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NOTE FOR THE FILE

Subject: EU-US video-conference

Attached detailed minutes of the EU-US video-conference held on 14 May 2004 on the subject of intercountry adoptions from Romania.

The main differences of view can be summarised as follows.

- The US does not agree with article 21b of the Convention on the Rights of the Child, which puts intercountry adoption as a last resort, if no suitable manner at all is available in-country.
- The US does consider foster care as inferior substitute care, while in the EU this is considered a suitable manner of care.
- The US is in favour of “flexibility” in the laws in the form of “subsidiarity”, meaning if no national adopters have been found, children become available for intercountry adoptions. However, the representative of the Independent Panel has stated that intercountry adoption is not a child protection measure and should therefore only happen in extreme cases, and not as automatic alternative to other measures. The legal barrier for intercountry adoption must be placed sufficiently high.
- The US sees development of administrative capacity as improving and monitoring the intercountry adoption system, while the EU focuses on proper structures to protect children’s rights (child protection services, family courts).

Dirk LANGE

Cc. MM. Ruete, Lange, Quinn, Ms. Verger,
Ms. Schreiber (Cabinet Verheugen)
Mr. Scheele (EC Delegation Bucharest)
Ms. Martinez Carbonell (EC Delegation Washington)
Ms. Ragher (DG RELEX)

EU-US video-conference

14 May 2004, 18h00-19h30 Brussels time

Romania – intercountry adoption

Participants:

- Washington US State Department,
- Bucharest US Embassy,
- Brussels DG ELARG + Mr. Pierre Cornelis (Independent Panel of Experts)

(Full list of participants attached)

EC-Brussels Mathias RUETE explained the enlargement process and the Copenhagen political criteria. In the past the situation of institutionalised children was a matter of concern, which was mentioned under the political criteria for Romania's accession to the EU. The EU has supported the Romanian government over the years to improve this situation. The results have been impressive: the number of children in institutions has decreased significantly.

While one of the issues was adoption of children, the EU perspective was to address the whole situation of public child care. However, were confronted with inappropriate legislation, which was scrutinised by the European Parliament and by the Commission's Regular Report. Following Romania's request for advice in drafting new legislation on children's rights, the Commission has set up the Independent Panel of Experts. The mechanism of independent expert groups is used by the Commission when Member States' expertise is needed in cases where there is no detailed Community legislation. For example it was used when advising candidate countries on a banking system.

US-Washington Tom DELARE understood the explanations on independent panels, himself being a financial economist with experience in banking. The US has asked for this discussion on the Romania's preparation of the new law on adoption, because the Romanians sense that consensus on this issue should be reached in order to bridge the EU and the US position.

The situation is at the moment a moving target. There are weekly/daily changes in the drafts and the situation is unclear. The welfare of children is at stake, therefore there is a need for a constructive solution, but we should not dictate the legislation. The Government's draft is fine as far as it controls adoptions strictly. This draft was made to please the EU. However, the US challenges if grounds exist for an unconditional moratorium, which the current draft intends.

The US question is how to get a way out of this situation. The US supports an amendment of the Democratic Party, which maintains all controls, but introduces **subsidiarity**, meaning that when national adopters fail to be found, intercountry

adoptions will follow. The PSD has agreed that this might be a way out. The US has held extensive consultations with all political parties at all levels.

Recent discussions in the newspapers place Romania between the EU and the US. Romania needs a signal from the EU that there is EU flexibility. The US is prepared to work with the EU on corruption, HIV, teen pregnancies and national adoption. The most disturbing point are the statistics: 80.000 children in institutional care and over 6.000 abandoned children.

EC-Brussels Mathias RUETE said that both parties need to understand where we come from on children. Therefore Mr. Cornelis of the Independent Panel will explain the EU principles.

Pierre CORNELIS (Independent Panel of Experts) underlined that the Panel's opinion is a legal opinion and not political. The reference for their opinion is the UN Convention on the Rights of the Child (CRC) and the European Convention on Human Rights (ECHR). Also the practices in the EU Member States served as reference.

Intercountry adoption **cannot be considered as a protection measure**. Romania's situation is exceptional, as no EU Member State expatriates its children. Other Member States protect their children and deal with the issues "sur place". Out of home placement is provided and guidance to parents and family allocations. It is therefore not necessary to abandon children and to have them adopted locally. The objective of the new legislation is that Romania becomes like other Member States and does not export their children anymore. Intercountry adoptions lead to a vicious circle: too many intercountry adoptions will mean that the Romania will not see the need for proper child protection. And as long as their child protection is not at European level, Romania risks to continue to use intercountry adoptions.

To resolve this paradox, intercountry adoptions need to become legally more difficult. To resume, the Independent Panel did not say not to have intercountry adoptions, but it had to become exceptional.

Mr. Cornelis referred to his 20 years experience as magistrate in Belgiu, dealing with adoptions. Adoptions, even internal, are a difficult issue. It is very difficult to get it rights. These difficulties become apparent when children reach adolescence. Like other children adopted children need to identify with an adult. With intercountry adoption this is even more difficult, as also cultural references are needed. Adoption is not a fairy tale ending, it is not a miracle solution, no panacea. It should only happen in extreme cases, but not as automatic alternative to other measures. That is the Independent Panel's opinion.

