

28 July 2005

**ANSWERS TO THE QUESTIONNAIRE OF MARCH 2005, DRAWN UP BY THE
PERMANENT BUREAU OF THE HAGUE CONFERENCE ON PRIVATE
INTERNATIONAL LAW, ON THE PRACTICAL OPERATION OF THE
HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION
OF CHILDREN AND CO-OPERATION IN RESPECT
OF INTERCOUNTRY ADOPTION**

NAME OF COUNTRY OR ORGANISATION: Federal Republic of Germany

A EXPLANATIONS AND QUESTIONS

1. Description

- (a) Is your country (primarily) a receiving State or a State of origin? If both, please ensure your answers to the questions clearly distinguish, when necessary, between your role as a receiving State and your role as a State of origin.**

Germany is a receiving State.

- (b) If your country is not yet a Party, please specify if your country is considering becoming a party to the Convention.**

Not applicable.

- (c) Was your country represented at the 2000 Special Commission? Were the Conclusions and Recommendations of that meeting discussed or implemented by relevant authorities in your country?**

Germany was represented at the meeting.

The Convention entered into effect for Germany on 1 March 2002. The Conclusions and Recommendations of the 2000 Special Commission were taken into account in the course of the required implementing legislation.

2. Good practice

The Permanent Bureau has commenced work on a Guide to Good Practice on Implementation of the Convention. A consultative group met in September 2004 to provide advice to the Permanent Bureau on this project. It is anticipated that the draft Guide will be circulated, in English, French and Spanish, to all Contracting States in June 2005 seeking comments and for discussion at the Special Commission.

- (a) In relation to any aspect of intercountry adoption, what examples of good practice can you report, (i) from your own country or (ii) from another country?**

From Germany's point of view, there are no examples of particular interest to report on.

- (b) Please indicate what topics you would suggest for future chapters in the Guide to Good Practice (in addition to "Implementation", "Central Authority Practice" and possibly "Accreditation").**

The Guide to Good Practice should deal with requirements in respect of health reports on the children in a future chapter.

(c) Have you experienced any major concerns or problems (i) in your State and (ii) in another State, associated with implementation of the Convention, such as a lack of implementing legislation, inadequate staffing or funding issues?

(i) No.

(ii) Germany objected to Guatemala and Guinea becoming parties to the Convention, since in our view these countries do not currently have a sufficient infrastructure for conducting adoption procedures in accordance with the Convention.

(d) If your State has signed but not yet ratified the Convention, please indicate whether your State would like implementation assistance from the Permanent Bureau or other States. What type of assistance would be most beneficial?

Not applicable.

3. Questions concerning scope

Please specify any difficulties you have experienced in determining whether certain situations do or do not come within the scope of the Convention.

In the following cases, there were differences of opinion with the central authorities of other Contracting States:

Under national adoption law of a Contracting State, it is permissible for the biological parents to select adoptive parents. The central authority of this Contracting State is of the opinion that the Convention is not applicable in such cases, although it is clear from the onset that the child is to be brought to Germany after having been adopted. The reason being that, in the opinion of this central authority, the adoption mediation on the part of the central authorities of the home/receiving State required under the Convention does not lead to viable results in these cases.

Cases have come up in which a Contracting State apparently did not apply the Convention because the prospective adoptive parents were nationals of that Contracting State. That is, prospective adoptive parents with ordinary residence in Germany, who were nationals of the child's country of origin, adopted a child in such country of origin without involving a German central authority. However, all the while it was clear from the onset that these adoptive parents would be living in Germany with the child after the adoption.

In our view, the scope of application of the Convention pursuant to Art. 2 para. 1 comes into play in such cases. However, as explained above, all Contracting States do not share this view.

In particular, have there been any problems in determining whether:

(a) a child was or was not habitually resident in the State of origin;

No.

(b) a prospective adopter was or was not habitually resident in the receiving State (as e.g. in the case of a short-term or temporary resident); and

No.

- (c) the removal of the child was or was not “for the purpose of adoption” in the receiving State (as e.g. where the child is initially moved to the receiving country on a temporary basis or for foster care, and later on adoption is considered)?

No.

4. General principles for protection of children

(a) – (f): Not applicable (Germany is a receiving state)

- (a) What are the different types of care available to a child in need of care and protection in your State?

- (b) Please specify the procedures or other measures in place to ensure that due consideration is given to the possibilities for placement of the child within the State of origin before intercountry adoption is considered (the principle of subsidiarity - see Article 4 b) and Preamble, paragraphs 1-3).

- (c) What are your procedures to establish if a child is adoptable?

