

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF
THE 1996 CONVENTION**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1996 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit: ¹	Germany
<i>For follow-up purposes</i>	
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PART I – FOR STATES PARTIES

Recent developments in your State

1. Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of international child protection? Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice.

- No
 Yes, please specify:

2. Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1996 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities² in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and other relevant instruments:

Not all of the decisions rendered by German courts concerning the interpretation and application of the 1996 Convention are published. Therefore the decisions referred to below do not represent the relevant case law as a whole but rather serve as mere examples to illustrate the questions German courts have been dealing with since the Convention entered into force. To that effect, the decisions enlisted below cannot be seen to represent prevailing opinion either.

Some courts briefly discussed the age threshold as set out in Art. 2 1996 Hague Convention and pointed out that it provides for a clear delineation between the 1996 Hague Convention and the Convention of 13 January 2000 on the International Protection of Adults (see Brandenburgisches Oberlandesgericht (OLG, appellate court), 26 Apr 2016, 13 UF 40/16 and also Hanseatisches OLG Bremen, 24 May 2012, 4 UF 43/12 and 23 Feb 2016, 4 UF 186/15).

Regarding international jurisdiction there is some relevant case law pertaining to the application of Art. 5 in demarcation from the Brussels II bis Regulation. In particular, the effect of a change of residence by the child in question (from a Brussels II bis country to a 1996 Hague Convention country) has been discussed by the courts. The Brussels II bis Regulation takes priority in application pursuant to its Art. 61 a) only, if the child is habitually resident in a Brussels II bis country. Hence - it has been argued - the principle of perpetuatio fori does not apply, if the child takes up a new habitual residence in a 1996 Convention State in which the Brussels II bis regulation is not applicable (see OLG Köln, 1 Aug 2016, II-21 WF 82/16 and 21 WF 82/16; Saarländisches OLG, 26 Aug 2015, 9 UF

¹ The term "State" in this Questionnaire includes a territorial unit, where relevant.

² The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1996 Convention. Whilst in the majority of States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

59/15; Kammergericht (appellate court) Berlin, 2 Mar 2015, 3 UF 156/14 and OLG Karlsruhe, 12 Nov 2013, 5 UF 140/11).

Furthermore the term "habitual residence" itself has been frequently discussed by the courts in the context of Art. 5. It has been argued that the habitual residence of the child has to be determined independantly of the habitual residence of the parents (see Saarländisches OLG, 26 Aug 2015, 9 UF 59/15) and that it is important to assess the social integration of the child at its new residence that can usually be considered habitual after 6 months even though a consideration case-by-case remains necessary (Kammergericht Berlin, 2 Mar 2015, 3 UF 156/14).

Since the Brussels II bis Regulation does not include rules on applicable law and the 1996 Hague Convention supersedes the domestic conflict of laws provisions, Art. 15 et seq. are of particular importance which has lead to a growing corpus of case law.

Initially it was discussed whether Art. 15 (1) also encompasses authorities exercising their jurisdiction under the Brussels II bis Regulation. This question seems to be answered in the affirmative predominantly (see OLG Hamm, 2 Feb 2011, II-8 UF 98/10, 8 UF 98/10) in particular in cases where the authority in question would (hypothetically) also have jurisdiction under the 1996 Hague Convention (see OLG Karlsruhe 5 March 2013, 18 UF 298/12).

Furthermore some questions have arisen with regard to the application *ratione temporis* of Art. 16. As for Art. 16 (1), it was disputed, whether the provision was applicable to circumstances that had occurred prior to the convention entering into force on 1 January 2011. Often this question was not material und could therefore remain unanswered as domestic conflict law (Art. 21 of the Introductory Act to the Civil Code) also refers to the law of the state of habitual residence to govern matters of parental responsibility - albeit including the International Private Law of that state (Art. 4 (1) of the Introductory Act to the Civil Code) thus allowing for *renvoi* (Brandenburgisches OLG, 3 Mar 2014, 9 UF 275/11). As for Art. 16 (3), a similar question has arisen in cases where the change of habitual residence had occurred prior to the entering into force of the convention (OLG Karlsruhe, 5th 2013, 18 UF 298/12 and 19 Aug 2011, 16 UF 140/11; also Fed. Court of Justice, 16 Mar 2011, XII ZB 407/10).

As regards Art. 16 (2), it seems to have been established that the term 'agreement' also encompasses declarations of parental custody pursuant to section 1626a German Civil Code (see Kammergericht Berlin, 27 Jun 2011, 16 UF 124/11).

3. Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child protection:

In general terms, the application practice of the 1996 Hague Convention cannot be assessed without consideration of the Brussels II bis Regulation and the application and interpretation thereof. The subject matter covered by the 1996 Hague Convention also falls - to a considerable extent - within the scope of the aforementioned Regulation. According to Art. 61 a) Brussels II bis, the Regulation applies where the child concerned has his or her habitual residence on the territory of a Member State. Additionally, the Regulation prevails where the recognition or enforcement of a decision given in a court of a Member State is sought on the territory of another Member State (excluding Denmark), Art. 61 b) Brussels II bis. Thus, the Convention is superseded by the Regulation to the extent they share the same material scope in the aforementioned cases, see Art. 52 (1), (3), (4) 1996 Hague Convention in conjunction with Art. 61 a), b) Brussels II bis Regulation.

Therefore, in important areas regarding international child protection which are covered by the Convention - such as jurisdiction, recognition/enforcement and cross-border placements - the Brussels II bis regulation is the legal instrument German authorities apply most frequently.

Accordingly, the current revision of the Brussels II bis Regulation has been a development of paramount significance for Germany as it has been for other EU Member States. As the consultations are still ongoing, the impact of the revised Regulation cannot be assessed yet, but is likely to be considerable in the context of international child

protection given the comprehensive scope outlined above.

For the purposes of this questionnaire, this means that many questions refer to provisions that are rarely applied by German authorities as the (often similar) provisions of the Brussels II bis Regulation take priority of application. This has been taken into account by outlining the interplay of the Regulation and the 1996 Hague Convention where necessary in order to answer the respective questions in this questionnaire.

Another significant development was in the field of cross-border placements: The Federal Working Group of supra-local agencies responsible for the public youth welfare service has published a comprehensive guideline regarding the procedure to be executed by supra local agencies as competent authorities to grant consent in incoming cases of cross-border placements pursuant to Art. 33 1996 Hague Convention and Art. 56 (2) Brussels II bis Regulation. It can be accessed online: http://www.bagljae.de/downloads/125_verfahrensstandards_2016.pdf

Scope

4. Have competent authorities in your State experienced any challenges, or have questions arisen, in determining the scope of the Convention under **Article 2** (meaning of "child")_or **Article 3** (meaning of "protective measures")?

- No
 Yes, please specify:

Jurisdiction

5. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction under **Articles 5, 6, 7 or 10**?

- No
 Yes, please specify:

There is some relevant case law pertaining to the application of Article 5 in demarcation from the Brussels II bis Regulation. In particular, the effect of a change of residence by the child in question (from a Brussels II bis country to a 1996 Convention country) has been discussed by the courts. The Brussels II bis Regulation takes priority in application only if the child is habitually resident in a Brussels II bis country pursuant to Art. 61 a) Brussels II bis. Hence, the principle of perpetuatio fori - as outlined in the Regulation in difference to Art. 5 of the Convention - does not apply if the child takes up a new habitual residence in a 1996 Convention state which is not participating in the application of the Brussels II bis regulation.

Furthermore the term "habitual residence" itself has been frequently discussed by the courts in the context of Article 5 as has also been the case before within the framework of e.g. the 1961 Hague Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants, the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the Brussels II bis Regulation. However, this has led to a more and more nuanced understanding of the term over the years (see above question 2).

6. Have competent authorities in your State experienced any challenges, or have questions arisen, in implementing and / or applying **Articles 8 and 9**?

- No
 Yes, please specify:

The interplay between Art. 8, 9 and Art. 33 has occasionally represented a challenge in relocation cases. Where relocation seems to be in the child's best interest (e.g. where neither parents nor other relatives are present in the state of habitual residence or where special needs of the child speak in favour of relocation), the transfer of jurisdiction in accordance with Art. 8, 9 has proven to be problematic if the information provided to the court in the receiving country was insufficient to assume a 'substantial connection' yet, whilst the alternative of a placement pursuant to Art. 33 may fail due to the associated costs. In practice, although citizenship is a special example for "substantial connection", mere citizenship may be deemed insufficient for a transfer in case there is no additional "substantial connection". Such cases cause e.g. issues regarding domestic/local

jurisdiction/competency.

7. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Articles 8 and 9**?³

- No
 Yes, please describe them and also provide a link or attach them, preferably translated into English or French:

The International Hague Network of Judges and the European Judicial Network have proven to be effective tools in fostering judicial communication. In this regard the leaflet "Assistance in Proceedings of Family Courts with a Cross-border Dimension" ("Hilfestellung in Familienverfahren mit Auslandsbezug") which describes situations in which the Network Judges may provide assistance - and particularly mentions the transfer of jurisdiction pursuant to Art. 15 Brussels II bis - is noteworthy.

The leaflet provides contact data of the respective network judges. Questions regarding matters of international jurisdiction have been among the key issues of the requests addressed to the network judges in 2016 (see https://www.bundesjustizamt.de/DE/SharedDocs/Publikationen/EJNZH/Deutsche_Verbindungsrichter_Information.pdf).

8. Have competent authorities in your State had experience with urgent measures of protection taken under **Article 11**? (See also Question No 35.)

- No
 Yes, please describe in which situations a competent authority in your jurisdiction has applied Article 11:

The practical relevance of Art. 11 is limited given that Art. 20 Brussels II bis Regulation takes priority if the child is habitually resident in a Brussels II bis state. However, Art. 11 may still have some significance where the child is on German territory but habitually resident in a state where the Brussels II bis Regulation is not applicable, since Art. 20 Brussels II bis requires another Member State to have jurisdiction as to the substance of the matter. Urgent measures are taken e.g. in child abduction constellations (prevention of further abduction) as in cases of unaccompanied minors: In order to avert risks from the child or to avoid detriment to the interests of the participants and especially to secure the child's abode during proceedings, courts may issue provisional measures such as a travel ban in accordance with sec. 15 of the German International Family Law Procedure Act - IFLPA. Hague Courts are entitled to take such measures pursuant to Art. 20 Brussels II bis Regulation, which is why courts usually do not have to refer to Art. 11 1996 Hague Convention.

9. Have competent authorities in your State experienced any challenges, or have questions arisen, with respect to the application of **Article 11**?

- No
 Yes, please describe:
 Communication and cooperation between competent authorities may occasionally be difficult. Also, cost issues and other practical complications may arise.

10. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Articles 12, 13 or 14**?

- No
 Yes, please describe:
 See Article 11 above.

Applicable law

11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Articles 15, 16, 17 or 18**?

- No
 Yes, please describe:

The International Private Law in Art. 15 et seq. is of particular importance for competent authorities given that the Brussels II bis Regulation does not include rules on applicable law. Furthermore the Art. 15 et seq. supersede the domestic conflict of laws

³ See, e.g., Direct Judicial Communications - [Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications \(2013\)](#).

provisions (in particular Art. 21 of the Introductory Act to the Civil Code).

The principle of *lex fori* as laid out in Art. 15 (1) has proven advantageous as it allows competent authorities to apply the law they know best. While it was discussed whether Art. 15 (1) also encompasses authorities exercising their jurisdiction under the Brussels II bis Regulation, this question seems to be answered in the affirmative predominantly in particular where the authority in question would (hypothetically) also have jurisdiction under the 1996 Hague Convention.

Art. 15 (3) has some practical relevance in relocation cases, e.g. in cases of guardianship *ad litem* being established and subsequent supervision after movement.

From a practical point of view, the provision of Art. 16 is of paramount importance. This is particularly owed to Art. 3 1980 Hague Convention on the Civil Aspects of International Child Abduction which requires a breach of rights of custody attributed under the law of the state in which the child was habitually resident immediately before the removal or retention. The 'law of the state' also refers to the conflict of laws of the given state - hence Art. 16 is often relevant in (potential) child abduction cases.

In this context, some questions have arisen with regard to the application *ratione temporis* of Art. 16. As for Art. 16 (1), it was disputed whether the provision was applicable to circumstances that had occurred prior to the convention entering into force on 1 January 2011. Often this question was not material and could therefore remain unanswered as domestic conflict law (Art. 21 of the Introductory Act to the Civil Code) also refers to the law of the state of habitual residence to govern matters of parental responsibility - albeit including the international private law of that state (Art. 4 (1) of the Introductory Act to the Civil Code) thus allowing for *renvoi* (in contrast to Art. 21 of the Convention). As for Art. 16 (3), a similar question has arisen in cases where the change of habitual residence had occurred prior to the entering into force of the convention.

As regards Art. 16 (2), it seems to have been established that the term 'agreement' also encompasses declarations of parental custody pursuant to section 1626a German Civil Code.

12. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter III**?

- No
 Yes, please describe them:
 Please insert text here

Recognition and enforcement

13. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 23** from the perspective of the requested State?

