

ADOPTION

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**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: Italy**

**DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:<sup>2</sup>  
November 16<sup>th</sup> 2000**

**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.

In Italy, the Convention has been ratified by Law 476 of 1998, which amended Title III of the law 184 of 1983 by introducing the new procedure for international adoption, which came into force on November 16<sup>th</sup> 2000. Many changes have been made and novelties introduced, including:

1) the couple declared eligible for adoption by the Juvenile Court, has the legal obligation to give mandate to one of the authorized agencies to carry out the adoption's procedure, thus making effectively illegal private adoptions, that instead, up to that time, represented the vast majority (about 87%) of international adoptions made in Italy; 2) the requirement for prospective adoptive parents, to attend preparatory information and preparation courses for international adoption, before obtaining the decree of eligibility: the courses are offered by the social services of the local authorities in collaboration with the authorized bodies; 3) the requirement for the adoptive parents to travel to the country of origin in order to finalize the adoption, accompanying themselves the child(ren) in Italy; 4) the requirement for the authorized bodies for international adoption, in collaboration with the social services of the local authority, to ensure support and post-adoption services to those who request them; 5) The obligation to register in Italy the foreign adoption decision with the effects of a full and legitimated adoption. Before the law 476/98, the foreign adoption decision was always processed in Italy in a pre-adoptive custody order for a period of one year, to be completed with the pronouncement of adoption in Italy: now pre-adoptive custody order is delivered in Italy only if such a provision is explicitly required by the foreign adoption decision.

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?

The law 476/98 came into force only in November 2000 because it was first necessary to establish a series of new organisms and enable its application: 1) the central authority for international adoptions, identified in the CAI - Commission for International Adoptions, established at the Presidency of the Council of Ministers; 2) Authorized bodies for international adoption that, in addition to be no-profit organizations, according to the new requirements of law, can not make preliminary ideological or religious discrimination and must commit to participate in activities to promote the rights of children, preferably through actions of development cooperation in implementation of the principle of subsidiarity of

<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) >.

intercountry adoption in the countries of origin of the children. Since the promulgation of the law, especially in the early years after its entry into force, there has been a proliferation of accreditation of new agencies; fact that led to the current situation of 63 authorized bodies. Before the reform, the authorized agencies were only about ten.

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): in 1997: 2.017 adoptions; in 1998: 2.193 adoptions; in 1999: 2.177 adoptions (data from Department of Juvenile Justice of Ministry of Justice published on [www.giustiziaminorile.it](http://www.giustiziaminorile.it))

(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): in 2001: have been adopted 1797 children by 1483 couples; in 2002: 2225 children by 1529 couples and in 2003: 2772 children by 2300 couples (data from CAI - Commission for International Adoptions published in the Annual Statistical Report Rapporto - [www.commissioneadozioni.it](http://www.commissioneadozioni.it))

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

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

- (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).

In the first ten years after the entry into force of Law 476/98, there has been a steady increase in the number of international adoptions, that had its peak in 2010 when 4,130 children were adopted. These were years in which, thanks to the boost given by the application of the new procedures, we have witnessed a proliferation of promotional, information and preparation activities for international adoption at all levels and throughout the country, also thanks to partnership and public funding of local authorities (municipalities, provinces and regions especially). From 2010 onwards, however, there has been a reverse process: in 2013, 2,825 children were adopted, with a decrease in the number of adoptions of 9.1% compared to the previous year, when it there has already been a drop of 22.8% compared to 2011. We believe that the causes of this recent decrease in the number of international adoptions in Italy are numerous: the economic crisis, that made heavier the already high procedural costs, the increase of medically assisted procreation, the sense of distrust of Italian couples in a procedure perceived as too long, complicated, with an uncertain outcome and the concern for adopting a child who may have special needs, and then be "too demanding", also considering the difficulties of local public social services to ensure adequate support. Even the application in the years of the principle of subsidiarity influenced in this direction, causing a decrease in the number of referrals of adoptable children because, in the countries of origin of children - at least in some - there is a greater development of domestic adoptions and fostering and fewer children are not recognized at birth, thanks to a better welfare policy.