- (d) What procedures are in place to ensure that consent to an adoption is given in accordance with Article 4 c) and d) of the Convention?

- (e) Do you make use of the Model Form for the “Statement of consent to the Adoption”? See < www.hcch.net >, “Intercountry Adoption”, “Practical Operation Documents”, “Annex B to the Special Commission Report of October 1994”.

- (f) Have you applied the “Recommendation concerning the application to refugee children and other internationally displaced children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption”? See Annex A to the Special Commission Report of October 1994.

- (g) How is the eligibility and suitability of prospective adoptive parents assessed in your country (see Article 5 a))?

The decision as to the suitability of the prospective adoptive parents is always subject to a case-by-case examination. The *Bundesarbeitsgemeinschaft der Landesjugendämter* (Federal Association of Youth Offices) published recommendations on adoption mediation, which contain guidelines on assessing determining factors within the meaning of Art. 15 para. 1 of the Convention. These recommendations are not binding. They do, however, provide valuable aid.

- (h) What preparation (counselling, education or training) is given to prospective adoptive parents to prepare them for the intercountry adoption?

During the preparation of the sociological report, which can take several months, the parents are counselled at respective adoption agencies. In addition to this, there are seminars and meetings with families that have already adopted a child.

- (i) Please also specify the measures / procedures in place to ensure that the requirements concerning the counselling of prospective adopters are complied with (see Article 5 b)).

The counselling of prospective adoptive parents is conducted by adoption agency staff. These people are trained social workers (3-year education/training), who must have worked for at least two years in the area of adoption mediation.

(j) Please specify any post-adoption services established or contemplated in your country (see Article 9 c)).

There is a Federation of foster and adoptive parents, which is a self-help organization. This association stages regional meetings and a forum of the exchange of experiences for adoptive parents and children. Similar programs are offered by accredited adoption mediation agencies. Cities and districts have special counseling centers for cases, in which difficulties have arisen between adoptive parents and children.

5. Central Authorities

(a) Please specify any of the functions under Chapter IV of the Convention performed directly by your Central Authority or Central Authorities.

In Germany, the Central Authorities within the meaning of Art. 6 of the Convention are the Federal Public Prosecutor General at the Federal Court of Justice as the Federal Central Authority for foreign adoptions (Federal Central Authority) and the Central Adoption Agencies of the Land Youth Offices (central adoption agencies), section 1 (1) of the Adoption Convention implementation Act (*Adoptionsübereinkommens-Ausführungsgesetz* – AdÜbAG). The Federal Central Authority does not perform any functions as described under Chapter IV of the Convention. The Central Adoption Agencies are responsible for adoption mediation within the meaning of Chapter IV. They register prospective parents' wish to adopt and send the required paperwork to the Central Authority of the country of origin. However, as a rule, the Central Adoption Agencies do not prepare the sociological report on the prospective adoptive parents, but rather the local Youth Offices. The Central Adoption Agencies send the report on the child to the prospective adoptive parents, obtain their consent and state their agreement on continuing with the adoption procedures. The carrying out of procedures pursuant to Art. 21 of the Convention is delegated mainly to the local Youth Offices; however, the mediation agencies are responsible for conducting consultation with the Central Authority of the state of origin, section 2 (1) and (3) of the Adoption Convention implementation Act.

(b) Please indicate the number of personnel employed by your Central Authority to deal with intercountry adoption, their experience and qualifications, and what type of training they have received. (Where personnel undertake other functions, count them only for the amount of time spent on intercountry adoption, for example, if a person spends 50% of their time on intercountry adoption, count them as 0.5 of a person.)

The Federal Central Authority currently carries out its duties in accordance with the Convention, as well as other duties in the area of international adoption, also vis-à-vis non-Contracting States, with the support of two employees of graduate level ("higher service" – *höherer Dienst*) and five employees of upper level ("high service" – *gehobener Dienst*), two of which are employed part-time. Employees in the higher service are qualified to hold the office of judge; the clerks are former judicial officers. No special training has taken place in the area of international adoption.

Exact figures on employees at the Central Adoption Agencies are not available. However, these positions must be staffed pursuant to section 3 (2) of the Adoption Mediation Act (*Adoptionsvermittlungsgesetz* – AdVermiG) with at least two full-time specialists or the equivalent thereto in part-time employees; it is not permissible for these specialists to be predominantly occupied with duties that do not involve mediation. With regard to the training and qualifications of staff, reference is made to the response to question 4.(i).

(c) What procedures are in place to ensure continuity of experienced staff and training for new staff?

At the Federal Central Authority employees' experience is retained by ensuring low turnover. New employees are trained by experienced staff.

