

**20 YEARS, 20 QUESTIONS: A QUESTIONNAIRE ON THE IMPACT OF THE  
HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND  
CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION  
ON LAWS AND PRACTICES RELATING TO INTERCOUNTRY ADOPTION  
AND THE PROTECTION OF CHILDREN**

*drawn up by the Permanent Bureau*

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**20 ANS, 20 QUESTIONS : QUESTIONNAIRE RELATIF À L'IMPACT DE LA  
CONVENTION DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION DES ENFANTS ET  
LA COOPÉRATION EN MATIÈRE D'ADOPTION INTERNATIONALE  
SUR LE DROIT ET LA PRATIQUE EN MATIÈRE D'ADOPTION INTERNATIONALE ET DE  
PROTECTION DES ENFANTS**

*établi par le Bureau Permanent*

*Preliminary Document No 1 of July 2014 for the attention of the  
Special Commission of June 2015 on the practical operation of the  
Hague Convention of 29 May 1993 on Protection of Children and  
Co-operation in Respect of Intercountry Adoption*

*Document préliminaire No 1 de juillet 2014 à l'intention de la  
Commission spéciale de juin 2015 sur le fonctionnement pratique de la  
Convention de La Haye du 29 mai 1993 sur la protection des enfants et  
la coopération en matière d'adoption internationale*

## INTRODUCTION

The Fourth Meeting of the Special Commission on the practical operation of the 1993 Hague Convention<sup>1</sup> will commence with a special day on "20 years of the 1993 Hague Convention" (the Convention was concluded on 29 May 1993 and entered into force on 1 May 1995).

This special day will be an opportunity to reflect upon and discuss the implementation and operation of the Convention over the 20 years it has been in force and to analyse what its impact has been on laws and practices relating to intercountry adoption, as well as child protection systems more generally. It will provide an occasion to assess the improvements which the Convention has brought about, as well as the challenges which remain concerning its implementation and operation.

The responses to this Questionnaire will assist the Permanent Bureau with preparing the discussions for this special day. They will form the basis for the Preliminary Document on this topic, to be drawn up by the Permanent Bureau. This Preliminary Document will outline key questions for States for discussion during the special day.

Please send your response to this Questionnaire to [secretariat@hcch.net](mailto:secretariat@hcch.net), for the attention of Laura Martínez-Mora (Principal Legal Officer) and Hannah Baker (Senior Legal Officer) **by no later than 10 October 2014**. The Permanent Bureau will place responses online on the Hague Conference website (< [www.hcch.net](http://www.hcch.net) >) unless expressly requested not to do so.

Please note: if information provided in your State's Country Profile for the 1993 Hague Convention (sent to States for completion at the same time as this Questionnaire) assists with your answer to any question herein, please cross-refer to your Country Profile. There is no need to repeat information.

Thank you for your kind co-operation as the Permanent Bureau prepares for this next Special Commission meeting.

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<sup>1</sup> Full title: *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, "1993 Hague Intercountry Adoption Convention", "1993 Hague Convention", "1993 Convention" or simply "the Convention").

**NAME OF STATE: Germany**

**DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:<sup>2</sup> 1 March 2002**

**Information for follow-up purposes**

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**A. THE IMPACT OF THE 1993 HAGUE CONVENTION ON LAWS AND PRACTICES  
RELATING TO INTERCOUNTRY ADOPTION IN YOUR STATE**

1. Was the legislation in your State concerning intercountry adoption revised, or was new legislation enacted, as a result of, or in preparation for, implementation of the 1993 Convention? If so, please describe the main changes in practice which the revision / new legislation brought about.

The legislation concerning intercountry adoption was substantially modified in Germany in preparation for the implementation of the 1993 Convention. On 1 January 2002, the "Law regarding legal questions in the field of intercountry adoption and to further develop the laws on adoption" entered into force. It has three main parts:

**1. Adoption Convention Implementation Statute (AdÜbAG)**

The "Law regarding the implementation of the 1993 Convention" determines, in a first part, which authorities and bodies in Germany are competent to fulfill the tasks according to the Convention. Subsequently, a federal Central Authority according to the Convention was newly established: Until 2007 the Federal Public Prosecutor General acted as Federal Central Authority, the role was then transferred to the Federal Office of Justice. Germany also named regional Central Authorities (Art. 6 Sec. 2 of the Convention): These are the regional ("Land") youth welfare offices. The law furthermore states that the functions of a Central Authority may be performed by accredited adoption bodies (see Art. 22 of the Convention).