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;

The costs for international adoption covered by the couples are subject to a certification by the authorized bodies, which in turn is subject to control by the CAI. Families can deduct 50% of the expenses certified by the authorized body and until a few years ago could also get a 50% refund of the expenses, but currently this measure has not been refinanced. Over the years the costs have rapidly increased: in Italy, due to the need of a procedure of preparation and accompaniment of the couple more and more articulate and professional (which is necessary to face the greater complexity of the situation of adopted children, often older, siblings and/or with medical needs); abroad, because of the continuous and increasing demands of some countries of origin for a contribution to the supporting of the child already matched and the procedural costs with the foreign country. It should be noted that very often, at the same cost, the type of services offered to the couple abroad sees great disparity from authorized body to body, not being provided with the minimum standards of structure and not existing provisions on the remuneration of the staff abroad. Moreover, the couples have also to cover considerable costs for travels and stay, whereas, before the reform, the stay abroad was only optional. An Italian couple who adopts a child from abroad may to spend from 20 thousand to 30 thousand Euros, depending on the country of origin of the child.

<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".

Furthermore, it seems that many Italian couples - the media in Italy have given big space to this issue - have found themselves, once in the country of origin, to be solicited to pay "off the books" sums of money, in order to make faster or simpler the procedures. These payments are difficult to control and verify, if not through a joint effort between Central Authorities to stop this phenomenon and through a stronger and greater presence of the authorized bodies in assisting the couple. It seems unlikely that these things happen without anyone noticing, in particular the Central Authorities and the authorized bodies.

and / or

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

Italy introduced, by Law 476/98, an element of originality compared to other countries. In application of the principle of subsidiarity, the lawmaker introduced the obligation for authorized bodies to carry out activities to promote children's rights, preferably through cooperation development in the countries of origin of the children. Following the law 476/98, in these countries, the Italian authorized bodies - some become NGOs - have made many interventions. Instead, before the reform, the authorized body had no obligation to do so and they were very few who, working for the adoption, had also decided to activate forms of support to children on site. Over the years the Italian Central Authority - CAI - Commission for International Adoptions - has promoted the activities of these bodies through the enactment of calls for co-financing of projects.

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 Law 476/98 introduced a precise timing for the delivery of the decree of suitability (6 and a half months), which, even if in fact is often ignored - with the average time of approximately 1 year due to staffing problems both of public services and of the courts - had the advantage of halving the previous timing that was about 2 years. However, the waiting time before the assignment and the time of finalization of adoption increased in many countries of origin. On average, Italian couples conclude the adoption in about 3 years, a period of time that is experienced by couples as too long and with an uncertain outcome. Furthermore, the tendency of some Italian Juvenile Courts to issue restrictive decrees (about sex, number of children, age) greatly reduces the real possibility of adoption, expanding the waiting time up to many years.

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)?

Law 476/98 provides that adoptions from a non-Hague country must nonetheless comply with certain essential conditions, in order to be recognized in our country: the verification of the real state of abandonment of the child and the ascertainment of the impossibility of adoption or foster in his country of origin. This procedure has often produced reform processes in the countries of origin of children, at least from the point of view of formal and regulatory framework, which in some cases led to the ratification of the Convention. In the early 2000s international adoptions made in Italy from "non-Hague countries" covered about 70% of adopted children, in 2013 they were 52.8%, especially from the Russian Federation and Ethiopia, which altogether accounted the 36.4% of children.

### State of origin questions

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<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)*.