- No
 Yes, please describe:

The Federal Office of Justice as Central Authority under the 1996 Hague Convention occasionally receives applications for recognition and enforcement of decisions from other Contracting States requesting it to conduct the recognition and enforcement procedure directly via the Central Authority. However, the role of the German Central Authority is in the context of Art. 23 et seq. 1996 Hague Convention limited to referring those applications to the competent courts. But, as far as we are aware of, this rather corresponds with the common approach by other contracting states.

From the courts point of view, difficulties have repeatedly arisen in determining whether the child has been provided the opportunity to be heard pursuant to Art. 23 (2) c) 1996 Hague Convention.

14. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Article 24**?

- No
 Yes, please describe and also provide a link or attach them, preferably translated into English or French:

According to sec. 32 IFLPA the rules governing the admission of compulsory enforcement / the declaration of enforceability (sec. 16 et seq IFLPA) shall *mutatis mutandis* be applied to applications pursuant to Art. 24. That is, the "simple and rapid procedure" as described in answering question 16 applies with some exceptions, e.g. the *ex parte* procedure pursuant to sec. 18 (1) IFLPA is to be conducted in a modified form in some cases.

15. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 24** (e.g., in terms of procedure, formalities, time frames, etc.)?

- No
 Yes, please describe:
 (See Questions 13 and 17)

16. Please describe the "simple and rapid procedure" (see **Article 26(2)**) in place in your State for declaring enforceable or registering for the purpose of enforcement measures of protection taken in another State Party and enforceable there, in particular:

- a) Which authority declares enforceable or registers a measure of protection taken in another State Party?
 b) What time frames are applied to ensure that the procedure is rapid?
 c) Is legal representation required?

Please explain:

The implementing legislation for the "simple and rapid procedure" pursuant to Art. 26 (2) can be found in Sec. 16-23 of the International Family Law Procedure Act - IFLPA. Legal representation is not required, sec. 18 (2) IFLPA in conjunction with sec 10 (1), 114 (1), 111, 151 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction. The applicant may obtain the endorsement of enforcement in a simple and effective ex parte procedure, see sec. 18 (1), 20, 23 IFLPA. The competent court shall order that the title be furnished with the endorsement of enforcement; in giving the reasons it is - as a rule - sufficient to make reference to the Convention, see sec. 20 (1) IFLPA. The endorsement of enforcement is then to be granted by the registry clerk, see sec. 23 (1) IFLPA.

17. Are you aware of any challenges, or have questions arisen, in applying **Article 26** in your State?

- No
 Yes, please describe:

If foreign access orders lack accuracy, a provision similar to Art. 48 Brussels II bis Regulation might be beneficial from the courts point of view in order to make practical arrangements for organising the exercise of rights of access.

More generally, the respective order shall come into effect only when it becomes binding with final legal force, sec. 22 (1) IFLPA. In this context, the proceedings might be delayed due to the time required to serve the order in another country. (Also see Question 13).

18. Are you aware of any challenges, or have questions arisen, in applying **Article 28** in your State?

- No
 Yes, please describe:
 Please insert text here

Co-operation

19. Are you aware of any challenges, or have questions arisen, in applying **Article 30** in your State (e.g., in relation to the timeliness of responses to requests)?

- No
 Yes, please describe:

In general terms, the cooperation of the German Central Authority and the Central Authorities of other Convention States runs smoothly and effectively. However, some Central Authorities reply with a certain delay. This is at times caused by the means of communication employed, i.e. using regular mail instead of faxes and/or e-mails.

Also the language barrier is an issue with some States.

As for communication via e-mail, it has proven quite effective if Central Authorities provide a collective e-mail address that can be used instead of individual addresses linked to a specific employee in order to avoid difficulties in determining the right contact data that are often caused by turnover of staff.

20. In your view, would it facilitate the task of Central Authorities under **Article 30(2)** if States Parties provided information as to their laws and available services in relation to the

practical implementation of the 1996 Convention, *e.g.*, in the form of a Country Profile or a similar tool published on the HCCH website?

No

Yes, please describe the type of information that would be useful to include (*e.g.*, information with respect to the availability of certain protective measures under internal law (*e.g.*, in relation to **Article 3(e)**), or the procedures applied under, *e.g.*, **Articles 23, 24, 26, 31 or 33**, or information on Central Authority services provided):

Information in the form of a Country Profile would certainly be useful and is strongly recommended. In particular information with regard to the cooperation of the Central Authorities and the adopted procedure for recognition and enforcement of decisions would be deemed helpful. Apart from that, information that might facilitate the consultation procedure for cross-border placements in accordance with Art. 33 1996 Hague Convention could improve cooperation in this field.