Before a person is allowed to work independently at a Central Adoption Agency, they must have completed the required 3-year training/education and have been working for two years in the area of adoption mediation. The Central Adoption Agencies regularly provide their staff with training.

(d) Have you experienced difficulties with regard to the establishment or operation of the Central Authority, for example, difficulties over funding or resources?

We have had no negative experience with this.

(e) Please provide details of any difficulties you have experienced communicating with "central" Central Authorities in other countries or with provincial Central Authorities (in your own country or other countries)?

Within Germany, cooperation between the Federal Central Authority and the Central Adoption Agencies of the Land Youth Offices is good and intensive.

In part, there are considerable communication problems with Central Authorities from other Contracting States, in particular with countries of origin. Occasionally, obtaining responses from them is difficult, if not impossible.

6. Accreditation

At the Special Commission meeting in September 2005, the first day will be devoted to an examination of accreditation issues. Your responses to this part of the questionnaire will be very helpful to the Permanent Bureau in the planning and preparations for that day.

Accredited bodies

(1) Please indicate whether your country uses or intends to use accredited bodies in intercountry adoption. If so, please provide details on the topics (a) to (m) below.

Under the Adoption Mediation Act, NGOs can obtain accreditation to mediate international adoptions.

(a) Please provide details (including powers and resources) of the authority or authorities which grant accreditation.

The Land Youth Offices, which each Land in the Federal Republic of Germany has, have set up Central Adoption Agencies, which are Central Authorities within the meaning of the Hague Convention (cf. 5.(a)). The Central Adoption Agencies decide on the accreditation of NGOs for international adoption mediation.

(b) How many bodies have been accredited by your country? Federal States may provide the number for each state or province. If possible, please indicate how many bodies have been refused accreditation.

Since the entering into effect of the Hague Convention for Germany on 1 March 2002, twelve NGOs have been accredited.

(c) Please give a brief outline of your accreditation criteria, guidelines or

legislation.

The material requirements for the accreditation of an NGO for the purposes of international adoption mediation are stipulated in the provisions of sections 3 and 4 of the Adoption Mediation Act. In accordance thereto, the NGO must be particularly suited for work in the area of international adoption with respect to its specialist staff (principally, a minimum of two full-time specialist staff must be employed or the equivalent thereto in part-time staff), its work procedures and its financial situation.

(d) What is the process by which accreditation is granted?

An NGO that wishes to mediate adoption from a foreign country must submit a request to do so to the Central Adoption Agency of the Land Youth Office in their jurisdiction. The Central Adoption Agency checks the request and grants permission if the all conditions have been met.

Pursuant to sections 1 (1) and 2(1) of the Regulation on the Accreditation of Adoption Mediation Agencies and Costs (*Adoptionsvermittlungsstellenanerkennungs- und Kostenverordnung - AdVermiStAnKoV*), in particular a request submitted by an NGO for permission to mediate adoption from a foreign country must contain

1. the organization's bylaws,
2. an extract from the Association Register,
3. the organization's financial plan
4. a layout of the organization's financial situation,
5. an estimate of the average costs of an adoption mediation procedure,
6. preliminary certification of non-profit status or exemption from corporate status,
7. description of the organization's counselling and mediation concept,
8. a breakdown of the Adoption Mediation Agency's personnel makeup, i.e. certification of personal and expert suitability of specialized staff and individuals pursuant to section 3 (1), second sentence, of the Adoption Mediation Act by provision of documentation of exams taken and work references, as well as a complete curriculum vitae, and
9. an affidavit concerning previous criminal convictions from the Federal Central Criminal Register for those individuals mentioned in number 8 and representatives of the organization,
10. indication of the country or countries out of which the adoption of children is to be mediated,
11. indication of the Central Authority or accredited agency of the country of origin, via which adoption procedures are to be conducted,
12. certification of cooperation with agencies in the country of origin including provision of corresponding agreements,
13. documentation of authority to mediate adoptions in the country of origin,
14. a breakdown of the adoption mediation procedures, including any possible project funding,
15. an estimation of the average costs of such adoption mediation procedures, itemized according to country of origin, and
16. justification of particular suitability pursuant to section 4 (2), third sentence, of the Adoption Mediation Act.

(e) If possible, please provide an electronic copy of your accreditation criteria, guidelines or legislation, and any translations into English, French or Spanish.

Please find attached in the form of a pdf file the text of the AdVermiG in German, English, French and Spanish.

(f) How is the supervision of accredited bodies carried out in your State (Article 11 c))? Are there regular reporting requirements (including financial reporting) by the accredited body to the supervising authority?

Pursuant to section 2a (5) No. 2 of the Adoption Mediation Act, accredited organizations must report annually to the Federal Central Authority on the extent, progress and results of their work in the area of international adoption mediation.

