

European Commission Study on Adoption - Outline of presentation
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Good afternoon, Ladies and Gentlemen,

I should like to start with a few words about the **background to the European Commission study**, in other words, why the European Commission decided to carry out a study on adoption procedures in the Member States of the European Union.

Protecting children's rights is one of the European Union's top priorities, as stated in Article 3 of the Treaty on European Union.

This aim is also recognised in Article 24 of the Charter of Fundamental Rights of the European Union, which states that '**in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration**'.

Already in July 2006 the Commission presented a Communication *Towards an EU Strategy on the Rights of the Child*, which proposes a comprehensive strategy to safeguard children's rights effectively in all European Union policies and to support Member States' efforts in this field. The strategy will be implemented in cooperation with the Member States, international organisations and civil society. To this end, the European Forum on the Rights of the Child was opened on 4 June 2007, the aim being to work together and exchange best practices.

One of the rights that children have is to be brought up in a **family environment, as clearly stated in the preamble to the United Nations Convention on the Rights of the Child**. Hence, adoption is part of the picture.

If the European Union wishes to protect and promote children's rights, it must pay more attention to the issue of adoption. However, at present there is no common policy in this field.

Indeed adoption is specifically excluded from the scope of Council Regulation Brussels IIa which relates to issues of parental responsibility, visiting rights and child abduction.

International framework

We can, however, count on an important international legal framework for adoption: the 1993 Hague Convention on Inter-country Adoption and the Council of Europe Conventions, in particular the revised one.

We have also to consider the **United Nations Convention on the Rights of the Child** and its **principle of subsidiarity** that has sometimes lent itself to uncertain interpretations. We can now affirm that, as recalled by the UNICEF in the 2007 statement on Inter-country Adoption, which endorses The Hague Convention *inter-country adoption may indeed be the best solution for individual children who cannot be placed in a permanent family setting in their countries of origin. Institutionalisation should be considered as a 'last resort' solution for a child without parental care.*

The principle of subsidiarity -and here I am quoting the Hague Conference on Private International Law- must be applied realistically.

The Hague Convention refers to "possibilities" for placement of a child in the State of origin. It does not require that all possibilities be exhausted. This would be unrealistic; it would place an unnecessary burden on authorities; and it may delay indefinitely the possibility of finding a permanent family home abroad for the child.

The principle of the best interests of the child is the overriding principle in the Convention, not subsidiarity.

Moreover, we should not forget that the Convention on the Rights of the Child is of a universal nature and therefore must also take into account the point of view of countries, Islamic for example, which do not recognise the institution of adoption, or specific cases where children are separated from their parents by war or natural disasters.

However, where adoption is permitted, it should be carried out in the best interests of the child **and this means that the child needs to be brought up in a family environment which is able to assure the permanency of the relationship. If national adoption is not possible, inter-country adoption has to be considered as a possible alternative for the care of the child.** Institutionalisation and foster care should be seen, where possible, only as temporary measures.

Why the Commission deals with this issue

That said, we have to apply these general principles to the specific context of the European Union. We cannot deny that the European Union has its own particular background and that adoption between Member States does not have the same implications as adoption involving third countries.

The European Union is an integrated area with no internal borders. The Member States of the European Union share common values. They are working together to establish a common area of justice, freedom and

security based on the principle of mutual trust. Closer cooperation on adoption between the Member States might be regarded as one of the inevitable consequences of the free movement of citizens and the gradual emergence of a European judicial culture built on the diversity of legal systems, the promotion of citizens' rights and unity through European law.

According to a recent **Eurobarometer survey** (Flash Eurobarometer 188 published on 15 January 2007), most citizens want the European Union to take an active role with respect to adoption between Member States. The figures vary from one Member State to another, with the highest figures in Italy (87 %) and France (87 %). Nevertheless, on average, the number of citizens in favour of EU action in this field is very high (76 %).

Moreover, in recent years the European Commission has received **several complaints** from citizens and associations on the issue of adoption between Member States explicitly asking for action on the matter. One of those citizens is here today to tell us about her experience.

The content of the study

That is why the study ordered by the Commission has focused on: adoption procedures in the Member States of the European Union, including the practical difficulties encountered in this area by European citizens in the context of a European area of justice in civil matters; and the available options for resolving such difficulties and protecting children's rights.

We asked our contractor:

- (1) to produce a **comparative analysis** of the situation in the 27 Member States with respect to legislation, organisational arrangements, procedures and practices relating to inter-country adoption and in particular adoption between the Member States of the European Union, and
- (2) to identify practical difficulties and problems encountered in this area by European citizens, in particular those which prevent or hinder them from exercising parental responsibility, and to identify possible solutions to these problems, including the feasibility of setting up a European adoption procedure between Member States.

The study is divided into, on the one hand a legal analysis of the legislation on adoption in the 27 Member States and, on the other an empirical analysis based on the collection of statistical data.