The Law regarding the implementation of the 1993 Convention contains, in a second part, rules regarding intercountry adoption procedures. These rules do specify the rules of the Convention for every step of the procedure.

The third part of the law sets rules for the issuing of certificates according to Art. 23 of the Convention.

**2. Adoption Placement Act (AdVermiG)**

Whereas the substantive law regarding adoptions in the German Civil Code was not revised, the law regarding adoption placement was modified in preparation for the implementation of the 1993 Convention. The modifications apply for intercountry adoptions from Contracting States as well as from non-Contracting States and also for domestic adoptions, as the aim was to make the German law regarding adoption placement compliant with the high standards of the Convention in general (and not only regarding intercountry adoptions). The main changes are higher requirements regarding accreditation of adoption bodies and the personnel and professional suitability of the people working in adoption bodies and authorities that are facilitating adoptions. These higher requirements are complemented by rules regarding the supervision of said bodies. The law also contains rules regarding the preservation of adoption files and the possibilities of access to these files.

**3. Act on the Effect of the Adoption (AdWirkG)**

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<sup>2</sup> This information is available on the "Status Table" for the 1993 Hague Intercountry Adoption Convention, accessible via the "Intercountry Adoption Section" of the Hague Conference website, < [www.hcch.net](http://www.hcch.net) >.

A third new law deals with the recognition and the effects of foreign adoption decisions. It sets rules for a court procedure in which the effects of a foreign adoption order in Germany can be established with binding effects and in which a "simple adoption" can be transformed into a "full adoption". The law is applicable for all adoption decisions, such made in Contracting States as well as in non-Contracting States.

2. What changes, if any, did your State make to the identity and functions of the authorities and bodies involved in intercountry adoption as a result of the 1993 Convention requirements (e.g., the creation / designation of new authorities / adoption bodies, different assignment of tasks)? How, if at all, have these changes affected intercountry adoption procedures in your State?

In preparation of the implementation of the Convention, a federal Central Authority was newly established. It does not mediate adoptions but has, simply put, the task to assure the respect of the Convention in Germany in several ways (e.g. by coordination the work of the authorities and bodies mediating adoptions and by giving legal advices in court procedures regarding the recognition of foreign adoption decisions).

The "operating" bodies and authorities (meaning: those placing children in adoption) stayed, in general, the same, but have been allocated the tasks according to the Convention: The regional ("Land") youth welfare offices were chosen as Central Authorities in the regions and given the competence to mediate intercountry adoptions, whereas before, they mediated only national adoptions. Local youth welfare offices are, since the implementation of the 1993 Convention, allowed to mediate intercountry adoptions with an approval of the competent regional youth welfare office. The accredited bodies which mediated intercountry adoptions before the implementation of the Convention, too, also may, in case they hold an authorisation for placing children from Contracting States in adoption, perform the functions of a Central Authority since the implementation of the Hague Convention (see Art. 22 (1) of the Convention).

The requirements regarding the accreditation of adoption bodies and the personal and professional suitability of the people working in adoption bodies and authorities that are mediating adoptions have been increased and rules regarding the supervision of said bodies and authorities have been established. This assures the highest possible professionalism in intercountry adoption procedures. This may have caused, on the other hand, an increase of costs of an intercountry adoption in some cases, which is seen by some actors as one of several possible reasons for the decline of the number of adoptions in the past years. Other actors assume that higher costs did not cause the decline of the numbers of adoptions, especially with view on alternatives like surrogacy that are equally or more expensive.

3. (a) Please indicate the number of intercountry adoptions which took place from and / or to<sup>3</sup> your State:
  - (i) in the three years prior to the entry into force of the 1993 Convention in your State

Number of intercountry adoptions *from* your State (State of origin):

Number of intercountry adoptions *to* your State (receiving State):

For the years 1999 and 2000 there is no statistic about intercountry adoptions. The only number available is the number of children with a foreign nationality adopted in Germany, but this number includes the adoption of children that had been living here before their adoption (national adoptions of children with foreign nationality). All numbers are estimates as there is no central register regarding adoptions:

In 1999 approximately 1750 children with a foreign nationality were adopted in Germany.

In 2000 approximately 1890 children with a foreign nationality were adopted in Germany.

In 2001, approximately 1790 children with a foreign nationality were adopted in Germany, for this year it is known that approximately 850 of them came from a foreign country for the purpose of their adoption.

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<sup>3</sup> Depending upon whether your State is a State of origin, receiving State or both.