21. How does your Central Authority (either directly or through public authorities or other bodies) take appropriate steps under **Article 31(b)** to facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the 1996 Convention applies? Please explain:

In the context of Art. 7 (2) (c) of the 1980 Hague Child Abduction Convention and Art. 55 (e) Brussels II bis Regulation, mediation is offered by the German Central Authority to applicants on a regular basis. If applicant and respondent both show an interest in mediation, the German Central Authority is supported by third party mediators and cooperates closely with MiKK e.V., a non profit organization, that helps to facilitate the mediation. The German Central Authority liaises directly with the competent court in 1980 Hague Convention proceedings in order to ensure that no undue delay is caused by mediation and that the results achieved can be incorporated directly into the court order where appropriate. Although the German Central Authority does not yet offer such specific service in the context of the 1996 Hague Convention (also due to the rather limited mandate, see *supra* question 13), we provide information also in this context on request. In addition, services by MiKK also include 1996 Hague Convention constellations.

22. Have authorities in your State experienced any challenges, or have questions arisen, in applying **Article 33** (*e.g.*, has your State been requested to accept a child under a certain type of placement or institutional care that is not available under your internal law, or was insufficient information provided to you as the Requested State)?

No

Yes, please describe:

The placement of minors in Germany and the associated consultation procedure pursuant to Art. 33 1996 Hague Convention is governed by the implementing legislation in sec. 45-47 IFLPA. According to sec. 45 IFLPA competence for the grant of consent lies with the supra-local agency responsible for the public youth welfare service and requires to be approved by the competent family court according to sec. 47 IFLPA.

In this context, it occurred that the placement decision was made prior to completion of the consultation procedure and thus in derogation from the procedure provided for in Art. 33 1996 Hague Convention in conjunction with sec. 45-47 IFLPA. This has led - *inter alia* - as a consequence to problems as to obtaining a visa for the respective child.

Furthermore questions arose as to whether the consultation procedure had to be conducted in cases where a placement with relatives was considered.

In this context, reference may again be made to the comprehensive guideline developed by the Federal Working Group of supra-local agencies responsible for the public youth welfare service on the procedure for cross-boarder placements in incoming cases (see Question 3 *supra*).

Recently, questions of cross-border placements have increasingly be discussed in the context of unaccompanied minors. In this regard, relocation in accordance with Art. 33 1996 Hague Convention may be hampered by uncertainties as to who had to bear the associated costs.

In practice, cases of Kafala also may raise difficult legal issues as well as practical ones, including *e.g.* immigration issues.

23. Have authorities in your State experienced any challenges, or have questions arisen, in providing or obtaining reports or information under **Articles 32, 33 or 34**?

No

- Yes, please describe:

The above mentioned provisions governing the cross-border exchange of information are used by Convention States in a variety of ways to facilitate cross-border communication. The diversity of requests under Art. 32-34 1996 Hague Convention sometimes entails difficulties with regard to determining what kind of information is requested and if the requests falls within the scope of the Convention. This, however, seems to be inevitable to a certain degree given the different systems of family law and protective measures in the respective Contracting States.

24. Do authorities in your State use a standard template when providing a report on the (situation of the) child under **Article 32 or 33**?

- No
 Yes, please attach the template to your response (preferably translated into English or French):
[Please insert text here](#)

25. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 35**?

- No
 Yes, please describe:
[Please insert text here](#)

26. Does your State impose charges, as provided under **Article 38(1)**, for the provision of services under **Chapter V** (Co-operation)?

- No
 Yes, for the following types of services (e.g., translation, legal assistance):
[Please insert text here](#)

27. Have authorities in your State experienced any challenges, or have questions arisen, with regard to charges provided under **Article 38(1)**?

- No
 Yes, please describe:
[Please insert text here](#)

28. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, does your Central Authority provide assistance to **individuals** habitually resident in your State who request it in connection with the following matters? If so, please specify the nature of the assistance provided.

a) A request to organise or secure effective exercise of **rights of access** in another State Party (requested State)⁴

1. None
 2. Assistance in obtaining information on the operation of the 1996 Convention
 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
 6. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access
 7. Assistance in providing or facilitating the provision of legal aid and advice
 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State
 9. Referral to other governmental and / or non-governmental organisations for assistance
 10. Provision of regular updates on the progress of the application

⁴ See in this context, e.g., the [Practical Handbook](#) on the Operation of the 1996 Child Protection Convention, sections 11(E)(d) and 13(B) (2014).