The empirical analysis includes:

- the number of decisions on domestic or inter-country adoption issued in a Member State in a given calendar year (preferably 2005 or 2006);
- the proportion of those decisions involving cases of adoption between the Member States of the European Union;
- the average length of the adoption procedure, from the point at which the adoption application is submitted until the close of the procedure;
- the number of cases in which the adoption was achieved but only with difficulty;
- the nature and causes of the difficulties encountered (e.g. problems locating the child, resistance from a holder of parental responsibility, language problems, missing information, incompetence, etc.);
- the role of advisory services and family mediation in the adoption procedure;
- in cases where the adoption procedure has been prevented or abandoned or has not gone ahead on other grounds, the reasons for this, indicating the difficulties encountered and the scale.

Moreover, a **survey was conducted**, based on 500 interviews with representatives of the professions concerned (specialised lawyers, judges, social workers, associations of adoptive parents, other family-law and child-welfare associations, administrative authorities in the Member States responsible for the adoption procedure, individuals identified as having faced difficulties in this area, etc.), and policy-makers at national and European level.

I have to admit that the European Commission is not completely satisfied with the outcome of the study but in defence of the contractor he did reported several difficulties in collecting the relevant data.

I will limit myself to a brief overview of the results of the legal and empirical analysis which are obviously similar to those of the European Parliament's study.

Legal analysis

In general, we can affirm that:

The analysis of the legislation has identified a **vast set of national solutions**, sometimes presenting a high degree of difference one from the other.

A first consideration is that in the majority of Member States (17) the legal instruments for national and inter-country adoption are the same. In some cases there are specific rules related to inter-country adoption such as the role of the Central Authorities under the Hague Convention.

In 10 Member States we find different regulations for national and international adoption. Requirements for parents are more detailed for inter-country adoption (Sweden) or a prior judicial decision is necessary (Italy, Portugal). In the United Kingdom the role of the Central Authority is important in that it has to deliver a certificate of eligibility for the prospective adoptive parents.

Another common characteristic is a mandatory post-adoption service in international adoptions.

The situation of Romania is unique in the landscape of the European Union. In that country international adoption is limited to the child's grandparents living abroad. We will come back later to the particular case of Romania and Bulgaria to which the study has paid particular attention.

Concerning the role of the **Central Authorities**, the study observed that 25 out of 27 Member States have appointed a Central Authority which has the role defined in the Hague Convention. However, there are several differences in the way this role is adopted in practice in each Member State. They are generally placed under the Ministry of Welfare (or Social Affairs) or the Ministry of Justice.

Italy and France are special cases. In Italy the Central Authority reports to the Prime Minister's Office and in France it comes under the Ministry of Foreign Affairs.

As Greece only ratified the Hague Convention in September 2009, the Greek Central Authority could not be taken into consideration in the study. Ireland has not yet ratified the Hague Convention but has an Adoption Board, appointed by the Government, which carries out this function.

A total of 15 countries have both **accredited bodies** and Central Authorities, but the division of competencies between them differs

widely. Some countries have delegated intermediation entirely to the accredited bodies; some foresee both possibilities and others allow intermediation only through Central Authorities. The remaining Member States do not have accredited bodies.

Normally, the accredited bodies are under the auspices of the Central Authorities. They must be non-profit-making associations and prove that they are experts in the matter and able to operate in foreign countries.

Member States have completely different **provisions with regard to the prospective adoptive parents**: for example, their age or civil status (single person, married couple-heterosexual or same sex couple). Regarding the adoptability of the child, most EU Member States require the consent of the biological parents. Only Italy requires the state of abandonment of the child.

Recognition

One problem which has been raised with the European Commission is the lack of recognition of adoption decisions between Member States.

Theoretically, if a State is a member of The Hague Convention on Inter-country Adoption, foreign adoption orders should be recognised automatically. In practice, this is not always the case as is borne out by the complaints submitted by citizens to the European Commission.

It is worth noting that, in most cases, the lack of recognition refers to national adoptions (therefore not carried out under the Hague Convention) which are sometimes not recognised in other Member States.

In the UK, for instance, under the Adoption (Designation of Overseas Adoptions) Order of 1973 (amended in 2002) there is a list of designated countries whose adoption decisions are automatically recognised by the UK.

If an EU Member State is not on that list, even if it is party to the Hague Convention, the adoption is not recognised.

EU citizens resident in another Member State often encounter difficulties in acquiring nationality for their adopted child. It could be difficult for the child to acquire the citizenship of the adoptive parents resident in another Member State or the citizenship of the adoptive parents' habitual residence (of which they do not have citizenship).

Even if, theoretically, there are no special rules for EU citizens resident in another Member State, there are practical problems with applications made by EU citizens habitually resident or domiciled in another Member State.

For instance, the Commission's attention has been drawn to the fact that, because of the increased mobility of EU citizens within the Union, a

citizen who has started an adoption procedure in one MS and afterwards changes his/her habitual residence or domicile to another Member State is obliged to re-start the procedure from the beginning even if he/she has already obtained a certificate of eligibility.

I would like to invite the representative of the Central Authority of the French Community in Belgium to explain this kind of problem to us in more detail during the next discussion.

Empirical analysis

The study contains statistical data, where that data is available. Comparative tables have been prepared in order to highlight the main similarities and differences between Member States. However, the European Commission has no means of verifying the appropriateness or accuracy of the data.

