Presidency and aiming at promoting international family mediation, in particular for painful cases of international parental child abduction, as for cases in which the abduction occurs towards a State Party to the Hague Convention as in cases in which the abduction occurs towards a State not Party to a Convention.

The participants consider that the international family mediation can, in the cases of international child abduction, represent an efficient way to prevent disputes, which is compatible with and complementary to the applicable legal instruments, while favouring the interest of the child.

The participants are convinced that international family mediation can represent an efficient method to resolve these painful conflicts. Mediation most often leads to lasting and balanced solutions as they were discussed and accepted on a free basis by the parties. This enables, on the one hand, to resume the dialogue and to pacify conflicts between the parents and, on the other hand, to avoid potential repetitions and promote the voluntary enforcement of decisions, in the higher interest of the child.

With the prospect of further work, at Community and international level, on promotion and implementation of the international family mediation in these painful situations, the participants in this seminar:

- invite the Member States and the Commission to take into account and pool the information related to national, European or international hands-on experiments going on in this field;
- invite the Member States and the Commission to specially take into account the works which are currently carried out within The Hague Conference on Private International Law;

- invite the Member States to consider the particular issue of child abduction during the transposition and /or the implementation of the Directive 2008/52/CE of the European Parliament and of the Council of 21 May 2008 on certain aspects of the mediation in civil and commercial matters;
- encourage the Member States to work on the implementation of pilot projects, including the encouragement to a specific training for the international family mediators and other professionals involved in the international family mediations;
- invite the European Commission and the Council to consider the funding of such projects and programmes via funding programmes dedicated to civil justice;
- invite the Member States and the Commission to consider the possibility of setting up a specific working party within the European Judicial Network in civil matters, and which would notably be composed of the central authorities. It will be possible to appeal to the expertise of the European Parliament Mediator for International Parental Child Abduction, of mediators and organizations specialized in cases of child abduction, and of liaison judges for cases of child abduction, in order to draw a synthesis of the different related initiatives and works, notably those of The Hague Conference. This working party will report about its work and will propose to the Council and the Commission the most appropriate and efficient means to promote and improve the use of the international family mediation in cases of international parental child abduction, in compliance with the applicable legal instruments as well as when the abduction occurs towards a State which is not Party to any Conventions;
- invite the Commission to take into account the present conclusions during its further potential legislative works concerning the family mediation and regarding the issues related to parental authority, rights of custody, rights of access and international child abductions.