- (ii) in the three years following the entry into force of the 1993 Convention in your State

Number of intercountry adoptions *from* your State (State of origin):

Number of intercountry adoptions *to* your State (receiving State):

The following numbers are such of intercountry adoptions mediated by an accredited adoption provider body or authority. They do not include private/independent adoptions (there is no statistic regarding these adoptions).

In 2002, approximately 800 children were adopted from a foreign country, approximately 130 came from a Contracting State.

In 2003, approximately 720 children were adopted from a foreign country, approximately 130 came from a Contracting State.

In 2004, approximately 740 children were adopted from a foreign country, approximately 160 came from a Contracting State.

If precise figures are not available, please provide an estimate, indicating clearly that it is an estimate.

- (b) Taking into account the figures provided in Question 3(a) above, please comment upon whether implementation of the 1993 Convention in your State has had an impact on the number of intercountry adoptions undertaken from and / or to your State. If so, please indicate, if possible, which of the principles or procedures of the 1993 Convention appear to have had a bearing on the number of intercountry adoptions undertaken (e.g., implementation of the Convention's principle of subsidiarity,<sup>4</sup> increase / decrease in the number of States with which your State partners on intercountry adoption).

The implementation of the 1993 Convention did not lead to an immediate high increase or decrease of intercountry adoptions undertaken to Germany. The numbers of intercountry adoptions decreased slowly from 2002 to 2008 (approximately 798 to 716 per year) and then faster until today (approximately 276 intercountry adoptions per year). The decrease affected adoptions from Contracting as well as from non-Contracting States. The decrease of numbers therefore does not seem to be directly linked to the implementation of the 1993 Convention in Germany, but might be caused by developments in States of origin based on the implementation of the Convention in these States.

4. In your State, has implementation of the 1993 Convention had an impact on:

- (a) The costs<sup>5</sup> of intercountry adoption, including the transparency of these costs? If so, please provide details;

German legislation states, as does Art. 11 lit a) of the Convention, that accredited bodies must pursue only non-profit objectives. The costs for adoption procedures are subject to the supervision of the competent accrediting Central Authority. They have to be reasonable in the sense of the Guide to Good Practice N° 2. For public authorities facilitating adoptions, the fees to be paid (to the public authority for their service, not costs and fees that occur in the State of origin) are regulated by law. These principles were, however, established independently of the 1993 Convention and are interpreted nowadays in the light of the Convention

The requirements for the sufficiency of personnel working in adoption bodies were strengthened with regard to the implementation, which can lead, in some cases, to higher costs. In an ongoing discussion in Germany is criticised that accredited adoption bodies having to fulfill these requirements regarding their personnel have to be self-financing, whereas the regional Central Authorities receive taxes to support their work. This leads in several cases to different costs for an adoption from the same State of origin. But overall, it can not be noted that the implementation of the 1993 Hague Convention alone caused a notable increase or decrease of costs for adoptions in general.

Transparency also seems to be not especially influenced by the 1993 Convention, at least the legal requirements have not changed and transparency of costs has been striven for already before the implementation of the Convention. Some authorities and bodies think, however, that the implementation of the Convention and the permanent exchange of experiences between Contracting States have raised more awareness regarding transparency of costs than there was before which helps to achieve the goal.

and / or

- (b) Contributions, co-operation projects and donations,<sup>6</sup> including their transparency? If so, please provide details.

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<sup>4</sup> See Art. 4 b) of the Convention and the *Guide to Good Practice No 1 on the implementation and operation of the 1993 Hague Intercountry Adoption Convention* at Chapter 2.1.1, available on the specialised "Intercountry Adoption Section" of the Hague Conference website < [www.hcch.net](http://www.hcch.net) >.

<sup>5</sup> For a definition of the term "costs", please see the harmonised *Terminology on the financial aspects of intercountry adoption*, available on the Hague Conference website < [www.hcch.net](http://www.hcch.net) > under "Intercountry Adoption Section" then "Expert Group on the Financial Aspects of Intercountry Adoption".

<sup>6</sup> For definitions of the terms "contributions", "co-operation projects" and "donations", please see the harmonised *Terminology on the financial aspects of intercountry adoption* (*ibid*).

The implementation of the 1993 Hague Convention did not immediately have an impact on the practice of contributions, cooperation projects and donations in general. However, decisions about contributions, cooperation projects and donations follow the development of the standards elaborated by the Contracting States (and laid down e.g. in the Guide to Good Practice No 2) in the years following the implementation of the Convention in Germany.