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) As already told, the law 476/98 - as required by the Convention - has introduced a requirement for prospective adoptive parents, to take information and preparation courses for international adoption. Furthermore, our Central Authority for several years organized training courses on international adoption addressed to operators of public services, authorized bodies and of the Juvenile Court. Before the new law, there were very few courses in preparation for the adoption, they were left to the initiative of some government agencies and authorized bodies. Even then, in fact, there was the need to prepare an accompanying path for adoptive couples, that would lead them to develop a greater consciousness about adoption.
- (ii) In recent years, the children referred for international adoption are getting older and often have got medical needs and this has made necessary to establish a procedure for information, preparation and assessment of prospective adoptive parents more and more sophisticated, where the abilities of the public service and of the authorized bodies are complementary. In some cases, these procedures were implemented, at a regional level, in different ways, through the Protocols, with the peculiarity of create different courses of preparation depending on the residence of the adoptive parents and the result, in many regions, to make the process so complex that does not allow, in some cases, the compliance with the time required by law to issue the decree of eligibility. It is true, however, that the effects of the implementation of the preparation courses are tangible and positive, thanks largely to the work of authorized bodies, given that Italian couples are among the most ready and

welcoming: Italy is, in fact, the second country in the world for the number of adoptions and adopted children are among the older ones and often have medical problems; in 2013, for example, arrived in Italy 2,825 children with an average age of 5.5 years and the 28.7% of them were children with critical needs (with serious and often incurable diseases) and special needs (curable diseases).

(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: The former "application for international adoption" to be presented to the Juvenile Court, following the entry into force of Law 476/98, has become a "declaration of availability for international adoption." Within one year after the issue of the decree of eligibility by the Court, must be given the mandate to an authorized body, to avoid the forfeiture of the decree. Before the decree was valid for two years and, if the adoption didn't take place during that time, had in any case to be renewed.

(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): Before law 476/98, the international adoption decree was issued by the Juvenile Court on the basis of requirements prescribed by law: 3 years of marriage, check about the age of the adoptive parents and the ability to grow and educate a child. This control was made by the judge during an interview with the couple. Therefore, the homestudy issued by the Court together with the decree of suitability was very poor and in this form was presented to the country of origin, unless the couple didn't decide to go through an authorized body, which often compiled an additional report of the family, more detailed and with more information about their readiness. Over the years, the Juvenile Courts were aware of the need to make more detailed such assessment and, according to a good internal practice, they had begun to instruct the social workers to make psycho-social homestudy. So, with the entry into force of Law 476/98, besides the compulsory phase of information and training of the couple, the psycho-social public service was also specifically instructed to gather all the elements useful for the assessment of the couple by the Court. The content of the homestudy has been defined in detail: "gathering of data on the personal, family and healthcare situation of the prospective adoptive parents, on their social environment, the reasons why they wish to adopt, their aptitude for taking an intercountry adoption upon themselves, their ability to meet the needs of one or more children in a satisfactory manner, any particular characteristics that the children they wish to adopt might have, and any other relevant information to enable the Juvenile Court to assess their eligibility to adopt". This relationship is often supplemented with an homestudy made by the authorized body, in order to update some items and give more recommendations in relation to the child or children that the couple would be willing and able to adopt: as age, sibling groups, possible health problems, everything that can be useful in order to facilitate the matching proposal. Italy certainly should seriously engage itself to make current and functional the law 476/98 and should not be nestled into a context that has changed over the years, as in intercountry adoption there often are many and rapid changes.

(iii) The procedure to accept a proposed match: Law n. 476/98 establishes that the agency gets from the local authority the proposal of child's match, included all the information needed: health status, family of origin, previous life experiences. Then the agency has to transfer all the information to adoptive parents during the meeting to present the possible match. Unfortunately the law doesn't define the exactly procedure for this kind of meeting and which operators must be involved (psychologist, social worker, desk officer etc.). We need to underline that very often this exchange of information is superficial and inadequate, made by fax or email. Instead this is a turning point in the adoption procedure, it is the moment wherein the psychosocial operator can evaluate how the match proposed is welcomed by future adoptive parents.

(iv) The migration procedures for the child: The Law 476/98 charges the authorized body to assist the couple during the whole procedure, in Italy and abroad, especially when it leaves to the country of origin to finalize the adoption. Even in this case, however, the Law does not define the ways, leaving to the authorized body the

decision to provide support through experienced operators on site or through support and counseling "at a distance" (by phone or by mail from Italy).