The survey was conducted among adopted persons, people seeking to adopt, representatives of the competent authorities in each country (Ministries, judges and administrative authorities). It appears that the interest shown by the European Union in this issue was considered to be positive, especially with a view to establishing some minimum standards. It was underlined that, in most cases, even parents who did not take care of their children or mistreated them can always contest the adoption procedure, even after the children's long-term placement in an institution. Many interviewees underlined the **need for training courses** in order to prepare prospective adoptive parents for the realities of inter-country adoption.

In many countries interviewees complained about lack of training for all staff representatives at all levels of the adoption procedure: social workers, psychologists, and people managing the process in general.

Private adoption is often regarded as a means of circumventing the provisions against child trafficking.

A **post-adoption service** is also requested in those countries where such follow-up does not yet exist.

The **cost of adoption** is an important issue and sometimes forces the prospective adoptive parents to give up the procedure. Other complaints include excessive bureaucracy, the duration of the procedure and the disparity of case law, even at national level, which often leads to discrimination. Finally, incomplete or incorrect information about the child (especially concerning his or her health) is another shortcoming of adoption procedures.

As I mentioned, particular attention has been paid to **Romania and Bulgaria** in the context of the study, because these were the last two countries to accede to the European Union, on 1 January 2007. In this context adoption was a sensitive issue, because of the high rate of international adoptions, the lack of transparency in adoption procedures, the risk of corruption and child trafficking and the poor living conditions of children in institutions.

I will not repeat what has been already said by the previous speakers. It is however interesting to note that Romania and Bulgaria, faced with a similar problem, have ended-up with a different solution. After a moratorium on international adoptions, they are now possible again under Bulgaria's legal system, even if the number of adoptions has been considerably reduced (less than 100 in 2006 and 2007).

Romania on the other hand has banned inter-country adoptions from its legal system as a radical measure to prevent the reoccurrence of past abuses in adoption procedures.

The **UN Committee of the Rights of the Child** recently (June 2009) asked Romania to withdraw the moratorium on inter-country adoptions in order to implement Article 21 of the UN Convention.

The Memorandum sent by the Romanian Office for Adoptions to the Romanian Government in October 2009 referred to the possibility of resuming international adoptions, at least for certain categories of children.

The European Commission will follow this development with interest.

Policy options

I should now like to look at possible solutions to the problems identified in the study. The experts who conducted the study have underlined a certain number of possible policy options to be taken by the European Commission which are more or less feasible in the current circumstances.

1. Creation of a European Adoption Agency.

One of these options could be the creation of a European Adoption Agency, a kind of **super Central Authority**, whose task it would be to coordinate adoption procedures in Europe.

This option could ensure equal treatment for all European citizens and the possibility to collect all relevant data. This solution would probably allow for a certain harmonisation of rules and would alleviate the

problems of the costs and duration of adoption procedures as well as the risk of child trafficking and corruption.

The disadvantage of this solution is the time required to set up a new agency and the costs involved. We should not forget, moreover, that in family law matters the unanimity of all Member States in the legislative procedure is required.

2. Recognition of certificates of eligibility of prospective adoptive parents and recognition of adoption decisions in all Member States.

When all the parties involved in the adoption procedure have **European citizenship**, a common solution should be found to ensure recognition of decisions concerning adoptions taken in another Member State. This could be done via direct recognition or by means of a simplified procedure.

This option would favour the exercise of the freedom of movement of European citizens throughout Europe.

3. Creation of EU common adoption certificates.

Rather than having simple recognition, one solution might be to create **common adoption certificates**, for the eligibility of the parents, for example, or the recognition of adoption decrees issued in other Member States. A **single European procedure** could be developed for the delivery of the certificates. Selected parents would then be eligible to adopt throughout Europe without the need for further recognition.

It would have the advantage of being a unique procedure, saving time and establishing equality for all European citizens vis-à-vis adoption in Europe.

4. A register of children awaiting adoption.

A further option is the development of a **European register of children** awaiting adoption listing children eligible for adoption at the European level.

All these children would then have an equal opportunity to find a family in Europe.

5. The child's right to a family.

Although this core principle is sometimes not uniformly interpreted at international level it should definitely be so at European level.

By making the child's right to a family an absolute principle it would always be possible to act in the child's best interest, giving clear preference to the possibility of European adoption over institutionalisation or long-term foster care in the child's country of origin.

A shared interpretation of the **principle of subsidiarity** would be most welcome.

6. Harmonisation of national legislation on the basis of the existing Conventions

The Member States of the European Union could be encouraged to harmonise their legislation, at least on a number of specific issues. The correct implementation of the Hague Convention on Inter-country Adoption and the ratification of the 2008 Council of Europe Convention could play also an important role in this respect. Any European policy on the matter should focus on the **simplification and coordination of all coexisting measures**.

7. Status quo

The last possibility, of course, is to do nothing, apart from general adherence to the principles stated in the international Conventions. However, this option does not seem appropriate because the majority of European citizens want the European Union to intervene and the current situation undermines some of their fundamental rights.

Thank you for your attention.