For the assessment as to whether the accreditation conditions are still met, the Central Adoption Agency of the Land Youth Office is authorized to obtain information on the personal and professional suitability of the management and employees, as well as on the legal and organizational makeup and the financial situation of the accredited organization. In so far as is necessary for this purpose, the Central Adoption Agency can demand consultation of files and is authorized to enter the property and business premises of the accredited agency (section 4 (4) Adoption Mediation Act).

In addition, pursuant to section 4 of the Regulation on the Accreditation of Adoption Mediation Agencies and Costs a report must be submitted annually to the Central Adoption Agency of the Land Youth Office, which must specifically contain the following information:

1. Number of successfully completed adoption mediation procedures,
2. number of adoption mediation procedures terminated,
3. number of adoption mediation procedures currently in progress,
4. number of individually prepared suitability reports,
5. nationalities and ages of the adopted children,
6. breakdown of the average costs of an adoption mediation procedure according to country of origin,
7. financial plan for the year following the reporting year,
8. annual report for the completed calendar year, which must be examined by a suitable, independent agency,
9. setting up of additional agencies and a description of their duties, if no adoption mediation is being conducted by them.

The accredited organization must immediately report any substantive changes in circumstances that were essential to accreditation to the Central Adoption Agency of the Land Youth Office. This includes, e.g. changes to the bylaws, the loss of non-profit status or termination of an employee (cf. section 3 Regulation on the Accreditation of Adoption Mediation Agencies and Costs).

(g) How is the performance of the accredited body assessed or evaluated?

Performance assessment is conducted on the basis of the annual reports. If need be, the individual adoption files of the accredited organizations are examined.

(h) Has the competent supervisory authority encountered any difficulties in relation to (f)?

Up to present, no difficulties have arisen in the examination of accredited organizations.

(i) Are you aware of any acts or behaviour by accredited bodies or approved bodies or persons that contravened your accreditation criteria? Please also provide details of any sanctions or penalties applied?

There are presently no known violations of accreditation requirements. If the competent Central Adoption Agency concludes that an NGO no longer meets the conditions for accreditation, accreditation as an adoption mediation agency is then revoked (section 4 (3) Adoption Mediation Act).

(j) What are the conditions for renewal of accreditation?

Accreditation does not expire subject to a time limit. If it was revoked, accreditation can be reapplied for. In doing so, all legal requirements for accreditation must be examined anew.

(k) Have you experienced any difficulties in obtaining assistance or cooperation from other Central Authorities in regard to accredited bodies?

We have no information on this.

(l) Have you experienced any difficulties or concerns regarding the supervision of accredited bodies in other countries?

We have no information on this.

(m) Do you consider that standard or model accreditation guidelines would assist countries in developing appropriate safeguards or procedures?

Recommendations on what needs to be examined during an accreditation procedure could be helpful for new member states.

(2) Has your country authorised foreign accredited bodies to undertake intercountry adoptions in your country (see Article 12)?

Pursuant to section 2a (3) No. 4 of the Adoption Mediation Act, a foreign organization within the meaning of Art. 12 of the Convention is authorized to mediate adoptions if the Federal Central Authority has granted permission to do so in a special case.

(a) What steps are involved in the process of authorisation?**(b) What supervision of foreign authorised bodies occurs?****(c) Have you experienced any difficulties regarding a body accredited in one State and authorised to act in another State?**

(a)-(c): The Federal Central Authority examines the application and the documentation provided by the foreign organization. In case of a positive result, a written permit is issued. This permit refers to only one specific child, who is to be named. The Federal Central Authority examines in cooperation with the local Youth Office, which is to be involved in the adoption mediation process, whether the foreign organization observes the rules of the Convention. No problems of this kind are known.

(3) If your State has decided not to use accredited bodies, please explain the reasons and indicate what has influenced the decision.

Not applicable.

(4) What particular issues concerning accreditation would you like discussed on the Accreditation Day (17 September)?

The following problem can arise in the accreditation of a mediation agency: The authority competent for accreditation in the country of origin expects the organization to be accredited in the receiving country; the authority competent for accreditation in the receiving country requires as a condition to accreditation that the organization be accredited in the country of origin. One possible solution is a limited accreditation in the receiving country on condition that the organization be obligated to provide documentation of accreditation in the country of origin prior to expiry of the limited

accreditation. This is possible under German law.

(5) Would you like to see a chapter on Accreditation developed for the Guide to Good Practice for Intercountry Adoption? What issues do you think should be covered in this chapter?

