



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR JUSTICE, FREEDOM AND SECURITY
Directorate E: Justice
Unit E2: Civil Justice

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DBB
To the attention of
Ms Letitia DUMONT
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Subject: Service contract n° JLS/2007/C4/017

Comparative study on adoption procedures in the Member States of the European Union, practical difficulties encountered in this area by European citizens in the context of a European area of justice in civil matters, and options available for resolving such difficulties and protecting children's rights.

Dear Madam/Sir,

With reference to your letter of 25 March 2009 by which you have submitted to the Commission the final report of the above mentioned study, please find here our observations pursuant Article 1.3.3.(Final study) of the technical specifications.

I regret to say that, even though some remarkable improvements have been brought to the overall presentation of the study (as requested in our letter of 23 February 2009), there are still several changes needed for the Commission in order to be able to accept the study.

From the outset, we notice that the study as it has been conceived does not respond to the objective which the Commission has set itself: that is to demonstrate on the basis of a legal and empirical analysis that a procedure for adoption at European level is needed.

The data at our disposal in the study do not allow us to claim for such a need: no practical difficulties or shortcomings specific for European citizens has been underlined, the common complaints about length and excessive costs of the adoption procedure are valid for every type of inter-country adoption and the interviews have pointed out that the main problems have arisen with the States which are not part of the Hague Convention on inter-country adoption (while almost all Member States are parties of it).

We notice that in most of the cases the data on intra-European adoptions are simply not available, as they are mixed with the general inter-country adoptions so it is impossible to have an idea of the figures to corroborate the need of a European action in this field.

Still, we notice that also in the empirical study is often stated that "*European adoption is not foreseen by the law*" or something similar, which is simply obvious, because such a procedure does not exist. But, if the Ministry of Justice, the Central Authorities or other bodies have figures concerning inter-country adoption (which should contain the country of origin of the child) it should not have been impossible to take out from these data the ones concerning adoption between Member States (for instance this has been done with Denmark-pag.525 of the empirical study).

Moreover, the great majority of interviewees seem to consider that "*the procedure of adoption is adapted to the child interest*" and so are "*the selection criteria for adoptive parents and children selection*".

Therefore, on the basis of the results of the study one could argue that no action at European level is needed.

A useful source of information could have been the websites of adoptive parents because in the on-line forums the main difficult issues on adoption are discussed and this was a specific suggestion contained in the technical specifications at point 1.2.3 (Sources of information).

Also the Central Authorities in all Member States (except Greece) pursuant to the Hague Convention should have been consulted because they dispose of official data on inter-country adoption and it would have been possible to take out from their statistics the data concerning adoptions between EU Member States.

The legal analysis provides for a very academic description of the legislation into force in the different Member States but the data on the practical application of this legislation are missing and the relevant case-law as well.

Anyway, to render the study at least partly useful, the following changes are needed:

a) the chapter "*European Union competencies*" should be totally redrafted in order to eliminate the non necessary parties concerning for instance the Treaty on the Constitution, the Hague Programme and initiatives taken in other fields such as succession and wills or the financial programmes which have nothing to do with adoption.

The chapter should concentrate on the current legislation (Art.65 of the Treaty), the possible changes subject to the ratification of the Treaty of Lisbon and on the possibilities given to the Commission to act in the field of adoption pursuant to this legal basis.

Moreover, the chapter should concentrate on adoption issues and recall the results of the Eurobarometer survey (N° 188, also mentioned in the technical specifications) calling the EU to act in the field of adoption. Also the initiatives taken by the European Parliament should be considered (the conference of 9th November 2006 was devoted to the issue of a possible European adoption).

The big problem of the change of legislation in Romania and Bulgaria following their accession to the EU should be mentioned somewhere as this problem has been the "trigger" of the Commission initiative in the field of European adoption.

b) the chapter "*The International Document about child adoption*" should be improved by changing its title with a more suitable one and by avoid references to Title V of the Treaty (Common Foreign and Security Policy) which has nothing to do with civil law issues in general and with adoption in particular. Only the international legislation about child adoption should be considered: references to measures taken in the criminal area are not consistent with the scope of the study. It seems that there is also a sort of confusion between the Hague Conference of Private International Law and the Hague Programme which are completely different issues. The part concerning the Council of Europe Convention on adoption should be updated by mentioning the revised Convention N° 202 open for signature on 27/11/2008.

c) the "*Conclusions*" and the "*Policy option*" should be redrafted.

The "*Conclusions*" should be based on the results of the study. If the results of the study are not able to provide data or to report problems relating to adoption between Member States this outcome should be pointed out. However, the fact that there are insufficient data does not mean necessarily that the problem does not exist, but at least the difficulties of the contractor in finding the information, the reluctance of certain interviewees, the reticence of the sources should be underlined (because this is a justification of the lack of results also).