5. How, if at all, has implementation of the 1993 Convention in your State affected the average *time* which it takes to complete an intercountry adoption?

Please specify the causes of any change in timeframes, including whether these changes are attributable to a particular aspect of the intercountry adoption procedure and, if so, whether this aspect of the procedure takes place in your State or in other States.

The average time to complete an intercountry adoption varies from one State of origin to another, but did, on average, increase in the last years. The most important reason for this is the fact that in some cases it takes longer and longer to receive a child proposal from the State of origin. It could be assumed - without knowing for sure - that this is a consequence of the implementation of the 1993 Hague Convention in the States of origin: Longer procedures might for example be based on the fact that applications in a certain Contracting State increase because receiving countries stop cooperation with non-Contracting States. But there seem to be other reasons, too, such as work overload in the competent authorities and bodies in a State of origin or a change in legislation such as a restriction regarding the adoptability of children.

6. How, if at all, has implementation of the 1993 Convention in your State affected the processing of *non*-Convention intercountry adoptions (*i.e.*, intercountry adoptions to which the 1993 Convention does not apply)?

Adoption facilitation is not restricted to adoptions from Contracting States, but has always been possible for adoptions from non-Contracting States, too. In practice, since the implementation of the Hague Convention, the process of an intercountry adoption from a non-Convention State is as far as possible adjusted to the rules laid down in the Convention. This leads to a higher standard in the cooperation with the competent bodies in the States of origin (*E. g.* regarding procedural issues or requirements concerning the quality of papers – especially child study reports).

#### State of origin questions

7. (a) Have the main reasons for children becoming adoptable (whether domestically or intercountry) changed following implementation of the 1993 Convention in your State? If so, please identify those changes.
  
- (b) Has the general profile of children in need of *intercountry* adoption in your State changed following implementation of the 1993 Convention? If so, please specify the main reasons for any change.
  
- (c) Has implementation of the 1993 Convention changed the following aspects of the intercountry adoption procedure in your State?
  - (i) The establishment of the child's adoptability including, where appropriate, how consents are obtained from the birth parents / family / child and how consideration is given to the child's wishes and opinions:
  - (ii) The information provided to, and the counselling and preparation of, an adoptable child:
  - (iii) The provision of information concerning the child to prospective adoptive parents ("PAPs") (*i.e.*, under the 1993 Convention, the preparation of the report on the child):

- (iv) The matching of the child and PAPs:
- (v) The entrustment of the child to the PAPs:
- (vi) The making of the final adoption decision:
- (vii) The transfer of the child to the receiving State:
- (viii) The post-adoption services provided (e.g., when and how an adoptee may access information concerning his / her origins):
- (ix) Other, please specify: .

Receiving State questions

8. (a) How, if at all, has your State's counselling, selection and preparation of PAPs wishing to adopt *intercountry* changed following: (i) implementation of the 1993 Convention in your State; and / or (ii) if applicable, the changed profile of children in need of intercountry adoption in the States of origin with which your State partners?
- (i) Under the Implementation Statute the accredited bodies now have the right to select and prepare PAPs independently. Even though accredited bodies are obliged to involve public authorities in the process, they have sole responsibility to decide on the eligibility of PAPs. The regional Central Authorities can, since the implementation of the Convention, also counsel, select and prepare PAPs for an intercountry adoption. The procedure of counselling, selection and preparation of PAPs has not changed immediately as a direct result of the implementation of the 1993 Convention. Some accredited bodies and public authorities do, however, state that the standard has grown over the years due to the principles of the Convention, the exchange regarding the implementation between the different actors, greater comparability of standards, conferences etc.
  - (ii) As more and more children in need of adoption are found to have special needs, more and more attention is paid to these needs in the process of counselling, selecting and preparing PAPs. This results in more detailed information given to PAPs regarding possible special needs and requires a more careful consideration of which challenges PAPs can meet and cope with. The whole process therefore becomes more work intense when it comes to the adoption of children with special needs.
- (b) Has implementation of the 1993 Convention changed the following aspects of the intercountry adoption procedure in your State?
- (i) How PAPs apply for intercountry adoption: A change occurred in so far as PAPs have to chose a Central Authority or an adoption body holding an accreditation for adoptions from a Contracting State if they want to adopt from such State.
  - (ii) The provision of information concerning the PAPs to the State of origin (*i.e.*, under the 1993 Convention, the preparation of the report on the PAPs): An immediate influence of the Convention could not be noticed, but over time, authorities and bodies take new or modified standards elaborated by the Contracting States into consideration for the process of preparation PAPs and writing reports on them. Authorities and bodies are aware that States of origin have emphasised the importance of having accurate reports on the prospective adoptive parents and that they have expressed concerns about the lack of thoroughness and accuracy of such reports (see Guide to Good Practice No. 1, para 415). The direct communication between Central Authorities, the exchange of experiences and working processes and a better knowledge about the situation of adoptable children help to meet the needs of the States of origins. Moreover, a work group of the Land (regional) youth welfare offices developed a model form which the group highly recommends to use.
  - (iii)
  - (iv) The procedure to accept a proposed match: The procedure did not change in general, except the fact that only Central Authorities or adoption bodies with an accreditation for adoptions from certain States (Contracting and/or non-Contracting States can mediate adoptions and therefore are the ones that have the function to receive and approve child-proposals.

