



Adoption: at what cost?

For an ethical responsibility
of receiving countries
in intercountry adoption

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Terre des Hommes International Federation (TDHIF) is a network of eleven national organizations whose mission is to provide active support to children, their family and their community without racial, religious, political, cultural or gender-based discrimination in the framework of the UN Convention on the Rights of the Child. To this aim, the Terre des hommes organizations mobilize political will, advocate for appropriate government policies and support 1207 development and humanitarian aid projects in 67 countries. Projects are run in close partnership with the beneficiaries who are the primary actors of their own developments, including children. Terre des hommes works with 1028 local and national civil society organizations.

The Terre des hommes – child relief (Tdh) Foundation is the largest private international children's aid organisation in Switzerland. Being present in 30 countries, Tdh creates concrete solutions for children and their communities; solutions which improve their daily lives. Tdh brings specialised skills in health and protection and is strongly anchored in the reality and complexity of the countries in which it engages for the long-term. Its goal is to achieve concrete results which contribute to improving the life of children and to constructing their future. Tdh is a founder member of Terre des Hommes International Federation (TDHIF).

In the framework of the International Campaign against Child Trafficking (ICaCT), Terre des hommes is raising the issue of intercountry adoptions as a potential form of trafficking. On the European level, important political standpoints by the Governments of Member States and institutions of the European Community are related to intercountry adoption. It is a sensitive topic on the political level as well as for its practical aspects that we want to raise in the light of the future EU strategy on the Rights of the Child, the latter being presently elaborated by the European Commission. To this end, and mandated by the TDHIF, the Terre des hommes – child relief, based in Lausanne (Switzerland) has led a comparative study of laws and practices in six European receiving countries¹. The countries have been chosen according to their policies, structures and developments in regard to intercountry adoption over the last few years, the number of adoptions and the human resources available in each state.

The UN Convention on the Rights of the Child and the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption form the legal framework and the reference for the evaluation, commentary and recommendations laid out in the present study.

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Foreword

At the beginning of 2007, Romania and Bulgaria entered into the European Union. In the domain of intercountry adoption, the case of Romania was instructive – for the first time a country of origin is located alongside the traditional receiving countries. After years of scandals, one of the conditions of Romania's entry into the EU was the establishment of best practices. Romania went as far as to ban intercountry adoption; a drastic decision which it would later be criticized for.

Intercountry adoption is now negotiated at the highest level. Given the traffic in children, commercial adoption, and scandals within State institutions, there is much to be deplored. Focus has been given for many years on the practices of the countries of origin. They have been found to be too lax or too corrupt, and considered to be responsible for the downward slide in standards for intercountry adoption.

Now, in the time of globalization, when a child can be bought over the internet, or ever-increasing numbers of candidates seek to adopt in a context of risk, there

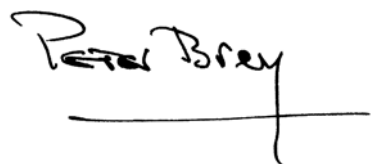
is urgent need to focus on the co-responsibility of the receiving countries.

In this publication, Terre des hommes – child relief (Tdh), under a mandate by Terre des Hommes International Federation (TDHIF), shows how the receiving countries also have a certain responsibility. With procedures and legislation which have little, if any, respect to the interests of the child, and policies which tend to respond to the demands of adopting couples or put pressure on the countries of origin in order to obtain children, the receiving countries do not respect the engagements they undertook by ratifying the Hague Convention on international adoption. It is the Hague Convention itself which aims to avoid these types of dysfunction.

Terre des hommes – child relief presents the results of a comparative study on the practices and legislations in six European receiving countries: Germany, Spain, France, Italy, Norway and Switzerland. With it we are launching an appeal to the European Union to put best practices in place, both within its own members as well as with third countries.



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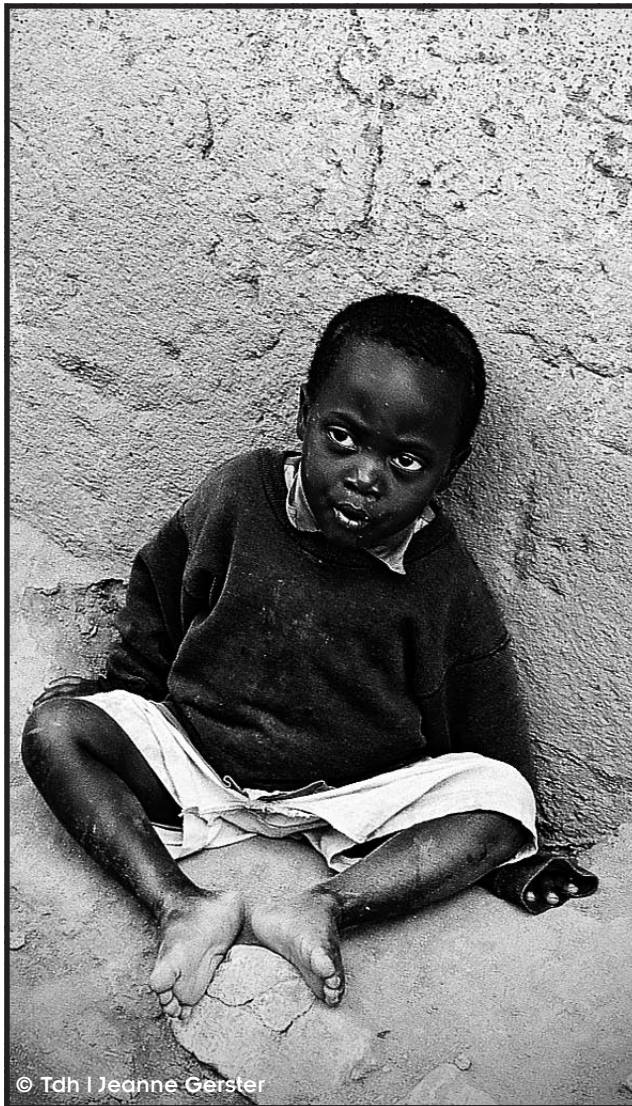
Adoption: to give a family to a child, and not a child to a family.

First part

Position paper

Introduction

The second half of the twentieth century saw a considerable expansion in intercountry adoption. It constitutes a means of filiation for an important number of children and an essential factor for the foundation of a similar number of families. *There is, however, considerable growing concern about the number of practices which do not respect the interests of the children, child trafficking being the most alarming.* Such practices include the buying and selling of children, where the money spent on these transac-



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tions does not correspond to the professional services required in adoption procedures, as well as, in some cases, illegal practices such as faked documents, lack

of respect for laws and regulations, pressure put upon parents and authorities in the countries of origin, corruption, child abduction etc. Besides the ethical objections to such practices, the consequence is that, on a worldwide scale, children are being adopted who are not necessarily in need of adoption, in violation of their rights¹.

Faced with this worrying situation, many criticisms have been leveled at the countries of origin. Terre des hommes wishes to highlight the co-responsibility of the receiving countries with regard to existing bad practices and child trafficking.

A comparative study of the legislations and practices of six European receiving countries² has thus been initiated and is presented in the second part of the present document. On the basis of the results of this study, we consider it a matter of urgency to draw the attention of European authorities to:

- the rights and reality of adoptable children in the world (A);
- the effects of some practices in certain European countries on these children (B).

In regard to eight worrying aspects of current adoption practices, we include recommendations for an ethical co-responsibility of the receiving countries relative to the children and their countries of origin.

In conclusion, we call for political measures by the receiving countries, individually and collectively, in the interests of children, especially within the framework of the Hague Conference on Private International Law and the European Union.

¹ See A. 1 and 2 below.

² Including Germany, Spain, France, Italy, Norway, and Switzerland. Belgium introduced a fundamental reform on 1st September 2005, and will be incidentally quoted as provider of sound practices, which are included in our recommendations, but are not to be found in the six countries of our study.

A. Rights and reality of adoptable children in the world

1. Children's rights or the right to a child?

Children have rights. These rights are laid down essentially in the United Nations Convention on the Rights of the Child and in the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. Children and their biological parents have a right to respect for their family life. A child who has been separated from his father and mother has a right to a permanent life project, preferably within a family environment. The child's interests must be given top priority in any adoption and must also include respect for his fundamental rights.

The prospective adoptive parents also have rights: the right to be informed, the right to receive support, the right to financial transparency. Nevertheless, even if the suffering of a number of infertile prospective adoptive parents must be taken into account, *no-one ever holds "the right to adopt"*. If it existed, it would imply the right over another human being, who would



become the "object" of the right of the adopting candidates. The needs of the children themselves and not those of the adults form the only legitimate basis for adoption. A prospective adoptive parent cannot therefore claim to be entitled to a child if no child needs to be adopted. Similarly, no receiving country has the right to claim children from their country of origin. The adoptable child is neither an object of competition between prospective adoptive parents, nor between receiving countries.

2. Principle of double subsidiarity

In accordance with the international conventions already mentioned³, the adoption is subsidiary to the child's maintenance in or his/her return to the biological family, if necessary with the support of outside help (financial, medical, social, psychological or com-

munity aid). Intercountry adoption is also subsidiary to the adoption of the child by a family from his/her native country (national adoption). This principle of double subsidiarity equally constitutes a *right of the child*.

All countries, whether they are receiving or of origin, have the obligation to take proactive measures in order to guarantee each child the respect of this double subsidiarity and enable him or her, therefore, as far as possible and in his/her interest, to be offered, as a priority, the option to stay with or go back to his/her family of origin, and if this is not possible, to be adopted in his/her country of origin, before an intercountry adoption can be envisaged.

3. Reality: an increasing disparity between the number and the profile of internationally adoptable children and the wishes of prospective adoptive parents

Owing to the increase in infertility (about 15 to 20 per cent of all married couples, according to experts) and a desire to have a child later in life, there is an ever-increasing demand from candidates for intercountry adoption. The majority – understandably – wish to adopt a young, healthy child.

On a global scale, however, according to UNICEF sources⁴ and to many countries of origin, *the number of healthy young children who are internationally*

3 Foreword and Art. 4 of the Hague Convention, Art. 21 of the United Nations Convention on children's rights, to be read as part of the whole of the convention and in particular, articles 5, 7, 8, 9, 10 and 18. See also the position of UNICEF: http://www.unicef.org/media/media_15011.html.

4 N. Cantwell, "Intercountry adoption – Commentary on the number of adoptable children and the number of people seeking adoption internationally", International child protection – The Judges' Newsletter published by the Hague Conference on International Private Law, Vol. V, Spring 2003, pp. 69-73, http://hcch.e-vision.nl/index_en.php?act=publications.details&pid=2799. See also the Report on the Recommendations of the Parliamentary Assembly of the Council of Europe 1443 (2000), No.10 décembre 1999, n°10.

adoptable is inferior to the number of prospective adoptive parents. At the same time, since 2004, the rate of adoption has steadied, or even decreased, in the most important receiving states in Europe and North America. This development may be the result of the reduction of children in need of a family.

It is of course always necessary to ensure that some children are not left behind in institutions, without any permanent life project within a family environment. Nevertheless, in the interests of the children, we cannot but be glad about the decreasing numbers of babies in need of intercountry adoption, due, in many countries, to a decrease of the causes of abandonment, to reinforced social policies in favor of families, to the gradual disappearance of the stigmatization of unmarried mothers, as well as to the development of national adoption.

This positive state of affairs goes very much against media images of children crowding the streets in a state of near-abandonment. The majority of these children, however, are not adoptable because some mem-

ber of the family refuses to give his/her consent, because the state is reluctant to define the legal status of the child and therefore to render him or her adoptable, or because the child has a deficiency and/or important psychological problems which no longer make it possible for him/her to integrate into a family.

Besides, if all these children were adoptable, the majority of them would be waiting in vain for a family. They are in fact children with “special needs” or “special characteristics”: older children, with a history of psychological problems; children suffering from an illness or handicap, reversible or not; or siblings who cannot be separated. Some of these children, however, have been adopted by families. And international experience proves that such adoptions have been successful, as long as the adopting family receives psychological support and appropriate post-adoption services. The number of prospective adoptive parents planning to welcome them remains nonetheless significantly lower than the number of children in need.



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B. Practices of receiving European countries

1. Central Authorities: promotion of a code of ethics or search for children at all costs?

Each of the six receiving countries considered in our comparative study has designated (at least) one Central Authority (federal⁵, CA) responsible for intercountry adoption. The practices of these Central Authorities are founded however on perceptions that are very different to their actual role. A pointer underlining these differences is the evolution in statistics between 2000 and 2005, revealing highly variable numbers of



intercountry adoptions. As shown in our comparative study, there has been an important increase in intercountry adoptions in Spain, France and Italy, with relative stability in Norway and a decrease in Germany and Switzerland. The messages issued by the Central Authorities and by their governments for the prospective adoptive parents and the countries of origin reflect equally diverging approaches.

Certain Central Authorities, or their Minister for Protection (France) are advocating (or have advocated as an objective of their activity), a permanent increase in the number of adoptable foreign children for the benefit of prospective adoptive parents, according to the wishes of the latter. Even if it is not so openly admitted, this goal is equally evident in other receiving countries (Italy, Spain). The attempt to achieve such a goal does not exclude that pressure is

put on the countries of origin. Moreover, it contributes to the propagation, among prospective adoptive parents, of the erroneous ideology of a “right to adopt” (see above, A. 1).

Nevertheless, other Central Authorities (Flemish and French communities from Belgium) are increasingly applying a more open approach to information concerning the lot of internationally adoptable children, as well as a clearly ethical attitude that intercountry adoption can only be authorized for those children in need, with total respect for the principle of subsidiarity, and a commitment to the adoption of the children for whom finding a family is most difficult.

On the other hand, as shown in our comparative study, *the composition and skills of Central Authorities are very unevenly regulated from one country to another. In most of them, the Central Authority fails to exercise effective or preventive control over all situations of intercountry adoption, or only does so after matching⁶ has taken place, once the child and prospective adoptive parents have already initiated the process of reciprocal bonding.* The Hague Convention, however, identifies the Central Authority as the body fully responsible for all international adoptions carried out in connection with its own country.

