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Ref: 2015/WB/kg/15-017

Utrecht, 22nd April 2015

Dear Sirs,

I am writing on behalf of CEP, the Confederation of European Probation, to express our concerns regarding the bill *Entwurf eines Strafänderungsgesetzes 2015 (98/ME XXV. GP)*.

CEP, founded in 1981, unites policy makers, decision-makers, practice-developers, academics, practitioners and others working in the field of probation and criminal justice from all over Europe. CEP currently represents 56 organisations such as Non-Governmental Organisations and Ministries of Justice, from 32 European countries.

Recently we were informed by our Austrian member *Neustart* about the aforementioned resolution that is to be proposed to the Austrian parliament for a vote. The stipulations of this resolution imply that the possibility for victims of domestic violence to ask for victim-offender mediation as a means for conflict resolution would cease to exist.

As you are aware, the European Union as well as the Council of Europe have adopted several regulations and recommendations relevant to the practice of victim-offender mediation in penal procedures. Of recent date is the Directive 2012/29/EU of the European Union, on establishing minimum standards on the rights, support and protection of victims of crime (more popularly known as *the Victims Directive*). Article 46 of this Directive states:

"Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim (...)"

This clearly shows that the European Union values restorative justice in penal cases. Since the Victims Directive aims to strengthen the position of the victim in the penal process, it does not exclude any type of crime in which restorative justice or victim-offender mediation may be applied, including domestic

violence. The Directive obviously intended to enable the victim to fully exercise its rights in criminal procedures. Therefore CEP sincerely regrets the proposal as described in *Entwurf eines Strafänderungsgesetzes 2015 (98/ME XXV. GP)* when this leads to limiting the options that victims have for conflict resolution in the penal processes, by excluding victim-offender mediation in cases of domestic violence.

Equally in article 46 of the Directive is stated restorative justice services:

"(...) require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process."

This is in line with other important European rules and regulations, e.g. the Council of Europe's Recommendation (99)19 concerning mediation in penal matters, which in itself is at the basis, among other Recommendations and considerations, of the Council of Europe's Recommendation CM/Rec(2010)1 – the European Probation Rules.

Therefore, a well-trained, good functioning restorative justice service providing organisation is the best guarantee to safeguard the conditions under which the victim can chose for, and benefit from victim-offender mediation in penal cases of domestic violence. In this regard CEP would like to stress that Austria is one of the frontrunners in Europe with regard to victim-offender mediation in penal cases, and even more so with regard to victim-offender mediation in cases of domestic violence. Neustart as the restorative justice service providing organisation in Austria is highly respected in Europe, and seen by many colleagues as an example.

I therefore implore the Austrian government as well as the Austrian Parliament to keep providing victims of domestic violence with the option to ask for victim-offender mediation in penal cases, if they would want so.

Yours sincerely,



W.A. van der Brugge
CEP Secretary General