11. Other, please specify:

In general terms, the German Central authority establishes contact with the Central Authority of the requested Member State in outgoing cases and subsequently forwards further inquiries (e.g. regarding assistance in obtaining private legal counsel, mediation, legal aid) to the Central Authority of the requested State. Hence, some of the boxes above were not ticked, even though such assistance may be provided just not directly by the German Central Authority but rather as a result of communication and cooperation with and support by the Central Authority of the requested State.

In outgoing cases, contact by individuals is rather rare, since often there are pending proceedings and attorneys already involved.

From a German perspective, the 1980 Hague Child Abduction Convention is applicable in most access cases that also fall within the scope of the 1996 Hague Child Protection Convention. In these cases, the 1996 Hague Convention might merely take a facilitating role, whilst the application is pursued in accordance with Art. 21 1980 Hague Convention.

However, if the child has already reached the age of 16, the 1980 Hague Convention is no longer applicable, see Art. 4. In these cases, access contacts could be facilitated in accordance with Art. 31-35 1996 Hague Convention, albeit for some measures, such as social reports, the Brussels II bis Regulation might take priority.

If the applicant already has a German court order for access rights, this order may be enforced pursuant to the 1996 Hague Convention, where the regime for recognition and enforcement of the Brussels II bis Regulation does not apply. But in many cases, decisions concern situations before relocation, so that an application for a new, amended decision under Article 21 1980 Hague Convention may be advisable.

b) A request to secure the return to your State of a child subject to **parental abduction** where the 1980 Convention is not applicable

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained
- 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child
- 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue
- 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 10. Assistance in providing or facilitating the provision of legal aid and advice
- 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 12. Assistance in obtaining private legal counsel or mediation services
- 13. Referral to other governmental and / or non-governmental organisations for assistance
- 14. Regular updates on the progress of the application
- 15. Other, please specify:

[Please insert text here](#)

c) A request to secure the return to your State of a **runaway child** (see **Article 31 c)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention

- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in discovering the whereabouts of a runaway child
- 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 8. Assistance in providing or facilitating the provision of legal aid and advice
- 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 10. Assistance in obtaining private legal counsel
- 11. Referral to other governmental and / or non-governmental organisations for assistance
- 12. Regular updates on the progress of the application
- 13. Other, please specify:
[Please insert text here](#)

d) A request for a **report on the situation of a child** habitually resident in another State Party (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see **Article 32 a)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Other, please specify:
[Please insert text here](#)

e) A request that the competent authorities of another State Party decide on the **recognition or non-recognition** of a measure taken in your State (see **Article 24)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in obtaining private legal counsel
- 7. Regular updates on the progress of the request
- 8. Other, please specify:
[Please insert text here](#)

f) A request that the competent authorities of another State Party **declare enforceable or register for the purpose of enforcement** measures taken in your State (see **Article 26)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention

- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in obtaining private legal counsel
- 7. Regular updates on the progress of the request
- 8. Other, please specify:
[Please insert text here](#)

29. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, if your Central Authority were to receive a request of assistance from **another Central Authority** on behalf of an individual residing abroad, in connection with the following matters, please specify the nature of the assistance that your Central Authority provides or would provide if the situation was to arise.

a) A request to organise or secure effective **exercise of rights of access**

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or the relevant laws and procedures in your State
- 3. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access
- 4. Assistance in providing or facilitating the provision of legal aid and advice
- 5. Assistance in obtaining private legal counsel or mediation services available in your State
- 6. Referral to other governmental and / or non-governmental organisations for assistance
- 7. Regular updates on the progress of the application
- 8. Other, please specify:

[From a German perspective, the 1980 Hague Child Abduction Convention is applicable in most access cases that also fall within the scope of the 1996 Hague Child Protection Convention \(see question 28 a\)\). The German Central Authority may bring proceedings for access pursuant to Art. 21 1980 Hague Convention before the competent German Court, see sec. 6 \(2\) IFLPA. The application for access is independent of and does not require a separate application for return. Concerning mediation, see Question 21 supra.](#)

[If the applicant already has a foreign court order for access rights, this order may be enforced pursuant to the 1996 Hague Convention, where the Brussels II bis Regulation does not apply.](#)

b) A request to secure the return to the State of habitual residence of a child subject to parental abduction where the 1980 Convention is not applicable