In order to focus on the child’s best interests, Terre des hommes recommends that each receiving country develops the following good practices:

- to define clearly, in an official charter of ethical practices binding on the government, the Central and competent Authorities, and the accredited bodies (see 6 below), the ethical approach cho-

⁵ As for the specificity of the issues in Federal States, see below, 3.

⁶ A professional decision to propose the adoption of an adoptable child by prospective adoptive parents selected according to their respective medical and psycho-social characteristics.

sen by the country in matters of intercountry adoption, and to communicate this charter to the countries of origin;

- to recognize the right of the Central Authority (preferably federal⁷), in collaboration with foreign diplomatic and consular bodies and for each concrete intercountry adoption, to exercise all legal powers of monitoring, decision and verification, on legal, administrative, ethical and psychological levels, at the very latest at the time of matching;
- to acknowledge the Central Authority's (federal) overall competence in coordinating a global policy on intercountry adoption with countries being a party to the Convention or not, including dynamic international contacts (covering visits to countries of origin, well-grounded international exchanges, as well as the denunciation of bad practices and the possible suspension of procedures with the countries of origin concerned), and to include the coordination, training, supervision and control over the active protagonists in each country, the authorization and control over accredited bodies and public information;
- to impose on its diplomatic representatives in the countries of origin the specific mission of reporting bad practices and suspected child trafficking or violations of their rights to the Central Authority (federal), in cooperation with the diplomatic representatives of other receiving countries;
- to set up each Central Authority by taking into account its needs as to the number, specialization, initial and further training, multidisciplinary (social work, psychology, law and medicine) and supervision of its staff;
- to link the Central Authority to an administrative environment and to grant it the necessary autonomy to operate on a multidisciplinary and international basis (including contacts with consular and diplomatic posts) in the superior interests of children and without pressure from politicians or lobbies;

- by sending clearly worded messages issued by political and administrative authorities, to raise the awareness of the population, media and professionals to the number and profile of children genuinely in need of international adoption: the right of adoption does not exist nor does the right to adopt a young healthy child exist;
- to encourage the adoption of children with special needs, through positive consciousness-raising measures, psycho-social support, and financial support if required.

2. Partnership with countries of origin, but with what objectives?

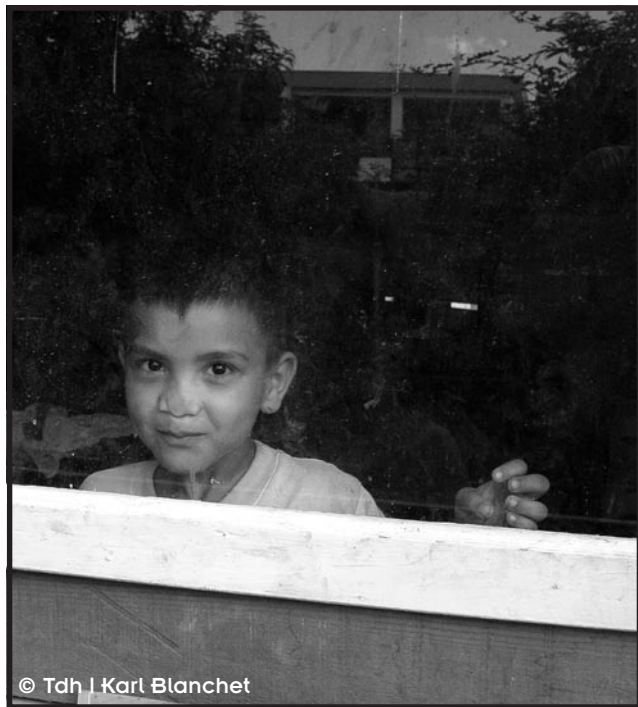
Throughout their mission, the Central Authorities of the receiving countries develop a partnership with a varying number of countries of origin, whether it is in the framework of the Hague Convention, by means of bilateral agreements, or through any other kind of administrative cooperation. Financial aid is sometimes offered to support the child protection and/or adoption system of the countries of origin (Italy). Adoption bodies accredited by the receiving countries also intervene in the countries of origin by means of aid schemes for homes and adoption institutions. The most important point is to assess the objectives of all these undertakings.

All too often, governments, Central Authorities and accredited bodies of receiving countries put explicit or implicit pressure on the country of origin, with a view to procuring a "supply" of adoptable children, preferably young and in good health, and this to the detriment of developing a country's global policy for child protection which totally complies with the principle of double subsidiarity. Too often again, as shown in our comparative analysis, governments, Central Authorities and accredited bodies of the different receiving countries (in particular when these are numerous, as in Spain, France and Italy) vie with each other in the same "target" countries of origin, while the children from other potential countries of origin, or children with special needs "interest" only rare organizations or receiving countries, or even in some

⁷ As to special problems in the federal states, see below, 3.

cases, are of interest to no-one. Even if not deliberate, this behavior (which concerns the greater majority) indubitably constitutes a risk factor which can lead to child trafficking.

Within the framework of a partnership which genuinely focuses on the needs of the child, the receiving countries must *put forward to the country of origin adoptive parent applications which correspond to the number and profile of the children needing adoption* – and must not make unrealistic demands that they receive offers of children which correspond to the wishes of their prospective adoptive parents in number and in characteristics. Some countries of origin (including members of the European Union) have already – and rightly so – set limits on the number and



profile of foreign applicants accepted in compliance with their children's needs⁸. On the other hand, within the framework of the home study of the applicants, none of the receiving countries under scrutiny takes into account the number of children adoptable in the country of origin. Each year in France, for example, the number of applicants declared suitable is higher than that of intercountry adoptions carried out in the same year. Thus the number of prospective adoptive parents desperately wanting to adopt is ever-increasing, along with all the risks of trafficking inherent to this kind of situation (see above, A. and B. 1).

In order to focus on the child's best interests, Terre des hommes thus advises that each receiving country should develop the following good practices:

- develop a dialogue with each partner country of origin as to the number and characteristics of those children in need of intercountry adoption; and open up a similar dialogue if need be with those countries not traditionally involved in partnership;
- take these factors into account within a responsible assessment policy on the suitability of prospective adoptive parents (in quality and content of the project), in view of their authorization. It is indeed disrespectful on the part of the applicants and a potential cause of child trafficking to authorize adoption schemes which will not be feasible or realistic with regard to the rights of the child;
- take into account these same factors within a responsible policy of authorization of the accredited bodies, according to the countries of origin in which they specialize. Their number should neither encourage competition between them nor put pressure on the countries of origin. As for the content of their mission, they should be in a position to present prospective adoptive parent profiles which correspond to the needs of the children;
- develop proactive, imaginative collaboration between receiving countries, especially European, in order to reduce competition, increase responsible cooperation with the countries of origin, and reflect together on what responsible messages should be addressed to their populations;
- help the countries of origin to develop a global

⁸ However, it does not follow that, in respect of its international commitments, a State may forbid the international adoption of its children when it cannot guarantee each child a permanent family life in the country.

child protection policy which respects the principle of double subsidiarity (priority promotion for families of origin and national adoption), and never link financial aid with the provision of children for international adoption.

3. Criticism of impacts of the application of the Hague Convention

As shown in our comparative study, the Hague Convention of 1993 is recognized as having the potential to improve the quality of procedures and their control, as well as the professionalism of its affiliates and the protection of children's rights, which it places at the forefront of intercountry adoption. The ethical scope and implementation of reforms to which it has given rise varies, however, from one country to another.

In certain countries (Norway), the Convention has proved to be a great impetus in speeding up procedures. In others, however (Switzerland), it comes under criticism for causing delays and undue administrative complications. This contradictory situation tends to suggest that it is not so much the content of the Convention which is in question, as its implementation by the different States.

Indeed, certain countries have taken advantage of the ratification of the Convention to set up vital reforms in order to promote:

- the specialization of a centralized Authority endowed with the capacity to control concrete procedures (Italy; as well as the regrettable situation in France, where the Central Authority is losing its ability to deal with the monitoring of all concrete procedures);
- a limited number of intervening parties (Germany, Norway), their training (Italy), their professionalism (Germany, Italy), their permanent cooperation as well as systematic dialogue between them and with the parties from the other countries involved (Italy, Norway).

Conversely, other countries, notably federal States such as Germany, Spain and Switzerland have increased their Central Authorities (federal and federate respectively) and/or their competent bodies (such

as child protection services, courts of justice) even their accredited bodies (Spain, France, Italy), with the danger of decisional contradictions, lengthy procedures, gaps in procedure verification, not to mention the possible lack of training, professionalism and cooperation among the intervening bodies, or even a lack of comprehension on the part of the countries of origin. Having been faced with serious problems caused by such practices, the Autonomous Community of Madrid has, for example, already begun a drive towards a reduction in the number of its accredited bodies.



It is not our intention to criticize the institutional structures of certain countries. However, we have found that in the *highly specialized field of intercountry adoption, which implies interdisciplinary work and international relations, it is undesirable to have vast numbers of intervening parties, especially when there are numerous federated Central Authorities* (26 in Switzerland), who for the most part, process only small numbers of adoptions. Even if the geographical proximity to the prospective adoptive parents can be an advantage, below a certain critical volume such authorities cannot guarantee a similar level of service or specialization for children and families, provide the guarantees of a “unified” Central Authority, or develop the necessary international relations.

Furthermore, *the federal Central Authority is unable to effectively play its role of coordinator when it has little or no power over directives and verification with*

regard to the federated Authorities. In Spain for example, the existence of seventeen different items of legislation as regards adoption and authorization of accredited bodies poses a real problem of coherency. Whereas some autonomous communities (federated bodies) refuse to collaborate with certain countries of origin they consider to be lacking in respect for the fundamental principles of adoption regulations, other communities accept to deal with these same countries.

In order to focus on the child's best interests and to make full use of all the potential for progress contained in the Convention, Terre des hommes thus recommends that each receiving country develops the following good practices:

- a specialized, standardized and swift procedure for intercountry adoption;
- monitoring, decision-making and control⁹ over concrete procedures clearly attributed to the Central Authority (preferably federal or at least sufficiently sizeable according to the number of adoptions processed) and not prone to contradictions or gaps;
- along with initial and continuous training, professionalism, multidisciplinary (law, social work, psychology, medicine), the supervision and cooperation of a number of intervening parties (particularly of accredited bodies¹⁰) in proportion to a feasible number of adoptions that relate to the needs of internationally adoptable children (see also above, B. 2).

4. Which attitude with regard to non-contracting states of the Hague Convention?

While the Hague Convention offers important guarantees to children from different contracting states, the implementation of such a convention must not become a risk for children in other countries who form *the majority among the adopted in 5 of the 6 European receiving countries* in our comparative study (Switzerland being the exception). Indeed, there is serious cause for concern that the least well-intentioned individuals head for countries which are not part of the

Convention in order to continue the trafficking which has been rendered more difficult in states parties, or at the very least to employ practices considered harmful to the children – and consequently to the adoptive and biological families.

Direct contact between the prospective adoptive parents and the biological parents or the child's guardian is prohibited for example by article 29 of the Convention before verification of the adoptability of the child and the suitability of the prospective adoptive parents. This is in order to ensure that assessments comply with both the child's interests and the freedom of consent of the parents or guardians. However, this direct contact is frequently not forbidden by the laws of non-contracting countries of origin or – even more astonishing – by the laws or practices of receiving countries which have ratified the convention (Germany, Spain, France and Switzerland for example), in their dealings with non-contracting countries. In France and Switzerland, “strictly private” adoptions (see below, 5), carried out with no aid whatsoever from the Central Authority, are only allowed with countries not party to the Convention, with the highest ethical risks.

Certain Central Authorities of receiving countries (Germany, Switzerland) are, furthermore, seeing their accompanying or control capacities restricted to adoptions with countries party to the Convention, without enabling procedures for the high-risk non-contracting countries to benefit from their expertise.

We therefore strongly condemn the shocking discrimination, contrary to article 2 of the Convention on the Rights of the Child, which is practiced against certain children from non-contracting states, for whom numerous receiving countries accept simplified rules of procedure and diminished guarantees, with the consequent risk of having to face grave violations of children's rights or failed adoptions.

On the other hand, a certain number of countries, such as Belgium, have recently brought into line the terms and procedures of intercountry adoption for children

⁹ As for the quality requirements of this control, see above, 1.

¹⁰ See also below, 6.

from non-contracting states with those adoptions complying with the Convention, offering the same guarantees to all children and thus also to all the adoptive and biological parents.

Spain increased the guarantees of intercountry adoptions with Haiti, a particularly vulnerable country having not ratified the Hague Convention, by introducing the obligation to adopt through a single accredited body.

Additionally, the two Special Commissions on the practical operation of the Convention in 2000 and 2005¹¹ recommend that “*States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-contracting States.*”

In order to place the child's best interests at the centre of the adoption process, Terre des hommes thus recommends that each receiving country:

- grants all children living in non-contracting states the same legal guarantees and/or procedures as those of the Convention, including Central Authority control;
- restricts or even prohibits private adoption (see below, 5);
- bans any contact between the prospective adopters and the parents or the child's guardian;
- grants the content of bilateral agreements.

5. Private adoption, an important source of abuse

Private adoption¹² consists, for prospective adoptive parents, in achieving an intercountry adoption without appeal to an accredited body. When the two countries concerned are party to the Convention, the candidates act at the least under the auspices of the Central Authorities and/or competent authorities. Insofar as the Convention is properly implemented – which all too often is not the case – it imposes a minimal ethical and legal framework in the interests of the prospec-

tive adoptive parents, the children and the biological parents. Nevertheless, accredited bodies can offer considerable additional guarantees so as to ensure a successful adoption. These guarantees focus on psychosocial support throughout the procedure as well as on reliable, professional local partnerships in the country of origin.

When a private adoption is carried out in a non-contracting state, there are no guarantees apart from those included in the existing legislation, which are diverse and variously implemented. ***This kind of procedure provides the potential breeding ground for the worst cases of abuse found in intercountry adoption: selection of children by the prospective adopters (prohibited by the Convention and psychologically problematical), pressure exerted on the biological parents, corruption, false documents, procedural illegalities, or the kidnapping of children.*** Because of the pressure put on countries of origin by hundreds, even thousands of individual adopters, private adoption constitutes moreover a fundamental hindrance for the development of intercountry adoption based on the child's interests and not those of adults.