Yes. The contents thereof could include: Bylaws, non-profit status, employment of specialized staff, costs, expenditure procedures, etc. (cf. also the list in the response to 6.(1)(d)).

Approved bodies and persons

(6) Please indicate whether your country uses or intends to use approved bodies or persons (see Article 22(2)) in intercountry adoption. If so,

(a) – (e): Germany did not submit a declaration pursuant to Article 22(2) and does not intend to do so in future.

(a) How many bodies or persons have been approved by your country to provide adoption services in accordance with Article 22(2)?

(b) Do you grant approval to persons or bodies from abroad?

(c) What are the guidelines by which approval is granted (if different from 1(c))?

(d) What is the process by which approval is granted and renewed?

(e) How is the supervision of approved bodies or persons carried out in your State (Article 22(2))?

(f) Has your country made a declaration under Article 22(4)?

Yes.

7. Procedural aspects

(1) Please indicate any operational difficulties that have been experienced, including in particular:

(a) obtaining accurate and sufficient health and social information on the child;

The reports on the health of the child are not always accurate. Sometimes they are incomplete, i.e. illnesses are kept quiet. Sometimes they are exaggerated, i.e. illnesses attested to cannot be confirmed.

(b) obtaining accurate and sufficient information on prospective adoptive parents;¹

We have had no negative experiences with this.

(c) obtaining an accurate estimate of fees to be paid by adoptive parents prior to adoption and / or travel to collect the child;²

The amount of the fees is unfortunately not always known beforehand. Provisions on fees can change at short notice in the individual countries.

¹ The Convention, Articles 15 and 16.

² See Report of the Special Commission of 2000, page 42, paragraph 7.

- (d) documentation requirements, including requirements for legalisation or authentication of documents, or the acceptance of documents by the other country;**

We have had no negative experiences with this.

- (e) obtaining the agreements required in Article 17;**

There is no information available on this.

- (f) receiving post-placement reports from adoptive parents or Central Authorities;³**

In Germany there are no state enforcement measures to force adoptive parents to prepare post-placement reports on the children. Generally, the reports are drawn up and forwarded by the competent Youth Office in cooperation with the parents on a voluntary basis. In a few exceptional cases, parents have refused to cooperate in the preparation of the report.

- (g) translation requirements;**

We have had no negative experiences with this.

- (h) time taken to process Convention cases.**

The time it takes to process an adoption varies greatly. In Germany, the examination as to the suitability of the adoptive parents by the local Youth Office generally takes from between 6 and 12 months. In problematic cases, the preparation of the sociological report can even take considerably longer. Processing abroad first of all depends on the country of origin selected, and secondly, whether the mediation there is conducted by a state agency or by a private organization. It ranges from a few months to several years.

- (2) Do you permit prospective adopters, once their eligibility and suitability have been established, to make their own arrangements for contacting directly the placement agencies in the country of origin?**

Yes.

- (3) Has the practice referred to in the preceding question given rise to particular problems of which you are aware?**

No.

- (4) Please provide details on the breakdown of placements in the Receiving State. What steps have been or are being taken in your country to address this problem (Article 21)?⁴**

There is no information available on this.

- (5) Legalisation of foreign documents can be very time consuming for Contracting States. At the Special Commission on the Apostille, Evidence and Service Conventions in November 2003,⁵ a recommendation was made concerning the 1993 Convention. The Report states that:**

³ See the Convention, Article 20.

⁴ The number of placement breakdowns is sought in the new draft Statistics Form.

⁵ See "Conclusions and Recommendations adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions", 2003, page 5, available on the Hague Conference website at < www.hcch.net >.

"The Special Commission stressed the usefulness of linking the application of the Hague Adoption Convention of 1993 to the Apostille Convention [the 1961 Convention Abolishing the Requirement of Legalisation for Foreign Public Documents]. In light of the high number of public documents included in a typical adoption procedure, the Special Commission recommended that States that are party to the Adoption Convention but not to the Apostille Convention consider actively becoming party to the latter."⁶

Would you favour a similar recommendation from the forthcoming Special Commission meeting for the 1993 Convention?

Yes.

(6) DNA testing has been used to establish identity (if, for example, a consent is in doubt). Can you provide details of such cases, including the cost and procedures involved?

There is no information available on this.

8. Private international law issues

(1) The Convention does not determine which authorities have jurisdiction to grant or amend / revoke an adoption nor which law applies to the conditions governing, or the effects of, an adoption.

(a) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the jurisdiction of the authorities to grant or amend / revoke an adoption?

No.

(b) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the law or laws to be applied to the conditions governing, or the effects of, an adoption?

No.

If the answer to either or both of these questions is "yes", do you wish the Permanent Bureau to study these questions further?