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or the relevant laws and procedures in your State
- 3. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained
- 4. Assistance in taking provisional measures of protection to prevent further harm to the child
- 5. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue
- 6. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 7. Assistance in providing or facilitating the provision of legal aid and advice
- 8. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 9. Assistance in obtaining private legal counsel or mediation services
- Referral to other governmental and / or non-governmental organisations for assistance

10. Regular updates on the progress of the application
 11. Other, please specify:

A foreign custody order ordering the return of the child to the State of habitual residence may be enforced in Germany. In this context, the German Central Authority refers the applicant to the competent court. Assistance in discovering the whereabouts of a child is provided on request of an authority pursuant to Art. 31 lit. c) 1996 Hague Convention.

- c) A request to secure the return of a runaway child (see **Article 31 c)**)

1. None
 2. Providing information on the operation of the 1996 Convention and / or on the relevant laws and procedures in your State
 3. Assistance in discovering the whereabouts of a runaway child
 Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
 4. Assistance in providing or facilitating the provision of legal aid and advice
 Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
 5. Assistance in obtaining private legal counsel
 6. Referral to other governmental and / or non-governmental organisations for assistance
 7. Regular updates on the progress of the application
 8. Other, please specify:

Where protective measures are required, the German Central Authority provides support in accordance with Art. 30, 32, 34, 35; in particular it informs the local Youth Welfare Office which may provide a social report or take further steps for the protection of the child on their own authority. The German Central Authority also assists in direct communication.

- d) A request for a report on the situation of a child habitually resident in your State (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see **Article 32 a)**)

1. None
 2. Providing information on the operation of the 1996 Convention and / or on the relevant laws in your State
 3. Preparing and transmitting the requested report
 4. Transmission of the request to the competent authorities in your State
 5. Other, please specify:

- e) A request that the competent authorities of your State decide on the recognition or non-recognition of a measure taken in another State Party (see **Article 24**)

1. None
 2. Providing information on the operation of the 1996 Convention and / or relevant laws in your State
 3. Transmission of the request to the competent authorities in your State
 4. Assistance in obtaining private legal counsel
 5. Other, please specify:

The German Central Authority refers the applicants to the courts competent pursuant to sec. 10, 12 IFLPA in conjunction with Art. 24.

- f) A request that the competent authorities of your State declare enforceable or register for the purpose of enforcement measures taken in another State Party (see **Article 26**)

1. None
 2. Providing information on the operation of the 1996 Convention and / or relevant laws in your State
 3. Transmission of the request to the competent authorities in your State
 4. Assistance in obtaining private legal counsel

5. Other, please specify:

The German Central Authority refers the applicants to the courts competent pursuant to sec. 10, 12 IFLPA in conjunction with Art. 26.

30. Where the habitual residence of a child present in your State cannot be established, have authorities in your State used any of the provisions of **Chapter V** in determining the child's place of habitual residence?

- No
 Yes, please specify:

31. Are you aware of any challenges, or have questions arisen, in applying any other provisions under **Chapter V** in your State?

- No
 Yes, please describe:
 Please insert text here

32. Have judges in your State used direct judicial communications in cases falling under the 1996 Convention?

- No
 Yes, please specify in relation to which specific matters (e.g., transfer of jurisdiction, placement of a child):

A variety of matters were subject to the enquiries adressed to the German Hague Network Judges, such as the applicable law pursuant to Art. 16, international jurisdiction, Art. 13 to name but a few.

General provisions

33. Has your State experienced any challenges, or have questions arisen, in relation to requests under **Article 40** for the delivery of a certificate indicating the capacity in which a person having parental responsibility or entrusted with protection of the child's person or property is entitled to act and the powers conferred upon him or her?

- No
 Yes, please describe:

34. Which authorities in your State are competent to issue such certificates? Please specify:
 By now there was no practical need for this.

Special categories of children

Children subject to international parental abduction

35. Have authorities in your State experienced any challenges, or have questions arisen, in relation to the application of the 1996 Convention in cases of child abduction where the 1980 Convention was not applicable (see Question Nos 28 b) and 29 b) above)?

- No
 Yes, please describe:

As pointed out above (question 29 b)), the return might be achieved by means of enforcing a foreign custody order which includes an order to return the child. Given that the 1980 Hague Convention has entered into force in relation to the vast majority of 1996 Hague Convention States, this approach is hardly ever pursued.