- (v) The migration procedures for the child: The migration procedures did not change in general (the legal requirements did not change). Migration is, however, facilitated in many cases in which a certificate according to Art. 23 of the Convention is issued, as recognition of a foreign adoption decision is a requirement for migration. In cases in which the foreign office has ceased legalisation of documents it can, depending on the decision of the German embassy/consulate be necessary to have the authenticity of the certificate approved before an adoption is recognised on the basis of the certificate.
- (vi) The post-adoption services provided: Post-adoption services did not change immediately as a direct consequence of the implementation of the Hague Convention. But as said for other procedural steps, some actors have the impression that the awareness regarding the need of effective post-adoption services has risen due to the exchange between Contracting States and a greater comparability of services, which leads to higher standards. Post adoption services are also adapted when the actual development requires changes. Such changes are notably the increasing number of adoptions of children with special needs. Whether the increase of these numbers is a consequence of the implementation of the Hague Convention can only be guessed, but seems likely.
- (vii) Other, please specify: .

**B. THE IMPACT OF THE 1993 HAGUE CONVENTION ON CO-OPERATION BETWEEN CONTRACTING STATES**

9. Has implementation of the 1993 Convention had any influence on the choice of States with which your State “partners” in intercountry adoption (e.g., due to the fact that your State has limited the number of States with which it partners or has ended co-operation with *non*-Contracting States)? If so, have these changes affected intercountry adoption procedures in your State?

There are neither limits in the numer of States with which Germany partners nor is cooperation limited to Contracting States. But in practice, the implementation of the Convention had an impact of the choice of States with which Germany partners and for which adoption bodies apply for an authorisation to work with: As more and more Contracting States of origin install family care or foster systems there are less children which are eligible for intercountry adoption. We highly appreciate that the principle of subsidiarity is respected through these measures in the States of origin. As a receiving State we have to face the fact that there are less adoptions from those States (e. g. Poland, Turkey).

It can also be seen as a result of the implementation of the Convention that cooperation has been ended (for a certain time or in general) with several States due to their inability to guarantee the standards of the Convention (e.g. Nepal, Cambodia).

10. In your State's experience:

- (a) What are the most significant changes to co-operation between Contracting States brought about by the 1993 Convention? Have any of these changes led to the safeguards of the Convention being more effectively respected (see Art. 1 b))? If so, please provide examples.

The implementation of the Convention led, in many States, to the establishment of Central Authorities and accredited bodies that have well trained personnel and are working effectively in the sense of the Convention. Clear knowledge about the actors competent and responsible for an adoption procedure under the Convention helps respecting the Conventions rules.

- (b) What are the most significant *challenges* which remain concerning co-operation between Contracting States to the 1993 Convention?

It does unfortunately happen that communication is very difficult with some Central Authorities or accredited bodies. In some extreme cases communication seems nearly impossible because telephone connections can not be established and the receipt of e-mails or mail is never confirmed. The reasons might be technical problems, unreliability of mail services or work overload. In less extreme cases it can take unreasonably long to exchange information. Misunderstandings happen, too, and can make communication difficult. It should be said, on the other hand, that communication has become far easier in other cases due to the implementation of the Convention and the designation of competent authorities.

Complaints are made from time to time about the report on children whis is in some cases not detailed enough to take a well-considered decision about a matching and give the agreement according to Art. 17 c of the Convention.

In some cases it shows that the role and function of the German accredited adoption bodies is not well known and understood in States of origin. The last do, in some cases, think that a regional or the federal Central Authority have to be involved at a certain point of the procedure, although the accredited bodies may perfom the duties of a Central Authority according to the Hague Convention themselves. On the other hand, some regional Central Authorities also face the problem that in some individual cases, States of origin are not willing to cooperate with a German regional Central Authority (but only with an accredited body).