Not applicable.

(2) Issues of applicable law may arise when bodies accredited in one Contracting State act in another Contracting State (Article 12), for example:

- whether and to what extent agents of that body are authorised to act and bind their principal;
- whether they have exceeded or misused their authority.

Have you experienced any difficulties in this respect (see also the *Hague Convention of 14 March 1978 on the Law Applicable to Agency*)?

No.

⁶ See paragraph 6.

9. Recognition and effects

(1) Have your courts used the Recommended Model Form "Certificate of Conformity of Intercountry Adoption"? See < www.hcch.net >, "Intercountry Adoption", "Practical Operation Documents", "Annex C to the Special Commission Report of October 1994".

It is not known as to what extent adoptive parents avail themselves of certificates of conformity pursuant to Art. 23 of the Convention in general legal practice in Germany.

In Germany the possibility exists to have the issue of recognition of an intercountry adoption cleared up in a final and binding sense by way of a judicial decision, if the adopted child has not completed its 18th year at the time of the adoption. (sections 1, 2 of the German law concerning the effects of adoption (*Adoptionswirkungsgesetz* - AdWirkG)). This applies not only to adoptions from the Contracting States, but also to non-Contracting States to the Convention. In this procedure, the court also makes a binding statement on the effects of the adoption and can, in some cases, declare upon request that the child has obtained the legal status of a child that has been adopted according to the German provisions (section 2 (2), section 3 AdWirkG). For such reasons, many adoptive parents avail themselves of procedures available to them under the provisions of the AdWirkG. In light of this, certification pursuant to Art. 23 of the Conventions plays a less central role in Germany.

(2) Have you knowledge of any difficulties that have arisen in obtaining certificates under Article 23(1)?

There is no information available on this. However, cases have come up where adoptive parents, who have adopted a child in another Contracting States, often are not in possession of certification pursuant to Art. 23 of the Convention. Thus, there could also be a lack of information in this regard. All Contracting States, and in particular countries of origin, should therefore take care that the adoptive parents are aware of the possibility to obtain certification pursuant to Art. 23 of the Convention.

(3) Do you have information about any case in which recognition of a Convention adoption has been refused under Article 24?

There is no information available on this.

(4) Are there any circumstances in which you would recognise the validity of a foreign adoption coming within the scope of the Convention despite Convention procedures or requirements not having been followed?

An adoption that was processed in a Contracting State is recognized in Germany pursuant to Art. 24 of the Convention, if it does not manifestly conflict with German public policy, taking into account the best interests of the child. Outside the scope of application of Art. 24 of the Convention, the recognition of an adoption is done pursuant to section 16a of the Act on Non-Contentious Matters (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit* - FGG)

Section 16a FGG reads as follows:

"The recognition of a foreign decision shall be denied:

1. if the courts of the other State are not competent under German law;
2. if one of the parties did not appear in court and claims that the document instituting proceedings was not served on him properly or not in such a timely manner that he was able to prepare his defence;
3. if the decision is incompatible with a judgment which was handed down in

Germany or is incompatible with a previous foreign decision which is to be recognized in Germany, or if the proceeding which formed the basis of the decision is incompatible with a previous proceeding which has attained pendency in Germany;

4. if the recognition of the decision leads to a result that is manifestly incompatible with essential principles of German law, especially if the recognition is incompatible with constitutional laws.”

According thereto, the recognition in Germany of an adoption from a Contracting State, for which the procedures or requirements set forth under the Convention were not observed, is not ruled out per se.

Please specify any other difficulties that have arisen in relation to Chapter V of the Convention.

None.

10. Payment of reasonable charges and fees

(1) Please quantify the costs and expenses charged or fees paid in your country in respect of intercountry adoptions (Article 32(2)). Is this information freely available and accessible to prospective adoptive parents and competent authorities?

If State adoption mediation agencies process the adoption, fees are due pursuant to section 5 of the Regulation on the Accreditation of Adoption Mediation Agencies and Costs (see above 6.(1)(d)) in the amount of € 2000. €1200 thereof are for the preparation of the sociological report and €800 for the adoption procedure. In addition to this are the costs for translations and certified copies. The Regulation on the Accreditation of Adoption Mediation Agencies and Costs is generally accessible as a legal regulation.

If the adoption is processed by an accredited organization, the costs entailed therein vary greatly depending on the organization and the child's country of origin. Upon request, accredited organizations inform the future adoptive parents in advance of the amount of costs they can expect.

(2) Have you had any experiences with the use of fee caps, established and publicised appropriate fees, established expediting fees, or other similar controls?

There is no information available on this.

