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EUROMED JUSTICE III PROJECT
Component II
Resolution of cross-border family conflicts
WG 2.3

PREPARATION OF A HANDBOOK
“Resolution of cross-border family conflicts: custody and visiting rights. Private international law and mixed marriages. Special reference to child abduction.”
11-13 December 2012
Madrid (ES)

INFORMATIVE NOTE

1. - General Information

2. - Main discussion items addressed during the meeting

3. - Summary of the main provisional results obtained during the meeting

1. - General Information

The 3rd meeting of the Working Group 2 under the EuroMed Justice III Project took place on 11-13 December 2012 in Madrid (ES) at the Hotel Catalonia Atocha.

This event was attended by representatives of 7 ENPI South partner countries, with 20 representatives in total attending the meeting.

The meeting was officially opened by *Mr Angel Llorente*, Director of International Cooperation, Spanish Ministry of Justice, and by *Andrés Salcedo* Team Leader; it was officially closed by *Andrés Salcedo*.

The meeting was attended by representatives of:

Algeria (3)
Egypt (3)
Israel (3)
Jordan (3)
Lebanon (3)
Morocco (3)
Tunisia (2)

The Syrian Arab Republic (formally part of the project even if there is a partial and temporary suspension of the EuroMed Justice III project in terms of Syrian participation), was not represented at this event. In addition, it was not possible to have Libya, as new ENPI South beneficiary country of the project, send a representative to the meeting. The same remark applies to the Palestinian Authority in spite of the efforts made by the Project Team and the UE Delegation.

Furthermore, the meeting was also attended by:

Main Short-Term Expert: Ms Juliane Hirsch (DE)

Short-Term Experts: Representative of the Spanish Ministry of Justice, Mr Javier FORCADA, Legal Advisor, Spanish Ministry of Justice, General Directorate of International Judicial Cooperation and Religious Affairs; Senior Family judge, appointed at the last minute by the Spanish NFP; and the Rt. Hon. Lord Justice Mathew Thorpe (UK), Head of International Family Justice for England & Wales, United Kingdom.

In total: 27 participants, including the Project Team, the MSTE (1) and the Short-Term Experts (2).

Regarding the profile of the participants, most of them were high-level senior magistrates of the Supreme Court, high officials of the Ministry of Justice, judges and public prosecutors, Ministry of Justice central services, counsellors of the legal services of the Ministry of Justice, etc. A number of participants, besides being magistrates, are also engaged within certain departments of their respective Ministries of Justice.

All the participants were experts in the field covered by the meeting; many of them have a long-standing experience and they showed a deep interest in the different presentations and topics discussed. Each presentation was followed by a debate and the discussions were constructive and very fruitful

In addition to the meeting agenda, relevant documentation and a general information leaflet were handed out to the participants, and also sent to them ahead of the meeting and, previously a suggested list of reading documents was sent to the participants through the National Focal Points and included in the project website.

The agenda of the meeting included presentations made by the key experts of the Project Team. These presentations were made by Mr Andrés Salcedo, Team Leader (General presentation and conclusions obtained during the first and second meeting on this component), by Mr José Maria Fernández Villalobos, Course Manager (Organisation and methodology of the Working Groups meetings), and Ms Juliane Hirsch, Main Short-Term Expert (Scope and general contents of the debate during this Working Group meeting). Furthermore, two thematic presentations were made during the meeting, the first one on “Child abduction and other cross-border family conflicts: practical approach. The Spanish experience”, was made by Mr Javier Forcada, Legal Advisor, Spanish Ministry of Justice, General Directorate of International Judicial Cooperation and Religious Affairs; Senior Family judge. The second presentation on “Helping to solve cross-border family conflicts: complementary perspectives”, was delivered by the Rt. Hon. Lord Justice Mathew Thorpe (UK).

2. - Main discussion items addressed during the meeting

The representatives of the Mediterranean Partners took then the floor to make a presentation on the current situation in this field in their respective countries. These presentations were followed by a general debate. The debates were focused on a discussion on best practices that are needed in the field of resolution of cross-border family conflicts. The aim of the meeting was to make progress in identifying criteria that can be translated into best practices in the field of resolution of cross-border family conflicts and that have been accepted by general consensus by the experts attending this third meeting. Furthermore, advanced draft versions of the conclusions of the first and second meeting were presented. All countries suggested small amendments to the draft and acknowledged the work carried out by Ms Hirsch.

During this third meeting the work revolved around an analysis of the difficulties that explain why the majority of the States have not yet signed or ratified the Hague Conventions of 1996 and 1980, even though some countries participate in the Malta process, or have signed the UN Convention on the Rights of the Child. The debates have revealed major differences between the participating countries and between these and the situation in the EU countries.

