

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
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drawn up by the Permanent Bureau

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Identification

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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 type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Please specify: Agreements on child custody or contact are limited by the best interest of the child. All agreements must be consistent with imperative national law.
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 <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 <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: Both parties have to file corresponding applications. The court has to confirm the agreement by court order.
3. c) Which court would be competent?	Please specify: Regularly the local court at the residence of the child; if it is a Hague or a Brussels IIa case, the specialized court at the place of the competent court of appeal is competent.
3. d) What are the costs for having a mediated agreement made into a court order in your country?	Please specify: Court costs depend on the value of the claim. E.g. in child custody or contact cases the costs are 44,50 €.
4. Are there any other method(s) by which a mediated agreement can be rendered enforceable in your country (e.g. by being notarised)	Please specify: At present: in contact and custody cases no. Enforceability will be improved by implementation of the EU-directive on mediation by 05/2011 In other cases notarisation is possible.
4. a) What are the possible costs for this other method(s)?	Please specify: Costs depend on the value of the claim. A notarisation f.e. of a mediated contact case would cost less than 100 €.
5. Can agreements mediated in another country in a family dispute involving children be approved by a court or otherwise formalised in your country?	[] No [x] Yes, approved by a court [] Other. Please specify:
5. a) If so, will the agreement mediated abroad be treated exactly as an agreement mediated in your country?	[] No [x] Yes [] Other. Please specify:
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?	Please specify: Such agreements regularly cannot be recognised or enforced in Germany. This is only done in practice if both parties can prove that all relevant safeguards have been respected in the proceeding abroad. Then the german court may establish a german court order on the basis of the agreement without establishing the facts on its own. Beside this, if the agreement falls within the scope of the Brussels-II-bis Regulation. Article 46 states that such agreements are treated like court decisions coming from other EU- Member

	States and thus can be recognised and enforced in Germany.
7. What specific measures are available in your country for enforcing an agreement on child custody or contact?	Please specify: Administrative fine Arrest Direct force (not in contact cases)

Thank you.