(3) Do you have any comments on the practice in some countries of requiring a mandatory contribution by adoptive parents for the support or development of child protection services in such countries?

In principle, there are no objections to contributions in the country of origin for the support or development of child protection services. However, it should not be set too high.

(4) Do you have any comments on or experiences of uneven processing amongst countries due to large disparities in fees (for example, applications from countries that offer higher fees may be processed more quickly)?

When a country of origin makes the speed with which an adoption is processed or the number of children that are eligible contingent upon the amount of fees that are paid, this borders on trafficking in children by the State.

(5) Are you aware of any instances of disparity between professional salaries or fees charged for adoptions compared to other forms of legal work? (For example, large legal fees may be charged for adoption, while standard or lower fees are paid for other family law matters such as divorces – see Article 32(3).)

There is no information available on this.

(6) Are you aware of any significant differences in fees charged for intercountry adoption by regional or provincial authorities?

Cf. response to 10 (1).

(7) To what extent, if any, are intercountry adoption fees used (a) to support or develop the national childcare and protection system; or (b) to contribute to funding resources of Central Authorities or accredited bodies?

Fees for international adoptions that are paid in Germany to Public Youth Offices go into the overall state budget. The fees that are charged by accredited organizations serve to finance them. In part, these organizations also support projects in the country of origin with these fees.

(8) Do you have any other comments about reasonable or unreasonable costs and expenses or fees?

The Contracting States should publish the fees that are charged in their area for a foreign adoption via the Secretariat of the Hague Conference. This would make it easier for accredited mediation agencies and future adoptive parents to plan. In addition, the charging of unjustifiable fees by local agencies would be reduced.

(9) Are you aware of any other problems arising from the payment of fees or charges in your country or in other countries with which you have adoption arrangements?

There is no information available on this.

11. Improper financial gain

(1) Please indicate the laws (including criminal sanctions), measures and procedures in place to give effect to the principle that no one shall derive improper financial or other gain from an activity related to an intercountry adoption (Article 32(1)).

Pursuant to section 4 (1) No. 3 of the Adoption Mediation Act, accredited organizations may not seek to derive any financial gain from adoption. They must provide State Finance Offices and to Central Adoption Agencies with documentation to this effect.

Section 236 of the German Criminal Code sanctions trafficking in children. Subsection 2 of this provision contains special stipulations on unauthorized adoption mediation. Emphasis is placed in particular on punishing offences and subjecting them to a higher penalty which involve e.g. trafficking in children for profit, for commercial gain or as a member of a gang, which has combined for the continued commission of trafficking in children (section 236 (4) no. 1 Criminal Code). Pursuant to sections 73 et seq. of the Criminal Code, it is possible to confiscate the proceeds obtained from punishable trafficking in children by order of forfeiture. Section 14 of the Adoption Mediation Act also contains supplementary provisions on fines for inappropriate conduct under the threshold for punishable trafficking in children.

(2) Are you aware of any instances of success in enforcing penalties to

discourage improper financial gain?

We have no information in Germany on this.

(3) Are you aware of any difficulties in the enforcement of laws or regulations or in prosecution of criminal activity?

Difficulties of this kind are not known to us.

(4) Apart from the measures referred to in Question 11(1) above, have any other preventive measures been taken in your country to combat improper financial gain?

If the Central Adoption Agency discovers that an accredited organization is profiting improperly from financial gains, their accreditation status for mediation of adoptions is revoked (section 4 (3) Adoption Mediation Act).

(5) Please provide details of any measures taken to prevent solicitation (e.g. through inducements to consent) of children for adoption (Articles 8 and 29).

Since Germany is a receiving country, we have no such measures.

(6) Have you experienced any difficulties in obtaining co-operation or assistance from other States in eliminating practices that lead to improper financial gain?

There is no information available on this.

12. Relative adoptions**Do you have any comments on the application of the Convention procedures to relative (inter-family) adoptions?**

An actual "matching" in accordance with the rules of the Convention is usually not undertaken in inter-family adoptions, since it is clear from the outset that an adoption can only be made by very specific individuals. However, inter-family adoption should not be taken out of the scope of application of the Convention, since this could foster misuse and attempts at circumvention.

13. Children with special needs**What policies or programmes do you have to ensure that children with special needs are given the same opportunity to find a family through intercountry adoption as other children?**

In the preparation of the sociological report, it is also examined in Germany as to whether the applicants are in a position to adopt children with special needs. This is the case with many families. For this reason, every year, a series of children with special needs are adopted from a foreign country by applicants in Germany.

14. Other forms of cross-border child care

International foster care, transnational *kafala* and other forms of child care with a cross-border element are not covered by the 1993 Convention, but by the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*: See for example its Articles 3 e) and 33(1).