(v) The post-adoption services provided: Law n. 476/98 establishes the duty for adoption agencies, together with local social services, to support adoptive families who make request during the first year from their return in Italy. But the law doesn't define the ways and also the duration is limited. Some regional additional protocols added details about these aspects. For example in some cases families can be supported by local social services for three years after their return. However there is the problem that, after the first years, the parents don't have access to any kind of support, except private services which have to be paid by the family. According with the reform of the Law n. 184/83 of 2001, Regions should give psychosocial and economic supports for parents who adopt children over 12 years old or children with disabilities, but it's not really happening yet. On the other side concrete experience and literature confirm how important is to give an extended psychosocial support, in particular during adolescence, to assure the successful of adoption.

(vi) 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?

After the approbation of the Law n. 476/98, Italy continued to carry on adoption procedures even with not- Countries, trying to make special bilateral agreements with them. In 2013 adopted children came from 56 different Countries. More than half of them were not-The Hague Convention Countries and some of them don't have any kind of agreement with Italian government. The new procedure introduced the duty for adoption agencies to ask both to Italian authority and to the Local one a specific authorization to start to work in that foreign Country. As consequence, the number of Countries where agencies can work has been limited.

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

One of the main future challenge is the effective collaboration between Countries in order to prevent and punish illegal actions aimed at obtaining an income from adoption procedure. Unfortunately, in many Countries (even The Hague-Countries) there is still a strong corruption at different level. This is difficult to fight without an effective and cooperative intervention. In particular this may be obtained by defining: 1) more requirements of transparency and competence from adoption agencies, 2) a common framework for the payment of delegates in the Countries, 3) a traceability system for money flows forward Countries of origin, 4) a stronger control on the child's adoptable status. In addition, a better collaboration would be desirable for: 1) a new procedure to make the adoption statements faster (in some Indian States one year waiting period between child match and adoption final statement is considered too long and difficult to manage); 2) sharing method and tools for adoptive parents' training and children's preparation during the waiting period between match and adoption final statement; 3) a reduction of the number and the periodicity of post adoption reports.

**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>**

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.

Direct consequences of the end of "do-it-yourself adoptions" are: the end of any kind of child's trade between biological family and adoptive family and the beginning of controls on the different steps of the adoption procedure, included costs. Indeed at the end of 80s, 87% of inter-country adoptions were realized privately with the support of non-authorized agencies which were completely out of control. Anyway there is still a problem on how to check the adoptions in Not-The Hague Convention-Countries. The main part of adopted children arrive from these countries and Italy didn't even sign any kind of bilateral agreement with some of them. This is a relevant fact: the largest number of adoptions is carried out where there are less rules and more possibilities of illegal trade.

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;

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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 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) >).

- (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?

In Italy, the Convention's ratification stopped definitely the phenomenon of "do-it-yourself adoptions". But at the same time, in the framework of the new procedure it started a new illegal practice of children adoptions, up to "child laundering". Based on our direct experience on the field, we notice the existence of many "grey zone". It means that in local contest there is a high risk for Italian and foreign agencies to fall in uncorrected and forcing actions even involuntarily. Of course this is responsibility of the subjects directly involved, but a key role is also played by local national Authorities. They should work in order to define more straight rules, to supervise the adoption agencies' work (delegates' work, mechanism of adoptable children's warning, etc.), to better check procedures and money's flows.

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

13. In your State's experience:

- (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?

Yes, of course, in Italy the status of a "legitimate child" of the adoptee, with all the rights and obligations that such status entails in behalf of the parents and the adopted children.

- (b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention? The status of a legitimate child is acquired in Italy only after the transcription of the judgment adoption into the civil registry. The Juvenile Court competent for the area of residence of the adoptive family is the Authority that orders the transcription of the judgment of adoption. Unfortunately, in some cases, the process of the transcription is as long as it affects significantly the rights of the child and of the adoptive family. The process may differ according to the competent court, ranging from about a month for the Juvenile Court of Milan to a year for that in Rome. While waiting for the document transcription - which is just a bureaucratic step because the legitimacy of the foreign adoption judgment has already been done by the CAI - the adoptee has the legal status of "child in charge" of the prospective parents and therefore he is not neither an Italian citizenship nor an adopted child by the couple. This condition put the child in peril to be abandoned once again.