We notice that the current conclusions could easily be referred to national adoptions: there are no specific conclusions regarding the fundamental issue of the study which is adoption between EU Member States. At least, even if the data are missing, you should have tried to extract a synthesis from the legislation of the Member States. For instance, some legislation could be deemed as discriminatory because foreigner (included EU citizens) cannot adopt even though they are legally residents in a certain Member State. This cannot be accepted in the light of the principle of the non discrimination on the basis of the nationality. Moreover, the lack of recognition of adoption decrees issued in another Member State could limit the freedom of movement of EU citizens because the adoptive parent cannot reside in this Member State with his/her child (as for this Member State he/she is not considered the parent of the child with all the legal consequences of this).

The *Conclusions* should require an effort of thinking ahead of the present situation: for instance, one could argue that in the light of the common area of justice and mutual trust which the EU tries to establish between Member States, the provisions of the Hague Convention which foreseen inter-country adoption only as a last resort solution could be seen as not adequate for EU Member States: the right of the child to have a family (principle which currently does not exist in international legislation) could be established by the EU and preferred to the option of leaving the child in institutional care until 18 years old in his/her country of origin. Provisions on how to maintain some links (cultural, linguistic, for instance) with the Member State of origin of the child could be imagined as post-adoption requirements.

The *Conclusions* should also be realistic and based on the current Community acquis: we cannot say that the EU has to harmonize the family law (p.189 Synthesis Report) because this is out of question on the basis of the Art.65. The challenge is exactly to find a way to

improve the situation on the basis of the limited competencies that the EU has in this field. And this lead to the issue of the "*Policy option*".

The contractor has proposed one *policy option*: the establishment of a European adoption procedure. But, first of all, to have only one option is a contradiction in terms: the options should be more than one by definition. Secondly, the need for such a procedure should be demonstrated (and this has not been done by the study). Thirdly, the advantages and shortcomings of every option should be indicated. Also the taking of no action (*status quo option*) is a possible option but we have to indicate the consequences of this lack of action. One can think of measures of *soft law* (such as improving cooperation between Member States, for instance between Central Authorities already established under the Hague Convention) or of legislative obligations for Member States (e.g. EC Directive) to recognize adoption decrees all over Europe or to establish a common certificate for Adoption or even at the establishment of a European Agency for adoption.

d) In the Synthesis Report (pag.144) the fact the Latvia has ratified in year 2000 the European Convention on adoption (which is a Council of Europe Convention dealing with the principles governing national adoption) does not mean that "*Latvia has a proper legislation on the European adoption*" at all! This could lead to misunderstanding because one could argue from such a statement that Latvia has already set up a specific legislation to deal with intra-European adoptions which is absolutely not the case (at least from the Legal Analysis).

e) As we have already noticed in our previous letter the quality of the English language is very poor for most part of the study. In particular the conclusions, the policy options and the chapter on European competencies at least should be checked by an English mother tongue because it seems that sometimes an automatic translator has been used.

Examples: *credits foods for maintenance obligations*, clearly literally translated from the French *obligations alimentaires* (pag.505), the *right of the family for family law* from the French *le droit de la famille* (pag.506). But there are also entire sentences which are simply not understandable.

We notice also that the mistakes already found in our previous analysis have not been corrected: "La qualité de la langue anglaise doit être vérifiée. A titre d'exemple: page 5 "*The European Union , traditionally composed by paid of reception...*" ne signifie rien; page10 "*The Youth Welfare occupies various experts*: "is made of various experts" est l'expression correcte; page 14 le *Code of Private International Right* est probablement le "Code of Private International Law".

You will perfectly understand that the Commission cannot endorse the publication of this kind of mistakes and the revision of the text by a mother tongue seems essential.

f) the annexes in the empirical report are incomplete (the part concerning Malta, Portugal, Sweden and United Kingdom is missing, Latvia stops at page 818).

Should we not receive the Final Report **reflecting fully the Commission's comments by June 8, 2009 at the latest**, we hereby inform you that, in accordance with Articles II.1.9 and II.16 of the above-mentioned contract, we shall impose liquidated damages.

Please also take into account that, after the final approval of the Commission, the final study must be submitted in **6** copies for the synthesis report and only **3** copies for the complete study.

A two-page summary must also be submitted.

The final study must also be made available electronically, (on a CD-ROM) in Word and in PDF format, in a set of files corresponding to the chapters of the study which must in principle not exceed two megabytes. These files must be tested before dispatch.

Yours faithfully,



Salla SAASTAMOINEN
Head of Unit

N.B. Please note that as from 20 April 2009 our offices are located in Rue Montoyer, 59-2nd floor (Ms De Luca's office is MO59 2/002).