36. In cases of child abduction where both the 1980 Convention and the 1996 Convention were applicable, have authorities in your State made use of provisions under the 1996 Convention in addition to or instead of provisions of the 1980 Convention?

- No
 Yes, please specify the provisions and explain:

In child abduction cases, the provisions in Chapter III are of particular importance to determine the applicable law as far as the rights of custody pursuant to Art. 3 1980 Hague Child Abduction Convention are concerned (see question 11).

37. In cases of parental child abduction, whether or not the 1980 Convention is applicable, have authorities in your State used the co-operation provisions in **Chapter V** of the 1996 Convention to determine whether adequate measures of protection are available in the State of the habitual residence of the child (e.g., to facilitate the safe return of the child)?

- No
 Yes, please explain:

The co-operation provisions of Chapter V are of limited relevance in cases of parental child abduction given that regularly the 1980 Convention is applicable whereby measures of protection may be arranged in accordance with Art. 7 h) 1980 Hague Convention. Additionally, the co-operation provisions of Chapter IV of the Brussels II bis Regulation take priority where the Regulation applies and direct judicial communication is possible, thus leaving little room for the application of the 1996 Hague Convention in this context. In German proceedings, use of undertakings et. al. is not common, such issues therefore do not arise.

38. In cases of parental child abduction, have competent authorities in your State taken measures of protection under **Article 11**, as an alternative to measures of protection in the form of mirror orders or undertakings, to facilitate the safe return of the child? (See also Question No 5.)

- No
 Yes, please explain:

See Question 37 supra.

Children subject to international relocation

39. Are you aware of any use being made of provisions of the 1996 Convention in cases where a parent wishes to relocate with his or her child to another State?

- No
 Yes, please explain:

In relocation cases, the decision on recognition of orders might often be relevant. However, the mechanism of Art. 24 1996 Hague Convention is not being applied very often, as the similar mechanism of Art. 21 (3) Brussels II bis Regulation often takes priority.

International access / contact cases involving children

40. Are you aware of any use being made of provisions of the 1996 Convention, including those under **Chapter V**, in lieu of or in connection with an application under **Article 21** of the 1980 Convention?⁵

- No
 Yes, please explain:

See above question 28 a).

Unaccompanied, separated, and internationally displaced children

41. Are you aware whether authorities in your State have used the provisions of the 1996 Convention in relation to the protection of internationally displaced children (such as refugee children, trafficked children, sexually exploited children, or unaccompanied children) and / or children whose habitual residence cannot be established?

- No
 Yes, please specify:

The provisions in Chapter V may prove to be effective instruments in order to facilitate cross-border communication between authorities aimed at taking measures for the protection of unaccompanied minors. In particular, assistance in discovering the child's whereabouts pursuant to Art. 31 c), 34 1996 Hague Convention, providing information on possible threats to the child's well being and requesting protective measures pursuant to Art. 32 b), 34 1996 Hague Convention and conducting social reports pursuant to Art. 32 a), 34 1996 Hague Convention were already employed in cases of internationally displaced children. Specific cases in relation to refugees are currently increasing and raise specific issues, in particular concerning the relation with immigration laws.

⁵ The [Explanatory Report](#) (Lagarde) on the 1996 Convention notes that co-operation under Article 35(1) between authorities of States Parties with respect to rights of access "serves in a certain way to complete and reinforce the co-operation, which is not always effective, provided for the same purpose between Central Authorities" under Article 21 of the 1980 Convention. Explanatory Report, paragraph 146 (1997).

Miscellaneous

42. Is there any other comment that your State wishes to make relating to the practical operation of the 1996 Convention? If so, please specify:

[Please insert text here](#)

PART II – FOR NON-STATES PARTIES

43. Is your State currently considering signing and ratifying or acceding to the 1996 Convention?

- No
 Yes

44. In considering how your State would implement the 1996 Convention, have you encountered any issues of concern?

- No
 Yes, please explain:

[Please insert text here](#)

PART III – FOR BOTH STATES PARTIES AND NON-STATES PARTIES

45. Are there any particular issues that your State would like the Special Commission meeting to discuss in relation to the 1996 Convention? Please specify and list in order of priority:

- [Placement of minors abroad according to Art. 33 in general \(costs, placement with relatives\) and in particular Kafala \(Relationship with Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption\)](#)

46. Do you have any observations or comments to share concerning the Practical Handbook on the Operation of the 1996 Child Protection Convention? Please specify:

[Please insert text here](#)