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 some countries of origin - for example, according to our experience, Thailand - the procedure of adoption is expected to be completed once the child reaches Italy. In these cases, the Juvenile Court acknowledge the foreign decision as pre-adoptive custody for a period of one year, a step prior to the judgment of adoption.

## 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) In 1997, 1.014 statements for National adoptions were pronounced; in 1998, they were 1.100 and in 1999 they were 1.020 (data of Juvenile Justice Department of Ministry of Justice published on [www.giustiziaminorile.it](http://www.giustiziaminorile.it))

(ii) In 2001, 1.290 statements of National adoptions were pronounced; in 2002, they were 1.135 and in 2003, they were 978 (data of Juvenile Justice Department of Ministry of Justice published on [www.giustiziaminorile.it](http://www.giustiziaminorile.it)). It's important to underline that these data are uncertain because of the lack of a national database about adoptable children.

(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 entrance in force of Convention's law of ratification apparently didn't affect the number of National adoptions. Already from the '80s in Italy the number of requests for national adoption is larger than the number of adoptable children. At the same time the lack of a national database must be taken into consideration, which prevents the adoption of many Italian children.

(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.

The reform of the law 476/98 has introduced a new procedure for intercountry adoption with no changes of the former law. Neither the reform of 2001, through Law 149, has really changed that procedure. Therefore two parallel procedures keep existing but the two do not have a common basis: those who wish apply for national adoption have to submit a "request" while those who are candidates for intercountry adoption have to submit a "declaration of availability". Moreover, these requests may be submitted at the same time but not with a single application since the two requests will take two different procedures. For instance, domestic adoption does not foresee

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

neither any compulsory training for prospective adoptive parents nor any kind of previous evaluation of suitability of the prospective parents.

**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?

It's not easy to say if it's due to Convention's application, but it's certain that in the last years the value of adoption as last measure for children's care has been more respected also in Italy. For example, recently the decision to separate a child from his biological family is mainly based on his parent's incapability to take care of him instead of family's economic situation. Currently the most frequent causes of child's removal are: parents' incompetence and problem of relationship inside the family (45%); parents' problems such as legal cases, health problems, drug/alcohol dependence, death (21,9%); child abuse, sexual abuse, acts of violence (10,7%); economic, housing and working problems (6%). Data source: "Relazione sullo stato di attuazione della legge recante modifiche alla disciplina dell'adozione e dell'affidamento dei minori, nonché al Titolo VIII del libro primo del codice civile" (Report on the actualization status of the law on the change of protocol of children adoption and foster care, as well as of Chapter VIII of 1st book of Civil law), presented by Justice and Working and Social politics Ministers to Presidency of Camera on December, 16th 2013.

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?

We think there has not been particular effect.

**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?

The making illegal of any kind of "self-service" adoption through the establishment of a central authority and the intervention/intermediation of the authorized agencies.

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

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

1) The cost of intercountry adoption has considerably increased and it is not affordable to everyone. That is a result of the implementation of the new procedure for adoption which is far more complex than the previous one. The new procedure is itself the result of the complex changes introduced by the Convention. Nonetheless, the Convention was an important tool in order to prepare, evaluate and support families who adopt children with health diseases, siblings, and older children, a consequence of the application of the principle of subsidiarity of the Convention. 2) An excessive competitiveness, in Italy and abroad, among the authorized agencies as a result of the intertwining of multiple factors: a too high number of agencies authorized for intercountry adoption compared with the dearth of both the children who may need adoption and prospective parents. 3) Italian Central Authority is experiencing hardships to carry out an effective monitoring on the operations of the accredited bodies, both in Italy and abroad. This predicament is caused by: a) the large number of authorized agencies; b) the lack of power of the Central Authority; c) the sudden reduction of both economic resources and staff; d) the lack of power to impose sanctions; e) the absence of a qualified referent, a person experienced and committed with our Embassies and Consulates who is able to understand the lines of the foreign policies and to define strategies to be implemented in the foreign country. 4) Procedure time for adoption is often too long, especially in the foreign country, which make uncertain the success of the entire process of adoption.

