

Août / August 2009



**Groupe de travail sur la médiation dans le cadre du processus de Malte
Questionnaire II**

établi par le Bureau Permanent

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**Working Party on Mediation in the Context of the Malta Process
Questionnaire II**

drawn up by the Permanent Bureau

Permanent Bureau | *Bureau Permanent*
6, Scheveningseweg 2517 KT The Hague | *La Haye* The Netherlands | *Pays-Bas*
telephone | *téléphone* +31 (70) 363 3303 fax | *télécopieur* +31 (70) 360 4867
e-mail | *courriel* secretariat@hcch.net website | *site internet* <http://www.hcch.net>

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Identification

State: United States

Name of contact person: Stefanie Eye

Name of Authority / Office: Office of Children's Issues, US Department of State

Telephone number: 202 -736-9127

E-mail address: EyeSB@state.gov

The Permanent Bureau kindly requests responses to the Questionnaire to be sent to < secretariat@hcch.net > by 25 September 2009 at the latest.

ENFORCEABILITY OF MEDIATED AGREEMENTS	
1. Are there legal restrictions on the content of mediated agreements regarding family law matters in your country?	<input checked="" type="checkbox"/> No – but if the couple wants to turn the mediated settlement into an enforceable court order, a judge will not be able to accept provisions that are contrary to law or contrary to the best interests of the child. <input type="checkbox"/> Yes. Please specify:
2. Are mediated agreements in a family dispute involving children enforceable in your country without any additional formalities such as notarisations or approval by court?	<input checked="" type="checkbox"/> No – they must be approved by a competent court to be turned into an enforceable order. <input type="checkbox"/> Yes
3. Can agreements mediated in your country in a family dispute involving children be approved by or registered with a court? (If the answer is "No" please continue with question 4.)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – as long as the court has jurisdiction to hear the case and the court finds the mediated agreement to be in the best interests of the child. <input type="checkbox"/> Other. Please specify:
3. a) Is the agreement once approved by or registered with a court treated as a decision of that court?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other. Please specify:

3. b) What exact steps are needed to make a mediated agreement into a court order?	Please specify: File a consent motion for a custody hearing in the court that has jurisdiction over the custody case. The judge will ask the parties if they understand the agreement and enter into it knowingly and voluntarily and, if there are no provisions that violate the law or that are contrary to the best interests of the child, the judge will generally approve the agreement and turn it into an enforceable court order.
3. c) Which court would be competent?	Please specify: the state court that has jurisdiction over the custody case. Generally, where there has been no court case, the court of the state where the child has lived in the last 6 months would have proper jurisdiction. If there was already a US custody order in place, the court that issued that custody order would retain jurisdiction as long as one of the parties or the child still lives in that state
3. d) What are the costs for having a mediated agreement made into a court order in your country?	Please specify: There would be a minimal filing fee. If the party uses a lawyer to help them file, they would pay for those fees.
4. Are there any other method(s) by which a mediated agreement can be rendered enforceable in your country (<i>e.g.</i> by being notarised)	Please specify: NO
4. a) What are the possible costs for this other method(s)?	Please specify:
5. Can agreements mediated in another country in a family dispute involving children be approved by a court or otherwise formalised in your country?	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes. If the agreement was approved by a judge in the foreign country in a proceeding that substantially complied with US notions of due process (notice and opportunity to be heard by both parties) and is now a court order, the parties would follow the steps described in 6 below to register the foreign judgement for enforcement. The foreign court order could also be directly enforced (which is quicker than registration, but is subject to defences that are not available for a registered order). If the agreement was not formalized into an order in the foreign country, the parties would have to follow the steps described in 3(b) with the appropriate US court.</p> <p><input type="checkbox"/> Other. Please specify:</p>

<p>5. a) If so, will the agreement mediated abroad be treated exactly as an agreement mediated in your country?</p>	<p><input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Other. Please specify:</p>
<p>6. In what circumstances, if any, can an agreement which has been approved by or registered with a court abroad, be recognised and enforced in your country?</p>	<p>Please specify: In almost all states, the foreign court order could be registered for enforcement under the UCCJEA if the foreign court proceeding substantially conformed to US standards of due process (both parties got notice and an opportunity to be heard) and the order had not been modified or amended. The foreign court orders can also be directly enforced (but not modified) in a US court, but the orders are open to defences that are not available to a registered order.</p>
<p>7. What specific measures are available in your country for enforcing an agreement on child custody or contact?</p>	<p>Please specify: If the agreement is made into a court order, then the same enforcement mechanisms are available for that order as any court order – including findings of contempt of court, fines, jail time, and restrictions on visitation or custodial rights (supervised visits, etc). The UCCJEA (which has been adopted by almost all states in the U.S.) provides for expedited enforcement mechanisms for foreign and domestic custody orders.</p> <p>If the agreement is not merged into a court order, then the parties do not have the remedies listed above. They may have remedies under contract law, but it is frankly unclear how a custody agreement would be enforced under contract law.</p>

Thank you.