

Novembre / November 2010



GROUPE DE TRAVAIL SUR LA MÉDIATION DANS LE CADRE DU PROCESSUS DE MALTE

**PRINCIPES POUR LA MISE EN ŒUVRE DE STRUCTURES DE MÉDIATION
DANS LE CADRE DU PROCESSUS DE MALTE**

établi par le Groupe de travail avec l'assistance du Bureau Permanent

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WORKING PARTY ON MEDIATION IN THE CONTEXT OF THE MALTA PROCESS

**PRINCIPLES FOR THE ESTABLISHMENT OF MEDIATION STRUCTURES
IN THE CONTEXT OF THE MALTA PROCESS**

drawn up by the Working Party with the assistance of the Permanent Bureau

PRINCIPLES FOR THE ESTABLISHMENT OF MEDIATION STRUCTURES IN THE CONTEXT OF THE MALTA PROCESS

A. CENTRAL CONTACT POINT

States should establish / designate a Central Contact Point for international family mediation which should undertake, either directly or through an intermediary, the following tasks,

- Serve as contact point for individuals and at the same time as network point for mediators working in cross-border family disputes.
- Provide information about family mediation services available in that country, such as:
 - List of family mediators, including contact details and information about their training, language skills and experiences;
 - List of organisations providing mediation services in international family disputes;
 - Information on costs of mediation;
 - Information on the mediation models used / available; and
 - Information on how mediation is conducted and what topics may be covered in mediation.
- Provide information to assist with locating the other parent / the child within the country concerned.
- Provide information on where to obtain advice on family law and legal procedures.
- Provide information on how to give the mediated agreement binding effect.
- Provide information on the enforcement of the mediated agreement.
- Provide information about any support available to ensure the long-term viability of the mediated agreement
- Promote cooperation between various experts by promoting networking, training programmes and the exchange of best practices.
- Subject to the principle of confidentiality, gather and make publicly available on a periodic basis information on the number and nature of cases dealt with by central contact points, actions taken and outcomes including results of mediation where known.

The information should be provided in the official language of that State as well as in either English or French.

The Permanent Bureau of the Hague Conference should be informed of the relevant contact details of the Central Contact Point, including postal address, telephone-number, e-mail address and names of responsible person(s) as well as information on what languages they speak.

Requests for information or assistance addressed to the Central Contact Point should be processed expeditiously.

Where feasible, the Central Contact Point should display relevant information on mediation services on a website in the official language and in either English or French. Where a Contact Point cannot provide this service, the Permanent Bureau could make the information received by the Central Contact Point available online.

B. MEDIATION

1. Characteristics of Mediators / Mediation Organisations identified by Central Contact Points

The following are among the characteristics the Central Contact Point should take into account when identifying and listing international family mediators or mediation organisations:

- A professional approach to and suitable training in family mediation (including international family mediation).
- Significant experience in cross-cultural international family disputes.
- Knowledge and understanding of relevant international and regional legal instruments.
- Access to a relevant network of contacts (both domestic and international).
- Knowledge of various legal systems and how mediated agreements can be made enforceable or binding in the relevant jurisdictions.
- Access to administrative and professional support.
- A structured and professional approach to administration, record keeping, and evaluation of services.
- Access to the relevant resources (material / communications, etc) in the context of international family mediation.
- The mediation service is legally recognized by the State in which it operates, *i.e.* if there is such a system.
- Language competency.

It is recognized that, in States where the development of international mediation services is at an early stage, many of the characteristics listed above are aspirational and can not, at this point, be realistically insisted upon.

2. Mediation Process

It is recognised that a great variety of procedures and methodology are used in different countries in family mediation. However, there are general principles, which, subject to the laws applicable to the mediation process, should inform mediation:

- Screening for suitability of mediation in the particular case
- Informed consent
- Voluntary participation

- Helping the parents to reach agreement that takes into consideration the interests and welfare of the child
- Neutrality
- Fairness
- Use of mother tongue or language(s) with which the participants are comfortable
- Confidentiality
- Impartiality
- Intercultural competence
- Informed decision making and appropriate access to legal advice

3. Mediated Agreement

When assisting the drafting of the agreements the mediators in cross-border family disputes, should always have the actual exercise of the agreement in mind. The agreement needs to be compatible with the relevant legal systems. Agreements concerning custody and contact should be as concrete as possible and take into consideration the relevant practicalities. Where the agreement is connected to two jurisdictions with different languages, the agreement should be drafted in the two languages, if that simplifies the process of rendering it legally binding.

C. RENDERING MEDIATED AGREEMENT BINDING

Mediators dealing with international family disputes over custody and contact should work closely together with the legal representatives of the parties.

Before starting the implementation of the agreement, the agreement should be made enforceable or binding in the relevant jurisdictions.

The Central Contact Points in the jurisdictions concerned should assist the parties with information on the relevant procedures.

Where needed, countries may examine the desirability of introducing regulatory or legislative provisions for the enforcement of mediated agreements.