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

1) To set a national research programme on the actual well-being of the children who have been adopted in recent years, since the Law 476/98, in order to evaluate the effectiveness - even in the long- term effects – of the new procedure. This has to be done considering that, in Italy, children adopted are among the oldest ones and often with health problems, many siblings and older children. 2) To foresee forms of promotion and bonus in behalf of couples who wish to adopt. In this vein, models of safe motherhood care have to be reviewed. 3) To reduce the expected time for an intercountry adoption required from the Italian procedure, applying the time set by Law 476/98 for the release of the declaration of suitability. 4) To ensure a greater role played by the Commission for Intercountry Adoptions at national and international level, providing it with greater human and financial resources and providing a supervisory role and more effective control on the operations of the agencies. 5) To promote the ratification of the Convention by the countries not yet signatories, in way to support the Ministry of Foreign Affairs. 6) To ensure stronger commitments for the the agencies who get the authorization, such as: high ethical standards, transparency, competence and accountability.

**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?

1) The principle of subsidiary in the intercountry adoption. 2) The design of a shared procedure between countries of origin and host countries. 3) The definition of the documents needed in order to claim a child as adoptable. 4) The fight against practices of "self-service" intercountry adoption; 5) The attempt to prevent the "market" of adoptions; 6) The planning of forms of mutual acknowledgement in adoption between states.

- (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?

When the Convention has been promulgated, it tried to contrast those wrong practices of adoption similar to a "market" which were common at that time. But unfortunately in the following years, other bad practices came up inside the adoption's procedure. As already told about the phenomenon of "child laundering" other actions are going on, due to: Adoptive States' politic pressure and the work (more or less brash) of agency's delegates on the field. They often aim to take the biggest number of adoptable children, possibly very young and healthy.

- (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 challenge remains, as we have seen, the same as 20 years ago: to ensure the protection of the rights of the child within the intercountry adoption path. Unfortunately, as we have noted, the illicit traffics linked to the adoption did not end but rather it has grown. In this vein, National Central Authorities have to make greater effort in order to enhance controls and first and foremost engaging politicians in the fight against illicit practices. Thus, it is compelling that Countries having ratified the Hague Convention should facilitate, concretely and effectively, the process of accession to the Convention of the non-Hague countries.

Moreover the child, with his needs and desires, has to be placed at the center of every decision. Children ready for adoption, all over the world, are getting progressively older and often characterized by tough life-stories. Thus, theirs stories have to be recognized and taken into account. From this point of view, the adoption procedure implemented by the 1993 Convention could be applied by providing a range of interventions both in the country of origin and in the host country. The child must be recognized as an active social agent in the process of adoption through a variety of solutions: forms of support within the path toward adoptability; to support activities which make the child aware of his adoption; to design new kinds of relationships between the child and the adoptive family in regard to the interventions for post-adoption in the receiving country.

**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?

Italy lacks of an International research on the well-being of the adoptees.

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

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

Over the past 20 years we have witnessed social and economic changes that have fundamentally altered the former global structure and equilibrium within the field of both humanitarian aid and intercountry adoption. Therefore, some countries of origin of the adopted children have introduced domestic adoption and other forms of alternative care, such as foster care. In some cases, this has reduced the need to indicate children for intercountry adoption. The intercountry adoption has come to be seen, in some cases, as a "predatory" practice in regard to the children and, more broadly, to the future of the their nation. A compelling point recently made seems to be the evaluation of how alternative and local forms of protection – nonetheless temporary – such as foster care, have to be prioritized instead of the opportunity for the abandoned children to have a stable family abroad. The problem arises at national level as well. In Italy 30.000 children are out of their families, in foster care or in a community. Moreover 1.900 of them are children with the right of been adopted even though they are not. More challenges come from the upsurge of assisted reproductive practices which are getting increasingly sophisticated. These practices make it compelling to reflect on how the prospective parents will change in the future their attitude toward intercountry adoption, especially if assisted reproductive practices will be free of charge and the adoption won't be.