Another major challenge is the circumvention of the 1993 Convention that can have various reasons. When PAPs do circumvent the Convention by purposefully giving wrong information to the authorities and bodies involved in an adoption, the actors having to guarantee the respect of the Convention can possibly not be held responsible for a circumvention. On the oter hand, cases are known in which a circumvention is possible because (often local) actors such as social workers or judges are missing the necessary knowledge about the Convention, which should be avoided by effective training in every Contracting State. Also should be avoided that national legislation contradicts the rules of the Convention, wich is the case for example when the legislation is based on the nationality of PAPs instead of on the principle of habitual residence.

The question what consequence can and should be drawn in a case of circumvention can hardly be answered in many cases, taking into consideration the well-being of a child involved in such an adoption and accomplished facts, especially a grown bond between a child and adoptive parents.

**C. THE IMPACT OF THE 1993 HAGUE CONVENTION ON THE PREVENTION OF THE ABDUCTION, SALE OF AND TRAFFIC IN CHILDREN AND OTHER ILLICIT PRACTICES<sup>7</sup>**

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<sup>7</sup> "Illicit practices" in this Questionnaire refers to situations where a child is adopted without respect for the rights of the child or for the safeguards now contained within the 1993 Hague Convention. "Such situations may arise where an individual or body has, directly or indirectly, misrepresented information to the biological parents, falsified documents about the child's origins, engaged in the abduction, sale or trafficking of a child for the purpose

11. In general, has implementation of the 1993 Convention led to more effective prevention of the abduction, sale of, or traffic in children and other illicit practices within / from / to your State in the context of intercountry adoption?

If so, please provide specific examples of measures which have been introduced in your State as a result of the 1993 Convention and their effect.

The implementation of the Convention was not followed by specific measures in order to fight the abduction, sale of, or traffic in children and other illicit practices. It did, however, influence the criteria for the recognition of foreign adoption decisions and the requirements for bringing a child to Germany for the purpose of an adoption. Whenever abduction, sale of, or traffic in children or other illicit practices occur in relation with an adoption / under the cloak of adoption, it is therefore more difficult to obtain documents for a child / permission to enter Germany when the standards of the Convention are not met. Although this cannot avoid the said crimes in every case, it should have a deterring effect.

12. In particular, *prior to* implementation of the 1993 Convention, did your State experience, whether in your State or in other States with which your State co-operated, any of the following problems in the intercountry adoption context:

- (a) Improper payments to family members, intermediaries, officials or others;
- (b) Other improper inducements of the consent of birth parents / family to adoption;
- (c) Fraud, such as misrepresentation of identity or false promises (e.g., misrepresenting to birth parents the reason for a child's removal from his / her home);
- (d) Forgery / falsification of documents;
- (e) Abduction of children for the purposes of intercountry adoption;
- (f) Abuse of guardianship orders (e.g., using such orders to remove children from a State of origin to circumvent intercountry adoption procedures);
- (g) Bypassing the matching system of a State of origin (*i.e.*, undertaking matching independently in the State of origin, without the involvement of the appropriate authorities);
- (h) Any other illicit practices?

If so, in your State's experience, has implementation of the 1993 Convention in your State *or in other States* had an impact upon the incidence and / or nature of these problems?

All of these problems occurred in the past and do still occur in single cases. Private/independent adoptions from non-Contracting States are not forbidden in Germany. In these cases, it can only be reviewed subsequently whether the standards for an intercountry adoption have been met. If they were not, recognition might be denied which might have a deferring effect. In adoption procedures according to the Hague Convention, on the other hand, most of the problems can be far better controlled and avoided (especially a, b, c, e, f, g). The experience has shown that not in every case, at every step of the procedure, all individuals involved respect the standards of the Convention. But overall, the said problems are not known to arise often in adoption procedures according to the Hague Convention.

#### **D. THE IMPACT OF THE 1993 HAGUE CONVENTION ON THE RECOGNITION OF INTERCOUNTRY ADOPTIONS IN YOUR STATE**

13. In your State's experience:

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of intercountry adoption, or otherwise used fraudulent methods to facilitate an adoption, regardless of the benefit obtained (financial gain or other)" (from p. 1 of the *Discussion Paper: Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases*, available on the "Intercountry Adoption Section" of the Hague Conference website < [www.hcch.net](http://www.hcch.net) >).