(1) Is your country involved in international placements of children other than for purposes of adoption?

Article 56 of Regulation (EC) No. 2201/2003, which has been in effect in all EU Member States (except Denmark) since 1 March 2005, expressly provides for the placement of children with foster parents or in a home in another EU Member State. Sections 45 et seq. of the International Family Law Procedure Act contain provisions on this for implementation at the national level.

(2) Are you aware of any difficulties concerning such placements?

No. Due to the fact that Article 56 of Regulation (EC) No. 2201/2003 did not enter into effect until 1 March 2005, no comprehensive information in practice has been obtained as of yet regarding its practicability.

(3) If your country is not yet a Party to the 1996 Convention, is your country actively studying ratifying or acceding to it?

Germany signed the 1996 Convention and has great interest in its ratification. This has not been possible up to now, since the Council of the European Union has not yet issued the mandate necessary to do so.

15. Avoiding the Convention

Are you aware of any attempts to circumvent the Convention or to avoid protections afforded to children, including the moving of children or birth parents to other countries?

The following practical examples can be mentioned:

- After denial of the necessity of adoption of a Philippine child by the Central Authority there, with the consent of the biological parents, the adoptive applicants brought the child to Germany using a tourist visa and made attempts here to conduct national adoption proceedings.
- German applicants brought a Chilean mother with her three-month-old baby to Germany. Once here, the biological mother gave the child up for adoption on the basis of a notary declaration and left the child with the applicants.
- A Georgian national brought a child from Georgia to Germany and first claimed on the basis of a falsified birth certificate that she and her husband were the biological parents of the child. After this was found to be untrue, it was claimed on the basis of an adoption certificate that the child had been adopted. The Georgian Central Authority has not responded to inquiries. A German Central Authority was not involved in the alleged adoption.

16. Additional safeguards and bilateral arrangements

Please describe any additional safeguards, requirements or procedures, which you apply to Convention adoptions (i.e. over and above those which are set out in the Convention itself). Are these applied generally, or only in relation to particular States?

There are no such regulations in Germany.

Have you made agreements with one or more other Contracting State (see Article 32(2)) with a view to improving the application of the Convention? If so, please specify with which States and what matters are covered by the agreements.

Germany has not concluded any such agreements.

Do you have any comments on the efficacy of bilateral arrangements:

Not applicable (see above).

(a) with non-Contracting States? Are Convention safeguards applied?

(b) with Contracting States? Do they improve the operation of the Convention? Have they caused any difficulties?

17. Limits on number of States with whom co-operation is possible

In making arrangements for intercountry adoption (whether as a receiving State or as a State of origin), have you found it necessary to confine co-operation under the Convention to a limited number of other Contracting States?

No.

If so, please explain the reasons (e.g. no appropriate accredited body, lack of resources to process applications from large number of States, etc) and indicate what has influenced the choice of these States.

Not applicable.

B SUGGESTIONS FOR THE SEPTEMBER SPECIAL COMMISSION

18. Do you regularly hold seminars, training sessions or workshops on the Adoption Convention in your State? Would you welcome participants from other countries? Would you find it helpful if there was a consistent way to announce such activities to other States? Do you have suggestions?

The Federal Central Authority holds an annual conference on international adoption mediation together with the Central Adoption Agencies of the Land Youth Offices and the foreign mediation agencies accredited in Germany. At these conferences, adoptions from Contracting States to the Hague Convention are dealt with, as well as from non-Contracting States. In the past, representatives of the Swiss and Luxembourg Central Authorities took part in the conferences.

Furthermore, the Federal Central Authority has held two conferences with guardianship judges to date. The topics discussed included recognition of adoptions from Contracting States to the Convention, as well as from non-Contracting States.

Participants from other countries are always welcome at these events.

The announcement of conferences of this kind held by a Contracting State in other interested countries would be welcomed.

19. In the current negotiations for a new Convention on the International Recovery of Child Support and other Forms of Family Maintenance, an Administrative Co-operation Working Group has been established to examine and report on practical problems and issues of administrative co-operation between authorities. Would you favour the establishment of a similar group for the 1993 Convention?

Yes.

20. Please indicate which topics you consider priority issues for the Special Commission in September 2005, and their degree of importance.

An important problem area is, in our view, the preparation of future Contracting States for the entering into effect of the Convention. At the time of the entering into effect of the Convention, not even the most fundamental conditions for cooperation in accordance with the Convention were implemented in various countries, e.g. necessary laws were not issued or no Central Authority was determined.

21. Any other suggestions, comments and observations are welcomed.

Currently none.