US-Washington Mike MOZUR: "Very interesting". Given the enormity of the issue, there is no real contradiction between Tom Delare's (US Embassy) opinion and Mr. Cornelis' and the conception would be that intercountry adoption would be permitted after domestic adoption failed. It will be a daunting task to achieve full support for such a system.

Numbers of children concerned are staggering. It concerns thousands of intercountry adoption. We are not alone, in the EU countries there is perhaps even a stronger interest in children for adoption. We have to continue to work together. We need room to ensure the ban is flexible.

US Bucharest Tom DELARE thanked Mr Cornelis and agreed that smaller homes are better than large institutions. But foster homes with three sets of mothers per 24 hours are not the solution. Many children are in the streets. The National Authority for Child Protection and Adoption says that despite three years of reform, the number of children is growing. The change will not be fast. Some ten years perhaps. We agree that intercountry adoption should be after difficult scrutiny. We do not think it is a fairy tale.

EC Brussels Mathias RUETE said we must realise there are difficulties, for example corruption. It is easy to buy certain officials and to get judgements through payments. The large number of abandoned children is the result of abandonment legislation. There are concrete examples, for example on the toll free phone, of desperate parents that had their parental rights terminated against their will. Elements of corruption are our major worry. How does the US think we can solve this issue?

EC Brussels Roelie POST made the point that adoptable/abandoned children are not the same as street children. One should not confuse these issues and emotions.

US Bucharest Tom DELARE said that if there is corruption you do not shut down business. We do not deny that corruption has led to the fact that some parents lost their children. It must have happened, but these were isolated cases. We should not sacrifice a generation. There are many options for national control.

EC Brussels Dirk LANGE referred to the different understanding about “last resort”. Last resort means only in extreme cases. The US just said to prefer intercountry adoption over foster care. But foster care is an agreed child protection alternative. Children are placed in families, and not cared for by three mothers per 24 hours.

US Bucharest Tom DELARE Sorry, we were confusing group homes with foster care. But family environment should be always preferable to institutional care. Institutional care should always be temporary; children are best served in a family environment. Prolonged foster care as substitute care is inferior.

Pierre CORNELIS (Independent Panel of Experts) In the EU we focus on maintaining the link between children and their families. To place a child for adoption and terminate parental rights is an extreme measure which decreases everywhere in Europe. In practice, temporary placement or foster care is not a definite measure, but focuses on return of the child to the family which is almost always a possible objective. The Convention on the Rights of the Child insists on the rights of the child to be raised in its family, in the original environment. Adoption is not a privileged solution.

US Bucharest Tom Delare wondered if the definition of intercountry adoptions as only for extreme cases was in line with the CRC?

Pierre CORNELIS (Independent Panel of Experts) confirmed that limiting intercountry adoptions to extreme cases is in line with the CRC and quoted article 20 of the CRC, in particular paragraph 3 that points to the desirability of continuity in ethnic, religion and culture, which is difficult to maintain with intercountry adoption.

US Bucharest, Tom DELARE: UNICEF’s position on this is different. UNICEF considers reserving intercountry adoption for extreme cases too severe. The US feels that article 20 gives different options.

EU Brussels Mathias RUETE quoted article 21.b that puts intercountry adoptions as a last resort. He underlined that the Commission never said that we exclude intercountry adoptions as such, but we have welcomed the moratorium. Romania is winning the battle and is changing childcare in Romania and should therefore be congratulated.

US Washington Mike MOZUR pointed to the need to look at the human dimension and concluded that we all agree that intercountry adoption as last resort is too severe.

EU Brussels Mathias RUETE warned to be careful in this meeting not to make a false sense of agreement. We think that no international law interdicts intercountry adoption and we never said that intercountry adoptions should be outlawed per se. Even though this is not a practice in Europe, but that from a legal point of view intercountry adoption remains an option only when all other measures of child care have not come to fruition, including institutions care measures. It is totally wrong if a child in foster care would be going for intercountry adoption.

Pierre CORNELIS (Independent Panel of Experts) underlined the fact that intercountry adoption should be last resort was confirmed by the UN Committee on the Rights of the Child.

EU Brussels Mathias RUETE stated that the US and the EC have certain disagreements, but we share the same ambition. We have to turn around, perhaps some intercountry adoptions are needed if Romania chooses to have it. The question remains, how we make sure that this system is not perverted (corruption).

US Washington Scott BOSWELL said there were different ways to prevent corruption, depending on local conditions. These could be to have intercountry adoptions decided by central government and not local authorities, to have strict licensing of adoption agencies or to have NGO's supervise the system in view of transparency. Someone of the Hague Convention has already offered assistance to create a good system.

Pierre CORNELIS (Independent Panel of Experts) reminded that the objective should be not to put Romania any longer in a 3rd world country situation. As candidate country it needs to respect human rights and therefore the barrier for intercountry adoption must be placed very high.

US Washington Mike MOZUR: We need clear standards. We have to work on corruption and we need relaxation of the laws and flexibility.

EU Brussels Mathias RUETE concluded that there was agreement on some issues. We are clear that we do not oppose intercountry adoption as such. However, there is a sizable difference, i.e. where to put the barrier, meaning when to accept intercountry adoptions as last resort. Also we have a difference of approach when it comes to how to best develop administrative capacity.

PARTICIPANTS EU – US VIDEO – CONFERENCE

14 May 2004

Washington US State Department:

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