A growing number of countries of origin and receiving countries are restricting access to private adoption, or even requiring the prospective adoptive parents to adopt through an accredited body, in the interest of the adoptable children and without discrimination depending on whether the convention is implemented or not. In our sample group, Italy and Norway oblige candidates to go through an accredited body, except in extremely rare cases (in around 1% of all intercountry adoptions), which are basically adoptions by foreign residents in their country of origin where there is no accredited body. German adoption law also maintains

¹¹ http://www.hcch.net/index_fr.php?act=text.display&tid=45.

¹² Also called independent or “wild” adoption.

that private adoption is prohibited. However, since adoptions pronounced abroad are easily recognized by the German authorities, this ban can be avoided without difficulty.

In other European countries (Spain, France, Switzerland), private adoption is legally totally open, and it concerns on average, in France and in Spain, *two-thirds of intercountry adoptions, in particular with the countries of origin the most vulnerable to trafficking*. These adoptions draw hardly any benefit from similar guarantees to those with an accredited body. Since the passing of a law on 4 July 2005, the involvement of the French Central Authority in “strictly private” adoptions with non-contracting states has noticeably diminished. The situation is therefore highly alarming.

Where private adoption is authorized, the authorities of the receiving countries and of the countries of origin, in order to respect their international obligations with regard to the Convention on the Rights of the Child and the Hague Convention, and notably to avoid discrimination among children, must themselves guarantee the services offered by the accredited bodies. The issues concerned are in particular the psychological support of the child, of the biological parents and of the prospective adoptive parents throughout the procedure, and the verification of the reliability and professionalism of the local partner in the country of origin (Belgium). Those duties, for which the Central Authorities are less well-prepared than the accredited bodies, can be properly ensured only in a limited number of situations and are in fact frequently not satisfied.

In order to place the child’s best interests at the centre of adoption, Terre des hommes thus recommends that each receiving country:

- should legally and effectively limit the use of private adoption;
- in those exceptional cases where the latter is authorized, should ensure that the Central Authority offers all parties concerned the same guarantees as those of the accredited bodies, notably concerning psychosocial support and verification

of the reliability and professionalism of the local partner in the country of origin.

6. Which professional standards, assessment and verification methods for accredited bodies?

In order to successfully manage an international adoption policy that is focused on the child’s best interests, the receiving countries need the support of accredited bodies which can provide a high degree of professionalism and ethical commitment. In fact, as shown in our comparative analysis, *the qualitative profile of these accredited bodies varies greatly from one European country to another*.

This can also be true according to the private or public nature of the accredited bodies. Indeed, in the two countries examined, where systematic use is made of public bodies (Germany and France), these:

- have a less well-defined administrative profile than private bodies: including “third way” French adoption, and confusion with the role of federated Central Authorities in Germany;
- have simplified administrative constraints;
- offer fewer guarantees with regard to the legal and psychological accompaniment of all parties concerned (for example, in respect of article 29 of the Convention: see 4 above);
- do not systematically have any local partners trained and controlled by them in the country of origin where they operate.

We can ask to what extent the development of these public bodies is not an attempt to “mask” from countries of origin the pursuance of practices similar to private adoption, especially in France which remains reluctant to ban the latter.

As for private accredited bodies, some receiving countries (Germany, Norway) authorize a limited number made up of professionals who are properly trained (initial and permanent training) and monitored specialists. This facilitates close collaboration between the authorities of the receiving countries, the countries of origin and the accredited bodies, as well as more effective control of the accredited bodies by the receiving countries and countries of origin. In the case of Norway, the small number also prevents competition

between accredited bodies, which is prejudicial to the children's interests.

Other European countries (Spain, France and Italy) have authorized a very large number of private bodies (some of these only carry out a few adoptions per year) which vie with each other. Professional qualifications are not always required, indeed, numerous accredited bodies still consist mainly of voluntary workers (Spain, France, Italy, Switzerland), whose training and moni-



toring are not always up to standard. The proliferation of accredited bodies does not facilitate regular controls by the Central Authority, which, in the receiving countries, sometimes also lacks the expertise necessary to assess not only all the legal and administrative work, but also all the psychosocial work carried out in the receiving country and in the country of origin. In this situation, the Central Authorities are sometimes suspicious of the accredited bodies and act in a spirit of competition rather than cooperation with regard to countries of origin.

In order to focus on the child's best interests, Terre des hommes thus recommends that all receiving countries implement the following good practices:

- legally acknowledge the role of accredited bodies in the description of an ethical policy of intercountry adoption, promote the development of a limited number¹³ of highly specialized professional accredited bodies (including financial support), give them authorization for countries of origin one by one, in accordance with the needs

of internationally adoptable children in these countries, define their legal and psychosocial role, including their partners in the country of origin (training, monitoring), and allow them to participate in developing practices which focus on the children's best interests (enable visits to countries of origin where few receiving countries work);

- if public bodies exist, oblige them to respect the same administrative conditions and legal, qualitative and ethical guarantees as those required by private bodies, notably with regard to services provided, effective psychosocial support for all the parties concerned, as well as the presence of reliable collaborators monitored in the country of origin who are capable of co-guaranteeing the adoptability and preparation of the child (see 7 below) in accordance with article 29 of the Convention;
- legally promote, and reinforce by means of shared experiences, initial and permanent training, multidisciplinary (law, social work, psychology and medicine) and supervision of the accredited bodies' teams;
- grant financing of the accredited bodies, in addition to any private donation, by means of public funds (guaranteeing continuation whatever the number of adoptions carried out) and by fixed-price payment by the prospective adoptive parents for professional services rendered;
- limit the duration of the accredited bodies' authorization and ensure regular controls (including visits to the accredited bodies and meetings with their teams) over the quality of their work in the legal, administrative, medical, and psychosocial fields for work carried out not only in the receiving countries but also in the countries of origin, so as to guarantee effectively their professionalism and ethical approach, including their responsibilities in regard to their partners and collaborators abroad.

¹³ As to the number of intervening parties, see 3 above.

7. Can children's interests be qualitatively guaranteed at each step of the procedure?

Whether they are implemented by the Central Authority of countries of origin and receiving countries, by competent authorities (courts, administrative bodies in charge of child protection, etc.) and/or by accredited bodies, the following procedural steps must be complied with, in accordance with conventions and international good practice and must be so qualitatively, i.e. in terms of professionalism, multidisciplinary and ethics, so as to respect the interests of both families and children:

- verification of the adoptability of the child, to include the implementation of the principle of double subsidiarity (see A. 2);
- preparation of the child;
- briefing, assessment of the aptitude and preparation of the prospective adoptive parents;
- matching the child with the most suitable prospective adoptive parents;
- supervision of the meeting between the child and the adopters, follow-through of the legal process of adoption, authorization allowing the child to travel to the receiving country (visa);
- provision of post-adoption services.

The success of this continuous service process implies very close collaboration between countries of origin and receiving countries, as well as ***complementarity between authorities and accredited bodies, depending on their respective qualitative skills***. In the interests of the child, each step must be carried out as quickly as possible and within a timescale that allows for professionalism and the respect of the rights of all parties concerned: the aim is to obtain a proper balance which can be continuously verified. All of these guarantees of good practice are unfortunately often lacking.

As stressed in our comparative study, ***the regulations and application of the different stages of international adoption vary greatly from one country to another, or even between one federate identity to another within the same country, whether the country is a party to the Convention, or if the adoption is conducted with an accredited body or privately***. If experiences (in certain independent Spanish Communities), or even global, qualitative and innovative poli-

cies (Belgium) are established in certain countries or federated bodies, the following insufficiencies are still too widespread in Europe:

- the regulations do not always clearly specify whether the authorities of the receiving country, and which ones, are co-responsible – with respect to the primary responsibility of the country of origin – for verifying that the study of adoptability has been properly carried out in the country of origin. This check should be done at the latest at the time



of matching (and not after allocating the child to prospective adoptive parents, which results in a “fait accompli” response), in connection with the authorities of the country of origin along with the consular and diplomatic authorities and the authorized bodies in the receiving countries;

- the criteria for assessment of the prospective adoptive parents' suitability vary greatly and are often unclear; authorizations to adopt are granted for unfeasible projects with regard to the realities of children in need of intercountry adoption¹⁴, without in-depth psychological assessment, or after an appeal on a refusal to give authorization that has been dealt with in a purely legal and administrative fashion (and not one based on psycho-social-medical requirements); and important factors are often deliberately concealed from the country of origin by the authorities of the receiving countries (e.g. illness of an adopting party, social status);
- neither the information and the preparation (most of the independent Spanish Communities, France,

¹⁴ See above, B. 3 and C. 2.

Switzerland) of the prospective adoptive parents, nor the placement follow-ups are systematically compulsory or subject to regulations;

- the required constant co-operation between authorities and bodies of receiving countries and countries of origin is not always subject to regulation as regards, notably, matching of the child¹⁵, placement follow-up, legal processing of the adoption nor authorization for the child to travel to the receiving country;
- high-standard post-adoption services are not available to all families and less so, specialized services for children with special needs.

In order to focus on the child's best interests, Terre des hommes thus advises each receiving country to develop the following good practices for all international adoptions, whether they are carried out by accredited bodies or privately in exceptional cases, in the countries of origin (party to the Convention or not):

- guarantee, through legal measures specifying reciprocal qualifications, within the framework of reinforced co-operation between receiving countries and countries of origin, and between authorities and accredited bodies, the real existence and compulsory respect of a continuum of professional and multidisciplinary services required for carrying out high standard and ethical adoptions;
- define in legal terms the co-responsible authority – in respect of the country of origin's primary responsibility – for the verification of the adoptability of the child. This verification should be carried out at the matching stage at the latest, in collaboration with the authorities of the country of origin, the consular and diplomatic authorities, as well as the accredited bodies of the receiving country;
- define the criteria for assessment of the suitability of prospective adoptive parents, taking into consideration all the psychosocial, medical and legal requirements particular to intercountry adoption, notably considering that the latter is

currently evolving more and more towards the adoption of children with special needs; include in these assessment criteria the feasibility of the project in view of the needs of internationally adoptable children; plan for an assessment by a team of multidisciplinary specialists, in the first instance and at the stage of appeal against a refusal to grant authorization;

- guarantee clear reports for countries of origin regarding prospective adoptive parents, refusing to conceal any information deemed by them to be crucial in decision-making at the matching stage;
- legally impose high-quality and ethical information and preparation for the prospective adoptive parents;
- develop specialized post-adoption services, according to the developing needs of the families.

8. What standard of financial transparency?

Money is of course the machine of war in child trafficking. The necessity for financial transparency exists on three levels of increasing gravity:

- the public costs of intercountry adoption in the receiving country, which are usually regulated and relatively low;
- the costs of adoption by accredited bodies in receiving countries and countries of origin;
- the costs of private intercountry adoptions in the countries of origin, which are the most fertile ground for child trafficking.

Generally speaking, and in accordance with international conventions, the distinction must be made between the legitimate cost of professionalism and compliance with the rights of the child (in the country of origin: work with the biological parents, priority search for national adoption, the multidisciplinary report on the child, the child's preparation; and in the receiving country: information, selection and preparation of the prospective adoptive parents, multidisciplinary

¹⁵ On the fundamental importance in timing the matching process for a successful control of the adoption procedure, see above, C. 1.

report, follow-up of the adoptive family) and the payment of sums of money whose allocation is not strictly justified. *In fact, these sums of money are used in order to “obtain” a child (payment in exchange for parents’ consent or other required consents, corruption, payment for false documents and cover for procedural illegalities, sums which serve to procure special favors or to accelerate procedures, a form of favoritism, etc.) and not the professional services required for a legal and ethical adoption procedure.* Those professionals performing serious work during the course of the adoption procedure must indeed be paid reasonable salaries. However, no one should be able to profit from intercountry adoption, nor have any financial interest in its development, to the detriment of the principle of double subsidiarity.

As shown in our comparative study, even if certain countries try to regulate and stabilize the cost of intercountry adoption, and even create financial solidarity among adopters (Norway) the established regulations in other receiving countries vary in regard to the expenses of accredited bodies paid by the prospective adoptive parents, and are often inadequate. Cost control of private adoptions is even more hazardous.

In order to focus on the child’s best interests, Terre des hommes thus advises each receiving country to develop the following good practices¹⁶:

- regulate the expenses which accredited bodies can charge to prospective adoptive parents, by specifying their nature, the maximum amounts or justification method, their means of payment in countries of origin (preferably by the accredited body, in exceptional cases, or in cases of absolute necessity made directly by the adopters) and those sums which cannot be claimed;
- ensure concrete and regular control of these regulations by the Central Authority;
- regulate the costs which prospective adoptive parents are able to bear, if they have been granted special authorization to act in a private capacity: the kind, maximum amounts or justification



method, the timing and name of the recipient of payments, and sums which cannot be claimed;

- ensure proper control of these regulations by the Central Authority, for each file, as far as possible before matching and in any event prior to issuing the child’s permit to enter the territory;
- in all cases, make it compulsory to present a detailed and justificatory calculation of all payments claimed;
- during the adoption procedure, ban all donations from prospective adoptive parents to accredited bodies or to children’s shelter institutions;
- after arrival of the child in the receiving country, regulate the possibility for adopters to grant aid devoted to the prevention of abandonment, the functioning of institutions and the upkeep of children who are not adoptable; such donations should be managed within the framework of a specific, controlled scheme, preferably through the accredited body or an NGO working in the field of co-operation and development; guarantee that no donation is linked to “promises” of any future attribution of children to candidates of the same accredited body or the same receiving country;
- develop scrupulous international co-operation with countries of origin and other receiving countries in order to improve the situation regarding payment in matters of adoption and to denounce all trafficking.

¹⁶ As to the financial support of accredited bodies by receiving countries, see above, 6.

Conclusions

Children throughout the world need a family, but they do not necessarily correspond to the desires of the prospective adoptive parents.