- (a) Has the automatic recognition of adoptions made in accordance with the Convention (see Art. 1 c) and Chapter V) led to significant improvements for children adopted intercountry and their families?

In case the certificate according to Art. 23 of the Convention is issued correctly, the recognition of a foreign adoption order in Germany is indeed facilitated. It can save time, efforts and expenses when it comes to obtaining documents, for example. Unfortunately the certificate is not yet well known enough for that most adoptive parents abstain from a court procedure according to the "Effect on the Adoption Act" to receive a court order regarding the recognition of an adoption, even if they hold an art. 23 HC-certificate. Those proceedings could be avoided if German authorities would realize that these adoptions should be recognized by operation of law. However, courts have to take the certificate into account, of course, and file their decision on this basis (which means recognition by law) in case there is no evidence that the adoption is manifestly contrary to Germany's public policy (Art. 24 of the Convention). In this respect the certificate can still accelerate the process of recognition.

- (b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention?

In particular, please specify whether either (i) your State, or (ii) any other Contracting State with which your State co-operates, requires an *additional* procedure (e.g., a registration procedure or court proceeding) to be completed in order to recognise an adoption made in accordance with the Convention.

In numerous cases, certificates according to Art. 23 of the Convention are not issued or are incorrect which defeats the automatic recognition of adoption decisions in other Contracting States. Mistakes in the certificates are, for example, missing dates of the agreements according to Art. 17 c of the Convention or mistakes regarding the authority that gave the agreement (e.g. the Federal Central Authority is named, although an accredited body has given the agreement).

Germany does not require an additional procedure to be completed in order to recognise an adoption made in accordance with the Convention. It is optional to have the recognition confirmed by a German family court. But as said, most adoptive parents obtain a German court order regarding the recognition of an adoption because the certificate according to Art. 23 of the Convention is not yet known well enough, so that difficulties can occur when it is shown to specific authorities like registry offices.

## **E. THE IMPACT OF THE 1993 HAGUE CONVENTION ON *DOMESTIC ADOPTION* AND OTHER MEASURES OF ALTERNATIVE CARE FOR CHILDREN IN YOUR STATE**

### ***Domestic adoption***

14. (a) Please provide precise figures regarding the number of *domestic* adoptions which took place in your State: (i) in the three years prior to the entry into force of the 1993 Convention in your State; and (ii) in the three years following this date. If precise figures are not available, please provide an estimate, indicating clearly that it is an estimate.

- (i) Approximately 5300 adoptions per year.
- (ii) Approximately 4500 adoptions per year.

- (b) Taking into account the figures provided in Question 14(a) above, please comment upon whether implementation of the 1993 Convention has had an impact on the number of domestic adoptions undertaken in your State. If so,

please indicate, if possible, which of the principles or procedures of the 1993 Convention appear to have had a bearing on the number of domestic adoptions undertaken (e.g., implementation of the Convention's principle of subsidiarity<sup>8</sup> including promotion of domestic adoption, or a decrease in the number of intercountry adoptions has caused PAPs to turn to domestic adoption).

The implementation of the 1993 Convention does not seem to have a notable impact on the number of domestic adoptions.

- (c) Has implementation of the 1993 Convention had an impact on domestic adoption *procedures* in your State? If so, please explain how the 1993 Convention brought about these changes.

No

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<sup>8</sup> See Art. 4 b) of the Convention.

### ***Other measures of alternative care for children***

15. (a) Is there any evidence that implementation of the 1993 Convention has had an impact on the *number* of children: (i) living in institutions; or (ii) living in alternative permanent family care (other than adoption) in your State?

- (i) No
- (ii) No

If so, please set out that evidence and indicate, if possible, which of the principles or procedures of the 1993 Convention appear to have had a bearing on the number of children living in these situations (e.g., the promotion of family preservation or reunification measures;<sup>9</sup> in-State alternative permanent family care promotion in revised / new legislation in preference to institutionalisation).

(b) How, if at all, has implementation of the 1993 Convention changed the *quality* of other alternative permanent family care measures available in your State for children who are deprived of parental care or at risk of being so deprived?

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16. How, if at all, has implementation of the 1993 Convention affected your State's approach to developing and implementing measures of family preservation and / or reunification?

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### **F. VIEWS ON THE IMPROVEMENTS BROUGHT ABOUT BY THE 1993 HAGUE CONVENTION AND THE CHALLENGES WHICH REMAIN**

#### ***In your State***

17. In your State's view:

(a) What are the most significant *improvements* in intercountry adoption and / or child protection more generally in your State which have resulted from implementation of the 1993 Convention?