First of all the discussion was on issues related to the criteria for selecting the competent jurisdiction, focusing on the pros and cons of the criterion of habitual residence and its acceptance as a general regulating criterion. The discussion also revealed real and current differences between the various systems, while trying to reach some approximation among the different systems and realities of each participating country.

Afterwards, the existence of parallel procedures in various countries was discussed. Participants also addressed the criteria to solve this problem and expressed contrasted positions with regard to good practices such as direct communications between judges or putting in place interim mechanisms.

Lastly, participants could also discuss about the recognition and enforcement of foreign decisions and came to the conclusion that there is a diversity of legal regimes and specific application problems, as well as possible solutions such as concentration of jurisdiction. Afterwards, participants identified good practices with regards to dissemination of relevant information to citizens and professionals and the peculiarities of such practices. The discussion also dealt with guarantee and protection measures to avoid wrongful removal or infringement of contact rights and the various reactions possible to a credible risk. Finally the discussion was concluded with other elements such as international child abduction.

3. - Summary of the main provisional results obtained during the meeting

Considering the objectives of this meeting and taking into account the recommendations made during the working sessions and the debate, the participants approved a document called Final Conclusions in which they stressed that this third meeting gave them the opportunity:

- a) To continue the debate and the overall approach to the handbook which identifies and describes possible approaches and best practices to improve resolution of cross-border family conflicts. In this respect there was a discussion and agreement on the work developed by the main short-term expert, Ms Juliane Hirsch, as a result of the first and second meeting.
- b) To follow the methodology agreed during the first meeting and, in this context, to have the opportunity to listen to the different approaches and opinions from the beneficiary countries' participants regarding the topics addressed during this third meeting.
- c) To be updated on the content of the project website and the separate forum (document folder, etc.) specially developed for this working group. On this point, there was general agreement on the advisability of using it as much as possible in between the different meetings for possible contributions and in order to keep in touch with the participants, experts and project team.
- d) To discuss and analyse the current situation of the project beneficiary countries with regards to the ratification, transposition and/or implementation of the Hague Conventions of 1996 and 1980, even though some countries participate in the Malta process or have signed the UN Convention on the Rights of the Child or other bilateral conventions or protocols, and reviewing current or potential obstacles to this ratification.
- e) To discuss on the best practices related to the topics on the agenda of the present meeting, such as the following topics: criteria governing international jurisdiction, problems related to conflicts of jurisdiction and conflicting decisions, how to improve and accelerate the recognition and enforcement abroad of decisions in cross-border family disputes, possibility of obtaining protective, urgent or interim measures or, finally, cross-border wrongful removal or retention of children.

- f) In addition, the main topic that will be discussed during the next meeting was announced, i.e. "Resolution of cross-border family conflicts: custody and visiting rights. Mediation and other means of Alternative Dispute Resolution".
- g) To promote mutual understanding and knowledge of the different judicial systems concerning cross-border family conflicts in the different countries that were represented at the meeting.
- h) To further strengthen cooperation among the Euro-Mediterranean Partners in the field of justice.
- i) To have a fruitful debate on the state of play in the field of cross-border family conflicts in the Mediterranean countries, while presenting their respective experience and legal framework.
- j) To reach some additional agreements on the contents of the handbook that should be produced by this Working Group at the end of its 5 meetings.
- k) To start the discussion on the contents of the training sessions and study visits that will be developed during the second phase of the project.

Participants also expressed the intention:

- ❑ To further reinforce the dialogue and to continue to work together in between the five meetings devoted to this component in order to produce the handbook expected at the end of their work. To this end, they could use the virtual platform on the EuroMed Justice III project website.
- ❑ To inform the relevant authorities and institutions in their respective countries of the results of this WG meeting so that they can also take advantage of the experience gained during this meeting.

Finally and taking into account the main objective of this working group - the handbook - and considering that the work will be developed during 5 working group meetings, the last one being in April 2013, the participants agreed to continue and finalise the discussion on these topics during the next meeting without prejudice of the possibility for them of being in contact with the expert, project team and among themselves through the above-mentioned virtual platform on the project website.

The participants have also been informed that the third meeting of this Working Group is planned to take place on 5-7 March 2013.

Participants agreed with the conclusions of this meeting.

Participants were grateful to the Directorate-General Development and Co-operation- EuropeAid, European Commission, to the Spanish Ministry of Justice and to the Project Team for organising this meeting.

Barcelona, December 2012