More and more prospective adoptive parents are offering to adopt a child, but in a context where there is a growing risk of child trafficking and violation of the rights of all concerned.

Only procedures which guarantee ethical practices and professionalism, in conformity with international conventions, can enable these two groups of vulnerable people living in very different countries, cultures and social environments to come together, with respect for their origins and life stories and create a fulfilling family life for all.

Even if the operational tasks are divided between them, the receiving countries and the countries of origin must be considered to be jointly responsible for the entire procedure, and particularly for compliance with the principles of the child's best interests and double subsidiarity. The countries of origin are far from bearing sole responsibility for child trafficking and other practices which do not respect the minimal legal, professional and ethical rules. ***Receiving countries have to assume in particular the responsibility for the behavior of their prospective adoptive parents, accredited bodies, Central Authorities and political leaders with regard to the countries of origin.***

This document thus recapitulates, on the basis of a comparative study carried out in six European receiving countries, a series of recommendations for good practice which should contribute effectively to combating child trafficking and promote intercountry adoptions that are focused on the needs and rights of children.

In this era of globalization, one single state is, nevertheless, very isolated in its attempts to develop successful procedures in the field of intercountry adoption. ***It is therefore up to the European Union to promote, among its member states and other countries, in particular within the framework of the Hague Conference on Private International Law, the exchange of experiences, the sharing of good practices, or even the adoption of common standards,*** which will necessarily contribute to raising awareness internationally, and therefore help to improve the lot of children and their families.

A scheme of this nature presupposes ***the development of a political will which departs from the unproductive ideological conflict "for" or "against" intercountry adoption,*** so as to combat pressure from lobbies of adults and focus on the best interests of the most vulnerable children. Moreover, it aims to establish ethical co-responsibility between the host countries with regard to internationally adoptable children and their countries of origin.



Second part

Comparative study on six European countries

Introduction: the project

Intercountry adoption has greatly developed over the last years. The establishment and the ratification of the Hague Convention by countries of origin and receiving countries represent a decisive step in the development towards better recognition of the necessity for an ethical framework and professional control. At the same time, practices in Europe vary from country to country and, confronted with the ardent desire of prospective adoptive parents to be able to adopt a child, some legislatures have allowed a flexibility and generosity which can put the child's protection in danger.



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This comparative study of the legislation and practices relative to intercountry adoption in six European countries aims to better understand the legal differences, their practical application, and the ethical implications. The study is thus intended to highlight the evident and worrying risks which certain European practices represent, the pressures placed upon the countries of origin, and to emphasize the responsibility of receiving countries in regard to the trafficking of children.

Terre des Hommes International Federation (TDHIF) mandated the Terre des hommes – child relief based in Lausanne, Switzerland, to carry out a comparative study of intercountry adoption practices in Germany, Spain, Italy, France, Norway, and Switzerland, all of which are party to the Hague Convention.

An in-depth study of the legislative texts and current practices was carried out parallel to a consultation of specialists in the domain of adoption in these six countries¹⁷. A questionnaire on the practices respective to each country in intercountry adoption, distributed at the end of 2005, allowed us to understand its principal characteristics.

This report supports and accompanies the Terre des hommes' Position Paper entitled ***“For an ethical responsibility of receiving countries in intercountry adoption”***. The conclusions and recommendations for receiving countries contained in the Terre des hommes Position Paper are taken from the results of the study presented in this report.

¹⁷ To facilitate the reader, and for comparative analysis, technical terms of each country have been modified on the basis of the terminology used in the Hague Convention, even if they do not always correspond to the meanings contained in respective national law. An accredited body in France, for example, by virtue of decisions taken by the French authorities, is authorized to work in certain departments, and competent in intercountry adoption. The Hague Convention, as well as many other countries, unites these two notions under the term accreditation, which will be used in this present study, including in mention of France.

I. Global overview of intercountry adoption

A. Recent statistical developments in the various countries

The statistical development¹⁸ of intercountry adoptions in the analysed countries from the year 2000 to the year 2005 are shown in Table I.

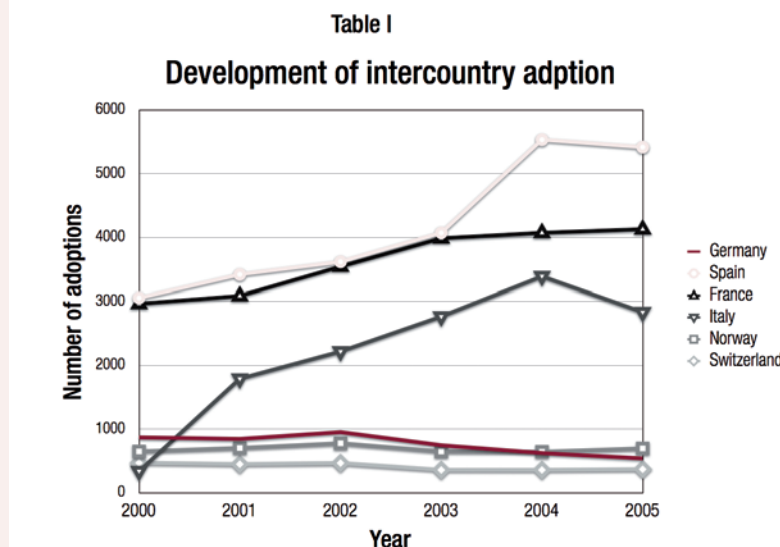
In **Spain** (population 40.3 million), intercountry adoption is marked by considerable growth. Intercountry adoptions increased, from 2000¹⁹ to 2005, from 3,062 to 5,423 per year²⁰. Comparing this number to the overall population, there is a rate of one intercountry adoption for 7,431 people.

France²¹ (population 60.5 million) has likewise seen a strong increase in the number of intercountry adoptions over the last few years. Between 2000 and 2005, they rose from 2,971 to 4,136 per year, which is an intercountry adoption rate of one for every 14,627 inhabitant.

Italy (population 58 million) has the most striking increase in intercountry adoption over the last five years: from 346 in 2000 to 2,840 in 2005²², which is one intercountry adoption for 20,422 people.

In **Norway**²³ (population 4.5 million) the number of intercountry adoptions carried out over the past few years is more stable. Between 2000 and 2005, they decreased slightly from 589 to 582 per year, which is an intercountry adoption rate of one per 7,731 people.

Switzerland²⁴ (population 7.5 million) is a country where the number of intercountry adoptions decreased between 2000 and 2005, from 478 to 337 authorizations for the entry of a child. This development is due to the entrance in force of the Hague Convention, which has proved to be very complicated. There is an intercountry adoption rate of one per 22,255 citizens.



18 The figures presented in this section refer, unless otherwise indicated, to declared intercountry extra-familial adoptions in the country, as far as they were given by study participants. We note nevertheless that it is difficult to find exact and comparable figures in regard to intercountry adoption, as each country follows its own statistical calculation. The comparison provided here is thus to be understood as indicative and trend-based.

19 There were only 942 intercountry adoptions in Spain in 1997.

20 Figures for 2005 provided by P. Selman of the University of Newcastle, 2007.

21 http://www.diplomatie.gouv.fr/fr/IMG/pdf/stat_adoption_2005.pdf.

22 Figures for 2005 provided by P. Selman, 2007.

23 These figures, provided by Adopsjonsforum, a Norwegian accredited body, relate to the date of arrival of the children in Norway and not the date of registration of the adoption.

24 The Swiss figures are relative to authorizations of entry and not adoptions declared in Switzerland – a figure which best indicates the number of intercountry extra-familial adoption. Figures provided by the Federal Office of Migration.

Germany²⁵ (population 82 million) has one intercountry adoption for 149,908 people. Between 2000 and 2005, there was a decrease in the number of intercountry adoptions, from 878 to 547 per year.

The total of intercountry adoptions for the six countries thus increased by about 70% over five years. That said, the increases are relative to three countries, Spain, France and Italy. The only country where the number of intercountry adoptions has remained relatively stable is Norway, while Switzerland and Germany have seen a decrease.

B. Changes following ratification of the Hague Convention

According to our study informant in **Germany**²⁶, since ratification of the Hague Convention the placement of children is usually carried out by specialists, thus improving its quality. Our informant also noted a decrease in child trafficking in the area of adoption, as well as in the number of private adoptions²⁷.

In **Italy**, we can note some significant changes in regard to the obligation to process adoptions through an accredited body and the creation of a centralized control system by the Central Italian Authority. Ratification encouraged the creation of training programs for social services personnel, which thus improved the quality of work.

Since ratification of the Hague Convention, **Norway** has seen greater attention paid to ethical issues and improved cooperation between the Central Norwegian Authority and those of other receiving countries. The Hague Convention has allowed an improvement in the speed of the adoption procedure, so that children do not have to stay too long in a shelter institution.

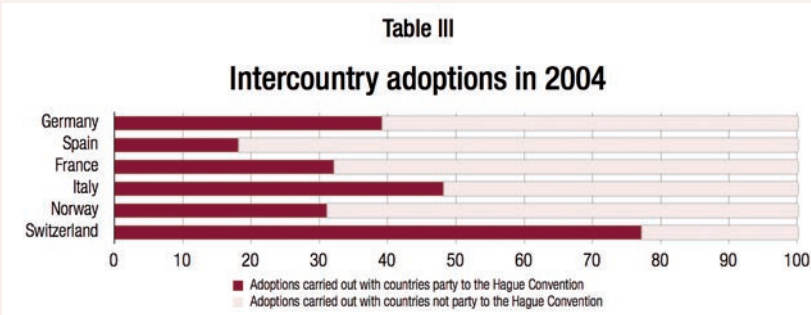
In **Switzerland**, we can see a significant decrease in adoptions due to the slowness of the procedure.

C. Do children come from member States of the Hague Convention?

Table II shows as percentage the intercountry adoptions carried out with non-contracting states of the Hague Convention, by year.

Table II Adoptions carried out with non-contracting states of the Hague Convention					
	2000	2001	2002	2003	2004
Germany	-	-	-	-	62%
Spain	59%	72%	87%	77%	83%
France	69%	71%	80%	77%	67%
Italy	74%	66%	73%	56%	52%
Norway	61%	62%	67%	66%	68%
Switzerland	27%	32%	25%	32%	25%*

* The drop in 2004 is largely explained by India's ratification of the Hague Convention at the end of 2003



As shown in Table III, in five of the six receiving countries, a majority of adopted children came from countries not party to the Hague Convention. The level of guarantees offered to these children and their families, in comparison with those of the Hague Convention, and consequently by application of the *principle of non-discrimination* between children (Article 2 of the Convention on the Rights of the Child), can thus be called into question.

Table IV studies the principal countries of origin of children adopted between 2000 and 2004. We can

25 Figures provided by the Federal Office of Statistics for 2000 to 2005. According to this source, their system of calculation contains several lacunae, and these figures are below the real number.

26 During our expert consultation, no data was given for Spain or France.

27 However, see below, II, A. 3.

see some important variations: China, for example, has become a principal origin of adopted children in Spain, France and Norway, while rarely or not at all in Germany, Italy and Switzerland. Nevertheless, *the six receiving countries all adopt in the same states of origin*, begging the question: what happens to adoptable children in other parts of the world?

no such accords. In 2001 **Spain** concluded a bilateral accord with Bolivia, which has since ratified the Hague Convention. In 2000, **France** concluded an accord with Vietnam, which allowed intercountry adoptions to recommence one year later – they had been suspended due to serious deviations. A “protocol for administrative cooperation in the coordination of

procedures in adoption requests to the Cambodian authorities and subsequent visa requests for children” was signed on 8 June 2006, by the French and Cambodian Ministers for Foreign Affairs. It was intended to allow the recommencement of adoptions, which have been suspended due to serious violations of children’s rights. **Switzerland** also concluded a convention with Vietnam on 20 December 2005.

We can conclude that *receiving countries do not rush into establishing bilateral guarantees comparable to those of the Hague Convention for cases of adoption which are not covered by the latter*.

Further in-depth analysis of the content and operation of existing agreements would be necessary to ascertain whether they are definitely concluded in the best interest of the children. If so, they should recognize similar rights to those included in the Hague Convention. Otherwise, they are at risk of accommodat-

ing the receiving countries with measures that “assure” the country of origin as a “supplier” of children.

At the level of international law, the bilateral agreements *cannot in any case derogate from the guarantees contained in the Convention on the Rights of the Child (CRC), nor should they, by application of*

28 In our expert consultation, no precise data was available for Italy.

Table IV

The five principal countries of origin of adopted children between 2000 and 2004*

	2000	2001	2002	2003	2004
Germany	-	-	-	-	Russia Ukraine Colombia Haiti Nepal
Spain	Romania Russia China Colombia Ukraine	China Russia Romania Ukraine Colombia	China Russia Ukraine Colombia Bulgaria	Russia China Ukraine Colombia Bulgaria	China Russia Ukraine Colombia Ethiopia
France	Romania Colombia Guatemala Cambodia Ethiopia	Colombia Haiti Ethiopia Romania Madagascar	Colombia Haiti Madagascar Russia Guatemala	-	Haiti China Russia Ethiopia Colombia
Italy	Russia Bulgaria Colombia Romania India	Ukraine Romania Colombia Bulgaria Belarus	Ukraine Bulgaria Colombia Belarus Poland	Ukraine Russia Colombia Bulgaria Belarus	Russia Ukraine Colombia Belarus Brazil
Norway	Korea China Colombia Ethiopia India	China Korea Colombia Ethiopia India	China Colombia Korea Ethiopia India	China Colombia Korea Ethiopia India	China Colombia Korea Ethiopia India
Switzerland	Romania India Colombia Thailand Russia	India Colombia Thailand Romania Russia	Colombia India Thailand Vietnam Russia	Thailand Colombia Russia India Ethiopia	Ethiopia Thailand India Colombia Russia

*In decreasing numbers of adoptions; the countries in bold were party to the Hague Convention at the time of our expert consultation. China was not yet at that time, but is now (ratification on September 16, 2005, coming into effect January 1, 2006.)

D. Bilateral agreements

Certain receiving countries²⁸ have concluded agreements with *countries of origin party to the Hague Convention*, such as **Spain** with the Philippines in 2002.

Agreements between receiving countries and non-contracting states of the Hague Convention are rare. According to our data, **Germany** and **Norway** have

the principle of non-discrimination (Article 2 of the CRC), derogate from the Hague Convention. They can only frame distinct ways in which the two universal conventions operate in the relationship between the states involved, and where necessary provide for additional guarantees (if they truly are guarantees; for example, the obligation to operate through accredited bodies).

From the perspective of the universal promotion of children's rights, it would furthermore be regrettable if bilateral agreements were to be concluded in the place of the Hague Convention, as the latter would thus lose its status as international reference for adoption.



II. Procedures of intercountry adoption in the European countries of the study

A. The routes of intercountry adoption

The intervening bodies envisaged by the Hague Convention in the treatment of intercountry adoption are:

- The Central Authority (CA; see below, III, A), and in a federal state, the federal Central Authority and the federate Central Authorities;
- The competent authorities (child protection authorities, courts, civic offices, etc.), which provide support to the Central Authorities
- The accredited bodies, which act as intermediaries between prospective adoptive parents and the country of origin, based on a delegation of some tasks by the Central Authorities in the state of origin and the receiving country. These bodies have historically been private bodies (see below, III, B).

Two routes for intercountry adoption traditionally exist and are authorized by the Hague Convention: adoption through an accredited body and private or independent adoption (i.e. without the intervention of an

Table V

Adoptions through an accredited body

	2002	2003	2004
Germany	-	-	-
Spain *	66%	66%	-
France	34%	35%	41%
Italy **	90%	94%	99%
Norway	99%	99%	99%
Switzerland	30-40%	30-40%	30-40%

* In our expert consultation, data was only available for the Autonomous Community of Madrid.

** The change in percentages illustrates the progressive application of the Hague Convention (which forbids private adoption).

accredited body). These two ways come under the responsibility of the central and competent authorities. The private route, however, contains some important risks (see below, B).

Important differences in regard to the respective weight of these two routes merit analysis in respect of the countries, as shown in Table V.

At the legal level, some countries (Spain, France and Switzerland) give prospective adoptive parents a free choice between the two routes (1). Others (Italy and Norway) in principle do not allow private adoption, except under strictly limited conditions (4). *The intervention of public bodies nevertheless can negate the claims of policy*, whether it is in the free choice of adopters in France (2) or in the forbidding of private adoption in Germany (3).

1. Spain, France and Switzerland: freedom of choice for prospective adoptive parents

In Spain, France and Switzerland, prospective adoptive parents can decide whether to adopt a foreign child through an accredited body or through private adoption. *There is no legal restriction either way*. In France and Switzerland, *private adoptions constitute two-thirds* of intercountry adoptions.



We note nevertheless for some years, in Germany and France particularly, the creation of *public bodies which seem hybrid*, as they are functioning as accredited bodies as well as central or competent authorities. As we will show below, the intervention of these public bodies can be problematic inasmuch as their status, especially in the sense of the Hague Convention, is not clear – neither for the prospective adoptive parents, nor for the countries of origin. They do not seem to provide the same level of guarantees as those offered by accredited private bodies.

2. France: freedom of choice and a “third way” through a public body

Further to the law of 4 July 2005, a “third way”²⁹ for adoption has been created in France: the French Agency of Adoption (l’Agence française de l’adoption, AFA) that was established on May 18, 2006. In conformity with the legal text of its creation³⁰, it is *a public body*, in the form of a “grouping of public interest” composed by “the State, the departments and legal entities of private laws”. The French government declared the AFA to be an accredited body of adoption at the Hague Conference on Private International Law³¹.

The AFA is accredited to serve as an intermediary for adoption *in all countries party to the Hague Convention* and, *under condition of a specific agreement* on a country by country basis, delivered by the Minister for Foreign Affairs, *in the case of non-contracting states*.

It is difficult to understand how this condition of a country-by-country agreement, legally imposed upon the private accredited bodies for all countries of origin³² whether or not they are contracting states to the Hague Convention, only applies to the AFA in its relations with countries not being a party to the Convention. This creates discrimination between children and families in regard to the guarantees granted to them. Furthermore, it is important to emphasize in this context that it is not enough for a country to be a party to the Hague Convention in order to guarantee good practice and that the interest of having trustworthy partners in the countries of origin remains an essential asset of the accredited bodies.

It is also important to verify the way in which the State operates its control (in the sense of the Hague Convention) over a public body of which it is a constituent member.

Contrary to the private accredited bodies, the AFA does not select prospective adoptive parents, but accepts all those who hold a certificate of suitability. On the other hand, even if the AFA presents itself as an “intermediary”, it does not give any guarantee of a matching. The AFA itself sends the file of prospective adopters to the country of origin. Again contrary to the private accredited bodies, the AFA does not assure the monitoring of the adoptive family after the arrival

of the child, but gives such responsibility to the public services of the Children’s Social Assistance (l’Aide sociale à l’enfance³³).



The French Authorities seem to cultivate this ambiguity between the roles of the AFA, the accredited bodies and their respective work regarding “individual” adoptions. During its inauguration, the Minister for Foreign Affairs announced that the AFA could “act” in relationship with the countries of origin “in its dual status as state agency and accredited body”³⁴. “The agency will be able to both support the parents and reassure the countries of origin of the children, who wish to protect themselves against individual [i.e. private] procedures”³⁵.” The AFA also announces on its

29 Communiqué du Conseil des ministres (Paris, 23 mai 2006), www.diplomatie.gouv.fr.

30 Art. L 225-15 of the Social and Family Action Code, as modified by the law of July 14, 2005.

31 www.hcch.net/index_fr.php?act=text.display&tid=45.

32 Art. L 225-12 of the Social and Family Assistance Code.

33 Art. R 225-47 of the Social and Family Assistance Code, as modified by the decree of July 6, 2006.

34 Address by Philippe Douste-Blazy (Paris, May 18 2006) (in French), www.diplomatie.gouv.fr.

35 Adoption reform : response by Philippe Bas, acting minister for Social Security, for the Elderly, the Handicapped, and the family, to a question at the National Assembly (Paris, May 17 2006) (in French), www.diplomatie.gouv.fr.

website³⁶: “Every request for support in the preparation and transmission of an adoption file *in a country closed to individual* [i.e. private] adoption is taken into consideration. Nevertheless, the countries remain sovereign whether or not to accept the demand according to their own criteria.”

The AFA thus seems to be much more a mechanism aiming at the acceptance of semi-private or quasi-private adoptions by the countries of origin, which no longer want private adoptions, then an accredited body. On pain of violating the principle of non-discrimination between children (Article 2 of the Convention on the Rights of the Child) and families, it



would be advisable to monitor whether each benefits from the same level of guarantees, whatever the way of adoption considered, including adoptions through the AFA and strictly private adoptions (in the sense of French law) – which seems difficult in the current state of French practice.

3. Germany: official prohibition of private adoption and a discordant reality

In Germany, private adoption is officially prohibited. Alongside private accredited bodies, prospective adoptive parents may nevertheless legally turn to the adoption bodies of the Child and Youth Social Services of the “Länder” (departmental authorities), as well as to the adoption bodies of *local* Child and Youth Social Services if they are accredited by the “Land” for one or more countries, or for a particular case. These latter two bodies are thus **public**. Even if the *local* bodies are properly accredited for intercountry adoption, they are **not mentioned in the list of accredited bodies communicated by Germany to the Hague Conference**. *In regard to the adoption bodies of the “Länder”, we have not been able to find mention of their accredi-*

tation, and they appear on the list communicated to the Hague Conference³⁷ not as accredited bodies but as federated Central Authorities.

In regard to their mode of operation, and contrary to the private bodies, the public bodies do not seem to possess **partners or means of operation in the countries of origin**. Furthermore, some prospective adoptive parents engage in the procedure with the public bodies after already having selected a child in a foreign country, **thus contravening the principles contained in Article 29 of the Hague Convention³⁸**. *Despite the official German position to forbid private adoption, adoptions conducted through public bodies seem comparable to adoptions considered as private in other countries.*

It is thus interesting to compare, *in Germany and in France, the limits of adoptions by the intermediary of public bodies*, which seem to “gloss over”, especially in regard to the countries of origin, the refusal of authorities to prohibit private adoption.

Furthermore, prospective adoptive parents resident in Germany manage in practice to bring adopted children into the country **without any recourse to private or public bodies**. The German authorities recognize that they have few means to control such adoptions which are considered as private, and which frequently later receive legal recognition. Calls for a reinforcement of the legislation are thus being made by some authorities and organizations.

4. Italy and Norway: prohibition of private adoption except for justified and truly limited cases

Italy distinguishes itself as having, since its ratification of the Hague Convention, prohibited private adoptions, including non-contracting states. Recourse to an accredited body has become obligatory. Nevertheless, in exceptional circumstances, prospective adoptive parents can carry out the process without recourse to an accredited body but *by going through*

³⁶ <http://agence-adoption.lnet.fr/home>.

³⁷ hcch.e-vision.nl/index_fr.php?act=authorities.listing.

³⁸ For a critique of this practice, see below, C. 1.

an NGO specialized in the support of transnational family relationships, the International Social Service (ISS). A convention has been signed by the Central Authority and the ISS for the treatment of individual adoption cases where *there is no accredited body operating in the country*. This procedure is accessible to couples of whom one of the spouses originates from the country concerned or to Italian families who have lived in the country concerned for a considerable time and have a “significant connection” with its culture. In 2004, such adoptions represented 1% of the total of intercountry adoptions.

In Norway, two possibilities for adoption exist. Private adoption is extremely restricted however (around 1%). Candidates may only have recourse to private adoption on conditions similar to those in Italy for adoption through the ISS.

B. The ethical risks of private adoption

In contracting states of the Hague Convention, private adoption requires at least the intervention of the Central Authorities and/or competent bodies. The child, the prospective adopters and the child’s parents may not have *psychosocial support throughout the procedure*, as well as guarantees of *local monitoring by foreign partners*, offered in principle by the accredited bodies. The Hague Convention does, however, always offer a secure framework to the procedure, *in as far as it is correctly applied* – which is far from always being the case. For this reason, the intervention of an accredited body also has its advantages.

The situation is much more problematic in *non-contracting countries of the Hague Convention*. Private or individual adoption occurs in situations where prospective adopters undertake themselves the process in the country of origin, or by recourse *to a third party, for which the receiving State does not necessarily have any guarantees*.

In countries where it is freely accessible, the private route does not seem any more legally complicated than an adoption through an accredited body – to the contrary, in fact, it can even be simpler. In disregarding the professional rules of the matching, guaranty of the attachment process between child and adopters, the latter often find it preferable to search themselves

for a child who meets their expectations most closely. Frequently, the private route is presented as being faster than the one through an accredited body – even if, in some cases, the private adopters waited indefinitely, and in vain, for the promised child.

Furthermore, the prospective adoptive parents do not always have a critical perspective about all kinds of solicitations. ***This is the road to all kinds of abuse*** (illegalities, corruption, pressure on the parents or the country of origin, kidnapping of the child, etc.). Even if the prospective adoptive parents must receive an authorization to adopt in their country of residence, neither the child nor the child’s parents, nor the adopters ***benefit from specific psychosocial and legal support – an important element in the success of an adoption***.

A restrictive policy – even the prohibition of private adoption, as chosen by Italy and Norway – is much more in conformance with the Convention on the Rights of the Child and the Hague Convention. It reinforces the protection of the child’s interests without discrimination, whether or not they live in a country party to the Hague Convention. Nevertheless, the accredited bodies need to provide real guarantees of protection for the child. If not, the problem is simply displaced (see below, III, B).

The general obligation to go through an accredited body would limit the risk of abuses and child trafficking, as well as unprofessional practices. Significantly, it is imposed by a growing number of countries of origin.

Where private adoption is authorized, ***the receiving countries must offer privately adopted children the same services and guarantees as those offered to children adopted through an accredited body***, by application of the principle of non-discrimination between children (Article 2 of the Convention on the Rights of the Child). This requirement is often impossible to respect for a large number of procedures, and is thus an argument for restricting private adoption. In the receiving countries which do not prohibit private adoption, ***it remains a matter of the individual responsibility and ethics of prospective adoptive parents*** to avoid the private adoption process.

C. The principal procedural steps in intercountry adoption

1. A multidisciplinary process where the matching is the founding principle, guaranteed by article 29 of the Hague Convention

Intercountry adoption is a multidisciplinary, legal and medico-psychosocial process, which presumes the *co-operation of the authorities and institutional bodies in the receiving countries and the countries of origin. Even if they are unfortunately not prescribed by all legislatures*, the following procedural steps should be systematically respected, in conformance with internationally recognized good practice:



a) In the country of origin:

- work with the family of origin, verification of the possibilities to reintegrate the child in its family; failing that, verification of his/her legal and psychological adoptability; elaboration of a legal and medico-psychosocial report on the child;
- search for an adoptive family in the country of origin (*the principle of subsidiarity in intercountry adoption*) and, failing that, a foreign adoptive family;
- preparation of the child;

b) In the receiving country:

- Information, evaluation of the suitability and preparation of the prospective adoptive parents;
- Elaboration of a legal and medico-psychosocial report on the prospective adoptive parents;

c) In the country of origin and/or the receiving country (*the chronology of some steps can vary according to the country*):

- professional matching of the child with the best prospective adoptive parents, on the basis of reports on the child and on the potential prospective adopters (*and not the choice of the child by the prospective adoptive parents*);
- first contact between the child and the prospective adoptive parents – the child is then entrusted to the prospective adoptive parents, possibly for a trial period; professional monitoring of this stage;
- transfer of the child to the receiving country;
- legal establishment of the adoption;
- offer of post-adoption services to the adoptive family and, ideally, to the family of origin.

The fundamental stage for the future of the child and the adoptive relationship is the *matching*. This means the identification, for each child in need of adoption, of the best prospective adoptive parents. The decision is taken either by the accredited bodies of the receiving countries, or by the authorities of the country of origin (who are responsible for the child), and then confirmed by the approached prospective adopters and the authorities of the receiving country. All the controls of the legitimacy of the adoption, especially the adoptability of the child, the suitability of the prospective adoptive parents, and the trustworthiness of the intervening parties, should, in principle, happen *before the matching*. After this point, the process of reciprocal attachment begins for the child and the adoptive parents, and most authorities and courts hesitate to turn back the clock. ***It is thus regrettable that these controls, especially those carried out by the Central Authorities of the receiving country, frequently take place only after the matching:*** they are thus largely futile.

Article 29 of the Hague Convention constitutes a fundamental guarantee for a successful matching process: direct contact between the prospective adoptive parents and the parents of origin or the guardians of the child is not permitted before verification of the adoptability of the child and of the suitability of the prospective adoptive parents. This guarantees an evaluation conform to the interests of the child, as well as the freedom of consent of the child's parents or guardians. This article must apply within the framework of private adoption. Nevertheless, current laws or practices in receiving countries party to the Hague

Convention (Germany, Spain, France and Switzerland), do not systematically prohibit direct contact in their relationships with non-contracting states of the Hague Convention.

2. Brief description of the legal procedures in the receiving countries of the study

In **Spain**, the suitability of prospective adoptive parents is verified by the *child protection services of the Autonomous Communities*, which provide a certificate of suitability. In case of refusal, the prospective adoptive parents may have recourse to judicial appeal. The adopters then have free choice between private adoption and adoption through *accredited bodies*. The *Central Authorities of the Autonomous Communities* handle intercountry adoption with all countries except China. Having requested a unique intermediary, China deals with the *Federal Central Authority*.

In **France**, prospective adoptive parents contact the *Children's Social Assistance Services* of their department. The relevant adoption office sets up a demand for "accreditation" (i.e. the verification of suitability) through a social enquiry and psychological investigations. If the candidates are judged to be suitable, the accreditation is provided for five years, and valid for the adoption of one or more children at the same time. The adopters then have free choice between private adoption or through an *accredited body*³⁹. At the end of the procedure in the country of origin, the adopters submit a visa application for the child to the *French consulate competent in the territory*. The visa is issued after consultation and in agreement with the *Central Authority*.

In **Italy**, the Minors' Tribunal (*Tribunale per i Minorenni*) is competent to receive the request for a certificate of suitability for prospective adoptive parents. The judge transmits this request and the relative documents of the candidates to the competent *social services*. An enquiry then determines the adopters' capacity to receive a child, and its conclusions are transmitted to the Minors' Tribunal by the social services. The tribunal then delivers a decision of suitability, or a decision attesting the non-existence of the qualities necessary for an adoption. This decision is then sent to the *Italian Central Authority* and the *accredited body* chosen by the prospective adopters. The accred-

ited body assists the adopters and monitors the entire procedure. It is responsible for the identification of the child in the chosen foreign country. In exceptional cases, the accredited body accompanies the adopters in the child's country and monitors them during the phase of first contact. If the meetings conclude with a positive estimation by the authorities of the child's country of origin, the accredited body transmits the records and the reports on the meetings to the Italian Central Authority, which takes care of their conservation. Finally, the Central Authority authorizes the entry and residence of the child in Italy.

In **Norway**, the adopters have to make contact with their local municipality (*Social and Child Welfare Office*), for registration as candidates. This service then produces a social report, with its favorable or unfavorable opinion on the authorization to welcome a child. When the file is complete, the social service is responsible for sending it to one of the five regional offices of the *National Office for Children, Youth and Family Affairs*, which grants or refuses the authorization. After authorization, unless the prospective adoptive parents have personal links with the country where they wish to adopt, an *accredited body* is required to act as an intermediary for the adoption.

In **Switzerland**, the *Cantonal Central Authorities* play an important role throughout the procedure for an adoption *in states parties to the Hague Convention*. In general, they are competent for everything requiring direct contact with prospective adoptive parents. These services are responsible for providing information on the current state of intercountry adoption, for evaluating the suitability of the prospective adoptive parents, and for the authorization to receive a child in view of his/her adoption. The Cantonal Central Authorities are also responsible for the files sent to the child's country of origin, as well as for the file on the child proposed for adoption by the country of origin. These documents must be transferred through the *Federal Central Authority* which verifies the file for its formal accuracy. *The Federal Central Authority does not monitor intercountry adoptions with*

³⁹ For an analysis of the modifications to the French procedures currently in process, especially the creation of the French Agency for Adoption, see above, A. 2.

non-contracting states to the Hague Convention. The latter are thus the sole responsibility of the Cantonal Central Authorities, which is responsible only for the verification of the candidates' suitability to adopt and for the authorization of the child to enter Switzerland. The *accredited bodies*, whose intervention is only optional and whose missions are not legally recognized, accompany the adopters together with their foreign partner responsible for the identification and preparation of the child.

In **Germany**, the public adoption services⁴⁰ (*Adoptionsvermittlungsstelle des örtlichen Jugendamtes*) and the private ones (*Adoptionsvermittlungsstelle in freier Trägerschaft*) are responsible for the principal tasks of the procedure. They evaluate the candidates, establish the file on the candidates, and examine the proposal of a child. The transmission of the adopters' files to the countries of origin does not have to pass through the Federal Central Authority (*Bundeszentralstelle für Auslandsadoption*). The latter only has a role at the request of the prospective adoptive couple, *for adoptions governed by the Hague Convention*.

In conclusion, we note that although the framework of the procedural steps is comparable in the different European countries, *the division of responsibility between the State and the accredited bodies varies considerably*. This has important consequences for the quality and systematicity of some services, especially in countries where *private adoption* is widely practiced.

3. Who proposes multidisciplinary services: the State or the accredited bodies?

Following *the conventions and best practices recognized by the international community, it would be advisable to resort to all the multidisciplinary services described below in each adoption procedure*. Nevertheless, whether they are offered or not, the optional or

obligatory nature is relative to each country (evaluation always being obligatory, by application of the Hague Convention). Of course, adopters engaged in a private adoption do not benefit from the services offered by the accredited bodies. Furthermore, the *quality* of the services varies according to the supplier: State, public accredited body, professional private accredited body, voluntary private accredited body, etc⁴¹. Additionally, the *regulation* does not specify the minimal content of services supplied to the adopters and the child. Finally, in regard to multidisciplinary services, it is regrettable that *the authorities and the accredited bodies do not systematically have the necessary qualified, trained and supervised professionals* – that is, lawyers, social assistants, psychologists and doctors. Table VI shows

Table VI

Compared practices

Services	Managed by the accredited bodies	Managed by the authorities
Information for adopters on intercountry adoption	All countries	All countries
Information for adopters on ethical issues	Germany, Spain, Norway, Switzerland	Germany, Spain, Italy, Norway, Switzerland
Evaluation of candidates for intercountry adoption *	Germany	All countries
Preparation of candidates for adoption	Germany, Spain, France, Norway, Switzerland	Germany, Spain, Italy, Switzerland
Preparation of the child for adoption	Germany, Spain, Italy, Switzerland	None
Monitoring the adoptive family after the adoption	All countries	Spain, France, Italy, Norway, Switzerland

* In this regard, see also below.

the compared practices according to our expert partners in the different countries of the study.

Multidisciplinary services are often proposed jointly by the authorities and the accredited bodies. In some countries, the role of the authorities can be mostly formal, administrative or legal, while the accredited bodies, during their intervention, take care of the practi-

40 For a critical analysis of their responsibilities, see below, A. 3.

41 For a qualitative analysis of the accredited bodies, see below, III, B. In regard to the public accredited bodies, see below, A. 2 and 3.

cal aspect – given their experience in the countries of origin. ***The necessary and useful complementarity between the work of the authorities and that of the accredited bodies should be better recognized*** in some countries, where the accredited bodies are sufficiently qualified to take on the tasks of preparation and psychological support of the child and the adopters. Their partners in the countries of origin are also able to verify the adoptability of the child for intercountry adoption.

The ***verification of the adoptability of the child*** and his/her preparation raise the issue of multidisciplinary services in regard to the child. According to Article 4 of the Hague Convention, the Central Authority of countries of origin party to the Hague Convention has the responsibility to verify the impossibility of the child to remain with his/her family of origin, the existence of the family's consent to the adoption of the child, the psychological adoptability of the child, as well as the inexistence of suitable prospective adoptive parents within the country (*the subsidiarity principle of intercountry adoption*). The entirety of these verifications are the basis of intercountry adoption and presume an important ethical point: the child must be declared to be adoptable at the intercountry level before an accredited body, its partner or its representative, receive the child's case file. It is also absolutely necessary that the adoptability of the child is declared by financially disinterested persons.

The pressure on countries of origin to obtain children is huge, in particular by private adopters. The risks of abuse are very high: the authorities in the countries of origin are often badly equipped and distant from the local level where the children are situated. The possibility for the accredited bodies' partners or representatives in the field to co-guarantee the adoptability of a child is ***an essential contribution of the way through an accredited body***.

It is unfortunate that, in view of their legislation and practices, ***the authorities of receiving countries do not systematically exercise their responsibilities***. The verification of adoptability and the preparation of adopted children, in particular with regard to private adoptions, are not the sole responsibility of the countries of origin. The adopters in the receiving countries,

especially those who adopt through private channels, create further disorganization in the systems of child protection – which are already under-equipped in financial and human resources – in the countries of origin.

4. The legal conditions imposed on prospective adoptive parents in the different countries of the study

The evaluation of the prospective adoptive couples is based on ***medico-psychosocial criteria*** linked to their suitability to receive a foreign child and to offer him/her adequate conditions of development. These criteria are developed by professionals responsible for the evaluation and vary from one country to another, as well as the deadlines for treatment of each application. Furthermore, the criteria are often not transparent. It is necessary to establish continuing training and supervision for the professionals, allowing them to share an enriching experience.

Nevertheless, in each country the law imposes ***legal prerequisites*** to be respected by the prospective adoptive parents even before the evaluation. These conditions vary between the countries of the study, as is shown by the Table VII, whether in law or in practice.

To this should be added ***the conditions imposed by the countries of origin***. The difference of concepts between the countries of origin and the receiving countries is large. For example, almost all the countries of origin refuse applications by homosexual people and same-sex couples, and give priority to married couples over single candidates. On the contrary, very tolerant legislation in the receiving countries ***gives false hope to some people who, at the end of a long selection and preparation procedure, cannot hope to legally have a foreign child assigned. The receiving countries thus maintain the illusion of a supposed "right to adopt."***

The issue of the maximum age limit and/or the maximum difference in age is currently very important. More and more older couples are applying to adopt. They are sometimes old enough to be grandparents themselves. It is important to note in this regard that neither **France** nor **Switzerland** impose a limit or a legal maximum difference.

On the other hand, the *minimum age* in **Switzerland** is paradoxically much higher than in other countries.

In regard to *civil status*, only **Italy** legally prohibits adoption by a single person, and reserves it for couples.

The issue of *chronic illness* is currently just as sensitive. Some receiving countries seek to hide health problems of prospective adoptive parents from the countries of origin – such as HIV or cancer in remission. The question can be asked how they would react

if the countries of origin likewise attempted to knowingly conceal an adoptable child's HIV infection...

Ethical principles should be based on *the inexistence of an assumed 'right to adopt,'* as well as on the *search for the best prospective adoptive parents for each adoptable child.* We should not forget either that there are more people who wish to adopt than there are children in good health and free to be adopted internationally.



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Table VII

Legal prerequisites for adoptions in the analysed receiving countries

Legal criteria imposed on adoption							Particular issues taken into account (or not) during the evaluation to suitability			
	Age limit (min)	Age limit (max)	Age difference between adopter and adoptee	Civil status	Other criteria	Homosexual couples	Disabilities	Chronic illness (HIV)	Religion	
Germany	25 years	None	40 years (max)	Married couple; single adopter remain an exception	Have the full capacity to fulfill juridical duties	No joint adoption possible	Taken into account	Taken into account	Taken into account	
Spain *	25 years	None	14 years (min), maximum of one generation-i.e. between 40 and 50 years	Married or unmarried stable couple; single person, widowed or divorced	-	Adoption as a couple or as individual possible	Taken into account	Taken into account	Not taken into account	
France	28 years, or more than 2 years of marriage	None	15 years (min)	Married or single person	Differences across the departments	No joint adoption possible	Differences across the departments	Differences across the departments	Differences across the departments	
Italy	None	None	18 years (min) 40 years (max)	Couple married over 3 years	-	Adoption not possible	Does not determine a refusal	Does not determine a refusal	Does not determine a refusal	
Norway	25 years	45 years	Regulated through the age limit	Couple married over 2 years; single adopter is an exception	Clean police record	No joint adoption possible for a foreign child	Taken into account	Taken into account	Suitability refused to members of sects which refuse some medical intervention	
Switzerland	35 years, or over 5 years of marriage	None	16 years (min)	Couple married at least 5 years (of whom both are over 35), or single person (35 years)	-	No joint adoption possible	Taken into account	Taken into account	Suitability refused to members of sects	

* we refer here to conditions set out by the Civil Code which applies throughout the Spanish territory. Each Autonomous Community adds its own regional legislation.

III. The actors in the intercountry adoption procedure

A. The Central Authority (CA)

According to the Hague Convention, *the Central Authority is guarantor of intercountry adoptions in a country*, whether receiving or of origin. It can obtain the cooperation of competent authorities: judicial (children's tribunals, etc.) or administrative (such as youth protection services, civic offices), in order to exercise its duties. It can also delegate to *accredited bodies for adoption (B)*.



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In federal countries (Germany, Spain and Switzerland), the Federal Central Authority is the privileged

exchanging partner with other countries as well as the *Federated Central Authorities*. To allow comparison between unitarian and federal states, the following analysis is based on the *Federal Central Authorities* in the case of federal states.

1. The attachment of the (Federal) Central Authority

The locus of the (Federal) Central Authority's administrative attachment conditions is shown in Table VIII. Its means of action are relative to the internal organization of each country: especially its level of competence in decisions and control, its capacity for psychosocial work (and not just for legal and administrative issues), as well as its possibilities for international contact. It also influences the understanding of intercountry adoption in each country.

2. The role of the (Federal) Central Authority

Germany

Bundeszentralstelle für Auslandsadoption

For Hague Convention adoptions

- Reception and transmission service for States party to the Hague Convention to address their communication and requests
- Coordinating office for general questions in international cooperation, for example the exchange of information on current law, procedural questions, statistics, but also for particular cases
- At the request of prospective adoptive parents, transmits requests and adoption files to the foreign Central Authority and confirms the conformity of the certificate of adoption established in another contracting State

For all intercountry adoptions

- Participates in procedures before the court of guardianship for the recognition and validation of adoptions carried out abroad
- In certain cases, authorizes foreign adoption bodies

Table VIII
The attachment of the Central Authority

Germany	Spain	France
To the Public Prosecutor of the Federal Courts of Justice	To the Ministry of Labor and Social Affairs	To the Ministry for Foreign Affairs
Italy	Norway	Switzerland
To the President of the Council of Ministers	To the Ministry of Family Affairs and Children	To the Federal Department of Justice and Police

- Establishes an attestation for German residents abroad who wish to adopt in their country of residence
- Establishes and manages a database of all inter-country adoptions

The federated CA of the “Länder” manage actual procedures, certify and control the German accredited bodies.

Spain

Dirección General de Servicios Sociales, Familia y Discapacidad, Ministerio de Trabajo y Asuntos Sociales

Hague Convention and non-Hague Convention adoptions

- Interlocutor with foreign CAs and for international relations
- Information
- Coordination of actors in intercountry adoption
- Transmission of case files to China

The CAs of the Autonomous Communities take care of concrete procedures, except for China, and accredit and control the accredited bodies.

France

Mission de l'adoption internationale (MAI)

Hague Convention and non-Hague Convention adoptions

- Centralizes and distributes information
- Accredits and controls the accredited bodies
- Communicates with the administrations of the countries of origin
- Issues necessary visas for adopted children
- Oversees the conduct of private adoption procedures (a task which is being progressively taken over by the French Agency of Adoption: see above, II, A. 2)

The MAI will soon be replaced by the Central Authority for Intercountry Adoption (ACAI).

Italy

Commissione per le Adozioni Internazionali

Hague Convention and non-Hague Convention adoptions

Concrete procedures

- Collects and stores all acts and information relative to procedures managed by the children's tribunals and by the accredited bodies
- Authorizes the entry of adopted foreign children, or foreign children placed in view of adoption
- Certifies the conformity of adoptions with the requirements of the Hague Convention

Global competence

- Collaboration with the Central Authorities of other States
- Signature of bilateral accords
- Promotion of cooperative programs
- Promotion of collaboration among persons working in the domain of adoption
- Training of actors in the domain of adoption
- Information for prospective adoptive couples and public opinion
- Delivering accreditation to the accredited bodies and monitoring their work, verifying their distribution across countries

Norway

Norwegian Directorate of Children, Youth and Family Affairs

Hague Convention and non-Hague Convention adoptions

- Maintenance of a central register of adoptions
- Control of the accredited bodies
- Authority of recourse when applications for certificates of the prospective adoptive parents' suitability are refused by the regional office
- Cooperation with other Central Authorities

Concrete procedures are carried out by the five regional offices of the Directorate and by the accredited bodies, under the supervision of the CA.

Switzerland

Federal Central Authority

For all intercountry adoptions

- Accreditation and supervision of all accredited bodies

For Hague Convention adoptions

- Interlocutor with foreign CAS and the Cantonal Central Authorities
- Transmission of case files to and from countries of origin (no intervention in concrete procedures with non-contracting states: the only intervening bodies are the Cantonal Central Authorities and only in matters of the verification of the suitability of prospective adoptive parents and the authorization of the child's entry into the country, as well as accredited bodies whenever prospective adoptive parents choose this route)

The role and effective range of the (Federal) Central Authorities thus varies greatly from one country to the other.

In all the countries, the (Federal) CAs are more or less competent in the matter of *developing a global policy for intercountry adoption* (especially in **Italy**), and more particularly in the accreditation of accredited bodies (except in **Germany** and **Spain**), relationships with countries of origin, coordination, and even in the training of intervening parties (**Italy**).

The **French** and **Italian** CAs also operate a *control on all the concrete procedures*, which allows them to fully exercise their responsibilities, as set out in the Hague Convention. In the majority of countries (**Germany**, **Spain**, **Norway**, and **Switzerland** for non-Convention adoptions), however, control over procedures is delegated to the federated or decentralized Central Authorities, as well as to the accredited bodies where they play a part. This control varies greatly and offers only a relative guarantee⁴².

In regard to the *effectiveness of controls over concrete procedures*, we regret that the CAs' interventions are often *more administrative than ethical or*

psychosocial, and too late in the procedure – after the child has been matched with the prospective adoptive parents (which leaves the authorities with a “fait accompli” that is rarely put into question).

Finally, in all the countries except **Germany** and **Switzerland**, the (Federal) CAs are responsible for *intercountry adoptions covered by the Hague Convention and those which are not covered by it*. This avoids any discrimination of children and families in the adoption process who are not covered by the Hague Convention and who, where effectiveness of support or even control are concerned, are often most at risk.

3. Personnel training

The composition and training of the CA's team of professionals⁴³ plays a role in carrying out their activities and of the level of guarantees that can be offered. In **Spain** and in **Norway**, personnel benefit from initial professional training. The professionals of the **Italian** Central Authority come from central government administration and work with psychologists and lawyers. In **Switzerland** and **Germany**, personnel have legal training, although without special attention to the domain of adoption.

Legal training seems to be over-represented in comparison to psychosocial and medical training, even though *adoption is by nature a multidisciplinary process*. Furthermore, *the necessity for specialization, continuous training, and supervision* is not systematically taken into consideration.

4. Cooperation between Central Authorities of receiving countries and countries of origin

The **Italian**⁴⁴ CA maintains close relationships with the countries of origin of children. They organize field visits, where collaboration is discussed, as well as the possibilities for establishing bilateral agreements. The CA has organized training programs for

⁴² On the role of the diplomatic representations of receiving countries in the countries of origin as regards the control of intercountry adoptions, see below, 6.

⁴³ There were no data for France provided in our expert consultation.

⁴⁴ There were no data for France provided in our expert consultation.

personnel in the countries of origin and encourages the accredited bodies to bring together those working in the same country and to set up training courses or support projects.

In **Spain**, cooperation with the CAs of other countries ensures the child's protection through the exchange of information and control of post-adoption monitoring.

In **Norway**, the CA works closely with the CAs of Sweden and Denmark. Meetings are also organized between the Norwegian CA and the CAs of the different countries of origin.

In **Switzerland**, the Federal CA has exchanges with other European CAs and some countries of origin.

The **German** expert underscores the difficulty of cooperation with the countries of origin, due to problems of communication.

Trips to the countries of origin in order to meet with the Central Authorities, visit the shelter institutions and closely monitor the adoption procedures, are *necessary for the CAs of receiving countries in order to improve the respect of children's rights*. Cooperation among the CAs should provide more specific and qualitative information for each receiving country on the situation in the countries of origin, and vice versa.

5. The position of the Central Authorities of receiving countries in regard to practices contrary to the interests of children in the countries of origin

Our consultation of national experts⁴⁵, in regard to a possible position for the CAs in the receiving countries on practices contrary to the interests of children in the countries of origin, indicates that practices differ from one country to another.

The **Swiss Federal CA** rarely approaches the cantonal Central Authorities, while in **Norway** the CA refuses the requests of prospective adoptive parents for the countries of origin concerned. For its part, the **German CA** issues a declaration against countries which do not provide the necessary guarantees. Accreditation can also be withdrawn or refused to accredited bodies which work with countries known to have bad

practices. The **Spanish CA**⁴⁶ refers to the children's defense services of the region concerned. Denunciations thus remain internal, and there is no clear procedure. As regards **Italy**, we know only that the CA takes position.

Again, we note a large disparity in the existence of legal means for denunciation on the part of the CAs of receiving countries. These denunciations apply internally, to the CA's international relations, or to practices contrary to the interests of children committed in the countries of origin. The effective establishment of a means of denunciation and its consequences for the demands of prospective adoptive parents and for the authorization of the accredited bodies also differ from one country to another.

*Nevertheless, the CAs of receiving countries are co-responsible, along with those of the countries of origin, for violations of the rights of the child and of bad practices committed during intercountry adoptions which involve their countries*⁴⁷.

6. Collaboration between the Central Authorities and their embassies or consulates

The **Swiss**⁴⁸ ambassadors' role in the procedure is to issue a visa or provide a document recognizing the adoption, and to verify the case file's documents.

The **German** CA and ambassadors work together to control procedures prior to issue of a visa.

Italian law requires Italian consuls abroad to control all documents relative to adoptions and to verify their conformity with the Hague Convention. Without this declaration of conformity, the CA does not authorize the issue of an entry visa. In **Italy** and in **France**, *documents initially verified by the ambassador must then be verified a second time by the Central Authority of*

⁴⁵ No data for France.

⁴⁶ See also above, 2, in regard to the problems of coherence in policy on intercountry adoption, due to the federal structure of the country.

⁴⁷ In regard to the role of diplomatic representations, see below, 6.

⁴⁸ No data was provided for Spain in our expert consultation.

the receiving country, and then sent to the country of origin. This practice, which guarantees unity and specialization of practice for adoptions carried out in the countries of origin, is unknown in **Switzerland**.

In **Norway**, ambassadors issue visas and passports for children.

The scope for judgment for ambassadors and consuls in the majority of cases is at a minimum, or even inexistent. *Most of the time they get involved only at the end of the procedure, after the adoption procedure has already been carried out in the country of origin*, and are thus confronted with a “fait accompli”⁴⁹.

In the case of **suspensions of child trafficking**⁵⁰, only the Norwegian ambassadors have a specific obligation to inform their government. We note a *state of inertia in the domain of cooperation on suspicions of trafficking* in almost all the countries of the study⁵¹.

B. The accredited body for adoption

Unless otherwise noted, in this section we discuss *private* bodies accredited for intercountry adoption. The particular situation of the German and French bodies is covered above, under II, A.

An accredited body for adoption is usually headquartered in a receiving country, while acting in one or more countries of origin, *through representatives and/or local partners*. In the framework of the Hague Convention, it should be *accredited by the receiving country and authorized by the country of origin in which it works*. The Hague Convention imposes these minimal conditions for accreditation and authorization (Articles 10 to 12).

The actual tasks of the accredited bodies are variable according to the receiving country⁵², but they usually consist at least of the following:

- in *interdisciplinary support (information, preparation, follow-up) for the prospective adoptive parents and the child*;
- and in *the establishment, in the countries of ori-*

gin, of contacts with identified, trained and monitored local partners, with a view to the matching of adoptable children and suitable prospective adoptive parents. These local partners and/or accredited bodies’ representatives can also co-guarantee, with

Table IX	
The number of accredited bodies in each receiving country	
	Number of accredited bodies
Germany	12 private ones, other than the public accredited bodies *
Spain	39
France	41
Italy	70
Norway	3
Switzerland	20

* For a critical analysis, see above, II. A. 3.

the authorities of the countries of origin, the adoptability and preparation of the child (see below, II, C. 3).



49 On the necessity for a control at the latest at the time of matching, see also above, 2. This control should be made by the CA, with the cooperation of the diplomatic representation in the countries of origin.

50 No data was provided for Germany or Spain in our expert consultation. ni pour l’Espagne.

51 In regard to the role of the CA in this respect, see above, 5.

52 In regard to the division of roles between the CAs and the accredited bodies, see especially above, II, C. 2 and 3, and III, A. 2.

1. The number of accredited bodies in each receiving country

At the national level, a limited number of accredited bodies encourages the effectiveness of collaboration between actors in intercountry adoption, as well as the professionalism, training, and control of the accredited bodies. In relationship to the countries of origin, it diminishes competition between accredited bodies and pressure put on authorities. *Ethically, the number and profile of the bodies accredited by a receiving country should be proportional to the number and profile of internationally adoptable children in the countries of origin with which they work.*

2. The conditions and end of accreditation of private bodies

Germany⁵³

Conditions:

- qualified personnel in terms of character, training, and professional experience
- at least 2 full-time employees, or a corresponding number of part-time employees
- a working method and financial situation which allow for the good and due completion of its missions
- be non-profit

Duration of accreditation: unlimited

End of accreditation:

- in the case of violation of the laws and principles of the Hague Convention
- if the conditions are not, or no longer, respected

Spain⁵⁴

Conditions:

- be a non-profit association or foundation
- interest in the protection of minors
- follow the aims and activities according to its statutes
- have a permanent headquarter
- have the means and the personnel (i.e. a multidisciplinary team: at least one qualified lawyer, one qualified psychologist, and one qualified social worker) sufficient to carry out its functions

- have stable representation in the countries of origin
- have its own and independent bank account
- have carried out a business and financial plan

Duration of accreditation: 2 years

End of accreditation:

- if the accredited body is not authorized by the country of origin
- if the conditions of accreditation are not fulfilled
- if the accredited body acts against the laws for protection of minors

France⁵⁵

Conditions:

- act as a legal identity of private law
- provide the statutes and a list of members
- establish a document detailing the projected activity, the provisions for financial operation, and budget for the current activity
- communicate the list of intervening parties, including their Curriculum Vitae which shows their qualifications in the field of childcare
- provide the name and address of the accountant responsible for the maintenance of the organization's accounts
- show the detailed account of sums which will be required of future adopters
- communicate the identity of institutions from which children will be taken
- provide the agreement which links the organization to its local representative
- provide information on the procedure for bringing children into French territory
- communicate the documents established for the adoptive parents

⁵³ These rules apply for private and public accredited bodies.

⁵⁴ This concerns the general conditions and the accreditation relevant to each Autonomous Community.

⁵⁵ Slightly different rules apply for the French Agency of Adoption, the public accredited body. See our critique above, II, A. 2.

Duration of accreditation: unlimited

End of accreditation:

- when the organization no longer provides sufficient guarantees to ensure the respect of the rights of children, their parents, and the future adopters
- if the organization begins an adoption project on behalf of a family resident in a French department where it has no accreditation, or if the organization carries out placements of children from countries which are not mentioned in its authorization
- if the organization carries out or modifies the placement of a child in violation of the relevant laws of the country of origin
- if the organization receives funds from future adopters which do not correspond to its published fees
- if the organization acts on behalf of people who hold an accreditation for adoption, or if it interferes in their relations with authorities or foreign bodies, without being expressly asked to do so
- if the organization obstructs a control
- if the organization contravenes the requirements of the Hague Convention

Italy

Conditions:

- be managed and composed of personnel trained in the area of intercountry adoption
- employ professionals from the social sector
- have adequate infrastructure in Italy and abroad
- be a non-profit association
- not hold any racial or religious prejudice in regard to prospective adoptive couples
- be engaged in cooperative development activities in the children's countries of origin
- present a study on the countries of origin where it intends to work (attesting knowledge of the local situation)

Duration of accreditation: unlimited

End of accreditation:

- in cases of serious violation of the law
- revocation is automatic if the accredited body has not obtained authorization to exercise its activi-

ties from the authorities of the country of origin within eighteen months

Norway

Only three accredited bodies exist, and have been accredited for a long time.

Conditions:

- have long experience in the domain
- adoption activities must be the principal activity of the organization
- be non-profit

Duration of accreditation: tacit extension of general accreditation, 2-3 years for each country for which an application for renewal is necessary.

End of accreditation:

- if the accredited body does not match the legal criteria
- if its activity is not ethical

Switzerland

Contrary to the concept of an organization as contained in the Hague Convention, an individual person can be accredited as an intermediary in adoption.

Conditions:

- have a good reputation, as well as for associates
- be experienced in the area of adoption and be trained in the protection of children
- know Swiss law in regard to adoption and show sufficient knowledge of the functioning of Swiss institutions
- indicate working methods
- indicate the manner in which it will ensure information, awareness building, preparation, support and monitoring of the candidates
- present a financial plan and its fees
- show knowledge of the cultural and social specificities of the children's countries of origin
- show adequate knowledge of international law in regard to adoption, as well as knowledge of the current adoption laws current in the countries of origin
- commit to working in a transparent manner, in the best interest of the child and in respect of the

ethical regulations for adoption

- respect ethical criteria
- justify its relationships with the placement authorities of the countries of origin

Duration of accreditation: 5 years max.

End of accreditation:

- if the accredited body has obtained authorization on the basis of false or misleading information
- if the accredited body does not fulfill the required conditions for authorization
- if the accredited body seriously contravenes its obligations

We emphasize in particular here *the importance of accreditation on a country of origin by country of origin basis* (and not all countries as a bloc). The ac-



creditation must take into account the internationally adoptable children in each country, as well as the accredited body's knowledge of the country, its current conditions, and the existence of trustworthy representatives and/or partners in each country.

The issue of the duration of accreditation is equally crucial. *An unlimited duration, still in use by a number of countries, or tacit extension*, does not provide for regular control by the authorities, nor for critique and a permanent effort for progress by the accredited body's team.

3. Periodic controls of the accredited bodies

Periodic and systematic controls of the accredited bodies are necessary in order to guarantee the quality of their work. That said, the body which carries out this control and the criteria and means applied vary from one country to another.

In **Germany**, the control is carried out by the Central Authorities of the "Länder". Each accredited body must submit a report. The Central Authority can require consultation of case files as well as the provision of evidence and further information.

In **Spain**, the Central Authority of the Autonomous Community carries out a general control which asks the accredited bodies to submit monthly and annual reports. The Central Authority of the Autonomous Community carries out visits.

The **French** Central Authority can carry out visits to the accredited bodies. A general control is automatically done by the Central Authority, since it manages the entry visas for children. Furthermore, the accredited bodies must submit a report.

Controls in **Italy** are undertaken by the Central Authority through a visit to the accredited bodies headquarters. It must also produce a report. Regular controls at the headquarters include administrative issues and the transparency of the financial documentation. The law provides, in all cases, for the verification of the accredited bodies work every three years. Controls are practically continuous, given that the accredited bodies must go through the Central Authority during the critical phases of the adoption procedure.

The **Norwegian** Central Authority carries out controls through visits and meetings, at least every two to three years.

In **Switzerland**, the Federal Central Authority requires an annual report from each accredited body.

Table X summarizes the criteria for evaluation during the controls. We can see that while some countries ensure a systematic and wide scale evaluation, others do not seem to apply defined criteria.

Controls of the accredited bodies are an essential responsibility of the receiving countries in application of the Hague Convention. Nevertheless, such application seems highly variable.

Aside from the submission of reports by the accredited bodies, *systematic visits by the CA to the accredited bodies seem indispensable, as well as meetings,*

in order to verify administrative and accounting aspects, but *also and above all, the quality, ethics, and professionalism of the multidisciplinary work*. For example, where the administrative and qualitative aspects listed above are concerned, **Germany** and **Norway** control everything. Even if **Italy** in theory also controls these issues, the high number of accredited bodies (70) seems to be a heavy burden for a similar standard of control. The number of verifications carried out by **France**, and even more so by **Spain**, is lower. In **Switzerland**, almost nothing is systematically controlled.

4. Personnel training

Our expert consultation on the question of the accredited bodies personnel training again reveals some wide disparities at the level of requirements in the different countries of the study.

Although **German** accredited bodies employees undergo initial training, no continuing training is required. Nevertheless, professionalization and qualifications are prerequisites.

In **Spain**, initial professional training is required for accredited bodies personnel, but no continuing training is necessary. The multidisciplinary team includes at least one graduate lawyer, one graduate psychologist and one graduate social worker. In the majority of accredited bodies, the team is composed of volunteers and not professionals.

The professionals of the **French** accredited bodies must prove their skills in the domain of childcare. Training is compulsory for the accredited bodies management as well as for the personnel in direct support of families. Nevertheless, the accredited bodies have asked for a flexible and adapted application of this regulation, in the framework of “self-control”. Moreover, many accredited bodies are composed exclusively of volunteers, generally adoptive parents who wish to help prospective adoptive parents.

The **Italian** accredited bodies are required to give initial training to all their employees. Continuing training is also required. The Central Authority organizes training courses for public social service personnel and those of the accredited bodies, as well as periodi-

Table X
Control criteria for accredited bodies

Control criteria	Country
Regulations and statutes	Ger / Fr/ It / No
Trading accounts and balances	Ger / Sp / Fr/ It / No
Agreements with prospective adoptive candidates	Ger / Fr/ It / No
Authorization to practice in the country/ies of origin	Ger / Fr/ It / No/Sw
Legal texts relative to adoption in the country/ies of origin	Ger / It / No
Contracts with foreign collaborators	Ger / Sp / Fr/ It / No
Professional qualifications of personnel in the receiving country	Ger / Fr/ It / No
Professional qualifications of partners in the country of origin	Ger / It / No

cal information sessions, conferences, and cultural activities. Furthermore, the accredited bodies frequently organize conferences and seminars for social workers. For most of the accredited bodies, the team is composed of volunteers and not of professionals.

In **Norway**, non-obligatory initial training is available for all employees, while no continuing training is required. However, the team members are all professionals. They often include a lawyer, several social workers, a nurse, a teacher, a sociologist, an anthropologist, and people with specific knowledge of the language and culture of the countries with which the accredited body works. *Note: there are only three accredited bodies in Norway, for 600 to 700 intercountry adoptions per year, of which 99% go through an accredited body.*

In **Switzerland**, experience in the area of adoption is necessary, and as a general rule, training in the area of child protection, in order to work with an accredited body. In the majority of accredited bodies, the team is composed of volunteers and not professionals. No continuing training is required.

Professionalization of personnel is an important requirement for the improvement of practices in intercountry adoption. In France and in Switzerland nevertheless, no professional training is necessary. Furthermore, in Spain, France, Italy and Switzerland, a large number of volunteers work for the accredited bodies.

Multidisciplinary, initial and continuing training, as well as the supervision of team members of the accredited bodies are indispensable for a qualitative and ethical work in the continuing development of an international context.

By requiring qualifications for the accredited bodies teams, the receiving countries give preference to adoptions through accredited bodies, to the detriment of private adoptions (see below, II, A). They make the choice of human, training, and financial investment for the accredited bodies (see below, 6). In addition, the number of accredited bodies in some countries (see above, 1) is reduced, allowing them to reach a critical size essential for their professionalization.

5. Costs, billings, and donations relative to adoption

In **Germany**, costs incurred abroad are paid by the accredited body. Unfortunately, we were unable to collect data on billing or on any donations.

The costs of the country of origin which works with **Spain** are paid by the accredited bodies or directly by the adopters. The Spanish accredited bodies must deliver a detailed invoice to the parents, which remains unpredictable, as the parents themselves pay a certain amount in the country of origin. Nevertheless, obligatory donations are prohibited by law. The adopters can become affiliated to the association or foundation which is dealing with their case, and can also make humanitarian donations to the shelter institutions of the country of origin. Such payments are made by the accredited body.

The majority of the **French** accredited bodies leave it to the adopters to take direct care of costs for the preparation of their adoption file, as well as those linked to local procedures. The accredited bodies have the obligation to produce an invoice approved by the Central Authority, of which the sums are public. Unfortunately, we have not been able to collect data on donations.



In **Italy**, costs incurred abroad are often paid by the prospective adoptive parents. The accredited bodies must provide the parents with a detailed invoice on the costs of adoption, a hazardous exercise for the same reasons as in Spain. Furthermore, Italian law provides, among others, that the costs of adoption are tax-deductible. It is legal to require donations.

Norwegian adopters only pay transport, lodgment or boarding costs directly in the country of origin. The

accredited bodies have instituted a principle of solidarity, according to which all parents pay the same sum for an adoption in the same country of origin. No invoice provides detail of the use of sums paid by the prospective adoptive parents, but the costs of adoption are published and approved by the Central Authority and the Ministry for Family and Children's Affairs.

In **Switzerland**, costs incurred abroad can be settled by the accredited body or directly by the parents. The accredited bodies provide a detailed invoice. Donations can be made by the adopters. They are usually voluntary.

It would be preferable that the accredited bodies themselves pay all costs linked to adoption. Thus, adoptive parents cannot be put under financial pressure by some bureaucrats, shelter institution managers, or lawyers in the country of origin who look for extra profit.

If adoption through an accredited body is obligatory and professional (Norway), the costs linked to the adoption are paid by the accredited bodies and *financial transparency* is encouraged.

“Obligatory” donations by adopters to the accredited body or to a child shelter institution are ethically unacceptable, especially during the adoption procedure.

6. Financing of the accredited bodies

The **German** and **Spanish** accredited bodies finance themselves through the reimbursement of costs by the adopters. In **France**, contributions paid by previous adopters provide further financial help to the accredited bodies.

94% of the costs of the accredited bodies in **Norway** are covered by reimbursement by the prospective adoptive parents, 2% are paid by the State, and 4% by contributions from previous adopters.

Financing of the accredited bodies varies in **Italy** and can come from the larger public, parent-founders of the organization, reimbursement of costs by prospective adoptive parents, contributions by previous adopters, or from institutions financed by the Catholic Church.

Similarly, in **Switzerland**, the accredited bodies are financed from a variety of sources: contributions from previous adopters, parent-founders, and reimbursement of costs by prospective adoptive parents.

We can see that no State except Norway participates in the financing of the accredited bodies. Financing by prospective adoptive parents is susceptible to pressure on the accredited bodies: to find adoptable children in order to ensure their own financial existence through the contributions of adoptive parents.

As the CAs delegate part of their competence and responsibilities to the accredited bodies (according to the Hague Convention), partial financing by the States would seem recommendable.

7. Collaboration, competition, and ethical principles of the accredited bodies

As several accredited bodies exist in each of the countries of the study, their collaboration, but also any competitive relationship they may have, should be examined. In this context, ethical principles set up by the accredited bodies, or groups of accredited bodies, are supplementary guarantees and opportunities for sharing of experiences between accredited bodies.

A group of accredited bodies (Freie Träger der Adoptionsvermittlung) exists in **Germany** and has an ethical charter. But the 12 private German accredited bodies find themselves in competition in the countries of origin.

The federation of accredited bodies and other types of Spanish groupings do not require affiliation, but do make reference to an ethical charter. In the countries of origin, the **Spanish** accredited bodies work with local employees and with the State. Thirty-nine accredited bodies work in 21 countries of origin, of which some are covered by a large number of accredited bodies.

In **France**, there are several accredited bodies groupings (French Federation of accredited bodies, French Federation for Adoption, and the Intercountry Adoption Collective). Nevertheless, many accredited bodies seem to want to keep their independence. A competitive situation exists among the 41 French accredited bodies in the countries of origin.

There is no grouping among the **Italian** accredited bodies, and consequently, no common charter. The accredited bodies work in the countries of origin with local employees. There is competition between the 70 Italian accredited bodies.

In regard to **Norway**, the 3 accredited bodies collaborate together. They work in the country of origin with the State and local partners, and have local employees. There is no competition between the Norwegian accredited bodies because of their limited number. In the countries of origin, however, they are in a competitive situation with many Spanish, French and US candidates carrying out a private adoption, as well as for-profit adoption agencies (especially those from the US).

The **Swiss** Conference of Accredited Bodies in Adoption (CSOIA) includes seven accredited bodies and has an ethical charter. The accredited bodies collaborate in the countries of origin with local partners and employees, assuring the link with the State. In some countries, two or three accredited bodies are in operation, which can cause competition.

The work of each accredited body in the country of origin is founded upon the trustworthiness of their representatives and/or partners. The accredited body can be considered as co-responsible for this trustworthiness, inasmuch as it chooses its partners. It should assume *obligations for their training and control*. To avoid any form of pressure, the salary of collaborators in the countries of origin should be independent of the number of adoptions carried out.

Any competitive situation in the countries of origin creates a risk for the accredited bodies representatives to be put under pressure in the sense of “giving” children for intercountry adoption, without taking sufficient account of the principle of subsidiarity. Such competition can exist between the accredited bodies and adopters of different countries (as seen with Norway), but also between accredited bodies of the same country (Germany, Spain, France, Italy). In these latter receiving countries, such competition is closely linked to the high number of accredited bodies (see above, 1).

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