An adoption procedure according to the Hague Convention does, in theory, offer a relatively "safe" and "smooth" way to adopt a child. While challenges remain, cooperation between Contracting States is in many cases well enough to lead to relatively "smooth" procedures in practice, too. The standards laid down in the Convention apply to adoptions from non-Contracting States, either, so that it can be said that the Convention influences the overall standard for intercountry adoptions in Germany.

(b) Has implementation of the 1993 Convention had any *adverse effect(s)* on intercountry adoption and / or child protection more generally in your State?

No

(c) What are the most significant *challenges* which remain in your State in relation to the proper implementation and operation of the 1993 Convention?

See answers to questions 10. (b) and 13. (b).

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<sup>9</sup> I.e., implementation of the 1993 Convention's principle of subsidiarity (Art. 4 b) of the Convention).



### **Globally**

18. In your State's view, *at a global level*:

- (a) What are the most significant *improvements* in intercountry adoption and / or child protection more generally which have taken place as a result of the entry into force of the 1993 Convention and its implementation in an increasing number of Contracting States over the last 20 years?

The fact that a group of States has set unified standards for intercountry adoptions and constantly works on measures to assure their respect has improved the guarantee of the child's rights in adoption procedures and child protection measures worldwide in our view. Although challenges remain: Having clear rules for a big number of adoption procedures (intercountry adoptions between Contracting States) and the possibility to orientate procedures that do not fall into the scope of the Convention towards the Convention nevertheless makes adoption procedures more comparable. Setting the same standards in a high number of cases makes it easier to set these standards high.

- (b) Has the entry into force of the 1993 Convention and its implementation in an increasing number of Contracting States over the last 20 years had *any adverse effect(s)* on intercountry adoption and / or child protection more generally?

From the German point of view, as there is no German scientific evaluation regarding this question, it can only be guessed based on international evaluations and the experience of German actors whether the implementation of the Convention had adverse effects. The fact that the numbers of intercountry adoptions are declining worldwide might be caused by the implementation of the Convention (principle of subsidiarity, cooperation projects to strengthen the child protection system in a Contracting State etc.). Based on this assumption (which is not proved) it can be seen as sign that less children are in need of (international) adoption because they receive other adequate care, but from the point of view of some actors it might also mean that less children do receive the chance to grow up in a family. According to international evaluations this seems to be different from State to State, so that a general answer can not be found.

- (c) What are the most significant *challenges* which remain today in relation to the implementation and operation of the 1993 Convention? Have these challenges changed / evolved over the past 20 years?

The challenges enumerated in the answers to questions 10. b) and 13. b) are "global" challenges as they occur in the cooperation with several Contracting States. More generally it can be found that the consequences of a non-respect of the Convention are limited, which makes the enforcement of the set standards difficult in case not all actors are pulling in the same direction.

### **G. MONITORING AND REVIEWING THE IMPLEMENTATION AND OPERATION OF THE 1993 HAGUE CONVENTION**

19. In your State's view, are the current mechanisms used to monitor and review the implementation and operation of the 1993 Convention satisfactory (e.g., periodic Special Commission meetings, the development of tools to promote consistent interpretation and good practices)? Would your State consider any additional monitoring and / or review mechanisms useful?

The current mechanisms are satisfactory.

- 20. (a) Has your State benefitted from the services or assistance of the Permanent Bureau of the Hague Conference in relation to implementation and / or operation of the 1993 Convention? If so, please explain what service or assistance was provided and how it benefitted your State.

All documents provided by the Permanent Bureau (Guides to Good Practise, country profiles etc.) are, although sometimes very extensive and therefore not extremely "handy" very helpful. This is also the case for help or advise in specific single cases and of course, for all meetings organised by the Permanent Bureau.

- (b) Resources permitting, what *additional* services or assistance could the Permanent Bureau provide to facilitate the proper implementation and operation of the 1993 Convention?

In some cases it might be helpful if the Permanent Bureau had more capacities to mediate between, for example, Central Authorities, for example in cases in which certificates according to Art. 23 of the Convention are not issued or issued with defaults on a regular basis and repeated requests for remedy were fruitless. It seems that the "power" of the Permanent Bureau might in some cases be more effective than the one of Central Authorities.

If your State has any other comments concerning "20 years of the 1993 Hague Convention", please provide them in the space below: