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**INTERNATIONAL ADOPTION**  
**IN THE EUROPEAN UNION**

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**Résumé:** The main purpose of the report consists of proposing an up-dated **comparative** vision in the field of intercountry adoptions at European level, in particular following an **interdisciplinary** perspective able to give adequate consideration both to social and legal aspects involved. In particular, the research envisages two different levels of analysis: a documentary analysis based mainly on a statistical profile of the phenomenon within EU countries followed by a review of the fundamental international and European instruments that actually regulate the international adoption system and a survey that will be realized specifically at national level. The study led to some concrete proposal for the interventions of EU level and national policy-makers as well as representatives of civil society directed to harmonize the different national rules and experiences and to create a **European adoption** system.

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## EXECUTIVE SUMMARY

The main purpose of the present Report consists of proposing a **comparative** analysis of the different intercountry adoptions national systems, with the aims to create an updated knowledge base upon which any policy formulation may be better evaluated, taking into account the impact that such policies may have in the various EU member states, according to the research evidences on one side and the national child protection welfare systems on the other side.

### *Statistical aspects*

For what concerns the different aspects aimed at sketching a statistical profile of the phenomenon within Europe, the enquiry made it possible to underline that EU receiving States accounted for over 40 per cent of total intercountry adoptions worldwide in 2004; in the same year the 9 EU States of origin provided 3.3 per cent of the children sent for international adoption (falling to 2 per cent in 2006). All of the States of origin, apart from Estonia, now send children primarily to other EU countries. In contrast, most EU receiving States take children mainly from non-European countries and only Cyprus, Malta and Italy took more than 10 per cent from other EU States.

Moreover, the analysis put in evidence some general trends of the phenomenon, which determined the initial rise (1998-2004) and the subsequent fall (2004-2007) in the total number of intercountry adoptions. In particular, it could be underlined that the number of intercountry adoptions worldwide grew substantially from the mid-fifties, reaching a peak of over 45,000 in 2004. In the next three years the numbers fell to 37,000, similar to the level in 2001. 3 EU states – France, Spain and Italy – have been among the top 5 receiving states for the last 15 years. In general terms, it could be underlined that EU states – especially Spain and Ireland – experienced an above average increase in the number of children received between 1998 and 2004 but most EU states have subsequently experienced an above average decline from 2004 to 2007. By 2007 less than 20 per cent of children sent to 22 receiving States through intercountry adoption were from European countries and only 2.4 per cent from the EU.

Regarding the statistical profile of international adoption in EU, while the evidence submitted has been helpful in providing an overall picture of this phenomenon, **it is important that the European Parliament take steps to encourage all states to keep accurate records of children sent or received with more detail than is found in most returns. An immediate step could be to support current efforts by the Hague Convention to develop a standardized pattern of returns from all contracting states.**

### *Psycho-social and policy aspects*

In the report, legislative choices taken both at supra-national and national level have been viewed in parallel together with practices followed in the domestic experiences to verify if and to which extent the declarations of principles, the enactments, interpretations and applications of legal rules are adequately reflected in concrete measures adapted to the actual needs in individual situations.

In particular, referring to the services enacted, the issues analyzed in this report are represented by the role of adoption in the national child welfare policy, the interdisciplinary approach to this instrument, the preparation services, the modalities of support during the waiting time, the matching, the main traits of post-adoption services, the impact and problems related to special-needs adoptions, and finally a review and an analysis of the forums for adoptive/birth parents and adopted persons.

Some specific debated issues must be particularly highlighted.

The first sensitive subject to focus on is the time of reflection for the birth mother to reconsider her decision to make her child available for adoption. In some countries a minimum

period of some months is required before the child can be legally available for adoption. From a psychological perspective a minimum period of some months is indeed recommended, because a woman cannot fully realize and estimate all the consequences of her decision before she has actually given birth to a child. On the other hand, for the child's best interest, a final decision should not be postponed too long, because (repeated) separations are hindering children's attachment development, in particular later in their first year of life. To take both the birth mother's and child's perspective into account, a minimum period of at least three or four months does seem acceptable. Of course, psychological counselling of the birth mother before and after birth should be included in good practice standards or protocols.

In several countries there is a debate about the position of children in residential care and/or foster care. Often, these children cannot be adopted because their birth parents do not give their consent for adoption, while at the same time, these parents are not in the position to take care of the children themselves. In many cases, children's rights to family care or permanency are thus violated. **It is of paramount importance that every effort should be made to stimulate family reunification, and that birth parents are indeed supported to rear their children in an adequate way. Besides that, foster care should be made available for non-adoptable children in residential care, whereas the position of foster children should be strengthened so that (more) permanency is guaranteed. Based on what is known from attachment research, family-type care and stable parent-child relationships should be preferred to residential care and repeated transitions or placements.**

Even if – according to the European reports – the subsidiarity principle of the Hague Convention is generally adhered to, its concrete enactment at a national level must be specifically supported. It is of course positive that it is generally recognized that adoptive or foster placement in the children's own country of origin is preferred to intercountry adoption. However, although some measures are mentioned (e.g., children can be adopted only after a minimum period of time during which the option of domestic placement is investigated), **a set of guiding rules or detailed guidelines on the enactment of the principle of subsidiarity at a national and supranational level is lacking. A good-practice parameter, taking into account both the subsidiarity principle and the child's perspective (needing a permanent and stable family placement, preferably as soon as possible in the first year of life) would be helpful.**

In particular, **Countries should be given support to organize their own local foster care and adoption programmes, for example by providing good-practice manuals and protocols to the local social welfare services. At the same time, programmes to support caregivers in institutions should be developed and implemented, to ensure better care for those children for whom a place in a family cannot be found** (for example, children infected with HIV).

Most countries acknowledge the need of proper preparation for prospective adoptive parents, and many countries indeed work with (compulsory) preparation courses or programmes. The experiences in these countries show that parents usually embrace such programmes because they learn a lot about important aspects of adoption (for example about the background of the child or attachment issues). Moreover, in these courses they can meet other prospective parents and discuss mutual interests and concerns. **Considering the positive outcomes of (compulsory) preparation, these services should be recommended in adoption practice everywhere.**

In marked contrast to parent preparation, the preparation work with prospective adopted children seems to lag behind. Most countries (of origin) acknowledge the relevance of preparation services for children but they often lack the resources or knowledge to prepare the child for adoption in an adequate way, taking into account issues of child development. For example, life story work (as it was developed in the UK) could help a child to bridge the transition from institutional care to a family placement.

With respect to matching, there is not a set of clear-cut criteria or guidelines available for matching issues and procedures. **From the child's best interest perspective, it should be recommended that psychological expertise (by clinical psychologists or experts on child**

**development) is used to guarantee good matching.** More research is needed on which decision rules are used in practice and how adequate these rules are.

Contrary to the situation with pre-adoption services, post-adoption services have already been implemented in countries with a longer history of adoption practice, while other countries are in the process of organizing these services. **It should be concluded that the need for post-adoption services is widely acknowledged but that the implementation of these services should receive more attention in adoption policy.**

Moreover, although more special-needs adoptions are realized in intercountry adoptions nowadays (and even more are expected in the future), there is no consensus about special measures or policies in the European countries. At the same time, some countries have experience with campaigns or protocols to better prepare prospective adoptive parents for a special-needs adoption. It should be concluded that **special-needs adoption deserves more attention, now and in the future, and therefore existing experiences and efforts should be combined to improve awareness, knowledge, and practice.**

Finally, adoption policy and practice may also benefit from the results of scientific research on the different psycho-social aspects involved. Adoption research can provide evidence-based insights into the effects of adoption and may lead policy arrangements. In the comparative review of European adoption research realized in the report it emerges clearly that intercountry adoptees in Europe were found to show delays compared to their nonadopted peers reared in biological families with respect to insecure disorganized attachment in (early) childhood, language, learning problems / special education, and behavior problems. Because intercountry adopted children often have experienced pre-adoption adversity, such as malnutrition and institutional neglect and abuse, delays were expected in virtually every aspect of child development. However, no differences were found between intercountry adoptees in Europe and their nonadopted peers regarding attachment security, IQ, school achievement, and self-esteem. For that reason, **post-adoption services must be developed to guarantee support to adoptive parents and (adult) adoptees** to prevent insecure disorganized attachment, learning problems and mental health problems in international adoptees in Europe.

#### *Legislative and normative aspects*

A detailed national policy analysis has been carried out with the specific aims to find unifying elements in the legislation in place and the main questions at stake in the various countries with regard to adoption procedures, trying, at the same time, to identify major regulatory issues and areas of conflict for which common solutions shall be proposed.

The report focuses in particular on the rules about the competent authorities, those regulating the adopters' and the adopted children's requirements and rights, the models of adoption, the measures to react to the phenomenon of abuse and of trafficking in children, the child's right to know his/her origins, etc.

It has to be underlined that the comparison made in the report among the EU states' experiences makes it clear how deep are some divergences. These contrapositions can be also extremely sharp. Both procedural aspects and national practices and services present intense diversities. The role played by national legislators, courts and competent administrative authorities is still a core one in this field.

Moreover, for what concerns the fundamental normative instruments and measures that regulated international adoption systems, at international (the Convention on the Rights of the Child and the 1993 Hague Convention) and regional level, it has been underlined that the multiplicity of solutions aimed at regulating this specific issue – with or without binding force – may create strong tensions in Europe.

**Therefore, it seems to be decisive to think about the possible modifications to be made in the future, in order to simplify and coordinate all the coexisting measures in this area, to give rise to a European strategy not limited to the mere and welcome adhesion of the EU to the Hague Intercountry Adoption Convention, to other Council of Europe Conventions on children's rights and to the Convention on the Rights of the Child.**

In this perspective, it seems worthwhile to favour a tendency already accepted but open to further ameliorations, based on coordinated and far-reaching plans directed towards precise objectives<sup>1</sup>: **ratifications of international conventions, enactments of new pieces of national legislation, creation of monitoring mechanisms, supervision of governmental initiatives, allocation of resources, promotion of policies and activities aimed at raising the awareness of public opinion on child protection issues and especially on adoption.**

The most appropriate first instrument to achieve this result seems to be a specific **EU Parliament Resolution**, expressly devoted to these issues, **with a view to creating a European working group of experts (a Children’s Rights Commission), with a deep knowledge of the different legal problems to solve<sup>2</sup>.** This group should be responsible for drafting a text that, first of all, systematizes current rules governing **private international law** aspects concerning in particular international adoptions proceedings (*i.e.*, about the criteria to determine the applicable law, the judicial competence, the recognition and the enforcement of foreign civil decisions) in light of the important steps taken and the positive results already obtained thanks to the wide number of ratifications of the 1993 Hague Intercountry Adoption Convention, inside the EU area.

When all the persons involved in the adoption procedure have **European citizenship, unitary solutions should be envisaged to ensure the direct recognition, in a EU country, of decisions concerning adoptions made in another EU country**, whether or not the latter has ratified (adhered or made accession to) the 1993 Hague Intercountry Adoption Convention, on condition, however, that its principles are accepted and the best interests of the child have been duly respected and ascertained. This can be done without altering the balance between national statutory provisions and conventional rules, when they coexist, as happens in many EU countries.

On the other hand, as far as the substantive and procedural aspects of adoption law are concerned, they should continue to be regulated by national statutes, however in a manner that is respectful of the principle of **equal treatment: both domestic and intercountry adoptions shall be subjected to the same guarantees.** The future entry into force of the 2008 revised CoE Convention on adoption will confer an “added European value” to this vision and – in case of numerous ratifications – it will greatly enlarge the “conventional platform” in the field in question.

In the meantime, **the drafting of a document about the “Principles of adoption law in the EU” could succeed in defining a set of references apt to restate existing rules and to identify the inviolable principles with which the legislations and practices of all member states should comply.** This document should favour a greater awareness of the difficulties to overcome and could hopefully give rise to shared policies in this area.

Some interesting perspectives and considerations in this area result also from the interviews directed to certain privileged players in the European scenario concerning international adoptions.

The topics on which the interviews were particularly focused were basically a review of these 15 years of “The Hague system”, a glance towards the possible future of international adoption and the hypothesis of a “European adoption” system, meaning a series of rules and procedures concerning the adoption of children from the European Union by families residing within the European Union

Some specific problems were reported in particular by almost all those interviewed: for example it has been noticed that in many countries, especially countries of origin, ratification took place before the time was ripe. In most cases, this is due to the fact that a consistent and adequate general system for the protection of children’s rights had not yet been developed.

Concerning future scenarios, it emerges also a drop in the number of children available for intercountry adoption, mainly due to the economic growth of some countries and to the resulting implementation of national adoption. A major consequence of this phenomenon is

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<sup>1</sup> See Part I, Chapter II, paras. 1 and 2.

<sup>2</sup> See Part I, Chapter II, para. 3.3.

that it will increasingly be the so-called “special needs” children who are made available for intercountry adoption; particularly “older” children, siblings or handicapped children.

Concerning the debated issue of the cost of adoption, what most emerged preponderantly was the need for transparency. Moreover, it was pointed out that when the accredited bodies intervene, they must act on a truly “non-profit” basis, accepting only the sums required to cover expenses. Another sensitive consideration that needs to be reported is that a possible contribution towards the children’s maintenance in the countries of origin must be properly regulated, agreed upon among the central authorities and decided transparently.

Relating the role of accredited bodies, the major problems are related to the fact that it is often difficult to verify how these bodies effectively work. It was specifically recommended that, within EU scenario, **both countries of origin and receiving countries ought to have and to share a “minimum standard” for the criteria for the authorization and accreditation of the bodies.**





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## LIST OF ABBREVIATIONS

<b>1967 CoEAdC</b>	first CoE Convention on the Adoption of Children
<b>2008 CoEAdC</b>	new CoE Convention on the Adoption of Children
<b>CMCoE</b>	Committee of Ministers/Council of Europe
<b>CoE</b>	Council of Europe
<b>CRC</b>	Convention on the Rights of the Child
<b>CRC</b>	Committee: Committee on the Rights of the Child
<b>EC</b>	European Community
<b>ECFR</b>	Charter of Fundamental Rights of the European Union
<b>ECHR</b>	European Convention on Human Rights and Fundamental Freedoms
<b>ECJ</b>	European Court of Justice
<b>ECtHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>HCIA</b>	Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption
<b>HCPIL</b>	Hague Conference on Private International Law
<b>HGuide</b>	Guide to Good Practice under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption
<b>NR</b>	National Reports
<b>PACoE</b>	Parliamentary Assembly/Council of Europe
<b>UN</b>	United Nations



## INTRODUCTION

The main purpose of the report consists in proposing an up-dated **comparative** vision in the field of intercountry adoptions at European level, in particular following an **interdisciplinary** perspective able to give adequate consideration both to social and legal aspects involved.

The research was carried out having in mind some key points:

- to strongly rely on the human and child rights instruments, on the case law of the European Court on Human Rights and of the UN Committee on the Rights of the Child as on the EU commitments towards human and children’s rights;
- not to discriminate between international adoption in the EU and international adoption between EU and non EU countries;
- to focus on the necessary interdisciplinarity of the adoption process (legal, psychological, social and medical).

Even if the research project focuses on intercountry adoption, the study recognizes the importance to collect pertinent information on domestic adoption, on childcare legal system and practices in order to check the implementation of the subsidiarity principle, as well as the existence of adoptable children who are not effectively adopted.

Moreover, the study will focus on non-relative adoptions, as relative adoptions represent a totally different topic, given the fact that in these cases the child is previously known by the prospective adoptive parents. The questions of the determination of the children in need for adoption and of their matching with the prospective adoptive parents are to be dealt with in a specific way. More generally, relative adoptions refer more to family problems solving than to child welfare and protection.

Regarding **the methodological approach** undertaken in carrying on the study, the research envisages **two different levels of analysis: a documentary analysis based mainly on a statistical profile** of the phenomenon within EU countries **followed by a review of the fundamental international and European instruments** that actually regulate the international adoption system and a survey that will be realized specifically at national level.

**Part I** of the Report contains a detailed documentary analysis aimed at sketching a statistical profile (**Chapter I**). Data concerning all EU member states were examined in details. Most of them were collected from National Reports, but also other resources, available otherwise, were used to complete the overall picture, given the absence of uniformity in the information delivered by state reporters. Indeed, some clear gaps emerged, in looking at the answers given to the same questions. Thus, the relevant tables and graphs represent the results of a mixed approach, which was necessary to avoid *lacunae* in the comparison. In that way, the enquiry made it possible to underline deep differences between receiving and sending countries, as well as the processes underlying some general trends, which determined the initial rise (1998-2004) and the subsequent fall (2004-2007) in the total number of intercountry adoptions, in a ten years time span. The need to respect the principle of **subsidiarity** – in light of art. 21 of the Convention on the Rights of the Child (CRC) and of arts. 1 and 4 (b) of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (HCIA) – suggested to verify the effectiveness of alternative measures too. Therefore, the enquiry detected also the impact of intercountry adoption on the development of **services for children**. A useful mean to provide further statistical data is a list of sources, coordinated by different subjects operating in receiving countries, that was added at the end of the survey.

The **following chapter** of Part I is centred on some turning points of the recent history of children’s rights. After a brief overview of the “**universal framework**”, the main traits of the “**regional**” background were summarized. In particular this part of the study is based on a

review of the monitoring instruments employed by the UN Committee on the Rights of the Child in charge of monitoring the implementation of the CRC and of the Hague Conference as well as of the reports and documents already produced for that purpose by the Member States and the recommendations issued by international bodies. The focus was mainly put on the work done by the different actors – of the Council of Europe (CoE) and of the EU – called to intervene.

This chapter also contains a review of the most relevant case-law of the European Court of Human Rights, useful to delineate the prevailing reasoning of the Court in relation to specific issues at stake (**Chapter II**).

The second part of the report (**Part II**) is based on a comparative national survey and tries to reach a double purpose: describing the current legal and policy national frameworks (**Chapter I**) while enlightening the pluridisciplinary aspects of the problems linked with intercountry adoption (**Chapter II**). A network of experts coming from EU countries, with specific knowledge of the subject, was entrusted with collecting the documents and data in the various Member States and drawing the national papers using a format (questionnaire) drafted to help them in finalizing their work. Such tool is intended to harmonize the qualitative information and the quantitative references and statistical data sources to be collected about intercountry adoptions.

Therefore, the information collected thanks to the data drawn from the national surveys, concerning all the member states of the EU, was the basic point of departure on which the comparison has been based. Cross analysis was made with regard to both the qualitative and the quantitative available elements. To reach the necessary degree of synthesis and consistency, it was felt useful to emphasize some core points. In particular, the different national experiences were selected and subdivided according to specific areas and problems (*e.g.*, for what concerns the legal aspects, the rules about the competent authorities, those regulating the adopters' and the adopted children's requirements and rights, the models of adoptions, the measures to react to the phenomena of abuse and of trafficking of children, the child's right to know his/her origins; for what regards the psycho-social aspects the support given the waiting period, the post-adoption services, the matching, etc.).

Adoption policy and practice should be facilitated to make informed decisions by knowledge from multidisciplinary sources: laws and legal issues, numbers of adoptions and statistical developments, but also knowledge from psychological adoption research. Adoption research can provide evidence-based insights into the effects of adoption. In other words, we should answer to the following question: how does adoption affect the children involved and what does this mean for their adjustment?

Thus, a comparative analysis of adoption research with a special focus on the outcomes of adoption (**Chapter III**) can shed more light on the consequences of adoption decisions for adopted children's lives. Based on the insights of European adoption research, specific programs or interventions can be developed or strengthened to support adoptive families or adoptees. In this part of the report these studies are summarized through a series of meta-analyses, describing the development of intercountry adoptees in Europe with respect to their social-emotional (attachment) relationships, cognitive development (IQ, academic adjustment, language, and learning disorders/special education), behaviour problems and mental health referrals, and self-esteem.

In order to provide a complete perspective on the subject, it was necessary to know the viewpoint of some entities that operate from a privileged point in monitoring the phenomenon of adoption (**Chapter IV**). The "qualified" interviews have been prepared by sending preliminary "guiding questions" that have been used as facilitators to broaden the topics into a full range of discussions and exchanges on adoption in the course of the interviews that have been arranged.

The criterion for choosing certain privileged players was our effort to give a qualitatively important, albeit partial overview of the legal and administrative operators in the public administrations in some European receiving countries and countries of origin. The interviews were specifically directed to representatives of the following bodies:



1. international association of juvenile court judges
2. international association of adoptive families
3. Euroadopt (Association of European Authorized Agencies)
4. central authorities pursuant to the Hague Convention
5. members of the Hague Conference.

The questions posed can be grouped into three macro-areas:

– A review of these 15 years of “The Hague system”, a glance towards the possible future of international adoption and the hypothesis of a “European adoption” system, meaning a series of rules and procedures concerning the adoption of children from the European Union by families residing within the European Union;

– Preparing and assisting the prospective adoptive parents and the post-adoption period. Connected with this theme are aspects such as the important issue of the search for origins;

– The accredited bodies, the principle of subsidiarity and collaboration between the central authorities, seeking to reflect on what problems still exist in the work of the accredited bodies and how the subsidiarity principle has been enacted up to now and how it will be implemented from now on.

In the final part of the report (**Conclusions**), all the questions analyzed through the different approaches adopted have been inserted into more general conclusions, while in last chapter (**final recommendations**) some concrete proposals and general principles – both directed to policy-makers and to civil society representatives – were formulated with the aim to help unify, harmonize and/or improve the international adoption system within EU countries.



**PART ONE**  
**DOCUMENTARY ANALYSIS**



# CHAPTER I

## STATISTICAL PROFILE OF INTERCOUNTRY ADOPTION IN THE EUROPEAN UNION\*

### 1. COUNTRIES STUDIED

#### 1.1 Receiving states and states of origin in the European Union

For the purposes of this analysis, the 27 countries of the European Union were split into receiving states and states of origin. Where countries responded to the Hague Special Commission Questionnaire of 2005 or the ChildONEurope Questionnaire of 2008 asking whether the country was primarily/mainly a state of origin or a receiving state, their own definition has been used; although many receiving states also send some children, only the Czech Republic and Portugal described themselves to the Hague as “both a receiving state and a state of origin” and in the responses to the ChildONEurope Questionnaire the Czech Republic defined itself as mainly a state of origin and Portugal repeated that it was both a sending and a receiving country, while noting that it now receives more children than it sends. Countries not responding to either questionnaire have been classified according to the available data – i.e. whether, on the basis of available statistics, they sent or received more children.

The classification results in 17 EU states being categorized as receiving states; 9 as states of origin; and Portugal as both, since it provided statistics for children both sent and received. Table 1-1 below shows the division of states and also lists the non-EU countries in the Council of Europe, which has been used as a definition of a wider Europe. The table also shows that all EU countries apart from Greece and Ireland have now ratified/acceded to the Hague Convention.

Table 1-2 lists the countries in the order of the **number of children** received or sent in 2004, the peak year for intercountry adoption worldwide, and shows the wide variation in the numbers of children sent to (or received from) other European states. Table 1-3 lists countries by ratio of adoptions per 1,000 births and reveals the wide gap in wealth between sending and receiving states.

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\* This chapter has been drafted by Peter Selman, Enrico Moretti and Federico Brogi.

**Table 1-1. European Union states and Inter-country Adoption**

Receiving states		States of origin	
European Union	Hague	European Union	Hague
Austria	YES	Bulgaria	YES
Belgium	YES	Czech Republic	YES
Cyprus	YES	Estonia	YES
Denmark	YES	Hungary	YES
Finland	YES	Latvia	YES
France	YES	Lithuania	YES
Germany	YES	Poland	YES
Greece	NO	Romania	YES
Ireland	Signed	Slovak Republic	YES
Italy	YES	9	9
Luxembourg	YES	"Both receiving state & state of origin"	
Malta	YES	Portugal	YES
Netherlands	YES	(10)	
Slovenia	YES	Total EU states = 27	
Spain	YES		
Sweden	YES	Non-EU states of origin	
United Kingdom	YES	Albania	YES
17	15	Armenia	YES
		Azerbaijan	YES
"Both receiving state & state of origin"		(Belarus)	YES
Portugal	YES	Bosnia	NO
(18)		Croatia	YES
Non-EU receiving states		Georgia	YES
Andorra	YES	Macedonia	NO
Iceland	YES	Moldova	YES
Liechtenstein	NO	Montenegro	NO
Monaco	YES	Russia	Signed
Norway	YES	Serbia	NO
San Marino	YES	Turkey	YES
Switzerland	YES	Ukraine	NO
24 (25)		23 (24)	18

All the states listed above are members of the Council of Europe, except Belarus whose application for membership is currently suspended.

Montenegro has only been a separate member since May 2007 – previously part of Serbia & Montenegro. No evidence has been found of any intercountry adoption to or from Liechtenstein.

**Table 1-2. Intercountry Adoptions in Europe in 2004; Number of children received or sent + percentage from or to Europe. States with available data (EU members in Bold)**

Receiving states			States of origin		
Country	Number	% from Europe (EU)	Country	Number	% to Europe (EU)
EU states			10 EU states		
Spain	5,541	38% <b>(2%)</b>	Poland	408	74% <b>(61%)</b>
France	4,079	21% <b>(6%)</b>	Bulgaria	393	69%
Italy	3,402	64% <b>(16%)</b>	Romania	289	78% <b>(45%)</b>
Netherlands	1,307	2%	Latvia	127	86% <b>(67%)</b>
Sweden	1,109	16% <b>(5%)</b>	Lithuania	103	72%
Germany	650	48% <b>(8%)</b>	Slovakia	75	99%
Denmark	528	10% <b>(4%)</b>	Hungary	69	88% <b>(67%)</b>
Belgium	470	12% <b>(0%)</b>	Czech Rep	34	94%
Ireland	398	65% <b>(1%)</b>	Estonia	18	28%
UK	332	5% <b>(1%)</b>	(Portugal)	9	56%
Finland	289	16% <b>(2%)</b>	EU 9(10)	1,515	
Luxembourg	56	0%	EU states as % of all	3.3%	
Malta	46	24% <b>(13%)</b>	Other European states		
Cyprus	3	100%	Russia	9,440	36% <b>(35%)</b>
(Portugal)	2	(Portugal)	Ukraine	2,046	60% <b>(57%)</b>
EU 14 (15)	18,201		(Belarus)	627	58% <b>(47%)</b>
Non-EU states with statistics			Moldova	65	29% <b>(23%)</b>
Norway	706	4% <b>(3%)</b>	Serbia	49	100% <b>(59%)</b>
Switzerland	557	28% <b>(9%)</b>	Turkey	38	87% <b>(79%)</b>
Iceland	28	0%	Albania	27	67%
Andorra	0	----	Bosnia	24	92%
18 states	19,501	32% <b>(6%)</b>	Croatia	19	100% <b>(95%)</b>
Overall Total <b>(23 states)<sup>1</sup></b>	45,288	31%	Macedonia	5	80% <b>(40%)</b>
% Europe	43%		10		
% EU	40%		20 states	13,865	
Other EU states with limited statistics			Members of Council of Europe from Asia/Europe		
Austria	(77)	---	Armenia	57	28%
Greece	n/a	---	Azerbaijan	30	7% <b>(3%)</b>
Liechtenstein	4	50%	Georgia	32	6%
Slovenia	n/a	---	3		% to Europe
EU 17 (18)	18,278	----	23 states	13,984	45% <b>(44%)</b>
24 states	45,365		All states	45,288	43% <b>(40%)</b>
			Europe as % of all	30.8%	

<sup>1</sup> 23 states (18 listed European states PLUS United States, Canada, Israel, Australia and New Zealand) = base for calculating states of origin. For data provided to ChildONEurope see para. 3.

**Table 1-3. Intercountry Adoptions in Europe in 2004; Adoptions per 1,000 live births (ratio); GNI per capita and Total Fertility Rate (TFR) in 2004**

RECEIVING STATES				STATES OF ORIGIN			
Country	Ratio	GNI per capita	TFR	Country	Ratio	GNI per capita	TFR
EU receiving countries				EU sending countries			
Spain	12.4	21,210	1.3	Bulgaria	6.3	2,740	1.2
Sweden	11.7	35,770	1.7	Latvia	6.0	5,460	1.3
Malta	11.5	12,250	1.5	Lithuania	3.3	5,740	1.3
Luxembourg	9.3	56,230	1.7	Slovakia	1.5	6,480	1.2
Denmark	8.4	40,650	1.8	Estonia	1.4	7,010	1.4
Netherlands	6.9	31,700	1.7	Romania	1.2	2,920	1.3
Italy	6.4	26,120	1.3	Poland	1.1	6,090	1.2
Ireland	6.3	34,280	1.9	Hungary	0.7	8,270	1.3
France	5.5	30,090	1.9	Czech Rep	0.4	9,150	1.2
Finland	5.3	32,790	1.7	9			
Belgium	4.2	31,030	1.7	(Portugal) <sup>2</sup>	0.08	10,441	1.5
Austria	(1.1) <sup>1 2</sup>	32,300	1.4				
Germany	1.0	30,120	1.4	Other European countries			
UK	0.5	33,940	1.7	Russia	7.7	3,410	1.3
Cyprus	0.3	17,580	1.6	Belarus	7.1	2,120	1.2
Slovenia	--- <sup>2</sup>	14,810	1.2	Ukraine	5.0	1,260	1.1
Greece	--- <sup>2</sup>	11,098	1.2	Moldova	1.5	710	1.2
17				Serbia	0.4	2,620	
(Portugal) <sup>3</sup>	0.1 <sup>2</sup>	10,441	1.5	Bosnia	0.6	2,040	1.3
Other European receiving states				Croatia	0.5	5,590	1.3
Norway	12.8	52,030	1.8	Albania	0.4	2,080	2.2
Iceland	7.0	38,620	2.0	Turkey	0.03	3,750	2.4
Switzerland	8.2	48,230	1.4	Europe/Asia			
Liechtenstein	?? <sup>2</sup>	---- <sup>4</sup>	----	Armenia	1.7	3,720	1.3
Andorra	0.0	---- <sup>4</sup>	----	Azerbaijan	0.2	950	1.8
Monaco	?? <sup>2</sup>	---- <sup>4</sup>	----	Georgia	0.6	1,040	1.4
San Marino	?? <sup>2</sup>	---- <sup>4</sup>	----	Other countries sending many children			
Other major receiving states				China	0.8	1,290	1.7
USA	5.5	41,400	2.0	Guatemala	8.1	2,130	4.5
Canada	6.0	28,390	1.5	Korea	4.0	13,980	1.2
New Zealand	6.4	20,310	2.0	Colombia	1.8	2,000	2.6
Australia	1.5	26,900	1.7	Ethiopia	0.5	110	5.7
Israel	1.7	17,380	2.8	Haiti	4.6	390	3.9
				India	0.04	620	3.0

<sup>1</sup> Based on adoptions through the agency *Family for You*

<sup>2</sup> No satisfactory data - so not used to calculate states of origin (Selman 2008)

<sup>3</sup> Portugal defines itself as both a receiving state and a state of origin

<sup>4</sup> GNI rated as "high" - \$10,066+ - in State of the World's Children 2006



## 1.2 Statistical returns from national enquiries

The quantity and quality of data on adoption provided by National Experts in response to the questions on *Statistics and Policy* varied greatly between countries. Two receiving states – Austria and Greece – were unable to provide national data on children received for intercountry adoption and a further 2 – Cyprus and Slovenia – had no **annual data**. The UK supplied information only on the number of prospective parents whose applications had been approved – and the countries for which such approval had been granted. The German report cites annual figures for children adopted after being “brought into the country for adoption” – and non-relative adoptions only, but states that the national statistics “seem not to be very reliable”. The figures provided by Selman (2002, 2006) and Lehland (1999) were higher because they included all children born abroad and adopted in Germany by non-relatives. In several national Reports – e.g. Spain, Denmark – the figures quoted are less detailed than those available on the Internet and in others – e.g. Belgium, Italy and Sweden – reference was made to a website – in cases such as these we have made use of the more detailed sources.

The returns from the 9 states of origin were more useful, as they are not widely available on the Internet or in published statistics. Many provided good detail on all the questions asked – e.g. Estonia, Hungary and Poland. Latvia provided annual totals of intercountry adoptions for 2005-7 and the principal countries of destination for 2006-7. Eight of the Reports from states of origin provided annual data on domestic adoption for at least 2 years, enabling a calculation of proportion of all intercountry adoptions to be made (see para. 4 below). Data on domestic adoption was also provided by 8 of the 17 receiving states.

Table 1-4 gives a brief **overview of the data contained in the Reports of National Experts**, linked to the countries’ responses to the Hague Special Commission, which are posted on the Hague web pages at

[www.hcch.net/index\\_en.php?act=conventions.publications&dtid=32&cid=69](http://www.hcch.net/index_en.php?act=conventions.publications&dtid=32&cid=69).

**Table 1-4. Availability of statistics for EU countries**

Receiving states (see also Annex 1 for other sources of data on receiving states, including websites)			
Country	Hague 2005 Questionnaire	ChildONEurope 2008	Comments + Alternatives (See Annex 1)
Austria	NO	Partial Return no adequate data	One agency only in EurAdopt Stats 2003-6
Belgium	NO	Referred to CA website	Stats from 2 CAs Internet – see Annex 1
Cyprus	NO	ICA 2003-6 No details	EurAdopt Stats 2003-5 age + sex
Denmark	NO	2007 - by state of origin - + domestic	Internet – see Annex 1 all years
Finland	YES – 2001-3	Several appendices	Good detail from Annual report - Internet
France	YES - 2004	NO STATS	Internet – states of origin sending 60+ listed
Germany	YES - 2004	YES – annual totals 2003-6	Reports all children brought in for adoption by age; Non-relative totals only
Greece	NO	no adequate data	No stats kept
Ireland	NO	YES – same as web + domestic	Annual report - Internet
Italy	YES – 2001-3	Referred to CA website	Internet – see Annex 1
Luxembourg	NO	YES – 2005-7; same as CA	+ domestic 2001-7 2002-4 on request from CA
Malta	NO	Good stats 2003-6	On request from CA

Netherlands	YES – 2001-3	ICA + domestic 2003-7	+ age gender sibs 2003-6 On Internet – see Annex 1
Slovenia	NO	Total ICA from May 05 to Sept 08	Annual data does not distinguish ICA from domestic
Spain	NO	Annual Totals for inter- and in-country – more detail on web	Internet – see Annex 1 States of origin no age or gender
Sweden	YES – 2001-4	Age + sex 1981-7 + ref to MIA website	Internet – see Annex 1 MIA website has states of origin
United Kingdom	Scotland only	Good detail on domestic, esp. adoptions from care	Limited ICA data - Applications received - 5+
17	6		
Portugal	YES – 2001-3	ICA: 2000 -7	Full stats to Hague Totals only to ChildONEurope
States of origin – Country profiles available in Para. 3			
	Hague 2005 Questionnaire	ChildONEurope 2008	Comments
Bulgaria	NO	ICA – 2003-7 + Domestic 2004-7	Totals only ; <i>Save Our Children</i> has 1989 -2003
Czech Republic	NO	ICA - 2003-6 Domestic 2003-4	
Estonia	YES -2001-3	ICA - 2003-6 Domestic 2003-6	Total by age, sex and location prior to adoption
Hungary	YES -2004	ICA - 2003-6 Domestic 2003-6	Excellent ICA stats – inc. state of origin, age, sex and siblings: domestic – totals only
Latvia	YES – 2001-3	ICA 2005-7 No Domestic	Totals only
Lithuania	YES -2001-3	ICA - 2003-6 Domestic: 2003-6	Total by age, sex, health and sibling groups – no gender
Poland	YES - 2004	ICA- 2003-6 Domestic only cases	Excellent stats – inc. state of origin, age, sex and siblings
Romania	YES -2002-3	ICA – 2003-4 Domestic - 2005-6	Total by state of origin, age and sex
Slovak Republic	YES -2004	ICA - 2003-6 Domestic 2003-6	ICA - totals by state of origin and sex. Domestic – totals
9	7	9	
Both receiving state & state of origin			
Portugal	YES – 2001-3	ICA - 2000-7 No Domestic	Full stats to Hague Totals only to ChildONEurope

### 1.2.1 Summary tables of data provided by national experts

The summary tables below show the information provided by the National Experts in response to each of the topics set out in the Questionnaire in Section 3 in greater detail: *Statistics and Policy*: adoptable children; prospective adoptive parents; domestic non-relative adoption; intercountry adoptions; and adoption breakdowns. (For more detail para. 4 below for a comparative analysis of those topics where data provided were sufficiently detailed).

### Data relating to adoptable children

Of the 17 receiving countries, only 4 (Germany, Ireland, Italy and the Netherlands) provided data on the number of adoptable children. The paucity of information in regard to the characteristics of adoptable children was even more marked: only two countries (Ireland and the Netherlands) provided data broken down by age. The Netherlands alone provided information on the health of these children, their siblings and the reasons for their availability for adoption, while the Netherlands and Italy provided information and data on the characteristics of “waiting” adoptable children.

	Receiving																
	Austria	Belgium	Cyprus	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxembourg	Malta	Netherlands	Slovenia	Spain	Sweden	UK
<b>Number of adoptable children (domestic and/or intercountry)</b>	N	NA	N	N	N	NA	Y	N	Y	Y	N	N	Y	N	N	N	N
<b>Age (domestic and/or intercountry)</b>	N	NA	N	N	N	NA	N	N	Y	N	N	N	Y	N	N	N	N
<b>Health (domestic and/or intercountry)</b>	N	NA	N	N	N	NA	N	N	N	N	N	N	Y	N	N	N	N
<b>Siblings (domestic and/or intercountry)</b>	N	NA	N	N	N	NA	N	N	N	N	N	N	Y	N	N	N	N
<b>Reason for adoptability (domestic and/or intercountry)</b>	N	NA	N	N	N	NA	N	N	N	N	N	N	Y	N	N	N	N
<b>Number and characteristics of “waiting” adoptable children</b>	N	NA	N	N	N	NA	N	N	N	Y	N	N	Y	N	N	N	N

The situation in the sending countries seemed better. One third of these countries had data on adoptable children (Bulgaria, Hungary, Lithuania). Bulgaria and Lithuania provided useful information on age and state of health. With regard to siblings, data for Lithuania alone was provided and only Hungary provided information on the reasons for the relative availability for adoption.

	Sending										Both receiving and sending
	Bulgaria	Czech Republic	Estonia	Hungary	Latvia	Lithuania	Poland	Romania	Slovak Republic	Portugal	
<b>Number of adoptable children (domestic and/or intercountry)</b>	Y	N	N	Y	N	Y	N	N	N	N	N
<b>Age (domestic and/or intercountry)</b>	Y	N	N	N	N	Y	N	N	N	N	N
<b>Health (domestic and/or intercountry)</b>	Y	N	N	N	N	Y	N	N	N	N	N
<b>Siblings (domestic and/or intercountry)</b>	N	N	N	N	N	Y	N	N	N	N	N
<b>Reason for adoptability (domestic and/or intercountry)</b>	N	N	N	Y	N	N	N	N	N	N	N
<b>Number and characteristics of “waiting” adoptable children</b>	N	N	N	N	N	Y	Y	N	N	N	N

LEGEND: Y = Data available; N = No data available; NA = Not answered

*Data on prospective adoptive parents*

Of the 17 receiving countries, 8 have data on the rates of abandonment of the authorization procedure by and the refusal of authorization to prospective adoptive parents. With regard to adoptive parents holding valid authorization, currently waiting for a match, 8 countries have provided information on domestic adoption and 9 on intercountry adoption. Moreover 9 out of 17 countries provided data on the average length of the waiting period.

	Receiving																
	Austria	Belgium	Cyprus	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxembourg	Malta	Netherlands	Slovenia	Spain	Sweden	UK
<b>Which are the respective rates of abandonment of the authorisation procedure by and of refusal of the authorisation to prospective adoptive parents?</b>	N	NA	Y	Y	Y	NA	N	N	Y	N	Y	Y	Y	N	N	Y	N
<b>How many prospective adoptive parents with a valid authorization are currently waiting for a matching in domestic?</b>	N	NA	N	Y	Y	NA	Y	N	N	Y	Y	Y	N	Y	N	N	N
<b>How many prospective adoptive parents with a valid authorization are currently waiting for a matching in intercountry adoption?</b>	N	NA	N	Y	Y	NA	Y	N	N	Y	Y	Y	N	Y	Y	N	Y
<b>Average length of the waiting period?</b>	N	NA	Y	Y	Y	NA	N	N	Y	Y	Y	Y	N	Y	N	Y	N

Sending countries do not, of course, have information on rates of abandonment of the authorization procedure by and the refusal of authorization to prospective adoptive parents. With regard to adoptive parents holding valid authorization, currently waiting for a match, 5 countries provided information on domestic adoption and 4 on intercountry adoption. 2 countries (Latvia and Bulgaria) also sent in data on the average length of the waiting period.

	Sending										Both receiving and sending
	Bulgaria	Czech Republic	Estonia	Hungary	Latvia	Lithuania	Poland	Romania	Slovak Republic	Portugal	
<b>Which are the respective rates of abandonment of the authorisation procedure by and of refusal of the authorisation to prospective adoptive parents?</b>	N	N	N	N	N	N	N	N	N	N	N
<b>How many prospective adoptive parents with a valid authorization are currently waiting for a matching in domestic?</b>	Y	Y	N	Y	N	Y	N	Y	N	N	
<b>How many prospective adoptive parents with a valid authorization are currently waiting for a matching in intercountry adoption?</b>	Y	Y	N	Y	N	Y	N	N	N	Y	
<b>Average length of the waiting period?</b>	Y	N	N	Y	N	N	N	N	N	N	

LEGEND: Y = Data available; N = No data available; NA = Not answered

*Quantitative data relating to domestic non-relative adoption*

Only 10 of the 17 receiving countries has information on the number of domestic adoptions – the data for Malta made no distinction between relative and non-relative adoption - and most of these provided no information regarding age, health and siblings.

	Receiving																
	Austria	Belgium	Cyprus	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxembourg	Malta	Netherlands	Slovenia	Spain	Sweden	UK
<b>Number of domestic adoptions</b>	N	Y	N	Y	Y	N	Y	N	Y	Y	Y	N	Y	N	Y	N	Y
<b>Age of children in domestic adoption</b>	N	NA	N	Y	N	N	N	N	Y	N	N	N	N	N	N	N	Y
<b>Health of children in domestic adoption</b>	N	NA	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
<b>Siblings in domestic adoption</b>	N	NA	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N

Virtually all sending countries (8 on 9) provided information on the number of domestic adoptions. With regard to the characteristics of these children, age alone appears to be sufficiently documented (4 out of 9).

	Sending										Both receiving and sending
	Bulgaria	Czech Republic	Estonia	Hungary	Latvia	Lithuania	Poland	Romania	Slovak Republic	Portugal	
<b>Number of domestic adoptions</b>	Y	Y	Y	Y	N	Y	Y	Y	Y		N
<b>Age of children in domestic adoption</b>	N	N	Y	N	N	Y	N	Y	Y		N
<b>Health of children in domestic adoption</b>	N	N	N	N	N	N	N	N	N		N
<b>Siblings in domestic adoption</b>	N	N	N	N	N	Y	N	N	N		N

LEGEND: Y = Data available; N = No data available; NA = Not answered

### Quantitative data relating to intercountry adoptions

All the receiving countries except Austria and Greece provided data on the number of intercountry adoptions. On the characteristics of intercountry adoption, the position varied considerably. On age, in particular, 5 countries had available data; on health and siblings, only 2 countries had available data; while the situation regarding the number of adoptees by country of origin seems much better (10 on 17). 7 countries provided some useful information on the use of accredited bodies.

	Receiving																
	Austria	Belgium	Cyprus	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxembourg	Malta	Netherlands	Slovenia	Spain	Sweden	UK
<b>Number of intercountry adoptions</b>	N	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
<b>Age of children in intercountry adoption</b>	N	NA	N	Y	Y	NA	N	N	N	Y	N	N	Y	N	N	Y	N
<b>Health of children in intercountry adoption</b>	N	NA	N	N	N	NA	N	N	Y	Y	N	N	N	N	N	N	N
<b>Siblings in intercountry adoption</b>	N	NA	N	N	Y	NA	N	N	N	N	N	N	Y	N	N	N	N
<b>Number of adoptees per country of origin/destination</b>	N	NA	N	Y	Y	NA	Y	N	Y	Y	N	Y	Y	Y	Y	Y	N
<b>Ratio adoptions through an adoption accredited body versus independent adoptions</b>	N	NA	N	Y	Y	NA	N	N	Y	Y	Y	N	Y	N	N	Y	N

All sending countries collect data on the number of intercountry adoptions and the number of adoptees by countries of destination. Data on the characteristics of children adopted through intercountry adoptions is much less complete.

	Sending										Both receiving and sending
	Bulgaria	Czech Republic	Estonia	Hungary	Latvia	Lithuania	Poland	Romania	Slovak Republic	Portugal	
<b>Number of domestic adoptions</b>	Y	Y	Y	Y	N	Y	Y	Y	Y		N
<b>Age of children in domestic adoption</b>	N	N	Y	N	N	Y	N	Y	Y		N
<b>Health of children in domestic adoption</b>	N	N	N	N	N	N	N	N	N		N
<b>Siblings in domestic adoption</b>	N	N	N	N	N	Y	N	N	N		N

LEGEND: Y = Data available; N = No data available; NA = Not answered

## Adoption breakdown

Very little is known about adoption breakdowns in quantitative terms. Apart from Germany, Malta and Hungary, no data on adoption breakdowns is available in either the 17 receiving countries or the 9 sending countries.

		Receiving																
		Austria	Belgium	Cyprus	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxembourg	Malta	Netherlands	Slovenia	Spain	Sweden	UK
<b>Adoption breakdown (numbers)</b>		N	NA	N	N	N	NA	Y	N	N	N	N	Y	N	N	N	N	N
<b>Adoption breakdown (reasons)</b>		N	NA	N	N	N	NA	N	N	N	N	N	N	N	N	N	N	N
<b>Adoption breakdown (consequences)</b>		N	NA	N	N	N	NA	N	N	N	N	N	N	N	N	N	N	N

		Sending										Both receiving and sending
		Bulgaria	Czech Republic	Estonia	Hungary	Latvia	Lithuania	Poland	Romania	Slovak Republic	Portugal	
<b>Adoption breakdown (numbers)</b>		N	N	N	Y	N	N	N	N	N	N	
<b>Adoption breakdown (reasons)</b>		N	N	N	Y	N	N	N	N	N	N	
<b>Adoption breakdown (consequences)</b>		N	N	N	Y	N	N	N	N	N	N	

LEGEND: Y = Data available; N = No data available; NA = Not answered

## 2. EUROPEAN UNION RECEIVING STATES

### 2.1 Overview of receiving states in the EU

In Section One, 17 EU countries were identified as being primarily “receiving states”. Portugal described itself as “both a country of origin and a receiving state” and provided statistics on children both sent and received. This section reviews the statistics from these countries for the period 1999 – 2007, with particular reference to 2003-6, the period which is the focus of ChildONEurope’s current research on behalf of the European Parliament. Where possible, the figures quoted have been taken from data provided in response to a Questionnaire or from published data accessible on the Internet (see Appendix 1). Limited data relating to two countries (Austria and Cyprus) are available in the annual *EurAdopt Statistics*.

National reports were available in English for all 17 countries and for Portugal, which sent details of both children sent and received, but the provision of statistical information was very varied (see Summary Tables in para. 1.2 above). For some countries where statistical data had not been attached or were limited in scope – e.g. Belgium, France and Spain – use has been made of detailed statistics on intercountry adoption available on the Internet (see Appendix 1). The data used has, therefore, been based on available statistics for all the countries – with notes where the statistics submitted in National Reports differ from those

figures obtainable from sources listed in Appendix 1. Four countries – Austria, Cyprus, Greece and Slovenia – have either provided no adequate statistics – or only partial (e.g. no annual figures or no differentiation between domestic and intercountry adoptions). Much of this Report will, therefore concentrate on the 14 countries with good data and EurAdopt data for Austria and Cyprus.

This section will summarise the trends in intercountry adoption from 1999 to 2007, changes in the countries from which children were received, and the proportion from Europe. Details available on age, sex, special needs etc. are listed in para. 1.2.1 and are discussed in para. 4 below.

**Table 2-1. Intercountry adoption to selected countries 1999 to 2007: USA, Canada and member states of EU – by rank in 2007**

Country	1999	2001	2003	2004	2006	2007
United States	16,363	19,237	21,616	22,884	20,679	19,613
Spain	2,006	3,428	3,951	5,541	4,472	3,648
France	3,597	3,094	3,995	4,079	3,977	3,162
Italy	2,177	1,797	2,772	3,402	3,188	3,420
Canada	2,019	1,874	2,180	1,955	1,535	[1,535]
<i>Subtotal for 5 top states</i>	26,162	29,430	34,514	37,861	33,851	31,378
Sweden	1,019	1,044	1,046	1,109	879	800
Netherlands	993	1,122	1,154	1,307	816	778
Germany <sup>1</sup>	591	583	485	419	422	567
Denmark	697	631	523	528	447	429
Belgium <sup>1</sup>	450	419	430	470	383	358
UK	312	326	301	333	363	356
Ireland	191	179	358	398	313	[313]
Finland	149	218	239	289	218	176
(Austria)	n/a	n/a	n/a	(77)	(90)	n/a
Malta	72	39	23	46	60	64
Luxembourg	66	56	51	56	45	31
(Cyprus)	14	10	3	3	n/a	n/a
Portugal	n/a	2	4	8	12	n/a
Total to EU (16) <sup>2</sup>	12,224	12,958	15,355	18,059	15,591	14,114
Total Europe <sup>3</sup> (20)	13,331	14,149	16,757	19,350	16,404	14,863
Global Total <sup>4</sup> (25)	32,527 (22)	36,176 (23)	41,365 (23)	45,136 (23)	39,589 (22)	37,051 (21)
% to top 5	80%	81%	83%	84%	83%	85%
% to USA	50%	53%	52%	51%	52%	53%
% to Europe	41%	39%	41%	43%	41%	40%
% to EU	38%	36%	37%	40%	39%	38%

<sup>1</sup> Number of foreign children brought in for adoption

<sup>2</sup> No annual figures were obtained for Greece or Slovenia

<sup>3</sup> 16 EU states + Andorra, Iceland, Norway and Switzerland

<sup>4</sup> 20 European states + USA, Canada, Australia, Israel and New Zealand - no data for Singapore, Japan or Gulf states



## 2.2 The rise in numbers 1998-2004

The number of international adoptions worldwide **doubled** between 1995 and 2004. Between 1998 and 2004, the overall increase was 42 per cent but there was substantial variation between receiving countries, with Spain experiencing a rise of 273 per cent and Ireland a rise of 171 per cent (see Table 2-2 below). Sweden experienced a below average rise, and the number of children going to Denmark fell.

**Table 2-2. Percentage change in number of adoptions 1998-2004: USA and selected EU receiving states**

Country	Adoptions 1998	Adoptions 2001	Adoptions 2003	Adoptions 2004	Change 1998-2004 %
Spain	1,487	3,428	3,951	5,541	+ 273
Ireland	147	179	341	398	+ 171
Finland	181	218	238	289	+ 59.7
Netherlands	825	1,122	1,154	1,307	+ 58.4
Italy	2,233	1,797	2,772	3,402	+ 52.3
USA	15,774	19,237	32,616	22,884	+45.1
Total (22 states)	31,924	36,176	41,265	45,136	+ 41.4
UK	258	326	301	332	+ 28.7
Sweden	928	1,044	1,046	1,109	+ 19.5
France	3,777	3,094	3,995	4,079	+ 8.0
Malta	43	39	23	46	+7.0
Denmark	624	631	523	528	- 15.0

### 2.3 The decline in numbers 2004-2007

The steady rise in the total number of intercountry adoptions was **reversed** in 2005 and the decline accelerated in 2006, by which time almost all the major receiving countries had experienced a fall in numbers. Overall, there was a fall of 18 per cent across 22 states, but there was a variation between countries (see Table 2-3) with the largest decline in Finland and the Netherlands and a slight *rise* in the United Kingdom (where the figures relate to *applications* only and so do not reflect the availability of children).

**Table 2-3. Changes in numbers of adoptions 2004-2007; ranked by percentage change, 2004/5 to 2007**

Country					Change
	2004	2005	2006	2007	2004/5 – 7
Finland	289	308	218	176	- 43 %
Netherlands	1,307	1,185	816	778	- 40 %
Spain	5,541	5,423	4,472	3,648	- 35 %
Sweden	1,109	1,083	879	800	-28 %
Denmark	528	586	447	429	- 27 %
Belgium <sup>1</sup>	470	471	383	358	- 24 %
France	4,079	4,136	3,977	3,162	- 23 %
Ireland	398	366	313	n/a <sup>2</sup>	(-21%) <sup>2</sup>
All EU states (16)	18,059	17,362	15,591	14,114 <sup>2</sup>	(-22%)
All countries	45,136	43,775	39,589	37,051 <sup>2</sup>	(-18 %)
United States	22,884	22,728	20,679	19,613	- 14%
UK	334	367	364	356	3.0%
Italy	3,402	2,840	3,188	3,420	+ 0.5%
Malta	46	39	60	64	+ 39 %

<sup>1</sup> Figures are based on aggregation of data from French and Flemish communities – national statistics are available only from 2006

<sup>2</sup> 2007 data for Canada and Ireland not available; world and EU totals assume the same number as in 2006 for both countries

**Table 2-4. Crude intercountry adoption rates (per 100,000 population): selected EU receiving countries 1998 – 2006: ranked by rate in 2004**

Country	Number of Adoptions 2006 <sup>1</sup>	Adoptions per 100,000 population <sup>2</sup>			
		2006	2004	2001	1998
Spain	4,472	10.2	13.0	8.6	3.8
Sweden	879	9.7	12.3	11.8	10.5
Malta	64	14.8	11.4	9.8	10.8
Denmark	450	8.3	9.8	9.8	11.8
Ireland	313	7.4	9.8	9.3	3.3
(USA)	20,679	6.8	7.8	7.6	5.8
France	3,977	6.5	6.8	6.7	6.4
Italy	3,188	5.4	5.9	4.8	3.9
Netherlands	816	5.0	8.1	7.2	5.3
Finland	58	4.1	5.5	4.2	3.5
Belgium	383	3.7	4.5	4.2	4.8
Germany <sup>3</sup>	422 <sup>3</sup>	0.5	0.6	0.7	0.7
UK	363	0.6	0.6	0.5	0.4

<sup>1</sup> Number of adoptions is based on sources cited in Appendix 1

<sup>2</sup> Population data from State of the World's Children (UNICEF), 2000, 2003, 2006, 2007

<sup>3</sup> Totals are for children brought into Germany for adoption through agencies - there are no data on private adoptions – therefore the actual numbers (and ratios) may be substantially higher

**Table 2-5. Intercountry Adoptions in EU countries in 2006: Number of children received; percentage from Europe; and number from top 4 states of origin**

INTERCOUNTRY ADOPTION		Number of children from top 4 non-European countries sending children to Europe in 2006				
Country	Number	From Europe				
			China	Ethiopia	Colombia	Vietnam
Spain	4,472	34%	1,759	732	280	0
France	3,977	14%	314	408	321	742
Italy	3,188	45%	0	227	289	289
Sweden	879	11%	362	32	47	67
Netherlands	816	4%	314	48	80	0
Germany <sup>4</sup>	583	29%	0	33	36	22
Denmark	450	3%	160	38	37	44
Belgium	383	10%	153	88	29	0
UK	364	8%	187	>5	>5	>5
Ireland	313	49%	33	14	0	68
Finland	218	24%	49	15	18	0
Malta	60	32%	0	21	0	0
Luxembourg	45	0%	2	0	1	0
Slovenia		100%	0	0	0	0
All European receiving states <sup>1</sup>	16,557	25%	3,515	1,255	1,203	1,167
15 EU states	15,752	26%	3,333	1,228	1,118	1,167
USA <sup>3</sup>	20,679	21%	6,493	2	73 344	163
World Total <sup>2</sup>	39,738	22%	10,743	2,118	1,587	1,364
% to US <sup>3</sup>	52%	--	60%	35%	22%	12%
% to Europe	41.7%	--	33%	59%	76%	86%
% to EU states	39.6%	--	31%	58%	70%	86%

<sup>1</sup> 21 states (all listed EU states +Andorra, Iceland ,Norway & Switzerland)

<sup>2</sup> 21 states ( Europe + USA, Canada, Israel, Australia and New Zealand)

<sup>3</sup> Two other states are crucial to the USA – Guatemala (98% to USA) and Korea (77%). Proportion to European countries in 2006 was 2% and 11% respectively. The USA took 55 per cent of children sent by Russia.

<sup>4</sup> Figure is for all children born abroad and adopted by non-relatives (see Appendix 1) – number brought in for adoption is lower (422)

**Table 2-6. Intercountry adoptions in Europe in 2004; Number of children received from Europe by members of EU**

Country	Total (2004)	% from Europe	% from EU	Total (2006)	% from Europe
EU states ranked by % received from Europe in 2004				EU states	
Cyprus	3	100%	100%	0	---
Ireland	398	65%	(1%)	313	49%
Italy	3,402	64%	(16%)	3,188	45%
Germany	650 <sup>1</sup>	48%	(8%)	583	39%
Spain	5,541	38%	(2%)	4,472	34%
Malta	46	24%	(13%)	60	32%
France	4,079	21%	(6%)	3,977	14%
Sweden	1,109	16%	(5%)	879	11%
Finland	289	16%	(2%)	218	4%
Belgium	470	12%	(0%)	383	10%
Denmark	528	10%	(4%)	450	3%
UK	332	5%	(1%)	364	8%
Netherlands	1,307	2%	2%	816	4%
Luxembourg	56	0%	0%	45	0%
14	18,278				46%
Portugal <sup>2</sup>	2	n/a	n/a	8	n/a
Slovenia	n/a	--	--		100%
(Austria)	(77)	(18%)	(1%)	n/a	--
Greece	n/a				
18					
Non-EU states					
Switzerland	557	28%	(9%)	349	20%
Norway	706	4%	(3%)	448	6%
Iceland	28	0%	0%	8	0%
Andorra	0	0%	0%	8	0%
22	19,501	32%	(6%)	16,561	25%
Global Total					
23 states <sup>3</sup>	45,288	31%		39,742	22%
% Europe	43%				
% EU	40%				
European states with poor or no stats					
Liechtenstein	n/a	--			
Monaco	n/a	--			
San Marino	n/a	--			
25					
% EU	40%				

<sup>1</sup> Figures are for all children born abroad and adopted by non-relatives – number brought in for adoption is lower (419).

<sup>2</sup> Portugal describes itself as both a receiving state and a state of origin, but now receives more children than it sends.

<sup>3</sup> All listed European states with data except Austria and Portugal PLUS United States, Canada, Israel, Australia and New Zealand).

### 3. STATES OF ORIGIN IN THE EUROPEAN UNION

#### 3.1 Overview of states of origin in the EU

In Section One we identified 9 EU countries which were seen as primarily “states of origin”, sending countries and one (Portugal) which provided statistics on both children sent and received. In this section we report available data for these countries (see para. 1.2.1 above) alongside estimates made from the statistics for 22 receiving states (Selman 2002, 2007). These latter statistics will often be underestimates but have the advantage of comparability between countries in terms of the source of information and for some countries provide more detail than the figures submitted. There are also some earlier statistics from many of the countries available on the Hague Convention web-site at

[www.hcch.net/index\\_en.php?act=conventions.publications&dtid=32&cid=69](http://www.hcch.net/index_en.php?act=conventions.publications&dtid=32&cid=69)

Table 3-1 looks at changes in the number of children sent by Eastern European countries between 2003 and 2007. This includes three countries (Russia, Belarus and the Ukraine) which are not EU members but have sent significant numbers of children and two countries (Romania and Bulgaria: see Tables 3-3 and 3-4) which were not members during the period in question but acceded in 2007. These countries were the top five European states of origin in 2003. For the EU countries the data submitted by National Experts has been used where possible: for the other countries figures presented are based on the analysis of receiving states referred to above<sup>1</sup>.

Tables 3-5 to 3-11 show the **main destination countries** for children from the 7 of the EU states which acceded to the Convention in May 2004 and for Portugal who acceded in 1986. Where possible – e.g. Lithuania and Poland – the official statistics are reproduced in full. Elsewhere data from National Experts are in brackets.

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<sup>11</sup> From 2005-2007 French statistics record only countries sending more than 50 children a year and adoptions to Germany from Eastern Europe are not available for EU States of origin other than Bulgaria (2004-6), Romania (2003-6) and Poland (2003 only). This may lead to underestimates of children sent.

**Table 3-1. International adoptions from selected Eastern European countries 2003-2007; ranked by number sent in 2003**

European states of origin sending most children in 2003 Number of adoptions recorded in 22 receiving states						
Year >	2003	2004	2005	2006	TOTAL	2007
Russia	7,747	9,453	7,468	6,752	31,420	4,588
Ukraine	2,052	2,021	1,705	1,031	12,530	1,557
Belarus	656	627	23	34	1,340	13
EU states of origin: Data sent by National Experts to ChildONEurope 2008 - [bracketed figures are adoptions recorded in 23 receiving states]						
Bulgaria <sup>1</sup>	595	217	101	98	1,011 [1,471]	82
Poland <sup>2</sup>	333	387	336	311	1,367 [1,533]	359
Romania <sup>1</sup>	279	251	2	0	533 [703]	0
Lithuania <sup>2</sup>	104	103	108	125	440 [398]	118
Hungary <sup>2</sup>	100	80	88	97	365 [291]	133
Latvia <sup>2</sup>	[65] <sup>3</sup>	[124] <sup>3</sup>	111 [114]	147 [140]	447 [443] <sup>3</sup>	114 [100]
Slovakia <sup>2</sup>	47	78	41	34	200 [184]	45
Czech Rep <sup>2</sup>	39 [18] <sup>3</sup>	39 [34] <sup>3</sup>	53 [27] <sup>3</sup>	35 [25]	166 [104]	[18]
Estonia <sup>2</sup>	15	28	16	20	79 [75]	30

<sup>1</sup> Bulgaria and Romania became full members of the EU in 2007: Tables 3-3 and 3-4 below show the pattern of adoption in Romania 1999-2005 and in Bulgaria 2003-2007.

<sup>2</sup> These 7 countries joined the EU in May 2004 – the other 3 countries acceding at this time – Cyprus, Malta and Slovenia – are primarily receiving states.

<sup>3</sup> No annual statistics were submitted by Latvia for 2003 or 2004 - the bracketed figures are adoptions to 23 receiving states (Selman 2008), figures from the Czech Republic are much higher than those estimated from the 23 receiving states – see Footnote to Table 3-5

**Table 3-2. Standardised adoption ratios (per 1,000 live births) 10 Eastern European countries and the top 5 non-European states of origin 2003-2006: listed in order of ratio in 2003**

Country	Rank <sup>1</sup> 2003	Adoption Ratio <sup>2</sup> 2003	Adoption Ratio <sup>2</sup> 2004	Adoption Ratio <sup>2</sup> 2005	Adoption Ratio <sup>2,3</sup> 2006	Rank <sup>1</sup> 2006
Bulgaria <sup>4</sup>	9	15.5	6.3	1.7	1.4 (1.4)	--
Belarus	13	7.2	7.1	0.25	0.4	---
Guatemala	3	6.4	8.1	8.8	9.5	3
Russia	2	6.3	7.7	4.9	4.5	2
Ukraine	5	5.0	5.0	4.4	2.5	9
S. Korea	4	4.7 <sup>3</sup>	4.0	4.6	4.0	5
Haiti	8	4.2	4.6	3.6	4.0	8
Latvia	---	3.6	6.0	5.4	6.7 (7.0)	22
Lithuania	---	2.9	3.3	2.5	3.0 (4.2)	---
Romania <sup>4</sup>	15	2.0	1.2	0.07	----	---
Estonia	---	1.9	1.4	0.9	0.9 (1.4)	---
Colombia	6	1.8	1.8	1.5	1.8	6
Poland	19	0.95	1.1	1.1	1.0 (0.9)	16
Hungary	---	0.8	0.7	0.7	1.0 (1.0)	---
Slovakia	---	0.76	1.5	0.6	0.5 (0.6)	---
China	1	0.6	0.8	0.8	0.6	1
Vietnam	10	0.57	0.3	0.7	0.8	7
Czech Rep	---	0.2	0.4	0.3	0.2 (0.4)	---
India	7	0.05	0.04	0.03	0.03	10

<sup>1</sup> Rank by total number sent to 22 receiving states in a specified year.

<sup>2</sup> Adoptions per 1,000 live births.

<sup>3</sup> For 2006 the ratios for EU states based on National data are in brackets.

<sup>4</sup> The highest number of international adoptions in Bulgaria was in 2002 (1,129) when the ratio was 18. In Romania in 1991 the ratio would have been even higher at over 25 (Selman 2009) – 2-3 per cent of all births. Both of these figures are higher than Korean adoption at its peak in the 1980s (Selman 2007).

### 3.2 Bulgaria and Romania – accession in January 2007

Bulgaria and Romania acceded to the European Union in January 2007. In the years preceding their accession, there was a considerable focus on the provisions for deprived children in both countries and especially on what was seen by many as an excessive use of intercountry adoption at the expense of the development of domestic adoption and fostering.

The number of international adoptions from Bulgaria rose sharply in the 1990s, reaching a peak of 1,129 (18 per 1,000 live births) in 2002. During this period the number of domestic adoptions was falling. In 1997 the Committee on the Rights of the Child had commented “*With regard to adoption, despite recent changes in the legislation regulating this practice, the Committee is concerned about the lack of compatibility of the current legal framework with the principles and provisions of the Convention, especially with regard to the principle of the best interests of the child (art. 3)*”. There was also much criticism from NGOs such as *Save the Children* who produced a damning report which was enclosed as evidence with the National Expert’s submission.

Bulgaria ratified the Hague convention in 2003 and since then the number of international adoptions has fallen sharply to under 100 in 2006 (Table 3-3) while domestic adoptions have risen to about 700 a year. Most of the children placed “in-country” were aged under 3 and no child with disabilities was placed for domestic adoption. In 2007 there were only 135 children in foster care. Over 2,000 foreign adopters had applied for a child and over 500 had been approved.

The report from Sweden raised the issue of whether the EU is perceived as seeing intercountry adoption in Bulgaria and Romania as inappropriate for a new member of the EU even if there are many children in institutions needing a family placement.

For nearly two years after the dictator's fall, Romania became the main focus for international adoption<sup>2</sup>. UNICEF (1999) has estimated that more than 10,000 children were taken from the country between January 1990 and July 1991. In April 1991, a report from *Defence for Children International* (DCI) and *International Social Service* (ISS) said that intercountry adoption was "now seen as a national tragedy in Romania" (DCI 1991:9) and in summer 1991 a nine month moratorium was imposed.

In 1993 Romania became one of the first states of origin to ratify the Hague Convention, but by then the moratorium had ended and the number of children placed for international adoption began to rise again from 1996. Official Romanian figures show a rise from 1,315 children sent in 1996 to 2,290 by 1998. Renewed attempts to control what was clearly becoming a flourishing market in children were made in 2002, as a result of which the number entering the US fell sharply from 782 in 2001 to 57 in 2004. Official data from the Romanian government record a total of 10,936 international adoptions between 1997 and 2004 (Chou et al., 2007). In 2005, the Romanian government finally announced that intercountry adoptions were to end: only biological grandparents living in another country will be able to adopt Romanian orphans, and then only if no other relative or Romanian family will adopt the child (Dickens 2006). Table 3-4 charts the decline in numbers of children sent for international adoption from 2000 to 2005.

Many argue that the effect of intercountry adoption in Romania has been negative, delaying the reform of institutional care and the development of in-country adoption, (Dickens 2002). Social workers preferred to work in international adoption and orphanages could make financial gains. This charge was repeated in a recent book by Roeli Post (2007) who kept a diary of her work for the European commission that helped Romania reform its child protection system and argues that intercountry adoption in Romania had become a market in children, riddled with corruption.

Table 3-3 is based on data from receiving states as Bulgaria's response gave only totals (given in brackets in the table) and the names of major receiving states without details on numbers sent. The response confirms that Italy, Spain, France, the USA and Germany were the main destination states from 2002-2007.

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<sup>2</sup> This section is based on P. Selman (2009), 52-54.



**Table 3-3. Adoption from Bulgaria to 22 receiving states –1999 to 2006; countries receiving most children in 2004**

Country <sup>1</sup>	1999	2001	2002	2003	2004	2005	2006	2007
Italy	294	151	219	265	113	37	28	32
USA	221	297	260	198	110	30	28	20
Spain	92	172	181	202	57	21	11	11
France	188	190	228	230	48	?? <sup>1</sup>	?? <sup>1</sup>	?? <sup>1</sup>
Germany <sup>2</sup>	n/a <sup>2</sup>	n/a <sup>2</sup>	n/a <sup>2</sup>	n/a <sup>2</sup>	25	20	13	14
Switzerland	22	17	15	19	15	?? <sup>3</sup>	?? <sup>3</sup>	?? <sup>3</sup>
Sweden	36	23	21	17	7	2	0	2
TOTAL (Min of Justice) <sup>4,5</sup>	889 (1,000)	868 (900) <sup>4</sup>	955 (1,119) <sup>5</sup>	963 (595)	393 (217)	115 (101)	96 (98)	82 (81)

<sup>1</sup> From 2005 France has published data only for countries sending 50+ children.

<sup>2</sup> German data for Bulgaria is not available for 1999-2003.

<sup>3</sup> From 2005 Switzerland has not provided data by state of origin.

<sup>4</sup> Save the Children reports 1,000 in 1999; 900 in 2001; and 1,119 in 2002.

<sup>5</sup> The Ministry of Justice reports the annual number of consents given for intercountry adoption 2003-2005 (National Report for Bulgaria. These show a sharp fall from 1,119 in 2002 to 81 in 2007 and 30 in the first six months of 2008. There are no detailed statistics on destination countries for children sent.

**Table 3-4. Adoptions from Romania to 21<sup>1</sup> receiving states, 2000 to 2005; ranked by number received by each country in 2001. Totals provided by Romania in response to the Hague and ChildONEurope questionnaires in Brackets**

Country	2000	2001	2002	2003	2004	2005
US	1,119	782	168	200 (60)	57 (41)	2
Spain	583	373	38	85 (63)	48 (38)	3
France	370	223	42	17 (19)	16 (15)	n/a
Italy	23	173	40	70 (72)	119 (116)	0
Ireland	69	48	12	8 (1)	2 (0)	0
Germany	56	33	22	11 (12)	10 (15)	6
Israel	n/a	27	13	15 (11)	5 (0)	0
Canada	59	25	15	8 (5)	?? (0)	??
Australia	12	18	8	1 (0)	0 (4)	0
Sweden	16	12	2	1 (2)	0 (0)	0
Cyprus	10	10	3	3 (1)	3 (3)	3
UK	23	5	0	1(3)	0 (0)	0
TOTAL (National data)	2,478	1,813	413	421 <sup>1</sup> (279) <sup>3</sup>	267 <sup>1</sup> (251) <sup>3</sup>	15 <sup>2</sup> (2) <sup>3</sup>
Other Romanian statistics		(1,521) <sup>4</sup>	(458) <sup>4</sup>	(332) <sup>4</sup>		

<sup>1</sup> Adoptions reported from Switzerland (52 in 2003; 22 in 2004) have not been included as many were step-parent adoptions and no statistics are available for 2005. Romanian data show 11 adoptions to Switzerland in 2003; 0 in 2004.

<sup>2</sup> Although international adoptions were halted from January 2005, some were in process and recorded in receiving countries in 2005.

<sup>3</sup> Response to ChildONEurope 2008.

<sup>4</sup> Response to the Hague Special Commission.

### 3.3 Statistical profiles of states of origin acceding to the EU in 2004

Where possible, tables have been based on the data provided by National Experts. However, only 3 countries – Lithuania, Poland and Slovakia – provided annual statistics on receiving State for all years. Hungary and Latvia provided data for some years, but the Czech Republic and Estonia had only totals. Estimates based on data from receiving states have been used to fill gaps in provision and to explore data accuracy. In most cases national data and estimates are similar or due to a known absence of data in the estimates, but the figures from the Czech Republic and Hungary are much higher than estimates and those from Poland much lower – differences are discussed in footnotes to Table 3-5 and 3-10.

**Table 3-5. Adoption from the Czech Republic to 22 receiving states 2003 to 2007; countries receiving most children in 2006 (Figures in brackets are from the Report of the National Expert)**

Country	2003	2004	2005	2006	2007	2003-7	2000-08 <sup>1</sup>
Denmark	16	18	13	10	9	66	128
<i>(Czech data)<sup>1</sup></i>	<i>(16)</i>	<i>(18)</i>	<i>(13)</i>	<i>(10)</i>	n/a		<i>(133)</i>
Germany	??	1	n/a <sup>2</sup>	n/a <sup>2</sup>	n/a <sup>2</sup>	n/a <sup>2</sup>	(63)
Italy	0	0	9	5	5	19	(24)
USA	2	2	2	2	1	9	---
Sweden	0	8	4	2	2	16	(19)
France	0	5	??	??	??	5+	(10)
Austria	n/a	n/a	n/a	n/a	n/a	n/a	(17)
TOTAL	18	36	24	19	18	124	(278)
<i>(Czech data)<sup>1</sup></i>	<i>(39)<sup>3</sup></i>	<i>(39)<sup>3</sup></i>	<i>(53)<sup>3</sup></i>	<i>(35)<sup>3</sup></i>		<i>(166+)</i>	

<sup>1</sup> Data provided to ChildONEurope by National Experts.

<sup>2</sup> German statistics do not give data on numbers adopted from Bulgaria .

<sup>3</sup> Higher totals may be due to inclusion of adoptions to Austria, which was not one of the 22 receiving states, and to Germany which did not record numbers received from the Czech Republic in most years or possibly due to the inclusion of relative adoptions.

**Table 3-6. Adoption from Estonia 2003 to 2007 to 3 receiving states, ranked by number received in 2007**  
(*Figures in brackets are from Ministry of Social Affairs* ).

Receiving country <sup>1</sup>	2003	2004	2005	2006	2007
USA	13	13	13	4	22
Sweden	6	1	8	6	5
Finland	2	4	3	2	3
TOTAL	21 (15) <sup>1</sup>	18 (28) <sup>1</sup>	24 (16) <sup>1</sup>	12 (20) <sup>1</sup>	30

<sup>1</sup> The Estonian *Ministry of Social Affairs* reports adoptions only to these 3 countries : 85% to USA, 10% to Sweden and 5% to Finland.

**Table 3-7. Adoption from Latvia 2003 to 2007 to 23 receiving states ; 5 countries receiving most children in 2006 (Figures in brackets are from the Central Authority).**

Country	2003	2004	2005	2006	2007
France	50	105	73	79 (83)	(30)
Italy	0	0	14	36 (41)	37 (36)
USA	15	15	27	24 (21)	32 (46)
Spain	0	2	0	0	0 (1)
Sweden	0	1	0	1	1
TOTAL <sup>1</sup>	65	124	114 (111)	140 (147)	100 (114)

**Table 3-8. Adoption from Hungary 2003 to 2007; children sent to 22 receiving states (data provided by the National Expert for 2006-7 in brackets) ranked by number of children sent in 2006**

Top 6 receiving states					
Country <sup>1</sup>	2003	2004	2005	2006	2007
Italy	16	26	38	62 (58) <sup>2</sup>	82 (82) <sup>2</sup>
USA	16	8	7	10 (10)	13 (11)
Norway	12	13	9	9 (9)	13 (13)
Spain	7	10	3	7 (8)	15 (16)
France	13	7	?? <sup>1</sup>	?? <sup>1</sup> (7)	?? <sup>1</sup> (6)
Netherlands	0	1	4	2 (2)	5 (5)
TOTAL	69	69	60	92 (97)	128 (135)
Ministry of Social Affairs & Labour <sup>1</sup>	(100)	(80)	(88) <sup>3</sup>	(124) <sup>3</sup>	(135) <sup>3</sup>

<sup>1</sup> No data for France where numbers less than 50 - 2005-2007.

<sup>2</sup> Statistics from National Expert cover the years 2006-2007.

<sup>3</sup> The Hungarian *Ministry of Social Affairs and Labour* reports that in 2005 independent adoptions also came from the USA, France, Israel and Switzerland and in 2006 from Austria, Germany and the USA.

**Table 3-9. Adoption from Lithuania 2003 to 2007 (data from National Expert) - Totals + top 3 receiving states**

Country	2003	2004	2005	2006	Total
Italy	22	40	48	64	176
France	43	25	21	21	110
USA	26	25	23	22	96
Other	13	13	16	18	58
TOTAL	104	103	108	125	440

**Table 3-9a. Adoptions to 22 receiving states**

Country <sup>1</sup>	2003	2004	2005	2006	2007
Italy	28	34	38	69	77
USA	15	29	26	14	27
France	41	28	(21) <sup>1</sup>	(21) <sup>1</sup>	?? <sup>1</sup>
Sweden	0	8	6	6	10
Denmark	1	0	0	1	0
Spain	0	0	0	0	4
TOTAL	85	103	78 (99) <sup>1</sup>	90 (111) <sup>1</sup>	118

<sup>1</sup> From 2005 data from France record only countries sending 50+ children – bracketed figures are from the table above.

**Table 3-10. Polish statistics from Ministry of Labour & Social Policy**

Country <sup>1</sup>	2003	2004	2005	2006	Total 2003-2006
Italy	155	187	211	214	767
USA	86	84	?? <sup>1</sup>	22 <sup>1</sup>	192 (339) <sup>2</sup>
France	21	39	38	25	123
Netherlands	21	23	34	20	98
Sweden	12	22	28	15	77
Germany	12	10	11	7	40
TOTAL	333	387	336	311	1,367 (1,513) <sup>2</sup>

<sup>1</sup> No adoptions from the US reported in 2005 despite a substantial number of orphan visas being issued for the Czech Republic (see Table 3-10a below). Numbers are too low in other years.

<sup>2</sup> Bracketed numbers are estimates from receiving states.

**Table 3-10a. Poland: Adoptions to 22 receiving states (Selman 2008)**

Country	2003	2004	2005	2006	2007
Italy	148	194	201	228	200
USA	97	102	73	67	84
France	21	36	39	??*	??*
Netherlands	20	22	30	25	29
Sweden	25	21	27	18	25
Germany	18	14	19	22	19
TOTAL	346 (333)**	408 (387)**	397 (336)**	362 (311)**	[359]*

\* No data for states of origin sending less than 50 children.

\*\* Data in brackets are from the National Report for Poland.

**Table 3-11. Adoption from Slovakia 2003 to 2007 (data from National Expert); 6 countries receiving most children in 2006**

Country	2003	2004	2005	2006	Total
Italy	29	65	26	23	143
France	11	4	10	0	25
Netherlands	0	3	2	3	8
Sweden	0	3	2	2	7
Austria	2	1	0	3	6
TOTAL	47	78	41	34	200

**Table 3-11a. Adoptions from Slovakia to 22 receiving states**

Country <sup>1</sup>	2003	2004	2005	2006	2007
Italy	29	63	26	23	29
USA	1	1	0	0	1
Netherlands	0	3	2	3	7
France	11	4	??	??	??
Sweden	0	4	1	2	7
TOTAL	42	75	30	34	45
Slovakia <sup>1</sup>	(47)	(78)	(41)	(34)	

<sup>1</sup> Central Authority statistics from Slovakia are very close to those recorded by the receiving states as regards totals and countries to which children were sent, but include adoptions to France in 2005, which were not recorded in published French statistics.

## 4. FEATURES OF ADOPTION IN EU COUNTRIES: A COMPARATIVE ANALYSIS

### 4.1 The use of in-country (domestic) adoption in EU states

#### 4.1.1 Receiving states 2003-2006

Amongst receiving states the level of domestic adoption varies widely: more than 3,000 a year are recorded in the UK, fewer than 100 a year in Belgium and the Netherlands (see Table 4-1 below). As a proportion of all intercountry adoptions they accounted for over 95 per cent in Denmark and the Netherlands but less than 10 per cent in England & Wales. The UK is best known for a continuing high rate of domestic non-relative adoptions, most of which now involves adoption from the childcare system of children with “special needs”. A majority of these are adopted without the consent of the birth parents. In these respects the pattern of domestic adoption in the UK is much more like the United States than mainland Europe, where the level of domestic adoption tends to be low and there are legal barriers to adoption without parental consent. The number of children in care (per population under age 18) in the UK is higher than in many West European countries, although lower than in the USA (Mason & Selman 2005).

As the number of children available for intercountry adoption declines, there may be growing interest in domestic adoption, but evidence from this study suggests that the number of children available for domestic adoption is limited in many receiving states and waiting times are longer than for overseas adoption.

Chou and Browne (2008) have argued that those countries with high proportions of intercountry adoptions have high levels of children in residential care and should encourage domestic adoption instead. This argument is hard to maintain in respect of Denmark or Sweden, where few children are in institutions (Gay Y Blasco et al. 2008), but there is evidence of a need for more domestic adoption in many countries.



**Table 4-1. Intercountry and Domestic adoption in EU receiving states 2003- 6 – ranked by proportion of children placed abroad**

Country <sup>1</sup>	ICA	Domestic	% ICA	Chou & Browne	Rate (2004)
Denmark	2,083	2,144	97%	----	9.8
Netherlands	4,462	170	96%	97%	12.3
Luxembourg	193	15	93%	98%	12.2
Belgium	1,754	151	92%	87%	4.5
Spain	19,387	3,331	87%	77%	13.0
Ireland	1,435	311	82%	93%	9.8
Finland	1,053	205	84%	92%	5.5
Italy 2004-7	9,464	3,090	75%	63%	5.9
Malta	168	77	69%	---	11.4
Germany <sup>2</sup>	1,701 (2,467) <sup>2</sup>	6,045	22% (29%)	28%	0.8
UK <sup>3</sup>	1,366 <sup>3</sup>	14,700 <sup>3</sup>	8.5%	4.6%	0.6

<sup>1</sup> Statistics from Greece and Slovenia do not separate domestic and intercountry adoptions. Other countries not listed did not send data on domestic adoption.

<sup>2</sup> Bracketed numbers include children not “brought in for adoption”, but born abroad and adopted in Germany by non-relatives.

<sup>3</sup> Figures for “domestic” adoptions are adoptions from childcare in England & Wales. UK intercountry adoption numbers are based on approved applications, *not* on the number of children adopted.

#### 4.1.2 States of origin

8 of the 9 EU states of origin sent details of the number of domestic adoptions in recent years. These indicate a wide variation in the level of domestic adoption, both in relation to the number of intercountry adoptions and in terms of the number of children in the population.

The number of intercountry adoptions from Bulgaria and Romania has fallen sharply in recent years and by 2004 these represented 26 per cent of all adoptions in Bulgaria (falling to 10% in 2007) and 15% in Romania, which subsequently stopped all non-relative ICAs.

In the other EU countries there was much variation – from under 20% in Hungary and Slovakia; to 25% in Estonia (2003-6) and over 50% in Lithuania.

No data were obtained for Latvia, which has the highest intercountry adoption ratio of all nine sending countries and was found to have the highest ratio of intercountry to domestic adoption of all European sending countries in an earlier study (Chou & Browne 2008).

Table 4-2 shows the number of intercountry and domestic adoptions in the EU states of origin and the **2004 intercountry adoption ratio**. Figures in brackets are proportions in earlier years as reported by Chou & Browne (2008), showing the change in Bulgaria and Romania as they have reduced the number of intercountry adoptions.

The highest proportions are found in Lithuania – and probably in Latvia if recent data were available. Chou and Browne sought to demonstrate a link between such higher proportions and the number of children in residential care – a conclusion challenged by Gay Y Blasco et al. (2008), who noted that no data had been presented for the Czech Republic, which had the highest number of young children in residential care. Table 4-2 shows that it also has the lowest proportion of international adoptions!

**Table 4-2. Intercountry and domestic adoption in EU states of origin 2003-6 – ranked by intercountry adoption ratio in 2004**

Country	ICA	Domestic	% ICA	Adoption ratio <sup>1</sup> in 2004
Latvia (2005-7)	372	n/a	n/a ( 77.4)	6.7
Lithuania	440	348	55.8% (56.3)	3.0
Bulgaria (2004-7)	411	2,597	13.6% (47.0)	1.4
Romania <sup>2</sup> (2003-4)	530	2,703	19.6% (31.3)	1.2
Hungary	392	2088	15.8% (13.2)	1.0
Poland <sup>3</sup>	716 <sup>3</sup>	6,743 <sup>3</sup>	9.6% (---)	1.0
Estonia	79	232	25.4% (25.0)	0.9
Slovakia	153	1,422	9.7% (4.3)	0.5
Czech Republic (2003-2004)	78	2,358	3.2% ( --- )	0.2

<sup>1</sup> Intercountry adoptions to 22 receiving states per 1,000 live births (see Table 3-2).

<sup>2</sup> From 2005 there are no intercountry adoptions from Romania, while domestic adoptions remain at a similar level, so the percentage drops to zero – for 2003-6 the % = 1.0.

<sup>3</sup> Numbers refer to total adoptions (cases) not adopted children, who totalled 1,056 over the three years – see Table 3-10.

## 4.2 Characteristics of children placed for domestic and international adoption

Some statistical reports included additional information on the characteristics of children placed. The most common were age and sex of children, but several also gave details of the number of children in sibling groups and the placement immediately prior to adoption. Tables 4-2 and 4-3 report on these for states of origin.

### 4.2.1 Sex of children placed for adoption by EU states of origin

The predominance of girls amongst infants adopted from China is well-known, but sex differentials are found in many other countries. Table 4-3 below shows the **proportion of females amongst children adopted** from 4 of the states of origin sending most children in 2005.

**Table 4-3. Gender of children adopted internationally in 2005**

	EurAdopt 2005			United States 2005		
	Female	Male	% Female	Female	Male	% Female
China	1,724	118	94%	7,545	394	95%
India	123	71	63%	235	89	73%
Ethiopia	164	201	45%	234	196	54%
Lithuania	3	5	38%	18	7	72%
Poland	12	30	29%	31	42	32%
Czech Rep	7	18	28%			
Russia	30	81	27%	2,307	2,345	49.6%
Korea	65	186	26%	606	998	38%

Source: EurAdopt Statistics 2005; US Dept of Homeland Security 2005.

Table 4-4 below looks at the **sex differentials in EU states of origin** – and at any differences between domestic and international adoption – using statistics provided in the National Reports.

**Table 4-4. Gender of children sent for International and Domestic Adoption by EU states of origin - data from National reports**

Country	Intercountry Adoption			Domestic Adoption		
	Female	Male	% Female	Female	Male	% Female
Estonia 2003-6	30	49	40%	112	120	48%
Hungary 2006-7	94	138	41%	n/a	n/a	--
Lithuania 2003	n/a	n/a		n/a	n/a	--
Poland 2005	269	378	42%	n/a	n/a	--
Romania ICA 2003-4 Domestic 2005-6	275	255	52%	1,294	1,263	51%
Slovakia 2003	66	134	33%	n/a	n/a	--

The table confirms the finding from US and EurAdopt statistics (Table 4-3 above) that a majority of international adoptions from Europe are of boys, in contrast to many Asian countries.

#### 4.2.2 Age of children placed for adoption by European states of origin

A major problem with the information on age from this study was the lack of agreement on which age groups should be used. This has made comparison between countries problematic.

Returns to the *Hague Conference* Questionnaire asked countries to report the age of children using four age bands – <1; 1-4; 5-9; and >10. A similar structure is used by the United States in their reports for FY2005 and FY2006.

*EurAdopt* Statistics use a wider range: 0-1; 1-2; 2-3; 3-4; 4-5; 5-7; 9+.

Only four of EU states of origin provided information in the National reports on the age of children sent for international adoption and these used a wide variety of age bands:

<1; 1-4; 5-9; >10 (Poland 2005-6)

0-2; 3-6; 7-14; 15-17 (Estonia)

0-3; 3-6; 6-10; 10-14; 14-18 (Hungary; Poland 2003-4 )

0-3; 4-6; 7-10; 11-18 (Lithuania)

Comparison of international adoption, based on data from the USA and the *EurAdopt* agencies in 2005 show a wide range of age patterns in different countries (see Table 4-5 below). Korea and South Africa stand out as countries sending mainly very young infants. In most EU states of origin there were no children placed when under age one – often due to specific legislation.

This pattern is confirmed by the data submitted in the National report to ChildONEurope from Estonia (Table 4-6 below), which also gives information on domestic adoption.

Lithuania (Table 4-7 below) did not give figures for under age one but again shows a clear pattern whereby the age of children for intercountry adoption is much older than those placed for domestic adoption.

**Table 4-5. Age of international adoptees sent to *EurAdopt* agencies and to the United States in 2005: EU states in bold**

	EurAdopt 2005 (%)			United States 2005 (%)		
	Under 1	1-4	5+	Under 1	1-4	5+
Korea	<b>96</b>	4	0	<b>92</b>	8	1
South Africa	<b>86</b>	14	0	n/a		
Guatemala	n/a			<b>79</b>	18	3
Vietnam	46	<b>54</b>	0	<b>57</b>	<b>37</b>	6
China	27	<b>72</b>	1	35	<b>63</b>	3
Ethiopia	<b>48</b>	37	15	32	26	<b>43</b>
Thailand	22	<b>73</b>	5	6	<b>66</b>	28
<b>Poland</b>	16	<b>46</b>	38	4	45	<b>51</b>

<b>Czech Rep</b>	8	<b>72</b>	20	n/a		
Russia	4	<b>79</b>	17	20	<b>51</b>	29
Haiti	2	<b>71</b>	27	10	48	<b>42</b>
<b>Hungary</b>	0	<b>91</b>	9	n/a		
<b>Lithuania</b>	0	<b>82</b>	18	0	<b>60</b>	40
<b>Slovakia</b>	0	<b>75</b>	25	n/a		
<b>Bulgaria</b>	0	<b>70</b>	30	n/a		
<b>Estonia</b>	0	<b>50</b>	<b>50</b>	0	25	<b>75</b>
Brazil	0	39	<b>61</b>	5	22	<b>74</b>
<b>Latvia</b>	n/a			0	0	<b>100</b>

**Table 4-6. Estonia: Age distribution of international and domestic adoptions. Data from the Estonian Ministry of Social Affairs**

	2003		2004		2005		2006	
	ICA	Dom	ICA	Dom	ICA	Dom	ICA	Dom
<b>Under 1</b>	27%	<b>73%</b>	11%	<b>54%</b>	19%	<b>67%</b>	10%	<b>70%</b>
<b>1-2</b>	<b>40%</b>	15%	29%	37%	<b>50%</b>	29%	<b>40%</b>	23%
<b>3-4</b>	33%	12%	<b>54%</b>	9%	19%	2%	35%	6%
<b>5+</b>	0	--	7%	---	12%	2%	15%	2%
<b>Total</b>	<b>15</b>	52	<b>28</b>	74	<b>16</b>	49	<b>20</b>	57

The data for Estonia in Table 4-3 indicated NO children under age 1 – the higher proportion in national data (Table 4-4 above) probably reflects differences in the time when age was measured, but still indicates a higher proportion of older children. In contrast a majority of **domestic** adoptions in Estonia were of children aged under 1 year.

In Lithuania, over 70% of children adopted internationally were aged 4 or over. In 2003-6 80 percent of “adoptable” children were over age 4 – and over 30% were aged 11-18.

**Table 4-7. Lithuania: Age distribution of international and domestic adoptions - Data from the National Report for Lithuania**

	2004		2005		2006	
	ICA	Dom	ICA	Dom	ICA	Dom
<b>0-3</b>	27%	<b>74%</b>	23%	<b>74%</b>	28%	<b>76%</b>
<b>4-6</b>	<b>40%</b>	18%	34%	18%	28%	19%
<b>7+</b>	31%	8%	<b>43%</b>	8%	<b>44%</b>	5%
<b>Total</b>	<b>103</b>	<b>93</b>	<b>108</b>	<b>88</b>	<b>125</b>	<b>106</b>

It is clear from Tables 4-6 and 4-7 that in these countries those children sent for *international* adoption were older and that most domestic adoptions were of young infants – a pattern also found in Brazil, which **only** sends older children, siblings and special needs children for intercountry adoption, as these are hard to place in domestic adoption. The placement of siblings is discussed briefly in para. 4.2.3.

#### 4.2.3 Sibling groups

It is now recognised that wherever possible siblings should be placed together and this is becoming increasingly common in intercountry adoption – and in domestic adoption in the US and the UK. In many sending countries such as India there is little possibility of placing sibling groups for domestic adoption but sibling placements are becoming more accepted in international placements. Unfortunately there is little available documentation of this development. However since 2006, EurAdopt statistics have included details of sibling placements for all countries sending children.

**Table 4-8. Sibling Placements with EurAdopt agencies 2006-7**

State of origin	Total Adoptions	Sibling Children			% of children in sibling groups
		2x	3x	Total	
India	266	12	3	15	6%
Russia	160	12		12	8%
Ethiopia	599	78	21	99	17%
Colombia	521	6	39	112	22%
Lithuania	21	2	3	5	24%
Haiti	37	12		8	32%
<b>Poland</b>	42	16	3	19	45%
<b>Slovakia</b>	21	10		10	48%
Brazil <b>2006</b>	65	6	9	15	23%
<b>2007</b>	68	32	34	56	82%

In Lithuania sibling groups were found in both international and domestic adoption, but were more common in international adoption where 54 per cent of children placed in 2004-6 were said to be members of sibling groups compared to 9 per cent of those placed for domestic adoption. In this period 62% of children “available for adoption” had at least one sibling.

#### 4.2.4 Location prior to adoption

There has been much concern over suggestions that those children currently placed for international adoption are not orphans and not those in greatest need. It has been argued, for example, that most of the children originally coming from Romania were not in fact being rescued from the terrible conditions in institutions shown on television programmes in rich countries, but taken soon after birth from maternity hospitals or “bought” from their birth mothers.

However, Kadlec & Cermak (2002) studied a group of 150 Romanian children adopted in the USA and found that over 60 per cent had been in institutions for 2 or more months: of the remaining 40 per cent, one third were taken directly from hospital; 28 per cent directly from their biological family; and 18 per cent from foster care. In the UK a clear majority of children adopted from Romania had spent some time in institutions and outcome was related to the length of such stays.

In the three sending countries providing data on children placed for intercountry adoption, between 85 and 100% of children had been in institutions, immediately prior to placement (see Table 4-9 below).

**Table 4-9. States of origin; location of children prior to adoption**

	Maternity		Institution		Foster Home		Birth Family	
	ICA	Dom	ICA	Dom	ICA	Dom	ICA	Dom
<b>Estonia 2003-6</b>	14%		71%		13%		2%	
<b>Lithuania 2003</b>	--	--	<b>91%</b>	45%	<b>9%</b>	50%	<b>0%</b>	5%
<b>Poland 2005-6</b>			<b>85%</b>		<b>15%</b>			
<b>Slovakia 2003</b>			<b>100%</b>		<b>0%</b>		<b>0%</b>	

#### 4.2.5 Prospective adopters, available children and waiting times

The decline in numbers of intercountry adoptions has led to great concern over the growing number of approved applicants who are facing long waiting lists and the implications of competition between receiving states for the dwindling number of children available for international adoption. In France there have been newspaper reports of as many as 25,000 families approved for international adoption, while the number of adoptions per year fell from 4,136 in 2005 to 3,162 in 2007.

Reports from National experts reinforced this. In the Netherlands the number of permits issued to prospective adopters rose from 1,366 in 2003 to 1,546 in 2006, while the number of adoptions fell from 1,154 to 816/778. In Finland the number of applications approved each year rose from 230 in the year 2000 to 373 in 2004 and 359 in 2006, when there were 218 adoptions. In Denmark there were 1,500 prospective adopters waiting for children, while the annual number of adoptions fell from 631 in 2001 to 429 in 2007. The current waiting time is 9-24 months, but this is expected to lengthen.

In Slovenia there are 206 prospective adopters waiting for children – with a waiting time of 5-10 years for domestic adoption and 6 months for Russia and the Ukraine.

The report from Spain shows that the number of approved applicants now far exceeds the number of adoptions each year.

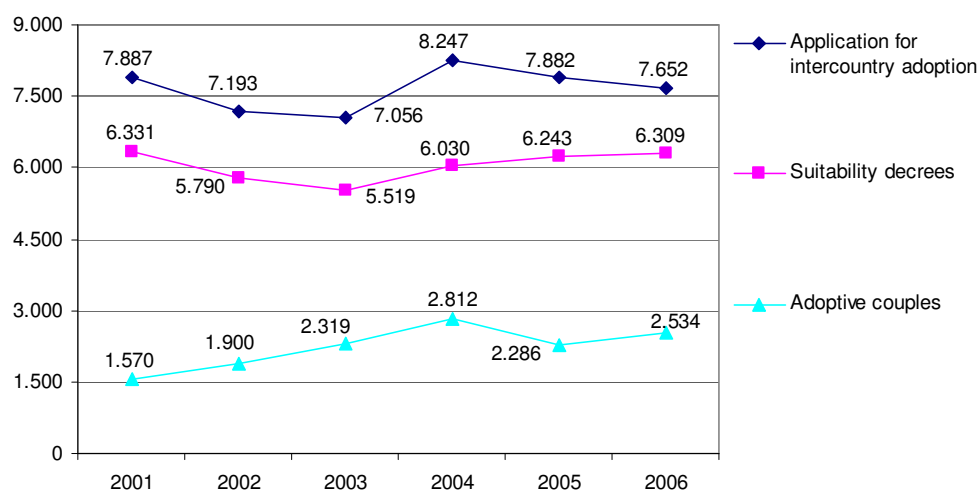
**Table 4-10. Number of applicants approved for intercountry adoption and number of adoptions in Spain 2003-2006**

	1	2	3	
Year	Applicants	Approved	Adoptions	Ratio 2:3
2003	8,811	6,110	3,951	1.5:1
2004	11,054	7,838	5,541	1.4:1
2005	9,878	8,092	5,423	1.5:1
2006	11,843	9,235	4,472	2.1:1

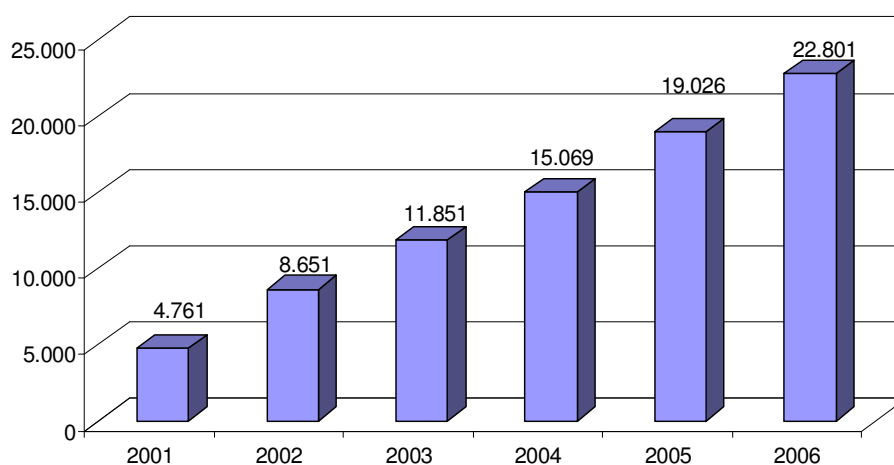
The result is a gradual build-up of approved adopters who now face an ever longer wait for a child and some of whom may never achieve an adoption. There are no data on the characteristics of the waiting adopters but single women now face particular problems with the change of policy in China.

A similar situation is found in Italy – as clearly demonstrated in Figure 4-1 below, which charts the increasing number of applications that do not result in an adoption.

**Figure 4-1. Applications for intercountry adoption, suitability decrees for intercountry adoption and adoptive couples. Italy: years 2001-2006**



**Figure 4-2. Cumulated differences over the years between the number of suitability decrees for intercountry adoption and adoptive couples. Italy: years 2001-2006**





## 5. SUMMARY AND FINAL CONSIDERATIONS

17 of the 27 EU states are primarily **receiving states**; 9 are primarily **states of origin**; and 1, **Portugal**, classifies itself as “**both a receiving state and a state of origin**”. Annual statistics for the 2003-6 period were available for 13 of the receiving states and for Portugal, but data for Austria, Cyprus, Greece and Slovenia were absent or incomplete. Adoption statistics from Germany are considered incomplete as they only record adoptions arranged by agencies. There are no data on private adoptions. Adoption statistics for the UK are also unsatisfactory as they record only approved applications and there are no data on how many of these lead to a completed adoption and entry of a child. The 9 states of origin all provided annual data for at least some years, but the detail varied considerably between the countries.

**EU receiving states accounted for over 40 per cent of total intercountry adoptions worldwide in 2004; in the same year the 9 states of origin provided 3.3 per cent of the children sent for international adoption** (falling to 2 per cent in 2006). All of the states of origin, apart from Estonia, now send children primarily to other EU countries. In contrast, most EU receiving states take children mainly from non-European countries and only Cyprus, Malta and Italy took more than 10 per cent from other EU states.

**There is a wide variation within both groups** in respect of the number of adoptions and standardised rates. **The number of adoptions per population of 100,000 for receiving states in 2004** (Table 2-4) **ranged from 0.6 in Germany and the UK to 13.0 in Spain**. Although the United States still receives most children for intercountry adoption, several EU receiving states – Spain, Denmark, Sweden, Ireland and Malta – had consistently higher rates than the US from 2001 to 2006.

**For sending countries, the number of adoptions per 1,000 live births in 2006** (Table 3-2) **ranged from 0.4 in the Czech Republic to 7.0 in Latvia**. In 2003 – when none had yet acceded to the EU – the range was from 0.2 in the Czech Republic to 15.5 in Bulgaria, when Bulgaria had the highest rate of all countries sending children in that year. There are similar variations in many other aspects of intercountry adoption within the two groups, which are discussed in later chapters.

**The number of intercountry adoptions worldwide grew substantially from the mid-fifties reaching a peak of over 45,000 in 2004. In the next three years the numbers fell to 37,000**, similar to the level in 2001. **Three EU states – France, Spain and Italy – have been in the top 5 receiving states for the last 15 years.**

EU states – especially Spain and Ireland, experienced an above average increase in the number of children received between 1998 and 2004 but most EU states subsequently experienced an above average decline from 2004 to 2007.

**At the turn of the century Romania and Bulgaria**, who acceded to the EU in 2007, **sent more children than any other European country** apart from Russia **but by the time of accession Romania had stopped all overseas adoptions and the annual number of children sent by Bulgaria had fallen** from over 1,000 a year to less than 100 in 2006 and 2007. However, **EU membership seems to have had little impact on the number of children adopted from those countries acceding to the EU in May 2004**: 5 of the 7 “states of origin” acceding in 2004 sent more children in 2007 than in 2003 and in 2006 two states – Latvia (7.0) and Lithuania (4.2) – had higher rates per 1,000 births than any country apart from Guatemala and Russia.

However, most EU sending countries have much lower rates – fewer than 2 per 1,000. The variation in adoption rates noted earlier is linked to variations between states in the proportion of adoptions which are “intercountry”. In Latvia and Lithuania more children are sent abroad for adoption than are adopted domestically. However, **for all other EU sending countries a majority of adoptions were “in-country” in the 2003-06 period**, with the proportion of intercountry adoptions ranging from 3 per cent in the Czech Republic to 25 per cent in Estonia.

This contrasts with many **EU receiving states** where **the number of intercountry adoptions far exceeds the number of children placed domestically** (Table 4-1). **Only in the UK and Germany did domestic adoptions exceed intercountry adoptions**. Meanwhile

the dwindling number of children available for intercountry adoption has led to growing numbers of prospective adopters approved for overseas adoption, who are faced with long waits for a placement.

It was noted above that, although many countries provided excellent statistics, others reported that “private” adoptions were not recorded and four receiving states were unable to provide annual statistics. **The situation with regard to more detailed aspects of adoption was less satisfactory.** Very little information was available in sending or receiving countries on the number of children available for adoption and even less on their characteristics. More information was provided on the number of prospective adoptive parents (see Table 4-3 and Figures 4-1 and 4-2).

Most states of origin provided useful information on the number of domestic adoptions and on the age and sex of children placed for international adoption at least. The limited responses regarding the location of children prior to placement was reassuring in indicating that a majority were in institutions as indicated by the principles of subsidiarity. More information on special needs and sibling placements would have been valuable. There was a lack of information on adoption breakdowns in the responses of both receiving and sending states which seemed to be a matter of concern and confirmed the on-going need for research into outcomes, which is discussed elsewhere in this report.

In conclusion, while the evidence submitted has been helpful in providing an overall picture of international adoption in the EU, it is important that the European Parliament take steps to **encourage all states to keep accurate records of children sent or received with more detail** than is found in most returns. An immediate step could be to **support current efforts by the Hague Convention to develop a standardised pattern of returns from all contracting states**<sup>3</sup>, a plan which will be extended to other states with the co-operation of Unicef.

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<sup>3</sup> See P. Selman (2008), *Intercountry Adoption in contracting States of the 1993 Hague Convention*, Report to the Hague Conference on Private international Law, July 2008.

## CHAPTER II

### THE INTERNATIONAL LEGAL FRAMEWORK: CHILDREN' RIGHTS AND HUMAN RIGHTS CHALLENGING ADOPTION\*

#### 1. INTRODUCTION: THE INTERNATIONAL FRAMEWORK

This chapter is dedicated to analyse the most relevant international and supra-national instruments and provisions regarding adoption and their impact on national contexts. Legislative choices and judicial trends shall be viewed in parallel together with practices followed in the domestic experiences, to verify if and to which extent the declarations of principles, the enactments, interpretations and applications of legal rules are adequately reflected in concrete measures adapted to the actual needs of individual situations.

In the first part of the chapter (paras. 2 and 3) **international instruments** are taken into consideration: a primary consideration shall be given to the **CRC** and the **HCIA**, considered in light of their **impact on national** experiences.

**European sources of law** will be examined soon afterwards. The focus will be put initially on the **activities done within the area of the CoE** (para. 4), **further divided in: recommendations and resolutions** by the Parliamentary Assembly and the Committee of Ministries and **CoE Conventions**. Due to its importance, we will take into consideration separately the **ECtHR's case law** (para. 5).

Finally, in the last part of the chapter (para. 6), the **initiatives of the EU** will be examined.

The analysis should clarify the reciprocal interrelationships between all these levels,, trying to answer – at the same time – to some basic questions:

- (a) about the **ambits** in which there was a deep **incidence** of the decisions taken by the **ECtHR**;
- (b) about the **feasibility** – or rather, the legal foundations – and the **likeliness** of a **European**, more coordinated **approach to intercountry adoption** in the current scenario and in a future one;
- (c) about the role that can be played by **EU Parliament** while taking into consideration both the solutions already followed in the **27 EU countries** – and the reforms that have been consequently proposed – and the activities done and planned at a **EU level** (*i.e.*, EU Commission Reports, Resolutions, Programmes and Communications<sup>1</sup>, EU Council Decisions and Directives)<sup>2</sup>.

Given the vast amount of data considered and the available information, it was thought that **some final Annexes** could be useful. **One of them contains a list of the ECtHR**

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\* This Chapter has been drafted by Raffaella Pregliasco (paras. 1.3, 1.4, 1.5, 1.6, 1.8, 1.10, 2.5), Elena Urso (paras. 1.1, 1.2, 1.7, 1.9, 1.11, 2.1, 2.3, 2.4, 2.6, 2.8, 2.9, 2.10, 3, 3.1, 3.2, 3.3) and Isabelle Lammerant (paras.2.2 and 2.7).

<sup>1</sup> See, *e.g.*, the EU Commission Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – *A special place for children in EU external action* (SEC [2002] 135] 136).

<sup>2</sup> See, among the others, the following EU Council Decisions: the Council Decision 2003/93/EC of December 19<sup>th</sup>, 2002, authorizing the members states, in the interest of the Community, to sign the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children (in O.J., L 048, 21/02/2003 p. 0001-0002); the EU Council and Parliament Decision 779/2007/EC of June 20<sup>th</sup>, 2007 establishing for the period 2007-2013 a specific programme to prevent and combat violence against children young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General Programme Fundamental Rights and Justice (in O.J., L 173, 03/07/2007, p. 0019-0026); the EU Council Decision 2006/619/EC of July 24<sup>th</sup>, 2006 on the conclusion, on behalf of the European Community, of the protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nation Convention against transnational organized crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community (in O.J., L 262, 22/09/2006, p. 0051-0058).

**decisions** in the field in question<sup>3</sup>. **Another** one contains a **brief list of websites and links**, some of which were indicated in the National Reports as well<sup>4</sup>. Although it is not an exhaustive and complete collection, it might be useful to identify further sources. A special Annex is then devoted to a series of **bibliographical basic references**. They are comprehensive of general works devoted to issues of public and private international law and of comparative and multidisciplinary works.

References to these annexes is intended to give the reader more detailed indications about the variety of **sources** that may be **of interest**, especially for the subjects more concerned in this field: **European and national policy makers** as well as **organizations** that represent **civil society**, especially **NGOs** and their **networks** operating in the area of children's rights.

## 2. THE UNITED NATIONS SYSTEM

### 2.1 The United Nation Convention on the Rights of the Child (CRC) and its monitoring

The United Nations (UN) exercised a unique role in the up-rise of the contemporary history of fundamental rights. Among the initiatives taken in the field in question, **the CRC** can be described as one of the most successful international documents, which **founded the basis for the evolution of a children's right culture and gave impulse to further initiatives**, which are extremely important for our purposes.

Indeed, **Art. 20** of the **CRC** imposes onto the UN member states the obligation to give "*special protection and assistance*" to children "*temporarily or permanently deprived*" of their family environment or who, for their own best interests, "*cannot be allowed to remain in that environment*". Alternative care, to be ensured in accordance with their national laws, should be comprehensive, *inter alia*, of foster placement and of adoption or, if necessary, of "*placement in suitable institutions for the care of children*". In considering these solutions, "*due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background*". For this reason, **Art. 21[b]** **confers upon states parties to the CRC also the duty to "recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin"**.

The CRC imposes on state parties which "*recognize and/or permit the system of adoption*" (*i.e.*, not on member states of the UN in which this institution is not admitted, like in almost all Islamic countries) the **duty to guarantee that adoption is made in the best interests of the child**. Furthermore, states parties to the CRC in which adoption is regulated or recognized have the **obligation to ensure that the authorization to adopt a child is granted only by competent authorities**. The latter are charged with the task of determining that adoption is permissible, in compliance with applicable substantive and procedural rules and in light of "*all pertinent and reliable information*". In doing this, they shall act so to make it sure that the child's adoptability has been established after verifying his/her *status*, concerning his/her parents, relatives and legal guardians. Moreover, if informed consent to adoption is a fundamental requirement according to state legislation, the persons who have to give it shall obtain the previous necessary counselling (art. 21, [a]).

As it has been already pointed out, **the CRC states also general principles**. First of all, the **subsidiarity principle** (art. 21, [b]). Indeed, intercountry adoption shall be taken into consideration only when domestic solutions can not be considered adequate to ensure the child a proper family placement. In addition to this, the CRC declares the principle of **equal treatment**, so that both national and intercountry adoptions shall benefit of the same "*safeguards*" (art. 21, [c]) and prohibits any kind of advantages from the placement of a child, (art. 21, [d]), while **favouring the draft of special agreements, among member states**, so

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<sup>3</sup> See Annex 2 – ECtHR case-law.

<sup>4</sup> See Annex 4 – Web sites.

that they can follow specific solutions thanks to Conventions signed on a bilateral or a multilateral basis. The subsequent developments, due mainly to the HCIA provisions, which will be examined further down, made it clear how the collaboration, between sending and receiving countries, is the fundamental premise for developing a trustworthy interstate system, which can enhance the level of children's protection in this area.

**Every European Union member state is party to the CRC. However**, while looking at each national experience and comparing the measures adopted in order to respect its principles, **several differences appear**. Generally speaking, the impact of the CRC was noteworthy, but domestic solutions often present their own characteristics. In some cases, they did not completely reach the aims pursued by this important and ambitious UN "programme". The analysis made by international subjects **revealed how decisive is the phase of implementation of the fundamental principles** proclaimed by the CRC is.

The **Committee on the Rights of the Child** is the body of independent experts that monitors implementation of the CRC by its State parties. Its observations and recommendations to States shall be taken in consideration in our analysis in conjunction with some positions expressed by **UNICEF** in the context of the surveys it carries out. The joint analysis of these two sources can give us a deeper understanding of the implications of Article 21. They revealed the gaps that still have to be filled in by national actors, in adapting legislative provisions and domestic practices to the fundamental obligations and standards set up by the CRC. Without doubts, there have been **achievements and failures** in the two past decades following the signature of this important Convention. Indeed, since November 20<sup>th</sup>, 1989, many positive results were obtained. Most ratifying states made great efforts to adapt their social and economic measures to eliminate and reduce some weaknesses in their internal legal systems, which blocked innovatory plans or lowered their rhythm.

After having put into evidence the most important principles enshrined in the CRC, we will now move to examine the monitoring process of the Convention, by taking into consideration both the UNICEF and CRC Committee's contribution.

### *2.1.1 The role of UNICEF in monitoring the application of the CRC*

As regards UNICEF's contribution in this respect, it seems important to emphasize **its position on intercountry adoption**, which was synthesized in a brief document, that can be read in its official website<sup>5</sup>. Once evaluated the results of enquiries received from would-be adopters, UNICEF's auspice is that national authorities carry out all the necessary activities to respect both adoptive families' and children's rights actually, while waiting for the full implementation of the HCIA.

Another controversial point was linked to the uncertain interpretation of arts. 20 and 21 of the CRC in the past with regard to **institutional children care**, or, more precisely, as far as its position in the hierarchy of measures to help children without a suitable family of origin is concerned, in light of the meaning of the principle of subsidiarity, as defined by the HCIA.

It is not no longer possible to cast doubts on this point. The **UNICEF's position** does not leave room for doubting about the complete coincidence between the visions expressed by these two international conventions: *"For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care which should be used only as a last resort and as a temporary measure. Inter-country adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family in their countries of origin, it may be indeed be the best solution"*.

The awareness that **abuses** can (and often do) occur, sometimes as a consequence of deplorable practices<sup>6</sup>, and in other occasions as the results of tragic forms of real trafficking of

<sup>5</sup> This text is available at the following website: [http://www.unicef.org/media/media\\_41918.html](http://www.unicef.org/media/media_41918.html)

<sup>6</sup> E.g., the "transformations", especially in past years, of non adoptive family placements – like those created by the Islamic *kafalah* – into full adoptions or, on the contrary, the trend to impose too rigid limitations in the recognition of their effects, in some EU members states. It is worth mentioning on these issues the data collected and commented about the French experience in this field by the "*Colombani Report*". See J.M. Colombani, *Rapport sur l'adoption*, La Documentation française, Paris, 2008, at p.107 ff. The wide debate that took place in France was not isolated, however. The problems caused by solutions based on the concept of "personal status" or

children, has led UNICEF to reaffirm one of the core points contained in the Preamble of the HCIA. Indeed, “the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children”. For the establishment of the necessary “safeguards to ensure that intercountry adoptions take place” a “system of co-operation amongst Contracting States” was deemed to be decisive, to “prevent the abduction, the sale of, or traffic in children”. Reciprocal trust, indispensable to “secure the recognition in Contracting States of adoptions made in accordance with the Convention” presupposes a common concern and involvement in concrete actions aimed at combating “sale and abduction of children, coercion of parents and bribery”<sup>7</sup>.

The seriousness of such situations suggests the adoption of strong **preventive measures** to avoid the rise of a “children’s market”. Moreover, in cases of **war** or **natural disasters** extremely severe violations of children’s rights occurred, from time to time. Of course, there are objective difficulties in finding a suitable family placement for a child in his/her home-country, in the (often only temporary) absence of his/her family environment due to the presence of a conflict or of tragic conditions, independently of the underlying reasons. UNICEF’s document rightly clarified this aspect too, in adhering to the position expressed by the International Confederation of the Red Cross and NGOs. Moreover, it pointed out how the substantial growth in the number of families from wealthy countries desiring to adopt a child abroad determined an increase in the attempts to bypass strict control in the receiving states. This was possible because the “lack of regulation and oversight” favoured a rush of dishonest subjects to set up an “industry around adoption” in certain sending countries. Prospective adopters are victims (but also, in some cases, involuntary “co-authors”) of such profit-centred illegal mechanisms, given the frequent attempts to find easy ways to obtain a child, especially when the rigid application of their national legislations caused excessive delays and costs.

UNICEF supported the international legislation set up by the HCIA and applauded the fact that the number of its ratifications became higher and higher. It is important to stress again its **role of actualization of the CRC purposes**, in taking the necessary steps to protect children from illegal and detrimental practices, and the usefulness of its action in prompting a vision based on a deep equalitarian aspiration.

In summary, it can be said that through the *Implementation Handbook for the Convention on the Rights of the Child* UNICEF underlined the key aspects for an effective respect of Article 21 CRC and for the full implementation of other important conventional principles. It is worth remembering that the need of all children for a family and for a sense of security and permanency in their relationship is recognized in the CRC’s Preamble. However the CRC remained neutral regarding the desirability of domestic and intercountry adoption, although adoption is mentioned in Article 20 relating to child care as one of the possible forms of alternative care. The assumption in the CRC – because of its universal origin in a context where, for example, Islam-based systems do not accept the institution of adoption – is that the children’s psychological need for permanency and individual attachment can be met

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on the child’s birth-place – in order to distinguish between adoptable and non adoptable children – were object of an intense discussion also in other experiences, where this kind of distinction does not exist, albeit *ad hoc* solutions were followed up to now to solve the serious problems created by such foreign “non adoptive placements” (*i.e.*, the application in cases of children placed in *kafalah* in their country of origin, after their arrival in the EU, of the same rules concerning simple adoption, or the recognition of limited effects to *kafalah*, in order to admit family reunion only). Sometimes, it happened – like in Italy, in the past – that these children were declared in “state of abandonment”, notwithstanding the fact that they were placed in foster family care, in compliance with their home-country’s laws (and to the rigid prohibition of adoption followed in Muslim countries). Despite the fact that they had developed strict bond of affections with their *kafil*, a completely new procedure started to place them in an adoptive family. For the necessary references, see in the Bibliography the following contributions: M.C. Fobets, J.Y. Carlier (2005); F. Monéger (2003); F. Boulanger (2001); I. Copart (2001); P. Gannagé (2000); Y. Favier (1998); D. Pearl, W. Menski (1998); H. Muir Watt (1994), (1995), (1997), (1998), (1999), (2003); E. Possoin-Drocourt (1990), (1993), (1995), (1999); M. Revillard (1999); S. Cossu (2007); L. Miazzi (2006); J. Long (2003), (2007a), (2007b); Orlandi (2005); A. Vanza, L. Miazzi, (2004).

<sup>7</sup> See the fourth para. of the already quoted document at: [http://www.unicef.org/media/media\\_41918.html](http://www.unicef.org/media/media_41918.html)

without the formality of adoption. Nonetheless, it is also clear that where adoption is permitted it should be properly regulated by the state to safeguard children's rights.

However, as it has been already stressed, **UNICEF clearly states the principle of subsidiarity<sup>8</sup>** and that in the adoption procedure the **best interests of the child** must be **“the paramount” consideration** rather than simply “a primary” consideration. The paramountcy principle should be clearly stated in law and, in all countries where adoption is permitted, it should be regulated by law both as regards domestic and intercountry adoption.

As far as the reference to **“competent authorities”** is concerned, it must be understood as including the judicial and professional authorities charged with vetting the viability of the placement in terms of the best interests of the child, and with ensuring that proper consents have been obtained and all relevant information considered. As regards the requirement of the **determination** on the basis of all pertinent and reliable information, that the adoption is permissible **in view of the child's status concerning parents, relatives and legal guardians** it is clear that an adoption can only take place if parents are unwilling or are deemed by judicial process to be unable to discharge this responsibility and any legislation that permits adoptions under less stringent conditions would probably amount to a breach of both children's and parents' rights under the Convention. It is important to focus our attention again on the fact that the CRC further specifies the requirement of **informed consent** to adoption because of cases in which children have been wrongfully removed from their parents. **All these safeguards do however mean that the “paramountcy” of children's best interests in adoption is in one sense circumscribed by the legal necessities of satisfying legal grounds** and gaining necessary consents. If the procedures are not followed then an adoption must not proceed, regardless of the child's best interests.

In the concept of the child's best interests the principle of the **consideration of the child's views should also be considered**. Although art. 21 does not explicitly mention this point in the requirements relating to consent, a proper consideration of it is certainly to be regarded as implicit and in accordance with art. 12 of the CRC.

Moreover, given that the wording of art. 21, related to **intercountry adoption**, clearly indicates that this is to be considered as a **solution of last resort (subsidiarity principle)**, member states to the CRC have a clear obligation to take active measures to ensure that all possible efforts have been made to provide suitable care for the child in his or her own family and, if not possible, country of origin. It seems important to remember that this principle is in accordance with other provisions embodied in the CRC, and, namely:

1. with art. 20(3) relating to care, requiring due regard to be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background;

2. with art. 7, upholding the child's rights to know and be cared for by parents, whenever possible;

3. and with art. 8, the child's right to preserve identity.

Particularly, UNICEF – deeply aware of the existence of situations in which children were adopted without the necessary previous ascertainment of their condition of adoptability – made it clear that *“the case of children separated from their parents and communities during war or natural disasters merits special mention. It cannot be assumed that such children have neither living parents nor relatives. [...] family tracing should be the priority”<sup>9</sup>*.

Respect for these principle and the regulation of intercountry adoption is crucial in order to **prevent an improper use** of this institute, such as when it is arranged on a commercial basis or by illicit means or even in situations of grave violations of children rights, such as trafficking. This has also been recognized in the **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and**

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<sup>8</sup> See UNICEF's position on Inter-country adoption: *“For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care which should be used only as a last resort and as a temporary measure”*, in [http://www.unicef.org/media/media\\_41918.html](http://www.unicef.org/media/media_41918.html).

<sup>9</sup> UNICEF's position on Inter-country adoption: [http://www.unicef.org/media/media\\_41918.html](http://www.unicef.org/media/media_41918.html).

**child pornography**<sup>10</sup> that requires states to take measures to criminalize, as an extraditable offence, any sort of trafficking in children, including: improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable internal and international legal instruments on adoption.

Another aspect to be considered is related to the previously mentioned provision of the CRC, which states that intercountry adoption should not result in **improper financial gain** (art. 21 [d]). Indeed, while payments by prospective adoptive parents may be made in good faith, a system that puts “a price on a child’s head” is likely to encourage criminality, bribery, sale and abduction of children, coercion of parents of origin and exploitation. Moreover, it affects the humanity of children. On this point it is necessary to consider that also art. 35 of the CRC requires states parties to take measures to prevent the sale of children for any purpose.

Finally, it is important to clarify that the interpretation of art. 21 of the CRC, which specifies that the child concerned by intercountry adoption enjoys **safeguards and standards equivalent to those existing in the case of national adoption**, implies that every intercountry adoption must be authorized as being in the best interests of the child by competent authorities of the child’s state, on the basis of proper investigation and information and after proper consents were obtained (with counselling, if necessary). In this way, any discrimination can be avoided. Indeed, the **anti-discrimination principle – stated by art. 2 of the CRC** – requires also that every child concerned by domestic adoption must benefit from the same level of safeguards and standards as established for intercountry adoption.

### *2.1.2 The role of the Committee on the Rights of the Child and its Concluding Observations*

In their competency to regularly assess the situation of children’s rights in the various states parties to the Convention on the Rights of the Child, notably the European Union member states, the UN Committee on the Rights of the Child addressed some **issues relating to the implementation of arts. 20 (child care) and 21 (adoption)**<sup>11</sup>.

It complained about the **unjustified diversities between treatments and procedures applicable only to intercountry adoption and not also to domestic ones**. The CRC Committee also criticized **the absence of specific bodies – legally “accredited” to operate in foreign countries** – responsible in dealing with prospective adopters’ applications and the **high costs and the long delays in the preparatory activities** aimed at completing the necessary procedural steps to adopt a child abroad, as well as the lack of expertise in the follow-up of adopted children and of due attention as far as post-adoption services are concerned<sup>12</sup>.

The Committee has very frequently focused on the issue of the **alternative care for children deprived of their family environment** addressing it in its Concluding Observations to EU member states. It has expressed a deep concern, for instance, against the **long permanence in institutional structures** of children whose full adoptability might have been declared without undue delay.

It has positively appreciated the adoption of specific laws or plans of action to care for the needs of children deprived of their family environment and for expansion of the foster care system. However, it has frequently expressed its concern at large about the increasing number of children placed in institutions or in out-of-home care. The Committee noted that,

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<sup>10</sup> <http://www2.ohchr.org/english/law/crc-sale.htm>. The following countries have ratified the Protocol: Austria (2004), Belgium (2006), Bulgaria (2002), Cyprus (2006), Denmark (2003), Estonia (2004), France (2003), Greece (2008), Italy (2002), Latvia (2006), Lithuania (2004), Netherlands (2005), Poland (2005), Portugal (2003), Romania (2001), Slovakia (2004), Slovenia (2004), Spain (2001), Sweden (2007). Among these countries, the following ones have received concluding observations from the Committee that regard adoption: Austria (2008), Bulgaria (2007), France (2007).

<sup>11</sup> The Concluding Observations relating to each state can be found on the website of the Office of the United Nations High Commissioner for Human Rights: <http://www2.ohchr.org/english/bodies/crc/index.htm>

<sup>12</sup> In the impossibility to continue listing both positive and negative points stressed by the CRC Committee in a number of Observations to the National Reports, we suggest searching for other interesting information in some NGO’s report (i.e. Save the Children and others)



among these children, the percentage of children coming from abroad and belonging to minority ethnic groups was higher than that of nationals, as well as the fact that many of these children come from vulnerable or poor families.

As regards **residential facilities** the Committee has requested states to take various steps in order to improve their legislative systems as well as practices actually followed. It recommended to reinforce their efforts to prevent and reduce the recourse to institutionalisation<sup>13</sup>, to ensure that children are placed in residence care only as a measure of last resort<sup>14</sup>, and for the shortest time possible<sup>15</sup>; that the conditions of residential facilities are improved<sup>16</sup> and that institutionalised children live in small groups and are individually cared for<sup>17</sup>.

As regards **foster care**, the Committee has often proposed to increase its availability, especially of family-type foster homes and of other family-based alternative care measures, by providing greater financial assistance and increasing the counselling and support mechanisms for foster families.

The Committee has further focused its attention on the issue of the **periodic review of placements** in accordance with art. 25 of the CRC that states that children placed by competent authorities for the purposes of care, protection or treatment of their physical or mental health have the right to a periodic review of the treatment provided to them and of all other circumstances relevant to their placement. Continuous monitoring has indeed proved crucial in assessing the decisions taken on the basis of the principle of the child's best interests and in preventing abuses. The Committee, in certain cases, has therefore recommended to undertake a periodic review of placement and to guarantee the **contact between the children placed in out-of-home care and their parents**.

Another issue to which the Committee has paid special attention is that of **participation by children** in the process of their placement in alternative care, by recommending that states take into account children's views in any decision regarding their placement, as well as promoting their active participation in the life and organization of the institutes.

Finally, in a few cases the Committee has recommended states to provide adequate follow-up and reintegration support and services for children leaving institutional care<sup>18</sup> and to invest in the training of social workers<sup>19</sup>.

As regards **adoption**, the Committee has focused its attention on the legislative relevant procedural guarantees, especially as determined by the **HCIA**. The Committee has paid much attention to the application of the Hague Convention by welcoming its **ratification**<sup>20</sup>. On the other hand, it has recommended that states that haven't yet complied, should ratify the Hague Convention or ensure that their legislations are consistent with its principle<sup>21</sup>. Furthermore, the Committee has requested some receiving states to promote ratification of the Hague Convention or to conclude bilateral agreements with the states of origin of the children adopted by the residents of that country<sup>22</sup>. The Committee has further recommended that **sufficient human and other resources** are made available by states for the effective implementation and monitoring of the legislation<sup>23</sup>. Finally, in a few cases the Committee has addressed the issue of **domestic adoption**<sup>24</sup>, by requesting states to harmonize proceedings and costs of domestic adoption among authorized agencies throughout the state party, in order

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<sup>13</sup> Greece (2002), Hungary (2006), Portugal (2001).

<sup>14</sup> Hungary (2006), Lithuania (2006), Croatia (2004), Romania (2003).

<sup>15</sup> Czech Republic (2003), Lithuania (2006), Romania (2003).

<sup>16</sup> Czech Republic (2003), Hungary (2006), Lithuania (2006), Romania (2003).

<sup>17</sup> Finland (2005), Lithuania (2005).

<sup>18</sup> Czech Republic (2003), Lithuania (2006).

<sup>19</sup> Hungary (2006), Lithuania (2006), Poland (2002), Romania (2003).

<sup>20</sup> Cyprus (2003), Hungary (2006), Italy (2003).

<sup>21</sup> Hungary (2006), Latvia (2006), Malta (2000), Slovakia (2007), Slovenia (2004), Croatia (2004), Romania (2003).

<sup>22</sup> Germany (2004), Italy (2003).

<sup>23</sup> France (2004), Hungary (2006), Romania (2003).

<sup>24</sup> France (2004), Italy (2003), Croatia (2004), Romania (2003).

to ensure that it is carried out in full compliance with the best interests of the child and the appropriate legal guarantees and procedures spelled out in the Convention and requesting that the states encourage the practice of national adoption, so that the recourse to inter-country adoption becomes a measure of last resort.

### **3. THE KEY PRINCIPLES OF THE HAGUE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION**

**The Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption (HCIA) is the second universal legal instrument pertinent to adoption<sup>25</sup>**, whose fundamental aim consists in implementing art. 21 of CRC. It is the principal international treaty regulating intercountry adoption and was specifically drafted to set detailed and legally binding international standards defining an agreed system of supervision and channels of communication and effective relationships between the authorities in the Country of origin and the state receiving the adopted child. The first object of the Convention, as set out in art. 1, is *“to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized by international law”*.

This regulatory instrument can be particularly effective, as it is shared both by the child’s Country of origin and of destination, with all the unquestionable advantages deriving from the recognition of a set of shared principles and of common, transparent procedures.

**The HCIA has been ratified by the great part of EU member states, as well as current and prospective accession countries:** Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Romania and Turkey.

**Some principles enhanced by the Hague Convention are particularly relevant for a clearer vision of the issues examined** herein, also in a European perspective:

- **The principle of co-operation between Central Authorities.** Indeed, according to art. 7(1) of the HCIA, Central Authorities shall co-operate with each other in view to better protect children, establishing a proper communication between them and clearly identifying the competent bodies involved in the adoption proceedings.
- **The criterion of habitual residence of the child and of the adopters.** This criterion establishes that, **in the adoption proceedings, both the child and the adopters have to follow the rules applicable in the country where they temporarily reside**, even if they have different citizenship.
- **The subsidiarity principle**, which states that **intercountry adoption is one of a range of care options which may be open to children in need of a family**. For this reason, when it is not possible for the child to be raised by his/her family of origin, other forms of permanent family care in the country of origin should be considered, before taking in consideration an adoption proceeding.
- **The principle of non-discrimination**, which ensures that **the child involved in an adoption proceeding enjoys safeguards and standards equivalent to those operating in the case of national adoption**.
- The principle according to which the **adoption declared in accordance with the HCIC**, in a contracting states (the sending country), is **recognized by operation of law** in the other contracting states (the receiving country).
- The principle that requires the **matching with a suitable family**.
- The need that the **proper consents to adoption** are obtained, if requested by the applicable law.
- The declaration of the **illegitimacy of improper financial gains** derived from activities related to an intercountry adoption.
- The introduction of a **system of accreditation** of the agencies involved in intercountry adoption procedures.

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<sup>25</sup> [http://www.hcch.net/index\\_en.php?act=text.display&tid=45](http://www.hcch.net/index_en.php?act=text.display&tid=45).

- The importance of **preserving information** on the child’s history before granting an adoption.

The vast legal literature on these principles can give a general confirmation of **their outstanding impact on national systems, as well as on international relationships**, not only between member states to the HCIA, but with regard to non-member states as well. Undoubtedly, a radical change of perspective occurred when attempting to create renewed solutions aimed at ensuring the respect of these principles. **However**, at the same time, it is clear that **further efforts have to be made, given the lack of a fully harmonized vision**, shared by all national legislators and authorities. In-depth studies on these questions have been carried out by experts of public and private international law, as well as of child and family law. In view of the need for a concise vision, the necessary references to some of these fundamental contributions are not expressly quoted, being referred to in the Bibliography. Thus, it seems proper to continue to outline the basic features of the legal sources in this area only, while paying the appropriate attention to the difficulties arisen in the implementation stage of the HCIA.

### **3.1 The role played by the Hague Conference on Private International Law and the importance of its experience for “intra-European” adoptions**

It will now be possible to propose a brief **analysis of the most important aspects concerning the implementation of the HCIA** and its operation **in light** of the observations contained in **the *Guide to good practice***<sup>26</sup>, issued by the **Permanent Bureau of Hague Conference on Private International Law** in September 2008 and aimed at favouring a unified and fuller implementation of the Convention.

The publication of the **HGuide** follows a constant monitoring activity, testified by other documents delivered before, devoted to the initiatives of the HCPIL on children’s protection<sup>27</sup>. However, the additional work recently done goes parallel with the intensified efforts to **deepen the knowledge and the capabilities necessary to put in action a stronger collaboration also between states parties to the HCIA** (that have already signed and ratified it or that have adhered or made accession to it) and **those that can be defined as “non conventional states”**. Indeed, there are good reasons to believe that some of them will implement it in a near future. The main objective of the HCPIL – in publishing the HGuide – was evidently that of favouring the effectiveness of implementation plans.

**The Guide is addressed to policy makers** involved in short term and long term planning to implement the Convention in their country, as well as lawyers, administrators, caseworkers and other professionals needing guidance on some practical or legal aspects of implementing the Convention. Accredited bodies and approved (non-accredited) persons will also be able to use the Guide to assist them in performing their functions under the Convention.

The Guide tries to emphasise the **shared responsibility of receiving states and states of origin to develop and maintain ethical intercountry adoption practices**. At the heart of the matter are the child’s best interests, which must be the fundamental principle that supports the development of a national child care and protection system as well as an ethical, child-centred approach to intercountry adoption

Concerning the Guide’s text and formulation, the fact that a **Glossary** was inserted before the Introduction stresses the shared **need to agree on the meaning of basic concepts that can often be interpreted in rather different ways**. Thus, a detailed specification is referred to a core notion: the **“best interests of the child”**. Indeed, the HCIA does not contain a definition of this expression, given the variety of elements that have to be considered in individual cases. The HGuide tries to **exemplify** them, while remembering that, according to the Explanatory Report to the HCIA, a **strict interpretation** of this term **has to be refused**

<sup>26</sup> An electronic version of the guide can be downloaded at: [http://www.hcch.net/upload/adoguide\\_e.pdf](http://www.hcch.net/upload/adoguide_e.pdf)

<sup>27</sup> See *Protecting children across international frontiers-The Hague Children’s Conventions*, HCCH Publications, The Hague, 2005.

because it “*might render impossible some good adoptions*”. Thus, “*to avoid such undesirable results, it should be construed as meaning the ‘real’ or ‘true’ interests of the child*”.

To this purpose, “a number of essential factors are referred to in the Convention and must be included in any consideration of what is the best interests of a child who is the subject of an intercountry adoption. These factors, taken from the Convention, include, but are not limited to: efforts to maintain or reintegrate the child in his/her birth family, a consideration of national solutions first (implementing the principle of subsidiarity); ensuring that the child is adoptable, in particular by establishing that necessary consents were obtained; preserving information about the child and his/her parents, evaluating thoroughly the safeguards where necessary to meet local conditions; providing professional services”.

It is interesting now to focus on **other points that were properly emphasized by the HGuide**. They are related to the measures to be taken in order to fully respect the **subsidiarity principle**. In this regard, it is worthwhile mentioning again how some **practical issues** are of vital importance in order to ensure that the intercountry adoption process is really made in conformity with the fundamental aims of the HCIA. Before deciding if a child is adoptable or not, the competent authorities of his/her country of origin, in charge of carrying out protective interventions, shall give priority to all solutions that favour **temporary care**, with a view to preserving the family unit. Only when this is not possible, given the serious and permanent nature of the family problems and deficiencies, **national adoption** or **permanent family care** can be taken into consideration. **Intercountry adoption shall come later, but before institutional care in internal structures, which is a last resort measure**. Evidently, such a sequence implies that economic and social resources are destined to fulfil the objective of an effective child centred protective system, at a national level. All solutions that are apt to respect the child’s right to have a family must be given priority. Thus, intercountry adoption is an adequate solution only when it is in the child’s best interests, given the absence of a family placement in his/her country of origin.

The formal declaration of these important principles is not sufficient, evidently, to identify the concrete actions to be done, nor to give a precise definition of the functions to be performed. The HCPIL was aware, thirteen years after the entry into force of the HCIA at an international level (1995), of the usefulness of standard forms and explanatory schemes. Therefore, the **final part of the HGuide contains some Annexes that sketch extremely simplified models to be followed in starting an implementation plan**, after proposing detailed pathways to signature, ratification and accession, devoted to explain some points that are often unclear (*e.g.*, the possibility for a **state** to become **part** to the **HCIA** without being a **member of the HCPIL**; the different methods that can be adopted to bring into force the HCIA into the domestic order – *i.e.*, through **automatic incorporation**, in states in which the “*monist approach*” is adopted, or by the enactment of an incorporation **statute** or the **transformation** by state legislation, in those that accept the “*dualist approach*”)<sup>28</sup>.

Furthermore, some practical examples were listed too, to suggest concrete solutions for a well-constructed implementation procedure. Most of the situations examined hereby deal with problems that will be considered further down, in the final part of this Report. Indeed, it will be necessary to consider again all these issues in light of the overall scenario described by the EU national observers. **In the HGuide adequate attention has been already devoted, however, to some urgent and complex difficulties to overcome**, due to situations in which several causes intervened in determining the children’s exposition to the risk of being abused (*e.g.*, malnutrition due to starvation or to their abandonment as a consequence of their parents’ death because of civil wars, ethnic conflicts, epidemic diseases, natural disasters)<sup>29</sup>.

To cope with these problems, specific Recommendations<sup>30</sup> and Questionnaires<sup>31</sup>, for both sending and receiving countries, were drafted. They were followed by detailed

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<sup>28</sup> See the HGuide, Annex 4, paras. 1.4-1.5.3.

<sup>29</sup> See, on these issues, the Conclusions of the Report.

<sup>30</sup> See the *Hague Recommendation on Refugee Children* (HGuide, Annex 5).

<sup>31</sup> See the *Organigram* (HGuide, Annex 6).

recommended model forms (*i.e.*, of the certificate of conformity of intercountry adoption to the HCIA, of the child’s medical report, and of further documentation).

The **in-depth analysis and the suggestions made by the HCPIL** in this recent publication can be viewed as **fundamental milestones, on which a coordinated structure can be** built with a view to specifying the legal marking traits referred to the EU context, while being aware, however, of the trans-national dimension of the social phenomenon at issue.

As we have seen, the Guide establishes some specific recommendations in many fields related to adoption proceedings that are quite relevant in the context of our research. It seems therefore worthwhile **emphasizing some of its central statements, given their absolute importance in the perspective of the rise of a “EU approach”**.

- (a) First, the Guide focuses on **co-operation** between competent authorities in each contracting state and between central authorities in the different countries throughout every step of the adoption proceeding.
- (b) It also stresses the **importance of defining standards and criteria for the agencies** involved in the adoption proceedings<sup>32</sup>.
- (c) In addition to this, the Guide specifies a number of **measures intended to support** the implementation of the **best interests principle**. As an example, every contracting country must ensure that the child to be adopted is genuinely adoptable: for this reason both the Convention and the Guide establishes a number of obligations and requirements<sup>33</sup>. Even the matching with a suitable family is intended to meet the best interests of the child and should be done professionally.
- (d) Furthermore, **prospective adoptive parents** should be thoroughly **assessed as suitable** to adopt a child, particularly if the child has special needs<sup>34</sup>.
- (e) Moreover, the Guide establishes many **safeguards to prevent the abduction, sale and trafficking** in children for adoption. In order to accomplish this purpose, some practical measures are determined: first of all, it underlines the importance of maintaining cost transparency and of monitoring the fees paid for an adoption.
- (f) Then, **effective regulation and supervision** of bodies and persons must be guaranteed and penalties should be legally enforced.
- (g) Finally, **post-adoption survey** of adoptive parents can be useful for recovering information about any possible abuse occurred in the process, unauthorized and unreasonable payments and any other unethical practice<sup>35</sup>.

#### **4. THE ROLE OF THE CoE ON CHILDREN’S RIGHTS AND ITS INCIDENCE ON THE DEVELOPMENT OF A COMMON “PAN-EUROPEAN” FRAMEWORK**

An overview of the initiatives promoted by the organs of the CoE can be helpful in shedding light on the relevance of their action to promote a widely shared European approach to the issues in question.

**The fundamental right perspective, based on civil and political liberties, has undoubtedly characterized all the activities of the CoE.** Not only the human rights and freedom listed in the ECHR, but **also social and economic rights were duly considered**, in this context. A clear example of this is the enactment of the European Social Charter (ETS

<sup>32</sup> See Part II, Chapter I, para. 4.

<sup>33</sup> The procedure for establishing adoptability is discussed further on in Part II, Chapter I, para. 8.

<sup>34</sup> The procedure of matching is discussed in greater detail in Part II, Chapter II, para. 5.

<sup>35</sup> This issue is analyzed in Part II, Chapter II, para. 9.

053), adopted in 1961, and revised in 1996<sup>36</sup>. In the field of children's rights, where these two perspectives are necessarily interconnected, several Conventions were drafted<sup>37</sup>, but the deep interest in this area was shown through other documents as well. For instance, a Recommendation was issued on a European Charter on the Rights of the Child<sup>38</sup>, another one on child welfare<sup>39</sup>, and others, respectively, on family policy<sup>40</sup>, on the rights of the children<sup>41</sup>, and others on a European strategy for children<sup>42</sup> and on the abuse and neglect of children<sup>43</sup>.

#### 4.1 The most important CoE Recommendations and Resolutions

The more recently adopted **Parliamentary Assembly's Recommendations** deserve to be all mentioned together, to give an idea of their extended scope. Later, some of them will be look at in further details.

- Recommendation no. 1433 (2000) on international adoption: respecting children's rights;
- Recommendations no. 1601 (2003) and no. 1698 (2005) about the rights of children in institutions;
- Resolution no. 1530 (2007) and Recommendation no. 1778 (2007), both on child victims: stamping out all forms of violence, exploitation and abuse.
- Recommendation no. 1828 (2008) on the disappearance of newborn babies for illegal adoption in Europe
- Recommendation no. 1844 (2008) on refreshing the youth agenda of the Council of Europe.

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<sup>36</sup> The text is available in the following web site: [http://www.coe.int/t/dghl/monitoring/socialcharter/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp). In brief, the contracting parties accepted that the aim of their policy "to be pursued by all appropriate means, both national and international in character" is the attainment of conditions in which social rights and principles are effectively realised. Not only individual liberties and workers' social rights were considered (*i.e.*, the opportunity to work and to take on an occupation freely, the workers' rights to just conditions of work, to safe and healthy working conditions, to fair remuneration sufficient for a decent standard of living for themselves and their families, to freedom of association in national or international organisations for the protection of their economic and social interests, to bargain collectively, to social security, appropriate facilities for vocational guidance, to a special protection in their work in cases of maternity, independently of marital *status* and family relations, etc.), but the ESC also states that "children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed", that "the family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development", that "everyone" has the right to benefit from social welfare services and that, in cases of inadequate resources, the right to social and medical assistance has to be recognized. Art 1 finally states that "the nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons" and that "migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party". For our purposes, it is important to remember that the revised ESC entered into force in 1999 and that its 1995 Additional Protocol introduced a mechanism of collective complaints, in force since 1998. The European Committee of Social Rights (ECSR) – made of fifteen members elected by the CoE Committee – has both the task of examining the complaints presented against breaches of the ESC, in order to declare or not their admissibility, and the duty to monitor the implementation activity of states parties, by supervising the reports that they deliver on a yearly basis. For up-to-date information about the ECSR, see the following website: <http://hudoc.esc.coe.int/esc2008/query.asp?action=query&timestamp=56965.73>

<sup>37</sup> They were already mentioned from the start (see the *Introduction*): in light of the principles enshrined by the Convention on human rights and fundamental freedoms, signed in Rome on November 1950, the Convention on the adoption of children (1967) and the 2008 revised adoption Convention were drafted, the Convention on the legal status of children born out of wedlock (1975), the Convention on custody of children (1980), the Convention on the exercise of children's rights (1996), the Convention concerning children's contacts (2003) and the Convention on children's protection against exploitation and sexual abuses (2007).

<sup>38</sup> No. 847 (1979).

<sup>39</sup> No. 1071 (1988).

<sup>40</sup> No. 1074 (1988).

<sup>41</sup> No. 1121 (1990).

<sup>42</sup> No. 1286 (1996).

<sup>43</sup> No. 1371 (1998).

A unitary tread runs through all these Recommendations. Starting from the first ones, a far-sighted programme immediately appears. As soon as their content is tested with the legal instruments adopted later, it is possible to identify **their landmark role in promoting common European positions**, in which co-ordination with other international (also non European) organizations has proved to be decisive<sup>44</sup>. Ensuring a “*systematic*” and “*full study*” on the rights of the children was considered one of the core objectives to be pursued. Not only the high competence of experts, but also their independence was considered, in this regard<sup>45</sup>. **The drafting of specific European Conventions on children’s rights** can be viewed as the concretization of the project to **draw up appropriate legal instruments of the CoE in order to complete the CRC, so that it embodies “not only the civil and political rights of children but also their economic and social rights”**<sup>46</sup>.

The extension in the number of states members to the CoE led to give prominence to a stricter intergovernmental co-operation in the **elaboration of social and family policies favourable for children**, in order to keep their family ties, so as to prevent abandonment, thanks to solutions alternative to institutionalization, in their state of origin (*i.e.*, foster family care, family-community and domestic adoption). For cases of **adoptive failures**, the Parliamentary Assembly of the CoE proposed the revising the European Convention on nationality of November 6<sup>th</sup>, 1997, to make it easier for the child to acquire the nationality of the receiving state<sup>47</sup>. Another important profile on which proper attention was devoted has been the **condition of institutionalized children**<sup>48</sup>. This problem, despite it being “*common to all member states*” of the CoE, so that no one “*can claim to be beyond criticism in this field*”, was thought objectively more serious in some countries, where “*the situation of such children is still particularly disturbing and necessitates further substantial progress*”<sup>49</sup>. The fact that “*victims of such practices are very often children from ethnic minorities*” or “*particularly those with disabilities*” is due to well-known economic difficulties, frequently caused by “*the absence or inadequacy of social benefits and in changing people’s attitudes*”, especially “*in the recent post-communist democracies*”<sup>50</sup>. The Parliamentary Assembly of the CoE underlined this point also in light of the accession to the EU of new member states, while expressing, however, a deep concern about **children living in institutions in other European countries too, external to the Union**. Undoubtedly, their situation is no longer “*a matter for the social welfare field and has now become first and foremost a human rights issue which gives the Council of Europe an important role in this respect*”<sup>51</sup>. Various actions can improve this worrying situation: special intergovernmental programmes tailored for these children’s condition, specific kind of alternative measures, as well as supervision and supporting activities, sponsorship given by public and private organizations (EU, international institutions, NGOs) to make sure that the use of resources is respectful of the aims pursued by the plans in question<sup>52</sup>.

A deep awareness was shown by the Parliamentary Assembly of the CoE about the **need of a unitary space, in which applicable rules aimed at protecting children rights are unified**, in order to avoid that unacceptable abuses of different kinds can continue to be easily perpetrated (*i.e.*, abandoning children in institutions when a family – foster or adoptive –

<sup>44</sup> See, *e.g.*, Recommendation no. 1121 (1990) on the rights of the children, especially at point G, where, together with the European Community, also the HCPIL and ILO were mentioned expressly. Prior to this, Recommendations no. 874 (1979) on a European Charter on the Rights of the Child, no. 1701 (1988) on child welfare and no. 1074 (1988) on family policy were issued

<sup>45</sup> See Recommendation no. 1121 (1990), at points E and G.

<sup>46</sup> See Recommendation no. 1121 (1990), at point C.

<sup>47</sup> See Recommendation no. 1443 (2001) at point 7.i and 7.ii.

<sup>48</sup> See Recommendations no. 1601 (2003) and no. 1698 (2005).

<sup>49</sup> See Recommendations no. 1698 (2005) at point 4.

<sup>50</sup> See Recommendations no. 1698 (2005) at points 4 and 5.

<sup>51</sup> See Recommendations no. 1698 (2005) at point 7.

<sup>52</sup> More precisely, the final recommendations from the Parliamentary Assembly to the Committee of Ministers of the CoE reads as follows: “*urge sponsors and the European Union in particular to ensure that European funds to the various European states for children in institutions actually reach their proper destination and to regularly verify the use of such funds*” (see Recommendation n. 1698 (2005), at point vi).

placement is possible or accepting the danger that, because of the lack of strict regulations of birth records in some countries, a real traffic of children can be carried out). Both stronger preventive action and more efficient subsequent regular control, in the post-adoption stage, have to be considered in this perspective<sup>53</sup>. The Recommendation, besides the suggestions addressed to member states to the CoE in order to promote the signature and ratification of several international conventions that operate in the field of children's protection<sup>54</sup>, also proposes a revision of the HCIA. Moreover, it reaffirms the need to adopt all the possible measures to accomplish its main goals, as well as those indicated by the CRC<sup>55</sup>.

Furthermore, the Parliamentary Assembly recently issued two key Recommendations on adoption from which the following abstracts seem particularly relevant to the current study.

In the **Recommendation 1828 (2008) on Disappearance of newborn babies for illegal adoption in Europe**<sup>56</sup>, the Assembly reiterates notably that “*international adoption should enable children to find a mother and father... and not enable foreign parents to satisfy their desire for a child at any price. The Assembly thus restates the principle that there should be no right to parenthood. The Assembly nevertheless notes that countries still have different constraints and laws relating to adoption and that children are increasingly traded on a real marketplace governed by money, to the detriment of poorer countries. The Assembly condemns the increasingly prevalent practice of using parallel circuits and trafficking, as well as all the ensuing dealings and psychological and economic pressures. Such practices became easier when eastern borders were opened u [...]. While bearing in mind the fact that international adoption should be considered only if there are no national solutions, the Assembly nevertheless regrets that some countries have large numbers of children living in institutions. The Assembly, therefore, would like a single area to be created, which would be governed by the same rules in order to avoid disparities arising which would be against the interests of the child, and it would like governments to introduce a monitoring procedure involving regular post-adoption reports*”.

The Parliamentary Assembly further recommends notably to member states to

- *ensure that persons wishing to make international adoptions are eligible and suitable to adopt, provide them with compulsory training of an appropriate nature, ensure that foreign children who are adopted are monitored, particularly psychologically, and implement a monitoring system;*
- *lay down strict rules on the setting up of specialist child adoption agencies;*
- *take the necessary steps to give adopted children the right to know their origins at the latest when they reach the age of majority;*
- *make provision for the right of mothers to withdraw their consent for adoption, within a reasonable time, while safeguarding the interests of the child”.*

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<sup>53</sup> See in particular point 7 and ff. of Recommendation no. 1828 (2008) about disappearance of newborn babies for illegal adoption.

<sup>54</sup> *I.e.*, namely the UN Convention against Transnational Organized Crime and its Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, as well as the relevant Council of Europe Conventions (respectively, on Action against Trafficking in Human Beings [CETS no. 197], on the Protection of Children against Sexual Exploitation and Sexual Abuse [CETS no. 201], and the revised convention on adoption of children [CETS no. 202]).

<sup>55</sup> More particularly, it restates the importance of combating the trafficking of children, of contemplating and inflicting severe condemnations against the authors of abuses, in the field in question; of the drafting of specific bilateral agreements, of adopting stricter rules at a national level, in all the phases of the procedure, and for the activities of all the subjects concerned. The social aspects of the phenomenon were considered too, thanks to an explicit mention of the need to carry out the necessary implementing instruments to favour the universal availability of family planning services, so as to respect reproductive health and rights effectively. Finally, it gave emphasis to the core points of the revised Convention on adoption of children, which, however, will be dealt with further down, in the text in more detail.

<sup>56</sup> <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/erec1828.htm>.



In the **Recommendation 1443 (2000) on International adoption: respecting children's rights**<sup>57</sup>, the Parliamentary Assembly of the Council of Europe already insisted that “*there can be no right to a child*”. The Assembly therefore fiercely opposes the current transformation of international adoption into nothing short of a market regulated by the capitalist laws of supply and demand, and characterised by a one-way flow of children from poor states or states in transition to developed countries. **It roundly condemns all crimes committed in order to facilitate adoption, as well as the commercial tendencies and practices** that include the use of psychological or financial pressure on vulnerable families, the arranging of adoptions directly with families, the conceiving of children for adoption, the falsification of paternity documents and adoption via the Internet. It wishes to alert European public opinion to the fact that international adoption can lead to the disregard of children's rights and that it does not necessarily serve their best interests. In many cases, **receiving countries perpetuate misleading notions about children's circumstances in their countries of origin** and a stubbornly prejudiced belief in the advantages for a foreign child of being adopted and living in a rich country.

The Parliamentary Assembly further recommended notably to member states to:

1. *ratify the Hague Convention on Adoption if they have not already done so, and undertake to observe its principles and rules even when dealing with countries that have not themselves ratified it;*
2. *help those countries from which foreign children come to develop their own adoption laws and to train the relevant personnel in public authorities and properly accredited agencies and all other professionals involved in adoption;*
3. *develop child-friendly social and family policies designed to prevent children being abandoned and to keep them in their families of origin, and, failing that, to develop family-based alternatives and to promote domestic adoption in preference to placement in institutions.*

A very comprehensive vision has characterized the work done so far by the CoE<sup>58</sup>. In rather recent times, another useful step was taken towards the same direction. Indeed, the Parliamentary Assembly's **Recommendation 1844 (2008) on “Refreshing the youth agenda of the Council of Europe”** represents the premise of a new CoE Resolution (CM/Res [2008] 23) on the youth policy of the Council of Europe, adopted by the Committee of Ministers of the CoE on November 25<sup>th</sup>, 2008.

This is a **real multidisciplinary plan**, which – being issued by an organization that has a “pan-European” character – is extremely **important in the field here examined, also in light of the targets and the goals listed hereby**<sup>59</sup>. As already pointed out, **this overall**

<sup>57</sup> <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EREC1443.htm>.

<sup>58</sup> In dealing with adoption, also other areas can be relevant, because the reasons why a child can be considered as adoptable can be due to several events (*i.e.*, separation from his/her parents; lack of adequate family support, abandonment due to difficulties in overcoming special needs, linked to economic problems or to the parents' unwillingness or inability to cope with such situations). The CoE took into account special situations too. *E.g.*, see the following Parliamentary Assembly's Recommendations: no. 1703 (2005) on protection and assistance for separated children seeking asylum, no. 1532 (2000) on a dynamic social policy for children and adolescent in towns and cities; no. 1248 (1994) on education of gifted children; no. 675 (1972) on birth control and family planning in Council of Europe member states. The number of Documents and Reports is very high, but – except those related to the drafting of European Conventions – some of them can be mentioned here: the Report on a European strategy for children (Doc. 7436, of December 14<sup>th</sup>, 1995, 1403-12/12/95-1-E); the Report on setting-up a European Ombudsman for children (Doc. 8552, of October 1<sup>st</sup>, 1999); the Report on the respect of the rights of the child in international adoption (Doc. 8592, of December 2<sup>nd</sup>, 1999); the Report on building a 21<sup>st</sup> century society with and for children: follow-up to the European strategy for children (Doc. 9188 of September 6<sup>th</sup>, 2001); the Report on the rights of children in institutions: follow-up to Recommendation 1601 (2003) of the Parliamentary Assembly; the Report on disappearance of newborn babies for illegal adoption in Europe (Doc. 11461, of December 7<sup>th</sup>, 2007); The Report on promoting the participation by children in decisions concerning them (Doc. 11615 of June 2<sup>nd</sup>, 2008).

<sup>59</sup> To ensure that the priorities of the CoE youth policy and action for the coming years are implemented through the proper approaches, methods and instruments, a list was proposed: (a) intergovernmental and international co-operation on the development of youth policy, with particular focus on setting standards and supporting their implementation; (b) service to countries, in particular through international reviews of national youth policies and

**strategy of the CoE is accompanied by more detailed instruments, issued with a view to urging member states to resolve extremely serious problems.** In such situations, **wide scale agreements** have to be contemplated and specific measures have to be adopted on an *ad hoc* basis, too. **National legislative reforms are deemed as necessary, but they can not be sufficient when complex and urgent multi-state issues are at stake**, so to imply the danger of irretrievable events due to conflicts or other emergencies.

Therefore, all forces have to be coordinated (national police and Europol, as well as the activity of lawyers and judges). The work of NGOs, of special boards and bodies, set up at a European (CoE and EU) level, shall be made so as to be effective in their relations with non-European countries<sup>60</sup>.

## 4.2 The CoE Conventions on adoption of children

Undoubtedly, however, **the most relevant instruments directly related to adoption are the two Conventions drafted by the CoE: the first one (CETS no. 058), signed on April 24<sup>th</sup>, 1967 (1967 CoEAdC)**<sup>61</sup>, in force since April 26<sup>th</sup>, 1968<sup>62</sup>, and ratified by 18 states and signed by 3, is destined to be superseded by a **more recent one (CETS no. 202), opened to signature on November 27<sup>th</sup>, 2008 (2008 CoEAdC), and not yet entered into force**<sup>63</sup>.

**Some brief introductory remarks** about the reasons why the CoE decided to draft a new Convention can be useful to understand its main traits too, as well as the importance to ratify it, in order not to postpone such a necessary change. Indeed, **some of the provisions of the 1967 CoEAdC are no longer apt to reflect the contemporary social and legal situation.** Ongoing developments in the process of modernization of child and family law, due also to the important role played by national and European case-law that mirrored societal changes, determined deep legislative innovations in most member states of the CoE. As it is stated in the **Explanatory Report to the 2008 CoEAdC**, “*certain provisions of the [1967 CoEAdC] became outdated over the years, [...so that t] he first proposals for updating [it...] were made already in 1977 [...]. Then, in 1988, the CJ FA [the Committee of Experts on Family Law] included questions on the adoption of children in its agenda, but decided to wait for the outcome of the work of the [HCPIL...] on the matter, which resulted in the [HCIA...]*”<sup>64</sup>. **Not only the developments in the CoE legal framework, but also those occurred in the wider area in which the HCPIL operates were duly considered.**

Thus, some core parts of the 1967 CoEAdC were deeply modified. The very structure of the Convention was changed. Some of its provisions, like those about the adoptee’s right to have access to information on his/her identity, which were previously considered as “*supplementary*”, were inserted into the Part that contains “*essential provisions*”. The need for them to operate on an obligatory and not on voluntary basis was correctly stressed in the

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youth policy advisory missions; (c) co-operation with the European Union; (d) partnerships with other stakeholders and services involved in areas which are relevant to the Council of Europe youth policy; (e) co-management, as a unique and valuable co-operation mechanism between governments and youth organisations.

<sup>60</sup> Such an approach was proposed in several situations that, albeit not directly connected with the field of adoption law, are related to cases in which the risk for children’s lives and well-being is very high, because they can become orphans, they can be abandoned, etc.

<sup>61</sup> <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=058&CL=ENG>

The 1967 Convention was ratified by the following EU countries: Austria, Czech Republic, Denmark, Germany, Greece, Ireland, Italy, Malta, Latvia, Poland, Portugal, Romania, Sweden, United Kingdom.

<sup>62</sup> The 1967 CoEAdC is no longer in force in some member states: Sweden and the United Kingdom, as it was clarified in the respective National Reports, as well as in the Explanatory Report to the 2008 CoEAdC.

<sup>63</sup> Up to this moment, the 2008 CoEAdC has been signed, November 27<sup>th</sup>, 2008, by the following member states to the CoE on: Armenia, Belgium, Denmark, Finland, United Kingdom, Island and Norway. To enter into force at least three ratifications are necessary.

<sup>64</sup> See points 3 and 4 of the Explanatory Report, available, like all the other sources of the CoE, in the official website, and more precisely at the following Internet link:

<http://conventions.coe.int/Treaty/EN/Reports/Html/202.htm>

It seems worthwhile to remember that, apart from the Documents mentioned in the text, also a *White Paper* was devoted to principles concerning legal consequences of parentage. Despite the lack of binding force, it was taken into account carefully by the drafters of the revised Convention, given the importance needed to be given to national reforms enacted since the 1960s, and thereby examined.

replies to the questionnaire sent to member states by the Working Party. Moreover, in the new 2008 CoEAdC there is no longer trace of discrimination between children born in and out of wedlock. As far as intercountry adoption is concerned, the decision to devote a rather limited space to it (arts. 12 and 15) is founded on the choice to give prominence to the HCIA. However, the revised European Convention “*as a whole will exert an important influence*” in this field, being an “*effective complement*” to the HCIA, so that adoptions not covered by it “*are regulated in such a manner as to comply with the underlying aims of any adoption*”<sup>65</sup>, aimed at protecting the best interests of the child. In the new 2008 CoEAdC the scope of this fundamental principle has been defined more precisely (art. 4, I), also in respect of the rare cases – if and where they are admitted – of revocation and/or annulment of the adoption decision (art. 14, I). It is important also to make clear that the revised Convention can not reduce the level of guarantees already existent, also when it permits a solution (*e.g.*, like revocation or annulment of adoption) – just because it is followed, albeit limitedly, in some member states –. On the contrary, states parties to it “*shall retain the option of adopting provisions more favourable to the adopted child*” (art. 18).

Member states are called to enact legislation and any other measure that “*may be necessary*” to respect the obligations set up by the new Convention (art. 2). Not only statutory rules and administrative texts but also “*firm and constant practice*” have to be respectful of its statements<sup>66</sup>. The main aim of this provision is to avoid adoptions based on private contracts, without the intervention of a state authority<sup>67</sup>. Indeed, to be valid, an adoption must be made by the competent (judicial or administrative) authorities (art. 3), but they can grant it only if it is in the child’s best interests, after verifying that “*all the necessary conditions have been fulfilled*” (art. 4.1). In this regard, “*particular attention*” has to be paid to the importance of a “*stable and harmonious home*” (art. 4.2).

The ambit of applicability of the 2008 CoEAdC is defined by the legal concept of children adoption. Indeed, its essential feature is the creation of a permanent parent-child relationship. The revised Convention, like the 1967 CoEAdC, covers only the adoption of persons under the age of eighteen, on condition that they have not reached majority (if this is established at a younger age)<sup>68</sup>. Moreover, it provides that they shall not be married nor have “*entered into a registered partnership*” (art. 1). The ascertainment of the child’s adoptability depends on a series of precise pre-requirements concerning his/her parents’ consent and the conditions that can justify a derogation from it (*i.e.*, because of the impossibility of tracing the persons whose consent is required, of their incapability to give it, or of the presence of an unjustified refusal – art. 5)<sup>69</sup>. Also the child’s consent is necessary, in case he/she has “*sufficient understanding*”, after reaching an age in which the law so provides, which can not, however, be superior to 14 years<sup>70</sup>. In the 1967 CoEAdC, on the contrary, the child’s views were not adequately considered, but this position can no longer be deemed as compatible with

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<sup>65</sup> That is to say, with a child centred vision that respects the child’s best interests by providing him or her “*with a harmonious home*”. See the Explanatory Report at point 19.

<sup>66</sup> See in this sense the Explanatory Report at point 2.

<sup>67</sup> See in this sense the Explanatory Report at point 3. It can still happen, even today, that child adoptions made abroad on the basis of a private contract model are recognized, albeit in a rather limited number of European countries (even in those in which the HCIA is already in force), in cases of non conventional adoptions that are not directly subjected to the provisions of the HCIA, or if they are not regulated in compliance with its principles. In such situations, however, the mere extension of the area of applicability of the principles of the HCIA to all adoptions (conventional or not) is sufficient to preclude similar results. This is a solution followed by a great part of ratifying states in the EU. See later Part II of this Report.

<sup>68</sup> The 2008 CoEAdC prohibits legal restrictions in the number of children that may be adopted by the same person. Moreover, it does not allow the law to foreclose adoption for the fact that a person has (or is capable of having) a child (art. 13).

<sup>69</sup> See in this sense the Explanatory Report at point 34.

<sup>70</sup> See art. 5.1.c. Also this provision expresses on the need to consider the variety of solutions followed in this respect in the 47 member states to the CoE. See later in this Chapter.

modern instruments concerning children's rights at an international<sup>71</sup>, supranational<sup>72</sup> and EU level<sup>73</sup>.

The solutions briefly described so far are extremely respectful of the variety of choices made by European legislators. Indeed, inside the CoE context, in the majority of legal systems child adoption is based on the parents' consent (except in rather exceptional situations). In other, albeit less numerous, countries an objective evaluation of the child's condition of abandonment is sufficient and no relevance is given to consent, nor is it required to grant a full adoption<sup>74</sup>. Therefore, the solution enshrined by art. 5 of the 2008 CoEAdC is extremely appropriate because it took all of these options into account<sup>75</sup>. More precisely, as a rule, the consent of the mother or of the father (or of "*any person or body entitled to consent*") is required (art. 5.1.a.). In case of adoption by one member of a married couple or of a partnership, the consent of the spouse or of the registered partner is necessary (art. 5.1.c). Evidently, this provision mirrors a frequent situation already regulated by a great part of state legislators in the EU. It does not impose, however, any statutory intervention upon member states in which the condition of unmarried couples is not legally recognized.

As far as the **mother's consent** is concerned, it can be given only after at least six weeks from the child's birth or after a longer period of time legally prescribed. In any case, absent a legislative provision about it, it can not be valid if given before the time necessary to enable her to "*recovery sufficiently from the effects of giving birth to the child*" (art. 5.5). When the father and/or the mother are not holder of parental responsibility or if they can not give their consent to their child's adoption, the law can provide that it is possible to dispense with it (art. 5.4). All persons whose consent is required shall receive proper counselling as well as the necessary information about its effects (*i.e.*, the severance of all ties between the adoptee and the birth family in cases of full adoptions, which are the most frequent ones, to which the 2008 CoEAdC is prevalently addressed)<sup>76</sup>. The case-law of the ECtHR undoubtedly played<sup>77</sup> an important role in inducing this change too<sup>77</sup>.

The drafters of the 2008 CoEAdC showed an appropriate sensibility also towards another aspect of adoption law that caused a great deal of controversy. Indeed, by indicating the **conditions for adoption**, or, more precisely, by listing the requirements concerning the would-be adopters' civil *status*, the revised Convention abandoned the original twofold

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<sup>71</sup> See art. 12 of the CRC.

<sup>72</sup> See the provisions embodied in the 1996 European Convention on the exercise of children's rights.

<sup>73</sup> See art 11 (2) of the European Council Regulation (EC/2001/2003) – *Brussel II-bis* – that repealed Regulation (CE/1347/2000) – *Brussel II* –, which states that the child has to be heard in proceedings affecting him or her, unless this is not appropriate, taking into consideration the age and the degree of maturity. See, for a brief overview on these points, E. Urso (2005).

<sup>74</sup> On this point see later Part II of this Report, on the notion of child's adoptability in EU states. For instance, in Italy only in cases of simple adoption consent is required (arts. 44 ff. of Act no. 183/1984 as repealed by Act no. 149/2001). On this aspect of the Italian legislation see E. Urso (2007b).

<sup>75</sup> The need to protect also biological parents' rights induced the drafting of a provision that regulates the cases in which the proceeding for establishment of paternity or of maternity is pending (if it exists). In such situations, if it is deemed to be appropriate, the procedure is stayed to wait for the decisions concerning the ascertainment of the parental relationship. The latter shall be carried out "*expeditiously*" (art. 16 of the 2008 CoEAdC).

<sup>76</sup> Art. 11 of the 2008 CoEAdC deeply modified the previous provision concerning the effects of adoption (art. 10 of 1967 CoEAdC). No further mention has been made anymore to the condition of "*legitimate*" or "*illegitimate*" child, not to the fact that the adoptee was born in a "*lawful wedlock*" or not. Also references to property and inheritance rights were eliminated. The new provision states that upon adoption the child becomes a full member of the adopter/s' family and that the adoptive parents have the parental responsibility for the adoptee. Their reciprocal rights and obligation are the same as if the child's legal parentage were legally established. However, in case of step-parent adoption, the spouse or the registered partner of the adopter should retain his/her rights and obligation towards the child if he/she is the child's biological parent, except the law provides differently. As a rule, adoption produces the termination of the legal relationships between the adopted child and his/her birth family, but the law can provide exceptions, because of impediments to marriage or registered partnership or if the surname of origin can be kept by the adoptee. According to the 2008 CoEAdC other forms of adoptions are admitted, with more limited effects in respect of those described so far (*i.e.*, simple adoptions)

<sup>77</sup> The relevant cases decided by the ECtHR are: *Keegan v. Ireland*, Application no. 16/1993/411/409, judgment of May 26<sup>th</sup>, 1994, in *Reports*, p. 342 and *Kroon v. the Netherlands*, judgment of 27<sup>th</sup> October, 1994, in *Reports*, Series A no. 297 C. They will be examined later, while dealing with the contribution of the ECtHR.

method that was followed in the 1967 CoEAdC<sup>78</sup>. Several possibilities have been inserted into the relevant provision of the new Convention (art. 7). **The revised norm takes into account both the fact that in some member states of the CoE marriage is no longer required as a pre-condition to adopt a child<sup>79</sup>, in case of a couple of adopters, and the fact that some modifications intervened, albeit only in a limited number of state legislations so far, so that marriage was opened to same-sex couples too, who were consequently placed in the same condition of heterosexual spouses. The wide range of situations to be considered were subdivided in two categories: (a) cases in which adoption “shall” be permitted and (b) cases in which it *might* be allowed, in the sense that states can freely decide to do so or not.**

(a) In the first kind of hypothesis state **legislation shall** permit a child to be adopted (either simultaneously or successively):

(1) “**by two persons of different sex**” if they are “*married to each other*” or if they “*entered into a registered partnership together*”, on condition that such legal institution is regulated by applicable state law;

(2) “**by one person**”.

(b) In the second kind of cases state authorities are **free to extend** the scope of the 2008 CoEAdC to **same sex couples** so that adoption can be granted to:

(1) homosexual couples who are “*married to each other or*”

(2) who “*entered into a registered partnership together*”.

Analogously, states can admit adoption in cases of *de facto* couples too, both different sex and same sex ones, who “*are living together in a stable relationship*”. In the latter cases, states parties are free to determine also the criteria for ascertaining if this relationship is stable or not<sup>80</sup>.

Only a few modifications were made to rules on **subsequent adoptions** (*i.e.*, adoptions of a child who has already been adopted), which continue to be admitted very strictly<sup>81</sup>, while

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<sup>78</sup> According to the 1967 CoEAdC a child could be adopted “*either*” by a couple (on condition, however, that its members were “*married to each other*”, no matter if they adopted a child simultaneously or successively), “*or by one person*”. Therefore, the choice to admit single persons to fully adopt a child was left to ratifying states members to the CoE, being this solution not an obligatory one, but rather an optional one. Indeed, the expressions used by art. 6 of the 1967 CoEAdC (“*The law shall not permit*”) established a limitation, but in the sense that adoption could not be granted in any other situation. This provision was referred, albeit impliedly, to heterosexual married couples only. Moreover, it did not impose an obligation to allow both married couples *and* (unmarried or married) single persons to child adoption. As a consequence, the European Commission on Human Rights (in the case *Di Lazzaro v. Italy*, application no. 31924/96, decision of July 10<sup>th</sup>, 1997, in 90-A, *Decisions and Reports*, September 1997, p. 134 ff.) declared the inadmissibility of a complaint in which the applicant had contested the violation of art. 8 of the ECHR for not being able, according to her national law, to fully adopt a child, being a single person (*i.e.*, more precisely, the contrast between Italian legislation and the ECHR). The relevant provisions of the domestic legislation (art. 6 of the Act – no. 357/1974 – of authorization to the ratification and enforcement of the 1967 CoEAdC and art. 6 of Act no. 184/1983) that do extend full adoption to singles were considered by the ECtHR as respectful of the right to family life because they did not give rise to an illegal interference with it. For a comment devoted also to the Italian Constitutional Court’s position on other decisions taken in this case, at a state level, see E. Urso (2001). Italian legislation still authorizes individuals to obtain simple adoption only, but not full adoption (arts. 6 and 44, Act. no. 184/1983 as amended by Act no. 149/2001).

<sup>79</sup> See, *e.g.*, the solutions adopted in the United Kingdom by the *Civil Partnership Act* (2004), in force since December 2005 or, even before, in Sweden in 2002, which induced both these states to denounce the 1967 CoEAdC, given that domestic legislation allowed same sex registered partners to jointly apply for the adoption of a child. Other member states enacted similar pieces of legislation. Moreover, some of them, after opening marriage to same sex couples (*i.e.*, the Netherlands in 2001, Belgium in 2003; Spain in 2005), applied the same rules applicable to heterosexual married couples to homosexual ones as well. Anyhow, as it will be clear from the analysis of the National Reports, the great majority of European states still follow a different solution (see later in Part II of this Report). Moreover, as it was underlined in the Explanatory Report to the 2008 CoEAdC (at point 45), “*the right of same sex registered partners to adopt jointly a child was not a solution that a large number of States Parties were willing to accept at the present time*”. Single persons, however, if they are allowed by domestic legislation to adopt a child, can not be discriminated on the basis of their sexual orientation. On this point, see the recent condemnation inflicted to the French state by the ECtHR with a decision rendered in 2008, which will be examined further on in this Chapter (*E. B. v. France*, application no. 43546/02, judgment of January 22<sup>nd</sup>, 2008).

<sup>80</sup> In this sense, see the Explanatory Report to the 2008 CoEAdC at point 47.

<sup>81</sup> The content of art. 8 of the revised Convention resembles that of art. 6.2 of the 1967 CoEAdC. It contains the

some innovations characterize the provision about age requirements (art. 9). Minimum age to adopt is lower compared to the previous one (18 instead of 21 years). Also, **the age minimum limit was lowered**. It can not be higher than 30 years<sup>82</sup>. National legislations can fix different limits but inside this interval. As far as **minimum age difference** between the adoptee and the adopter/s is concerned a specific limitation was added, in line with state laws that tend to indicate it. The difference between the adopted child's age and that of the adopter/s should be adequate and "at least" of 16 years, preferably. Only "exceptional circumstances" can justify a departure from these limitations, if it is necessary for the best interests of the child<sup>83</sup>.

Looking at the **procedural aspects**, three phases were taken into consideration:

- (a) the preliminary enquiry (art. 10);
- (b) the subsequent stages concerning the **adoption procedure** (arts. 12, 14, 15,16,19);
- (c) the **post-adoption** activities (arts. 12, 20, 21 and 22).

- (a) Before the child is placed in the care of the prospective adoptive parent/s and adoption is granted, several steps should be taken. First of all, "appropriate" enquiries have to be carried out to make sure that adoption is in the best interests of the child. They need to be very extensive, except in cases of in-family adoptions. Rules about professional confidentiality and personal data protection have to be respected carefully, given the sensitive nature of the information collected<sup>84</sup>. Priority should be given to qualified and social workers, well-trained and experienced, and, in any case, only a "person or a body recognized for that purpose" should be charged with this task. The factors that should be considered, which were mentioned in art 10 of the revised Convention, all are of vital importance<sup>85</sup>, but their list must not be considered exhaustive, nor is it necessary to verify all of them in every situation in the same identical way. Some of these elements are interrelated, in the sense that both the child's and the prospective adoptive parent/s' suitability have to be verified, as well as their conditions, which need to be interpreted in a rather wide meaning<sup>86</sup>. All enquires about the prospective adoptive parents' suitability and eligibility to adopt should be made before the child is entrusted to their care (art. 10.5). As it is stated in the Explanatory Report to the 2008 CoEAdC, absent these enquiries, "adoption may not be granted". The reason why this strict requirement was introduced is linked with the purpose of reducing the risk of abuses in all cases in which adoptions do

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necessary modifications due to the reform of the conditions for adoption and, in addition, some formal variations only. The novelty consists in the provision added into its last paragraph, which allows subsequent adoption also if it is "justified on serious grounds and the former adoption cannot in law be brought to an end" (art. 9.e).

<sup>82</sup> Upper minimum age was 35 years in the 1967 CoEAdC, but it was considered too high and "not in line with the majority of national laws". See the Explanatory Report to the 2008 CoEAdC at point 50.

<sup>83</sup> However, if the adoptive parent is the spouse or the registered partner of the child's father or mother, the law can allow this requirement to be waived (art. 9.2.a). Among the exceptional circumstances in which derogation is possible, there might be the case of adoption of a child whose younger siblings were already adopted by the same person/s. Even if, according to several national laws, adoption of children older than those already adopted is not allowed, in the situations hereby examined an exception should be permitted, being it aimed at reuniting the members of a family.

<sup>84</sup> In this respect, the Explanatory Report to the 2008 CoEAdC (at point 55) underlines the need, while treating these data, to abide by the provisions embodied in the CoE Convention of January 28<sup>th</sup>, 1981 for the protection of individuals with regard to automatic processing of personal data (CETS no. 108). Art. 10.4 adds that the competent authority is not affected by the provision in question in the exercise of its power or duty to obtain all information or evidence deemed as useful, regardless of the fact that they are inside or outside the ambit of the above mentioned enquiries.

<sup>85</sup> *I.e.*, the would-be adopters' personality, their social environment, their home and household, their ability to bring up a child, the reasons underlying the desire to adopt a child and, in case of individual adoption by one spouse or one partner, the reason why the other does not apply too. Almost all of these criteria an rules are already followed by national authorities. See later in this Report Part II.

<sup>86</sup> More precisely, art. 10.2. provides that the enquiries shall concern the "mutual suitability of the child and the adopter"(d), their ethnic origins, religious beliefs and culture (f), the length of time that the child eventually spent with the would-be adoptive parent while being in his/her care (during the probationary period or in cases of previous foster care family placement, which is admitted by some states, albeit not allowed by others) (d), "the personality, health and social environment of the child" (e) and, as far as it is possible, "his or her background and civil status" (f).

not take place through public intermediaries but thanks to the intervention of private subjects (the so-called “independent” or “private” adoptions). As a matter of fact, these kinds of adoptions still continue to be permitted in some states. It is true that they are not always correlated with attempts to breach the law, but it is unquestionable that they caused rather serious and difficult problems, especially when children have been adopted abroad<sup>87</sup>. Anyhow, it was unlikely that a general prohibition could be accepted, despite the wide criticism that surrounds them and the great efforts made in a great number of states to arrive at their elimination. Therefore, appeared wiser to recognize such situation and, while waiting for its general improvement, to try to prevent that adoption could be granted without that the above-mentioned preliminary enquiries having been carried out.

(b) The 2008 CoEAdC allows states parties to the CoE to regulate a **pre-adoption placement** of the child so that he/she is in the care of the prospective adopter/s before adoption is finally granted (art. 19). According to laws already applicable in several member states such probationary period has an obligatory nature<sup>88</sup>, being that its aim is to give competent authorities the possibility of assessing the future relationships between the adoptive parent and the child. Indeed, this provision should be referred to domestic adoptions mainly. **In cases of intercountry adoption, a special procedure has to be followed and this implies that at the moment of the child’s arrival in the receiving country he/she has been already adopted.** However, the revised Convention deals only with some limited situations, in which a request has been made to obtain information about a prospective adopter who lives (or has lived) in **another state party**, in order to enquiry on his/her suitability to adopt a child and on the fulfilment of the child’s best interests through adoption. In this case, the state in which the would-be adopter lives (or has lived) has to provide the requested information without any delay, thanks to the intervention of a designated national authority. It seems clear that **this avowedly vague provision tries to avoid useless duplications of the rules contained in the HCIA. At the same time, it takes into account the fact that the HCIA is not in force in all member states of the CoE.** For these reasons it establishes only the conditions favouring a defined interstate co-operation. Furthermore, the revised Convention imposes upon states parties the duty to “*facilitate*” **the acquirement of the adopter’s nationality** by the adopted child, when the adopter is “*one of their nationals*”. However, an adopted child can acquire the adopter’s nationality also if the adoption has been made in a country of which the adopter is not a national. Indeed, this provision does not eliminate the possibility, on one side, that according to some state laws adoption determines the automatic attribution to the adoptee of the adopter’s nationality, nor, on the other side, that for other legislations these situations are regulated differently<sup>89</sup>. Finally, the provision in question adds that only the adopted child’s possession or acquisition of another

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<sup>87</sup> In light of the analysis of the National Reports, it is possible to say that this can happen both countries in which the HCIA is not in force and in those where, despite its ratification, also private persons can perform the function of a Central Authority, on condition that state legislation allows this. This was the final compromise reached by the HCIA (at art. 22.2), after a long debate, due to the strong pressures exercised by states that did not want to forbid independent adoptions (first of all, the United States of America, where the HCIA entered into force only in April 2008, after that 8 years passed since the signature, in October 2000, of the Federal Act that authorized its ratification). Art. 22 of the HCIA reads as follows: “(1) *The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.* (2) *Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons*”. In any case, the 2008 CoEAdC prohibits any improper gain, whatever its nature, from the adoption of a child (art. 17).

On these issues, see in brief E. Urso (2000).

<sup>88</sup> The length of this period varies: in some states it is of 1 year, in others of six months or rather it is not exactly specified, but has to be so long so to ensure that the information acquired is sufficiently complete to foresee a good adoptive placement.

<sup>89</sup> For instance, in the United Kingdom and in Italy, despite the ratification of the HCIA, nationality is not directly acquired by the adoptee soon after being adopted. This is a point that will also be examined later. See in Part II of this Report.

nationally can determine the loss of the original one, due to adoption (art. 12). As far as **revocation** and **annulment of adoption** are concerned, it is worth remembering that some European states do not permit them except in case of simple adoptions, if they are regulated<sup>90</sup>. Indeed, the 2008 CoEAdC does not compel member states to legislate so as to introduce revocation or annulment in their internal legal systems. It provides that, if an adoption can be revoked or annulled<sup>91</sup>, only the competent authority can make this kind of decision.

(c) **Post-adoption services** should be ensured and promoted by states parties, so as to avoid the repetition of current phenomena, on which great attention shall be devoted further down<sup>92</sup>. Indeed, **assistance is important also after the adoption procedure has been completed and the child is placed in the adopter/s' family**. In some situations, adoptive parents face serious difficulties and the presence of structures charged with the duty of giving them support, at a psychological and at a social level, is of paramount importance (art. 20). Among the situations in which a specific aid of this kind is decisive, contemplated by the 2008 CoEAdC, it is worth mentioning the cases in which the adoptee needs special help (*e.g.*, because of his/her health conditions, behavioural difficulties, uncertainties due to identity problems, etc.). In brief, the activity of social workers with an appropriate training in the “*social and legal aspects of adoption*” was felt necessary (art. 21) to cope with these problems. If one thinks about the complex questions concerning the access by the adoptee to information on his/her adoptive origin, birth-family environment and parents' identity, this kind of requirements appears all the more important.

At this point, **a brief mention of the new provisions about access to and disclosure of information can be of interest** (art. 22). This is an issue that was not considered in the 1960s, when the first CoEAdC was signed and entered into force. At that time, most state legislations ensured absolute secrecy on data concerning the existence of an adoption, as well as on any kind of element that could determine birth-parents' identification. As a rule, it was strictly forbidden to reveal both the adoptive nature of the relationship of kinship and every fact that could allow the adoptee to trace back his/her origins. Knowledge of his/her roots was not considered important and, on the contrary, it was felt that a total re-birth could be possible only if the adopted child had no awareness of his/her past. However, **a new vision started to be followed once the results of psychological and medical studies revealed the importance of disclosure of information for an adopted person who desires to acquire a series of data on his/her adoptive origins and also – if permitted by the law – about the members of the birth family**. In some cases, accessing to these data can be extremely helpful to develop a good self-perception. This was the basis of the choice made by the CRC (arts. 7 and 8)<sup>93</sup> and by the HCIA (arts. 16, 30 and 31)<sup>94</sup>, which determined the legal

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<sup>90</sup> See later in Part II of this Report.

<sup>91</sup> Revocation can be possible only before the child is full of age and on serious grounds. Annulment can be asked only within a limitation period (art. 14).

<sup>92</sup> See later Part II in this Report.

<sup>93</sup> Arts. 7 and 8 of the CRC read as follows: art. 7. “1. *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.* 2. *States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless*”. Art. 8: “1. *States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.* 2. *Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity*”.

<sup>94</sup> According to the relevant articles of the HCIA, the Central Authority of the state of origin, after ascertaining that the child is adoptable, has to draft a report that, *inter alia*, is comprehensive of information about the adoptee's “*identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child*”. This report will be transmitted to the Central Authority of the receiving state, together with evidences about the presence of the necessary consents and information about the reasons underlying the child's placement, while “*taking care not to reveal the identity of the mother and the father if, in the*



obligation to carry out the necessary reforming action, in states in which both Conventions were in force.

Evidently, disclosing such information requires appropriate instruments and solutions, likely to respect all the interests in question: on the one hand, the adopted person's right to know his/her origins, as well as the reasons of the abandonment and the name of his/her biological parents, and, on the other, the birth-parents' right to maintain anonymity (if recognized by the law) and the mother's right not to reveal her identity in case of anonymous delivery (when this is legally possible). Apart from the adopted person's right to develop his/her own personality, it is also a matter of giving information on genetic and/or biological aspects, or on other factors linked with the pre-birth period and the early phase of his/her life, which are often necessary to ensure an effective health's protection. In accessing to this information, however, sensible data can be revealed. Thus, a balance has to be struck also between the parents' right to privacy and both the adoptee's rights: to obtain information and to maintain secrecy about his/her origins, with regard to third parties. In brief, several aspects have to be considered in parallel. The preparatory work done in view of the drafting of the 2008 CoEAdC duly took into account these complex issues, as well as the solutions that finally prevailed in a great part of member states to the CoE, which, however, followed rather different paths in this regard<sup>95</sup>. Moreover, it was necessary to examine an important decision taken by the ECtHR<sup>96</sup>, which clarified some core points that state legislations have to respect in order to abide by the ECHR, in dealing with a right which is not "absolute".

As far as the revised CoE Convention is concerned, it is worth underlying that it took all these innovations into proper consideration. Firstly, it imposed a twofold duty on competent authorities of member states: (a) to keep public records and (b) to allow the reproduction of their contents in such a way as to avoid access to persons who do not have "*a legitimate interest*" in knowing the adoptive nature of a parent-child relationship so as to prevent, in case this information is disclosed, the revelation of the birth-parents' identity. Access to information about the adopted child's origin "*held by the competent authorities*" should be allowed to him/her. If, according to national law, the parents of origin have the right to keep secrecy on their identity, the competent authorities can, "*to the extent permitted by law, determine whether to override that right*" so as to reveal identifying information, while taking into account "*the circumstances*" and the "*respective rights*" of the adoptee and of his/her birth-parents. When the adopted child is not yet full of age, an "*appropriate guidance*" may be foreseen. Adopters and adoptees should have the right to receive certificates in which extracts of the public records are contained without any mention of the adoption nor of the identity of the parents of origin, so that only the adoptee's birthplace and date of naissance are indicated. Anyhow, this does not foreclose the possibility, for the adopted person and the adoptive parents, of obtaining full copies of the birth records, which contain information about the adoption and the identity of the parents of origin<sup>97</sup>.

States members to the CoE can decide, however, that the completion of an adoption can occur **without the disclosure** of the adopter's identity as well as that of the adoptee's birth-family (art. 20.6 and 20.1). They must also enact the necessary provisions to require or to allow that adoption **proceedings** are made *in camera* (art. 22.2). Finally, the 2008 CoEAdC provides also that relevant information about an adoption should be collected and retained, after the granting of an adoption, for a minimum period of 50 years (art. 22.5).

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*State of origin, these identities may not be disclosed*" (art. 16). Moreover, the competent authorities of contracting states have the duty to "*ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved*". More precisely, they shall ensure that "*the child or his or her representative has access to such information, under appropriate guidance*", yet "*in so far as is permitted by the law of that State*" (art. 30). Finally, the HCIA states that "*personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted*" (art. 31). On the monitoring activity carried out in this regard by the CRC Committee, see later, in this Chapter.

<sup>95</sup> See on these issues later in this Chapter.

<sup>96</sup> See the case *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003. For a comment see later in this Chapter.

<sup>97</sup> See in this sense the Explanatory Report to the 2008 CoEADC at point 85.

The modifications to the 1967 CoEAdC are not secondary, evidently. Thus, in case member states to the CoE and member states that participated to its elaboration should ratify (accept or approve) the revised Convention, they shall take the necessary steps to improve their national laws. After ratification by states parties, the 2008 CoEAdC will be applied in their mutual relationships. If, however, a state party to the revised Convention, which is party to the 1967 CoEAdC too, does not ratify the new Convention, the latter will not be applicable<sup>98</sup>.

## 5. THE EUROPEAN COURT OF HUMAN RIGHTS AND ITS ROLE IN THE DEVELOPMENT OF NEW SUBSTANTIAL AND PROCEDURAL GUARANTEES

**In interpreting the ECHR, the Strasbourg Court progressively defined a new set of guarantees<sup>99</sup>, which outdated the traditional vision that characterized a great part of CoE legal systems in past decades and thus led to a general and fundamental restatement of principles and rules in this area<sup>100</sup>.**

In particular, the ECtHR treated several adoption and placement cases<sup>101</sup>, mainly in the light of **article 8 of the European Convention on Human Rights<sup>102</sup>**, that is to say notably the **right to respect to family life**.

Briefly, this article imposes to states not only negative but also positive obligations relating to the respect for everybody's family life. States must thus not only restrain from direct arbitrary interference with family life, but also take all the useful steps to allow everybody to enjoy effective family life, in front of the state and of the other individuals. On complaint of individuals, **the reasoning to assess a potential interference with family life can be synthesised in three steps**.

1. The European Court has first to ascertain if, in the concrete case, family life exists in the sense of the Convention. The definition of such family life focuses mainly on effective family life, that is to say blood or descent ties or *de facto* existing emotional ties between the concerned individuals.
2. When family life exists in a specified case, the Court examines if such family life has been interfered with by the state. In placement and adoption cases, such interference amounts mainly to the prohibition or obligation to develop or maintain family ties with respectively a child or parents. According to the Court, adoption of a child without the consent of a parent amounts to interference with his/her right to respect for family life<sup>103</sup>, especially when the child was forcibly separated from his/her parents soon after birth<sup>104</sup>.

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<sup>98</sup> This implies that art. 14 of the 1967 CoEAdC shall continue to be applied. In comparing its provisions with that of the corresponding art. 15 of the revised Convention it is clear that a communication between authorities of states parties will be possible, but that there will be no need to designate a specific national authority for this purpose.

<sup>99</sup> The ECtHR – the Strasbourg Court – has the duty to enforce the ECHR provisions. Member states of the CoE, individuals and NGOs may file petitions alleging violations of the rights enshrined by the ECHR directly with the ECtHR. Applicants have the right to receive appointed counsel, if they can not afford legal expenses. Claimants may petition the ECtHR only after exhausting local remedies. Therefore, state statutory provisions and national judicial systems always have a decisive position in ensuring that children's rights are respected. If the ECtHR decides that a breach of a fundamental right was committed by a state, the successful applicant can obtain damages for both pecuniary and non pecuniary losses, as well as counsel fees. Moreover, the ECtHR can give directives to make the necessary reforms of state legislations, policies or practices followed by national authorities. The Committee of Ministers of the CoE is responsible for the enforcement of such measures.

<sup>100</sup> The width of state Courts' contributions does not allow a detailed and comprehensive analysis here. Although the necessary detailed references can be traced both from the data collected by the National Reports and from all the works listed in the Bibliography, some of them can be illustrated in the text also while examining the judicial work done by the ECtHR.

<sup>101</sup> The quoted case-law can be found on the website of the Court:

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>

<sup>102</sup> <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>.

All European Union member states are party to the Convention and have thus to pay due respect to the whole case-law of the Court.

<sup>103</sup> *Söderbäck v. Sweden*, October 28<sup>th</sup>, 1998, § 25; *Eski v. Austria*, January 25<sup>th</sup>, 2007, § 34, 36 and 38.

<sup>104</sup> *P., C. and S. v. the United Kingdom*, October 16<sup>th</sup>, 2002, § 113, 116, 118 and 134.

Moreover, cutting a child off from his/her roots may only be justified in very exceptional circumstances<sup>105</sup>.

3. Nevertheless, according to paragraph 2 of Article 8, an interference with family life may be legitimate if it is in accordance with the law, necessary in a democratic society and with the legitimate purpose of markedly protecting health or morals or the rights and freedoms of others. In adoption cases, the general interest and the best interest of the child are often alleged in order to justify interferences, especially with the adults' family life.

In its reasoning about the interpretation of the concept of "family life", **the Court therefore very carefully examines such a balance of interests, ultimately giving primacy to the interest of the child but recognizing also a certain margin of appreciation to states**, in function of their historical and cultural family traditions.

Certain principles and even fundamental rights of the parents of origin, the child and adult adoptee and the (prospective) adoptive parents may be derived from the main judgments of the European Court of Human Rights relating to adoption and placement. Such list is of course not exhaustive, as the Court only deals with the cases submitted to it. The relative multiplication of cases gives, nevertheless, provides rather interesting indications on the necessary balance that needs to be struck in adoption proceedings, especially, but not exclusively, when all parties do not agree with the adoption project.

As far as fundamental rights of the parents of origin and their child are concerned, it is important to remember that, according to the ECtHR case-law, the link between parents of origin and their child relates to family life from the birth, and therefore also in view of a project for the child to be adopted<sup>106</sup>. The natural family relationship is not terminated by reason of the fact that the child is taken into public care<sup>107</sup>.

With regard to the **consent of the parents of origin to the adoption** of their child, in view of the necessary balance between the interests of the parents of origin, of the child and of the prospective adoptive parents as well as the general interest, and taking into account the primacy of the best interest of the child, national laws stating a reflection delay for the parents of origin of (only) two months from the birth, or the irrevocability of their consent, do not exceed their margin of appreciation and consequently do not violate the respect for family life of the parents of origin<sup>108</sup>.

When separated from the child without consenting to his or her adoption, art. 8 includes a parent's right to the taking of measures with a view to his or her being reunited with the child and an obligation on the national authorities to take such action, except if it is not in the best interest of the child<sup>109</sup>. Especially during the procedures, the authorities have to take all the necessary steps which could be reasonably expected of them in the circumstances, to ensure that the chances of the parent and the child re-establishing their relationship are not definitively compromised<sup>110</sup>.

However, the obligation on the national authorities to take measures to that end is not absolute, especially where the parent and child are still strangers to one another<sup>111</sup>. The nature and extent of such measures will depend on the circumstances of each case, but the understanding and cooperation of all concerned will always be an important – although not decisive – ingredient. While the national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests

<sup>105</sup> *Görgülü v. Germany*, February 26<sup>th</sup>, 2004, § 48.

<sup>106</sup> *Kearns v. France*, January 10<sup>th</sup>, 2008, § 72; *V.S. v. Germany*, May 22<sup>nd</sup>, 2007.

<sup>107</sup> *X. v. Croatia*, July 17<sup>th</sup>, 2008, § 36; *Johansen v. Norway*, August 7<sup>th</sup>, 1996, § 52; *Olsson (1) v. Sweden*, March 24<sup>th</sup>, 1988, § 59.

<sup>108</sup> *Kearns v. France*, January 10<sup>th</sup>, 2008, § 72; *V.S. v. Germany*, May 22<sup>nd</sup>, 2007.

<sup>109</sup> *Couillard Maugery v. France*, July 1<sup>st</sup>, 2004, § 238, 270 and 273-274; *Pini and others v. Romania*, June 22<sup>nd</sup>, 2004, § 150; *Görgülü v. Germany*, February 26<sup>th</sup>, 2004, § 45; *P. C. and S. v. the United Kingdom*, October 16<sup>th</sup>, 2002, § 117; *E.P. v. Italy*, November 16<sup>th</sup>, 1999, § 64; *Hokkanen v. Finland*, September 23<sup>rd</sup>, 1994, § 55; *Olsson (2) v. Sweden*, November 27<sup>th</sup>, 1992, § 90; *Margareta and Roger Andersson v. Sweden*, February 25<sup>th</sup>, 1992, § 91; *Eriksson v. Sweden*, June 22<sup>nd</sup>, 1989 § 71.

<sup>110</sup> *E.P. v. Italy*, November 16<sup>th</sup>, 1999, § 69.

<sup>111</sup> *Nuutinen v. Finland*, June 27<sup>th</sup>, 2000, § 128.

and the rights and freedoms of all parties involved must be taken into account, and more particularly the best interests of the child and his or her rights under art. 8 of the Convention. Where contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them<sup>112</sup>.

The right to respect for family life implies procedural guarantees relating to placement and adoption of the child. It involves a right of the parents of origin and of the child to be informed, to be heard, to participate (including by being legally represented) in the decisional process and to appeal against any decision<sup>113</sup>. The concerned persons must be able and must have received due time to play an adequate role in the decisional process in order to be afforded the protection of their interests<sup>114</sup>.

An adoption may notably be decided without the consent of said parent if this has no close relationship with the child and *de facto* family ties have existed between the child and the adoptive parent for a long time. Adoption in such a case consolidates and formalises existing ties<sup>115</sup>. In view of the **fundamental rights of the adoptable child**, the requirement, by national law, of the child's consent to be adopted (only) from 10 year old does not appear unreasonable, since the relevant international treaties leave the national authorities some discretion as to the age from which children are to be regarded as sufficiently mature for their wishes to be taken into account<sup>116</sup>. Nevertheless, relating to children older than 10 years and living in a family-type institution, there are unquestionably no grounds, from the children's perspective, for creating emotional ties against their will between them and adoptive parents to whom they are not biologically related and whom they view as strangers. In this case, the Court notices that the children had reached an age at which it could reasonably be considered that their personality was sufficiently formed and they had attained the necessary maturity to express their opinion as to the surroundings in which they wished to be brought up.

The adoptive parents' interest derives from their desire to create a new family relationship by forging ties with their adopted children. Although such a desire on the part of the applicants is legitimate, the Court considers that it cannot enjoy absolute protection under art. 8 of the ECHR in so far as it conflicts with the children's refusal to be adopted by a foreign family. The Court has consistently held that particular importance must be attached to the best interests of the child in ascertaining whether the national authorities have taken all the necessary steps that can reasonably be demanded to facilitate the reunion of the child and his or her (in this case, adoptive) parents. In particular, it has held that, in such matters, the child's interests may, depending on their nature and seriousness, override those of the parents. As it has previously held, in fact, adoption means "*providing a child with a family, not a family with a child*"<sup>117</sup>.

Adoption has also to respect the fundamental rights of the (prospective) adoptive parents and the adoptee, in their right definition. The so called right to adopt is not, as such, included among the rights guaranteed by the Convention<sup>118</sup>. Nevertheless, the relations

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<sup>112</sup> *Pini and others v. Romania*, June 22<sup>nd</sup>, 2004, § 151; *Scozzari and Giunta v. Italy* [GC], July 13<sup>th</sup>, 2000, § 221; *Hokkanen v. Finland*, September 23<sup>rd</sup>, 1994, § 58; *Nuutinen v. Finland*, September 23<sup>rd</sup>, 1994, § 128. See also *Couillard Maugery v. France*, July 1<sup>st</sup>, 2004, § 307.

<sup>113</sup> *X. v. Croatia*, July 17<sup>th</sup>, 2008, § 48-49 and 53-54 (application to a mother suffering from paranoid schizophrenia and drug addiction, and consequently entirely disvested from the capacity to act and consequently deprived by law of her parental rights); *Keegan v. Ireland*, May 26<sup>th</sup>, 1994, §§ 51 et 55; *Olsson (I) v. Sweden*, March 24<sup>th</sup>, 1988, § 71; *B. v. United Kingdom*, July 8<sup>th</sup>, 1987, § 65; *R. v. United Kingdom*, July 8<sup>th</sup>, 1987, § 67-69; *W. v. United Kingdom*, July 8<sup>th</sup>, 1987, § 64 and 109.

<sup>114</sup> *X. v. Croatia*, July 17<sup>th</sup>, 2008, § 48; *Görgülü v. Germany*, February 26<sup>th</sup>, 2004, § 52; *P. C. and S. v. the United Kingdom*, October 16<sup>th</sup>, 2002, § 119-120 and 136-137; *McMichael v. United Kingdom*, February 26<sup>th</sup>, 1995, § 87; *Olsson (I) v. Sweden*, March 24<sup>th</sup>, 1988, § 71; *B. v. United Kingdom*, July 8<sup>th</sup>, 1987, § 64; *R. v. United Kingdom*, July 8<sup>th</sup>, 1987, §§ 67-69; *W. v. United Kingdom*, July 8<sup>th</sup>, 1987, § 64.

<sup>115</sup> *Söderbäck v. Sweden*, October 28<sup>th</sup>, 1998, § 32-34; *Eski v. Austria*, January 25<sup>th</sup>, 2007, § 39 (both judgments relating to stepparent adoption).

<sup>116</sup> *Pini and others v. Romania*, June 22<sup>nd</sup>, 2004, § 145.

<sup>117</sup> *Pini and others v. Romania*, June 22<sup>nd</sup>, 2004, § 153-157; *Fretté v. France*, February 26<sup>th</sup>, 2002, § 42; *E.P. v. Italy*, November 16<sup>th</sup>, 1999, § 62; *Johansen v. Norway*, August 7<sup>th</sup>, 1996, § 78.

<sup>118</sup> *E.B. v. France*, January 22<sup>nd</sup>, 2008, § 41; *Wagner and J.M.W.L. v. Luxemburg*, June 28<sup>th</sup>, 2007, § 121; *Pini and others v. Romania*, June 22<sup>nd</sup>, 2004, § 140 and 156; *Fretté v. France*, February 26<sup>th</sup>, 2002, § 42; *Di Lazzaro v.*

between an adoptive parent and an adopted child are as a rule of the same nature as the family relations protected by art. 8 of the ECHR<sup>119</sup>. Particularly, in conjunction with art. 14, an adopted child may not be discriminated, for example with regard to inheritance rights, when compared to a biological child<sup>120</sup>.

With respect to **adoptive parents who have not yet lived with the adopted child**, a relationship arising from a lawful and genuine adoption may be deemed sufficient to attract such respect as may be deemed as due for family life under art. 8 of the Convention, which is therefore applicable. Especially in the case where, although family life has not yet been fully established in the instant case, if the applicants have not lived with their respective adopted daughters, nor had they sufficiently close *de facto* ties with them either before or after the adoption orders were made, that fact is not attributable to the applicants. Moreover, in selecting the children solely on the basis of a photograph without having had any real contact with them that would have served as preparation for the adoption, the applicants were simply following the procedure put in place by the respondent state in such matters<sup>121</sup>.

With respect to an adoptive parent living with the child in the receiving state without recognition by this state of a foreign adoption decision, family life exists between the parent and the child. The refusal of the receiving state, according to its private international law rules, to recognise the full adoption decision regularly taken in the state of origin because of the receiving state's legal prohibition of full adoption by single persons constitutes an interference with the family life of the adoptive parent and the adopted child contrary to art. 8 of the ECHR. Indeed, it violates the best interest of the child who was fully abandoned in her country of origin. It also creates discrimination contrary to art. 14 of the Convention<sup>122</sup>.

With respect to prospective adoptive parents having lived with the child but not yet adopted him or her, the European Commission of Human Rights has left open the question of a potential family life but has examined the question in light of paragraph 2 of art. 8 of the ECHR (legitimacy of interference by the state)<sup>123</sup>.

With respect to prospective adoptive parents with no contact with any child yet, especially during the process of assessment of the suitability to adopt, it has been judged that **the right to respect for family life does not safeguard the mere desire to found a family**. It presupposes the existence of a family, or at the very least the potential relationship founded either on blood ties either or on a valid adoption. Nevertheless, **the notion of private life**, also protected by art. 8 of the Convention, encompasses elements such as sexual orientation and the right to respect both the decisions to have and not to have a child, as we will see further in our case-law analysis

## 5.1 Analysis of some ECtHR's leading cases and their impact on national frameworks

The aim of focussing on some leading-cases is, by following the ECtHR's reasoning, to make clear how intense was its impact on domestic frameworks, as well as how deep was the interconnection between its action and that of other international organizations, responsible for the draft of modern international legal instruments, adopted outside the sphere of the CoE<sup>124</sup>. Albeit in synthesis, a critical vision might hopefully emerge.

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*Italia*, Commission decision of July 10<sup>th</sup>, 1997, p. 134; *X v. France*, Commission decision of October 5<sup>th</sup>, 1982, p. 241; *X v. Belgium and the Netherlands*, Commission decision of July 10<sup>th</sup>, 1975, p. 75.

<sup>119</sup> *Wagner and J.M.W.L. v. Luxemburg*, June 28<sup>th</sup>, 2007, § 121; *Pini and others v. Romania*, June 22<sup>nd</sup>, 2004, § 140; *X v. France*, Commission decision of October 5<sup>th</sup>, 1982, p. 241; *X v. Belgium and the Netherlands*, Commission decision of July 10<sup>th</sup>, 1975, p. 75.

<sup>120</sup> *Pla and Puncernau v. Andorra*, July 13<sup>th</sup>, 2004, § 61.

<sup>121</sup> *Pini and others v. Romania*, June 22<sup>nd</sup>, 2004, § 143, 146 and 148. In this case, the right to respect for family life of the adoptive parents was nevertheless judged as legitimately interfered with, if the 10 year old adopted children refused to be adopted (see above).

<sup>122</sup> *Wagner and J.M.W.L. v. Luxemburg*, June 28<sup>th</sup>, 2007, § 117, 133 and 157-160.

<sup>123</sup> 5 March 1990, in *Il diritto di famiglia e delle persone*, 1990, p. 759-766. In a case of foster placement without adoption purpose, the Commission stated that at least *private life*, also guaranteed by art. 8 of the Convention is in question, leaving open the question of family life: July 10<sup>th</sup>, 1978, *D.R.*, vol. 13, pp. 248-251.

<sup>124</sup> For a wide analysis of the ECtHR case law in the field in question, see, in English, A. Opromolla (2001); U.

The following selection of cases, indeed, does not have the ambition to be exhaustive. Its main aim is to trace, inside the heterogeneous panorama of the ECtHR decisions, those that favoured the rise of core principles of a renewed European adoption law. Indeed, the ECtHR, despite the need to respect state discretionary powers and the principle of “*proportionality*”, so to intervene only when this is the most appropriate way in order to avoid non compliance by national laws with the ECHR provisions, developed a *corpus* of interrelated principles that can be considered as fundamental terms of comparison, in any analysis of the European legal systems not limited to the internal sphere.

It is out of doubt that the ECtHR’s rulings have a binding force towards any state condemned for breaching a provision of the ECHR, but the importance of the ECtHR’s judgments was recognized only very gradually in other situations (*i.e.*, when an application was rejected or if a state was not a party to the proceeding). Moreover, not all European countries reacted in the same ways *vis-à-vis* the ECtHR case-law. However, especially in the last decade, **the contribution of the Strasbourg Court became a basic element in the development of a new vision, all over the CoE. Its case-law created a true European “judicial landmark” likely to induce legislative modifications also in states not directly involved in individual cases.**

The very nature of the ECtHR’s role does not permit coherence or uniformization to be ensured. Moreover, it is not the European Court’s task to act as a kind of “judicial law maker”. Such a role would not only be outside the scope of the Strasbourg Court’s duties and powers, but it would also be contrary to its functions, in the interplay with subjects operating at a domestic level, who are placed in a better position to intervene more effectively and promptly. Therefore, **the Court can not** (nor did it want) to **substitute itself to the domestic authorities in the exercise of their responsibilities** for the regulation of public care, nor in the determination of the requirements to declare, respectively, the suitability and eligibility of would-be adopters or the child’s adoptability. It is called, however, to review under the ECHR all the activities done and the decisions taken by state authorities, in the exercise of their power of appreciation<sup>125</sup>. The scope of the latter has to be defined in view of the nature of the issues to be dealt with as well as in consideration of the seriousness of the interests in question. Thus, no general criterion can be established, once and for all. There is, however, a unitary factor that represents **a sort of guideline: the best interests of the child**, which was duly considered during the revision of the CoE Convention on the adoption of children. **Most of the choices – inherently and intentionally vague – that finally prevailed in the 2008 CoEAdC, can be described as the result of the intense incidence of the ECtHR’s “jurisprudence”** that necessarily follows a “bottom/up” method, being compelled to start from the details of every individual situation, before invoking the principles applicable to the case at hand. In light of these considerations, the aspiration to impose unitary solutions in the area of child and family law is not only apt to be considered as legally unfounded<sup>126</sup>, but – at a certain degree – it can also create more serious problems than those that it aims to resolve.

Coming finally to our case-analysis, as far as the legal position of **unmarried fathers** is concerned<sup>127</sup>, a fundamental step was taken in the case *Keegan v. Ireland*<sup>128</sup>, in which the

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Kilkelly (1998). See also S. Grataloup (1998); E. Urso (2001), p. 154-204. More recently, see J. Long (2006), p. 94-104, p. 156-173.

<sup>125</sup> See, among the others, *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, para. 55; *Johansen*, cited above, pp. 1003-04, para. 64; *K. and T. v. Finland*, cited above, para. 154.

<sup>126</sup> This does not mean that well-known and welcome academic initiatives that are devoted to the harmonization of European family law do not deserve the utmost attention. Anyhow, while considering substantive (and not procedural or private and public international law) aspects, in this area, it seems more appropriate to distinguish the different levels in which the analysis can be developed. Evidently, statutory choices are (and have to be) always made by elected representatives and should undergo a judicial scrutiny of constitutionality under state law provisions.

<sup>127</sup> Generally, to establish the existence of a parent-child relationship that represent “family life”, in cases of natural fathers and their children, it is important to consider not only (nor exclusively) cohabitation, but also the kind and nature of the relationship between parents and the attitudes shown towards the children. See recently *Lebbenik v. The Netherlands*, application no. 45582/99, judgment of May 11<sup>th</sup>, 2004, in *Reports*, 2004-IV. The family

ECtHR held that Arts. 8 and 6, I of the ECHR were violated by Irish legislation, which allowed the placement of the applicant's daughter for adoption, shortly after her birth, without her father's knowledge or consent<sup>129</sup>. More precisely, the ECtHR recalled its previous case-law<sup>130</sup>, to emphasize that: “*where the existence of a family tie with a child has been established, the state must act in a manner calculated to enable that tie to be developed and legal safeguards must be created that render possible as from the moment of birth the child's integration in his family*”. Then, it invoked the “*principle laid down in Article 7 of the [CRC...] that a child has, as far as possible, the right to be cared for by his or her parents*”<sup>131</sup>.

This important statement was the basic premise of the ECtHR's reasoning. Indeed, in cases of **children born out of wedlock** “[the] obligations inherent in Article 8 [...] are closely intertwined, bearing in mind the state's involvement in the adoption process. The fact that Irish law permitted the secret placement of the child for adoption without the applicant's knowledge or consent, leading to the bonding of the child with the proposed adopters and to the subsequent making of an adoption order, amounted to an interference with his right to respect for family life”.

However, these conditions were absent in the situation in question, because the state's action was not deemed as “*necessary in a democratic society*”. In its motivation, the ECtHR stressed that a child born out of a *de facto* relationship is a member of “*that “family” unit from the moment of his birth and by the very fact of it*”, and that consequently there “*exists between the child and his parents a bond amounting to family life even if at the time of his or her birth the parents are no longer co-habiting or if their relationship has then ended*”<sup>132</sup>.

In the case at hand, Irish law made it impossible to create a legal bond between the father and the child, from the moment of her birth. For this reason, the Irish state was considered responsible for failing to respect the applicant's right to family life.

The ECtHR rightly underlined that, as it often happens in analogous situations, when “a child is placed with alternative carers he or she may in the course of time establish with them new bonds which it might not be in his or her interests to disturb or interrupt by reversing a previous decision as to care [...] Such a state of affairs not only jeopardised the proper development of the applicant's ties with the child but also set in motion a process which was likely to prove to be irreversible, thereby putting the applicant at a significant disadvantage in his contest with the prospective adopters for the custody of the child”<sup>133</sup>.

Between the decisions of the ECtHR that deserve to be remembered, the importance of the **child's consultation** was repeatedly underlined in some relevant cases, all concerning

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relationship does not end in cases of long periods during which the child is placed in foster care. See *Johansen v. Norway*, application no. 24/1995/530/616, judgment of June 27th, 1996, in *Reports*, 1996-III, p. 1001-02. On these issues, see also *Olsson v. Sweden no.1*, application no. 2/1987/125/176, judgement of March 23<sup>rd</sup>, 1988, in *Reports*, 1988, p. 130; and *Olsson v. Sweden no. 2*, application no. 74/1991/326/398, judgement of November 27<sup>th</sup>, 1992, in *Reports*, 1993, p. 250; *Söderbäck v. Sweden*, application no. 113/1997/897/1109, judgment of September 28<sup>th</sup>, 1998.

<sup>128</sup> Application no. 16/1993/411/409, judgment of May 26<sup>th</sup>, 1994, in *Reports*, p. 342. The complete text of this decision is available in the Court's official website: <http://www.echr.coe.int/echr/> and <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>

<sup>129</sup> The ECtHR also found a violation of art. 6 of the ECHR. Indeed, in the Court's view the adoption process is different from the guardianship and custody proceedings. Given that the applicant was not allowed by Irish legislation to challenge the decision to place his daughter for adoption (either before the Adoption Board – that exercises a quasi-judicial function, and so was considered a Tribunal for the purposes of art. 6 – or before the courts), nor had he any standing in the adoption procedure, he could only impede his daughter's adoption by bringing guardianship and custody proceedings. However, these proceedings inevitably led to a decision in favor of the prospective adoptive parents. Thus, the right to a fair trial was interfered with.

<sup>130</sup> At para. 50. See *Marckx v. Belgium*, judgment of June 13<sup>th</sup>, 1979, *Series A* no. 31, p. 15, para. 31; *Johnston and Others v. Ireland*, judgment of December 18<sup>th</sup>, 1986, *Series A* no. 112, p. 25, para. 55, p. 29, para. 72.

<sup>131</sup> *Eriksson v. Sweden*, judgment of June 22<sup>nd</sup>, 1989, *Series A* no. 156, p. 24, para. 58.

<sup>132</sup> Cohabitation is not a “*conditio sine qua non*” of family life between parents and their children. See *Berrehab v. the Netherlands*, judgment of June 21<sup>st</sup>, 1988, in *Reports*, *Series A* no. 138, p. 14 ff.; *Kroon v. The Netherlands*, judgment of October 27<sup>th</sup>, 1994, in *Reports*, *Series A* no. 297 C, p. 56.

<sup>133</sup> Para. 54. See *W. v. the United Kingdom* judgment of July 8<sup>th</sup>, 1987, *Series A* no. 121, p. 28, para. 62.

German legislation<sup>134</sup>. For instance, in *Kutzner v. Germany*<sup>135</sup>, a case regarding the **withdrawal of the applicants' parental responsibility** for their two daughters, the ECtHR held that there was an **illegitimate infringement of their right to respect for their family life**, as guaranteed by art. 8 of the ECHR. To briefly summarise the case, the applicants' daughters, because of their late physical and mental development, had received educational assistance and support from a very early age. Their parents had followed medical suggestions and attended a special school for people with learning difficulties. However, according to the competent Guardianship Court, they "[did] not have the intellectual capacity required to bring up their children properly". For this reason, an interlocutory order was made, which withdrew their rights to decide about their children's health and place of residence. Their daughters were placed in the care of the assessment team of a private association. This first decision was followed by another one that withdrew the applicants' parental rights. In light of the evidence collected and the psychologist's report, they were deemed to be unfit to bring up their children, because they lacked the necessary intellectual capacity and, consequently, the awareness to answer to their children's needs. The applicants' appeal against this decision was dismissed by the competent Regional Court, on the ground that the relevant provisions of the German civil code on the protection of children's interests were satisfied. The ECtHR, after considering the restrictions on the applicants' visiting rights, held that the placement of the children in unidentified foster homes foreclosed the possibility for the applicants to see them for the first six months. In light of further facts (i.e., obstacles and limitation in the arrangements for visiting rights, because of the children's continued placement in foster homes and the restrictions imposed on contact with the applicants) the ECtHR emphasized that there was an unjustified interference with family life. Indeed, the width of member states' discretion is not unlimited. The ECtHR, after recognizing that in the "instant case the authorities may have had legitimate concerns about the late development of the children [held that...], both the care order itself and, above all, the manner in which it was implemented were unsatisfactory" (at point 58).

Although this case did not concern adoption law, but **foster care**, it seems important to **underline the meaning of the concept of family life as well as the characters of state intervention**, in situations in which limits in the parents' capacities objectively exist, but they can not justify the severance of the ties with their children. A statement of the Court deserves to be quoted: "*Although the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in an effective "respect" for family life. Thus, where the existence of a family tie has been established, the state must in principle act in a manner calculated to enable that tie to be developed and take measures that will enable parent and child to be reunited*"<sup>136</sup>.

Of course, the ECtHR is aware of the variety of solutions adopted by state legislators, which reflect different traditions on the role of the family and of public authorities in the care of children and that depend also on the amount of available resources to finance social interventions, thanks to effective preventive care measures. Anyhow, a **crucial importance** has to be conferred, "*in any event*", to the **child's best interests**<sup>137</sup>. Similar considerations can be extended to cases in which a foster placement precedes the start of an adoption procedure. Therefore, it can be interesting to quote further excerpts from this decision. Indeed, **the principle of subsidiarity, at a domestic level, can be properly respected only as far as children, whose parents' difficulties can not be easily eliminated, but who have developed intense ties of affection with them, are not separated from their family**

<sup>134</sup> See *Sahin v. Germany*, judgment of July 8<sup>th</sup>, 2003; *Sommerfeld v. Germany*, judgment of July 8<sup>th</sup>, 2003; *Kutzner v. Germany*, judgment of February 26<sup>th</sup>, 2002; *Hoffmann v. Germany*, judgment of October 11<sup>th</sup>, 2001; *Elsholz v. Germany*, judgment of July 13<sup>th</sup>, 2000.

<sup>135</sup> *Kutzner v. Germany*, judgment of February 26<sup>th</sup>, 2002.

<sup>136</sup> See para. 61, where the ECtHR cited several authorities. Among these, see especially *Olsson v. Sweden (no. 2)*, judgment of November 27<sup>th</sup>, 1992, Series A no. 250, pp. 35-36, para. 90.

<sup>137</sup> See para. 66. Other cases have been mentioned here: *Hokkanen v. Finland*, judgment of September 23<sup>rd</sup>, 1994, Series A no. 299-A, p. 20; *Johansen*, already cited, pp. 1003-04; *K. and T. v. Finland*, cited above.



**environment without previous adequate enquiries, which imply that they should be heard** in all proceedings that may take place.

As the ECtHR rightly emphasized, if “a considerable period of time has passed since the child was first placed in care, the child’s interest in not undergoing further de facto changes to its family situation may prevail over the parents’ interest in seeing the family reunited”.

This is all the more true also in cases – like *Pini and Bertani v. Romania*<sup>138</sup> – in which children who were already adopted could not establish any kind of contact with their adoptive (foreign) parents, because national authorities of their state of origin did not allow them to meet each other.

Generally speaking, it is possible to say that, despite the width of the **discretion** that each member state has in assessing the necessity of taking a child into care, whenever strict limitations are at stake, independently of the nature of the relationship of kinship (whether it is adoptive or biological), **parental rights and access have to always be taken into proper consideration so that any limitation that can threaten the break of family relationships has to be avoided, except if it is deemed as necessary in the child’s best interests**. In a great part of cases, the reasons underlying the decisions taken by national authorities and courts are undoubtedly serious ones. **Anyhow, to justify serious interferences with family life they have to be proportionate to the legitimate aims pursued**.

In following this general approach, **the ECtHR also expressly took into consideration the issue concerning the adopted child’s right to know his/her origins** (*Odièvre v. France*, judgment of February 13th, 2003)<sup>139</sup>, in light of Art. 7 of the CRC too, so that **a fair balance can be struck between this right** (to have access to information about the identity of his/her parents and siblings so as to develop his/her own personality) **and that of the biological parents** (to remain anonymous). In its careful analysis, all the different positions were properly examined so as to emphasize the reasons that justify some divergences among legal systems. Basically, **the main contrapositions can be referred to two kinds of conceptions**.

On one side, in light of the child’s right to the respect of his/her own identity, it is not accepted that he/she can not have parents and, as a consequence, anonymous birth is refused. In this perspective, only certain limitations to the disclosure of information are considered admissible. For instance, in case of refusal by the child’s parents (or rather, in most cases, by one of them, the single mother) to have contacts with the child, the possibility of ensuring that the delivery occurs in a “discreet way” is admitted, so as to respect parental privacy, but also the child’s right, in the future, to trace his/her origins back. Of course, a delicate equilibrium has to be reached, given the coexistence of two opposed interests. Anyhow, in case of persistence of the parent/s unwillingness to have contacts with the child, the latter can not force them to act differently.

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<sup>138</sup> Applications nos. 78028/01 and 78030/01. For a brief analysis of this decision see later in the text. On this decision, see E. Urso (2002); C. Ovey, R. White (2003).

<sup>139</sup> The French legislator had already modified statutory provisions previously in force thanks to an Act (no. 2002-92) enacted on January 22<sup>nd</sup>, 2002. Therefore, the Court thought sufficient to verify that this new system allowed the applicant to receive information about her family of origin, albeit not about the identity of its members, so that she could be able to trace back her roots. At the same time, the new statute was respectful of the rights of all persons involved, in the sense that it ensured the anonymity of the birth mother too in case she decided not to reveal her identity, together with a series of additional guarantees. Indeed, specialized personnel have to inform a pregnant woman who declares to prefer to remain anonymous after the child’s birth about the legal consequences of her choice and the psychological shortcomings of not knowing one’s own identity, as well as on the possibility of changing her mind, later, at any moment. Furthermore a specific Council was set up (*Conseil National pour l’accès aux origines personnelles*) to mediate between the requests made by the different subjects involved.

For a prior decision, concerning an applicant’s request – refused by national authorities – to know his past life, when he was placed in foster care (from the age of one year until majority), see *Gaskin v. United Kingdom*, application no. 10454/83, judgment of July 7<sup>th</sup>, 1989. The ECtHR excluded a violation of the right to respect of private and family life, as far as the limitation in the access to social services records (due to the need of confidentiality), but it held that the impossibility for the person directly involved to receive all necessary information to know and to understand his childhood, if all the contributors did not consent to the disclosure of such information, amounted to a violation of art. 8 of the ECHR.

**On the other side, anonymous birth is viewed very differently, as a solution to avoid the sacrifice of the child's life.** In other words, the right to give birth anonymously is not considered as a choice aimed at solving the contrast between the child's "*right to filiation*" and the need to avoid the "*mother's distress*", but as a tool to cope with the contraposition between the existence of the child and the right to know his/her mother. Given that the latter can be envisaged only on condition that the first one is respected, it is thought that making possible the **child's birth** (*i.e.*, ensuring his/her right to life) possible has a **priority** with respect to the protection of the person's right to know his/her parent/s. For this reason, anonymous birth is considered legitimate and ethically acceptable.

The knowledge of the diversities and analogies among legal systems, which is extremely important for a supranational Court, can add further elements to our analysis. Indeed, an entire paragraph of the ECtHR's ruling was devoted to comparative law. The 2002 French reform of the so-called "*accouchement sous X*" was considered in parallel with solutions followed in other European countries<sup>140</sup>. Some parts of this interesting synthesis deserve to be quoted: "*It is relatively rare for mothers to be entitled to give birth anonymously under European domestic legislation, as Italy and Luxembourg stand alone in not imposing a statutory obligation on the natural parents to register a newborn child or to state their identity when registering it. Conversely, many countries make it obligatory to provide the names, not only of the mother, to whom the child is automatically linked, but also of the father*"<sup>141</sup>.

As the ECtHR has pointed out, this happens in Norway, the Netherlands, Belgium, Spain<sup>142</sup>, Denmark, the United Kingdom, Portugal, Slovenia, Switzerland and Germany. "In Germany, in view of the rising number of abandoned newborn infants, the first "baby box" (Babyklappe) – a system that allows the mother to leave her child, ring a bell and leave without giving her identity – was installed in Hamburg approximately two years ago. Since then, other "baby boxes" have been installed in other towns. In May 2002 a bill on anonymous births was rejected by the Bundestag. On 21 June 2002 the Land of Baden-Württemberg introduced a further bill in the Bundesrat which was submitted to the relevant committees for presentation to the Bundestag. Yet another example is provided by Hungary, where mothers may decide to remain anonymous by abandoning their newborn child in a special, unsupervised room in the hospital.

The current trend in certain countries is towards the acceptance, if not of a right to give birth anonymously, then at least of a right to give birth "discreetly". An example of this is

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<sup>140</sup> A clear description of the French legal developments was proposed by the ECtHR (see *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, paras. 15 and 16). As the Court made it clear, French law did not recognize the *mater semper certa est* rule. Newborn babies could be abandoned according to a set procedure, enabled by an ancient tradition. At the times of the French revolution, a reform introduced some innovations: anonymity and medical care were ensured to pregnant women who wanted to abandon their children at birth. At the beginning of the XX century, a new Act (enacted on June 27<sup>th</sup>, 1904) abolished the system of abandonment based on the "*tour*" and introduced the "*open office*" system. Also under the Vichy government the traditional method to assist mothers, in case of anonymous births, was followed. The extreme severity that characterized sanctions against women who had abortions at that time coexisted with legislative provisions on the protection of births (regulated by Legislative Decree of September 2<sup>nd</sup>, 1941). These rules subsequently underwent several reforms (*i.e.*, due to Decrees of November 29<sup>th</sup>, 1953 and January 7<sup>th</sup>, 1959) and they were amended later on, in 1986 (see art. 47 of the Family and Welfare Code and now art. L. 222-6 of the Social Action and Families Code). The system based on anonymous births was later inserted into Act no. 93-22 of January 8<sup>th</sup>, 1993 that introduced some modifications to the rules on the secret abandonment of children. For the first time, the choice of giving birth in secrecy was expressly considered as far as the determination of filiation is concerned. Indeed, arts. 341 and 341-1 of the French Civil Code created an "estoppel defence" to proceedings to establish maternity. After the approval of the 1993 Act, several official reports were devoted to these issues, suggesting a reform of the system, which was made by Act no. 2002-93 that regulated "*access by adopted persons and people in State care to information about their origins*", which was enacted on January 22<sup>nd</sup>, 2002 and that is still in force.

<sup>141</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 19.

<sup>142</sup> Where the Spanish Supreme Court in 1999 declared the unconstitutionality of section 47 of the Law on civil status, which allows mothers to have the words "*mother unknown*" entered in the register of births, deaths and marriages.

provided by Belgium, where a debate has begun, largely as a result of the large number of women crossing the border to give birth anonymously in France”<sup>143</sup>.

**After a long survey, the ECtHR held that French law was not in breach of art. 8 of the ECHR.** According to the Court, the applicant’s purpose was not to “*call into question her relationship with her adoptive parents*”, but to know the reasons of her abandonment, as well as her parents’ and her siblings’ identity. Therefore, the case was considered from the “*perspective of private life*”, and not in that of “*family life*”. Indeed, the claim was referred to a request aimed at knowing the “*biological truth*”. **The object of the complaint was the preclusion to obtain information about the applicant’s origins and identifying data.** Thus, art. 8 was declared applicable, given that, in the meaning that it acquired thanks to the ECtHR case-law, its aim is also to protect the “*right to identity and personal development, and the right to establish and develop relationships with other human beings*”. Indeed, preserving “*mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life*”<sup>144</sup>. Despite the well-established principle that recognizes the “*vital interest, protected by the Convention, in receiving the information necessary to know and to understand [...one’s own] childhood and early development*”, the Court distinguished the situation in question with regard to others,<sup>145</sup>. More precisely, the ECtHR observed: “*The issue of access to information about one’s origins and the identity of one’s natural parents is not of the same nature as that of access to a case record concerning a child in care or to evidence of alleged paternity. The applicant in the present case is an adopted child who is trying to trace another person, her natural mother, by whom she was abandoned at birth and who has expressly requested that information about the birth remain confidential*”<sup>146</sup>.

Moreover, **the wide notion of private life implies that it has to be referred both to the child and to the mother**<sup>147</sup>. The ECtHR observed that several elements testified the mother’s complete disinterest towards her daughter (*i.e.*, she never went to see her after the birth, and subsequently also she showed total indifference towards her). Notwithstanding the difficult reconciliation of the “*two private interests*” in question, after all, in the case at hand two adult persons were involved. This was deemed to be an important aspect by the ECtHR, given the importance also of the need to protect third parties, that is to say, “*essentially the adoptive parents, the father and the other members of the natural family*”<sup>148</sup>. The Court considered that the private and family life of other subjects has to be respected too, in light of the fact that the applicant was an adult, that her adoption dated back to more than thirty years before and that a non-consensual disclosure of information could be risky for her mother, her adoptive parents, her biological father and her siblings too. In addition to this, the solution adopted by the French legislator in 2002 was considered legitimate and proportionate in an attempt to ensure the protection of another interest, namely the protection of the mother’s and child’s health during pregnancy and birth so as to “*avoid abortions, in particular illegal abortions, and children being abandoned other than under the proper procedure*”<sup>149</sup>. Besides, the ECtHR noted also that “*some countries do not impose a duty on natural parents to*

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<sup>143</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 19.

<sup>144</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 29, where the ECtHR quoted some of its decisions: *Bensaid v. the United Kingdom*, application no. 44599/98, ECHR 2001-I, *Mikulić v. Croatia*, application no. 53176/99, ECHR 2002-I.

<sup>145</sup> Thus, the differences with both the *Gaskin* and the *Mikulić* cases were emphasized. A different situation was present also in the case *M.G. v. the United Kingdom*, application no. 39393/98, judgment of September 24<sup>th</sup>, 2002. On these issues see later in this Chapter.

<sup>146</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 40.

<sup>147</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 44. Here the ECtHR, after considering the wide recognition “*in the general scheme of the Convention*” of the “*child’s vital interest in its personal development*” took account also of the “*woman’s interest in remaining anonymous in order to protect her health by giving birth in appropriate medical conditions*”. On these issues, among the already quoted cases, see *Johansen v. Norway*, judgment of August 7<sup>th</sup>, 1996, in *Reports 1996-III*, p. 1008; and *Kutzner v. Germany*, application no. 46544/99, ECHR 2002-I.

<sup>148</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 44.

<sup>149</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 45.

*declare their identities on the birth of their children and that there have been cases of child abandonment in various other countries that have given rise to renewed debate about the right to give birth anonymously*<sup>150</sup>.

Thus the Court, while taking into account the different practices followed in legal systems and traditions, as well as the diversities of means for abandoning children, held that the French solution was respectful of the ECHR, given the **state margin of appreciation** in deciding the measures likely to ensure the rights hereby guaranteed. Indeed, the applicant, according to French law, could have access to non-identifying information about her mother and natural family, which enabled her “*to trace some of her roots, while ensuring the protection of third-party interests*”<sup>151</sup>. Thanks to the system created by the Act of January 22<sup>nd</sup>, 2002 the principle that a mother may give birth anonymously was preserved, but due relevance was conferred also to the prospects of her future agreement to waive confidentiality. Anyhow, the current provisions make it easier to research about a person’s biological origins, given the role conferred to the National Council for Access to Information about Personal Origins<sup>152</sup>. They permit that a request is made with a view to obtaining the disclosure of the mother’s identity, on condition, however, that she expressed her consent, which is deemed as necessary to protect her from unwelcome interferences with her private life. In that way, **a balanced equilibrium was reached between the competing interests in question**. This was stressed by the ECtHR while observing that member states have to be “*allowed to determine the means which they consider to be best suited to achieve the aim of reconciling those interests*”<sup>153</sup>.

Of course, **legal relationships between adoptees and their adoptive parents, as a rule, create family life**<sup>154</sup>. However, the practical aspects of each situation have to be verified. Indeed, **the existence or not of family life is a question of fact that depends on the concrete and actual presence of strict family ties**. Thus, the ECtHR denied – in a case decided in 2002, *Pini and Bertani v. Romania* – the existence of a violation of the right to family life if the adopted children and the adopters had never been living together, so that there was no possibility of creating reciprocal bonds of affection<sup>155</sup>. At the same time, the Court held that in this case a violation of art. 6 (1) of the ECHR was committed in such a situation by state authorities who were deemed as responsible for not respecting foreign decisions, the enforcement of which might have determined the necessary conditions to give rise to family ties. Indeed, the applicants’ complaints were about the infringement of their right to respect for their family life (art. 8 ECHR). They alleged the failure by the Romanian authorities to enforce the decisions of the competent national judge (*Braşov County Court*) regarding their adoption of two Romanian children, so that they were deprived of any contacts with them. Moreover, they complained that state authorities did not allow their adopted daughters to leave Romania, in violation of art. 2. 2 of Protocol no. 4 to the ECHR.

In brief, the first and the second applicants were Italian couples, who had adopted two children, Romanian nationals. Both of them were born in 1991 and lived in an educational

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<sup>150</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 45.

<sup>151</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 48.

<sup>152</sup> This Council is an independent body and its members are experts of the national legal service, representatives of associations interested in this field and professionals with good practical knowledge of the issues in question.

<sup>153</sup> See *Odièvre v. France*, judgment of February 13<sup>th</sup>, 2003, para. 48.

<sup>154</sup> See the European Commission decisions in the following cases: *X v. Belgium and the Netherlands*, decision of July 10<sup>th</sup>, 1975, application no. 6482/74, in *Decisions and Reports*, 7, p. 75 ff.; *X v. France*, decision of October 5<sup>th</sup>, 1982, application no. 9993/82, in *Decisions and Reports*, 31, p. 241 ff.

<sup>155</sup> Applications nos. 78028/01 and 78030/01. The ECtHR stated that: “[I]n the instant case [no..] doubt [could be casted] on the compliance of the adoption orders with domestic legislation or with the relevant international treaties [...]. [Even if] the children’s consent was not obtained by the courts that allowed the applicants’ applications for adoption, [...] that was not an omission. As the children were nine and a half years old on the date on which the national courts ruled on the applications for adoption, they had not yet reached the age at which their consent should have been obtained for the adoption order to be valid, set at ten years under the domestic legislation. Such a threshold does not appear unreasonable, since the relevant international treaties leave the national authorities some discretion as to the age from which children are to be regarded as sufficiently mature for their wishes to be taken into account [...]” For a brief analysis of this decision see later in the text. On this decision, see E. Urso (2002).

centre (the *Poiana Soarelui Educational Centre* in Braşov – hereinafter CEPSB –), after being abandoned by their parents. As it was ascertained at a domestic level, their adoptions were granted in compliance with applicable state laws, as well as with the HCIA. Therefore, the adopted children were allowed to leave Romania and enter Italy and to reside there permanently with their adoptive parents. Despite previous attempts to contest the validity of the adoption orders, there was no doubt that the two children were adopted by the applicants. However, the CEPSB brought actions to set aside both adoption orders. Their lawfulness was contested, in light of the alleged lack of previous children’s consent. However, the first instance Court rejected their application, given that the necessary consent to adoption was given by the competent Board. This decision became final after that even the Court of Appeal declared the CEPSB’s complaints as unfounded. More precisely, the Court took into consideration the views expressed by the Romanian Committee for Adoption, which criticized the fact that the CEPSB filed numerous applications to the domestic courts. The latter actions were viewed as abuses of process, because they were not in the children’s best interests (*i.e.*, to favour integration into a family), but aimed at postponing and obstructing the adoption process, by causing delays so that the children could continue to stay in the institutional care placement. This was the basic reason on which also the ECtHR judgment was founded. Anyhow, the Court did not think that a violation of art. 8 occurred, given that the adopted children, now adolescents, have not expressed their consent to adoption because they viewed their adopters, who could never had been able to meet them in Romania, as strangers. However, the Court condemned the Romanian state because of a breach of due process, being the activities carried out by its national authorities, which determined such a situation, contrary to the fundamental procedural principle set up by art. 6 of the ECHR (*i.e.*, the right to a fair hearing).

Finally, the ECtHR observed that notwithstanding the absence of a family life between the adoptive parents and the adoptees, given “*that the applicants have not lived with their respective adopted daughters or had sufficiently close de facto ties with them either before or after the adoption orders were made, that fact is not attributable to the applicants. In selecting the children solely on the basis of a photograph without having had any real contact with them that would have served as preparation for the adoption, the applicants were simply following the procedure put in place by the respondent State in such matters. It further appears from the evidence before the Court that the applicants always viewed themselves as the girls’ parents and behaved as such towards them through the only means open to them, namely by sending them letters written in Romanian. [Thus...], the Court considers that such a relationship, arising from a lawful and genuine adoption, may be deemed sufficient to attract such respect as may be due for family life under Article 8 of the Convention, which accordingly is applicable. As regards the State’s obligation to take positive measures, the Court has repeatedly held [...] that Article 8 includes a parent’s right to the taking of measures with a view to his or her being reunited with the child and an obligation on the national authorities to take such action*”<sup>156</sup>.

According to the ECtHR’s ruling, national authorities do not have an absolute obligation to “*take measures to that end*”, even more so in cases in which the adoptive parents and the adopted children are “*still strangers*” to each other<sup>157</sup>. Despite the possibility of adopting a wide range of specific measures, adapted to every individual case, there is a general criterion to be followed, in similar situations, which was expressly indicated by the Strasbourg Court: “*The nature and extent of such measures will depend on the circumstances of each case, but the understanding and cooperation of all concerned will always be an important ingredient. While the national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests*

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<sup>156</sup> See, for example, the following judgments: *Eriksson*, cited above, pp. 26-27, para.71; *Margareta and Roger Andersson v. Sweden*, judgment of February 25<sup>th</sup>, 1992, Series A no. 226-A, p. 30, para. 91; *Olsson v. Sweden* (no. 2), judgment of November 27<sup>th</sup>, 1992, Series A no. 250, pp. 35-36, para. 90; and *Hokkanen v. Finland*, judgment of September 23<sup>rd</sup>, 1994, Series A no. 299-A, p. 20, para. 55.

<sup>157</sup> See *Nuutinen v. Finland*, no. 32842/96, para.128, ECHR 2000-VIII.

and the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them<sup>158</sup>. **What is decisive in this case is therefore whether the national authorities took the necessary steps to enable the applicants – who had been acknowledged as the adoptive parents [...] and had in both cases obtained a court order, on an urgent application, requiring the CEPSB, a private institution, to hand over the child to them – to establish family relations with each of the children they had adopted [...]. There are unquestionably no grounds, from the children’s perspective, for creating emotional ties against their will between them and people to whom they are not biologically related and whom they view as strangers. It is clear from the facts of the case that at present [the adopted children] would rather remain in the social and family environment in which they have grown up at the CEPSB, into which they consider themselves to be fully integrated and which is conducive to their physical, emotional, educational and social development, than be transferred to different surroundings abroad. The adoptive parents’ interest derived from their desire to create a new family relationship by forging ties with [...] their adopted children. Although such a desire on the part of the applicants is legitimate, the Court considers that it can not enjoy absolute protection under Article 8 in so far as it conflicts with the children’s refusal to be adopted by a foreign family. The Court has consistently held that particular importance must be attached to the best interests of the child in ascertaining whether the national authorities have taken all the necessary steps that can reasonably be demanded to facilitate the reunion of the child and his or her parents. In particular, it has held in such matters that the child’s interests may, depending on their nature and seriousness, override those of the parent**<sup>159</sup>.

The ECtHR decision in the case *Pini and Bertani v. Romania* is a clear example of how difficult is the task of a supranational Court, but also of how decisive are the steps to be taken by national authorities are, so as to respect fundamental children’s rights, as stated by international Conventions. The deplorable manners in which the adoption proceedings were conducted were severely criticized by the ECtHR, given that it was the absence of any possibility of effective contacts between adopters and adoptees that caused the situation. Children did not receive any psychological support apt to help them accept the departure from the centre where they have been living for a long time. The Court considered these omissions as the real reasons of the shortcoming that lead to litigation.

The legislative efforts made in order to adopt adequate measures to respect international obligations can not be isolated. As it was properly held by the ECtHR, in the case here considered: “[I]n spite of [the] domestic legal provisions, [...] no sanctions have been taken in respect of the lack of cooperation of the private institution in question with the authorities empowered to enforce the adoption orders” Such a situation contravenes the principles of the rule of law and of legal certainty, notwithstanding the existence of special reasons potentially justifying it, the Government having cited the obligations on the respondent state with a view to its future accession to the European Union legal order. By refraining for more than three years from taking the effective measures required to comply with final, enforceable judicial decisions, the national authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect. That conclusion is made all the more necessary in the present case by the probably irreversible consequences of the passage of time for the potential relationship between the applicants and their adopted daughters.

The fact that a child stays for a long time in an institutional care centre, absent any formal decision that limits his/her parents’ rights on justified grounds, was considered, however, in previous cases, as an interference with art. 8 of the ECHR<sup>160</sup>.

<sup>158</sup> See *Hokkanen*, cited above, p. 22, para.58; *Nuutinen*, cited above, para. 128; and *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, para. 221, ECHR 2000-VIII.

<sup>159</sup> See *E.P. v. Italy*, no. 31127/96, para. 62, November 16<sup>th</sup>, 1999, and *Johansen v. Norway*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, pp. 1008-09, para. 78.

<sup>160</sup> Apart from the cases already mentioned (see above at footnote n. 3), it is important to quote other decisions of the ECtHR on these issues. See *Scozzari and Giunta v. Italy*, applications nos. 39221/98 and 41963/98, judgment

The **suitability of prospective adoptive parents** was considered in connection with much debated cases, in which the sexual orientation of would-be adopters was deemed by national authorities to be contrary to the best interests of the child. In two cases this kind of situations was examined directly<sup>161</sup>. After a first decision (*Fretté v. France*)<sup>162</sup> taken in 2002 in which the ECtHR – with a one vote majority – denied the existence of a violation of both the right to family life and of the right not to be discriminated (arts. 8 and 14 of the ECHR), while deciding that a breach of art. 6 (1) of the ECHR had occurred, in another case decided in 2008 (*E.B. v. France*) the Court substantially modified its position, despite the formal declaration of uniformity with its precedent, and held that current French legislative

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of July 13<sup>th</sup>, 2000. In *Covezzi and Morselli v. Italy*, application no. 52763/99, judgment of September 24<sup>th</sup>, 2003, the ECtHR sanctioned the excessive delay in the proceedings, given the length of time elapsed (*i.e.*, twenty months) between the moment in which the applicants' children were separated from their parents (in compliance with a decision taken in a situation of urgency) and the moment in which the final decision on parental powers (*potestà dei genitori*) was issued by the Children's Tribunal. *Italy*, application no. 40/1997/824/1030, judgment of June 9<sup>th</sup>, 1998. On these issues, see Urso (2001) and (2003).

<sup>161</sup> Indeed, the ECtHR had already taken into consideration the problem of a parent's sexual orientation, in the past, but in a different case concerning a biological father, whose daughter was born in a heterosexual relationship, before he started to live in a same-sex union with a man. See *Salgueiro da Silva Mouta v. Portugal*, application no. 33290/96, judgment of March 21<sup>st</sup>, 2000 (final).

The applicant was a Portuguese national who, during his marriage, had a daughter. After separating from his wife he started to live with a man, in a stable homosexual relationship. Pending the divorce proceedings, he signed an agreement with his former wife about the award of parental responsibility. The ex-spouses agreed that parental responsibility was conferred onto the mother and a right to contact onto the father. However, the applicant was unable to exercise his right to contact because his ex-spouse did not comply with that agreement. Therefore, he sought an order giving him parental responsibility for the child. He alleged that his former wife was not complying with the terms of the agreement, given that the child had not been living with her, but with her maternal grandparents only. In her reply, his former wife accused the applicant's partner of having sexually abused the child. The Lisbon Family Affairs Court awarded the applicant parental responsibility, dismissing as unfounded – in light of the court psychologists' reports – his former wife's allegations. The latter appealed this decision with the Lisbon Court of Appeal, which rendered a judgment that reversed the lower court's ruling and awarded parental responsibility to her, with contact to the applicant. Anyhow, the right to contact granted to the applicant by the second instance Court was never respected by his former wife. Thus, he lodged an application with the Lisbon Family Affairs Court for enforcement of the Court of Appeal's decision. He complained that the choice of awarding parental responsibility to his ex-wife rather than to himself was due exclusively to his sexual orientation. In his application to the ECtHR, he contested that there was a violation of Article 8 of the Convention taken alone and in conjunction with art. 14, given that the Court of Appeal's decision amounted to an unjustifiable interference with his right to respect for his family life. More precisely, such a decision was described by the applicant as “prompted by atavistic misconceptions which bore no relation to the realities of life or common sense”. The ECtHR, after emphasizing that in the enjoyment of the rights and freedoms guaranteed by the Convention, art. 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations, recognized that the Lisbon Court of Appeal “had regard above all to the child's interests”. At the same time, the Strasbourg Court noted that the second instance judges, in reversing the first instance decision, “introduced a new factor, namely that the applicant was a homosexual and was living with another man”. The Court concluded that “there was a difference of treatment between the applicant and [the child's] mother which was based on the applicant's sexual orientation, a concept which is undoubtedly covered by Article 14 of the Convention”. A different treatment is discriminatory, in this regard, - said the Court – if it has no objective and reasonable justification, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized. Although the decision of the Court of Appeal was aimed at pursuing a legitimate aim (*i.e.*, the protection of the health and rights of the child), the grounds on which it was based were illegitimate. Indeed, The Court of Appeal, in deciding that there were not sufficient reasons for taking away from the mother the parental responsibility awarded her by agreement between the parties, had taken into account the fact that the applicant was a homosexual and was living with another man. It had observed that “The child should live in ... a traditional Portuguese family” and that “[i]t is not our task here to determine whether homosexuality is or is not an illness or whether it is a sexual orientation towards persons of the same sex. In both cases it is an abnormality and children should not grow up in the shadow of abnormal situations” (*ibid.*). The ECtHR thought that the above-quoted passages were not simple *obiter dicta*, but the real foundations of the contested judgment, because “the applicant's homosexuality was a factor which was decisive in the final decision”. The Court of Appeal – said the ECtHR – warned the applicant not to behave in a way that might make the child realize that her father was living with another man “in conditions resembling those of man and wife” (*ibid.*). In light of this reasoning, the Strasbourg Court held that the distinction made, being based on considerations about the applicant's sexual orientation, was “not acceptable under the Convention”, and that, for this reason, there was no “reasonable relationship of proportionality” between the means employed and the aim pursued. Therefore, it stated that there was a violation of art. 8 considered in conjunction with art. 14.

<sup>162</sup> See *Fretté v. France*, application no. 36515/97, judgment of May 26<sup>th</sup>, 2002.

provisions, as applied by its highest administrative jurisdiction, determined a violation of both art. 8 and art. 14 of the ECHR.

In the first case, *Fretté v. France*<sup>163</sup>, the applicant was a man who alleged that the decision to dismiss his application for authorisation to adopt a child was an arbitrary interference with his private and family life, (art. 8 ECHR) and that this was due only to an “*unfavourable prejudice about his sexual orientation*”. In his complaint, moreover, he alleged a procedural violation, given that he was not notified of the hearing held by the highest administrative French Court (*Conseil d’Etat*) and that he had had no access to the Government Commissioner’s submissions on his case before the hearing so that there was also a breach of arts. 6 and 13 of the ECHR. The ECtHR considered only the latter complain founded, but rejected the first one. These were the reasons of the decision, in brief: “*The [...] decision contested by the applicant was based decisively on the latter’s avowed homosexuality. Although the relevant authorities also had regard to other circumstances, these appeared to be secondary grounds. In the Court’s opinion there is no doubt that the decisions to reject the applicant’s application for authorisation pursued a legitimate aim, namely to protect the health and rights of children who could be involved in an adoption procedure, for which the granting of authorisation was, in principle, a prerequisite. It remains to be ascertained whether the second condition, namely the existence of a justification for the difference of treatment, was also satisfied. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different [...]. However, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law.*

*The scope of the margin of appreciation will vary according to the circumstances, the subject matter and the background; in this respect, one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States [...]*”.

In 2002, in the field in question, there was an extremely uncertain situation, absent clear and specific provisions on these issues, in most European legal systems. Therefore, the ECtHR could say that: “*It is indisputable that there is no common ground on the question. Although most of the Contracting States do not expressly prohibit homosexuals from adopting where single persons may adopt, it is not possible to find in the legal and social orders of the Contracting States uniform principles on these social issues on which opinions within a democratic society may reasonably differ widely. The Court considers it quite natural that the national authorities, whose duty it is in a democratic society also to consider, within the limits of their jurisdiction, the interests of society as a whole, should enjoy a wide margin of appreciation when they are asked to make rulings on such matters. [...] Since the delicate issues raised in the case, therefore, touch on areas where there is little common ground amongst the member States of the Council of Europe and, generally speaking, the law appears to be in a transitional stage, a wide margin of appreciation must be left to the authorities of each State [...which] should not, however, be interpreted as granting the State arbitrary power, and the authorities’ decision remains subject to review by the Court for conformity with the requirements of Article 14 of the Convention*”.

In the *Fretté* case, the Strasbourg Court founded its decision on an evaluation of the state solution, which was deemed to be objectively and reasonably justified, given the wide margin of appreciation left to domestic authorities, the presence of deep contrapositions among the opinions of experts and the lack of specific studies in the area. On the latter point, the ECtHR added: “*that the scientific community – particularly experts on childhood, psychiatrists and psychologists – is divided over the possible consequences of a child being adopted by one or more homosexual parents, especially bearing in mind the limited number of scientific studies conducted on the subject to date. In addition there are wide differences in national and international opinion, not to mention the fact that there are not enough children*

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<sup>163</sup> See *Fretté v. France*, application no. 36515/97, judgment of May 26<sup>th</sup>, 2002.



to adopt to satisfy demand. This being so, the national authorities, and particularly the Conseil d'Etat, which based its decision, inter alia, on the Government Commissioner's measured and detailed submissions, were legitimately and reasonably entitled to consider that the right to be able to adopt on which the applicant relied under Article 343-1 of the Civil Code was limited by the interests of children eligible for adoption, notwithstanding the applicant's legitimate aspirations and without calling his personal choices into question. If account is taken of the broad margin of appreciation to be left to States in this area and the need to protect children's best interests to achieve the desired balance, the refusal to authorise adoption did not infringe the principle of proportionality. [Therefore...] the justification given by the Government appears objective and reasonable and the difference in treatment complained of is not discriminatory within the meaning of Article 14 of the Convention<sup>164</sup>.

In the second case, *E.B. v. France*<sup>165</sup>, the applicant was a woman, to whom the French authorities had denied the declaration of suitability to adopt a child. She complained of the breach of her right to family life due to discrimination based on her sexual orientation, which she has revealed. In fact, she had a relationship with a woman, but her request to be considered suitable to adopt had been made as a single person, that is possible according to the current legislative provisions. The ECtHR took into account their contents carefully and, having regard to the absence, in the applicable rules stated by French law (in the *Civil code* and other statutes), held that a violation of both arts. 8 and 14 of the ECHR was committed.

It seems important to remember that the majority of the ECtHR held that the French state breached art. 14 of the Convention considered in conjunction with art. 8 because the Code civil allows single persons to adopt, without imposing any kind of restrictions, so that no discrimination based on sexual orientation can be considered legally justified.

A brief excerpt of this case can better highlight the reasoning followed by the ECtHR, in apparent contradiction with the previous one. Indeed, this is an issue that still reveals one of the deepest differences, among European laws, some of which, however, underwent a radical modification in the past five years, after the ECtHR decided the case *Fretté v. France*.

In *E.B. v. France*<sup>166</sup> the Court held that: “the relevant provisions of the [French] Civil Code are silent as to the necessity of a referent of the other sex, which would not, in any event, be dependent on the sexual orientation of the adoptive single parent. In this case, moreover, the applicant presented, in the terms of the judgment of the Conseil d'Etat, “undoubted personal qualities and an aptitude for bringing up children”, which were “assuredly in the child's best interests, a key notion in the relevant international instruments [...]. Having regard to the foregoing, the Court cannot but observe that, in rejecting the applicant's application for authorisation to adopt, the domestic authorities made a distinction based on considerations regarding her sexual orientation, a distinction which is not acceptable under the Convention [...]”.

The European Court had observed, from the outset, that its previous trend was not modified, as far as the notion of family and private life is concerned. Indeed, “the provisions of Article 8 do not guarantee either the right to found a family or the right to adopt [...]. 42. Nor is a right to adopt provided for by domestic law or by other international instruments, such as the [CRC...], or the [HCIA...]. The Court has, however, previously held that **the notion of “private life”** within the meaning of Article 8 of the Convention is a broad concept which encompasses, inter alia, the right to establish and develop relationships with other human beings the right to “personal development” [See *Bensaid v. the United Kingdom*, no. 44599/98, para. 47, ECHR 2001-I], or the right to self-determination as such [...]. It encompasses elements such as names [...] gender identification, sexual orientation and sexual life, which fall within the personal sphere protected by Article 8 [See, for example, *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, pp. 18-19, para. 41, and *Laskey, Jaggard and Brown v. the United Kingdom*, judgment of 19 February

<sup>164</sup> See *Fretté v. France*, application no. 36515/97, judgment of May 26<sup>th</sup>, 2002.

<sup>165</sup> *E. B. v. France*, application no. 43546/02, judgment of January 22<sup>nd</sup>, 2008.

<sup>166</sup> *E. B. v. France*, application no. 43546/02, judgment of January 22<sup>nd</sup> 2008, at paras. 41 ff.

1997, *Reports of Judgments and Decisions* 1997-I, p. 131, § 36] and the right to respect for both the decisions to have and not to have a child [See *Evans v. the United Kingdom* [GC], no. 6339/05, para. 71, ECHR 2007]. Admittedly, in the instant case the proceedings in question do not concern the adoption of a child as such, but an application for authorisation to adopt one subsequently. **The case therefore raises the issue of the procedure for obtaining authorisation to adopt rather than adoption itself**".

Indeed, the applicant's claim was founded on the **alleged discrimination** based on her **avowed homosexuality**. Therefore, the European Court did not think that it was "called upon to rule whether the right to adopt, having regard, *inter alia*, to developments in the legislation in Europe and the fact that the Convention is a living instrument which must be interpreted in the light of present-day conditions [...], should or should not fall within the ambit of Article 8 of the Convention taken alone".

In distinguishing the case at hand from the *Fretté v. France* case, the ECtHR held that, in the latter case, the decisions to reject the application for authorisation had pursued a legitimate aim, namely to protect the health and rights of children who could be involved in an adoption procedure, while taking into consideration the wide margin of appreciation of national authorities, on such matters. The Strasbourg Court admitted that also in the *E. B.* case the question to be addressed was basically the same: "how an application for authorisation to adopt submitted by a homosexual single person is dealt with", but it stressed also the differences between the two situations. Indeed, the Court observed that "whilst the ground relating to the lack of a referent of the other sex features in both cases, the domestic administrative authorities did not – expressly at least – refer to E.B.'s "choice of lifestyle"[...]. Furthermore, they also mentioned the applicant's qualities and her child-raising and emotional capacities, unlike in *Fretté* where the applicant was deemed to have had difficulties in envisaging the practical consequences of the upheaval occasioned by the arrival of a child (§§ 28 and 29). Moreover, in the instant case the domestic authorities had regard to the attitude of E.B.'s partner, with whom she had stated that she was in a stable and permanent relationship, which was a factor that had not featured in the application lodged by Mr *Fretté*. With regard to the ground relied on by the domestic authorities relating to the lack of a paternal or maternal referent in the household of a person seeking authorisation to adopt, the Court considers that this does not necessarily raise a problem in itself. However, in the circumstances of the present case it is permissible to question the merits of such a ground, the ultimate effect of which is to require the applicant to establish the presence of a referent of the other sex among her immediate circle of family and friends, thereby running the risk of rendering ineffective the right of single persons to apply for authorisation. The point is germane here because the case does not concern an application for authorisation to adopt by a – married or unmarried – couple, but by a single person. In the Court's view, that ground might therefore have led to an arbitrary refusal and have served as a pretext for rejecting the applicant's application on grounds of her homosexuality.

Another issue was recently considered by the ECtHR in the case *Wagner v. Luxembourg*<sup>167</sup>: the **possibility that a full adoption of a child granted abroad to a single person, in a state that permits that singles can fully adopt a child, is recognized and enforced in a state in which this kind of adoption is not admitted by the law**. As it has been mentioned, in the Luxembourgish National Report, the refusal to give effect to the adoption order by domestic courts was not considered respectful of the ECHR by the Strasbourg Court. Notwithstanding several decisions were taken by national judges (*i.e.*, the competent civil and the administrative courts, as well the Constitutional Court), stressing that the internal rules are aimed at protecting the child's right to a family, the ECtHR held that this solution violates art. 8 of the ECHR. Given the importance of the issues in question, in light of the presence of different solutions followed by other national legislations, similar to that indicated by the ECtHR as respectful of the ECHR, it seems important to give enough space to the Court's interesting comparative analysis again. Not only the perspective – and the problems – linked with a private international law vision were considered carefully by the

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<sup>167</sup> See *Wagner v. Luxembourg*, application no. 76240/01, judgment of June 28<sup>th</sup>, 2007.

Court (*i.e.*, about conflict of laws rules designed to determine the competent jurisdiction, the applicable law and the requirement to enforce a foreign decision) but also some core aspect of substantial regulation of adoption by single persons. The text of the decision will be quoted in French, because this is the language in which the decision was delivered<sup>168</sup>.

*“Parmi les quarante-six Etats membres du Conseil de l’Europe, aucun n’interdit de manière absolue l’adoption par les célibataires. L’Irlande et l’Italie acceptent l’adoption par les célibataires dans des situations très exceptionnelles. L’Islande et la Lituanie autorisent les célibataires à adopter un enfant dans des «circonstances exceptionnelles».*

*Un deuxième groupe de pays admet l’adoption par des célibataires, mais seulement si certaines conditions sont remplies. Ainsi, en Arménie, seules les femmes célibataires peuvent adopter ; à Malte, un célibataire ne peut pas adopter un enfant de sexe féminin.*

*Dans un troisième groupe de pays, comprenant le Luxembourg, l’adoption par les célibataires est admise de façon générale, mais leur capacité d’adopter est limitée à une adoption sans rupture des liens familiaux avec la famille d’origine. Ainsi, en Géorgie, en Lituanie et en Russie, l’adoption par un célibataire ne rompt pas les liens de filiation avec l’auteur d’origine de sexe opposé à celui de l’adoptant. Dans les autres pays européens, l’adoption par les célibataires est permise sans aucune limitation.*

*Les Etats membres n’accordent pas les mêmes effets à un jugement d’adoption rendu à l’étranger. Si certains Etats acceptent que le jugement rendu à l’étranger produise dans l’ordre juridique interne les mêmes effets qu’il produirait dans l’Etat où il a été rendu, d’autres Etats vont autoriser les parties à demander l’« adaptation » des effets au droit interne et, enfin, un troisième groupe d’Etats n’accepteront la production des effets que selon leur propre droit interne”.*

The **comparative analysis** made by the ECtHR deserves to be expressly quoted, because of its clarity and usefulness for our purposes: *“Le panorama du droit comparé permet de regrouper les Etats membres dans deux catégories distinctes:*

*i. Les Etats qui refuseraient la reconnaissance même du jugement étranger dans des circonstances telles qu’elles se présentent en l’espèce. D’une part, en Irlande et en Italie, le refus serait fondé sur l’interdiction de l’adoption plénière au profit des célibataires. D’autre part, dans des pays nordiques, le refus serait fondé sur une interdiction de principe d’une adoption conduite selon la démarche suivie en l’espèce par la première requérante. En effet, lorsqu’un citoyen danois, finlandais, islandais ou suédois souhaite adopter un enfant à l’étranger, il doit d’abord demander une autorisation aux autorités nationales de son propre pays pour ensuite pouvoir prendre contact avec les autorités de l’Etat duquel il souhaite adopter un enfant. Lorsque cette autorisation préalable fait défaut, le droit interne des pays nordiques prévoit d’une façon uniforme que le jugement rendu à l’étranger ne sera pas reconnu.*

*ii. Les Etats qui accepteraient la reconnaissance du jugement étranger dans des circonstances telles qu’elles se présentent en l’espèce. Dans certains Etats, le jugement étranger produirait les effets déterminés par le droit interne de l’Etat où il a été rendu (c’est le cas de la Suisse et de l’Estonie). Ensuite, dans d’autres Etats, les effets du jugement étranger pourraient être adaptés au droit national (c’est le cas des Pays-Bas). Enfin, dans la plupart des Etats, le jugement étranger ne produirait que les effets déterminés par le droit national du pays où il serait exécuté. Ainsi, indépendamment des effets qu’un jugement peut produire dans le pays où il a été rendu, il ne produira en droit interne des Etats membres que les effets autorisés par le droit national. Le juge national devra alors adapter l’adoption étrangère à l’un des modes d’adoption reconnu par le droit interne. L’adoption étrangère produira donc les mêmes effets qu’une adoption de droit interne. Il en est ainsi notamment en Allemagne, en Belgique, en Bulgarie, en Croatie, en Espagne, en France, à Malte, au Portugal et en Roumanie”.*

**The need to consider all these divergences among state laws does not eliminate their obligation to abide by the ECHR principles.** The welcome decision by the ECtHR reflects both these aspects, but, then again, the Court could not decide which is the best

<sup>168</sup> See *Wagner v. Luxembourg*, application no. 76240/01, judgment of June 28<sup>th</sup>, 2007, paras. 66-77.

solution, as this has to be identified by member states in the exercise of their discretion, by balancing the two opposing interests in question: to ensure that the right to family life of a foreign child receives proper and full respect, the same that is given to nationals, and that after that an adoption has been legally granted abroad and a child is placed in the care of his/her adopter, strict national rules do not violate his/her best interests to keep the family ties already established with his/her adoptive (single) parent. In some cases, national case-law determined a transformation of full adoptions into simple adoptions. Anyhow, this is an issue that will be dealt with further down in greater detail<sup>169</sup>.

In concluding this general overview of the main trends of the “European judiciary”, it is possible to say, on the latter point, that it is not by chance that the 2008 CoEAdC did not consider **intercountry adoption** extensively. Only one provision deals with these cases, but it is limited to situations in which information on the adoptee and/or the would-be adopter are required by a state party to the CoE, if the person involved lives or has lived in one state member to the Convention<sup>170</sup>. Indeed, **the CoE consciously omitted any reference to this issue, on a more general scale, because it preferred to develop a European international instrument that could be complementary to the HCIA.**

**Such a perspective can prove to be extremely valid because it presupposes the acceptance of the vastly appreciated mechanism set up by the Hague Conference,** based on a system of co-operation between Central Authorities as well as on its collaboration with new organs (whether public or private “accredited bodies”) that are widespread throughout the large area in which the HCIA is already in force.

## 6. THE EU AND CHILDREN’S RIGHTS: EUROPEANIZATION TRENDS

The **EU Parliament Resolution of January 16<sup>th</sup>, 2008, “Towards an EU strategy on the rights of the child”** (P6-TA [2008] 0012) represents a clear development of an intense work, which was done by the **European Commission**, and more precisely by the plan described in its Communication devoted to the issues in question, adopted on July 4<sup>th</sup>, 2006 (*i.e.*, COM [2006] 367 final)<sup>171</sup>. The wide range of sectors inserted into these important documents requires a powerful intervention in the definition of EU policies, but also in the programmes that member states are called to put in action.

Undoubtedly, the EU’s support will be decisive in translating these vast plans into concrete measures. **Short-term and long-term perspectives** evidently need different kinds of approach,. Thus, the welcome initiatives already taken (*e.g.*, to fight against children’s exploitation to prevent and avoid sexual abuses not only<sup>172</sup>) reveal the strength of a common, European effort in delineating pervasive instruments to react to the most serious and urgent problems, but also the appropriateness of a future, co-ordinated activity to cope with difficulties that can not be solved thanks to *ad hoc* instruments. Of course, **urgency** is a criterion to be followed in reacting to phenomena that have an immediate impact and that can be blocked or reduced adopting emergency measures only. Anyhow, **priorities** have to be

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<sup>169</sup> See later Part II of this Report.

<sup>170</sup> See before in this Chapter.

<sup>171</sup> The EC Commission published this communication on children’s rights in July 2006. See Communication from the Commission, *Towards an EU Strategy on the Rights of the Child*, Bruxelles, COM (2006) 367 final, (SEC [2006] 888; SEC [2006] 889), available in the website of the EU at:

[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:EN:PDF) the same text is also available at the following website: [http://ec.europa.eu/justice\\_home/fsj/children/fsj\\_children\\_intro\\_en.htm](http://ec.europa.eu/justice_home/fsj/children/fsj_children_intro_en.htm)

See also the recent *Report*, written by E. Ahmed, *Findings of a Consultation with Children & Young People*, in Non-EU Member states, April 2007 available at:

[http://www.europarl.europa.eu/hearings/20070417/libe/plan\\_international\\_en.pdf](http://www.europarl.europa.eu/hearings/20070417/libe/plan_international_en.pdf)

<sup>172</sup> For instance, this document contains a hotline phone number to help exploited children. Moreover a preliminary work was done in order “to implement the alert system known as *Child Alert*, and also an analysis of possible public-private partnerships with the banking and credit card sectors to curb the purchase of images on the internet depicting sexual abuse of children”. See, later, the Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with ‘116’ for harmonized services of social value (2007/116/CE).

established in drafting long lasting and vast programmes. The **European Commission** made it clear that **existing** activities have to be considered. This is important both in addressing urgent needs and in planning **future action** to be structured in a long-term perspective.

The interplay with **state actors** is fundamental in this respect. The European Commission's awareness of the necessity to adopt a cross-current "strategy" was confirmed by the targets indicated in its communication. As already said, in order to ensure that a "**mainstreaming**" policy is efficient, constant collaboration between all subjects involved in children's rights protection is of paramount importance. **The involvement of the civil society, of NGOs, of their networks**, and not only of politicians, experts and representatives of national or international bodies and organs, **is perhaps the key element that can reduce the gap between private and public actors** and that can help in superseding the traditional divide that often separates them. For this purpose, it is worth mentioning again the objectives set forth by the European Commission: creating "*consultation mechanisms*" and "*enhancing capacity and expertise on children's rights*", while "*designing a communication strategy*" on the area in question.

Starting from this programme, and passing to the analysis of the previously mentioned **EU Parliament Resolution "Towards an EU strategy on the rights of the child" of January 16<sup>th</sup>, 2008** (P6-TA [2008] 0012), it is worthwhile to focus on the "*added value of EU action*". Indeed, a universal vision emerges from this strategy that can add a great impulse to the development of a renewed conception of human rights, both at a national and at an international level. **At a state level, a better degree of interaction and exchange between national institutions** (*i.e.*, legislators, judiciaries, central administrations and local social services) **seems necessary**. While restating the basic right of the child to have a family and the member states' duty to respect it, the Resolution goes on with more detailed statements. **It urges state action aimed at identifying "effective solutions to prevent the abandonment of children and offset the placement of abandoned children and orphans in institutions"** (point 110). In so doing, national legislators shall always give "*primary consideration*" to the best interests of the child, as laid down in the CRC. The importance of coordinated interventions is highlighted by the explicit mention of **the need for EU states and the European Commission to collaborate** (with the HCPIL, the CoE and children's organizations) **to ensure that, in applying national and international provisions, subsidiarity is really the leading principle**, so that alternative family care solutions (like foster care families), domestic adoptions and intercountry adoptions are considered in sequence, and placement in institutions is limited only to cases in which a temporary solution is necessary. The proposals made by this Resolution prompt for a **central role for the EU**: "*to establish a framework to ensure transparency, effective monitoring of adopted children's development and to coordinate*" the activities of all the (national and international) subjects involved with a view to preventing "*child trafficking*", devoting a special consideration to "*children with special needs*" (point 111).

Prior to the accession to the EU of new member states from Eastern Europe, EU institutions made enquiries to verify, *inter alia*, that adoption laws were respectful of the fundamental rights of the child<sup>173</sup>. This was one of the problems to which the attention of EU Parliament was addressed also in the 2008 Resolution. As has been already noted<sup>174</sup>, the EU Commission had delivered a communication, in 2006, devoted to the same issued considered by the 2008 EU Parliament Resolution<sup>175</sup>. This welcome event was emphasized by Networks

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<sup>173</sup> See later, in this Chapter.

<sup>174</sup> More general initiatives were taken, during the 1990's. They have been already mentioned too. See in Part I Chapter II. *E.g.*, the adoption by the Economic and Social Committee of the European Communities of an *Opinion on Adoption* (delivered on July 1<sup>st</sup>, 1992), mainly devoted to situations in which free circulation of people could have an impact on intercountry adoptions; a seminar held in Brussels, on March 11<sup>th</sup>-12<sup>th</sup>, 1993, organized by the Commission of the European Communities and the European Forum for Child Protection, in which the issue of *Child Welfare in Europe. 1993: Implications for adoption* was debated, and a *Resolution on international adoption* drafted in 1996 by the Commission Justice and Citizenship of the European Parliament.

<sup>175</sup> See EU Commission communication "*Towards an EU strategy on the rights of the child*" of June 4<sup>th</sup>, 2006, (COM [2006] 0367), in the website: [http://ec.europa.eu/justice\\_home/fsj/children/fsj\\_children\\_intro\\_en.htm](http://ec.europa.eu/justice_home/fsj/children/fsj_children_intro_en.htm)

actively campaigning in this area<sup>176</sup>. In another Communication<sup>177</sup>, the European Commission identified children's rights as one of its main priorities and stressed the need to fight against any kind of exploitation and abuse, so that the EU could act as "a beacon to the rest of the world".

The text of the latest Directives deserves to be examined at this stage, albeit briefly. The EU Parliament, having regard to a long list of documents<sup>178</sup>, considered the need to fulfil several core objectives, in this field<sup>179</sup>, and illustrated its strategy in its main traits<sup>180</sup>. Then, it defined the wide areas in which coordinated and wide actions should be started or enforced<sup>181</sup>. Most of them can have a direct or indirect relevance for our purposes<sup>182</sup>.

## 6.1 EU family law instruments: their contents, nature and aims

Another example of the specific attention on the part of the EU to child family law issues is the approval, respectively in 2003 and 2004, of two Directives concerned with reuniting the families of third-country nationals and of EU citizens<sup>183</sup>. As far as the first Directive is concerned, it seems important to remember again that the ECJ, on June 27<sup>th</sup>, 2006, took a decision that dismissed an **action** of the **EU Parliament**. By its application, the European Parliament sought the annulment of the final subparagraph of art. 4(1), art. 4(6) and art. 8 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification<sup>184</sup>. In brief, the EU Parliament challenged the compatibility between these

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<sup>176</sup> See, e.g., the news listed in the website of the European Children's Network (EURONET): [http://www.crin.org/euronet/policies\\_activities/policy.asp?policyID=1001](http://www.crin.org/euronet/policies_activities/policy.asp?policyID=1001)

<sup>177</sup> Communication on Strategic Objectives 2005-2009, in the website:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0012:EN:NOT>

<sup>178</sup> See the EU Parliament Resolution of January 16<sup>th</sup>, 2008 (PT6-TA [2008] 0012).

<sup>179</sup> See the EU Parliament Resolution of January 16<sup>th</sup>, 2008 (PT6-TA [2008] 0012).

<sup>180</sup> See the EU Parliament Resolution of January 16<sup>th</sup>, 2008 (PT6-TA [2008] 0012).

<sup>181</sup> See the EU Parliament Resolution of January 16<sup>th</sup>, 2008 (PT6-TA [2008] 0012).

<sup>182</sup> For reasons of synthesis, the main points of the EU Parliament Resolution of January 16<sup>th</sup>, 2008 that are of decisive importance in the field of domestic and/or intercountry adoption can be listed side by side to each item: *child participation* (points 36, 40 and 41); *violence* (points 42, 50, 52, 55, 56, 57, 58, 59, 60, 72, 74, 80, 81, 82, 87, 88, 90, 91, 92, 93); *poverty/discrimination* (points 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 114, 115, 117); *child labour*; *children of immigrants, asylum seekers and refugees* (points 124, 126, 128, 129, 132, 133, 134, 135, 136); *right of the children to information and education* (points 141, 142, 149, 150, 153, 154); *health* (159, 160, 161, 162, 163, 164, 168); *birth registration* (points 171, 172, 173, 174, 175, 176, 177); *children in armed conflicts* (178, 186); *children and democracy* (point 190).

<sup>183</sup> The Directive on the right of citizens of the European Union and their family members to move and reside freely within the territory of the EU (2004/38/EC). A specific Regulation (the so-called Rome III) has been proposed also to develop unified 'conflict of law' rules to establish judicial competence and indicate the applicable law in trans-national cases of divorce. Substantive aspects of family law are evidently considered preconditions to the operation of these rules (e.g., the respect of the child's best interests or of the right to due process of law, which implies that special procedural guarantees are tailored to the children's condition).

<sup>184</sup> Art. 4(1) of the Directive provides that the member states are to authorize the entry and residence, pursuant to the Directive in particular of minor children, including adopted children, of the sponsor and his or her spouse, and children of the sponsor or of the sponsor's spouse where that parent has custody of the children and they are dependent on him or her. In accordance with the penultimate subparagraph of art. 4(1), minor children "must be below the age of majority set by the law of the Member State concerned and must not be married". Furthermore, final subparagraph of art. 4(1) provides that 'By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member state may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive'. Art. 4(6) of the Directive reads as follows: "By way of derogation, Member states may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member states which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification." Finally, art. 8 of the Directive provides that: "Member states may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her. By way of derogation, where the legislation of a Member state relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member state may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members."

Among the international legal instruments mentioned by the EU Parliament in its application, see: the

articles and the principles embodied in the ECHR (arts. 8 and 14) as well as other international conventions. Furthermore, the Parliament contended that the contested provisions were not respectful of the fundamental rights “*as they result from the constitutional traditions common to the Member states of the European Union, as general principles of Community law*” and that the Union has “*a duty to respect them pursuant to Article 6(2) EU, to which Article 46(d) EU refers with regard to action of the institutions*”. After quoting the most important cases decided by the ECJ on these matters – *i.e.*, *Carpenter*, Case C-60-00, para. 42, and *Akrich*, Case C-109/01, para. 59 –, the EU Parliament emphasised that this principle is reaffirmed in Article 7 of the ECFR, and expressly cited by **art. 24 of the ECFR** (about children’s rights) and that it is stated also by other provisions embodied in international **Conventions** signed under the aegis of the **United Nations**.

However, the **ECJ rejected the view** that the contested provisions are in breach of the right to respect for family life set out in art. 8 of the ECHR as interpreted by the European Court of Human Rights. The Court said that art. 4(6) of the Directive 2003/86/EC “*does give the Member states the option of applying the conditions for family reunification which are prescribed by the Directive only to applications submitted before children have reached 15 years of age*”. According to the ECJ, this “*provision can not be interpreted as prohibiting the Member states from taking account of an application relating to a child over 15 years of age or as authorising them not to do so*”. In brief, in order to ‘save’ the provision in question, the Court added that art. 4(6) “*of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member states to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships*”. As far as art. 8 of the Directive 2003/86/CE was concerned, the ECJ underlined that it “*authorises the Member states to derogate from the rules governing family reunification laid down by the Directive*”. In other words, the Court was of the opinion that the latter provision does not have the effect of precluding any family reunification, given that it merely “*preserves a limited margin of appreciation for the Member states by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host state for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration*”. Consequently, for the ECJ, the fact that “*a Member state takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights*”. As it has been underlined from the start, in proposing some introductory remarks to this Report, it can happen that strong contrapositions arise, sometimes, in defining the meaning of fundamental rights, also among institutional actors. Thus, it seems wiser to avoid such kind of tensions, which are likely to stem whenever a differentiated treatment is based on provisions that are, evidently, the unavoidable results of a distinction based exclusively on children’s age and/or nationality. Being aware of this danger is a basic guarantee, however, in order to avoid similar contrasts in the future while dealing with intercountry adoption. The laudable aim to harmonize state laws inside the EU can not be reached, evidently, if due respect is not paid to the principle of equality, or rather, of non discrimination, which plays a core function in the definition of the fundamental right to family life as well. Therefore, independently of the fact that children come from a sending country of the EU or from a non-EU member state, no difference should be allowed, in framing common principles and rules regulating the protective measures to be adopted.

As already anticipated, up to now, in the instruments enacted at a EU level, the **free circulation of European citizens** seems to be the most pressing need taken into

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Recommendation No R (94) 14 of the Committee of Ministers of the Council of Europe to Member states of 22 November 1994 on coherent and integrated family policies, and the Recommendation No R (99) 23 of the Committee of Ministers to Member states of 15 December 1999 on family reunion for refugees and other persons in need of international protection. The Parliament also invoked the constitutions of several Member states of the European Union.

consideration<sup>185</sup>. Moreover, as far as third-country nationals are concerned, it is possible to observe a certain resistance, which can only partially be explained by the need to control immigration trends, not only in the implementation phase of the above mentioned Council Directive 2003/86/EC of September 22<sup>nd</sup>, 2003, which is referred to third country nationals, but also in the national rules devoted to the movement of EU citizens too, especially in more recent times, after the enlargement. However, in light of the insights due to past experience as briefly described in the analysis proposed so far, it is reasonable to think that, by focussing our attention on the constitutional aspects of the problem at issue, it will be possible to ensure that children's fundamental rights will be duly respected, thanks to a renewed consciousness of the need to treat all children – whether EU citizens and nationals of non-EU states – on an equal footing.

## 6.2 The constitutional dimension of children's rights protection and the future perspectives

Although the ECFR is no longer an internal part of a Treaty aimed at instituting a Constitution for Europe, its constitutional dimension can not be denied, as well as the fact that its legal strength will be identical to that of the revised Treaty, when it enters into force. **The ECFR does not confer new powers or duties to the Community, but it can be considered the political premise for a strong commitment in actions devoted to children's rights protection.** Indeed, its provisions are of paramount importance in our field and they need to be clearly stated again: not only those on the right to family life (art. 33), to social security and social assistance (art. 34), to health care (art. 35), but also the article that deals with the **“rights of the child” (art. 24)**, which are comprehensive of the right to receive protection and care and to have his/her views heard. As has been already stressed, rights imply responsibilities. This means that the EU can and shall give support to member states' efforts thanks to several activities, and especially thanks to its monitoring role, as far as the actual respect of children's rights is concerned, and to the creation of the necessary *“framework for mutual learning within which the Member States can identify and adopt the many good practices to be found across the Union”*<sup>186</sup>.

The EU – conscious of its well-established role in defending human rights – openly declared its ambition to authoritatively impose a strategy aimed at protecting children's rights, also in the international context. To arrive at a real worldwide protection of these rights a *“European model of social protection”* and a series of specific programmes can be planned<sup>187</sup>, especially for children in need, in order to reinforce the Union's capacity to carry out an effective action in a global perspective. Evidently, not only national statutory reforms are important for this purpose, but also a widely shared and *“real European political will”*<sup>188</sup>, which is necessary to develop the most effective measures, at a EU-level. These noble intents require to be accompanied by a legal basis, which, however, already exists. It does not seem essential to repeat here what has been already said from the beginning. although it can be useful to remember – to use the same terms of the above-quoted European Commission Communication – that, to uphold *“the common European principles enshrined in the Treaty means taking full account of the UN Convention on the Rights of the Child and, similarly, of the provisions of the European Convention on Human Rights that affect children's rights”*<sup>189</sup>.

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<sup>185</sup> On the complex challenge to coordinate the freedom of circulation and social policies in the EU, see S. Giubboni (2006b) and (2007). On these issues, see, on the institutional aspects, P. Rodière (1989), (1991) and P. Watson (1993).

<sup>186</sup> See the above-quoted Document (*“Towards an EU strategy on the Rights of the Child”*) at the following website: [http://ec.europa.eu/justice\\_home/fsj/children/fsj\\_children\\_intro\\_en.htm](http://ec.europa.eu/justice_home/fsj/children/fsj_children_intro_en.htm)

<sup>187</sup> See the above-quoted Document (*“Towards an EU strategy on the Rights of the Child”*) at the following website: [http://ec.europa.eu/justice\\_home/fsj/children/fsj\\_children\\_intro\\_en.htm](http://ec.europa.eu/justice_home/fsj/children/fsj_children_intro_en.htm)

<sup>188</sup> See the above-quoted Document (*“Towards an EU strategy on the Rights of the Child”*) at the following website: [http://ec.europa.eu/justice\\_home/fsj/children/fsj\\_children\\_intro\\_en.htm](http://ec.europa.eu/justice_home/fsj/children/fsj_children_intro_en.htm)

<sup>189</sup> See the above-quoted Document (*“Towards an EU strategy on the Rights of the Child”*) at the following website: [http://ec.europa.eu/justice\\_home/fsj/children/fsj\\_children\\_intro\\_en.htm](http://ec.europa.eu/justice_home/fsj/children/fsj_children_intro_en.htm).



Apart from these important principles and political programmes, it is necessary to consider also some **technical aspects** concerning the situation that is likely to occur in the future, if all member states of the EU completed the ratification process of the **Treaty of Lisbon**. It is well-known that the position of the 2007 Treaty of Lisbon about the so-called co-decision procedure is only partially different from the superseded 2004 Treaty of Rome aimed at instituting a “Constitution” for Europe. The amendment embodied in the Treaty of Lisbon to the EU and the EC Treaties about policies and internal actions of the EU determines a modification of art. 65 of the EC Treaty<sup>190</sup>.

When the new provisions enter into force, it will be replaced by a revised version according to which the area in which judicial co-operation shall be developed is wider if compared to that defined by the current one. Indeed, the principle of **mutual recognition** will be applied, in civil matters that have **cross-boarders implications**, not only in cases of judgments, but also of decisions in extrajudicial cases<sup>191</sup>. This kind of co-operation is comprehensive of the adoption of measures aimed at approximating the laws and regulations of the member states<sup>192</sup>. In such cases, the **ordinary legislative procedure** (the so called “co-decision” procedure) shall be followed by the EU Parliament and the Council, in adopting measures “**particularly**” if necessary to ensure the proper function of the **internal market**<sup>193</sup>, so as to make it possible the mutual recognition and enforcement of judgments and decisions in extrajudicial cases, between member state, the cross-boarder service of judicial and extrajudicial documents, the compatibility of the national rules on conflict of laws and jurisdiction, the cooperation in the taking of evidence, the effective access to justice, the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the member states, the development of alternative methods of dispute settlement and the support for the training of the judiciary and judicial staff.

However, a **different method** shall be followed as far as measures concerning **family law** with **cross-border implications** are concerned. They shall be decided by the Council, which will follow a **special legislative procedure**, in the sense that the Council shall act unanimously after consulting the EU Parliament. Anyhow, the Council, on a proposal from the Commission, “*may adopt a decision determining those aspects of family law with cross-border implications*” which may be the subject of acts adopted by the ordinary legislative procedure. In this case, it shall also act unanimously after the EU Parliament has been consulted. Anyhow, national Parliaments shall receive a notification and they can make an opposition within a six month period. If no opposition is made in due time, the Council may adopt the decision; on the contrary, it shall not.

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<sup>190</sup> The modification in question is related to Part Three, Title IV, Area of Freedom, security and Justice, Chapter 3, Judicial cooperation in civil matters.

<sup>191</sup> The first part of art. 65, in its new version, reads as follows: “1. *The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.* 2. *For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: (a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases; (b) the cross-border service of judicial and extrajudicial documents; (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction; (d) cooperation in the taking of evidence; (e) effective access to justice; (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States; (g) the development of alternative methods of dispute settlement; (h) support for the training of the judiciary and judicial staff*”.

<sup>192</sup> According to art. 65 of the EC Treaty “*measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken [...] for the proper functioning of the internal market*”. Differently, the revised art. 65 (1) declares that the principle of mutual recognition of judicial and extrajudicial decisions is a milestone of judicial cooperation in civil matters.

<sup>193</sup> Under art. 65 of the EC Treaty, in its current version, measures concerning judicial cooperation in civil matters with a cross-border dimension can be adopted only “*in so far as necessary*” for the proper functioning of the internal market. The Treaty of Lisbon no longer contains this limitation. According to the revised art. 65 these measures in judicial co-operation shall be adopted “*particularly when necessary*” for the proper functioning of the internal market.

**Current provisions** require that decisions regarding family law with cross-boarders implications must always be taken unanimously and according to the consultation procedure, without exceptions, in the sense that a complete agreement has to be reached inside the Council and that a previous consultation of the EU Parliament is necessary. At present, according to art. 67 (2) of the EC Treaty, it is possible for the Council, which decides at unanimity after consulting the EU Parliament, to follow the ordinary, co-decision procedure, acting by qualified majority vote, after the five year transition period subsequent to the entry into force of the 1997 Treaty of Amsterdam (1999). Anyhow, if the **Treaty of Lisbon** (art. 65 [3]) comes into effect, the Council – which shall continue to act unanimously and after consulting the European Parliament – will be able to move family law issues having cross-boarders implications from the scope of applicability of the procedure based on unanimity and consultation to that of ordinary (co-decision) procedure based on the qualified majority vote system. In this way, the role of the EU Parliament will become more decisive, given the consequent reduced power of member states. It is true that it will always be necessary to notify the proposal to all state Parliaments, that each national legislator can make an opposition and this will be sufficient to block such a procedure. However, in the area of family law, a new scenario, albeit not a radically changed one if compared to the present, might characterize the near future. At the same time, the fact that family law issues, despite their trans-boarder nature, shall be subjected to a procedure that is different from that applicable to other civil matters, reinforces the doubts already casted on exceedingly vague extensions of plans aimed at expanding the intervention of EC legislative instruments. As far as **private international law** issues are concerned, the free circulation of decisions can undoubtedly benefit from **new provisions**, to be co-ordinated with international Conventions operating in the relevant areas. Differently, **substantial aspects** of child law may be better harmonized thanks to **soft law** measures. To this purpose a good method might be legal comparison, to be carried out by promoting a more intense and frequent exchange of experiences, as well as a more structured academic involvement in this field, opened to the contributions of civil society too (*e.g.*, NGOs' activities, associations of adopted parents, adopted children and birth-parents).

### **6.3 Comparative law, unification and harmonization plans: the role of European academic groups**

As a rule, in **the field of children's rights, there has not been a strong commitment for a long time in comparative studies** centred on a multi-national vision, except in cases in which a condemnation of a state member of the CoE by the ECtHR emphasized the limits of national legal solutions and/or practices, or rather, their violation of the ECHR<sup>194</sup>. **Legal instruments were adopted by the EU, mainly to regulate trans-boarder families.** This rather general vision can be viewed as **the necessary premise to the analysis of the National Reports, in which a lot of differences are present, not only in the information delivered, but also in the method of proposing the relevant data.** Comparison will evidently be based on the elements drawn from these texts, but it is necessary to consider that some points were not widely examined<sup>195</sup>, and that, in some cases, only a very brief and/or limited description of important issues has been given (*i.e.*, about cases of abuses or of trafficking of children)<sup>196</sup>. Maybe this is due to the fact that a vast analysis of judicial decisions is not possible in this context and to the understandable difficulty to reveal facts that in most cases concern criminal behaviours, on which proceedings may still be pending. Anyhow, a lot of information could be found in the Reports, and this will now allow a further, albeit brief, comparative, intra-European overview, in the II Part of the Report.

<sup>194</sup> See the Bibliography for some basic references. In particular, see U. Kilkelly (1998), H. Stalford (2001).

<sup>195</sup> For instance, no wide and direct reference was made to one of the most debated points, vastly considered by the 2008 CoEAdC, that is to say, if the access to adoption to homosexual single person/s, registered partners or spouses is permitted or not. *E. g.*, only a brief mention in the French Report is contained on this issue, while quoting two decisions of the ECtHR – *Fretté v. France* (2002) and *E. B. v. France* (2008).

<sup>196</sup> If a work-in-progress perspective is adopted, however, amelioration can be envisaged.

Moreover, to complete the comparative vision even past and future activities of the **Commission on European Family Law – CEFL**<sup>197</sup> – established on September 1<sup>st</sup>, 2001, need to be considered with due attention. Its first meeting, held in Utrecht, on December 11<sup>th</sup>-14<sup>th</sup>, 2002, was devoted to the ‘*Perspectives for Harmonization and Unification of Family Law in Europe*’. Subsequent publications of its proceedings and its further work gave rise to an intense debate about this important legal field in the academic context<sup>198</sup>. Indeed, some of the issues examined so far are deeply interrelated with the area of children’s rights. For instance, the third conference of the CEFL, which took place on June 7<sup>th</sup>-9<sup>th</sup>, 2007, in Norway, at the University of Oslo, was devoted to several issues: to the harmonisation of family law in Europe, particularly in Northern countries and the USA, to children’s rights and responsibilities owed to them; to recent developments in cross-border family matters; and to the position of cohabitants upon the termination of their relationship, either by death or dissolution. The second conference, which took place in 2004, was devoted to divorce and maintenance between former spouses. Also more recent initiatives – within this framework – reveal **how important a structured coordination between academic groups and law makers will be**. The experience that led to the **Draft of the Common Frame of Reference** in the context of Contract Law can be considered, in this regard, as an encouraging precedent, while looking at the future action that needs to be planned in other sectors of private law in which not only it is necessary to deal with situations having cross-boarders implications – like all the cases of intercountry adoptions –, but also with principles to be affirmed at a national level, for purely domestic cases. Family law issues are not, evidently, directly comparable to any other matter of private law, but given that common basic principles have to be respected, an analogous approach might be appropriate.

Indeed, it seems wise to adopt a **balanced and realistic approach**, in order to avoid a twofold kind of shortcoming. **On one side, it is necessary to prevent the excessive fragmentation that was produced** by the enactments of separate pieces of EC legislation (as it happened, for instance, in the field of consumers’ protection so far, as a consequence of the non-uniform way followed in the implementation of several EC Directives), which can favour the rise of excessively different national policies. On the other side, **it seems important to abandon the method that prevailed until now, which consists in accepting the current *status quo*, so that domestic (and rather heterogenous) solutions coexist with widely accepted, but not always strictly followed, international obligations.**

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<sup>197</sup> See on this initiative, recently, in English K. Boele-Woelki (ed.), (2003a), (2003b), (2005a), (2005b), (2007); M. Antokolskaia, (2003). More recently, in light of certain legislative innovations (for example, the different notions of marriage), some distinctions were also made in this regard. See M. Antokolskaia (2006).

<sup>198</sup> An up-to-date version of the work of the Commission on European Family Law is available at <http://www.law.uu.nl/priv/cefl>



**PART TWO**  
**COMPARATIVE ANALYSIS**



# CHAPTER I

## LEGAL AND POLICY FRAMEWORKS\*

### 1. SCRUTINY OF THE NATIONAL SYSTEMS THROUGH THE HCIA AND OTHER INTERNATIONAL INSTRUMENTS

Looking at the national systems in a European perspective implies trying to put some order into a **vast set of national solutions**, sometimes presenting a high degree of difference among themselves. Notwithstanding these differences, it should be made clear that all these elements are part of a more **general framework, defined by international legal instruments operating at a worldwide level but strictly interrelated to the European legal context, shaped by state law, supra-national norms and inter-state agreements.**

In examining this complex and multi-layered system, **setting some general criteria** will prove useful to trace some distinctions. These criteria will **put in evidence some lines of analysis** that will often occur through the text of this chapter.

A fundamental distinction that can be made is, first of all, between **receiving and sending countries**. Thus, a well-established subdivision, which is respectful of a basic structural trait of the HCIA too, should hopefully act as the guiding-principle for a brief overview of an extremely vast and diversified scenario.

Another descriptive criterion will be adopted while considering other, more general aspects of adoption law, with reference to domestic as well as to intercountry adoptions. **A distinction** will be made **between substantive and procedural requirements** concerning the positions of the prospective adoptive parents and of the child, respectively. The elements to establish both the eligibility and suitability of would-be adopters and the child's adoptability will be analyzed in order to take into account not just the formal solutions embodied in legislative provisions, but also the practices that are actually followed. In that way, the actual contents of statutory rules should be clarified, given that some of these can produce rather different results according to the interpretative method that is adopted by the actors called to apply them (*i.e.*, the judges, the social services and the other competent public authorities, as well as the private subjects that are legally entitled to participate in the adoptive procedure).

Moreover, **national provisions need to be examined in light of all relevant sources of applicable law, both hard and soft law instruments** (*i.e.*, international conventions and bilateral treaties, on one side, administrative provisions, arrangements and case-law, on the other). These general criteria will hopefully help to summarize an heterogeneous ensemble, but it is important to emphasize once again that they should be all considered within the already described **general framework**.

Concerning the contents of our analysis, first of all **the legal instruments applicable to domestic and intercountry adoption will be examined**. As previously mentioned, all EU countries have ratified the **CRC** and in most of them the **HCIA** is in force. In some cases, national legislation was specifically adapted to these international instruments. In others, they were completely incorporated. Furthermore, some EU countries signed and ratified bilateral agreements with European and non European countries. Finally, a third category of countries did not ratify the HCIA, nor did they modify their internal legal systems so as to conform them to its principles.

Always in the same perspective of analysis, then, we will examine **the role of competent authorities** in the various EU states, the **accreditation and control criteria for adoption bodies, the elements to establish the eligibility of adopters and the child's adoptability, the adoption proceeding and the typologies of adoption, the**

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\* This Chapter has been drafted by Raffaella Pregliasco (paras. 10, 11, 12, 13, 14), Elena Urso (paras. 1, 5, 6, 7, 8 and 9) and Angelo Vernillo (paras. 2, 3 and 4).

**implementation of subsidiary principle** and, finally, some more specific questions, as the **access to origins** for the adoptee, the **restrictions to intercountry adoptions**, the recognition and **effects of adoption orders**, the **costs** of adoption and **child abuses** in the process of adoption.

## **2. DIFFERENT INSTRUMENTS RELATING TO INTERCOUNTRY ADOPTION AND DOMESTIC ADOPTION**

The different legal instruments relating to inter-country adoption and domestic adoption vary considerably. There are a lot of different legal system within the enlarged European Union, In the majority of the situations all the rules applying to inter-country adoption apply equally to domestic adoptions. This happens especially for the general legislation and concerning requirements for the prospective adoptive parents and the adoption procedure. From the National Reports, 17 countries declare that there are no major differences (Austria, Spain, France, Belgium, The Netherlands, Germany, Ireland, Malta, Greece, Slovenia, Slovakia, Czech Republic, Lithuania, Estonia, Latvia, Poland and Bulgaria).

In **Spain** for example, the general principles of the adoption are stated in the Civil Code that regulates national and inter-country adoption. Law 54/2007 on International Adoption regulates in its *Title I*, the General Conditions, the adoption procedure regulations and the roles and functions of the organizations which take part in the international adoption process, such as the central authorities from the country of origin and receiver states and the organizations which sponsor intercountry adoption. *Title II* contains the international private law in relation to international adoption, to the competence of the international adoption constitution, applicable law and the effects in Spain of adoptions announced by foreign authorities.

In **France**, in accordance with the main international instruments, the French legislation makes no legal distinction between national and intercountry adoption. However, some specific provisions may be applicable to the accredited adoption bodies wishing to work at an international level. As regards countries of origin, in Estonia there are few differences between the national and the international adoption procedure, but: 1) in intercountry adoption the agreement of the Ministry of Social Affairs as the central authority is required; 2) children who do not have a family in Estonia can be adopted abroad; 3) follow-up reports are required for 2 years.

In many countries of origin (for example in Poland), by virtue of the principle of subsidiarity contained in the Hague Conference, it is explicitly stated by law that national adoption must be preferred to international adoption.

Also in **Ireland and Greece**, which are not parties to the Hague Convention, the legal instruments are the same for domestic and intercountry adoption.

There are **10 countries that declare there are differences between intercountry adoption and domestic adoption** (Italy, Portugal, Luxemburg, Denmark, Finland, Sweden, United Kingdom, Cyprus, Romania and Hungary).

In **Italy**, one of the most important receiving countries, there are a lot of differences. For example in the case of intercountry adoption, but not for domestic adoption, an “order of suitability” must be issued by the Juvenile Court. For intercountry adoption but not for domestic adoption, it is compulsory for the adoptive parents to apply to an accredited body.

An interesting case is **Portugal** where the regulation on international adoption only appeared in 1993, and its discipline falls within two main and undeniable principles: the principle of the need for a previous legal decision and the principle of subsidiarity. The international adoption can only proceed after a previous process of legal confidence (as in Italy, a judicial authorization) which means it is not possible to obtain a decision of administrative confidence in this field.

In the **United Kingdom** there are separate regulations, distinct guidance and additional elements are covered, as in many other receiving countries. The costs of domestic adoption services are largely met by the statutory adoption agencies whereas the costs of intercountry adoption services are largely met by the adopters. Intercountry adoptions are



defined as “non agency” adoptions and as such, adoption assessments and other aspects of the adoption process may be afforded less priority by the statutory adoption agencies than are domestic adoptions. Assessment of adopters’ suitability can be undertaken by the local authority or by voluntary adoption agencies specifically approved for the purpose. The content of preparation and assessment is different, reflecting the different issues which arise in domestic and intercountry adoption. The central authorities have no role in service delivery in domestic adoption whereas in intercountry adoption they process the application documents, grant a certificate of eligibility and forward application documents to the State of origin.

**Sweden** also presents few differences in laws related to domestic and intercountry adoption:

- An allowance from the national insurance system is given only for intercountry adoption;
- Requirements regarding the parents are more detailed in intercountry adoption. These concern knowledge, insight about adopted children and their needs, and attending a course before your first adoption;
- Consent for the adoption procedure to continue is needed only for intercountry adoption;
- Accreditation of private organisations is given only for intercountry adoption. National adoptions of children are handled by local social service authorities.

A small country like **Cyprus** presents an interesting aspect of intercountry adoption which is regulated by provisions of the Hague Convention whereas National adoptions are regulated by the Cyprus Adoption Law. Their main differences are: a) post-adoption services are not provided in national law b) there are no provisions for accredited bodies to operate in the national law and c) the national law permits the private placement of a child for adoption by the birth parents to Prospective Adoptive Parents.

From the point of the view of countries of origin, here is the situation of **Hungary**, where intercountry adoption can only be arranged by the Hungarian Central Authority operating with the Ministry of Social Affairs and Labour. Furthermore, only those children who cannot be adopted in Hungary (older children, children with diseases, sibling groups, Roma children) can be adopted abroad. Two follow-up reports are required in the field of intercountry adoption: 2 months and one year after the adoption.

The situation of **Romania** is very unusual. National legislation on intercountry adoption was adapted to the international provisions in the field. The limitation of intercountry adoption – to the situations when the adopters who have the domicile abroad are the grandparents of the child residing in Romania – is mainly based on the provisions of the UN Convention on the rights of the child, whose art. 21 paragraph 1 letter b) provides that “States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall recognize that intercountry adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin”.

Law no. 273/2004 on the legal status of adoption contains regulations regarding domestic adoption as well as regulations regarding intercountry adoption. The differences are the following:

- the compulsory condition for adopters in the case of intercountry adoption: to be the grandparents of the child they want to adopt
- the preparation, assessment and suitability certification of adopters: in intercountry adoption is carried out by the foreign authorities of the state where the adopters reside; while in domestic adoption by the Romanian authorities
- the stage of fostering in view of adoption is not regulated in case of intercountry adoption; while it is a compulsory stage in the domestic adoption procedure
- in the case of intercountry adoption, the adopters (grandparents of the adoptee) know the child, the biological parents and relatives of the child prior to the initiation of adoption procedure. In the case of domestic adoption, the biological family and the adoptive family do not know each other.

An important consideration is that in all cases the rules are set from the perspective of maximizing the child's chances of having a good future. Thinking about the differences between domestic and international adoption, we can say that generally the differences are:

- the necessity of a public Central Authority;
- more requirements for the prospective adoptive parents in intercountry adoption;
- in intercountry adoption the post adoption service is obligatory;
- provision of an authorization for the prospective adoptive parents;
- preparation (where present) and assessment are different from those of the public authority.

**The emerging trend also in the countries where the procedures are different** (e.g. Germany and Denmark, among others) **is to standardise the two procedures**, making the national procedure increasingly similar to the international procedure, in relation to requirements, methods of evaluation, etc.

### **3. ROLE OF COMPETENT AUTHORITIES (CENTRAL AND ACCREDITED BODIES IF ANY)**

In the European Union **only two countries have not yet signed and ratified the Hague Convention of 1993 regulating Intercountry Adoption: Greece and Ireland**. So the system of a Central Authority, that the Hague Convention promotes and supports as a system to cooperate in intercountry adoption, is not yet fully in use in the European Union. Really only Greece has still not designated a Central Authority because Ireland, although not a signatory to the Hague Convention, has an Adoption Board carrying out this function. This Adoption Board in Ireland will be officially recognised as a central authority following the ratification of the Hague Convention of 1993. The Adoption Board is an independent quasi-judicial statutory body appointed by the Government and is responsible for granting Declarations of Eligibility and Suitability to prospective adopters in advance of their adopting abroad, registering and supervising the Registered Adoption Societies, maintaining the Adoption Societies' Register and maintaining the Register of Foreign Adoptions, in which details of inter-country adoptions are entered.

**The other 25 countries have designated a Central Authority** under the Hague Convention of 1993. Generally all the Central Authorities have the role as defined in the Hague Convention and have the following main responsibilities:

- to establish and maintain co-operation between the Central Authorities and competent authorities of the State parties to the Hague Convention;
- provide information in connection with laws and general information;
- cooperate with other Central Authorities on the operation of the Hague Convention;
- regulation and accreditation of adoption agencies;
- set standards for adoption;
- keep records of adoptions.

It is interesting to **look briefly at Spain, Germany, Austria, Belgium and** (although not the same) **the United Kingdom, to see how the role of the Central Authority has been organized in some federal states**, in comparison with non federal states in the European Union.

**Only Spain has not designated a federal central authority**. In fact the sixth article of the Hague Convention establishes that each contracting state shall designate a Central Authority or States having autonomous territorial units shall be free to appoint more than one Central Authority. With this purpose, when Spain ratified the Hague Convention, the seventeen Autonomous Communities were designated, as Central Authorities. Central Authority intervention and the *ECAIs* (adoption bodies or Entities Collaborating in International Adoptions), are regulated in Intercountry Adoption law and in the Hague Convention, 1993.

The relevant child protection authority in each of the Autonomous Communities organizes and bestows upon them information about legislation, gives the prospective adoptive parents the preliminary necessary information on adoption, receives the adoption applications, certifies the applicant's suitability, follows up reports, receives the children,

gives the approval of the children's characteristics and accredits, controls, inspects and prepares the ECAIs guidelines. The ECAIs issue reports and advise the interested parties about adoption, taking part during the adoption procedures before the appropriate Spanish and foreign authorities; mediating during the processing and ensuring the fulfilment of post-adoptive obligations. The ECAIs can state cooperation agreements among them.

In **Austria** there is one Central Authority in every province but there is a Central Authority at the Federal Level. In **Germany** there are 12 Central Adoption Agencies (for 16 federal states) but there is a Federal Central Authority, in **Belgium** each community has a Central Authority but there is one for the Federal State, in the **United Kingdom** there is one Central Authority for each country (England, North Ireland, Wales and Scotland) but also a common Central Authority.

So only Spain and Greece do not have only one point of reference, because Spain has seventeen authorities and Greece has none. **The other countries in the European Union have a single Central Authority and it is very interesting to observe where the political system places these Central Authorities.** So the majority of the Central Authorities are designated, in different ways, under the Ministry of Welfare (or Social Affairs, or Labour and Social Affairs). 15 central authorities are thus defined: Portugal, Luxemburg, Finland, Sweden, United Kingdom, Malta, Cyprus, Slovenia, Slovakia, Czech Republic, Lithuania, Estonia, Latvia, Poland and Hungary. The central authorities in 6 countries are placed under the Ministry of Justice: The Netherlands, Austria, Belgium, Germany, Denmark and Bulgaria.

Truly special in the landscape are the choices of Italy and France. In fact **the Central Authority in Italy is directly under the government** ("Prime Minister's Office") **and the Central Authority in France is under the Ministry of Foreign Affairs.**

The central authorities, in all cases in which they act either alone or together with accredited bodies, have the power to monitor, control and authorize the accredited bodies to intermeditate in intercountry adoption.

**15 countries**, Austria, Italy, Portugal, Spain, France, Belgium, Netherlands, Luxemburg, Germany, Denmark, Finland, Sweden, United Kingdom, Bulgaria and Poland, which operate in the field of Intercountry adoptions, **have both a Central Authority and accredited bodies.** However it is important to know that some central authorities (e.g. Italy) have delegated all intermediation with foreign countries to the accredited bodies, others have allowed both possibilities (Spain for example), and others only allow intermediation through the central authority (generally the smaller countries). Ireland, which is not a State party to the Hague Convention, has only one accredited body.

**The rest of the countries do not have accredited bodies.**

Before examining the two different structures in some countries, it is interesting to note some other situations.

In **Malta** for example, before this year, there was no legal framework for the operation and regulation of accredited adoption bodies. Hence the Central Authority, through the Department for Social Welfare Standards (DSWS) carried out all work related to adoptions, including the training and assessment of prospective adoptive parents, administrative work, preparing of all documentation and the communication with internal and foreign stakeholders. Through the provisions of the new act, operational responsibility has now been delegated to a government agency called "Appogg", which has set up an adoption unit (besides other functions) to deal with adoption functions in Malta. All case work previously carried out at the DSWS has been handed over to "Appogg", whilst the department, in its role as the regular and Central Authority has begun the process of formally accrediting this agency. Other private entities, especially legal firms, have also shown interest in applying for accreditation. The role of an accredited agency would be to assume operational responsibility for the full adoption process. Their prime aim would be to assist prospective adoptive parents in fulfilling the objectives of a proper adoption in line with local standards and the Hague criteria. They facilitate the process from the start until after the child is received in Malta and they are also required to support the parents afterwards. They would be obliged to maintain close contact with the Central Authority and to liaise with external accredited and approved bodies.

**Greece** remains in an unusual position: in short, in the absence of a central authority, the national law dictates to the agencies which are by law entitled to carry out national or international adoptions, the procedures concerning consent, social work evaluation by the appropriate agency, statistics etc.

In addition to the Social Work Departments of some Prefectures that by law are also responsible for intercountry adoptions, the Greek branch of the International Social Service, although a Non Governmental Organization, has been acknowledged as specialized in international adoptions and is responsible for the required report in the cases where one party's habitual residence is abroad.

One country with accredited bodies is **Denmark** where the Department of Family Affairs under the Ministry of Justice is the Central Authority. The Danish adoption agencies work under accreditation to the ministry, and are supervised and controlled by the National Board of adoptions, which also accepts the international cooperation contacts. The accredited organisations are responsible for the intercountry adoption mediation and handling of adoption cases, besides the applications. The National Board of Adoption also functions as a board for procedure complaints by adoptive parents. The Danish adoption agencies work under accreditation to the ministry, and are supervised and controlled by the National Board of adoptions, who also accepts the international cooperation contacts. The accredited organisations are responsible for the intercountry adoption mediation and handling of adoption cases, besides the application. The National Board of Adoption also functions as a board for procedure complaints by adoptive parents.

Similarly in **Luxemburg** the Ministry of Family and Integration is the Central Authority. As the contact for the 5 accredited bodies working in Luxembourg, the Central Authority defines their missions, controls their activities and their finances. The Central Authority is responsible for the consent for the adoption procedure to continue and for contacts with the Central Authorities of the States of origin. Together with the Central Authority, the accredited bodies are responsible for informing the prospective parents. They are responsible for the home studies, for preparing all the documents which are being signed by the Central Authority.

In **France** the accreditation and monitoring of adoption bodies fall under the authority of the Ministry of Foreign Affairs that issues one authorization per country. This authorization is not limited in time.

These examples relate to the receiving countries, but there are also some countries of origin using accredited bodies, first of all Poland and Bulgaria.

**Bulgaria** sets out that mediation can be carried out only by a Non-Profit Corporate Body for carrying out socially useful activity, referred to hereinafter as "accredited agency", that has been entered in the Central Register under art. 5, paragraph 1 of the Law on Non-Profit Corporate Bodies (which can be Bulgarian or foreign entities) and has obtained permission for this activity from the Minister of Justice.

The activities that accredited intermediary bodies may undertake are listed in the national law. These comprise:

- 1) intermediary activities between the Ministry of Justice and the prospective adoptive parent(s) regarding the submission of the documents necessary for entering the register of prospective adopters under article 136 FC,
- 2) giving information to the prospective adoptive parent,
- 3) case administration and court representation,
- 4) mediation in order to establish contact between the nominated adoptive parent and the child,
- 5) ensuring the transfer of the child,
- 6) undertaking actions to ensure the return of the child to the State of origin in cases where the decision of the Bulgarian court is not recognized in the receiving State within one year after its entry into force and they shall supervise the wellbeing of the child during that period.

The accredited intermediary bodies can neither identify children for inter-country adoption nor can they carry out matching of children to their own applicant adopters.

The Polish central authority has delegated some responsibilities to accredited bodies in **Poland**, i.e. adoption and custody centres. There are three centres authorized to run the intercountry adoption procedure and they are responsible for, among others, qualifying a family to adopt a Polish child/children, the matching process, assisting in pre-adoption contact and producing a report on the contact. A family applying for adoption of a Polish child must go through one of three accredited adoption and custody centres. It is not compulsory to be assisted also by a foreign accredited body (a family may go through the receiving state's central authority alone).

**It is mainly the countries of origin that do not provide accredited bodies: Slovakia, Czech Republic, Lithuania, Latvia, Estonia, Hungary, and Romania.**

In **Hungary** there is only one Central Authority, there is no competent authority or accredited body in the field of intercountry adoption. However Hungary works together with adoption accredited bodies from abroad. If an adoption body is approved in its own country, then the Hungarians accept its application, and only need its approval. (However Hungary is now thinking of not admitting any new adoption accredited body as it cannot cope with so many applicants ).If the prospective adoptive parents come from a country where there is an adoption accredited body that Hungary works with, then it is compulsory for them to make their application through it. If there is no adoption accredited body in that country, Hungary accepts the application from the competent Central Authority.

The situation in **Romania** is very interesting and also rather strange. The Romanian law forbids the participation of private bodies in the intercountry adoption procedure in Romania. The interdiction is applied to the members of staff of the accredited bodies, except in the situation when they are the adopters. In the field of intercountry adoption, the Romanian authorities can collaborate with private bodies that carry out their activity in the receiving state if they are accredited in that state and authorized by the Romanian Office for Adoptions. Taking into account the restrictions on intercountry adoption of children from Romania (*limited to the grandparents of the child*), no foreign private body has requested the Romanian authorities for their authorization since the new legislation came into force.

Some states of origin have not delegated certain activities to accredited bodies but have anticipated that they have designated host countries to be accredited by them to operate.

This is for example the case of Lithuania and Estonia. In **Lithuania** on 3<sup>rd</sup> June 2005, the Minister of Social Security and Labour of the Republic of Lithuania approved the "Order of the Specification" of the Procedure for Granting Authorization to Foreign Institutions regarding intercountry adoption in the Republic of Lithuania. It establishes the procedure for granting authorization to foreign institutions regarding intercountry adoption, the procedure for its cessation, renewal, suspension and revocation, and also procedures and functions, rights and duties of the authorized foreign institutions. The Lithuanian Central Authority is responsible for the accreditation of bodies and the authorization of accredited bodies abroad, including their supervision and review. Prospective adoptive parents, who want to adopt a child in the Republic of Lithuania, shall submit, through their Central Authority or accredited body, the necessary documents to the Lithuanian Central Authority.

In **Estonia** different mediators cannot operate except for organizations from other countries that have legal rights to arrange adoptions in their own country. Agreements are signed with those organizations for the purpose of making procedures more secure, avoiding independent adoptions and possible intervention of mediators. Collaboration partners have to exhibit documents that prove their rights to deal with intercountry adoptions and special permission to collaborate with Estonia if their state law demands it.

**The central authorities' policies towards foreign countries are very varied and cannot but be affected by two fundamental factors: the first factor is whether they are countries of origin or receiving countries, the second factor is, of course, their links with foreign policy.**

In truth the research did not show many signs of response to this issue. The nature of the request (which is the policy of your country's Central Authority towards foreign partner

countries?) does not enable researchers to receive a complete and comprehensive answer. But some references to the issue were reported.

For example in **Malta** cooperation with foreign countries is the key to the successful implementation of the adoption process. This is the view taken by the Maltese Central Authority as it seeks to establish long-lasting and fruitful relations with several partner countries. This role has recently been further accentuated since “Appogg” (see above) took over the day-to-day operational responsibility for adoptions as it leaves more time and resources for the Central Authority to pursue international contacts and establish bilateral collaboration with partner countries. This is viewed by the Central Authority as one of its core functions as it seeks to facilitate the adoption process for parents as much as possible.

This is an example of how a central authority, no longer engaged in the daily life of adoptions, can engage in better relationships with other countries.

It is also interesting to analyze the situation of **Luxembourg**, which is certainly a small but well organized country. As a government body – the Luxembourg Central Authority is part of the Ministry for the Family and Integration – it executes the policy defined by the Government. The Central Authority’s policy is completely based on the fundamental guidelines on child care and protection in the European Union to be found in the international instruments, which define children’s and human rights. Its activities is therefore inspired by the following principles:

- 1) the best interest of the child,
- 2) subsidiarity,
- 3) participation of the child,
- 4) non-discrimination principle (boys and girls),
- 5) non-profit principles and fight against trafficking.

The Central Authority only cooperates with States of origin where it has proof and can check that among other things, these are the objectives of the State of origin.

The adoption services in Luxembourg are accredited to cooperate with specified States of origin (in general 1 or 2). On request by prospective parents, one of the accredited bodies can ask for approval from the Central Authority to carry out this adoption procedure with a new State of origin.

Concerning the cooperation on a regular basis with new States of origin, the Central Authority will examine every request coming from the Government, a State of origin or from an accredited body. The initiative may also be taken by the Central Authority. The Government has to approve the cooperation with new States of origin.

Another example could be **Slovenia** that has signed and ratified the Convention on the Protection of Children and Cooperation in Relation to Intercountry Adoption and observes the procedural rules, determined in the aforementioned convention when dealing with intercountry adoptions. When dealing with adoptions of Macedonian children Slovenia observes the bilateral agreement between the Government of the Republic of Slovenia and the Government of Macedonia on Interstate Adoptions.

The **United Kingdom** has indicated that it does not propose to enter into bilateral agreements with States of origin. It views the framework provided by the Hague Convention to be sufficient. A list of designated countries (i.e. countries where the effects of a full adoption order are recognised by the UK) was established under the Adoption (Designated Order) 1973 and has subsequently been amended. The Adoption and Children Act 2002 provides for a review of this list, based on clearly defined criteria, but this has not yet been completed. Legislation is in place to restrict adoption from certain countries and to date this has been implemented in relation to Cambodia and Guatemala. There is provision for adoptions to be exempted from this restriction on a case by case basis.

In **Germany** the protection of the convention’s principles and national adoption law is the chief objective of the central authority policy.

#### 4. ACCREDITATION CRITERIA AND CONTROL OF ADOPTION BODIES

**The Hague Convention** of 1993 presents the adoption bodies in **art. 9** explaining that **the Central Authorities shall take**, directly or through public authorities or other bodies duly accredited in their State, **all appropriate measures to:**

- a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- c) promote the development of adoption counselling and post-adoption services in their States;
- d) provide each other with general evaluation reports about experience with intercountry adoption;
- e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation”.

**What are the characteristics of the “bodies duly accredited”?** It is again the Hague Convention that states that “Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted” (Art. 10) and that an accredited body shall:

- a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption;
- c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation”.(Art. 11)

As known, **it is not mandatory for a central authority to delegate part of its powers to these bodies**. In some countries this is not expected and everything is done by the central authorities, in others they do delegate and have exclusive responsibility, in others prospective adoptive parents can contact either the central authorities or these bodies.

A first analysis can be made, comparing the two States which have not yet ratified the Hague Convention: **Greece** and **Ireland**. There is a difference between these two States and only **Greece** is without a Central Authority. So in addition to the Social Work Departments of some Prefectures that by law are competent also for intercountry adoptions, the Greek branch of the International Social Service, although a Non-Governmental Organization, has been acknowledged as specialized in international adoptions and is responsible for the required report in the cases where one party’s habitual residence is abroad. The requirements are established by law but there is a lively discussion about this. In fact adoptive parents can now refer to an agency entitled by law to carry out adoptions after having the child at their home and just before going to court.

This is a currently debated issue, as when the adoptive parents have not been approved in advance by the competent body, the best interest of the child cannot be guaranteed and the court is somehow forced to decide in favour of this adoption. At this point it should be mentioned that in Greece, according to article 7 of Law 2447/96 adoptions by private arrangement and not necessarily through public agencies, is being allowed, provided that the same legal procedures are being followed. The difference is that the prospective adoptive couple or person may, through private arrangement, already have the child with them and then apply to the appropriate body (Social Work Department of each Prefecture of the country) to undergo all the legal procedures for the adoption. This means, in reality, that if the social worker’s evaluation is negative for the quality of the prospective adoptive parents, it is very difficult – except in extreme cases- to take the child away as usually it has already bonded with the parents and any move may very well be thought to be in accordance with the child’s best interest and well-being. The law does not declare specifically what is the time limit for the request by the prospective parents for the legal procedures, but states the word “reasonable time”. This may create problems as it may be interpreted differently and be the cause of problematic outcomes. Once the prospective adoptive parents have applied to an

authorized public agency requesting the legal process to begin through the social worker's evaluation, the agency is obliged by law to do this within a period of up to six months. In spite of the efforts of the public agencies to change the law on this issue in order to prevent undesirable outcomes, this was not possible due to public pressure for procedures to be faster and "easier" for the adoptive parents. It should be mentioned that the majority of the adoptions in Greece are done by "private" arrangement followed by legal procedures and not by public agencies.

It is different in **Ireland**. It is compulsory for prospective adoptive parents to go through an adoption accredited body, which includes the Health Services Executive and Registered Adoption Societies. Forthcoming adoption legislation will allow for the creation of more accredited bodies to conduct assessments, mediation and post-adoption services. The International Adoption Agency (Ireland) supports the view that more non-Health Board agencies be accredited to conduct assessments in order to cut down on waiting times. The majority of these agencies are third country agencies (i.e. their business headquarters are neither in Ireland nor in the child's State of origin). They are not covered by any legislative provisions or regulation in Ireland. They are not registered with the Adoption Board. The Helping Hands Adoption Mediation Agency, which deals with applications for Vietnam, is the only agency based in Ireland.

There are **some countries that have not provided for accredited bodies are but reflecting on this possibility. One** of these is the **United Kingdom**. There are currently no accredited bodies in the UK which are responsible for intercountry adoption intermediation. Voluntary adoption agencies are accredited according to criteria set out in the relevant regulations and standards. Both statutory and voluntary agencies are also regularly inspected according to the same criteria and measures. In England and Wales it is an offence for any prospective intercountry adopter habitually resident (whether birth parent, step parent, relative or guardian of the child) to adopt from abroad without having complied with regulations. In practice this means that they will commit an offence if they do not undergo an assessment from an accredited agency, followed, if the agency recommends their approval, by an eligibility certificate issued by the relevant central authority. The agency must ensure that the applicants have "appropriate" preparation and, in practice, this will mean that most adopters attend preparation courses.

In Northern Ireland prospective applicants will be expected to attend a structured preparation course, but it is only an offence if they adopt without first having undergone an assessment of their suitability. In Scotland and N. Ireland none of the above restrictions apply in respect of adoption by close relatives.

There are also regulations which govern the "matching" and introduction stages of the intercountry adoption process, immigration and when the child returns with the family to the UK. However, currently there are no accredited bodies in the UK which are also approved by the relevant bodies in the States of origin to make intercountry adoption arrangements. Thus, no UK adopters make arrangements through an "accredited body".

In the absence of such "full service" agencies, in UK adopters do choose to use the services of agencies accredited in other countries when making arrangements for their adoptions in the States of origin. Examples of this would be US and Israeli accredited bodies which assist UK adopters applying to adopt from the Federation of Russia.

Whilst there is professional concern and debate in the intercountry adoption community in the UK about the absence of accredited bodies (with the prospect of one or more voluntary adoption agencies seeking to fill this gap in the future) there is no central policy driving either the debate or any such initiatives. Where this is discussed, the concern is that the definition of the UK central authority's role in intercountry adoption is limited and does not include the proactive development of relationships with States of origin or a hands-on approach to the adoption process in relation to facilitation and problem solving in respect of individual applications.

In **Cyprus** there are no Accredited Bodies operating since this is not provided for in the National Law but is a matter to be discussed during the process of the preparation of the new



draft law. In some States that have not ratified the Hague Convention there are private offices in operation, acting as mediators in intercountry adoptions. Cypriot Prospective Adoptive Parents turn to them for help but the Cypriot Central Authority is not in a position to assess which of those operate with or without the necessary control by the State.

**Romania** is still an unusual case because the law forbids the participation of private bodies in the intercountry adoption procedure in this country. The interdiction is applied to the accredited bodies, except in the situation where they are the adopters. In the field of intercountry adoption, the Romanian authorities can collaborate with private bodies that carry out their activity in the receiving State if they are accredited in that State and authorized by the Romanian Office for Adoptions. Taking into account the restrictions on intercountry adoption of children from Romania (limited to the grandparents of the child), no foreign private body has requested the Romanian authorities for its authorization since the new legislation came into force. It is not compulsory for the prospective adopters (the grandparents of the children) to carry out the intercountry adoption procedure by means of an authorized body. The requests of the persons or families who reside in the territory of another State which is a party to the Hague Convention and who want to adopt a child from Romania can be transmitted to the Romanian Office for Adoptions by the central authority or by the accredited bodies in that State.

In **Bulgaria** it is possible for prospective adoptive parents to apply to an accredited institution or directly to the central authority. Bulgarian law places a duty on the Ministry of Justice as the Central Authority to “exercise control over the composition and the activities of the accredited agencies that act as an intermediary in intercountry adoptions”. The control, under article 136 (7) (d) FC, includes keeping a register of accredited bodies which, under 136a) (4) shall include details, including “the authority that has issued the permission”, the terms of the permission and the terms and conditions of the permission for performing mediation activity issued by a foreign competent authority’. The basis and procedure for granting permission to intermediaries in intercountry adoption is elaborated further in Ordinance No 3 Section iv. A foreign entity can only be given permission to act as an intermediary with the country of accreditation. The permission is issued following a complex check of the organisation’s documents, a visit to its office and an interview with the IA Commission. The Commission shall offer to the Minister of Justice to issue permission for mediation. The Minister’s rejection can be appealed against.

Some concerns about the role of foreign accredited bodies have been expressed as follows: “*article 136b (10) Family Code and Art 36(2) Ordinance 3 would appear to permit foreign accredited bodies from non-Hague Convention States to act as intermediaries in inter-country adoption. A problem arises in that Bulgaria cannot control the standards on which accreditation in such a State is based, nor can it ensure that such bodies act in the best interests of children rather than the best interests of potential adopters*”. The accredited bodies, as well as organisations whose request for accreditation has been rejected, have criticised the policy of the Ministry of Justice for not being transparent and for the big delays in taking decisions for accreditations. In 2007 a conference was organized with the Ministry of Justice to discuss the accreditation criteria and the work of the International Adoptions Commission that was also criticised for being slow and not transparent.

It is not compulsory for the prospective adoptive parents to go through an adoption accredited body. Article 5(1) of Ordinance 3 sets out the following options for the submission of an application to the Ministry of Justice by a foreign citizen wishing to adopt a Bulgarian child in order to be listed in the Register:

- 1) through/by the Central Authority of the State of citizenship,
- 2) through/by an adoption body accredited by the Minister of Justice,
- 3) in person in the cases of adoption of a grandchild or of a child of a spouse where The Hague Convention is not applicable.

If the prospective adoptive parent is a citizen of a State that is not a party to The Hague Convention s/he should go through an adoption accredited body.

**Poland** is a country of origin where there is the obligation to contact the institutions authorized for residents while foreigners can apply both through their national agencies and

directly through the central authority. If a foreign organisation accredited in its country for intercountry adoption wishes to act in Poland, it is required to apply for the Polish central authority's accreditation, accordance in with Article 12 HC. To obtain such accreditation, the Polish central authority must be provided with the organisation's statutory document, containing information on its aims and measures, approval or accreditation given by a relevant institution in the applicant's country and letters of plenipotentiary power for the representative in Poland. The Polish accreditation document is valid for two years; to extend it the following are required: valid accreditation given by the receiving State's institution, a report on the last two years of activity and valid plenipotentiary letters.

The Polish central authority has delegated some responsibilities to accredited bodies in Poland, i.e. adoption and custody centres. There are three centres entitled to run intercountry adoption procedures and they are also responsible for qualifying a family to adopt a Polish child/children, the matching process, assisting in pre-adoption contact and producing a report on the contact. A family applying for the adoption of a Polish child must apply to one of three accredited adoption and custody centres. It is not compulsory to be assisted also by a foreign accredited body (a family may apply just to the receiving State's central authority).

There are small differences in the three Baltic States: **Estonia, Latvia and Lithuania.**

Pursuant to the law of social care and welfare in **Estonia**, the Minister of Social Affairs has to take care of social welfare and adoption arrangements to and from foreign countries and hold an appropriate register. It doesn't mean that the minister will have to communicate with the children and the families in person. The ministry takes care of bureaucratic procedures: receiving applications and personal data from people who wish to adopt; giving information about adoption and statutory law; preparing parents for adoption; finding appropriate parents for a child and preparing an adoption hearing in court.

In Estonia, different mediators cannot operate, except for organizations from other countries that have legal rights to arrange adoptions in their own country. Agreements are signed with those organizations for the purpose of making procedures more secure, avoiding independent adoptions and possible intervention of mediators. Collaboration partners have to exhibit documents that prove their rights to deal with intercountry adoptions and special permission to collaborate with Estonia if their State law demands it.

Estonian domestic law has not determined any criteria on adoption bodies. When it comes to this particular question it uses the Hague convention. Estonia's partnerships with other countries in intercountry adoption evolved before Estonia signed the Hague Convention in 2002.

In **Latvia** there is no accreditation law. Prospective adoptive parents who want to adopt a child in the Republic of Latvia, shall submit to the Central Authority files containing the examination of the adopter's family, prepared by a competent institution in the relevant country and reference to the person's criminal record. The Central Authority shall ascertain that the submitted documents are in conformity with the law.

The Minister of Social Security and Labour of the Republic of **Lithuania** has approved the "Order of the Specification" of the Procedure for Granting Authorization to Foreign Institutions in respect of inter-country adoption in the Republic of Lithuania. It establishes the procedure for granting authorization to foreign institutions regarding intercountry adoption, the procedure for its cessation, renewal, suspension and revocation, and also procedures and functions, rights and duties of the authorized foreign institutions. The Lithuanian Central Authority is responsible for the accreditation of bodies and the authorization of accredited bodies abroad, including their supervision and review. Prospective adoptive parents, who want to adopt a child in the Republic of Lithuania, shall submit, through their Central Authority or accredited body, the necessary documents to the Lithuanian Central Authority. After this brief overview it is useful to consider the main receiving countries in the European Union (France, Spain, Italy, Sweden, Denmark, and Germany) and the way in which they have regulated intermediation in intercountry adoption.

**Among the member countries of the European Union three are among the first four receiving countries in the world with regard to intercountry adoptions: Spain, Italy**

**and France.** Only the United States exceed these three countries numerically. It is interesting to note that **these countries use the accredited bodies as intermediaries between couples and the foreign countries.** In Italy it is not possible to adopt without applying to one of them, whereas in France<sup>1</sup> it is possible to adopt without the intermediation of an accredited body only in the countries which have not ratified the Hague Convention, which allow it. In all three of these countries, and also in Germany, Sweden and Denmark for example, these bodies must be authorized by their respective central authorities. Only in Spain must each central authority in the federal communities authorize these bodies in each community, whereas in federal States like Germany this authorization is granted by the federal central authority. The authorization granted generally does not expire (cf. France and Italy) but the activity of these bodies is continually inspected and monitored by the central authorities. In Italy the activity of the accredited bodies for example is closely controlled also because it is to them that the central authority has almost totally delegated the responsibility for intermediation and for relations with foreign countries and activities abroad for adoption by Italian couples<sup>2</sup>. Bodies authorized to intermediate must be non-profit and this requirement is always carefully examined and monitored through controls, the production of annual reports (Italy, Germany, Denmark for example). The accreditation criteria are different for each country but they have the following features in common: they are non-profit making, they are directed by competent and expert people, they can prove that they are able to operate in foreign countries (presence and also authorization by the foreign authorities), and also willingness to constantly report to their own central authority.

## 5. THE PROSPECTIVE ADOPTIVE PARENTS

Generally speaking, **most of the requirements necessary for being considered eligible and suitable as adoptive parents are rather similar, if some subjective and objective elements are taken into consideration.** Indeed, all these aspects have to be carefully analysed, also thanks to enquiries that involve the family and social relations: the family “history” of the would-be adopters, their personality, their state of health, their living conditions, comprehensive of their economic resources, home environment, education and

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<sup>1</sup> The accreditation and monitoring of adoption bodies fall under the authority of the Ministry of Foreign Affairs. The criteria for the accreditation of an adoption body mainly relate to the following factors: the competence of its executives and of all the people involved in the running of the organization; the post-adoption services it provides; how it calculates the sum to be paid by the adoptive parents; the identity of and the contract with the adoption body of reference in the State of origin; the institutions and bodies from whence the children come; the information concerning the transfer of the child and the information given to applicants about adoption rules and procedures in the country in which they will be authorized to work.

The Ministry of Foreign Affairs issues one authorization per country. This authorization is not limited in time. French individuals may apply for adoption without the intermediation of an accredited body in the States which are not parties to The Hague Convention and which do not prohibit it. A natural person cannot act as an intermediary in the adoption process.

<sup>2</sup> In accordance with article 39ter Law 184/1983, in order to be authorized to function by the Commission, the accredited bodies must meet a series of requirements such as being directed by and comprising persons with adequate training and competence in the field of intercountry adoption, as well as having suitable moral qualities. The staff of the accredited bodies must include professionals in the social, legal and psychological field, with the capacity to give the couple support before, during and after adoption. Then there are some objective requirements such as being based in the national territory, having an adequate organizational structure in at least one autonomous region or province and the necessary personal structures to be able to function in the foreign countries in which they intend to act. The accredited bodies must be non-profit and must not exercise preliminary discrimination against persons seeking adoption (whether of an ideological or religious nature). The accreditation criteria are established by presidential decree DPR 108 of 2007: the bodies must request authorization from the Commission for intercountry adoption which within 120 days of receiving the request, decides whether to grant accreditation or not, indicating the foreign countries or geographic areas in which the body is authorized to operate. In the case of denial the bodies have 30 days in which to ask for reconsideration. The inspection of the bodies is carried out periodically by the Commission in relation to their continued suitability and also the correctness, transparency and efficiency of their activity, particularly concerning the proportion of the assignments accepted that reach completion. The inspections are made from the taking random samples or following relevant notification. It's compulsory for the prospective adoptive parents to go through accredited bodies except in the case of a child united by a bond of kinship up to the sixth degree or by an existing stable and lasting relationship, when the child is fatherless.

job, the reasons why they desire to adopt a child, their visions and expectations about the parent-child relationships, their capacity and willingness to bring up a child and to take care of his/her special needs, due to age or health conditions.

However, as far as the prospective adopters' **civil status and age** are concerned, different solutions are followed. In some countries, precise **age limitations** or **differences** (between the age of the adopted child and that of the adoptive parents) have been established, while in others they are absent, even if this is an aspect taken into account in the application of general norms concerning the suitability of would-be adopters. Legislative provisions and judicial interpretations vary very deeply also in respect of civil status.

Starting from the latter requirements, many legislations, as already said, in presence of an application made by a **couple**, require that **spouses** may only adopt **together**. However, it is important to remember again that recent innovations in some national legal systems allowed also members of civil unions or registered partnerships to adopt a child jointly. In any case, rather distinct solutions appear, in looking at the details of each national experience. **In some EU states full adoption is still permitted to (heterosexual) married couples only. In others, it is allowed also to single persons. In a third group of countries, where also singles** are allowed to fully adopt, this is possible for both different-sex spouses and same-sex registered partners. In a smaller group of EU member states – the Netherlands, Belgium, Spain, Belgium and Norway – adoption became allowed to same-sex married couples too, after the enactment of new pieces of legislation in the last decade<sup>3</sup>.

**EU countries that expressly permit homosexuals to adopt a child can be subdivided into two groups**, to which, however, the same countries may belong, given that **joint adoption** and **second parent adoption** can be possible in alternative, even if under different circumstances.

(a) The first group of countries permits **joint adoption**. This can be said not just for those in which same-sex marriage is admitted<sup>4</sup>, but also for other countries<sup>5</sup>, in which civil partnership is restricted to homosexual couples exclusively<sup>6</sup>.

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<sup>3</sup> See later in the text for a brief description of the *status quo*. On these issues see G.R. de Groot (2007), for a clear comparative vision concerning the situation reflected by national reports delivered for the 2006 Conference of the International Academy of Comparative Law. For further analysis, before, see Antokolskaia (2002) and K. Boele-Woelki, A. Fuchs (2003).

<sup>4</sup> *I.e.*, the Netherlands, Belgium, Spain and Norway. See, respectively, the Belgian Act of February 13<sup>th</sup>, 2003 (in force since June 1<sup>st</sup> 2003) opening civil marriage to same-sex couples see the *Moniteur Belge* of February 28<sup>th</sup>, 2003, at pgs. 9880-9884. See the Dutch Act (*Wet van 21 december 2000 tot wijziging van Boek 1 van het Burgerlijk Wetboek in verband met de openstelling van het huwelijk voor personen van hetzelfde geslacht - Wet openstelling huwelijk*-Law on the opening up of marriage), in *Staatsblad* 2001 no.9. For the text in Dutch and in an unofficial English translation by Dr. Kees Waaldijk, in the following web page <http://www.law.leiden.edu/organisation/meijers/publications-waaldijk.jsp>. For Spain, see the Act of 2005, *Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio* (Law no 13/2005, of July 1<sup>st</sup>, that amended the Civil Code in respect of the right to contract marriage), in *Boletín Oficial del Estado* no. 157, July 2<sup>nd</sup>, 2005, pgs. 23632-23634, which entered into force on July 3<sup>rd</sup>, 2005, and for Norway, the Law on Registered Partnership (*Lov om registrert partnerskap*), enacted on April 30<sup>th</sup>, 1993, nr. 40 and the more recent *Act on changing the marriage law,...* (*Lov om endringer i ekteskapsloven,...*), no. 91, of June 17<sup>th</sup>, 2008, in force since January 1<sup>st</sup>, 2009. For the original text in Norwegian see the following web site: <http://www.regjeringen.no/nb/dep/bld/dok/regpubl/otprp/2007-2008/otprp-nr-33-2007-2008-/16.html?id=502804>. In Sweden an Act that opens marriage to same-sex couples is expected by May 1<sup>st</sup>, 2009. The initial differences provided by the 1994 Act on Registered Partnerships (*Laegn om registerat partnerskap*) gradually disappeared: joint adoption was opened to same-sex couples in 2003 and lesbian couples were allowed to undergo medically assisted reproduction services in 2005.

<sup>5</sup> *I.e.*, Belgium, Germany, Spain, Sweden, the United Kingdom, the Netherlands and in Norway, but in the latter two states same-sex couples were not allowed to intercountry adoption. This issue was much debated in the Netherlands. See the Dutch Parliamentary proceedings (*Kamerstukken*) 2006-2007, 30, 551, no. 3. On these problems, see G.R. de Groot (2007) and I. Curry-Sumner (2008). Some restrictions exist also in Dutch legislation as far as the operation of the “presumption of paternity” is concerned (in cases of lesbian married couples). In Belgium only domestic adoptions were permitted to homosexual spouses initially, after the enactment of the 2003 statute, but it was later amended by a subsequent Act, of May 18<sup>th</sup> 2006 (*Loi modifiant certaines dispositions du Code civil en vue de permettre l'adoption par des personnes de meme sexe, in Moniteur Belge, June 20th, 2006*).

(b) The second group is comprehensive of countries that permit, respectively, **second-parent adoption** only or in **addition** to joint adoption<sup>7</sup>, in the sense that one partner of a same-sex couple may adopt the other partner's biological child in countries that exclusively allow step-parent adoption (*e.g.*, Denmark, Finland<sup>8</sup> and Norway) or that regulate it as an alternative to joint adoption. Therefore, **step-parent adoption** is admissible not only in Belgium, Germany, Spain, Sweden, the United Kingdom, the Netherlands and Norway, but also in **Denmark, France<sup>9</sup> and Ireland**. In Finland this is not yet possible, but the Government has presented a Bill (HE 198/2008) that is aimed at introducing a new legislation for this purpose. At the end of 2008 the Law Committee was still examining it.

In brief, it is possible to say that **the greatest restrictions are present in the first group of states that limit full (joint) adoption to married couples only**. For instance, single persons are not allowed to fully adopt a child in Italy, Latvia and Portugal. On the contrary, in the other EU countries where full adoption is permitted to singles it has been possible to open the systems to "*non traditional*" unions, albeit not always directly, but by means of specific legislative interventions.

The situation concerning same-sex couples in respect of **foster care** or **step-child foster care** partially mirrors the current one with regard to adoption, but there are some divergences. Indeed, foster care is admitted not only in states that allow same-sex couples to adopt a child jointly (*i.e.*, Belgium, Germany, Spain, Sweden, the United Kingdom, the Netherlands, Iceland and Norway), as well as to adopt the partner's biological child (Denmark, Ireland, Belgium, Germany, Spain, Sweden, the United Kingdom, the Netherlands and Norway), but also in other states, such as Estonia, Finland and France. In Italy, single persons can become foster parents, being possible that they are allowed to simple adoption, but there is no legislation directly regulating the legal condition of same-sex couples, nor, consequently, the adoption or fostering of children in their regard.

After this extremely schematic description, some conclusive remarks now can follow. Indeed, given that this Report is focused on **non relative adoptions**, it seems sufficient to remember that **step-parent adoptions** (*i.e.*, relative adoptions, because the child is adopted by his/her biological parent's same-sex spouse and/or partner) **are permitted in the above-mentioned situations by all legislations that regulate same-sex unions**, notwithstanding some diversities among the solutions envisaged, which reflect the characteristics of the different models followed<sup>10</sup>. Another point that deserves a special attention is linked to the **limitations, in some countries that opened joint adoption to same-sex couples, as far as**

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<sup>6</sup> *E.g.*, Iceland, Sweden, and the UK (England, Wales and Scotland, while this has been proposed for Northern Ireland).

<sup>7</sup> *I.e.*, on the one hand, Denmark and Germany, and, on the other, the Netherlands, Belgium, Spain, Norway, Iceland, Sweden and the UK (England, Wales and Scotland, where this has been proposed for Northern Ireland).

<sup>8</sup> In Finland, however, adoption is granted in respect of each partner individually, although one of them may have the custody on the child adopted by the other. Anyhow, no restrictions are applicable to child custody. The only criterion consists of the protection of the best interests of the child. It does not matter the custodian's sex, sexual orientation, age or civil status. In Denmark and Norway (before the recent reform) step parent adoption only (and not also joint adoption) was allowed, as well as in Switzerland.

<sup>9</sup> Joint adoption is not permitted to same-sex *pacsé* by French law. Step-adoption, in cases of simple adoption (*adoption simple*) was excluded by some judicial decisions, but it is not expressly prohibited by current legislation. Homosexual couples, as a rule, obtain the delegation of parental responsibility by their partner towards his/her child in order to give legal recognition to the factual situation concerning their relationship with him/her.

<sup>10</sup> Evidently, also if the child's birth is subsequent to the intervention of fertilization techniques, the question of adoption may arise. Anyhow, the solutions that were followed in cases of children born in a same-sex marriage were different. In the Netherlands and in Belgium, in case of access to medical assisted reproduction by one of the members of a married same-sex female couple, it is necessary to start a civil proceeding to give parental responsibility on the child, born in the marriage, to his/her mother's spouse, given that the relationship of kinship is automatically established only in respect of the child's mother. In Spain, on the contrary, the member of a lesbian married couple – who is not the child's mother – does not need to obtain a judicial order in order to obtain the legal *status* of parent of the child, being the relationship of parenthood established in respect of both spouses on the same basis as in cases on heterosexual married couples. Evidently, while considering male spouses, the prohibition of surrogated motherhood determines that for the same-sex married couple there is no possibility of giving birth to a child in wedlock. Anyhow, the couple can adopt a child.

**intercountry adoption is concerned.** This can be said for the Dutch experience. It may be that this choice was determined by an understandable caution, due to the evaluation of the objective fact that most sending countries are not likely to allow adoption in these situations. At the same time, this limitation – from a purely formal standpoint – is difficult to be justified, once that marriage has been opened to homosexuals on the same basis as for heterosexuals. Thus, it is not difficult to foresee that it might be eliminated if the intention to give same-sex and opposite-sex married couples a really total equal treatment.

Anyhow, the basic question to solve still remains open: which are the reasons why parents' sexual orientation is considered a "sensitive" issue, in almost all socio-legal experiences? Is this a problem only due to deeply rooted attitudes, linked to social closure and stigma against homosexuals? Or is it a more complex matter, of which it is too early to have a well-documented knowledge because of the relative recent origins of the phenomenon and the need to wait for some years before being sure about the long lasting effects of these "new" kind of adoptions on the lives of adoptees?

On these issues, it is possible to mention a wide range of contributions<sup>11</sup>, although legal, sociological and psychological studies are not as numerous as they should be, given the importance of this subject, and there are still deep contrapositions among experts as to the impact on the development of the child's personality when he/she lives in a family made up of two persons of the same sex. Initial studies were carried out in respect of biological children, born of a previous different-sex relationship, and then raised in a family constituted of a same-sex couple (*i.e.*, by their mother, in most cases, or by their father and, respectively, her/his partner). Subsequently, also other situations were examined (*i.e.*, cases of children born thanks to medical assistance in hypothesis of insemination or *in vitro* fertilization, or of surrogated motherhood, permitted by some states in the USA, and with limitations due to the compensation in the UK as well). Also the adoptees' condition was studied. Anyhow, in most cases of "non traditional" families observations were devoted to children, while the condition of adults adoptees still needs to be carefully considered. Of course, before reaching a relevant amount of data, susceptible to be analyzed on a wide scale, more time has to pass. Children adopted in the mid 1990's or at the beginning of the XXI century will be adults around the end of the following decade. Therefore, it does not seem unjustified to up-date the interesting studies carried out in the last years of the XX century, inevitably limited to infants, pre-adolescents and teen-agers. Indeed, some of the most detailed studies date back more than ten years. Hopefully, it will be possible to arrive at a more complete picture if the same experts, together with others, possibly not involved in the previous enquiries, in order to ensure a higher level of impartiality, should continue to make their observations. Evidently, the condition of **adopted foreign children** is the rarest one, for the above-mentioned limitations, present also in some countries which followed very innovatory solutions in this field (*e.g.*, the Netherlands) and due, in other states, to the above-mentioned situation in the countries of origin.

Despite the differences with domestic adoptions, correlated to the child's origins and background, a great part of the psychological dynamics are, however, rather similar in all adoptees, independently of their nationality. Thus, it will be extremely important if, in the countries in which same-sex couples can adopt (jointly or individually, whether or not married or members of civil unions or registered partnerships) a renewed interest is shown towards these situations, in the post-adoption phase. More information will ensure more conscious decisions. The existence of so many doubts on these issues is perhaps the most serious obstacle to reach consistency in legislative and judicial choices. Despite such a high degree of uncertainty, while awaiting more complete enquiries, which will update the findings to date, it seems necessary to avoid that untested solutions are considered, in themselves, as

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<sup>11</sup> Several studies were made, but in the first period of time the examined relationships were those between biological (homosexual) parents, their children and/or their partners. Indeed, as a rule, legal recognition of these "non traditional" unions was absent, until the mid of the 1990s. See B. Miller (1979); F.W. Bozett (1980); K.G. Lewis (1980); B. Hoeffler (1981); M. Kirkpatrick, C. Smith, R. Roy (1981); S.L. Kweskin, A.S. Cook (1982); T.A. Lyons (1983); S. Golombok, A. Spencer, M. Rutter (1983); M.B. Harris, P.H. Turner (1985/86); R. Green, J.B. Mandel, M.E. Hotvedt, J. Gray, L. Smith (1986); J.J. Bigner, R.B. Jacobsen (1989); S.L. Huggins (1989).

the best ones just because there are not yet clear and incontrovertible evidences as to their effects on the child's well-being in the long run, but only some elements are known (*e.g.*, the child's current positive reaction), which however can only be considered sufficient if a short-term perspective is adopted.

The **lack of consensus** and the **limited amount of studies** are aspects that were properly emphasized also by the ECtHR in its latest decision, in the case *E. B. v. France*<sup>12</sup>.

In brief, **the auspice is that, in the future, these situations will be studied in a more structured and coordinated way, by analyzing all the data that are available, not limited to those referred to the family "environment"**, but comprehensive also of those concerning the social context, and its differences, due to the fact that the family lives in a urban or rural area, in a big or a small town, in a "modern" or in a "traditional" context. Evidently, all these elements influenced also the legislative choices made so far, but seldom openly. Indeed, very diversified approaches have been followed, according to the method adopted in regulating the core aspects of these "non traditional" unions<sup>13</sup>, and each of them can be described as the result of important sociological reasons, which, albeit not expressly declared, had a decisive impact on legislative solutions<sup>14</sup>.

Evidently, **in all these situations it is important to consider not just the national dimension, at both social and legislative level<sup>15</sup>, but also aspects of private international law**, in the light of the need to favour a more intense understanding of all the possible implications of these situations, **in a multi-cultural and multidisciplinary perspective**. First of all, it is a matter of verifying how domestic legislators and Courts reacted towards these innovations, in countries in which they were not introduced. Furthermore, it is necessary to think about the impact of these "new families" in an EU perspective. While considering the area of intercountry adoption, these questions may not appear as immediately relevant, but adoption law has to be considered in a unitary manner, so to avoid any discrimination based on nationality. Therefore, in thinking about the possible steps to take in order to equate the protection for all children, whether nationals or non nationals, Europeans or non Europeans, it is important not to forget that the suitability of adoptive parents has to be established also in light of the need to give the adoptees the highest level of freedom, so as to ensure the full development of their own personality.

The definitive refusal and the **condemnation** of any kind of **discrimination against all human beings** based on the grounds of their sexual orientation and/or behaviour goes parallel with the undeniable respect towards children, whose frailty is evident, in comparison to adults, to ensure their right not to be exposed to situations in which, albeit involuntarily and/or unconsciously, the same "parental model" may influence their self-perception and

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<sup>12</sup> See Application no. 43546/02, decision of January 22<sup>nd</sup>, 2008.

<sup>13</sup> See R. Wintemute, M. Andenaes (eds.), (2001).

<sup>14</sup> See, for the last decade of the XX century, when same-sex unions started to become more openly accepted (and revealed), on the parent/child relationships: L. Koepke, J. Hare, P.B. Moran (1992); A. O'Connell (1993); S. Golombok, J. Rust (1993); L. Lott-Whitehead, C.T. Tully (1993); S. Golombok, J. Rust (1993); C.J. Patterson (1994) and (1995); F. Tasker, S. Golombok (1995); J.M. Bailey, D. Bobrow, M. Wolfe, S. Mikach (1995); D. Flaks, I. Ficher, F. Masterpasqua, G. Joseph (1995); F. Tasker, S. Golombok (1995); M. Sullivan (1996); N. Gartrell, J. Hamilton, A. Banks, D. Mosbacher, N. Reed, C.H. Spark, H. Bishop (1996); S. Golombok, F. Tasker (1996); S. Sarantakos (1996); M. Sullivan (1996); F. Tasker, S. Golombok (1997); A. Brewaeys, I. Ponjaert, E.V. Van Hall, S. Golombok (1997); S. Golombok, F.L. Tasker, C. Murray (1997); F. Tasker, S. Golombok (1998); J.M. Wright (1998); R.W. Chan, R.C. Brooks, B. Raboy, C.J. Patterson (1998); R.W. Chan, B. Raboy, C.J. Patterson (1998); C.J. Patterson, S. Hurt, C.D. Mason (1998); I. Crawford, A. McLeod, B.D. Zamboni, M.B. Jordan (1999); N. Gartrell, A. Banks, J. Hamilton, N. Reed, H. Bishop, C. Rodas (1999); T.D. Gershon, J.M. Tschann, J.M. Jemerin (1999); B.R. King, K.N. Black (1999); C. McLeod, I. Crawford, J. Zechmeister (1999); F. Tasker, S. Golombok (1998); J.M. Wright (1998).

<sup>15</sup> During the last decade, observations could be made in respect to a deeply changed social and personal perception of the phenomenon at stake. See N. Gartrell, A. Banks, N. Reed, J. Hamilton, C. Rodas, A. Deck (2000); A.L. Siegenthaler, J.J. Bigner (2000); H. Barrett, F. Tasker (2001); C.J. Patterson (2001); J.F. Morris, K.F. Balsam, E.D. Rothblum (2002); S.M. Johnson, E. O'Connor (2002); H.M.W. Bos, F. van Balen, D.C. van den Boom (2003); H.M.W. Bos, F. van Balen, D.C. van den Boom (2004); K. Vanfraussen, I. Ponjaert-Kristoffersen, A. Brewaeys (2003); J.L. Wainright, S.T. Russell, C.J. Patterson (2004).

future behaviours. Among the aspects to be considered there is also the free development of the child's gender/sexual identity, evidently. This is a right protected by the ECHR (arts. 8 and 14) as well as by the ECFR in respect of all individuals, independently of their age (arts. 7 and 21). Public authorities are compelled, in guaranteeing its respect, to ascertain that the condition of the adoptee is an object of concern in all cases, not only when the adopted child has been placed in a "traditional" family, obviously, but also and equally when he/she has been adopted by a "non traditional" couple<sup>16</sup>.

Therefore, **post-adoption observational reports should help to have a clearer vision of the effects of adoption not only on children**, the weakest subjects in the "adoptive triangle", **but also on adult adopted persons**, whose experiences can give better insights into the contemporary history of adoption. Indeed, **child adoption, as an instrument aimed at giving a family to a child** (and not a child to a family), is not so ancient, having being introduced in the mid XIX century in the USA, and then regulated in other countries. However, adoption has very deep roots in society, having also taken place in the past in areas in which it is prohibited today (*i.e.*, *al-tabanni*, in pre-Islamic culture)<sup>17</sup> or was rejected, for a long time, because of the refusal of its original self-centred character dominated by a vision of the family that was not founded on love and bonds of affections but on economic interest (*i.e.*, as can be said for the countries in which the Christian religion was predominant, when the model of Roman *adoption* was rejected, prior to the enactment of contemporary codifications in continental Europe, and later reintroduced – for adult persons only, at the beginning of the XIX century – by the *Code Napoléon*). If one thinks about the reasons underlying some closures against adoption that are still present today, it appears clearly that most of them are determined by a criticism against an adult-centred and patrimonial conception of the relationships of kinship, which had characterized this legal institution for a long time<sup>18</sup>.

In considering intercountry adoption, **it is necessary to avoid that economically stronger subjects, who live in the so-called developed countries, fulfil their desires of paternity and maternity without taking care of the risk of imposing their own models on the more fragile links of the adoptive chain: the adopted child and his/her birth family**, whose conditions of poverty can not justify "easy" solutions based on the "offer" of a wealthy family environment. The emergence of a perspective that is sensitive to **children's rights** calls for a future, wider dialogue, in which data collected impartially thanks to **extensive comparative enquires** can foster in-depth debate, open to all voices. Of course, legislative decisions will always represent the will of the majority, but state Parliaments have to comply with their international obligations towards children and this implies a strong commitment to encouraging a kind of "cultural shift" that has already produced excellent results so far, as has been testified by the general approval of the positive impact of the HCIA<sup>19</sup>. The achievement of its purposes will prevent a "one-sided" vision, based only on the perspective of receiving countries and of their plans for their "affluent societies", from obliterating the need to respect the human dignity and the fundamental rights of children in need.

**As far as age is concerned**, in some countries, limits (on minimum and maximum age and/or age differences) are strictly indicated and derogations to the rule are permitted only on condition that certain situations are present. In other countries, there are no statutory limits, but judicial decisions intervened in this area. For instance, in Sweden, according to a decision of the Supreme Administrative Court "*adoptive parents should not generally be older than 45 years, which means that prospective parents should not be older than 42 years at the time of the application for the home study*". However, an accredited body may not require specific

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<sup>16</sup> The choice to use the expression "non traditional" or "new" couples or families has been determined by the need to exemplify and is based on the contraposition with the "traditional" notion of family reflected by national statutory provisions until a few years ago and by the European Convention on the adoption of children up to 2008, when the CoE opened the revised CoEADC to signature.

<sup>17</sup> See, on these issues, M. Corbier (1999); R. Aluffi Beck Peccoz (1990) and (1997); M. Fobets, J.Y. Carlier (2001); D. Pearl, D. Menski (1998); D. Archard (2004).

<sup>18</sup> E. Urso (2003).

<sup>19</sup> See in this Report, Part II, Chapter IV, the summary of the interviews with some European experts.



pre-requisites, given the applicability of those foreseen by the law of the child’s country of origin<sup>20</sup>. Also in England, Wales and Scotland there are no specific requirements, but “*lower age limits*”<sup>21</sup> are taken into account. Given the variety of solutions, a synthetic table is provided below, while for more detailed information about every national situation, one can have a look at the tables in Annex 5.

No specific age requirements	Minimum age limits	Maximum age limits	Minimum age difference	Maximum age difference
Sweden, United Kingdom, Germany, Poland, Hungary, Czech Republic, Portugal	Cyprus, Malta, Ireland, Finland, Luxembourg, France, Belgium, Austria, Spain, Estonia, Romania, Lithuania, Latvia	The Netherlands, Malta, Greece, Denmark, Lithuania, Slovakia, Slovenia	Greece, Luxembourg, France, Belgium, Denmark, Austria, Italy, Spain, Latvia	The Netherlands, Malta, Greece, Italy, Bulgaria

## 6. THE ADOPTION PROCEEDING

There are often **differences in the procedural rules applicable to domestic and intercountry adoptions**, respectively. In most cases, they are limited to some provisions only, concerning the phases that are subsequent to the initial stages, after that would-be adopters’ suitability has been already established. Indeed, as a rule, identical requirements are provided for both kind of adoptions, in regard of these requirements. Divergences in the procedure are justified by the need to regulate specific aspects that characterize the adoption of a child coming from another country (*e.g.*, the possibility and, in some cases, the obligation, for prospective adoptive parents to go through an adoption accredited body or to attend a course apt to verify their suitability and to give them the necessary insights about intercountry adoption)<sup>22</sup>. In the EU member states, which are in great part receiving countries<sup>23</sup>, **the authorities responsible for the ascertainment of the child’s adoptability are not the same for domestic and for intercountry adoptions**. In the latter cases, in all countries in which the HCIA is in force, as a rule, **accredited bodies** are called to ensure that the child’s best interests were respected in his/her **country of origin**, by co-operation with authorities and/or partners, and that adoption took place there in conformity to all the other fundamental principles enshrined by the HCIA (*e.g.*, the subsidiarity principle, the best interests of the child, etc.). Some of these bodies are private associations expressly authorized by the national Central Authority<sup>24</sup>, while others are public bodies, which have to undergo a preliminary enquiry to obtain the same kind of authorization. In most states, only private accredited bodies operate in the field of intercountry adoptions. In others, there are both private and public accredited bodies. In a third group of states public agencies only are entrusted with their tasks.

**The National Reports show an extremely heterogeneous landscape** also in this regard, which has been already described in its main traits. It might nonetheless be useful to show a brief synthetic table hereinafter, while the correspondent full-detailed version is available in Annex 5.

<sup>20</sup> See the National Report, at p. 9, where Section 8 of the *Intermediation Act* was mentioned.

<sup>21</sup> See the National Report for the United Kingdom, at p. 10.

<sup>22</sup> See on these issues Part II, Chapter II, para. 4.

<sup>23</sup> Only one EU member state has declared to be both a sending and a receiving country (*i.e.*, Portugal). Sending countries belong all to Eastern Europe (*i.e.*, Poland, Estonia, Romania, Lithuania, Bulgaria, Slovakia, the Czech Republic and Latvia). All the others are receiving countries (Sweden, Finland, the Netherlands, the United Kingdom, Ireland, Luxembourg, Belgium, Denmark, Germany, Austria, Italy, France, Spain, Cyprus, Greece, Malta and Slovenia).

<sup>24</sup> See on these issues Part II, Chapter II, paras. 3 and 4.

Presence of accredited public bodies and/or public authorities	Presence of accredited private bodies	Presence of both private accredited bodies and public bodies and/or authorities	Absence of accredited bodies
Poland, Romania, Czech Republic, Spain, Malta, Slovenia	Portugal, Bulgaria, Sweden, Finland, The Netherlands, Luxembourg, Denmark, Germany	Estonia, Lithuania, Slovakia, Belgium, Austria, Italy, France, Greece	Latvia, United Kingdom, Ireland, Cyprus

Evidently, **proceedings vary according to each country, but common guarantees have to be respected.** Where the HCIA is in force, costs (for translations of documents, etc.) have to be paid through accredited bodies and all contacts with the authorities of the country of origin shall be made by them. In those EU countries that allow **independent adoptions** (permitted by the HCIA, albeit not favoured)<sup>25</sup>, a deep concern was expressed about the shortcoming due to serious crimes committed by persons involved in child trafficking.

A final **judicial scrutiny** is often made in the receiving country, also with a view to ascertaining whether abuses were committed. The above-mentioned solutions are often followed also if the sending country did not ratify (accede or adhere to) the HCIA, as a response to the need to apply an equal treatment to all foreign adopted children. **Local social services** are competent to make **enquiries** aimed at drafting a report about the would-be adopters' suitability, taking into account all the relevant elements for this purpose (*e.g.*, style of life, motivations, socio-economic conditions, etc.). This is a solution followed in almost all states, as it can be clear in looking at some national experiences.

For instance, in **Sweden**, the social welfare committee (a local political body) is charged to carry out investigations on the prospective adoptive family's conditions, through one of its officials (a professional social worker), and to draft a home study, necessary to approve their request. At the same time, most families register with accredited organizations. In case the consent is given, it is valid for two years. Against decisions of **refusals** it is possible to obtain a **judicial redress**. More precisely, in some countries, if **consent is rejected** the social welfare committee, the applicants can **appeal** to an **administrative court**. On the contrary, **positive decisions** are **not** subjected to **appeal**, by anybody. In other countries other solutions are followed. In some of them the obligation to make the **necessary surveys** and to **support** the prospective adopters are an exclusive prerogative of **local social services**. In others, these activities are done under the supervision of **judicial authorities**.

Evidently, with regard to **recognition** of foreign adoption decrees, this is **automatic** in countries in which the **HCIA** is in force, according to art. 17<sup>26</sup>. As far as **non convention countries** are concerned, recognition is often regulated, in receiving countries, by rules inspired by the principles embodied in the HCIA, but, of course, these rules are different, given the absence of the "conventional framework".

Furthermore, there are no special rules or policies referred to adoptions based on a difference between EU and non-EU countries and/or citizens, at least so far. The basic contraposition is between intercountry adoptions regulated by provisions that are rooted, directly or indirectly, on the HCIA, operating only in the area of its applicability, and those that are external to this area.

Also in cases of prospective adopters who have been **habitually resident in another country**, in a state of the EU or in a non-EU state, the decisive distinction is between

<sup>25</sup> This is possible according to Swedish law (see Section 4 of the *Intermediation Act*, and Prop. to Parliament 1996/97:91, p. 79, quoted at p. 7 of the National Report).

<sup>26</sup> Art. 17 of the HCIA subordinates any decision in the State of origin according to which a child should be entrusted to prospective adoptive parents to the following requirements: that "*the Central Authority of that State has ensured that the prospective adoptive parents agree*"; that "*Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin*"; that "*the Central Authorities of both States have agreed that the adoption may proceed*"; and that it "*has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State*".

countries in which the HCIA is applicable or not. Indeed, according to Art. 14 of the HCIA: “persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence”. Therefore, to determine which is the competent authority is not decisive the citizenship and/or nationality, but the place in which the would-be adopters’ habitual residence was established.

This is a central point, to be emphasized with a view to deciding whether a European approach should modify or not the global vision adopted by the HCIA. Indeed, the successful outcomes of the HCIA can be explained in this perspective. The idea of creating a common framework for all adopted children and adoptive parents, thanks to a deep international cooperation, is linked with the correlated acceptance of a unitary set of guarantees. Their application does not depend on the fact that a person “belongs” to a certain group – determined by his/her nationality – but on the participation to a societal context, defined by habitual residence. After all, the same concepts of “country of origin” and “receiving country” reflect the fact that the HCIA gives priority to the relationship between the child and a country in which he/she lived and to his/her transferral from one to another.

In conclusion, it is possible to say that **any modifications shall be based on the valid model proposed by the HCIA, while considering the good examples given by some member states of the EU, which enacted special pieces of legislation in order to adapt their domestic legal systems to the requirements of the applicable international instruments** in this field (CRC and its Optional Protocol, HCIA, CoE Conventions). By listing some examples it will be possible to give an idea of the main trends followed actually as well as of the methods adopted to solve common problems. The National Reports contain the necessary elements to have a complete vision. Anyhow, it seems interesting to reflect on some recent legislative choices, which reveal a deep attention to the issues examined so far. For instance, in **Germany** two statutes were drafted to adjust internal rules to the international instruments in force into the state: the Adoption Convention Implementation Act (*AdÜbAG*)<sup>27</sup> and the Act on the Effects of Foreign Adoption (*AdWirkG*)<sup>28</sup>. Other statutory provisions are embodied in the Adoption Mediation Act (*AdVermiG*), which aims to regulate the mediation activity expressly<sup>29</sup>. The most important steps to be taken in compliance with the HCIA (e.g., designation of Central Authorities, present in each *Länder*)<sup>30</sup>. As it happens also in other national systems, also in Germany in cases of children adopted abroad in a “non-convention state” (i.e., where the HCIA is not applicable) it is necessary to follow a recognition procedure<sup>31</sup>. The Adoption Mediation Act (*AdVermiG*) applies to all intercountry adoptions, but if the state of origin of the child is a convention state also the procedures of the convention and the Adoption Convention Implementation Act (*AdÜbAG*) have to be followed. Adoptions orders are recognized in Germany if they were granted by a foreign jurisdiction for whom there is a certificate according to article 23 of the HCIA. If the adopters apply for a court recognition of the adoption according to the Act on the Effects of Foreign Adoptions (*AdWirkG*), the procedure is substantially the same, even if results and necessary time are affected. It is possible to convert a weaker form of adoption into a full adoption, in compliance with the HCIA (art. 27), according to the procedural rules set forth by the Act on the Effects of Foreign Adoption (*AdWirkG*). Moreover, before an adoption order is made the court has to take into account the reports drafted by the community youth offices and,

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<sup>27</sup> *Adoptionsübereinkommens-Ausführungsgesetz (AdÜbAG)*. For the text and the necessary information, see Bundesamt für Justiz (2007).

<sup>28</sup> *Adoptionswirkungsgesetz (AdWirkG)*.

<sup>29</sup> *Adoptionsvermittlungsgesetz*.

<sup>30</sup> See in this Chapter before.

<sup>31</sup> More precisely, The German court shall examine whether recognition is precluded or not, in light of the reasons listed in article 16a of the Code of Procedure in Non-contentious Matters (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit - FGG*).

eventually, also by adoption mediation agencies<sup>32</sup>. As it has been clarified by the National Report, in certain situations “*also the responsible central adoption agency has to be heard*” and the description and assessment of children’s views is a central aspect of such reports<sup>33</sup>. In any case, the basic requirement to be considered is the respect of the best interests of the child (art. 21 CRC)<sup>34</sup>.

In case of an adoption proceeding in which the adopted child comes from a foreign country, if German adoption law is applicable, the civil code provisions do not make a distinction between different states of origin. Moreover, as a rule, there are no status differences based on the adopters’ citizenship, in Germany, but some adoption cases are regulated by the adoption law of the foreign state to which the foreign citizens residing in Germany belong. In such cases, status differences can be present, in application of a general rule of private international law<sup>35</sup>. However, in Germany – as well as in almost all EU countries – there is no special policy towards prospective adoptive parents residing in another EU member state. Also the legal framework the habitual residence of German citizens it is not important. Indeed, this case is not regulated in the Act on the Effects of Foreign Adoptions (*AdWirkG*). Recognition of the foreign adoption order is governed by the same regulations outlined in the above-mentioned Act (*AdWirkG*) and in the article 16a of the Code of Procedure in Non-contentious Matters (*FGG*) independently of the fact that the German adoptive parents had their habitual residence in Germany or abroad.

Also in **Spain** national statutes were expressly enacted to deal with these issues. More precisely, apart from the general principles and rules embodied in the Civil code provisions and in the 1978 Constitution, two Acts were promulgated with a view to regulating adoption law: the *Ley Organica* on children’s protection (**no. 1/1996**), which dates back to 1996, the year after the ratification of the HCIA by Spain<sup>36</sup>, and the more recent **Act no. 54 of December 28<sup>th</sup>, 2007**, devoted to intercountry adoption<sup>37</sup>. Like it can be said for other member states, the ratification of International Convention requires a specific procedure. In particular, according to the Spanish Constitution it is necessary an authorization by the *Cortes Generales*. After ratification and publication in the Official Journal (*Boletín general del Estado*), the international document becomes part of the domestic legal system. The solution followed by Spain, as far as the role of the main public authorities charged with fundamental tasks are concerned, in this context (*i.e.*, the Central Authority and the authorities for child protection present in each Autonomous Community) is described in another part of this Chapter. Thus, it will be necessary here to focus on procedural aspects mainly<sup>38</sup>. In particular, it worth mentioning that the control carried out by the Entities Collaborating in International Adoptions (ECAIs) is about child protection of each Autonomous Community. For their accreditation, the law requires that they must be non profit organizations, that they shall be inserted into a register, that their main objective consists of child protection, that their activity is supervised by qualified persons with moral integrity and the necessary education and experience in the field of intercountry adoption. However, in Spain is not only compulsory to

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<sup>32</sup> See arts. 49 and 56d of the Code of Procedure in Non-contentious Matters (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit-FGG*).

<sup>33</sup> Bagljá 2006 p.22.

<sup>34</sup> Müller et al. 2007.

<sup>35</sup> See art. 22 of the Introduction to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch –EGBGB*). In the National Report the case of a Turkish couple who wants to adopt a Turkish child is mentioned, as an example.

<sup>36</sup> See C. Esplugues (1997).

<sup>37</sup> Both the CRC and the HCIA were soon ratified by Spain, respectively on November 30th, 1990 and on June 30th, 1995. Three bilateral agreements were signed too (with Vietnam, Bolivia and the Philippines).

<sup>38</sup> The Central Authority’s intervention and the Entities Collaborating in International Adoptions - *ECAIs*- activity (adoption bodies or *ECAIs*), are regulated by the 2007 Intercountry Adoption Act and by the HCIA. The relevant authorities on child protection of each Autonomous Community organize and collect data about foreign legislations, give prospective adoptive parents the necessary information on adoption, receive the adoption applications, declare the applicants’ suitability, make the follow-up of reports, receive the children, give the necessary approval of adoption and accredit, control, inspect and prepare the *ECAIs* guidelines. The *ECAI* report and advise the interested parties about adoption, take part to the adoption procedure in front of the relevant Spanish and foreigner authorities; mediate during the process and ensure the fulfilment of post-adoptive obligations. The *ECAIs* can establish cooperation agreements too. See, on these points, in this Chapter before.

follow ECAIs procedures (except if this obligation is required by the country of origin). It is also possible to follow a public procedure. More precisely, the new Act contains specific provisions that regulate these aspects, which take into account the different typologies of adoption. Art. 30 of **Act no. 57/2007** deals with simple or not full adoption (“*adopción simple*” or “*menos plena*”) legally granted by a foreign authority. In these cases, the new Spanish statute provides that this kind of adoption will produce effects in Spain, as an “*adopción simple*” or “*menos plena*”, on condition that it is respectful of the adoptee’s national law, according to art. 9.4 of the Spanish Civil Code (art. 30.1). Moreover, the new Act establishes that the adoptee’s national law will determine the existence and the validity of these adoptions, as well as the conferral of parental responsibility, or, rather of the “*patria potestad*”, to use the term adopted by Spanish legislation (art. 30.2). These simple or not full adoptions shall not be inserted into the Spanish Civil Registry as “adoptions”, however, nor they will determine the acquisition of Spanish citizenship. They will be equated to family foster placements (*acogimiento familiar*). Anyhow, it will be possible to transform them into adoptions regulated by Spanish law (*adopciones plenas*) if they comply with the relative requirements. This conversion will be regulated by the applicable legislation, which will be established by the criteria indicated in the new Act no. 57/2007. To this purpose, it will be necessary, in any case, that the competent Spanish authority verify that several elements are present: (a) that the persons, institutions and authorities whose consent was necessary were duly advised and informed about its consequences, about the effects of the child’s adoption and, actually, on the termination of the legal relationships between the adoptee and his/her birth family; (b) that their consent was expressed freely, in the legal prescribed way and in written form; (c) that it was not induced by payment of a sum of money or by any other benefit and that it was not revoked; (d) that the mother’s consent – if necessary – was manifested after the child’s birth; (e) that, while taking into account the child’s age and maturity, he/she was duly advised and informed on the effects of adoption and, if required, he /she gave his/her consent; (f) that the child has been heard, taking into consideration his/her age and degree of maturity; (g) that it is ascertained that the child’s consent, if necessary, has been given freely, according to the legal requirements and without a “*price*” or any kind of compensation (arts. 30.3. and 30.4.). Art. 32 of the above-mentioned Act deals with **international public policy**. It states that “*in any case it is possible to recognize a foreign decision concerning a simple or not full adoption [adopción simple or menos plena] if it produces effects that are contrary to Spanish international public policy. To this purpose, the best interest of the child will be taken into account*”.

The 2007 intercountry adoption Act deserves to be described in details also as far as other profiles are concerned. Indeed, its provisions were drafted after that an accurate study was made by a group of experts. This latter Spanish legislative intervention is of extreme interest, in a comparative vision because it benefits of an experience lasted more than a decade, after the entry into force of the HCIA, both at a national and at an international level, which was the logic premise of most of the solutions envisaged. The new Act reveals a deep knowledge of the phenomenon at stake. It reflects a very balanced approach, not based on a “*nationalistic*” attitude<sup>39</sup>, nor, on the contrary, on a vision that considers international declarations and obligations as sufficient, *per se*, to ensure a proper equilibrium between the need to prefer solutions apt to maintain foreign children who are in need in their home-countries (in family foster care or adoption) and the necessity of taking individual situations into proper consideration. The purposes of the Act were set forth at its very beginning to highlight a scenario that is common to most EU receiving states: “*The demographic and economic conditions that do not allow children, in their home-countries, to live an environment apt to their development, together with the fall of the birth rate in Spain determined a noteworthy increase, in recent years, of the number of foreign children adopted by Spanish nationals or by persons who reside in Spain*”

In brief, in order to respect the Constitution and the international instruments, the new Act conceives intercountry adoption not only as a mean to protect all children who are

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<sup>39</sup> Urso (2000).

without the possibility of living in a family in their own countries, but also as a tool “to avoid and prevent child abduction, selling or trafficking of children, while ensuring, at the same time, that children are not discriminated on [several] grounds like birth, nationality, race, sex, handicap or illness, religion, language, culture, opinion or any other personal, familiar or social circumstance”. The final and general criterion indicated by the legislator imposes that, in interpreting the new Act, a paramount importance has been conferred on the best interests of the child, which will “prevail on any other legitimate interest that might be concurrent in the intercountry adoption procedure”. After stating the guarantees to ensure that adoptee’s rights are fully respected (*i.e.*, in the field of in the post-adoption phase, as well in respect of access to origins and personal data protection), the second Part of the statute deals with more technical aspects, which were regulated analytically. Thus, as far as jurisdictional competence is concerned, it clearly states the principle of “*minimum connection*” (*connexio minima*). This implies that a Spanish authority shall not intervene in granting, converting an intercountry adoption or in declaring its annulment if it does not appear minimally connected with Spain. In that way, as it has been clarified by the Explanatory Report, it is possible “to avoid the introduction of exorbitant fora”, which can determine the following situation: an adoption that has been validly made in Spain is not existent or not effective in another country, especially in the country of origin of the child.

Moreover, the reform aims to give a more systematic character to the legislation in the area at stake. To this purpose, it distinguishes two situations: (a) the cases in which the adoptable child has his/her habitual residence in Spain or he/she is going to obtain it very soon and (b) the cases in which this requirement is not present. In the first kind of situations, Spanish law will be applicable to the granting of the adoption (*constitución de la adopción*). On the contrary, in the absence of habitual residence in Spain (at present or in a near future), because the child has not been living habitually in the Spanish territory nor is going to be transferred there in order to establish there his/her “*social centre of life*”, the new Act provides that adoption will be regulated by the legislation of the country in whose society the child will be integrated. In both cases, the Spanish statute embodies the necessary guarantees and leaves Courts, in the second kind of situations, a wider margin of discretion, to admit the different solutions envisaged by foreign statutes, so to give intercountry adoptions the highest level of international effectiveness in respect of adoptions made in Spain.

Of course, also other new pieces of legislation might deserve an express mention, but for evident reasons of synthesis it is not possible to list all of them. **The choice to mention the recent reactions shown by some of the states of the EU, like Spain and Germany**, in which the number of intercountry adoptions is rather large and the awareness of some difficulties is very deep, **was due to the need to show some of the most important legislative signs of a trend that can be followed by other members states as well**, while thinking about future reforms of current statutory provisions.

## 7. TYPOLOGIES OF ADOPTION

As it has been already observed, the coexistence of **full** and **simple adoption** is not a common trait. Indeed, in some countries they are both recognized and expressly regulated<sup>40</sup>, while in others only full adoption is allowed<sup>41</sup>.

In some EU legal systems that admit full adoptions exclusively, simple adoptions made abroad, which could have been revoked according to the legislation in force in the adopted child’s state of origin, are subjected to a modification, in the sense that they are transformed

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<sup>40</sup> *E.g.*, this can be said for several countries: Belgium, Bulgaria, France, Italy, Luxembourg, Spain.

<sup>41</sup> This happens in Sweden, Ireland, Finland, United Kingdom, Cyprus, Estonia, Germany, the Netherlands, Latvia, Lithuania, Poland, Denmark, Portugal, Greece, Czech Republic, Slovakia. Also in Austria full adoption is regulated, but there is an express provision concerning three types of adoptions, according to its level of “openness”. Indeed, “closed adoption” allows natural parents to receive only general information about the adoptive parents; “semi-open adoption” does not permit direct contacts, but only meetings, through the youth welfare authority. In cases of “open adoptions” natural parents are informed about the place in which the child lives and may establish contacts with the adopters. In Malta full adoption is the rule. Open adoptions exist but they are rare.

into irrevocable, full adoptions. On the latter point, given the great extension of the area of applicability of the HCIA, it is worth mentioning its relevant provisions (arts. 26 and 27). They expressly states that the “*recognition of an adoption*” includes recognition not only of “*the legal parent-child relationship*” between the adoptive child and the adoptive parents, and their parental responsibility for the adoptee, but also the “*termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made*”. According to the HCIA, when an adoption has the effect of terminating a previous legal parental relationship, the “*child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State*”. A final guarantee (art. 26 [3]) ensures that these provisions shall “*not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption*”. Furthermore, a specific rule is contained in art 27 of the HCIA: whenever adoption that was granted “*in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect*”. Two requirements are necessary for this purpose: the fact that the law of the receiving State permits this conversion (art. 27 [a]) and that the necessary “*consents [...] have been or are given for the purpose of such an adoption*”. Decisions that convert the simple adoption into a full one are regulated by the general rule on recognition of foreign decisions (art. 23). In brief, if an adoption has been certified by the competent authority of the sending country as respectful of the HCIA, “*it shall be recognized by operation of law in the other Contracting States*”.

The termination of the parent-child relationship can stem also from the breakdown of an adoption. In these situations, the child can be re-adopted after that a new procedure has been completed<sup>42</sup>. **As far as the effects of full adoptions are concerned, both domestic and intercountry ones give the adopted child the same legal status of a child born in the family.** In cases of full adoption, the legal relations with his/her parents and relatives no longer exist. As a rule, at the moment of the adoption, the child acquires the family name of his/her adoptive parents<sup>43</sup>, as well as the adopters’ citizenship<sup>44</sup>.

## 8. CHILD ADOPTABILITY

**Child adoptability can be established**, albeit on different conditions, **according to two models: a consensual one and a non consensual one.** In most EU countries, as it can be said for other states as well, the birth parents’ consent is necessary, as a rule, to declare a child adoptable. Only a rather limited number of legal systems follow a purely non consensual model. Anyhow, the situations in which the parents’ consent is absent are expressly considered in the first group of countries too. Divergences, however, exist as far as the grounds on which such derogation is permitted. These considerations are referred both to domestic and intercountry adoptions, but the competence to make the necessary enquiries is always of the authorities of the child’s country of origin, if he/she is adopted abroad. Thus, in cases of foreign adoptees the applicable rules concerning their adoptability are those of the sending country. If the HCIA is in force in both the state of origin and in the receiving state the reciprocal co-operation between the competent authorities makes it possible that the ascertainment of this condition, made in the child’s birth-country, is sufficient<sup>45</sup>. Another table can be useful, at this point.

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<sup>42</sup> This solution is foreseen by almost all national legislations, as previously mentioned.

<sup>43</sup> Some exceptions do exist. For example, Swedish law admit that the child can retain the “*former family name in combination with the new name if so desired*” (see the National Report, at p. 8).

<sup>44</sup> The acquisition of the adopted parents’ citizenship can be postponed, according to some national legislations. For instance, it is necessary, for Swedish law, the child becomes a Swedish citizen only after that adoption formalities have been completed in Sweden, but if an adopted child is under twelve years of age, he/she becomes automatically a Swedish citizen, if adopted by a Swedish citizen (see the National Report, at p. 8).

<sup>45</sup> This very brief description tries to exemplify a very wide set of solutions followed in national legal experiences. The full texts of the National Reports give a more detailed vision of each individual state context.

Adoption based on birth parents' consent	Adoption based on the state of abandonment only
Austria Portugal, Poland, Estonia, Romania, Lithuania, Bulgaria, Slovakia, Czech Republic, Latvia, Sweden, Finland, The Netherlands, United Kingdom, Ireland, Luxembourg, Belgium, Denmark, Germany, Austria, France, Spain, Cyprus, Greece, Malta, Slovenia	Italy

**Children's opinions and consent** has received a proper consideration to as well as those of his/her birth parents. There are, anyhow, certain diversities also in this regard, especially as far as the child's age is concerned. As a rule, children are always heard before that adoption is granted, except in cases of newly born babies or of children in their early childhood who can not express their views, evidently. As a rule, consent to adoption is required, as a prerequisite that can not be derogated, in cases of adolescents, even if the age requirement is not the same, in all countries. As established also by the 2008 CoEAdC, if a child is 14 years old, his/her consent, in any case, is necessary. Younger children's consent can be required by national legislations. The child's views, also if in case of a child under 14, are of paramount importance, in compliance with the principles stated by the CRC (art. 14) and by the above-mentioned provisions of the HCIA.

**Forced national adoptions** are possible only if the child's parents do not have custody or refused their consent without justified reasons. Anyhow, this kind of situation is regulated differently, inside the EU legal context. In some countries, this solution is expressly foreseen by the law, but it is not practiced. Most countries, albeit based on the central requirement of free consent given by the child's parents (or by other person/s having the legal responsibility towards him/her), it is possible a derogation in exceptional cases.

In cases of **intercountry adoptions**, **forced adoptions** are possible on condition that they are allowed by the legislation applicable in the child's country of origin. In the numerous cases regulated by the HCIA provisions, directly incorporated inside national sources of law or reproduced by special legal rules that have almost the same contents, an intercountry adoption can take place only if the competent authorities of the State of origin, after establishing that there are no possibility for domestic placements of the child and that adoption abroad is in his/her **best interests**, have ensured that "*the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin*", that these subjects "*have given their consent freely, in the required legal form, and expressed or evidenced in writing*", without been induced by "*payment or compensation of any kind*", that the mother's consent, if required, has been given only after the birth of the child; and that also the child's "*wishes and opinions*" have been taken into account, having regard to the his/her age and degree of maturity, to the fact that he/she has been "*counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required*". Also the latter has to be given "*freely, in the required legal form, and expressed or evidenced in writing*", and without being "*induced by payment or compensation of any kind*" (art. 4 HCIA).

## 9. IMPLEMENTATION OF THE SUBSIDIARY PRINCIPLE

In implementing the subsidiarity principle, several paths are followed. First of all, in all countries in which the HCIA is applicable, **Central Authorities** constantly **monitor** the **accredited bodies'** activities. More precisely, they are charged with the duty to verify if cooperation programmes are really promoted and enforced, as well as other kind of plans aimed at favouring alternative solutions to intercountry adoption (*i.e.*, domestic foster care and adoptions) for children without a family or whose family is not suitable.

If intercountry adoptions is not also be regulated by non conventional rules, these controls can not be ensured, although, especially in countries that has signed bilateral agreements, inspired to the principles of the HCIA, in-depth enquiries are carried on by



associations that operate in sending countries so to avoid that intercountry adoption is granted if the child's adoptability has not been established after verifying that alternative solutions were available, at a domestic level. This, however, is not an easy task. Thus, some states are considering the ratification of the HCIA as the better way to ensure the effectiveness of the principle at stake. In the relationships with sending countries that did not ratify, adhere or make accession to the HCIA, in some cases, according to national legislations, the "conventional model" is extended to all intercountry adoptions, that is to say, also to those based on "non conventional" provisions. Of course, however, the same rules are not applicable. Anyhow, great efforts are made to enhance the level of protection for all children, to respect the clear sequence indicated by the CRC (art. 20 and 21)<sup>46</sup> and by the HCIA (art. 4). The variety of solutions described by the National Reports deserves a wide comparative analysis, which is not possible here, for reasons of brevity. Thus, it seems more appropriate to make a reference to the specific parts devoted to this issues in order to have a direct and complete vision of the trends followed so far and of the problems that still need to be solved.

## 10. ACCESS TO ADOPTEE ORIGINS

The right to know one's origins is guaranteed by international Law. Art. 7.1 of the International Convention on the Rights of the Child, which acknowledges the right for children to know their parents and to be brought up by them. The Hague Convention of May 29<sup>th</sup> 1993 on the Protection of the Child and Co-operation in International Adoption laid down a framework for the ICCR general principle: children's States of origin must guarantee them access to their adoption files and must, therefore, conserve all the relevant documentation concerning them. However, the States of origin also have to define children's conditions of access to their biological parents' identity. The issue of State of origin competence has led to various procedures. Many States of origin are inclined to recognise the right of adopted children to know their identity and to know their origins.

There are only a few legal systems under which it is possible for the mother's identity to be kept secret at her own request or when the child's line of descent is not established in his/her birth certificate. However, many legal systems have set restrictions on and conditions for children's access to information on their origins (e.g. in some countries children under the age of 18 have to obtain the consent of their adoptive parents to start this procedure).

**Collection of information is a prerequisite in order to exercise the right of access to one's origins.** To allow access, a country must systematically collect and store information relating to a child's history and origins. It is one of the principles of the Hague Convention (articles 16 and 30). Collecting information must not be limited to the period around the birth of the child, but should continue until the child is adopted. The way a child has been welcomed into an institution or a foster family forms an integral part of his/her history, or his/her pre-adoptive past.

The Hague Convention of May 29<sup>th</sup> 1993 stipulates that the competent State authorities must ensure children access to the relevant information with *appropriate counsel* (UK). Very

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<sup>46</sup> Art. 20 of the CRC, imposes onto member states the obligation to ensure "*special protection and assistance*" to children "*temporarily or permanently deprived*" of their family environment or who, for their own best interests, "*cannot be allowed to remain in that environment*". Alternative care, to be ensured in accordance with their national laws, should be comprehensive, *inter alia*, of foster placement and of adoption or, if necessary, of "*placement in suitable institutions for the care of children*". In considering these solutions, "*due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background*". For this reason, Art. 21 confers on states parties to the CRC the duty to "*recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin*" (b). Furthermore, equivalent standards shall be followed in cases of national and intercountry adoption (c), any "*improper financial gain*" has to be avoided (d), and specific international instruments shall be adopted to promote these objectives, thanks to "*bilateral or multilateral arrangements or agreements*", so that, in this framework, "*placement of the child in another country is carried out by competent authorities or organs*" (e). The subsequent developments, due mainly to the HCIA provisions, made it clear how institutions shall be the last resort measure.

often, the child is accompanied, whether on a compulsory basis or not, by professionals, mainly social workers or psychologists. Their role demands an ability to welcome the child, listen to him/her sympathetically in order to help him/her decipher the information collected, understand the chronology of events and know his/her own history in an appropriate manner.

The professional acts as a mediator between the child, his/her history and his/her adoptive parents and must help the child trace his/her history from the information available, express his/her feelings, give some meaning to his/her history established by adults, who have defined a project of life for him/her, and by the adoptive parents who have been expecting him/her. In the field of international adoption, visits to the country of origin are increasingly organized through various initiatives (personal, arranged by the adoptive parents or supported by an association for adopted children, by the authorised adoption body and sometimes by the country of origin). This allows the child to renew contact with his/her country of origin, perhaps to revisit the areas in which he/she used to live prior to adoption, or to meet his/her biological parents.

### 10.1 Anonymous birth

Anonymous birth is, in fact, a fairly sensitive issue in some EU countries. This is due specifically to the UN Convention on the Rights of the Child and to the consequent CRC Recommendations instructing State parties that frequently condemned the practice of anonymous birth permitted in European countries (see Italy, etc.).

There is no legal jurisdiction over anonymous birth in many European countries (e.g. Bulgaria, Romania), although this is currently practiced. Some countries state that there is no such thing as anonymous birth, although it is a social phenomenon that persists, and this affirmation simply refers to regulation by law.

In some countries, government and public discussion as to whether a bill should be passed to clarify the legal issues surrounding anonymous birth (Germany) remains on-going. In Austria, **anonymous birth** is allowed (generally in hospitals, with the mother requesting anonymity in respect to all the authorities), and there is also the option of leaving a child at a **“baby nest”** (“Baby-Klappe”, usually at a special entrance to a hospital). There has been lengthy controversy and on-going discussion over these possibilities, given the difficulty in balancing the interests of the mother and the child, of preventing infanticide on one hand and protecting the child’s right to know his/her parents/origins on the other. In 2001 a Ministry of Justice Decree gave some guidance on implementation<sup>47</sup>, stating that children produced through anonymous births should be legally treated as the children of unknown parents (“Findelkind”), abrogating immediate responsibility for the care of the child to the Youth Welfare Authorities. In 2002, the UN CRC Committee strongly criticised Austria for its inconsistency of hospital approach, recommending that the use of “baby flaps” be stopped and that separate collection of the child’s **identity data** be made for later access<sup>48</sup>. In its 2007 Annual Report, the Vienna Youth Welfare Authority (“*Amt für Jugend und Familie/Magistratsabteilung 11*”) was critical of the comparatively high number of anonymous births in Vienna: 90 such births in hospitals were registered between 2001 and 2007, and in a further 16 cases recourse was made to baby flaps – it states that in Berlin, only 45 such cases were registered during the same period - a city with more than double the number of inhabitants as Vienna<sup>49</sup>.

### 10.2 Ways of facilitating access to birth/heritage information

As a general rule, access to documentation may be denied, if this is deemed to be detrimental to the health or development of the adoptee or if access would otherwise go against the interest of the adoptee or another private interest. Moreover, public and private

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<sup>47</sup> *Erlass vom 27. Juli 2001 über Babyneest und anonyme Geburt in Österreich*, see <http://www.anonyme-geburt.at/>; see also: <http://www.wien.gv.at/menschen/magelf/baby/anonymegeburt.html>.

<sup>48</sup> Concluding Observations: Austria, UN Doc. CRC/C/15/Add.251 (31 March 2005), paras. 29, 30.

<sup>49</sup> MAG ELF, Annual Report 2007, p. 15 and 16, see: <https://www.magwien.gv.at/menschen/magelf/pdf/jahresbericht2007.pdf>.

bodies involved in the adoption process are obliged to document all mediation activities and to conserve all material concerning the adoption process for as long as it may be of relevance for the adopted person or the persons closely related to him or her.

**EU countries vary hugely with regard to the age at which children are allowed access to records concerning their origins.** For example, in the Netherlands adoptees are allowed access to their records once they reach the age of 12. In Germany, once adopted children have reached the age of 16, they have a right to examine the adoption mediation case file on request and under specialist guidance (Article 9b AdVermiG). Access to the file (in part or in its entirety) may be denied if there is overriding opposition from one of the parties involved (e.g. the current address of the birth mother may be removed from the file). In other countries (Greece art. 1559 paragraph 2 CC for example), adopted persons have a right to information on their origins only when they come of age. In Italy there are different age-based levels: once adoptees reach the age of 25, they can access information about their origins and the identity of their biological parents (they can also do so once they are 18 if there are good supporting mental and physical health reasons). Application must, however, be made to the Juvenile Court in their place of residence which grants the authorization, after listening to the people it deems appropriate, by means of a court order. Access to the information is not granted to mothers who have declared at the time of birth that they do not wish to be named. A final sub-paragraph in article 28 states that once minors have reached the age of consent, authorization from the Juvenile Court is not necessary if the adoptive parents are deceased or have become unavailable.

In **France**, the local public services responsible for children in public custody (children in State custody with consent for adoption) and all organisations authorised for adoption are obliged to keep files on those children of whom they have custody. They have to guarantee minors, and/or young people who have reached adulthood, access to information on their origins. A child's biological mother may ask that her secret identity be revealed, although this information will be made known to the child only if he/she requests it. There is no upper age limit whatsoever for children regarding access to information on their personal origins, but it is not possible for a minor and/or person of any age to have access to information related to his/her mother's origins if the mother, having been contacted by the Council, has refused to reveal such secret information. In this instance, if the mother has not stipulated that her identity be revealed to her child after her death, her identity may be revealed to her child after this has taken place. Moreover, an Act dated 22nd January 2002 set up the National Council for the Access to Information on Origins. The Council has a Secretariat General and is attached to the Ministry for Social Affairs. There are Council representatives in each «département», whose task it is to gather – in a sealed container – all the information relating to a child's mother and any other details she may wish her child to know. The Council acts upon a request for access to information on origins from a minor and/or an adult.

When the request concerns children from abroad, the Council may request the Central French Authority, the International Adoption Organisation and/or the authorised organisation concerned to retrieve information from foreign authorities.

In some countries (e.g. UK, France, Cyprus, etc.) there are specific public registers, generally kept confidential, in which the adoption orders (relating to both national and international adoptions) and all the information concerning the adoption process, including information on origins, are held.

In regard to **sending countries**, it is generally forbidden to disclose any information relating to an adoption without the adoptive parents' consent until the adopted child comes of age (note: 18 years). The courts that have dealt with the adoption order, are obliged to allow disclosure of adoption information if the adoptee is over and above fourteen years of age, or his/her close relatives or other persons concerned consider this information necessary for the sake of the health of the adopted child, or his/her close relatives, or other person concerned, or for other important reasons.

It must be stressed that, **as a rule, the bodies responsible for the disclosure of information on origin are juvenile courts or other judiciary authorities and that the process leading to disclosure tends to be of a jurisdictional nature rather than merely a**

**administrative one.** This means that this particular step/phase is generally considered important enough to warrant a specific, in-depth analysis of the civil rights surrounding the request for access to information on origin and that it is not merely a matter of considering its legitimacy and whether or not it meets set criteria.

## 11. INTERCOUNTRY ADOPTION RESTRICTIONS

**The most common system** (used to set limits on international adoptions) **is to establish quotas or to impose other restrictions on international adoption proceedings. Many States impose restrictions on countries that are empowered to authorize organizations to act.** The main criteria for allowing intermediation with countries of origin is in fact the enactment – by these countries – of the principles of the CRC Convention and The Hague Convention 1993 and the existence of a functioning administration dealing with intercountry adoptions. **Countries of origin on which restrictions have been imposed are a different matter, depending not only on the degree of implementation of international standards** as stated above, **but also on the agreements reached with each receiving country**<sup>50</sup>.

In some countries, it is stressed that these measures are not debated widely enough among intercountry adoption professionals and among the community of intercountry adopters<sup>51</sup>. Some might argue that the process leading to a decision to restrict, and any potential review of that decision, could be more transparent.

Some countries establish legally enforceable conditions leading to the setting of restrictions or quotas when working with various sending countries<sup>52</sup>: in certain cases, there are restrictions on private or independent adoptions, and adoption applications are processed only through accredited bodies.

Furthermore, some countries choose to raise objections to the accession of certain countries – mainly sending countries – based on art. 44 (3) of the Hague Convention<sup>53</sup>. In such cases, accession of these States to the Hague Convention does not affect the countries that originated the objections and there is no obligation to recognize adoptions passed by the authorities of the sending countries. Normally, the competent authorities in the countries that made the objection do not permit accredited bodies to mediate adoption proceedings in the countries towards which the objection is directed. This may lead to complications when the same receiving countries still permit private or independent adoptions: in such cases, if prospective adoptive parents succeed in adopting from the sending countries, they may then apply for recognition of the adoption orders or sentences in the residing State and the decision rests with the judicial authorities to whom appeal was made, who is responsible to find a solution inspired to the best interests of the child, on a case-by-case basis<sup>54</sup>.

Some other countries do not raise objections ex art. 44 (3) of the Hague Convention but choose to co-operate mainly with States of origin that respect the United Nations Convention

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<sup>50</sup> Sweden has denied authorization to work with adoption intermediation from Ukraine and the Democratic Republic of Congo with reference to the Intermediation Act, section 6a. Accreditation was also denied for Bolivia with reference to a clause obliging the Central Authorities to strive for “balance” in size between different accredited bodies; Spain: adoption applications have been suspended in Guatemala, Haiti, Democratic Republic of the Congo and Kazakhstan because of lack of legal security.

<sup>51</sup> See NR from England.

<sup>52</sup> See NR from Spain art. 4 Law 54/2007 “...there will be circumstances that prevent and determinate the adoption when the country of origin is in war or immerse in a natural disaster, or when it doesn't exist a specific authority who controls and guarantee adoption; or when there aren't the required guarantees, or when it's not respected the best interest of the child and the ethic and legal international principles. ...The public entities in child protection may also state that it is possible to adopt only through ECAIs ( the accredited bodies) authorized by both sending and receiving countries, when the other procedure shows evident risks because of the lack of required guarantees...”.

<sup>53</sup> See NR from Germany: Republic of Guatemala (date of objection: 18.07.2003), Guinea (24.05.2004), Kingdom of Cambodia (07.11.2007) and Republic of Armenia (28.01.2008).

<sup>54</sup> See Report from Germany “...there is an extensive consensus between international adoption mediation agencies in Germany that there should be no adoption mediation over children from certain countries (e.g. Cambodia or Nepal). This however does not completely rule out intercountry adoptions from these countries as there may be (private) adoptions in these countries without adoption mediation in Germany...”.

on the Rights of the Child and in which there is a body that deals specifically with intercountry adoptions<sup>55</sup>.

In other countries, impending adoption legislation will restrict intercountry adoptions to countries that have ratified or acceded to The Hague Convention 1993 or to countries having a full international bi-lateral agreement that meets Hague Convention standards<sup>56</sup>.

Recently, several countries imposed restrictions/quotas on the number of files of prospective adoptive parents related to countries of origin<sup>57</sup>. In some countries these constraints apply to the number of prospective adoptive parents being admitted to training courses, and in others they apply directly to adoption applications. The number of adoption applications or the number of places available on preparation training courses is determined by the potential number of genuine matches. The ability to go ahead with an adoption process is determined by the needs of the child both in the State in which the prospective parents reside and in the other (sending) country.

In regard to **sending countries**, national reports collected do not flag up many factors concerning the existence of restrictions or other instruments with powers to limit or control intercountry adoptions. This finding probably means that generally EU sending countries do not impose many such restrictions. With the exception of Romania, where the law expressly prohibits intercountry adoptions (excluding the case of adoption by grandparents residing in a foreign country), Lithuania alone – of all EU sending countries considered in this report – stated explicitly that it had restrictions in place<sup>58</sup>.

## 12. RECOGNITION AND EFFECTS OF ADOPTION ORDERS IN EU COUNTRIES

**Most EU countries** declare that there are **no differences regarding the status of adoption processes between citizens of one country and foreign (notably European) citizens residing in the same country**. Generally speaking, citizenship of adoptive parents is not a prerequisite; as regards the application of the law of a specific country, parents need only have legal place of residence in that country.

There are **some States that differ from this general rule**. In **Germany**, for example, this particular aspect taps into a complicated legal issue<sup>59</sup>. In most cases no status-related difficulties are encountered (e.g. a Turkish-German couple wishing to adopt a German child). However, as set out in article 22 of the “*Einführungsgesetz zum Bürgerlichen Gesetzbuch (EGBGB)*” (Introductory Law to the Civil Code) there are adoption cases in Germany that are regulated by the adoption laws of the foreign State to which the foreign citizens residing in Germany belong (e.g. a Turkish couple living in Germany wishing to adopt a Turkish child).

**Recognition of foreign adoption orders is generally automatic only in Hague Convention countries.**

If EU citizens residing in another country adopt a child through the procedures of the country of their habitual residence, the adoptee is automatically awarded the same citizenship as the prospective adoptive parents in the EU, if the country of their habitual residence has signed the Hague Convention and the adoption is accompanied by the certificate of conformity as provided for under art. 23 of the same Convention. The adoption orders need only be recorded in the national civil registers to enable the child to obtain the same citizenship as his/her adoptive parents. Otherwise, adoption orders generally need to be

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<sup>55</sup> See NR from Luxembourg, NR from Cyprus.

<sup>56</sup> See NR from Ireland. Voluntary groups representing prospective parents are not in favour of such measures, as they will restrict the number of countries of origin available for adoption. Some groups have requested transitional agreements between Ireland and various countries.

<sup>57</sup> See NR from Cyprus, Netherlands, Belgium.

<sup>58</sup> See NR from Lithuania “...*In accordance with the Order of the Minister of Social Security and Labour No. AI-195 of July 17, 2006 previously authorized foreign institutions or the central authority of the receiving country may submit no more than 2 applications by a family or person a year to adopt a child (children) under 6 years. This requirement will not apply to families wishing to adopt a child with special needs. In accordance with the same Order, as from the 1<sup>st</sup> of August 2006, the Lithuanian Central Authority will not accept new applications from foreign organizations for authorization in the field of intercountry adoption in the Republic of Lithuania...*”.

<sup>59</sup> For an overview see NR from Germany referring to Winkelstrater 2007.

recognized by a judicial (usually) or an administrative authority. **A fundamental prerequisite to the granting of recognition of an adoption carried out abroad is that the foreign adoption fully complies with internal legal principles regulating adoption orders.** For example in **Spain**, when an adoption concerns a non-Hague country of origin, whether an EU country or not, various specific control measures are implemented in order to examine the legality of the process and the best interest of the child. These measures specifically presuppose the existence and the functioning of a central authority, and the presence of legislative measures covering international adoptions<sup>60</sup>. Some EU countries foresee that when an adoption is granted under a law that is incompatible with internal law, the adoption order may not have the same effects as would have been the case under their own jurisdiction, for example it may be considered as a simple adoption<sup>61</sup>. In **France**, if the aspiring adoptive parents reside in a State party to the Hague Convention of 29 May 1993 and if they wish to adopt a child in a State that is also party to the Convention, it will be up to the authorities of their country of residence (receiving State) to examine their case and to assess their suitability to adopt. Therefore, in this case there is no need to apply for eligibility for adoption in France. As to the other countries, it is preferable to apply for eligibility for adoption in France in the *département* in which they last resided, or in which they have retained some family ties, prior to embarking on any adoption procedure. In fact, without such a declaration by the French authorities, the adoption order may not be recognized in France.

Moreover, there are no rules or policies in the field of adoption in most EU countries that distinguish between EU and non EU-countries or citizenship. Equally, most countries encounter some difficulties in finalizing adoptions for prospective adoptive parents resident in other EU countries, especially in regard to the citizenship of the adopted child<sup>62</sup>.

In some cases, adoptive parents residing in a different EU country must ask their country of citizenship to register the foreign adoption order so as to enable them to obtain the same citizenship for their adoptive child. In such cases, registration of the adoption is a prerequisite for the child to be able to acquire the same nationality as his/her adoptive parents<sup>63</sup>. Some countries come up against various problems with adoption applications by foreign citizens habitually resident or domiciled within their territory: these are related to the difficulty in collecting and double checking data and information regarding their personal and

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<sup>60</sup> See NR from Spain citing art. 25 of the intercountry adoption law recently enacted. See also NR from UK: “...the adopter may, once returned to the UK, apply to the UK court for an adoption order. Prior to an adoption order being made in the UK the adopters would not be considered to be the child’s ‘legal’ parents...”; in the NR from Slovenia, it is stressed that “...none of the Republics of the former Yugoslavia, which were important countries of origin prior to Slovenian independence, signed the Convention, which means that the adoption decree must be recognized by the courts of Slovenia...”.

<sup>61</sup> See NR from Ireland.

<sup>62</sup> See NR from Sweden: “...A British family habitually resident in Sweden but with British citizenship could neither acquire Swedish nor British citizenship for their child. The Swedish principle is that the child should have the same citizenship as the parents. British citizenship could only be given to the child if the family moved to the UK. If the child had been rendered stateless by the adoption, it would, however, have been possible to acquire Swedish citizenship for it...”. See NR from Luxembourg: “...Citizens from EU Member States resident in Luxembourg may sometimes encounter difficulties in acquiring nationality for the adopted child. For example, French citizens resident in Luxembourg must, prior to the adoption procedure in Luxembourg, obtain an agreement to adopt by the French authorities in order to obtain French nationality for their adopted child. A Danish citizen married in Malaysia to a Malaysian citizen, was awarded custody of a child prior to adoption while residing in Malaysia. After moving to Luxembourg, the national immigration authorities of the Department of Foreign Affairs were unable to process a residence permit for the wife until the Danish authorities recognized this Muslim marriage. With regard to the child, the Luxembourg authorities were unable to process a residence permit until the child had been adopted. According to Malaysian law, the adoption may only become official after two years of custody...”. See NR from Malta: “...Adoption by Maltese citizens residing abroad, especially in another EU State, is automatically recognized and adoptive parents do not have to repeat the same administrative or legal procedures as for prospective adoptive parents residing in Malta”. However the child’s nationality would still have to be regularised with the Department of Citizenship and Expatriate Affairs. Thus Maltese adoptive parents have to apply for Maltese citizenship for the child until which time the child has to be in possession of an entry/residence visa (unless s/he is an EU citizen) and he or she would still be considered a resident alien until such time as Maltese citizenship was conferred upon the child.

<sup>63</sup> See NR from Luxembourg.

family history and relatives, information that is relevant to and necessary for the completion of their suitability report<sup>64</sup>.

There is **no great variation in legal treatment and regulations regarding the effects and recognition among sending countries.**

By virtue of the Hague Convention subsidiarity principle, some countries of origin explicitly state that national families have preference over foreign families in adoption procedures, with regard to both domestic and international adoptions<sup>65</sup>. Moreover, some sending countries state that priority for adopting a child shall be given to nationals residing abroad and to foreign nationals of country of origin descent, and for this reason, they stipulate by law that during the matching phase, due consideration must be given to the heritage of upbringing, ethnic origin, cultural background and the native language of the child<sup>66</sup>.

However, the same procedure and legal provisions are applicable to adoption proceedings, regardless of the citizenship of prospective adoptive parents. **Specific consideration must be given to Romanian law** which, despite approval given to nationals wishing to adopt generally being granted by sending countries, establishes that the limits on intercountry adoption stated by domestic law also apply to Romanian citizens non resident in Romania, irrespective of their permanent State of residence. This factor clearly illustrates the priority given to the principle of habitual residence above the principle of citizenship in regard to these specific matters<sup>67</sup>. On the other hand, Bulgaria gives specific priority by law to the principle of citizenship in regulating international adoption proceedings: internal law states that **Bulgarian citizens** (irrespective of their habitual residence) may adopt under the conditions for domestic adoption<sup>68</sup>, according to the principle of subsidiarity set out in the Hague Convention.

In regard to the recognition of adoption orders in particular, the general rule providing that if an adoption is granted in a Hague Convention State party it is automatically recognized in an other Hague Convention State party is applicable; otherwise, to have legal effect, the adoption order must be subjected to judicial or administrative proceedings. A specific regulation has been applied in **Estonia**, where – due to the great number of adoption orders granted by foreign administrative or (more often) judicial authorities – private international law has given automatic rights of recognition to adoption decisions from all countries, constituting a specific exception to the general rules concerning the recognition of foreign judicial orders established in the Estonian Code of Civil Procedure § 377. Equally, Hague Convention provisions are applicable, especially arts. 23-25, which give automatic recognition only to adoption orders granted in its Member States and condition that all Hague Convention conditions are abided by<sup>69</sup>.

### **13. TRAFFICKING AND ABUSE**

Most EU receiving countries stated that they had no known cases of trafficking in relation to adoptions, and nor did they know of any serious abuse or violations of the law over the last few years. The only difficulties that have been highlighted with regard to adoption pertain to specific cases, and these have actually boosted collaboration among the central authorities. **Within the European Union, there has been no case of abuse or of trafficking which would have required referral to the Permanent Bureau of the Hague Conference. Despite this, receiving countries do admit that it is no easy matter for the competent authorities to achieve a complete overview of all adoption cases.**

Moreover, some countries point out that most cases of trafficking and abuse relate to countries that have not ratified the Hague Convention and thus it is particularly difficult to monitor enactment of the principle of subsidiarity in non-Hague adoptions<sup>70</sup>.

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<sup>64</sup> See NR from Malta.

<sup>65</sup> See Report from Poland.

<sup>66</sup> See NR from Lithuania.

<sup>67</sup> See NR from Romania.

<sup>68</sup> See NR from Bulgaria.

<sup>69</sup> See NR from Estonia.

<sup>70</sup> See NR from Luxembourg.

Some countries stress that this kind of information is generally handled by NGOs working in the different territories in question and suggest that NGO reports to the CRC should be appraised in regard to this particular point.

**However, various specific abuses or illicit practices are flagged up by several different countries.** Published case law frequently contains cases involving falsified documents<sup>71</sup>. There have also been reports in the media about cases where adopted children have been sexually abused or maltreated in their adoptive family<sup>72</sup>.

Generally, when **irregularities** in countries of origin become known (such as in Cambodia and Ethiopia) consultation among adoption authorities/Central Authorities takes place and adoptions from those countries may be brought to a halt (even in the case of non-Hague Convention countries of origin, such as Ethiopia)<sup>73</sup>.

As a general rule, the authorities in charge of monitoring and regulating adoption procedures in order to avoid risks of trafficking and abuse are the central authorities, the judiciary authorities and the services of the Ministry of Foreign Affairs.

With regard to **sending countries**, no specific cases of trafficking or abuse have been flagged up, at least not since the establishment of new laws enacting the Hague Convention or entry into the European Communion. Some sending countries state that trafficking in children for adoption is a problem for impoverished families.

Over the last few years, several cases of pregnant women and babies being trafficked were reported by the Bulgarian media and the BBC, some of which were investigated. Bulgarian legislation to combat trafficking in human beings comprises: articles 159a-159c of the Penal Code, the Combating Trafficking in Human Beings Act of 2003 and its implementing legislation. Furthermore, the Penal Code was amended in 2006 to criminalize the sale of children before and after birth. A National Commission to Combat Trafficking in Human Beings was set up in 2004. Bulgaria also ratified the Council of Europe Convention on action against trafficking in human beings. The anti-trafficking legislation package provides protection and assistance to victims of trafficking and promotes cooperation between central government, municipal authorities, and NGOs for the setting up of programs to combat trafficking. The Bulgarian Identity Documents Law provides that, in the event of a parent not accompanying a child abroad, written parental consent is compulsory.

## 14. THE COSTS OF ADOPTION

### 14.1 Receiving countries

In their internal laws and regulations concerning international adoption, most EU countries stress that the end purpose of adoption proceedings is not financial gain and that, where requested, fees are simply required to cover the costs and expenses inherent in different procedures<sup>74</sup>. **The only general rules are that the charges must be proportionate and transparent and absolutely non-profit. Charges vary widely between agencies, regions and countries.** Charges vary also **in relation to the various different stages of the adoption process. As a rule, any activities considered compulsory under internal laws and regulations and provided by public social services are free of charge**<sup>75</sup>: these include the home study and post adoption support, although there are some exceptions to this<sup>76</sup>. A fee is

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<sup>71</sup> See NR from Germany, e.g. reference to OLG Düsseldorf 29.07.1999 Az. 2 B SS 60/99.

<sup>72</sup> See NR from Germany, e.g. reference to Remscheider Generalanzeiger 19.09.2008.

<sup>73</sup> See "Bridges to Ethiopia" Austrian adoption agency 2008 statement:

[http://www.bruecke-nach-aethiopien.at/PDFs/20081022\\_Brief%20an%20die%20Vereinsmitglieder.pdf](http://www.bruecke-nach-aethiopien.at/PDFs/20081022_Brief%20an%20die%20Vereinsmitglieder.pdf).

<sup>74</sup> See NR from Spain: art. 4.5 Law 28 December 2007 on Intercountry Adoption

<sup>75</sup> See NR from the United Kingdom: "Regulations prevent local authorities from charging for their involvement in certain stages of the process, e.g. the adopter and agency meeting to discuss the child match proposed, and the child review after arrival in the UK...". See also NR of Spain and Report of Netherlands: "...Applicants pay for the main part of the procedure (preparation course, mediation and matching). The home study by the child protection council is free (tax payers' money)...". In Austria, home studies are generally paid by the prospective adoptive parents.

<sup>76</sup> See NP from Luxembourg: "...Search of origin service offered by the accredited bodies and the Adoption Resource Centre are free of charge...".



payable for the so called “roots search” offered by the various accredited bodies. In many countries, especially where these procedures are not of a compulsory, nature, social services are entitled to charge a fee for the preparation courses.

On the other hand, **adoption mediation by accredited bodies is normally subject to a fee**, which varies according to the different countries of origin. In such cases, fees tend to be strictly regulated: they are reported in detail and overseen by the competent authorities<sup>77</sup>, particularly in Hague Convention State parties, in which central authorities are set up<sup>78</sup>. In these cases, agencies are required to inform both the prospective parents and the adoptive parents on how their money will be spent, with details of any other potential costs. All the organisations are obliged to set out the adoption costs in detail<sup>79</sup>. Finally, some countries declare that they have no regulations on costs because the entire process is free of charge<sup>80</sup>.

Below is a **table setting out the information collected on adoption process costs** in greater detail. It should be emphasized that in the Questionnaire sent to national experts, duly authorized by the EU Parliament, no individual items on adoption cost were included, since this was not specifically requested, although there was a general question as to the existence of cost regulations/monitoring at every step of the process. The information collected varied too greatly to enable an adequate comparative analysis to be carried out, but should be regarded as providing a broad overview of the issue.

	Preparation courses	Home study	Follow-up reports	Post adoption services	Average adoption cost	Support search origin
Austria	-	-	-	-	12-22000 (travel expenses included)	
UK	400	-	-	-	-	
Sweden	60 to 600	-	-	-	10-15000 (travel expenses included)	3000
Slovenia					10-15000	
Luxembourg	200	400 to 600	136 each reports	Free of charge	-	Free of charge
Netherlands	Free of charge	-	-	-	-	-
Italy	-	Free of charge	-	-	5000-15000 (travel expenses excluded)	-
Belgium	500					

\* with the exception of the UK, all costs are given in euros

<sup>77</sup> There are few exceptions to this general rule. See NR from Cyprus: “...There are no regulations or controls on costs at any stage of the adoption process; it is an issue under consideration with regard to the drafting of the new adoption law”.

<sup>78</sup> See NR from Luxembourg: “All costs and fees are monitored by the Central Authorities – two annual financial controls...”.

<sup>79</sup> See NR from Denmark: “...The mediation process financial reports are published every year. The National Board of Adoption carries out on-going monitoring of actual cases.”

<sup>80</sup> See NR from Greece.

Countries that answered the question on costs	Existence cost monitoring	Existence of minimum cost sheets
Austria	yes	-
Belgium	yes	-
Cyprus	no <sup>81</sup>	no
Denmark	yes	-
France	yes	-
Germany	yes	-
Greece	no	no
Italy	yes	yes
Ireland	yes	yes
Luxembourg	yes	yes
Malta	-	-
Netherlands	yes	-
Portugal	-	-
Slovenia	no	no
Spain	yes	-
Sweden	yes	yes
UK	yes	-

## 14.2 Sending countries

An analysis of the National Reports drafted by the EU sending countries reveals some general trends, as well as particular aspects linked to specific State experiences. The common thread is “black letter” law, i.e. legal doctrine that tends to be extremely careful about declaring the specific unlawfulness of any behaviour likely to lead to unjustified and/or inadmissible costs (should these not be permitted). Ordinary criminal sanctions are applicable in most of these cases.

Moreover, not all countries that do allow costs expressly regulate the criteria to be followed with regard to the level of such costs. References to cost ceilings are very rare, as is detailed information concerning the average costs sustained by prospective adoptive parents. This means that **it is not easy to make up a reliable and complete picture from the data provided**. It should be possible to collate more data in the future, thanks to additional sources and information provided by monitoring activities carried out by NGOs and other actors operating in this field. **Representatives of national authorities can find themselves in a tricky position, objectively speaking, when delivering hard to obtain data**, given their standpoint, for obvious reasons bound up with their institutional role. This difficulty can be inferred, *mutatis mutandis*, from the outcomes of the recent, wide-ranging work carried out by the Hague Conference of Private International Law. Complete and up-to-date information concerning costs, was not widely available, especially in regard to sending countries.

A **summary of the results obtained** by the National Reports might prove useful, at this point, in order to better highlight this situation. First of all, a comparison of some of the answers given to the same question immediately reveals that there are huge differences in

<sup>81</sup> A new law is currently in the process of being constructed, in an endeavour to define and better control adoption costs.

regard to the issue in question. Moreover, in some cases, there was no reply at all. **Portugal** and the **Slovak Republic** returned no information on this important point. In other cases, the information consisted simply of the fact that, according to national legislation, no costs were entailed since the process was free of charge, albeit in different ways. For instance, in **Romania**, all stages of the adoption process and legal proceedings are free of charge, in the sense that not only the social enquiries, the preparation courses and the post-adoption services cost nothing, but the judicial phase also demands no monetary payment. The reason given for this is that all these stages are “in the competence of the public authority”.

Other countries have no express regulations with regard to costs, and no monitoring procedures. For example, in **Estonia** there are no specific rules in this regard, and thus, in this respect, there is no formal control or supervision over the proceedings. In others, this aspect is considered analytically, despite the nature of the general rule. Thus, in the Republic of **Lithuania**, where the adoption procedure is free of charge and there are no costs for child care, costs are required and/or allowed for specific activities only, in the sense that costs are unavoidable in some situations and are permitted on a voluntary basis in others. While prospective adoptive parents are expected to pay for the translation of documents and certificates, it is up to them whether they wish to pay for an independent medical consultation, for legal assistance or for any other kind of help available to them, before or after the adoption. If they decide not to go for these kinds of individualized services, public medical services are available free of charge and, as far as administrative costs are concerned, court fees only are required. To ensure that the principles of the HCIA are properly respected (arts. 8 and 3), the Lithuanian Central Authority can intervene to prevent their infringement. Indeed, notwithstanding the absence of special measures geared to precluding improper financial gain, it is possible for the competent State authorities to verify whether or not foreign institutions seeking authorization are competent and whether or not their activities are properly carried out. Ordinary sanctions – set out in the penal code – will be enforced on any persons responsible for crimes against the child and the family.

In **Poland**, the activities of “public centres for adoption and custody” for children are free of charge. “Non-public” centres may, however, require a “donation”. This means that they are allowed to receive both sums of money (“in cash”) and gifts (“goods”). However, there is no way of establishing their value in either case. In the case of monetary grants – the NR states – “it is not possible to estimate the amount as it depends on the situation of the actual candidate”. In cases where goods are donated, they are transferred “to the actual institution in which the child was previously placed”. It seems quite clear that, should there be any infringement, this is particularly hard to detect.

In other countries, in which provision for the payment of costs is made, nebulous provisions exist alongside specific ones. In **Hungary**, there is a basic differentiation between cases in which would-be adoptive parents go through the official procedure and cases in which they “utilize civil services”. In the latter situation, there are cost implications for these services, but they “can set their own prices” (e.g. payment for the home-study). In cases of prospective adopters following the official procedure, costs are determined by the local child protection services. In any event, no details are available with regard to levels of cost. In **Bulgaria**, on the contrary, a more accurate set of measures was drafted. The much publicized difficulties that characterized the intercountry adoption situation explain the need for such detailed provisions. More precisely, each stage of the proceedings is covered by specific regulations on cost as well as cost control. Firstly, Bulgarian nationals wishing to adopt a child are not liable for the costs of home studies. The cost of making an application to the Court for granting an adoption is 12.5 Euros, in compliance with a specific provision under a statute enacted in 2008 (i.e. art. 20 the Tariff of the Fees Collected by Courts under the Civil Procedure Code- 2008). Moreover, in order to be authorized to operate in the field of intercountry adoptions, an agency has to file an application with the Ministry of Justice enclosing specific information as to costs and expenses sustained by the agency for its mediation services, and the maximum amount of any fees involved.

A more general approach is taken in the **Czech Republic**. Brief mention was made in respect of translation costs alone. The National Report stating whether or not a child is to be placed in the care of the prospective adopters is in fact sent directly to the applicants and the child's guardian and is written in Czech. The translation costs are borne by the applicants.

## CHAPTER II

### PSYCHO-SOCIAL AND POLICY ASPECTS OF ADOPTION IN EUROPE\*

This chapter addresses a series of psycho-social and policy aspects linked to adoption and to the adoption process: suitability for adoption in the national child welfare policy; interdisciplinary approach; preparation services; support during the waiting time; matching; post-adoption services; special-needs adoptions, and finally forums for adoptive/birth parents and adopted persons. For each of these aspects, some themes are highlighted. While the following exposition is organised in a discursive way, in annex 5 (on page 246) a synthetic version is provided through a synoptic table.

#### 1. SUITABILITY FOR ADOPTION IN THE NATIONAL CHILD WELFARE POLICY

Although in many European countries anonymous births are not possible (e.g., Belgium, Denmark, Finland, Greece, Latvia, the Netherlands), in some other European countries such births are possible (Austria, France, Luxembourg). In Austria, the relatively high number of anonymous births recently raised a critical debate in society. In France, social services are required to give psychological and social support as soon as possible to women who wish to give birth anonymously, and these women are informed of all available services to help them keep their child.

**In many European countries, biological parents (usually mothers) who wish to make their child (usually a baby) available for adoption, are counselled about the alternative of keeping their child, while sometimes a minimum period (usually some months) of reflection is required to safeguard a well-advised decision** (for example, Belgium, the Netherlands). In the same line, in for example Lithuania, children eligible for adoption cannot be younger than three months of age. Most European countries report that local welfare services should intervene to prevent child abandonment and infanticide and to support families in difficulty, for example by providing counselling, guidance and financial support (Cyprus, Denmark, France, Germany, Italy, Latvia, Lithuania, Poland, Romania, Spain, Sweden, United Kingdom).

**Adoption is generally seen as a last solution, a viable option only if intensive efforts to keep or reunite children with their biological family have been proven ineffective, and only if adoption is in the child's best interest.** Hungary, for example, reports that adoption is possible only for institutionalized children who are not visited by their parents for a long time, and for those children who cannot return to their families of origin. Some countries (e.g., Malta) recognize that children in local residential or foster care are rarely adoptable because the biological parents do not give their consent for adoption even when they are not in a position to take care of their children themselves. Comparable and sometimes controversial issues are critically debated in several societies. Denmark reports that the reluctance to break up a family does not always serve the individual child's best interest. Germany refers to a local debate about maltreated children in long-term foster care: should the focus be on family reunification or adoption? In the same vein, the Netherlands report states that the option of weak (simple) adoption as an alternative for long-term foster care is currently under debate. And Sweden notes a comparable issue for Swedish foster children: they do not have a right to permanency and their situation has been debated and examined in many investigations.

**The subsidiarity principle is generally adhered to, so that intercountry adoption should be only considered if no relative, foster or adoptive family can be found in the country of origin.** As an example, Lithuania reports that a child may be available for

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\* This chapter has been drafted by Femmie Juffer and Erika Bernacchi (paras. 2-8).

intercountry adoption if during six months no Lithuanian foster or adoptive family can be found.

Finally, there appears to be **consensus in both European countries of origin and European receiving countries about the desirability of family care for children**, so that **family-type care** – kinship care, adoption, fostering – **is preferred above institutional care**. However, some countries of origin state that although the reorganization of the residential care system is ongoing, there are still high rates of institutionalized children (e.g., Bulgaria, Czech Republic). Greece, for example, reports that institutional care, although reduced in the last decades, can still be further reduced or transformed, while foster care has not developed systematically throughout the country. Also, some countries of origin refer to economic aspects that hinder the realization of desired goals. For example, Estonia reports that preventive work in child welfare services is deficient because child protection workers do not have enough resources to carry out high quality preventive work. **In the reports reduction of institutional care is considered to be accomplished by finding kinship care or foster/adoptive families whereas transformation of institutional care is seen as the development towards organizing care in family-type units**, such as ‘family houses’ (Slovakia). In the research literature on institutional care, there are some recent examples of beneficial effects of transforming institutional settings into units with family-like characteristics (McCall et al., 2008). However, the beneficial effects of family placement seem to be larger than implementing interventions in institutional settings (Part I, chapter 3; see also Bakermans-Kranenburg, Van IJzendoorn, & Juffer, 2008).

## 2. INTERDISCIPLINARY APPROACH

In most European countries of origin and receiving countries an interdisciplinary approach is adopted to carry out the various stages of the adoption process and procedures. Counselling or guidance of the biological parent(s) is not mentioned in the country reports explicitly (with Romania as an exception), but that may be due to the fact that this issue has been addressed in the previous section (*Suitability for adoption in the national child welfare*). **Expertise from medical, social, psychological and legal authorities is usually required for the preparation and assessment (home study) of the prospective adoptive parents, the preparation and education of the prospective adopted child, and the post-adoptive services available for parents and children after placement**. Although these pre- and post-adoption services vary widely across European countries, as we will see in next sections, a common characteristic seems to be the interdisciplinary approach in adoption procedures.

## 3. PREPARATION SERVICES

According to the country reports, **in about half of the receiving European countries a system of obligatory preparation services for prospective adoptive parents has been implemented, usually in the form of a compulsory preparation course or programme** (Belgium, Denmark, Ireland, Luxembourg, Malta, Netherlands, Slovenia, and Sweden). The intensity of the course is mentioned by Denmark (three days), Ireland (six weeks), Luxembourg (eight hours), and the Netherlands (six meetings). In the courses, issues of attachment, the background of the children, and the adoption triad are usually covered. The United Kingdom’s report states that the adoption agency must ensure that the applicants have “appropriate” preparation and, in practice, this will mean that most adopters attend preparation courses. Other European receiving countries mention available services in their country but it is not explicitly mentioned whether these services are compulsory: a series of informative meetings (France) or preparation/information and training courses (Austria, Finland, Italy, Spain). A few countries acknowledge that there are no systematic special preparation programmes for prospective adoptive parents and that consultation is given on a case-to-case basis (Cyprus, Greece), or that valid data about this issue are not available (Germany, Portugal).

**About half the European countries of origin do not provide specified information about the preparation of the child for adoption. Other countries acknowledge the relevance of preparation services to the prospective adopted child but report that**

**because of a lack of resources such services are not provided, that the support for the child is of low quality** (Bulgaria, Estonia) **or that child counselling is available only when the child needs it** (Hungary). Slovakia is more detailed about this issue and mentions that the preparation of children for intercountry adoption, supported by a psychologist, includes counselling and informing children about the effects of adoption (in a way suitable for their age, intelligence and maturity), finding their opinions and wishes, and making the child familiar with the applicants and their family. **Concerning child preparation, the report from the United Kingdom is relevant**, too. The United Kingdom has a rich history and tradition in domestic adoption and based on these experiences the life story work with the child is highlighted (making life story books with stories, pictures and drawings of the child's life right from the start, at birth, until the present). For adopted children, life story work is very important because it gives them insight into the story of their life, the separations and losses, and the people who took care of them. Prospective adopters in the United Kingdom who are going to adopt internationally, are encouraged to contribute to the child's life story work by providing their own life story material and disposable cameras to the child in the country of origin.

#### **4. SUPPORT DURING THE WAITING TIME**

**The European countries of origin and receiving countries report that there are no specific programmes offered by the Central Authorities during the waiting time** (the time between the preparation programme me /home study and the actual arrival of the child in the adoptive family), or that informal meetings, bulletins, news on websites, etc. are provided to prospective adoptive parents. Some countries mention self-organized parent support groups, or information and support, if needed, by the accredited bodies (adoption agencies) and local welfare services.

#### **5. MATCHING**

**The receiving European countries report that the matching of a particular child to prospective adoptive parents is usually carried out in the child's country of origin**, after the files of the applicant(s) have been sent to that country's Central Authority, or by the local accredited bodies in close collaboration with the foreign authorities in the country of origin. **Generally, clear criteria and proceedings for matching are not provided by law**. The German report is wondering whether the matching decision is usually made in a 'clinical' way.

**Estonia, as a country of origin, reports that there are no special rules or criteria for the matching process**. Organizations that have a contract with Estonia own data about children who are free for adoption and who have not found a family in Estonia. If an appropriate family is found, then the child is introduced to the prospective parents. A person cannot go to an orphanage or make direct contact with Estonian institutions with the purpose to adopt. **Hungary reports that a family for a child is chosen by a member of the Central Authority**, by a psychologist who knows the child, and by a person who works in the field and is responsible for the adoption. Like Estonia, Hungary adds that prospective adoptive parents do not have the possibility to find and choose a child. **Slovakia reports that at the office of the Central Authority a commission of specialists** (psychologist, social workers, legal expert) **choose the most suitable family** from a list of prospective adoptive parents for an individual child.

With some exceptions for kinship adoption, **most countries report that applicants cannot choose a child to adopt and that contact with the child** (or biological parents) **before adoption is not foreseen/or allowed**. The report from France adds that a situation in which the adopters would choose a child cannot be fully ruled out in those countries where applicants can file their application individually (without the intermediation of an accredited body).

## 6. POST-ADOPTION SERVICES

In the European countries, **the situation of post-adoption services for adoptive families seems less clear and consistent compared to the available preparation services**, with the exception of post-placement reports for the countries of origin. The accredited bodies in many receiving countries assist adoptive parents when they are required to complete follow-up reports about the child's development and integration in the family to be sent to the country of origin. These reports are usually required for some years after placement, at varying intervals.

**Post-adoption services seem to vary across the European receiving countries.** Many countries refer to the free or supported offers through the local national standard health, child welfare, and education systems, but some also notice the disadvantage that adoption expertise is not always available or guaranteed in those services. Some countries report that supportive or counselling services for adoptive families are not provided by law (e.g., Cyprus), or that the Central Authority delegates the follow-up of the family to the accredited bodies because their staff can offer assistance to the adoptive family (Belgium, Italy). Denmark notes that a trial programme is running, offering post-adoption support by psychologists to all families from the arrival of the child until about four years after adoption. Finland mentions compulsory adoption counselling to monitor the success of the placement, and formal discussion groups (not compulsory). Adoptive parents can seek help from specialized centres (or psychologists, therapists) or adoptive parent associations/support groups (e.g., France, Ireland, Sweden). Luxembourg mentions post-adoption services provided by the multidisciplinary team of the Adoption Resource Centre that started in 2006. In Sweden, local social services have the obligation to support adoptive families after adoption. Unfortunately, this is done well by some municipalities but not by the large majority. The report from the United Kingdom states that there is no statutory follow-up of adoptive families in England, Wales and Scotland, although it is usual for adoption agencies to make one visit to the family after the child's arrival. In Northern Ireland there are post-adoption support arrangements for all families/children involved.

In the Netherlands, post-adoption services have been available since 2000. After each adoptive placement (including older children, sibling placements, and special-needs adoptions) parents can apply for Video Interaction Guidance. This is a specialized, preventive intervention aimed at enhancing sensitive parenting and attachment in adoptive parents, based on a study on the effectiveness of video-feedback intervention in adoptive families (Juffer, 1993; Juffer, Bakermans-Kranenburg, & Van IJzendoorn, 2005, 2008). It is a short-term programme (maximum of four sessions) using videotaped interactions of the parent(s) and child involved. Parents pay a small fee; the rest is subsidized by the government.

## 7. SPECIAL-NEEDS ADOPTION

**Most European countries report that there are no special measures or policies by law to support the adoption of children with special needs, but they do refer to adoption agencies offering information** or starting campaigns to raise public awareness. In Denmark prospective adoptive parents can choose between applying for an average adoption or a wider spectrum (including special-needs adoptions). If they apply for the widened adoption, the requirements of parent abilities are greater. In France, the state has set up a database for domestic special-needs adoptions, while for intercountry adoption a protocol is being considered to better prepare applicants open for special-needs adoption. Italy mentions that measures of economic support are offered to families adopting a child with special needs through domestic or intercountry adoption. Sweden notes that the accredited bodies make special efforts to recruit parents for children with special needs, but at the same time they are careful not to put pressure on prospective adopters who are not really prepared for a special-needs adoption.



## 8. FORUMS

In most European countries associations or forums on the Internet exist for (prospective) adoptive parents. In some countries forums for (adult) adoptees are mentioned (e.g., Denmark, Finland, Germany, Ireland, Netherlands, Sweden, United Kingdom).

## 9. SUMMARY

In many European countries anonymous births are not possible. Biological parents who wish to make their child available for adoption are counselled about the alternative of keeping their child to safeguard a well-advised decision. **Local welfare services (should) intervene to prevent child abandonment and to support families in difficulty. Adoption is generally seen as a last solution,** a viable option if efforts to reunite children with their biological family have been proven ineffective, and only if adoption is in the child's best interest. **The subsidiarity principle is generally adhered to, so that intercountry adoption should be only considered in case that no relative, foster or adoptive family can be found in the country of origin.**

There appears to be **consensus in both European countries of origin and receiving countries about the desirability of family care for children**, so that family-type care is preferred to institutional care. However, some countries of origin state that although the reorganization of the residential care system is ongoing, there are still high rates of institutionalized children. Also, some countries of origin refer to economic aspects that hinder the realization of desired goals. In the reports *reduction of institutional care* is considered to be accomplished by finding kinship care or foster/adoptive families whereas *transformation of institutional care* is seen as the development towards organizing care in family-type units, such as 'family houses'.

**In most European countries an interdisciplinary approach is adopted to carry out the various stages of the adoption process and procedures**, including expertise from medical, social, psychological and legal authorities. **In about half of the receiving European countries obligatory preparation services for prospective adoptive parents have been implemented, usually in the form of a compulsory preparation course.** Other European receiving countries mention the availability of preparation services in their country but it is not explicitly mentioned whether these services are compulsory. A few countries acknowledge that there are no systematic preparation programmes.

**About half of the European countries of origin do not provide specific information about the preparation of the child for adoption. Other countries acknowledge the relevance of such preparation but report that because of a lack of resources such services are not provided**, that the support for the child is of low quality, or that child counselling is available only when the child needs it. Based on experiences in domestic adoption, the life story work with the child is highlighted in the report from the United Kingdom. **For adopted children, life story work is very important** because it gives them insight into their life, the separations and losses, and the people who took care of them.

The European countries report that **there are no specific programmes offered by the Central Authorities during the waiting time**, or that informal meetings, bulletins, news on websites, etc. are provided to prospective adoptive parents.

**The receiving European countries report that the matching of a particular child to prospective adoptive parents is usually carried out in the child's country of origin**, or by the local accredited bodies in close collaboration with the foreign authorities. Generally, **clear criteria and proceedings for matching are not provided by law**, and one might wonder to which level the matching decision is made in a 'clinical' way.

With the exception of kinship adoption, most countries report that applicants cannot choose an adopted child and that contact with the child or biological parents before adoption is not foreseen/not allowed.

**The situation of post-adoption services seems less clear and consistent compared to the preparation services, with the exception of post-placement reports for the**

**countries of origin.** The accredited bodies in many receiving countries assist adoptive parents when they are required to complete follow-up reports about the child's development. Post-adoption services vary across the European receiving countries. Many countries refer to the existing local standard health care, child welfare and education systems, but some also notice the disadvantage that adoption expertise is not always available or guaranteed. Some countries report that post-adoption services are not provided by law, or that the Central Authority delegates this follow-up to the accredited bodies. Adoptive parents can seek help from specialized centres or adoptive parent associations in several countries. In the Netherlands, post-adoption services have been available since 2000. After each adoption (including older children, sibling placements, and special-needs adoptions) parents can apply for Video Interaction Guidance, a specialized, preventive, and evidence-based intervention aimed at enhancing attachment in adoptive parents.

**Most countries report that there are no special measures or policies by law to support the adoption of children with special needs,** but they do refer to adoption agencies offering information or starting campaigns to raise public awareness. In Denmark prospective adopters can choose between applying for an average adoption or a wider spectrum (including special-needs adoptions).

Finally, in most European countries forums (on Internet) exist for adoptive parents, and, to a lesser extent, for (adult) adoptees.

## **10. FINAL CONSIDERATIONS**

### **10.1 Place of adoption in child welfare policy**

To date, **there is no European consensus about the issue of anonymous births.** In many countries anonymous births are not possible, but in a few countries such births are allowed. **A discussion about this issue is badly needed.** Arguments *for* anonymous births (e.g., if such births are not possible, more women might abandon their infant and this would involve medical risks for both birth mother and child) should be balanced with the arguments *against* anonymous births (e.g., the child's right to know his or her birth relatives is violated). **Based on the child's best interest perspective, it should be concluded that anonymous births do not serve children's rights well. Also, the countries that do not allow anonymous births are not reporting exceptionally high rates of child abandonment or infanticide.**

The information from the European reports does not provide a clear picture of all available local welfare services to prevent child abandonment (or infanticide). **More research is needed to examine which services are usually provided for women with unplanned or unwanted pregnancies.** Which type of counselling is needed, adequate, and effective? A good-practice parameter might be helpful for countries providing or organizing these services.

**A related subject is the time of reflection for the birth mother to re-consider her decision to make her child available for adoption.** In some countries a minimum period of some months is required before the child can be made legally available for adoption. From a psychological perspective a minimum period of some months is indeed recommended, because a woman cannot fully realize and estimate all the consequences of her decision before she has actually given birth to a child. On the other hand, for the child's best interest a final decision should not be postponed too long, because (repeated) separations are hindering children's attachment development, particularly later in their first year of life. To take both the birth mother's and child's perspective into account, a minimum period of three or four months does seem acceptable. Of course, psychological counselling of the birth mother before and after birth should be included in good-practice standards or protocols.

**In several countries there is a debate about the position of children in residential care and/or foster care.** Often these children cannot be adopted because their birth parents do not give their consent for adoption, while at the same time these parents are not in the position to take care of the children themselves. In many cases children's rights to family care or permanency are thus violated. It is of paramount importance that every effort should be made to stimulate family reunification, and that birth parents are indeed supported to help

them rear their children in an adequate way. Besides that, foster care should be made available for non-adoptable children in residential care, whereas the position of foster children should be strengthened so that (more) permanency is guaranteed. **Based on what is known from attachment research** (see also next chapter) **family-type care and stable parent-child relationships should be preferred to residential care and repeated transitions or placements.**

**Although we conclude that according to the European reports, the subsidiarity principle of the Hague Convention is generally adhered to, it seems that on a more concrete level more clarity is needed.** It is of course positive that it is generally recognized that adoptive or foster placement in the child's own country of origin is preferred to intercountry adoption. However, although some measures are mentioned (e.g., children can be adopted only after a minimum period of time during which the option of domestic placement is investigated), **a set of guiding rules or detailed guidelines is lacking.** A good-practice parameter, taking into account both the subsidiarity principle and the child's perspective (needing a permanent and stable family placement, preferably as soon as possible in the first year of life) would be helpful.

**Although there is considerable consensus about the desirability of family-type care** above residential or institutional care (see also next chapter), in reality **there are still many children in institutional care in European countries.** In some cases, local foster care and domestic adoption have not yet developed systematically, or countries lack the resources to prevent institutional placements (by supporting families with problems) or to organize and recruit foster or adoptive families. It is of paramount importance that as many children as possible should be allowed to live in families instead of in institutions. **Countries should be helped to organize their own local foster care and adoption programmes,** for example by providing good-practice manuals and protocols to the local social welfare services. At the same time, programmes to support caregivers in institutions (see for example McCall et al., 2008) should be developed and implemented, to ensure better care for those children for whom a place in a family cannot be found (for example, children infected with HIV).

## **10.2 Adoption practice and policy**

**A common characteristic of European adoption practice is the interdisciplinary approach.** Given the nature of adoption, involving legal, medical, and psychological issues, this can be seen as a positive development. At the same time, one gets the impression that adoption policy and practice seem to be more informed by legal and medical issues than by psychological and child development issues. **More information should be made available about the effects of institutionalization, separations, loss, and family placement** (adoption, foster care) **on children's development and adjustment** (see also the next chapter).

**Most countries acknowledge the need for proper preparation of prospective adoptive parents,** and many countries indeed work with (compulsory) preparation courses or programmes. The experiences in these countries show that when people are used to a compulsory programme, parents usually embrace such programmes because they learn a lot about important aspects of adoption (for example about the child's background or attachment issues). Moreover, in these courses they can meet with other prospective parents and discuss mutual interests and concerns. Considering the positive outcomes of (compulsory) preparation, these services should be recommended in adoption practice everywhere.

**In marked contrast to parent preparation, the preparation work with prospective adopted children seems to lag behind.** Most countries (of origin) acknowledge the relevance of preparation services for children but they often lack the resources or knowledge to prepare the child for adoption in an adequate way, taking into account issues of child development. For example, life story work (as it was developed in the UK) could help a child bridging the transition from institutional care to a family placement.

**With respect to matching,** the conclusion can be drawn that there is not a set of clear-cut criteria or guidelines available for matching issues and procedures. From the child's best interest perspective, **it should be recommended that psychological expertise is used to**

**guarantee good matching.** More research is needed on which decision rules are used in practice and how adequate these rules are.

In general, the practice of applicants choosing a child appears to have been abandoned while contacts between applicants and the child are usually not allowed. This can be evaluated as a positive development because children's rights can be easily violated when decisions are made based on prospective parents' needs instead of children's best interest.

Contrary to the situation with pre-adoption services, **the state of the art of post-adoption services is lagging behind. Post-adoption services have already been implemented in countries with a longer history of adoption practice, while other countries are in the process of organizing these services.** An evidence-based support programme after adoptive placement has been implemented in the Netherlands and has shown positive effects on parenting behaviour and the child's attachment security. It should be concluded that **the need for post-adoption services is widely acknowledged but that the implementation of these services should receive more attention in adoption policy.**

Finally, although more special-needs adoptions are realized in intercountry adoptions nowadays (and even more are expected in the future), there is no consensus about special measures or policies in the European countries. At the same time, some countries have experience with campaigns or protocols to better prepare prospective adoptive parents for a special-needs adoption. It should be concluded that **special-needs adoption deserves more attention, now and in the future, and therefore existing experiences and efforts should be combined to improve awareness, knowledge, and practice.**

### CHAPTER III

## COMPARATIVE ANALYSIS OF EUROPEAN RESEARCH ON INTERCOUNTRY ADOPTION\*

Adoption policy and practice should be facilitated to make informed decisions by knowledge from multidisciplinary sources: laws and legal issues, numbers of adoptions and statistical developments, but also knowledge from psychological adoption research. **Adoption research can provide evidence-based insights into the effects of adoption; with other words, how does adoption affect the children involved and what does it mean for their adjustment?** Thus, **a comparative analysis of adoption research with a special focus on the outcomes of adoption can shed more light on the consequences of adoption decisions for adopted children's lives.** Based on the insights of European adoption research, specific programs or interventions can be developed or strengthened to support adoptive families or adoptees (for example, post-adoption services, see previous chapter).

The practice of intercountry adoption in Europe, and consequently **the research on intercountry adoption, has a relatively young and dynamic history** (Selman, 2000). Like in the rest of the world, **European research on intercountry adoption has focused primarily on one party of the adoption triad: the adoptee.**

**In this chapter these studies are summarized through a series of meta-analyses, describing the development of intercountry adoptees in Europe with respect to their social-emotional (attachment) relationships, cognitive development (IQ, academic adjustment, language, and learning disorders/special education), behavior problems and mental health referrals, and self-esteem. This comparative research analysis, including all available European intercountry adoption studies, should provide evidence-based insights into the effects of intercountry adoption on adopted children's adjustment.**

It should be noted that research examining the other two parties of the adoption triad – birthparents and adoptive parents – is much less common and particularly the perspective of the birthparents in the countries of origin is largely lacking<sup>1</sup>. Adoptive parents have been the focus of scientific studies conducted in Spain, Italy and the Netherlands. These studies examined the parenting stress that adoptive parents experience, their parenting behavior, or their psychosocial adjustment<sup>2</sup>. The studies showed that adoptive parents who rear deprived adopted children experienced higher levels of parenting stress. Furthermore, adoptive parents showed comparable parenting behavior (e.g., parental sensitivity) and psychosocial adjustment as parents who did not adopt children.

The demographic backgrounds of adoptive parents has been examined many times because in most studies on intercountry adoptees some background variables of the adoptive parents have been described as well. Most studies show that adoptive parents generally are somewhat older and more highly educated compared to parents who did not adopt children. Although in the general psychological literature higher education of the parents is usually associated with more optimal outcomes of the offspring, the mechanisms could be different in adoptive families and there is indeed at least one indication that a higher educational level of the adoptive parents is related to more psychiatric problems of adoptees in adulthood<sup>3</sup>.

Since most European adoption research has focused on the outcomes of intercountry adoptees, a review of that particular literature follows in the next section.

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\* This chapter has been drafted by Femmie Juffer.

<sup>1</sup> See Bos, 2008, for an exception; in a qualitative study Bos described the difficult and often desperate situation of birthmothers in India considering relinquishment and adoption.

<sup>2</sup> Hoksbergen et al., 2004; Juffer, 1993; Juffer et al., 2005; Palacios & Sanchez-Sandoval, 2006; Rosenboom, 1994; Rosnati & Barni, 2006; Rosnati et al., 2005; Rijk et al., 2006; Van Londen, 2002.

<sup>3</sup> Tieman et al., 2005.

## 1. THE ADJUSTMENT OF INTERCOUNTRY ADOPTEES IN EUROPE<sup>4</sup>

The **adjustment** of intercountry adoptees is defined here as **their development after adoption with respect to social-emotional attachment relationships, cognitive development** (including IQ, academic adjustment, language, and learning disorders / special education), **behavior problems and mental health, and their self-esteem**. On the basis of their often adverse experiences before adoptive placement (including malnutrition, neglect and maltreatment, deprivation in institutional care) it could be hypothesized that **intercountry adoptees show delays and difficulties compared to their nonadopted** (current) **peers and classmates**. However, compared to the children who stayed behind (past peers), for example in the children's homes, **intercountry adoptees do show catch-up growth and recovery**<sup>5</sup>.

In this review a meta-analytic approach is adopted; **a meta-analysis is a suitable instrument to summarize existing research on a certain subject**, in this case the adjustment of intercountry adoptees in Europe. Available and suitable empirical studies are systematically reviewed, analyzed, and synthesized. For the meta-analyses described in this review, effect sizes in terms of Cohen's *d* (Cohen, 1988) were computed: the standardized difference in means between the adopted group and their nonadopted comparisons. **The work presented here is based on and extends a series of meta-analyses on domestic and intercountry adoptees worldwide**<sup>6</sup>.

For the purpose of this review our meta-analytic data-base has been updated until 2008 and new suitable studies, if available, were added. At the same time, only studies examining *intercountry adoptees in Europe* were included in the current series of meta-analyses. For each area of development one or more meta-analytic conclusions are described, and for attachment a secondary analysis is added. Empirical studies on adopted children and adoptees of all ages (infancy to adulthood) were included. The adoptees came from various countries of origin, mostly from non-European countries (e.g., South Korea, India, Colombia), but in some studies children were adopted within Europe (e.g., from Romania to the United Kingdom; Hoksbergen et al., 2002; O'Connor et al., 2000). The adoptees were compared with nonadopted (current) peers reared in biological families (such as friend or classmates). No moderator analyses (for example, the influence of age at adoption or the effect of age at assessment on the outcomes) were conducted because for some areas of development the set of European studies was too small to permit such analyses.

## 2. ATTACHMENT RELATIONSHIPS OF INTERCOUNTRY ADOPTEES

Six scientific articles (see **Table 3-1** for more information about the European studies) examined the parent-child attachment relationships in adoptive families. Of these six studies, two focused on the attachment relationship of intercountry adopted adolescents or adults (Rosnati & Marta, 1997 and Irhammar et al., 2004, respectively). The two studies showed no marked difference between the adopted adolescents/adults and their nonadopted counterparts.

The remaining studies focused on the parent-child attachment relationship in (early) childhood, using observational measures (see Van den Dries et al., 2009). A secondary analysis showed that incountry adopted children in Europe ( $N = 215$ ) were more often insecurely disorganized attached (37% versus 15% in normative children). However, compared to European, institutionalized children (Vorria et al., 2003; Zeanah et al., 2005), the adopted children seemed to catch-up remarkably with respect to disorganized attachment (73% versus 37%, respectively; see **Figure 3-1**).

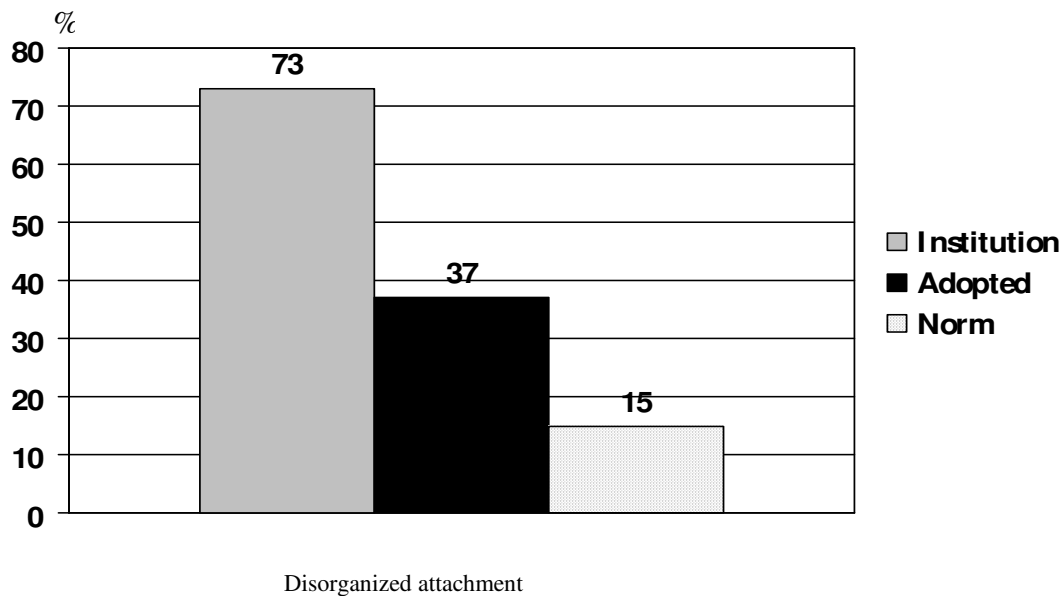
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<sup>4</sup> The contributions of Marinus van IJzendoorn, Marian Bakermans-Kranenburg, Linda van den Dries, and Caroline Klein Poelhuis to the original meta-analyses are gratefully acknowledged.

<sup>5</sup> Van IJzendoorn & Juffer, 2006.

<sup>6</sup> Juffer & Van IJzendoorn, 2005, 2007, 2009; Van den Dries, Juffer, Van IJzendoorn, & Bakermans-Kranenburg, 2009; Van IJzendoorn, Bakermans-Kranenburg, & Juffer, 2007; Van IJzendoorn & Juffer, 2005, 2006; Van IJzendoorn, Juffer, & Klein Poelhuis, 2005.

Figure 3-1. Insecure Disorganized Attachment in Institutionalized Children in Europe, Internationally Adopted Children in Europe, and Normative Children



The meta-analyses showed a non-significant effect for attachment security<sup>7</sup>. Comparable with our outcomes for attachment studies worldwide<sup>8</sup>, a risk of insecure attachment was not revealed for intercountry adoptees in Europe. Importantly, in the larger set of worldwide studies we found that children adopted before their first birthday are not at elevated risk for insecure attachment whereas children adopted after their first birthday do run a substantially higher risk of insecure attachment in (early) childhood. For the purpose of the current review it was not possible to replicate this finding because the set of European studies was too small.

For insecure disorganized attachment a substantial and significant effect was found. Comparable with our worldwide findings and the secondary analyses (see Figure 3-1), intercountry adopted children in Europe run a higher risk of disorganized attachment than nonadopted children in (early) childhood.

### 3. COGNITIVE DEVELOPMENT OF INTERCOUNTRY ADOPTEES

Table 3-1 shows the 16 scientific articles examining the cognitive development of intercountry adopted children in Europe. The focus will be on IQ, academic adjustment, language and learning problems/special education.

Comparable with our worldwide meta-analytic findings<sup>9</sup>, no significant effect was found for IQ. In the available studies, intercountry adoptees in Europe did have comparable IQ's as their nonadopted peers reared in biological families.

For academic adjustment, intercountry adopted children in Europe did not differ significantly from their nonadopted peers.

For language a small but significant effect was found. Comparable with our worldwide findings<sup>10</sup>, intercountry adopted children in Europe showed a small but significant delay in language achievement compared to their non-adopted peers.

For learning problems / special education a significant, modest effect was found. Comparable with our worldwide meta-analytic findings, an overrepresentation of learning problems/special education in intercountry adoptees in Europe was found. Adoptees are referred for special education or learning problems more often than their nonadopted peers.

<sup>7</sup> Statistical details can be requested from the author.

<sup>8</sup> Van den Dries et al., 2009.

<sup>9</sup> Van IJzendoorn & Juffer, 2005; Van IJzendoorn et al., 2005.

<sup>10</sup> Van IJzendoorn et al., 2005.

#### 4. BEHAVIOR PROBLEMS OF INTERCOUNTRY ADOPTEES

**Behavior problems can be seen as internalizing behavior problems**, for example withdrawn, depressed or anxious behavior, **or as externalizing behavior problems**, such as aggressive, delinquent or hyperactive behavior. Table 3-1 shows the 17 scientific articles on the behavior problems of international adoptees in Europe.

**For internalizing behavior problems a small but significant effect was found. For externalizing behavior problems a weak but significant effect was found.** Finally, for total behavior problems (a combination of all kind of problems) again a weak but significant effect was found.

In line with our worldwide meta-analytic findings<sup>11</sup>, intercountry adoptees in Europe showed somewhat more internalizing, externalizing and total behavior problems than their nonadopted current peers reared in biological families, but the effect sizes were quite small, meaning that the majority of the adoptees showed normal behavioral adjustment.

#### 5. MENTAL HEALTH REFERRALS OF INTERCOUNTRY ADOPTEES

Table 3-1 shows the eight scientific articles on the mental health referrals of intercountry adoptees in Europe. Comparable with our worldwide meta-analytic findings<sup>12</sup>, **a significant overrepresentation of mental health referrals** (for example to a child psychiatric clinic or residential setting) **was found**. This means that adoptees are referred to mental health services more often than their nonadopted peers.

#### 6. SELF-ESTEEM OF INTERCOUNTRY ADOPTEES

A final aspect of development is self-esteem or the overall evaluation of one's worth or value as a person (Harter, 1999). Ten scientific articles examined the self-esteem of intercountry adoptees in Europe (see Table 3-1). **A non-significant effect was found**. Again, this finding was comparable with our worldwide meta-analytic findings: adoptees show comparable levels of self-esteem as their nonadopted peers.<sup>13</sup>

#### 7. CONCLUSIONS

Most adoption studies in Europe have examined the development and adjustment of intercountry adoptees, although some studies did focus on the adoptive parents. Research on the situation and position of birthmothers in the countries of origin is markedly lacking. **Future adoption research should also focus (more) on adoptive family processes and dynamics** (Palacios & Brodzinsky, 2005; Rosnati, 2005), **on issues of race and ethnicity in intercountry adoption, and on the development of adoptees in adulthood, including adoptees in their role as parents.**

In a comparative analysis of European adoption research **intercountry adoptees in Europe were found to show delays** compared to their nonadopted peers reared in biological families **with respect to:**

- **insecure disorganized attachment** in (early) childhood
- **language**
- **learning problems / special education**
- **behavior problems.**

Because intercountry adopted children often have experienced pre-adoption adversity, such as malnutrition and institutional neglect and abuse, **delays were expected in virtually every aspect of child development.**

However, **no differences were found** between intercountry adoptees in Europe and their nonadopted peers **regarding:**

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<sup>11</sup> Juffer & Van IJzendoorn, 2005.

<sup>12</sup> Juffer & Van IJzendoorn, 2005.

<sup>13</sup> Juffer & Van IJzendoorn, 2007.



- **attachment security**
- **IQ**
- **school achievement**
- **self-esteem**

**The delays for attachment disorganization, learning problems/special education, and mental health referrals were (relatively) substantial.** In contrast, the effect sizes for language delays and behavior problems were quite small, indicating that the majority of intercountry adoptees were well adjusted regarding these aspects.

**Post-adoption services should support adoptive parents and (adult) adoptees** and our meta-analytic findings indicate that such **support is needed to prevent or improve insecure disorganized attachment, learning problems and mental health problems in international adoptees in Europe.** For example, a post-adoption service implementing video-feedback intervention in adoptive families has shown significant effects on sensitive parenting and on the reduction of disorganized attachment (Juffer et al., 2005, 2008).

Finally, **although intercountry adoptees struggle with some delays, they also show a remarkable catch-up after adoptive placement, in particular compared to nonadopted, institutionalized children**<sup>14</sup>. Adopted children show more optimal adjustment than institutionalized children with respect to their physical growth, their attachment relationships, their intelligence and school performance, and their self-esteem.

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<sup>14</sup> Juffer & Van IJzendoorn, 2007; Van den Dries et al., 2009; Van IJzendoorn & Juffer, 2006; Van IJzendoorn, Luijk, & Juffer, 2008.

**Table 3-1. European studies in the meta-analysis on the adjustment of intercountry adoptees**

Author(s)	Country	Aspect of adjustment
Andresen, 1992	Norway	Cognitive: school results / language Behavior problems
Bagley, 1993a	UK	Behavior problems Self-esteem
Bagley, 1993b	UK	Self-esteem
Berg-Kelly et al., 1997	Sweden	Cognitive: school results / language Behavior problems
Bunjes et al., 1988	Netherlands	Cognitive: school results / language
Bogaerts et al., 1998	Belgium	Behavior problems
Botvar, 1994	Norway	Behavior problems
Cantor-Graae et al., 2007	Denmark	Mental health
Cederblad et al., 1999	Sweden	Behavior problems Self-esteem
Cederblad, 1991	Sweden	Mental health
Dery-Alfredsson et al., 1986	Sweden	Mental health
Dalen, 2001	Norway	Cognitive: school results / language / learning problems Behavior problems
Dalen et al., 2006	Norway	Cognitive: school achievement / language Behavior problems
Dalen et al., 2008	Sweden	Cognitive: educational level
Elmund et al., 2007	Sweden	Mental health
Forsten-Lindman, 1993	Finland	Behavior problems Self-esteem
Frydman et al., 1989	Belgium	Cognitive: IQ
Geerars et al., 1995	Netherlands	Cognitive: school results Behavior problems Self-esteem
Greene et al., 2007	Ireland	Cognitive: IQ / language Behavior problems Self-esteem
Hjern et al., 2002	Sweden	Behavior problems
Hoksbergen et al., 1983	Netherlands	Mental health
Hoksbergen et al., 1988	Netherlands	Mental health
Hoksbergen et al., 2002	Netherlands	Behavior problems
Irhammer et al., 2004	Sweden	Attachment
Juffer et al., 2005	Netherlands	Attachment
Juffer et al., 1997	Netherlands	Attachment
Kühl, 1985	Germany	Self-esteem
Lanz et al., 1999	Italy	Self-esteem
O'Connor et al., 2000	UK	Cognitive: IQ
O'Connor et al., 2003	UK UK	Attachment Attachment
Odenstad et al., 2008	Sweden	Cognitive: IQ
Rosnati & Marta, 1997	Italy	Attachment
Rosnati et al., 2008	Italy	Behavior problems

Stams et al., 2000	Netherlands	Cognitive: school results / IQ / learning problems Behavior problems Self-esteem
Storsbergen, 2004	Netherlands	Behavior problems Self-esteem
Treffers et al., 1998	Netherlands	Mental health
Van Londen et al., 2007	Netherlands	Attachment Cognitive: mental development (IQ)
Verhulst et al., 1989	Netherlands	Mental health
Verhulst et al., 1990	Netherlands	Cognitive: percentage special education Behavior problems
Versluis-den Bieman et al., 1995	Netherlands	Cognitive: school competence
Wattier et al., 1985	Belgium	Cognitive: IQ



## CHAPTER IV

### SUMMARY OF QUALIFIED INTERVIEWS\*

#### 1. PREFACE

**By interviewing experts and people in charge from the central authorities we have tried to reflect on the changes that have taken place in recent years** following the 1993 Hague Convention on Intercountry adoption, but we have sought above all **to find food for thought on the European and world future of the important social and legal phenomenon of intercountry adoption.**

The “qualified” interviews have been prepared by sending preliminary “guiding questions” that have been used as facilitators to broaden the topics into a full range of discussions and exchanges on adoption in the course of the interviews that have been arranged.

The **criterion for choosing certain privileged players** was our effort to give a qualitatively important, albeit partial overview of the legal and administrative operators in the public administrations in some European receiving countries and countries of origin. **The interviews were specifically directed to representatives of the following bodies:**

1. international association of juvenile court judges
2. international association of adoptive families
3. Euroadopt (Association of European Authorized Agencies)
4. central authorities pursuant to the Hague Convention
5. members of the Hague Conference.

We asked **twelve questions** which can be grouped into **three macro areas:**

- **A review of these 15 years of “The Hague system”, a glance towards the possible future of international adoption and the hypothesis of a “European adoption” system,** meaning a series of rules and procedures concerning the adoption of children from the European Union by families residing within the European Union;
- **Preparing and assisting the prospective adoptive parents and the post-adoption period.** Connected with this theme are aspects such as the important issue of the search for origins;
- **The accredited bodies, the principle of subsidiarity and collaboration between the central authorities** , seeking to reflect on what problems still exist in the work of the accredited bodies and how the subsidiarity principle has been enacted up to now and how it will be implemented from now on.

#### 2. INTRODUCTION

Intercountry adoption is a phenomenon that in the last fifteen years, after The Hague Convention of 1993, has ceaselessly and strongly increased both in numerical terms and, consequently, in terms of the attention it receives from the people in charge and from public opinion. Apart from the United States of America, all the principal receiving countries are in Europe and are European Union member states. Furthermore, particularly in the European Union there are countries of origin that are witnessing a change in their role and “position” in the sector of intercountry adoption. We have been able to contact experts in the countries of origin and in the receiving countries and have asked them the same questions. This has facilitated a comparison of the replies and reflections, also enabling us **to gather the replies into the four major themes illustrated below**, which show the results of the interviews.

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\* This Chapter has been drafted by Angelo Vernillo.

### 3. I THEME: THE HAGUE CONVENTION, PAST AND FUTURE AND THE HYPOTHESIS OF EUROPEAN ADOPTION

The interviewees were asked to give their opinion of the changes introduced by the 1993 Hague Convention and as to what problems still exist. **All those interviewed expressed the firm conviction that the 1993 Convention has been an important step in the direction of clarity, order and the establishment of rules** in the world of adoption. Everyone agreed and declared that the **Convention is an instrument that has made it possible to reduce, if not completely eliminate, trafficking in children**. Moreover the Convention has introduced the **principle that in the world of adoption there must be professionalism as well as honesty and transparency**. In particular, for the adopted children's countries of origin the Convention has certainly introduced a positive change in public opinion, which is now in favour of adoption because the system now gives more guarantees. Some problems were reported across the board by almost all those interviewed, especially the fact that in many countries, especially countries of origin, ratification took place before the time was ripe. For example, a consistent and adequate general system for the protection of children's rights had not yet been developed. In addition, another aspect that deserves particular attention is that the receiving countries make a big "demand" on countries of origin, exerting a sort of "pressure" on the latter. **The hope that the Hague Convention can be present and effective in the maximum possible number of countries is widely shared**; we note in particular that **there are still many countries that have not ratified the Convention and whose procedures have wide margins of discretion both as regards the declaration of the state of abandonment and in defining and respecting the child's greater interest and the concept of subsidiarity**. *Concerning future scenarios* of intercountry adoption on the other hand, it emerges that in the diversity of roles, professions and nationalities of the privileged witnesses who were interviewed, **there is complete agreement on three aspects: firstly**, everyone agreed that **the existence of intercountry adoption will still be justified in the future**. **The second aspect, due to the economic growth of some countries and to the resulting implementation of national adoption** (also by virtue of the positive change in mentality that intercountry adoption has induced in some countries of origin), **is the phenomenon of the drop in the number of children available for intercountry adoption**. **The third aspect, which may also be considered to be a consequence of the second, is that it will increasingly be the so-called "special needs" children who are made available for intercountry adoption**; particularly "older" children, siblings or handicapped children. For certain countries it may be the adoption of children from ethnic minorities. **The hypothesis of "European adoption"**, meaning a system of rules and procedures expressly provided for European citizens who adopt other European citizens, **was not welcomed by almost all the interviewees**. This was both **because they do not see a real need and because they think there are still differences between the possible receiving countries and countries of origin within the European Union**. **Everyone agreed that communication within the Hague Convention should be supported, implemented and improved, rather than introducing a "double system" or new specific provisions**.

### 4. II THEME: PREPARATION AND SUPPORT FOR PROSPECTIVE ADOPTIVE COUPLES AND THE SEARCH FOR FAMILY ORIGINS

The search for one's origins is the aspect that concerns first and foremost the key players, the adoptive parents and the adopted child, especially in relation to the psychological aspects involved. **The common thought of all those interviewed was to stress the importance of the child's right to know his/her own origins**. This entails the necessary **responsibility of keeping all possible information about the child's history**. In particular it was seen to be fundamental *that this evaluation is of a personal nature and concerns the adoptive family and the child/adult but that every decision must be taken considering the principle of the best interests of the child*.

Moreover **it was deemed necessary to succeed in obtaining as much information as possible about the child, even before the adoption takes place, trying to create a sort of**

**'life book'**. Many of those interviewed stressed that the search for one's identity must be carried out with the assistance of trained professionals.

Still today the majority of adoptions are "without a name" and **the question is whether even if those who wish to remain anonymous should not give the adopted children more information**. The subject is undoubtedly sensitive and knowing how delicate these issues are, all the interviewees replied in the moderate terms that the case required. **Another aspect investigated was the so-called "adoption failures"**: are there any predictive criteria? What can be done? **The respondents agreed that the preparation of the prospective adoptive couples is fundamental**. *"Not only is the preparation important but also the selection of the couples"* some interviewee declared. This statement was then used to underline that it is important for the prospective adoptive parents to understand the child's situation, the adoption procedure and the child's cultural identity. It clearly emerged that the child too needs not only to be prepared for the separation but also *"that not all children are 'ready' to be adopted"* and that therefore **the matching must be done not only knowing the information about the children but allowing each child the necessary time for matching**. It is of paramount importance that the prospective **adoptive parents receive as much information as possible about the child** they are going to adopt and also *"that they take the time to stay in the country of origin with the child, to understand and create an environment together with the child"*. Adoption failure however is certainly not only due to the presumed incapacity of the family but is the joint responsibility of all those who, in varying degrees, have taken part in the process. An interviewee also added *"if the failures were investigated and analyzed more closely; if we accepted the idea that adoption is not for everyone; it is not for all who desire it just as it is not for all abandoned children, perhaps there would be fewer failures"*.

From these reflections the investigation necessarily shifted to inquiring **how a prospective adoptive family can be prepared, supported and assisted**. Everyone expressed the need for **adequate preparation conducted by qualified staff**. The experts in particular declared that it is important to provide real data about the situation regarding intercountry adoption: *"Firstly, correct information must be given and then the parents must be prepared for the type of child who is generally adopted and about the possibility that he or she may have physical or psychological problems, etc"*. There was also the consideration that perhaps there is nothing more to invent all over again, when instead it is necessary to organize differently what already exists and to fill it with contents, helped by professionals who are not only experts in their own field but above all experts in the specific field of intercountry adoptions. Some also suggested possible tools such as "role playing" to prepare the parents for example to put themselves in their children's place. **Preparation of the parents should also be associated with particular characteristics of the children eligible for adoption**: in practice the prospective adoptive parents should also be given a "specific" and not just a general preparation. In connection with these aspects, **post adoption is an important time, where support should not be exclusively given by psychologists but also by neuropsychiatrists, paediatricians, etc.**, trying to build a **network of professionals who are able to work together and support the adoptive family and the adopted child**. The experts interviewed affirmed: *"There must be the same support for the new adoptive family as there is when a birth takes place in hospital. There should be the same continuous relationship, which does not mean supervision, interference, monitoring of the parents, but should be offered in a positive way. Support for the new family is the best way to prevent problems"*.

### **5. III THEME: COSTS AND WAITING**

**There were many complaints that intercountry adoption is costly and demands very long waiting times**. We proposed this reflection and several observations were more frequently heard. It was pointed out that the **focus should not be only and exclusively on the waiting period for the parents but also for the children**. **A good administrative policy is needed in the countries of origin**, which should not accept more requests than the number which they are realistically able to process. *"I do not believe that it is now possible to shorten the waiting time, especially in Europe where the number of national adoptions is on the increase"*: said Odeta Tarvydiene of the Lithuanian central authority, then pointing out that

the waiting time is very much shorter in the case of the adoption of children with “special needs”. Saclier and Deegeling fully agree when they declare that the problem is not that of shortening waiting times but of reducing the number of prospective adoptive parents and for this reason “*people must be informed, prepared and given a chance to really understand what adoption is, before starting such a process*” (J. Deegeling).

The other aspect discussed concerns the **costs**. What most emerged preponderantly was **the need for transparency**. There is also the fact that **when the accredited bodies intervene, they must act on a truly “non-profit” basis, accepting only the sums required to cover expenses**. Another consideration that we wish to report here is that a possible contribution towards the children’s maintenance in the countries of origin must be regulated, agreed upon among the central authorities and decided transparently.

#### **6. IV THEME: ACCREDITED BODIES AND COLLABORATION AMONG THE CENTRAL AUTHORITIES**

The Hague Convention has provided for the presence of accredited bodies with given requirements, but **it is not always easy to verify how these bodies effectively work**. This observation emerges from some interviews: “*It is also very important to understand that it is not enough to be adoptive parents in order to be able to act and to work in an accredited body. High quality levels are needed*”. **The countries of origin and also the receiving countries ought to have and to share a “minimum standard” for the criteria for the authorization and accreditation of the bodies**. “*Not many but a few are needed, with a high level of specialization*”, someone declared.

**The central authorities in the receiving countries could come to an agreement with the authorities in the countries of origin on how many accredited bodies are really needed**: this is a special aspect of the collaboration between central authorities. All of those interviewed thought that it was fundamental for them to meet, discuss and establish personal contacts. Some expert asserted: “*Of course it is simpler for smaller countries to establish closer collaboration, although there is good cooperation among all countries. This is very important in the field of adoption because every country must understand other the countries’ demands and necessities*”. Concerning **bilateral agreements** it emerged that they **are an essential instrument for bringing together two countries with different cultures, different social organizations and different legal systems**, but which have the aim of cooperating to ensure the success of the adoption. It was also hoped that also in agreements with states that have not ratified the Hague Convention, the states party to the Hague convention may use the principles of this important Convention.



# CONCLUSIONS

## 1. GENERAL TRENDS IN INTERCOUNTRY ADOPTION ACROSS EUROPE

The statistical profile of intercountry adoption proposed at the beginning of this study revealed some interesting, general trends. It's worth to make a premise concerning **the data collected** thanks to the National Reports, **in relation to which an extremely varied picture emerges**. In some cases, there are evident *lacunae*, while in others information is detailed and complete. Although many countries provided **excellent statistics**, others reported that many "private" **adoptions were not recorded** and four receiving states were **unable** to provide **annual statistics**.

Coming back to the emerging general trends, it was found that Member States of the European Union receive substantially more children through intercountry adoption than they send<sup>1</sup>. As a matter of fact, EU receiving States accounted for over 40% of the total intercountry adoptions worldwide in 2004, while in the same year the 9 EU States of origin (mainly Eastern European) provided 3.3% of the children sent for international adoption. All States of origin excluding Estonia send children primarily to other EU countries, while most EU receiving States take children mainly from non European countries. Only in Cyprus, Malta and Italy more than 10% of the adopted children are from the EU.

However, a sensitive **fall in the proportion of worldwide adoptions involving children from European countries** occurred **between 2003 and 2006**<sup>2</sup>. By 2007 only 2.4 per cent of the children sent to receiving States through intercountry adoption were from the EU. **This was due to the well-known block of Romanian overseas adoption and to the significant decrease in the number of adopted children** coming into receiving states **from other East European countries**<sup>3</sup>. However, in the countries acceding to the EU in 2004 there was no significant reduction and in Hungary, Latvia and Lithuania there was an actual increase in the annual number of children sent over the period 2004-2006.

Although the United States continues to be the main receiver of children in absolute numbers, the countries with the highest rate of international adoption standardised against population, Spain, Malta and the three major Scandinavian countries are all from Western Europe<sup>4</sup>. Amongst EU members only Germany<sup>5</sup>, the UK and Portugal have a rate of less than one intercountry adoption per 100,000 population. In recent years, in some state, like the UK, in which the number of intercountry adoptions has been (and is still) very low, there has been a growing interest in the policy of encouraging domestic adoption as a solution to the failure of the care system, a policy shared with the United States but not found in any other European country<sup>6</sup>. Another clear trend, with regard to European receiving countries, is that domestic adoption remains very rare in most of them<sup>7</sup>.

## 2. PSYCHO-SOCIAL AND POLICY ASPECTS

The analysis carried out with regard to practices concerning adoption followed at national level revealed some interesting insights. It was useful, in particular, to understand if and to what extent the declarations of principles contained in international treaties, the interpretation and application of legal rules are adequately reflected in concrete measures applied in individual situations presenting specific needs.

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<sup>1</sup> See Part I, Chapter I, para 4.2.5.

<sup>2</sup> More precisely, it was 32 per cent in 2003 and 21 per cent in 2006. See P. Selman (2009b forthcoming).

<sup>3</sup> This fall is most evident in Romania, Bulgaria and Belarus. See Part I, Chapter I, Table 3-1.

<sup>4</sup> See Table 2-4 in Part I, Chapter I.

<sup>5</sup> German numbers are probably too low as available statistics do not include "private" adoptions.

<sup>6</sup> See P. Selman, K. Mason (2005).

<sup>7</sup> The impact of intercountry adoption varies between countries but many European countries are now reviewing their policies on domestic adoption of children with special needs and this can have an impact on general trends.

In particular, the role of adoption in national children welfare policies was analysed in the light of the services put in place, referring to some specific dimensions, as, for example, the adoption of an interdisciplinary approach, the preparation services, the support services for adoptive parents, the post-adoption services, etc.

In particular, some points that have emerged through this compared analysis need to be highlighted.

One sensitive topic to reflect on was the time of reflection for the birth mother to reconsider her decision to make the child available for adoption. Is a delicate point because a balance between two different interest – the need for the mother to fully estimate the consequences of her choice and, on the other side, the best interest of the child – needs to be struck. In particular the latter involves that the decision should not come too late, given the fact that early separation risks to hinder attachment development. A period between one and three (maximum four) months seems therefore to be acceptable, provided that the necessary psychological support should be given to the mother.

Another delicate debate that has involved many EU countries is that concerning the **position of children in residential care and/or in foster care**. It has been argued that intercountry adoption has had a negative impact on the development of services for children in European states of origin<sup>8</sup>, but some experts have gone further. They have claimed that intercountry adoption increases the number of children in institutional care facilities<sup>9</sup>. Even if these theories still need to be effectively proved, public concern about these points has grown, especially in relation to new EU Member States' accession. Indeed, in view of the accession to the EU of Bulgaria and Romania, there was a growing feeling in the European Parliament that it was somehow inappropriate for a member country to be sending large numbers of children for intercountry adoption. Thus, in 1999, Romania was asked to reform its child care system as a condition of membership and in 2001 to specifically reform its intercountry adoption laws, which were seen as incompatible with Romania's obligations under the CRC. In 2004, the EU Parliament enacted a Resolution calling on Romania to undertake further reforms and expressing concern also about the situation in Bulgaria, where a high number of children were adopted abroad. As a result, Bulgaria changed its laws so that intercountry adoption was allowed on a stricter basis<sup>10</sup>, and, in 2004, Romania introduced a general ban on international adoption.

Apart from the specific situation of institutionalised children in sending countries, situations where children cannot be adopted because their birth parents do not give their consent, while at the same time these parents are not in the position to take care of them are not rare. In many cases, children's rights to family care or permanency are thus violated.

The general recognition that adoptive or foster placement in the children's own country of origin is preferred to intercountry adoption is positive, but there are **still doubts in relation to the concrete application of the subsidiarity principle at national level**.

Concerning **preparation for prospective adoptive parents**, most countries acknowledge the need for this kind of services, while many work with compulsory preparation courses or programmes. The experiences in these countries show that parents usually embrace such programmes because they learn a lot about important aspects of adoption (for example about the background of the child or attachment issues). Moreover, in these courses they can meet other prospective parents and discuss mutual interests and concerns.

The **preparation work with prospective adopted children**, on the contrary, is still scarcely developed. Most countries (of origin) acknowledge the relevance of preparation services for children but they often lack the resources or knowledge to prepare the child for adoption in an adequate way, addressing issues of child development. Among the experiences

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<sup>8</sup> This has been most extensively argued in respect of Romania (Dickens 2002; Post 2007). Similar concerns have been expressed also about the impact of high rates of intercountry adoption in Korea (Sarrì et al 2001).

<sup>9</sup> See S. Chou, K. Browne (2008).

<sup>10</sup> More precisely, according to the new law, intercountry adoption could be granted only after all other options had been explored and three domestic candidates had refused to accept the child offered to them. See on this point Part I, Chapter I, para 3.2.

described in the National Reports, it seems worth to mention one that proved to be particularly effective, *i.e.* the life story work (as it was developed in the UK), used to help the child to bridge the transition from institutional care to a family placement.

With respect to matching, finally, from the National Reports no clear-cut set of criteria emerged in order to help guiding procedures and practices in this field.

Post-adoption services have already been developed with a certain degree of success in countries with a long history in adoption practice, while others began to organize them recently.

Concerning the **profile of children placed for intercountry adoption**, sensitive sex differentials were found in many states of origins. EurAdopt Statistics for the year 2005 show sensitive sex differentials for 2 among the States of origins sending most children, *i.e.* China and India, where girls were largely predominant. Another trend which is worth to mention is the increasing number of siblings placed for intercountry adoption, together with **special needs children**. In relation to the latter group, some countries have experienced public campaigns and/or protocols to better prepare prospective adoptive parents.

Finally, adoption policy and practice may also benefit from **the results of scientific research** on the different psycho-social aspects involved. Adoption research can provide evidence-based proofs concerning the effects of adoption and may lead to policy arrangements. In the comparative review of European adoption research realized by Femmie Juffer, intercountry adoptees in Europe were found to show **delays** compared to their non adopted peers reared in biological families with respect to: 1) insecure disorganized attachment in (early) childhood, 2) language, 3) learning problems, 4) behavior problems. This is due to the fact that intercountry adopted children often have experienced pre-adoption adversity, such as malnutrition and institutional neglect and abuse.

While delays were virtually expected in every aspect of child development, however no differences were found in relation to attachment security, IQ, school achievement and self-esteem. Moreover, **intercountry adoptees show a remarkable catch-up after adoptive placement, in particular compared to nonadopted, institutionalized children.**

### 3. LEGISLATIVE AND NORMATIVE ASPECTS

The comparative survey of the experiences of the EU member states in the field of intercountry adoption makes it clear **how great some of the divergences are**<sup>11</sup>. **These disparities can be extremely acute with regard to prospective adopters** (*e.g.*, whether, in case of a couple, they can or can not be members of a civil union or of a civil or registered partnership, either heterosexual or homosexual, and, in case of single persons, whether they are permitted or not allowed to fully adopt a child)<sup>12</sup>. There are also great **differences among the procedural aspects**<sup>13</sup>. **The role played by national legislators, courts and competent administrative authorities in this field is still a core one**<sup>14</sup>. However, this is an inner and inevitable character of a complex multi-state system. At a domestic level, each state, while exercising its legislative power, can make its own choices so to adapt them to its social and cultural context<sup>15</sup>.

**At the same time, international legal instruments** (CRC, HCIA, 2008 CoEAdC), **together with other – non binding, but important – European documents** (*i.e.*, Parliamentary Assembly's of the CoE Recommendations and Resolutions, EC Commission Communications and EU Parliament Resolutions) **outlined a general, “pan-European” strategy**<sup>16</sup>, **aiming to bolster global commitment in regard to the protection of children's rights**, which would warrant greater trust *vis à vis* more coordinated action in the future<sup>17</sup>.

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<sup>11</sup> See Part II, Chapters I and II.

<sup>12</sup> See Part II, Chapter I, para. 5.

<sup>13</sup> See Part II, Chapter I, para. 6.

<sup>14</sup> See Part II, Chapter I, paras. 4, 6 and 8.

<sup>15</sup> See Part I, Chapter II, para. 1.11.

<sup>16</sup> See Part I, Chapter II, paras. 1.1-1.9

<sup>17</sup> See Part I, Chapter II, para. 3.2.

All the efforts towards a European strategy in the field in question shall be made in light of the positive steps taken up to now at these different but interrelated levels<sup>18</sup>. It is important also having a deep knowledge of the potential shortcomings due to some flows in the intercountry adoption practice<sup>19</sup>, which, in some cases, were carefully detected by specific study groups, but that still need to be analyzed in other socio-legal experiences<sup>20</sup>. The data collected thanks to the National Reports gave a clear confirmation of this situation, in the sense that a detailed scrutiny was made in some member states, while this is still lacking in others<sup>21</sup>. The need to give rise to a common approach gave impulse to a widespread and more intensified activity at a EU level<sup>22</sup>. The European Parliament expressed its open favour towards a joint policy in order to ensure not only a simplification of adoption procedure, but also a more scrupulous action in carrying out all its stages<sup>23</sup>. This position was clarified by the Resolution of January 16<sup>th</sup>, 2008 (P6-TA [2008] 0012), which is devoted to a EU strategy on the rights of the child.

Despite the previously mentioned differences, there is a common agreement on the need to give rise to a unitary set of guarantees for all children, independently of their nationality. The main purpose of the EU strategy consists of promoting policies that can help families to cope with their problems, thanks to more efficient social measures, and more precisely to ensure better and more effective services for youth care. Naturally, in cases of intercountry adoption, this implies a reinforcement of international co-operation. Greatest attention must be addressed towards the so-called “sending countries”, the states of origin of adopted children, in order to actually respect the principle of subsidiarity. Thus, notwithstanding the need to consider the legal diversities between “Convention” and “non-Convention adoptions”, based on the fact that the HCIA is or not in force, it is essential arriving at the highest level of protection in all cases of adoption of foreign children.

Also “European case-law”, namely the ECtHR decisions, determined the emergence of this welcome European vision. However, the role of the ECtHR can be limited to a formal verification of the appropriateness of domestic statutory provisions, judicial decisions, practices and measures followed by social services and other public and private actors. In any case, their intervention, in the various phases of the procedure, comprehensive of the initial stages, aimed at establishing the suitability of would-be adoptive parents and the existence of the requirements for declaring a child adoptable is regulated differently, in each of the national legal systems. Moreover, it is worth to mention that the degree of (social and judicial) protection of the adoptees’ position varies according not only to black letter rules, contained in legislative provisions, but also to the practices that are actually followed. Thus, the idea of conferring onto the ECtHR the task of a final supranational arbiter is a matter of debate. It is true that its decisions may not only be of a persuasive nature, with regard to member states not involved in the individual proceedings, but that they may also be seen as capable of exercising an authoritative strength. However, there are good reasons for serious doubts about the possibility of giving rise to a more uniform system should this solution be adopted. This solution is, in fact, unlikely to be approved because of the inherent incompatibility with the current function of the ECtHR and the unlikelihood of an agreement to modify it, given the breadth of the consequences would stem from such a change.

The long list of decisions taken by the ECtHR reinforces the idea that, when violations are committed by CoE member states, the **Strasbourg Court** can only point them towards a path that is respectful of the ECHR. The fact that sometimes some various dissenting opinions have paved the way for further developments that were contrary to majority vision intensifies the **doubts about placing excessive trust in its leading role**. In brief, to use a metaphorical

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<sup>18</sup> See Part I, Chapter II, para. 3.

<sup>19</sup> See Part II, Chapter I, para. 14.

<sup>20</sup> See Part II, Chapter I, para. 13.

<sup>21</sup> See Part I, Chapter I, paras. 4 and 5.

<sup>22</sup> See Part I, Chapter II, paras. 3, 3.1 and 3.3.

<sup>23</sup> See Part I, Chapter II, para. 3.

image, the duties and powers of a group of “external, nominated referees” cannot be the same of those of an “internal team of elected coaches”. However, the solution consisting in creating a **special Session of the ECtHR** – proposed by the EU Parliament in the above-mentioned Resolution of January 16<sup>th</sup>, 2008 (P6-TA [2008] 0012) – can ensure a better coordination between the state and the European levels.

Indeed, the expectations of a **more intense participation in the interplay with domestic legislators** is not unrealistic and perhaps this would be the only way of avoiding dangerous situations, in which children may be exposed to the risk of abuses. Clearly, because of the internal and inevitable limitations already mentioned with regard to the competence of the “European judges”, the efforts to promote coordinated interstate activity of this kind have to be regarded as fundamental. Equally, this activity should hopefully become more deeply embedded into the **EU framework**, in which it already has a decisive position, as stated by art.6 (2) of the EU Treaty.



## FINAL RECOMMENDATIONS

In order to help the achievement of the goals mentioned and guide the action of the main actors of the adoption process, some Recommendations needs now to be put in evidence.

Due to the important role they play in the process of intercountry adoption, in particular as intermediaries between adoptive families and institutions, **a first set of recommendations is directed to representative of civil society:**

- (a) Intercountry adoption must always be viewed as aimed at ensuring a proper family environment to all children without a family in their country of origin, and for whom no adequate solutions were found there (*i.e.*, family foster placement or domestic adoption), despite the greatest efforts in this sense;
- (b) in the interplay between the various actors involved (*i.e.*, would-be adoptive parents, private and/or accredited bodies, NGOs, social services and other public authorities, judges) a proper attention must always be reserved to the actual way in which the best interests of the child are respected, in the individual situations, thanks to constant and effective co-operation among all these subjects in the different stages of the procedure;
- (c) the careful scrutiny that must be made before deciding that prospective adopters are suitable, by taking into account all the relevant factors (*e.g.*, physical and physical conditions, the style of life and the habits, the social and economic environment, etc.), must be considered as a fundamental requirement and the utmost collaboration shall be ensured during these preliminary enquiries, which should not be intended as undue interferences with private life but necessary means to protect the adopted child;
- (d) specific measures must be addressed to children with special needs, to better cope with their problems;
- (e) in the post-adoption stage a proper consideration shall be given to the adopters' needs to receive the required help, thanks to the possibility of consulting experts and receiving the necessary counselling and sustain;
- (f) due respect must be given to the social and cultural background of the adopted child, in the sense that his/her knowledge of his/her origins must be considered an important aspect of his/her life, which shall not be concealed, but viewed as a fundamental resource, in light of the current conception of parenthood, based on the reciprocal understanding and the appreciation of diversities;
- (g) the adoptive nature of the relationship of kinship must be revealed to the child in the proper way, while respecting his/her psychological needs and taking into account his/her age, degree of maturity, past experiences and any other factors that can be important for his/her well-being;
- (h) no action shall be carried out in order to favour, albeit involuntarily, any kind of gain or benefit from adoption;
- (i) specific documentation must be collected with a view to verifying if unjustified costs were sustained and in order to prevent that similar behaviour occur in the future too;
- (j) stronger efforts and more intense collaboration shall be ensured in order to help public authorities to discover situations in which abuses were committed, not only by denouncing facts already happened, but also by bearing witness or giving documentary evidences in advance, in order to make prompt enquiries on attempted crimes and/or unlawful practices;
- (k) special action must be promoted to develop more accurate systems to collect and exchange information and experiences, through the media and the new methods of communications (*i.e.*, the press and TV programmes and also thanks to the Internet – with dialogues in web *fora*, news sent via mailing lists, etc.), in order to heighten the level of public knowledge and awareness of the phenomenon in question;

- (l) the role of socio-legal studies in the ambit of child law at an academic level must be encouraged, with a view to creating a structured European network of experts of the various different areas concerned working in different, but interrelated branches (*i.e.*, sociology, psychology, statistic, anthropology, and law, which, despite of the different sectors involved – public and private international law, EC law, civil and criminal procedure, private law, penal law – can be considered in a unitary manner).
- (m) a higher degree of collaboration shall be promoted, in order to render contacts between practicing lawyers, experts of the social services, judges of the Children Tribunals and/or of Family Sessions of ordinary courts more constant and effective;
- (n) more accurate level of completeness and precision in the statistical surveys must be ensured, in order to collect not only quantitative, but also qualitative reliable data;
- (o) the best practices must receive due attention and be used as examples in order to reach all the previously mentioned goals.

Concerning the role of policy makers, in this regard it is decisive. Both national legislatures and EU institutions have precise responsibilities.

National policy-makers are responsible for the planning, implementation and monitoring of children welfare policies, that have a great influence on adoption practices and procedures. Keeping as fundamental point that children welfare policies should be, first of all, consistent with the principle of the child best interest, some recommendation aim at providing useful guidance for national and local policy makers, regarding the respective sphere of competences.

Regarding the sensitive issue of institutionalised children:

- every effort should be made to promote family reunification. This involves the responsibility to support birth parents in rearing their children in an adequate way, through economic assistance, social work and other measures;
- foster care should be made available for non adoptable children in residential care. Family-like care and stable parent/child relationships, in fact, are to be preferred to residential care, especially when transitions are repeated. This has been proved by various researches on attachment..

Regarding the observance and application of the subsidiarity principle:

- a set of guidelines on the enactment of this principle is now lacking both at national and supranational level. A good-practice parameter, collecting national experiences and taking into account a balance between subsidiarity and the best interest of the child will be helpful;
- in particular, States should take initiative to organise their own local foster care and adoption programs, for exemple by providing some good-practice manuals or training to local social welfare services. This should be done also thanks to the support and supervision provided by EU institutions;
- at the same time, programmes to support caregivers in institutions should be developed and implemented, to ensure a better care for those children for those a family cannot be found.

Regarding preparation services and matching:

- considering the positive results achieved, preparation services – both for prospective adoptive parent and adopted children – should be recommended in adoption practice everywhere. Psychologists, furthermore, should be in charge of the matching process, to guarantee the best interest of the child.

Regarding post-adoption services:

- national policy makers responsible of adoption policies should pay more attention to the implementation of post-adoption services, especially in States where they are still non in place.



Regarding children with special needs:

- special – needs adoption deserves more attention, now and in perspective, given the actual tendency of the countries of origin to send them for intercountry adoption. Efforts need also to be done to improve awareness and knowledge of the question.

To conclude, with reference to the collection of data:

- all States should keep accurate records of children sent or received for intercountry adoption, with more detail than it has been found in most returns.

Finally, **the following Recommendations**, based on the main findings emerged through the comparative analysis, **can be useful indications for EU level policy-makers**, to promote a more coordinated strategy. The basic assumption – it is worth remembering it again – is that there is no need for a “European adoption”, strictly speaking, but for a Europeanization of adoption law, in a broad sense.

- The EU should take steps to encourage all states to keep accurate records of children sent or received and should support current efforts by the Hague Convention to develop a standardised pattern of returns from all contracting states.** Despite the awareness of the common problems to solve, in a wider, “global” perspective, an important role can be played by the EU institutions in promoting a vision centred on the values shared within its area.
- Regarding the **application of subsidiarity principle**, the EU should take steps to promote the formulation of a set of guiding rules or detailed guidelines to be used by States to enact in a more consistent way the principle.
- It is not a matter of codifying new and unitary legal rules, but of **verifying if and to what extent an area of private law, in which fundamental rights are often at stake, can be influenced by common EU policies**<sup>1</sup>.
- In this perspective, it would appear worth **favouring an already accepted trend**, albeit one with room for further improvement, **based on coordinated and wide-ranging plans geared to the following precise objectives**:
  - ratifications of international conventions;
  - enactments of new pieces of national **legislations**;
  - creation of **monitoring mechanisms**;
  - **supervision** of governmental initiatives
  - allocation of **resources**;
  - promotion of **policies** and activities aimed at raising the “*awareness of public opinion on child protection issues*”<sup>2</sup>.
- International collaboration together with a strong pressure to promote a wide ratification of the HCIA as well as of the 2008 CoEAdC** can ensure a more intense protection for children in need and a real respect of the subsidiarity principle.
- The absence of EU legislative competence** is unquestionably an important formal factor, but it is clearly not the only one that creates obstacles in this perspective. For this reason and for all the others mentioned above, a “**common frame of reference**” **could prove to be a satisfactory and widely acceptable compromise.**

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<sup>1</sup> See Part I, Chapter II, paras 2.5 and 2.6.

<sup>2</sup> E.g., like those synthesized in the *Handbook for parliamentarians* [n. 7], devoted to “*Child protection*”, issued by UNICEF and the Inter-Parliamentary Union in 2004, p. 21-35.

- (g) The most appropriate primary instrument for achieving this would appear to be a specific **EU Parliament Resolution**, expressly devoted to these issues, geared to **setting up a European working group of experts (a Children’s Rights Commission)**, deeply aware of the different legal and social problems that need to be solved. This group should be **responsible for drawing up a document that**, first of all, **systematizes current rules governing aspects of private international law** (*i.e.*, the criteria to determine the “applicable law”, judicial competence, the recognition and the enforcement of foreign civil decisions) **in the light of the important steps already taken** and the positive results already obtained so far, thanks to the large number of HICA ratifications within the EU territory. **Judicial experience** (at national and at European level – ECtHR –) must be taken into account, along with **academic proposals**.

EC harmonization of private international law should proceed in tandem with plans aimed at stricter coordination with international instruments, given the frequent incidence, in the field of adoption law, of relationships involving third countries. This is, in brief, the essence of a two-tier method that would avoid potential problems caused by direct unification or harmonization projects, based on the enactment of Regulations or Directives respectively. On the one hand, the latter, paradoxically, sometimes led to greater disharmony, especially when no uniformity in the implementation phase can be foreseen, particularly when they are aimed at ensuring coordination with international instruments applicable outside EU confines. The former, on the other hand, must necessarily be based on a *minimum* consensus, not readily achievable given the diversity of national legal rules regulating core aspects of adoption law, with the consequence that their eventual scope could prove to be extremely limited and that wide-ranging solutions, not accepted by all member states, will prove impossible.

Experience suggests this somewhat cautious approach to prevent the shortcomings inherent in the different interpretations given to some core provisions of Regulation n. 2201/2003 by state Courts, not to mention those determined by the diversities among the national solutions adopted in implementing the Council Directive 2003/86/EC of 22 September 2003 concerning the family reunions of third-country nationals, nor the sharp contrapositions between the EU Parliament and the ECJ about the contents of some of the provisions of the latter Directive with regard to children’s rights<sup>3</sup>. The social and legal comparison will undoubtedly give a formidable insight to the drive towards a more coordinated framework, thanks to the draft of a set of references apt to restate existing rules and to identify the inviolable principles with which the legislations and practices of all member states should comply

In light of all these considerations some final points – always directed to EU level policy makers – can be emphasized, with a view to proposing a solution that can prove to be effective and legally acceptable.

- (a) **When those involved in the adoption procedure have European citizenship, unitary solutions should be envisaged that will ensure the direct recognition in one EU country of decisions concerning adoptions made in another EU country**, regardless of whether or not the latter has ratified (adhered or acceded to) the HICA, on condition that its principles have been accepted and the best interests of the child have been duly respected and ascertained. This could be achieved without altering the balance between national statutory provisions and conventional rules (established by the **HICA**), when they coexist, as is often the case in almost all EU countries.
- (b) External EU relations should be also taken into account in advance so as to avoid the much-publicized tensions that arose when trying to strike a balance between the basic

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<sup>3</sup> More precisely, the ECJ took a decision, on June 27<sup>th</sup>, 2006, that dismissed a EU Parliament application aimed at the annulment of the final subparagraph of art. 4(1), art. 4(6) and art. 8 of Directive 2003/86/EC.

principles enshrined by the 1980 Hague Convention on civil aspects of international child abduction and the “communitarized” rules in this sector (established by Regulation n.2201/2003). This point was not underestimated by the previously quoted EU Parliament Resolution (P6-TA [2008] 0012). It is not only a matter of thinking about the consequences of the application of EC law on conflicts of jurisdictions to non purely intra-Community situations, but also a question linked with the need to consider that very serious problems can arise if uniform EC conflict-of-laws rules are centred on unitary concepts (i.e., prospective adopters’ “eligibility” or “suitability”, not to mention the notion of “adoptive parent/s”) that are not susceptible of being defined in the same identical way in each national legal system.

- (c) New and autonomous concepts might be created, but if several meanings can be attached to them – as it happened with the concept of “parental responsibility”, the meaning of which vary under the domestic laws of the member states – similar difficulties seem unavoidable. Anyhow, also according to the traditional “jurisdictional approach” the applicable law (*lex fori*) can produce extremely different results, given the variety of legislative provisions and of “adoptive models”, inside and not only outside the EU. Analogous remarks can be extended to conflict-of-laws rule based on the *lex causae*. Given the absence of a high degree of uniformity, a two-tier method, as described before, might give an acceptable and reasonable answer to these thorny questions.
- (d) Free circulation of decisions concerning EU citizens would not be limited. Thus, the expansion of the ambit in which the paramount objective is the pursuit of a common area of freedom, justice and security in the EU would lead to greater reciprocal trust, so that recognition of “European adoption” could be made *ipso iure*. Therefore, adoption decrees issued by competent national Courts or decisions taken by administrative bodies in conformity with each national procedure and rules governing the adopters’ substantial requirements (e.g., in terms of age and civil status) shall be enforceable by operation of law.
- (e) On the contrary, as far as the substantive and procedural aspects of adoption law are concerned, these should continue to be regulated by national statutes, in a manner respectful of the principle of equal treatment: both domestic and intercountry adoptions should be subjected to the same guarantees. The future entry into force of the 2008 revised CoE Convention on adoption will confer an “added European value” to this vision and – in case of numerous ratifications – will greatly extend the “conventional platform” in the field in question.
- (f) In the meantime, the drafting of a document about the “Principles of adoption law in the EU” should promote a greater awareness of the difficulties to overcome and will hopefully give rise to a common, spontaneous movement towards policies more geared to the need to fight against discrimination of any kind, irrespective of the child’s “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” (art. 2 CRC).



## ANNEXES



## ANNEX 1

### SOURCES FOR STATISTICS FOR RECEIVING STATES IN THE EU

Statistics are available on the internet for a number of receiving States but these are often incomplete and seldom include a detailed breakdown by age or gender. In other cases statistics have been obtained from the relevant Central Authorities, EurAdopt statistics and the returns to the Hague Special Commission of September 2006: countries making returns have this indicated in brackets.

#### **AUSTRIA**

No national data available

#### **BELGIUM**

Data obtained separately from French and Flemish Communities

Only adoptions through registered agencies are recorded

Total data for last 2 years (since ratification) available on internet [www.just.fgov.be/adoptie/adoptie\\_jaarlijkske\\_statistieken.html](http://www.just.fgov.be/adoptie/adoptie_jaarlijkske_statistieken.html) These figures include adoptions in the German community and independent (non-agency) adoptions

#### **CYPRUS**

See *EURADOPT STATISTICS – latest volume = 2007*

No adoptions from Cyprus recorded for 2006 or 2007

#### **DENMARK**

Statistik.adoption.dk, 'Modtagne born 2000-2005 fordelt pa lande,'

[http://statistik.adoption.dk/udland/fordelt\\_paa\\_land\\_5aar.htm](http://statistik.adoption.dk/udland/fordelt_paa_land_5aar.htm)

see also *EURADOPT STATISTICS*.

#### **FINLAND** (Hague 2001-2003)

Finnish Board of Inter-country Adoption Affairs Annual Report 2005

<http://www.stm.fi/Resource.phx/publishing/store/2006/11/h11166517871736/passthru.pdf>

#### **FRANCE** (Hague 2004)

Annual Statistics are published by Mission de l'Adoption Internationale at

[http://www.diplomatie.gouv.fr/fr/les-francais-etranger\\_1296/conseils-aux-familles\\_3104/adoption-internationale\\_2605/statistiques\\_5424/statistiques-adoption-internationale\\_14683.html](http://www.diplomatie.gouv.fr/fr/les-francais-etranger_1296/conseils-aux-familles_3104/adoption-internationale_2605/statistiques_5424/statistiques-adoption-internationale_14683.html)

French version of 2007 Stats available on this site

Statistics for 2006 are available directly at:

[http://www.diplomatie.gouv.fr/fr/IMG/pdf/Stat\\_Adoption\\_2006.pdf](http://www.diplomatie.gouv.fr/fr/IMG/pdf/Stat_Adoption_2006.pdf)

Also for 2004 and 2005 by replacing date

**GERMANY** (Hague 2004 - numbers different from long-term data below)

Official figures are provided by the Statistisches Bundesamt publication  
*Statistiken der Kinder –und Jugendhilfe: Adoptionen*

Table 4 gives breakdown by nationality, sex, age etc.

Selman (2008) lists all non-German children adopted by non-relatives:

*Verwandschafts-verhältnis zu den Adoptiveltern nicht verwandt*. Report from National Expert for ChildONEurope lists only those children brought in for adoption through agencies.

**GREECE**

No data available

**IRELAND** (none to Hague)

The 2006 Annual Report of Adoption Board (An Bord Uchtala), published by the Stationery Office, is available by mail order from Government Publications, Postal Trade Section, 51 Stephens Green, Dublin 2 (Tel 01-647 6834/35/36/37) for 8 Euro

The 2003, 2004 and 2005 Reports are also available on the internet at  
<http://www.adoptionboard.ie/booklets/index.php>

**ITALY** (Hague 2001-2003)

Commissione per le Adozioni Internazionali

2008 Report: *Coppie e bambini nelle adozioni internazionali*

available at <http://www.commissioneadozioni.it/FileServices/Download.aspx?ID=353>

Annual statistics by State of origin in Table 2.6

2008 *Come cambia l'adozione in Italia. Le coppie e i bambini nel monitoraggio della Commissione per le Adozioni internazionali negli anni 2000-2007*

**LUXEMBOURG**

Data from Central Authority – same source used by National Expert

**MALTA**

Data from Central Authority – same source used by National Expert

**NETHERLANDS** (Hague 2001-3)

Centraal Bureau voor de Statistiek, 'Adopties naar land van herkomst en geslacht,' Statistics by State of origin 1995 - 2007 available at:

<http://statline.cbs.nl/StatWeb/Table.asp?>

STB=G1&LA=nl&DM=SLNL&PA=37722&D1=a&D2=a&D3=a&D4=a&HDR=T,G2&LYR=G3:10

More detailed data available as Excel file from Ministry of Justice:

**PORTUGAL**

Statistics have been provided to both the Hague Special Commission (2001-3) and ChildONEurope (2003-7)



## **SLOVENIA**

Statistics have been provided to ChildONEurope (2003-7)  
But no annual totals.

## **SPAIN**

Instituto Nacional de Estadística, 'Adopciones Adopciones internacionales (1) por países, tipo de dato y años,'  
Data for 1997 – 2004 available from *Ministero de Trabaio y Asuntos Sociales* at:  
<http://www.mtas.es/SGAS/FamiliaInfanc/infancia/Adopcion/Adopcion.pdf>  
2001-2005 by State of origin available as Excel Spread Sheet from Central Authority

## **Catalonia**

<http://www.idescat.net/dequavi/?TC=444&V0=3&V1=9&VA=2004&VOK=Confirmar>

## **SWEDEN** (Hague 2001-2004)

Swedish Intercountry Adoptions Authority (MIA) - formerly National Board for Intercountry Adoption (NIA - 1981- 2004)  
Adoptions by country of origin 2001-2006: <http://www.mia.eu/english/statistic.pdf>  
Annual Adoptions - 1969- 2006 by region of birth: <http://mia.eu/english/totals.pdf>  
2007 Data by country of origin - available <http://www.mia.eu/statistik/grund2007.pdf>

## **UNITED KINGDOM (Scotland only on Hague web-site)**

Department for Education and Skills, 'Adoption Statistics,'  
Applications received by Country requested are available from 2000 to date at:  
<http://www.dfes.gov.uk/intercountryadoption/general.shtml>  
Latest figures go up to December 2007  
Counts of less than 5 are not shown

## **EURADOPT STATISTICS**

These are produced annually on the basis of statistical returns from member agencies and are available from EurAdopt but not currently available on their web-site. The annual volume has details of the number of children received from each State of origin by country, agency and with breakdown by age, sex and (since 2006) how many children adopted in each case. The adoptions are only for non-relative adoptions and do not include either relative or step-parent adoptions

The statistics are of a good quality and collected in the same way by each agency. In the absence of easily available data, I have used the EurAdopt data for Cyprus and Iceland although this may underestimate numbers as independent adoptions are not included.

No data for Cyprus in 2006 or 2007.

EurAdopt Statistics are preferred for Norway, but differ from those presented by central authority. I have also used the 2005 and 2006 data for the one Austrian agency in EurAdopt – but F4Y did not make a return for 2007

**HAGUE CONFERENCE: Statistics provided for Special Commission**

14 receiving States and 18 States of origin made submissions of varying quality - mostly for the years 2001-3

These are available at

[www.hcch.net/index\\_en.php?act=conventions.publications&dtid=32&cid=69](http://www.hcch.net/index_en.php?act=conventions.publications&dtid=32&cid=69)

or go to Intercountry adoption section of the Hague web-site

[www.hcch.net/index\\_en.php?act=text.display&tid=45](http://www.hcch.net/index_en.php?act=text.display&tid=45)

and click on Statistics

**ANNEX 2**  
**EUROPEAN COURT OF HUMAN RIGHTS – CASE-LAW**

Abdulaziz, Cabales and Balkandali v. The United Kingdom (1985) *Application no. 9214/80; 9473/81; 9474/81*

Airey v. Ireland (1979) *Application no. 6289/73*

B. v. France (1992) *Application no. 13343/87*

B. and L. v. the United Kingdom (2005) *Application no. 36536/02*

Boyle v. the United Kingdom (1994) *15/1993/410/489*

Bronda v. Italy (1998) *40/1997/824/1030*

Buchberger v. Austria (2001) *Application no. 32899/96*

C. v. the United Kingdom (2007) *Application no. 14858/03*

Chepelev v. Russia (2007) *Application no. 58077/00*

Covezzi et Morselli c. Italie (2003) *Requête no 52763/99*

De Haes and Gijssels v. Belgium (1996) *7/1996/626/809*

E.B. v. France (2008) *Application no. 43546/02*

E.O. and V.P. v. Slovakia (2004) *Applications nos. 56193/00 and 57581/00*

E.P. v. Italy (1999) *Application no. 31127/96*

Emonet and Others v. Switzerland (2007) *Application no.39051/03*

Eriksson v. Sweden (1989) *11/1988/144/209*

Evans v. the United Kingdom (2007) *Application no. 6339/05*

Fretté v. France (2002) *Application no. 36515/97*

G.B. v. France (2001) *Application no. 44069/98*

Gaskin v. The United Kingdom (1989) *Application no. 10454/83*

Görgülü v. Germany (2004) *Application no. 74969/01*

H v. the United Kingdom (1987) *Application no. 9580/81*

Hokkanen v. Finland (1994) *Application no. 19823/92*

Hunt v. Ukraine (2006) *Application no. 31111/04*

Ignaccolo Zenide v. Romania(2000) *Application no. 31679/96*

Johansen v. Norway, 7 agosto 1996 *Reports 1996-III*

Johnston and Others v. Ireland (1986) *Application no. 9697/82*

Jucius and Juciuvienė v. Lithuania (2008) *Application no. 14414/03*

K. and T. v. Finland (2001) *Application no. 25702/94*

KA v. Finland (gennaio 2003) *Application no. 27751/95*

Kearns v. France (2008) *Application no. 35991/04*

Keegan v. Ireland (1994) *Application no. 16969/90*

Kutzner v. Germany (2002) *Application no. 46544/99*

L v. Finland.(2000) *Application no. 25651/94*

Lebbink v. the Netherlands (2004) *Application no. 45582/99*

Marcks c. Belgio, 13 giugno 1979 *Serie A n. 31*

McMichael v. the United Kingdom (1995) *Application no. 16424/90*

Mizzi v.Malta( 2006) *Application no. 26111/02*

Nanning v. Germany (2007) *Application no. 39741/02*

Nuutinen v. Finland (2000) *Application no. 32842/96*

O. v. The United Kingdom (1987) *Application no. 9276/81*

Odièvre v. France(2003) *Application no. 42326/98*

Olsson c. Svezia (no. 1), 24 marzo 1988 *Serie A, n° 130*

Olsson v. Sweden (no. 2) (1992) *74/1991/326/398*

Osman v. United Kingdom (1998) *Reports 1998-VIII*

P., C. and S. v. the United Kingdom (2002) *Application no. 56547/00*  
Phinikaridou v. Cyprus (2007) *Application no. 23890/02*  
Pini and Others v. Romania (2004) *Applications nos. 78028/01 and 78030/01*  
Pla and Puncernau v. Andorra (2004) *Application no. 69498/01*  
R v. United Kingdom (1988) 2 *FLR 445*  
Salgueiro da Silva Mouta v. Portugal (1999) *Application no. 33290/96*  
Scozzari and Giunta v. Italy 2000 *Applications nos. 39221/98 and 41963/98*  
Shofman v. Russia (2005) *Application no. 74826/01*  
Siemianowski v. Poland (2005) *Application no. 45972/99*  
Söderbäck v. Sweden (1998) *113/1997/897/1109*  
Stubbings and Others v. the United Kingdom 36-37/1995/542-543/628-629  
T. v. the United Kingdom (1999) *Application no. 24724/94*  
T.P. and K.M. v. the United Kingdom (2001) *Application no. 28945/95*  
Tomić v. Serbia (2007) *Application no. 25959/06*  
V. v. the United Kingdom (1999) *Application no. 24888/94*  
V.A.M. v. Serbia (2007) *Application no. 39177/05*  
W v. UK *Application (1988) n. 9749/82*  
Wagner et J.M.W.L. c. Luxembourg (2007) *Requête no 76240/01*  
Wallová et Walla c. République tchèque (2006) *Requête no 23848/04*  
X v. Croatia (2008) *Application no. 11223/04*  
X and Y v. Netherlands (1985) *Application no. 8978/80*  
Willis v. United Kingdom (2002) *Application no. 36042/97*  
Włoch v. Poland (2008) *Application no. 27785/95*  
Z and Others v. the United Kingdom (2001) *Application no. 29392/95*

### ANNEX 3

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## ANNEX 4

### WEB SITES - FORUMS

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[child-abuse.com/childhouse/childrens\\_rights/dci\\_ilo5.html](http://child-abuse.com/childhouse/childrens_rights/dci_ilo5.html)  
[childhouse.uio.no](http://childhouse.uio.no)  
[childhouse.uio.no](http://childhouse.uio.no)  
[conferenceofngos.org](http://conferenceofngos.org)  
[faculty.uccb.ns.ca/childrensrights](http://faculty.uccb.ns.ca/childrensrights)  
[http://child-abuse.com/childhouse/childrens\\_rights/dci\\_ilo4.html](http://child-abuse.com/childhouse/childrens_rights/dci_ilo4.html)  
<http://conventions.coe.int/Treaty/en/Treaties/Word/058.doc>  
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<http://conventions.coe.int/Treaty/en/Treaties/Word/160.doc>  
[http://www.coe.int/t/transversalprojects/children/caselaw/CaseLawChild\\_en.asp](http://www.coe.int/t/transversalprojects/children/caselaw/CaseLawChild_en.asp)  
[http://www.coe.int/t/transversalprojects/children/keyLegalTexts/Default\\_en.asp](http://www.coe.int/t/transversalprojects/children/keyLegalTexts/Default_en.asp)  
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<http://www.unicef.org>  
[humanrights.britishcouncil.org/](http://humanrights.britishcouncil.org/)  
[notes1.regione.vda.it](http://notes1.regione.vda.it)  
[onventions.coe.int/Treaty/en/Treaties/Word/105.doc](http://onventions.coe.int/Treaty/en/Treaties/Word/105.doc)  
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[www.abio.org](http://www.abio.org)  
[www.abo.fi/instut/imr/](http://www.abo.fi/instut/imr/)  
[www.adopting.org](http://www.adopting.org)  
[www.aibi.it](http://www.aibi.it)  
[www.alisei.org/infanzia](http://www.alisei.org/infanzia)  
[www.amnesty.it/minori](http://www.amnesty.it/minori)  
[www.amnesty.org](http://www.amnesty.org)  
[www.anfaa.it](http://www.anfaa.it)  
[www.avsi.org/avsi/it](http://www.avsi.org/avsi/it)  
[www.azzurro.it](http://www.azzurro.it)  
[www.baaf.org.uk/info/lpp/law/index.shtml](http://www.baaf.org.uk/info/lpp/law/index.shtml)  
[www.barnardos.ie/](http://www.barnardos.ie/)  
[www.bernardvanleer.org](http://www.bernardvanleer.org)  
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[www.childhopeuk.org](http://www.childhopeuk.org)  
[www.childhopeusa.org](http://www.childhopeusa.org)  
[www.childoneurope.org](http://www.childoneurope.org)  
[www.childoneurope.org](http://www.childoneurope.org)  
[www.child-soldiers.org](http://www.child-soldiers.org)  
[www.childwatch.uio.no](http://www.childwatch.uio.no)  
[www.childwelfare.com](http://www.childwelfare.com)  
[www.childwelfare.com](http://www.childwelfare.com)  
[www.ciai.it](http://www.ciai.it)  
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[www.comune.genova.it](http://www.comune.genova.it)  
[www.comune.roma.it](http://www.comune.roma.it)  
[www.crin.org](http://www.crin.org)  
[www.defence-for-children.org](http://www.defence-for-children.org)  
[www.democraziainerba.it](http://www.democraziainerba.it)  
[www.derechos.org](http://www.derechos.org)  
[www.droitsenfant.com](http://www.droitsenfant.com)  
[www.ecpat.it](http://www.ecpat.it)  
[www.essex.ac.uk/armedcon](http://www.essex.ac.uk/armedcon)  
[www.euro.who.int/ecehrome](http://www.euro.who.int/ecehrome)  
[www.euro.who.int/ecehrome](http://www.euro.who.int/ecehrome)  
[www.europa.eu.int](http://www.europa.eu.int)  
[www.europeanchildrensnetwork.org](http://www.europeanchildrensnetwork.org)  
[www.famiglia.regione.lombardia.it](http://www.famiglia.regione.lombardia.it)  
[www.gmfc.org](http://www.gmfc.org)  
[www.hcch.net](http://www.hcch.net)  
[www.hri.ca/welcome.asp](http://www.hri.ca/welcome.asp)  
[www.icrc.org](http://www.icrc.org)  
[www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chir.htm](http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chir.htm)  
[www.infanzia-adolescenza.marche.it](http://www.infanzia-adolescenza.marche.it)  
[www.informagiovani-italia.com/](http://www.informagiovani-italia.com/)  
[www.mecaforpeace.org](http://www.mecaforpeace.org)  
[www.minori.it](http://www.minori.it)  
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[www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm](http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm)  
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[www.unhchr.ch/html/menu3/b/h\\_comp37.htm](http://www.unhchr.ch/html/menu3/b/h_comp37.htm)  
[www.unhchr.ch/html/menu3/b/h\\_comp47.htm](http://www.unhchr.ch/html/menu3/b/h_comp47.htm)  
[www.unhchr.ch/html/menu3/b/h\\_comp48.htm](http://www.unhchr.ch/html/menu3/b/h_comp48.htm)  
[www.unicef.it](http://www.unicef.it)  
[www.unicef-icdc.org](http://www.unicef-icdc.org)  
[www.webcom.com/kmc/adoption/law/un/un-ica.html](http://www.webcom.com/kmc/adoption/law/un/un-ica.html)  
[www1.umn.edu/humanrts/africa/afchild.htm](http://www1.umn.edu/humanrts/africa/afchild.htm)  
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**ANNEX 5**  
**SYNTHETIC COMPARATIVE TABLES OF SPECIFIC ASPECTS OF ADOPTION IN EUROPEAN**  
**COUNTRIES – PART II, CHAPTER I**

**1. Age requirements**

**1.1 - Countries with no specific age requirements**

Country	Main characteristics
Sweden	
United Kingdom	
Germany	Except minimum age according to article 1343 BGB there are no legally fixed criteria in German adoption law. There are however some aspects as the ones listed in article 15 of the Hague convention that seem to be considered on a regular basis. Moreover the Working Committee of the Federal State Central Youth Office has published recommendations regarding the pre-requisites relating to prospective adoptive parents. Discussed criteria encompass personality, age, health, life satisfaction, parenting beliefs, living conditions and economic situation, planned care arrangement, social support and criminal record.
Poland	
Hungary	Despite the absence of rigid limits, age is one of the aspects considered before taking the decision to declare the prospective adopter/s' suitability
Czech Republic	Notwithstanding the lack of precise limitations, an appropriate age difference must be maintained between the adopter and the adoptee and the age gap should also correspond to the natural age difference between parents and children.
Portugal	

## 1.2 - Countries with minimum age limits

Country	Main characteristics
Cyprus	At least one of the adopters must be older than 25 years. Moreover, the law in force in Cyprus provides also that both the age of the adopter and of the adopted child have to be taken into consideration, but the restrictions in relation to the age difference do not apply where the adoption regards the child of the wife of the applicant or when one of the applicants has completed the 21st year of his age and is a relative of the adopted.
Malta	Art. 115, I of the Civil code states that: "An adoption decree shall not be made unless the applicant or, in the case of a joint adoption, one of the applicants: (a) has attained the age of thirty years but has not attained the age of sixty years and is at least twenty-one years older than the person to be adopted; or (b) is the mother or the father of the person to be adopted and has attained majority". Moreover, the same article contains other limitations. Indeed, according to art. 115, II of the Civil code, an adoption decree can not be made in respect of a person "(a) [...] who has attained the age of eighteen years except in favour of a sole applicant who is the mother or the father of the person to be adopted or (b) [...] of a female in favour of a sole applicant who is a male, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption decree; (c) [...] of a tutor in respect of the person who is or was under his tutorship, except after having rendered an account of his administration or given an adequate guarantee of the rendering of such account".
Ireland	In cases of non relative adoptions, both the members of the couple must be at least 21 years old. If the child is adopted by a married couple and one of the spouses is the child's parent or a relative, the minimum age limit of 21 years must be attained by one of the adopters only.
Finland	The adopter must have attained the age of 25 years. Anyhow, adoption may be granted if the adopter has attained the age of 18 years and the adoptee is either a child or his/her spouse or his/her own child, who has previously been adopted by someone else or if there are other exceptional grounds for the adoption.
Luxembourg	According to art. 344 of the Act of June 13 <sup>th</sup> , 1989, a minimum age of 25 years is required to adopt a child. However, in cases of adoption by a married couple, one of the spouses must have attained the age of 25 and the other the age of 21. No age limits are provided for in cases of step-parent adoptions. As far as the minimum age difference is concerned, the adopter must be at least 15 years older than the adopted child. If the latter is the spouse's child, the difference is inferior: it is only 10 years (art. 346).
France	Both married couples and single persons can adopt a child, on condition that they have attained the age of 28.
Belgium	The adopter must have attained 25 years of age.
Austria	The adoptive father must have attained the 30th year and the adoptive mother the 28th year (art. 180 of the Civil Code). However, in cases of joint adoption by spouses or if the adopted child is a child of the adopter's spouse, it is possible to derogate to these age limits if there is already a relationship between the adopter and the adoptee, which is corresponding to a parental relationship
Spain	Adoptive parent/s' age must be over 25 years of age.
Estonia	Prospective adopters must be at least 25 years old.
Romania	Only a minimum age requirement is provided by the law. The adopter/s must have attained the age of 18 years, no maximum age limit is required.
Lithuania	The age requirements for prospective adoptive parents, which are similar for domestic and intercountry adoption, concerning age establish a minimum and a maximum limit: 18 and 50 years, respectively. However, in exceptional cases the court may allow an older person to adopt. This can happen if the best interests of the child requires it, while taking into account the specific circumstances of the case.
Latvia	Prospective adopters must be at least twenty five years old and at least eighteen years older than the child. These are common requirements for all prospective adoptive parents (identical to those for domestic and intercountry adoption). Anyhow, both the limits concerning the prospective adopter's minimum age and that referred to the minimum age difference may be derogated if the prospective adopter adopts his/her spouse's the child. In this case the prospective adopter still needs to be at least twenty-one years old and the age difference between the adopter and the adopted child cannot be less than sixteen years. Moreover, exceptions can also be made to the eighteen year minimum difference also in cases of adoption of several children who are siblings, but also in this case the age difference between the adopter/s and the child cannot be less than sixteen years.

### 1.3 - Countries with maximum age limits

Country	Main characteristics
The Netherlands	Prospective adopters can not be older than 41 years at the moment in which the adoption procedure starts.
Malta	See table 1.2.
Greece	According to domestic legislation, the prospective adopters can not be older than 60 years and the age difference between the adopter and the adoptee must be at least 18 years and not above 50 years. However, in cases of adoption of the spouse's child and in any other case in which there is an important reason for allowing an exception, the Court may grant the adoption if the difference is lower, but never less than 15 years.
Denmark	Adoptive parents who are above 40 years of age can be allowed to adopt a child on condition that he/she is at least one year old and not over three years of age.
Lithuania	See table 1.2.
Slovakia	Prospective adopters can not be older than 50 years
Slovenia	Adopters' age should be proportionate to the adopted child's age. Anyhow, according to the Marriage and Family Relation Act, a minimum age limit has to be respected. Thus, the adoptive parents has to be at least 18 years older than the adoptee. Some exceptions are allowed, but in specific cases only.

### 1.4 Countries with minimum age difference

Country	Main characteristics
Greece	See table 1.3
Luxembourg	See table 1.2
France	The age difference between the adopter/s and the adopted child can not be less than 15 years. Anyhow, in case of adoption of the spouse' child the minimum age difference is lower (i.e., 10 years). The judge can grant the adoption also if there is a lower age difference, in particular cases.
Belgium	The minimum age difference between the adopter and the adopted child is 15 years.
Denmark	There can be a maximum age difference of 40 years, between the adopter/s and the adopted child, at the moment of the application.
Austria	Both adopters must be at least eighteen years older than the adopted child. Anyhow, if there is already a relationship between the would-be adoptive parents and the child, a derogation is admissible.
Italy	According to art. 6, 3 of the Act no. 184/1983, as amended by Act no. 149/2001, the age difference between the adopters and the adopted child must be at least of 18 years and no more than 45 years. These requirements can be derogated if the Children's Tribunal ascertains that the decision not to allow the adoption of the child could cause a serious harm to him/her, which could not be otherwise avoided (art. 6, 5). Moreover, adoption can still be granted if the maximum age difference limit is not complied with, but if one of the adopters only has an age that is above this limit and on condition that the derogation to the maximum difference of age (45 years) is not above 10 years. A derogation is possible also in the cases of (biological or adoptive) parents who have at least one child who is not yet fully of age or if the child who is adopted is a sibling of a child already adopted by the same couple (art. 6, 6).
Spain	One of the adopters must be, at least, 14 years older than the adopted child.
Latvia	

### 1.5 Countries with maximum age difference

Country	Main characteristics
The Netherlands	In the case of adoption by a couple, the age difference is 40 years. In cases of sibling adoption or adoption of children with special needs, an exception can be made to the 40 year difference. Furthermore, in cases of adopters aged between 42 and 46 years, an exception is allowed and a child who is over two years of age can be adopted. This procedure is a special one and is known as IBO. It was enacted to widen the range of would-be adopters for older children
Malta	See table 1.2
Greece	See table 1.3
Italy	See table 1.4
Bulgaria	There must be an age difference between adopter/s and adoptee at least of fifteen years.

## 2. The adoption proceeding

### 2.1 - Countries characterized by the presence of accredited bodies and/or public authorities

Country	Main characteristics
Poland	There are three accredited centers charged with the task of following intercountry adoption procedures. These “adoption and custody centers” were designated by the Polish Central Authority ( <i>i.e.</i> , the Ministry of Labour and Social Policy since 2000), which delegated some of its obligations to them. They verify the would-be adopters’ suitability to adopt Polish children, and are responsible for intervening in the matching process, for giving assistance in pre-adoption contacts and for drafting a report on the contacts. Applications made in order to adopt a Polish child must go through one of these centres. It is not compulsory, however, to be assisted also by the foreign accredited body.
Romania	Participation of private bodies in the intercountry adoption procedure is forbidden. The Romanian authorities can collaborate, however, with private bodies that operate in the receiving state, on condition that they were accredited in that state and authorized by the Romanian Office for Adoptions too. Anyhow, no foreign private body has requested the Romanian authorities an authorization after the entry into force of the new legislation. In cases of intercountry adoptions made by relatives ( <i>i.e.</i> , when the prospective adopters are the child’s grandparents) the authorized body does not need to intervene. The requests by the persons or families who reside in the territory of a foreign state, which is party to the HCIA, and who want to adopt a child from Romania can be transmitted to the Romanian Office for Adoptions by the central authority or by the accredited bodies in that state. Nobody else, who is not member of one of the above-mentioned three entities, can intervene in the intercountry adoption procedure.
Czech Republic	A very strict procedure is followed by the Central Authority for the Czech republic (established by the Law no. 359/1999). Only the Office for the International Legal Protection of Children is authorized to mediate the adoption of children from the Czech Republic to other countries. Among the competences of the Office there are several advisory activities. The Office, moreover, keeps a register in which adoption applicants’ names are listed, as well as the records of all children suitable for adoption abroad and it conducts also the matching. It informs the applicant of the selection too, by delivering a “ <i>notification of suitability</i> ”, though the competent Central Authority of the receiving country responsible for assessing the Office’s selection. If the applicant is interested in becoming acquainted with the child, the Office makes an appointment for the applicant to visit the institution caring for the child. The applicant is required to spend a period of time with the child of at least 7-14 days. Then, the Office delegates a specialist, who will be present at the moment in which the applicant is acquainted with the child. Experts of the staff from the institution work in cooperation with this Office-appointed specialist to draw up a prompt report on the visit, which is subsequently sent to the Office. Then, the applicant is required to inform the Office whether or not he/she intends to take the proposed child into his/her care in view of future adoption. The Central Authority of the receiving country issues and sends to the Office the consent in compliance with Article 17(c) of the HCIA. Through the central authority of the receiving country, the applicant sends the consent to the central authority of the sending country together with an application for a specific child to be taken into care. The application has to be submitted in Czech or in the foreign-language with Czech translation. Afterwards, the Office starts proceedings in order to place the child in the care of future adopters, issues the consent to the continuation of proceedings and then sends the notification of the commencement of the proceedings to the applicant. The Office has the obligation to decide within 60 days. The guardian, who is the child’s representative in the proceedings, exercises, on behalf of the child, all his/her procedural rights. The decision concerning the child’s adoption, which is delivered directly to the applicants and the guardian, is drafted in Czech, but translated at the applicant’s expenses. There is a brief time limitation, for the latter, in order to make an appeal ( <i>i.e.</i> , a 15 days period) against a negative decision. The appeal does not suspend the procedure. In case the child does not hold a passport by this time, the Office cooperates with the institution and guardian to issue a document necessary to authorize the travel. As soon as the decision on the placement of the child with the future adopters becomes effective, a passport is issued for the child. Then, he will be collected from the institution and transferred to the receiving country. After his/her arrival there, the Office will send the relevant documentation to the foreign competent Central Authority.

Spain

Given its decentralized structure, it has been established, in compliance with art. 6 of the HCIA, that each Autonomous Community is designated as a Central Authority. Indeed, contracting states having autonomous territorial units are free to appoint more than one Central Authority. Furthermore, in Spain there are also the Adoption Bodies or Entities Collaborating in International Adoptions (*ECAIs*), which are regulated by the Intercountry Adoption Act and by the HCIA provisions. The authorities on child protection of each Autonomous Communities organize and collect information about foreign legislation, give the prospective adoptive parents previous necessary information on adoption, receive the adoption applications, issue the applicant's suitability decision, follow up the reports, receive the children, give the approval to the adoption, give accreditation, exercise controls, supervise and draft the *ECAIs* guidelines. The *ECAIs* advise the interested parties about adoption, participate to the adoption procedures both in Spain and abroad, and ensure the fulfilment of post-adoption obligations. In particular, the control carried out by the *ECAIs* is about child protection of each Autonomous Community. For their accreditation, the law requires that they must be non profit organizations, that they shall be inserted into a register, that their main objective consists of child protection, that their activity is supervised by qualified persons. However, in Spain it is not only compulsory to follow *ECAIs* procedures. It is also possible to follow a public procedure. More precisely, the new Act on intercountry adoption, no. 57/2007, contains specific provisions that regulate these aspects, which take into account the different typologies of adoption. Art. 30 of Act no.57/2007 deals with simple or not full adoption legally granted by a foreign authority. In these cases, the new Spanish statute provides that this kind of adoption will produce effects in Spain, as an "*adopción simple*" or "*menos plena*", on condition that it is respectful of the adoptee's national law. Moreover, the new Act establishes that the adoptee's national law will determine the existence and the validity of these adoptions, as well as the conferral of parental responsibility. These simple or not full adoptions shall not be inserted into the Spanish Civil Registry as "adoptions", however, nor they will determine the acquisition of Spanish citizenship. They will be equated to family foster placements. Anyhow, it will be possible to transform them into adoptions regulated by Spanish law (*adopciones plenas*) if they comply with the relative requirements. To this purpose, it will be necessary, in any case, that the competent Spanish authority verify that several elements are present: (a) that the persons, institutions and authorities whose consent was necessary were duly advised and informed about its consequences, about the effects of the child's adoption and, actually, on the termination of the legal relationships between the adoptee and his/her birth family; (b) that their consent was expressed freely, in the legal prescribed way and in written form; (c) that it was not induced by payment of a sum of money or by any other benefit and that it was not revoked; (d) that the mother's consent – if necessary – was manifested after the child's birth; (e) that, while taking into account the child's age and maturity, he/she was duly advised and informed on the effects of adoption and, if required, he /she gave his/her consent; (f) that the child has been heard, taking into consideration his/her age and degree of maturity; (g) that it is ascertained that the child's consent, if necessary, has been given freely.

Malta

After the entry into force of the Adoption Administration Act, on May 1st, 2008, a government Agency has been designated, called Appogg, which has operational responsibility for all the adoption process. Its main purpose consists in consolidating the Central Authority's role as regulator of adoptions in Malta, thanks to the establishment of an accreditation process of adoption agencies by the Central Authority. A new Adoption Board and a Board of Appeal shall be introduced. The HCIA is in force in Malta since February 1st, 2005. The Central Authority (CA) is appointed by the Minister responsible for social policy. This function has been conferred to the Director of the social or family welfare department, now designated as the Department of Social Welfare Standard (DSWS). Until 2008, there was no legal framework for the operation of accredited bodies. Therefore, before the entry into force of this recent reform, it was the DSWS that carried out all the work concerning adoption. The new statute gave the government accredited body (Appogg) the responsibility for acting in this field. Now, the Department has the task of a Central Authority and, in this role it started the accreditation process of this agency. The latter will have operational responsibility for the entire adoption procedure, thanks to several activities (from the assistance to prospective adopters until the post-adoptive support). Strict contacts shall be maintained with the CA as well as with external approved accredited bodies. After the entry into force of the reform, it became compulsory for prospective adopters to go through official channels, while before it was possible to proceed with private adoptions.

Slovenia	Despite the entry into force, on May 1st, 2002, of the HICA, in Slovenia no specific legislation regulate intercountry adoption, to which the same rules concerning domestic adoption are applicable ( <i>i.e.</i> contained in the Marriage and Family Relations Act). Family policy is an area of competence of the Ministry of Labour, Family and Social Affairs (MLFSA). Thus, accredited adoption bodies in Slovenia are the social work centres. They are responsible for the determination of suitable adoptive parents. Their activity is supervised by the Inspection for Social Affairs, an administrative body of the MLFSA. Prospective adopters are compelled to go through the adoption procedure carried out by the public accredited bodies. Only social work centres are entrusted with this task, and are called to take a decision on the basis of the documentation submitted and the investigations made in order to verify the applicants' suitability. They can refuse or approve the request and in both cases a decree shall be emanated by them.
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## 2.2 - Countries characterized by the presence of accredited private bodies

Country	Main characteristics
Portugal	The Portuguese Central Authority (the General Directorate of Welfare and Social Services) is responsible to establish the competence of private social solidarity institutions that can intervene in the adoption procedure as well as to regulate their activity. See art. 18, section d, of the DL no. 115/1998; DL no. 45-A/2000 of March 22nd, 2000 and Notice no. 110/2004 of June 3rd, 2004. For further information, see the NR for Portugal, at pgs. 5 and 6.
Bulgaria	In Bulgaria, only a Non-Profit Corporate Body working in an area of social interest, which has been inserted into the Central Register and has obtained a special permission by the Minister of Justice can carry on activities concerning intercountry adoptions. The activities that accredited intermediary bodies can undertake are comprehensive of several tasks ( <i>e.g.</i> , intermediation between the Ministry of Justice and the prospective adoptive parent[s] regarding the submission of the documents; delivery of information to prospective adoptive parents; case administration and court representation; mediation to establish a contact between the adoptive parent and the child; the transferral of the child; ensuring the return of the child to the State of origin if the decision of the Bulgarian court has not been not recognized in the receiving State and the supervision of the child's condition during that period of time and subsequently). However, accredited intermediary bodies cannot identify children for intercountry adoption purposes or carry out the matching. See the NR for Bulgaria, at p. 4.
Sweden	The Swedish Intercountry Adoptions Authority (called MIA) is the Central Authority for the purposes of the HCIA. Among ist task, there is also the duty to lay down the conditions under which authorization is allowed to accredited bodies. For most applicants, it is compulsory to go through an accredited/authorized organizations. Anyhow, as it is stated by the MIA, this is not a compelling requirement in all situations because, according to Swedish legislation, it is preferable that intercountry adoption is carried out through non-profit organizations. Their presence is not required in cases of adoption by a child's relative or of other special reasons. In Sweden only non-profit association whose main aim consists in the intermediation of intercountry adoption can be authorized. In order to obtain the authorization it is necessary that the association will clearly operate in an expert and judicious manner, without a profit interest, and while following the best interests of the child as foremost guiding principles. Furthermore, a necessary requirement is the existence of a board and of auditors, as well as of rules that can ensure its openness. The association can be authorized to work in foreign country if several conditions are presents. After obtaining the authorization, the association can work in the country for which it was issued on condition that also the competent foreign authorities have granted their permission too. If the association does not fulfil all the above-mentioned condition, the authorization is revoked. The accredited association carries out various activities ( <i>e.g.</i> , concerning the completion of the adoption procedure by the applicants, the agreements to give the adopted child the new citizenship and the notification of both the adoption and of the naturalization order; the drafting of the post-adoption reports about the child's development). See, in this sense, the explanations referred to section 6 of the Swedish Act on intercountry adoption, contained in the MIA web site ( <a href="http://www.mia.eu">http://www.mia.eu</a> ) where further information can be found too.

Finland	<p>The practical aspects of the intercountry adoption procedure are followed by accredited bodies, which are called to give their service to prospective adoptive parents. Indeed, before granting an adoption in Finland or abroad, adopters shall obtain a permission by the Finnish Board of Inter-Country Adoption Affairs (sect. 25 of the Adoption Act). This permission is applied through the accredited body that has given inter-country adoption service to the applicant. The Board may grant the permission for adoption if the applicant fulfils the requirements laid down in the Adoption Act. To this purpose, the prospective adopters have to be habitually resident in Finland and to apply for the adoption of a minor child, who is habitually resident. The obligation to register with an accredited body, in these cases, is applicable not only to Finnish citizens, but also to non nationals. Notwithstanding these provisions, it happens that some would-be adopters of a child living abroad do not use the accredited body. However, independent adoptions are very criticized, because they are much more risky, in respect of those made through accredited bodies, that are compelled to undergo constant supervisions by state authorities. Indeed, accredited bodies are obliged to apply for a permission to cooperate with foreign service providers from the Finnish Board of Inter-Country Adoption Affairs and can cooperate only with those that received the Board's approval.</p>
The Netherlands	<p>In the Netherlands there are six adoption agencies, which have been authorized by the Ministry of Justice to act in the field of intercountry adoption. Each permission has a three year duration. The requirements to obtain the accreditation (indicated by the Adoption Act, 1998) have been already described (See part II, cap. I, para. 4). The accredited agencies are charged with the task of providing several services (<i>e.g.</i>, during the matching phase, or in supporting the prospective adopters' while they are abroad ). Their presence is deemed to be a guarantee to avoid abuses and the risk of trafficking. According to Dutch legislation, a one year period of follow up support is mandatory. Accredited agencies also plan meetings to allow adopters to communicate each others and to have contacts with experts.</p>
Luxembourg	<p>In Luxembourg there are five accredited bodies, whose tasks are defined by the Central Authority, which also controls their activities and their finances. The Central Authority (CA) for Luxembourg is the Ministry of Family and Integration. The CA has the responsibility for acquiring the consent for the adoption procedure and for contacts with the CA of the states of origin of foreign children. The accredited bodies, with the CA, are charged with the duty to inform the prospective parents, to prepare the home studies and all the documents which have to be signed by the CA. The latter is responsible for the research of the adoptee's origins. The Adoption Resource Centre is responsible for the preparation of the prospective parents and for post adoption services. The judicial competence belongs to two Courts. They declare the prospective parents qualified and fit to adopt (only in case of an adoption complying with the HCIA). After that adoption has been granted in the State of origin, the competent authorities recognize the certified adoption by operation of law, on condition that it was granted according to Hague Convention's requirements. The immigration authorities of the Department of Foreign Affairs are responsible for delivering the residence permits (visa) and the citizenship. As far as Hague Convention adoptions are concerned, the transcription of the adoption decisions taken by the authorities of the State of origin is made by the Civil Registry Office of Luxembourg City. It is not mandatory for prospective parents to go through an accredited body, at present, even if the procedure defined by the CA makes it very difficult for them not to go through an accredited body. In all intercountry adoption procedures, the CA and the accredited bodies are responsible for guaranteeing the respect of the fundamental principles of the HCIA: the best interest of the child and the subsidiarity principle. On the contrary, in case an adoption doesn't go through an accredited body, the respect of the subsidiarity principle is not guaranteed. Nonetheless, the Central Authority has expressed its favour for of a procedure where the proof of the subsidiarity principle is compulsory.</p>

Denmark	<p>The Danish adoption agencies are accredited by the Ministry of Justice that is the Central Authority (CA) according to the HCAI. Their activity is supervised by the National Boards of adoptions, which also accept the international cooperation contracts, and have competence in cases of complaints made by the adopters. Regional state Authorities are responsible for processing and approving adoption applications, for preparing the home study and the social reports. The matching of children with special needs is approved by the Regional state Authorities. Currently, there are two accredited non-profit organizations operating in Denmark. Accreditation criteria were already described (See part II, cap. I, para. 4). It is compulsory for the majority of prospective adopters to go through accredited bodies. It is always necessary in cases of intercountry adoptions made with a country already cooperating with a Danish accredited body. The latter has the task of following the formal part of the adoption.</p>
Germany	<p>In Germany non-governmental bodies are competent for intercountry adoption mediation, which are accredited in compliance with arts. 3 and 4 of the Adoption Mediation Act. According to this statute, an organisation must be particularly suited to work in this field. It needs to ensure qualified and specialised staff, adequate work procedures and financial situation. In addition to this, the Regulation on the Accreditation of Adoption Mediation Agencies and Cost lists the documents and information required to obtain the accreditation. These are aspects already considered before. See Part II, Chapter I, para. 4.</p> <p>There are no persons outside public authorities or accredited bodies who can perform the functions of Central Authorities in Germany, under arts. 15 to 21 of the HCAI. Moreover, it is important to remember that it is not compulsory for prospective adoptive parents who want to adopt a child from a foreign country to go through an adoption accredited body, but they can also directly contact their Federal State (<i>Land</i>) Central Adoption Agency. More precisely, in Germany, the Central Authorities, according to art. 6 of the HCAI, are called Federal Central Authorities for foreign adoptions (<i>Bundeszentralstelle für Auslandsadoptionen -BZAA</i>), and are part of the Federal Office for Justice and the Central Adoption Agencies of the Federal State Central Youth Offices. Given that some of the 16 federal states have created joint central adoption agencies, there are only 12 agencies. The BZAA have the duty to collaborate with Central Authorities in other countries on questions regarding the Hague Convention, to coordinate themselves with the federal state central adoption agencies and to collect statistical data. The BZAA, however, do not perform any functions as described under Chapter IV of the HCAI. The federal state central adoption agencies have responsibility in this regard. They however rely on Community youth offices (<i>Jugendämter</i>) for the collection of data about applicants necessary for a report according to art. 15 of the HCAI. The federal state central adoption agencies also decide on the accreditation of non-governmental bodies for international adoption mediation which, according to art. 22 of the HCAI, may perform functions of a central authority and supervise their activities.</p> <hr/>



### 2.3 - Countries characterized by the presence of both private accredited bodies and public bodies and/or authorities

Country	Main characteristics
Estonia	In Estonia county government specialists intervene in the adoption procedure. The Minister of Social Affairs is responsible for agreements concerning intercountry adoptions. According to provisions on social care and welfare the Minister of Social Affairs is also charged with the duty to take care of social welfare and adoption arrangements related to intercountry adoptions and to hold an appropriate register. The Ministry follows all the steps of the bureaucratic procedures. Apart from organizations from other countries, which are legally authorized to intervene in the adoption procedure, in their own country, no other subjects can operate in Estonia. Agreements with these organizations are made to ensure a safer procedure, so to avoid independent adoptions. Collaboration foreign subjects need to exhibit documents that prove their authorization to deal with intercountry adoptions and also the existence of a special permission to collaborate with Estonia, if the law applicable in their state requires it. Anyhow, Estonian internal legislation did not establish any criteria on this matter, nor on adoption bodies. The country relies on The Hague convention's provisions.
Lithuania	Foreign institutions can operate in the Republic of Lithuania, in respect of inter-country adoption, as far as they have been authorized, in compliance with a procedure established by an Order approved by the Minister of Social Security and Labour of the Republic of Lithuania on June 3rd, 2005. The Lithuanian Central Authority is responsible for the accreditation of national bodies and for the authorization of foreign accredited bodies. Prospective adoptive parents who want to adopt a child in the Republic of Lithuania shall submit, through the Central Authority of their state or an accredited body, the necessary documents to the Lithuanian Central Authority.
Slovakia	In Slovakia, the Central Authority is the Centre for the International Legal Protection of Children and Youth. It has been charged with several tasks, previously described (see Part II, Chapter II, para. 3). More complete data are available at: <a href="http://www.cipc.sk">www.cipc.sk</a> . Given that in almost all cases of intercountry adoptions, Slovakia is a country of origin, the main task of the Centre consists in forwarding the documentation ( <i>i.e.</i> , social reports, health reports and video) prepared by Offices of Labour, Social Affairs and Family, to a central body or an accredited competent institution abroad. Cooperation between central authorities to implement the HCIA is a fundamental part of the procedure, which is linked to the specific cooperation with accredited foreign entities in seeking, mediating and preparing future adoptive parents. Therefore, a collaboration between public authorities and foreign accredited bodies characterizes the system.
Belgium	In Belgium, there is a Federal Central Authority (ACF) and a Central Authority for each Community. The Federal Central Authority has been created in the Department of Justice in order to meet the requirements of the Hague convention, in particular concerning the competence of recognizing foreign adoption decisions and their registering. The Community Central Authority is created by each community. The latter's competence consists in the preparation of applicants, the matching and the follow-up of the child. Each Community may delegate a part of its competence to an accredited body. As specified by the NRT, « <i>the accredited body is a corporate body of private or public law. It pursues non-profit objectives and must satisfy the requirements of the community in order to be accredited. It is composed of a pluridisciplinary staff and it is controlled by and gets subsidies from the central authority. Only the accredited body is competent to be an intermediary to the adoption</i> ». Free adoptions are prohibited in Belgium, being necessary in all cases to go through an accredited body or the competent Central Authority.

Austria

In Austria there are private agencies that deal with intercountry adoption, which are accredited by state authorities. In particular, being the area of youth welfare under the competence of the nine Austrian provinces, the key actors at a province level are the Provincial Government and the District Administrative Authorities), comprehensive of the Youth Welfare Office. All nine Provincial Governments have been formally designated Central Authorities while the Federal Ministry of Justice is the Central Authority on the federal level. The latter has the responsibility for coordination, which includes forwarding applications from other HCIA member states to the respective Provincial Governments. The latter are charged with the task of transferring applications from adopting parents in Austria to other Central Authorities of member states to the HCIA. Only the Vienna Provincial Government made use of the possibility under the Convention to formally designate two organisations as accredited bodies for specific intercountry adoption services, one of which had to suspend all its activities due to irregularities in the management of an adoption case. While for Convention adoptions the State involvement is mandatory, in cases of adoptions of children from non-Hague Member States this involvement is reduced, apart from the phase concerning the general suitability assessment. A few private organisations offer counselling and support services to adopting parents in the various provinces.

Italy

After the ratification of the HICA, on January 2000, the Commission for intercountry adoption (*Commissione per le adozioni internazionali*) – which is the Central Authority (CA) for Italy – was designated. Several private, non profit associations were then authorized by the CA to operate in the field of intercountry adoption. Only one public body has been accredited in the Region of Piemonte, by following the same procedure applicable to private associations. The criteria that preside accreditation and the reasons for its eventual revocation have been already mentioned. See Part II, Chapter I, para. 4. The role of accredited bodies is rather wide, according to Italian legislation. After that the prospective adoptive parents' suitability to adopt a child has been declared by the Children's Tribunal, in light of the enquiries made by the social services, they have to designate an accredited body, by one year from this declaration. The designed body fulfils several duties and tasks (*i.e.*, it gives information to the prospective adopters, follows the procedure abroad and establishes the necessary contacts with the competent foreign authorities; collects the data concerning the child delivered by these authorities; passes this information to the prospective adoptive parents; receives the written consent to the meeting between the child and the would-be adopters from the foreign authority and carries out all the necessary steps; receives from the foreign authority the declaration concerning the respect of art. 4 of the HCIA – in cases of Convention adoptions – or the communication on its refusal; informs the Italian CA, the Children's Tribunal and the local social services about the adoption decision and delivers the relevant documentation as well as the authorization that allows the child to enter and to stay permanently in Italy; receives from the foreign authority the copies of certificates and documents about the child and pass them to the CA and the Children's Tribunal; supervises the transferral of the child in Italy; cooperates with the local social services charged with the duty to support the adoptive family since the arrival of the child in Italy; issues the certificates concerning the length of the procedure). After this phase and given a positive evaluation of the situation, the CA declares that the adoption corresponds to the best interests of the child (art. 32). Then, the child is immediately considered as holder of all the rights that are conferred on an Italian child placed in foster care (art. 34.1.), but he/she will obtain the Italian citizenship after that the adoption decision has been inserted into the civil registry Office (Art. 34.3).

See for further details the web site of the CAI: <http://www.commissioneadozioni.it>

France	<p>In France the Central Authority exercises “the roles and responsibilities laid out in arts. 7-9 and 33 of the HCIA. It is supported by its general secretariat, an administrative service attached to the Ministry of Foreign Affairs. In particular, the central authority issues recommendations and provides guidance on the setting up of accredited adoption bodies, on the requisites for intercountry adoption in the various countries and on the suspension or resumption of adoptions in the States of origin”. Leaving aside the criteria for accreditation (see Part II, Chapter I, para. 4), it is worthwhile mentioning that the Ministry of Foreign Affairs can issue one authorization per country and that this authorization is not limited in time. Notwithstanding the importance of the accredited bodies, French citizens can apply for adoption without the intermediation of an accredited body in the States which are not parties to the Hague Convention and which do not prohibit it. However, an individual person cannot act as an intermediary in the adoption process. In case of intercountry adoption, the prospective adopters, after being declared suitable, send their files, which are dealt with by the French adoption agency (the public adoption body) or by an accredited adoption body for the States parties to the Hague Convention. Finally, as it has been indicated in the Report “after the pronouncement in the State of origin, the consular services first check the legality of the adoption procedure when issuing the visa. French law provides for the delivery of support services to the child, starting from his/her arrival in the new family, until the transcription of the foreign decision or until the pronouncement of an adoption order. Afterwards, accompaniment services are provided upon request of the adoptive parents. They are guaranteed by the departmental children’s services”.</p>
Greece	<p>The HCIA is not in force in Greece. A national statute (Act no 2447/1996) regulates both domestic and intercountry adoptions. Thus, there is no Central Authority and also the authorized agencies are not comparable to the accredited bodies under the HCIA. They are regulated by the above-mentioned Act (arts. 4, 5 and 6). Moreover, also the Social Work Departments of some Prefectures are competent in cases of intercountry adoptions, the Greek branch of the International Social Services and a non governmental organization, which is acknowledged as specialized in the field at stake, which is responsible for the reports in cases in which one of the interested parties has the habitual residence abroad. The NR adds that “<i>state agencies are entitled to carry out national and international adoptions, the procedure concerning consent, social work evaluation by the appropriate agency, statistics, etc.</i>” However, their presence is not compulsory and also private arrangements are possible.</p> <hr/>

## 2.4 - Countries characterized by the absence of accredited bodies

Country	Main characteristics
Latvia	In the Republic of Latvia an identical procedure is followed for both domestic and intercountry adoptions. There are no legislative provisions regulating accredited bodies. Despite the ratification of the HCIA, and the existence of further domestic legislation on adoption law ( <i>i.e.</i> , the regulation on procedures for adoption no. 111, enacted on March 11 <sup>th</sup> , 2003, as amended on May 17 <sup>th</sup> , 2005, Civil Procedure Law) and of special rules concerning the procedures for granting and disbursement of remuneration for the adoption of a child, prospective adoptive parents who want to adopt a child shall submit directly to the competent Ministry their applications, containing the complete documentation on the results of examinations carried out by the competent institutions of their own country. Only after that the Ministry has ascertained the conformity of this documentation with legal requirements, they can be allowed to adopt a child.
United Kingdom	In the UK there are no accredited bodies responsible for intercountry adoption. However, the HCIA has been ratified (thanks to the Adoption [Intercountry Aspects] Act [1999], followed by the Adoption of Children Act [2002]), and each part of the country (England, Wales, Scotland and Northern Ireland) has its own Central Authority. The CAs have the responsibility for verifying that all the required documents are present and that the requirements of both the UK and the sending countries are respected. Moreover, it has been charged with different tasks ( <i>e.g.</i> , it issues the certificate of eligibility to prospective adoptive parents; it is responsible for contacting the foreign CA of a state that is member to the HCIA; it receives from this country's authorities the documentation about the matching and informs them on the prospective adopters' views; and, as far as non-convention adoptions are concerned, the CA for England – which is the lead one – guarantees the eligibility certificates in respect of applications from the other countries in the UK. In the absence of accredited bodies, the system is based on the activity of local authorities, voluntary adoption agencies and adoption support agencies. The first ones are local, statutory adoption, government agencies that have the obligation to provide adoption services, which they may outsource to other bodies. The latter are registered by the regulatory body Ofsted (England). Both of them are responsible for ensuring that adequate information is given to the prospective adopters, that they are properly prepared, as well as for taking a decision on their suitability. In cases of convention adoption their consent is necessary to proceed. Adoption support agencies support to the adoptive family during the adoption process.
Ireland	Ireland has not yet ratified the HCIA, which, however, was signed fifteen years ago. The legal instruments for both domestic and intercountry adoptions are the same. At present, there is no Central Authority. It is the Adoption Board that carries out the corresponding functions and that will become the CA after the ratification of the HCIA. This is an independent quasi judicial statutory body appointed by the Government, which has the responsibility for granting the declarations of suitability to prospective adopters, before that they go abroad, for supervising the registered adoption societies, for keeping their register and that of the foreign adoptions. Persons who are habitually resident in Ireland who wish to adopt a child abroad have to be declared eligible and suitable by the local Health Services Executive (HSE)/Registered Adoption Society (RAS), that operate as competent authorities to this purpose. The Irish central government, the Department of Health and the Adoption Board cooperate in working with the authorities of foreign countries. Prospective adopters are compelled to go through the HSE and the RAS. Only one mediation agency operates in Ireland.

## Cyprus

Intercountry Adoptions in Cyprus is regulated by the provisions of the HCIA, while domestic adoption is regulated by the Cyprus Adoption Law. The main differences are that in the national law post-adoption services are not provided, there are no provisions for the operation of accredited bodies and that the private placement of a child for adoption by the birth parents to Prospective Adoptive Parents is permitted. It is the Central Authority (CA) that carries out most of the activity. The Ministry of Labour and Social Insurance was designated as the CA. The Social Welfare Services (part of the Ministry) exercise all the powers and competences provided for in the HCIA. The NR specifies that the “*Central Authority has established cooperation with Central Authorities of other Contracting States and secures that all Intercountry Adoptions take place in the best interest of the child eliminating any obstacles for the Convention’s application. The Central Authority takes all the necessary measures for: (a) the collection and exchange of information with the Country of Origin regarding the state of the child to be adopted and the eligibility and suitability to adopt of Prospective Adoptive Parents (b) monitoring and intensifying all the appropriate procedures to ensure that the adoption process is promoted in compliance with the Convention (c) the provision of Post-Adoption Services (d) exchanging experiences and general evaluations regarding Intercountry Adoptions (e) the development of policies, procedures and standards in compliance with the Hague Convention*”. Prospective adopters who have their habitual residence in Cyprus have to submit their application for an intercountry adoption to the Director of the Central Authority (Social Welfare Services). The Director then transmits it to the District Welfare Officer of the district where the applicant resides and asks for the preparation of the report on suitability to adopt. Afterwards, it’s up to the *Central Authority to transmit the report together with all the documents to the Central Authority of the Country of Origin or to an Accredited Body that the applicants have selected in the Country of Origin. The above documents are forwarded only when the applicants are assessed suitable and eligible to adopt. When the Central Authority of the Country of Origin informs the Cypriot Central Authority that a child is proposed to be adopted by a couple, it then transmits a report with regard to (a) the child that includes information as to the adoptability, background, social environment, family and medical history of that child (b) the reasons for its determination on the placement. The information is given to the applicants who are advised to study it and if they agree for the adoption to proceed they sign a declaration. The declaration is then sent to the Central Authority of the Country of Origin. The Director of the Cypriot Central Authority together with the above sends a letter that the specific adoption may proceed in accordance with the provisions of article 17(c) of the Hague Convention. Upon receipt from the Central Authority of the Country of Origin of the Certificate that the adoption took place in accordance with the Convention, the Director of the Cypriot Central Authority sends a letter to the Country of Origin and to the Immigration Officer in Cyprus to inform them that the procedures of the adoption have been completed and when the Certificate that the adoption took place in accordance with the Convention (article 23) is presented at the Cyprus entrance Points, to allow the entrance of the child in Cyprus. The Cypriot Central Authority in cooperation with the District Welfare Offices sends to the Central Authority of the Country of Origin post-adoption reports with regard to the circumstances of the child every six months for 3 years according to the request of the Country of origin*”.

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**ANNEX 6**  
**PSYCHO-SOCIAL AND POLICY ASPECTS OF ADOPTION**  
**AND THE ADOPTION PROCESS – SYNOPTIC VIEW**

**Psycho-social and policy aspects of adoption/adoption process I**

Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
1. Austria (R)	Adoption is part of child welfare policy: strengthening family structure as well as interventions if the best interests of the child are not secured. Anonymous birth is possible and the possibility to leave a child at a “baby nest” (Baby Klappe). Relatively high numbers of anonymous births (2001-2007: 90 and 16 in Baby Klappe) raised critical debate.	Interdisciplinary approach: medical, psychological and social work expertise.	Consultation, counselling and preparation services available, e.g., by adoption agencies; IA: comprehensive home study usually in combination with specific preparation courses (not specified).	No specific services offered by CAs.
2. Belgium (R)	No possibility of anonymous birth. This question is on debate in the federal parliament. In domestic adoptions the accredited body also assists the biological parents. A mother who wishes to make her baby available for adoption has to go to an accredited body. A multidisciplinary staff examines with her whether other possibilities exist. Two months after birth is the minimum term of reflection for the birth parents. They cannot give their consent for adoption before the end of this period. A complete system of protection of youth exists and adoption must be the last solution for the child in respect with the subsidiarity principle.	The main steps of an adoption proceeding include interdisciplinary aspects; multidisciplinary staff in accredited bodies. The home study includes three parts: a social, a psychological and a medical part (and conclusions).	The applicant must have the social and psychological capacities to adopt a child. This capacity is determined by the Court of Minors either before a possible adoption decision, by way of a judgment of eligibility and suitability (in case of an IA), or during the adoption procedure (in case of a domestic adoption). Before that, the applicants have to follow a preparation organized by the Community in which they live. Preparation is compulsory. The preparation in the French community is different from the preparation in the Flemish community.	Not specified.
3. Bulgaria (O)	Child Welfare Reform goal: de-institutionalization of care; family support to prevent child abandonment; slow progress of reform; still high rates of abandoned, institutionalized young children.	Child adoptability and study of prospective adopters: social workers; child psychologists, lawyers.	Due to insufficient staff/resources: not provided or provided with low quality.	No State policy; provided by some NGOs.

CA = Central Authority; IA = Intercountry Adoption; R = Receiving country; O = Country of Origin

Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
4. Cyprus (R)	Social Welfare Services provides services to families needing help: counselling, guidance, (financial) support, and day care for children in foster families or care institutions. When children have to be removed from their families, the aim is to reunite them with their natural family as soon as possible. The family is in the meantime supported to improve the environment, to a level acceptable for the child to return. Only when this support fails, adoption is considered as an alternate solution but only if it is in the child's best interest.	Social Welfare Services and sometimes Mental Health Department (not specified).	No special counselling or consultation programmes for prospective adoptive parents. No preparation programmes for the biological family either. Social workers who deal with adoption provide these services on a case to case basis. Preparation is not obligatory in the current law but these issues are under study and will be included in the new draft law.	No specific programmes during the waiting time.
5. Czech Republic (O)	Domestic adoption and IA provide family-based care for abandoned children. The transformation of the residential care system is ongoing, but many children's homes and especially nursing homes for young children (0-3 years) are mainly institutional settings. The subsidiarity principle is applied. IA is only possible for children for whom family care is not found in the Czech Republic (in the form of adoption, foster care, entrustment to the care of an individual other than a parent or the personal care of a guardian).	Protection of children including adoption has an interdisciplinary character (layers, social workers, psychologists).	Not specified.	Not specified.
6. Denmark (R)	Anonymous birth does not exist in Denmark. Regulations go far to prevent abandonment of children. Recently there has been a lot of debate about the issue that reluctance to break up a family does not always serve the individual child's best interest. Denmark has a wide range of free of charge care and support for all families, and at the moment also psychological support for new adoptive families if they need it.	All the steps of the adoption process are interdisciplinary, with social workers, psychologists and in addition psychiatrists, health visitors and specialists. The post-adoption services are provided by psychologists.	An obligatory adoption preparation course. The 3-days programme and teachers are hired and controlled by the Ministry of Family Affairs. The intention is to prepare the parents for the child's identity development and understanding of the influence of the adoption process. The course has a fee of 1500 DKr. per person. The participation certificate is required to proceed with the adoption process.	Informal networks; case workers support families; courses, Internet, etc. by the accredited bodies.

Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
7. Estonia (O)	Separating a child from the family is the last resort and should be considered only when other measures are ineffective. In addition to the best interest of the child it also has economical aspects: more expensive (usually institutional) services are applied only when previous measures were inefficient. However, preventive work is deficient at many levels. Child protection workers do not have enough resources to carry out the preventive work.	Interdisciplinary: social work, psychologists, family therapists, psychiatrists, medical doctors.	Estonia does not have counselling services for parents of origin. Child counselling is usually taking place where they live (orphanage, foster care), although orphanage workers do not have a formal education for taking part in the adoption process - how to prepare a child for adoption and how to communicate with adoptive parents. There are no services and support for adoptive parents. People get the information about adoption mostly from the Internet.	Prospective adoptive parents can turn to a county government, social ministry or to NGO "Oma Pere".
8. Finland (R)	Residential and foster care: focus on family reunion; no foundlings/no anonymous births; 30-60 domestic adoptions each year (babies).	Pre and post-adoption: social workers; information by paediatrician (once).	Compulsory adoption counselling (home study); preparation courses (not compulsory).	Meetings; bulletins; news on websites.
9. France (R)	Adoption is integrated in child protection policies. Several activities aim at preventing the abandonment of children by providing parenthood support for prospective young parents. As regards women who wish to remain anonymous at the moment of birth, social services are explicitly required to give them psychological and social support as soon as possible. They must inform the mother of all the services available to help her keep her child. The woman is also informed of all the consequences of her decision and of the conditions under which she can change her mind. She is invited to provide some information, including her identity, which will be preserved in a closed envelope. French legislation makes no distinction between IA (three quarters of adoption in France) and domestic adoption.	Multidisciplinary team of experts in the social, educational, psychological and health care fields.	At the moment of their application, the aspiring adoptive parents are given some general information on the psychological, educational and cultural aspects of adoption, on the administrative and judicial procedures, on the situation of French children awaiting adoption and on the principles and special issues related to IA. From the issuing of the declaration of suitability for adoption until the child's arrival, the departmental services must organize a series of informative meetings on adoption. The accredited bodies are explicitly required to constantly assist the families they work with. The adopters may also seek the help of adoptive parents associations.	See preparation services.



Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
10. Germany (R)	Recent expansion of family support services to strengthen child protection system. Debate about maltreated children in long-term foster care: focus on adoption or family reunification? Debate about private adoptions and ways to prevent infant abandonment/infanticide.	Mostly social workers; medical experts or psychologists may be consulted.	Parents of origin and prospective adopters have a right to receive counselling and preparation services; no valid data on the quality of these services; information booklets.	Only self-organized support groups.
11. Greece (R)	Anonymous birth does not exist. Child welfare policy and prevention are not supported enough by adoption policy. Institutional care although reduced in the last decades can still be reduced or transformed, while foster care has not developed systematically all over the country. Only occasionally there is cooperation between foster care and adoption. Due to lack of financial and human resources, single parent families are not supported sufficiently.	Adoptions carried out by specialized residential institutions are operated by fully interdisciplinary councils (or working teams); this is not similarly the case when adoptions are carried out by other public agencies or privately.	Not systematically.	Not systematically.
12. Hungary (O)	Child welfare policy is based on the subsidiary principle, cooperation with/ support of families, and adoption as a last solution. Supporting biological families is central in child welfare policy. Unfortunately, real support of these families is not always possible. When the social and financial backgrounds of the biological family are very bad and the parents have no educational and social skills, children have to be taken away from the family. But adoption is a last solution and possible only for those children who are not visited by their parents for a long time, and for those children who cannot return to their families of origin.	Interdisciplinary process: lawyers, medical doctors, psychologists and social workers.	Counselling service is possible for children in institutions or foster families, but only when the child needs it. If the child has serious psychological problems, or needs preparation for adoption, it is possible to get counselling from a psychologist who works for child protection service or at the childcare institution. There is no compulsory preparation support for adoptive parents (this question is currently debated) but there are some self-help groups for Hungarian adoptive parents. The adoptive parents who come from abroad can get help from their accredited body.	No. Information and telephone number from the Ministry's website.

Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
13. Ireland (R)	Currently IA policy is attached to domestic adoption policy, which is attached to child welfare policy. Forthcoming legislation on adoption will link all three policies in a more cohesive manner.	Interdisciplinary: assessment of police records, medical and financial status; preparation course run by the Health Services Executive; Home Study: interviews with a social worker. The Adoption Board then decides whether to issue a declaration of eligibility and suitability. All stages are compulsory.	The six week preparation course, run by the Health Service's Executive, provides prospective adoptive parents with an opportunity to learn more about IA so that they are in a position to make an informed choice, evaluate their own skills, knowledge and abilities, and to meet other applicants who are at a similar stage in the process to themselves so that mutual support and learning can take place.	No statutory support. Some statutory funding is provided to voluntary IA support groups and charities.
14. Italy (R)	By law a minor has a right to a family. Local welfare services intervene to prevent abandonment and to support families in difficulty. Family-type care is considered for children removed from their families (foster care; family-type residential care). Family reunification is supported.	Interdisciplinary: social workers, psychologists, Juvenile Court.	The accredited body organizes information and training courses, also specifically in relation to the foreign countries.	By the accredited bodies and welfare services.
15. Latvia (O)	According to Latvian laws children should grow up in their biological family. Latvia supports families of origin to rear their children (help of social workers, financial support). Anonymous birth is not possible in Latvia. Adoption of minors is allowed if it is in the best interests of the child (decided by an Orphan's court). IA only possible if there is no family available in Latvia.	Interdisciplinary: court and psychological consultation.	Latvia as country of origin is responsible only for the preparation of domestic prospective parents. Children's homes as children's guardians are responsible for the preparation of children for adoption. Not further specified.	None.
16. Lithuania (O)	Support to families (social workers; financial support). Children eligible for adoption can not be younger than three months of age. A child may be offered for IA if during six months (starting at the registration of the child on the waiting list) no Lithuanian foster or adoptive family was found.	Yes, not further specified.	Lithuania as country of origin is responsible only for preparation of domestic prospective parents. Children's homes as children's guardians are responsible for children's preparation for adoption; not further specified.	None

Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
17. Luxembourg (R)	Placement of children in foster and residential care; after placement by the Juvenile Court domestic adoption is extremely rare; focus is on family reunification; domestic adoption follows an anonymous birth.	Interdisciplinary approach: medical, psychological and social work expertise involved.	Compulsory preparation course offered by Adoption Resource Centre (8 hours including attachment issues, adoption triad, etc.); Home study: 3 home visits by a social worker, 4 discussions with a psychologist and 1 medical visit.	Information from the accredited body about waiting list/procedures; parents can approach the accredited body for counselling.
18 Malta (R)	Legal provisions ensure that a child is provided with the appropriate care should problems within the family of origin arise. Children can be taken into care through a Care Order. Children can also be placed in care on a voluntary basis. The situation of children in residential/foster care is reviewed at least once every six months. Adoption is considered as an option, although in reality, children in residential/foster care are rarely adoptable since the parents of origin do not give their consent for adoption even if they are not in a position to care for the children themselves. This is a controversial issue which is still being debated. The Dept. for Social Welfare Standards is responsible for standards of care for looked-after-children and for accrediting service providers/provision, and serves as the CA for IA and domestic adoptions.	Not specified.	Prospective adoptive parents are prepared through preparatory sessions as part of the adoption process (compulsory). During this phase, if required, counselling and advice is provided and parents are also informed of the possibilities to adopt from various countries of origin.	Practical support (not specified)

Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
19. Netherlands (R)	Anonymous birth does not exist. Parental rights/responsibilities can be terminated. However, there is no such thing as a freeing order in Dutch law. The common view is that permanency can be achieved by providing other legal safeguards (e.g., foster care); although disadvantages are recognized (optimal continuity in the child-rearing situation is not guaranteed). The option of weak (simple) adoption as an alternative for long-term foster care is currently under debate. Adoption is not a part of the (government- funded) youth care and protection system. Adoption emerged from private initiative and half of the accredited bodies are run by volunteers. The work of the agencies is not funded by the government. There are no separate procedures for domestic adoptions and IA.	Interdisciplinary: social work, psychology, pedagogy, legal and medical expertise.	Compulsory preparation of 6 meetings for 8 couples (max), organized in different regions. Attendance is compulsory; a handbook on adoption is provided. Prospective adopters pay for the programme (900 Euro).	During the waiting time adoptive parents rely on peer-support.
20. Poland (O)	Domestic and IA are last solutions in child care system; families and children experiencing difficulties receive family guidance/therapy, social work; children deprived of parental care may be placed in foster families or an 'institution of care and education' (provisional nature: until return to the family of origin or placement in foster/adoptive family).	Interdisciplinary approach for families of origin; social work, psychological and pedagogical expertise.	Centres for adoption and custody: searching for foster and adoptive families; assessing and training foster and adoptive families; quality not specified.	Not specified.
21. Portugal (O and R)	Portuguese law foresees cases of adoption with Portugal as country of origin as well as cases of Portugal as receiving country for IA.	Adoption services: not specified.	Not specified.	Not specified.

Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
22. Romania (O from 1990 to 2005) (requests for IA in 2008; R)	By law (2005) only a grandparent living abroad can be accepted for IA. The policy of promoting domestic adoption is related to the subsidiary principle and fits into the policy of child protection, together with child abandonment prevention as well as maintaining the child in the extended family (up to fourth degree relatives). Romania developed services for preventing the separation of children from their family, maternal centres, services for the support of the extended family, institutionalization prevention and child care in a family-type environment by developing a network of professional foster carers. Adoption is restricted to those children who cannot be (re)integrated in their (extended) family and for whom adoption is a solution that meets their best interests.	The adoption procedure is interdisciplinary and involves professionals who work with the children, the biological family, the adopters: social workers, psychologists, lawyers, magistrates.	There are counselling services prior to and during the adoption procedure. Prospective adopters are informed during the preparation meetings. The professionals use informative materials – brochures, reviews. Information on adoption is also published on the web page of the Romanian Office for Adoptions.	No special services during the waiting time.
23. Slovakia (O)	Family care is seen as the most adequate arrangement for each child. All social policy activities with abandoned children are aimed to create possibilities for returning the child to the biological family or to search for a new family. The system of residential care is also based on this principle. For children living in institutions “family houses” or networks of professional families and foster families are preferred. IA can resolve the situation of some groups of children (Roma, handicapped) with few possibilities to be adopted in Slovakia.	The main steps of the adoption process are interdisciplinary; not further specified.	The preparation of children for IA, supported by a psychologist, includes the following: - counselling and informing children on the effects of the adoption, in a way suitable for their age, intelligence and maturity; finding their opinions and wishes, and getting consent, when required; - making the child familiar with the applicants and their family through the information sent by the applicants to the children’s home directly or through the Centre.	Not specified.

Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
24. Slovenia (R)	Slovenia respects the UN Convention on the Rights of the Child which defines family as a natural environment for the growth and well-being of children. Every child has the right to be taken care of by his birth parents and should not be separated from them, except when the competent authorities determine that such separation is necessary for the best interests of the child. Social work centres are obliged by law to start procedures, necessary to protect the best interests of the child.	The main steps of the adoption proceedings are interdisciplinary, involving different experts: social workers, psychologists, pedagogues and lawyers.	Social work centres organize obligatory individual counselling and preparation for prospective adoptive parents and voluntary educational group activities. A disadvantage is the lack of legal rules on adoption preparation. The social workers in the social work centres are therefore left to decide by themselves what kind of preparation activities are to be organized.	During the waiting period the prospective adoptive parents have access to different means of support (e.g., counselling).
25. Spain (R)	Preventive measures are established to support families in difficulty. In case of necessary separations of parents and children temporary foster-care (rate: 315 out of 100.000) is more often used than domestic adoption (rate 12 out of 100.000). IA is seen as a last option in child protection.	Interdisciplinary for domestic adoption and IA: lawyers, psychologists, social workers and medical doctors.	Birthparents: social services. Adoptive parents: specific programmes offered by Communities, accredited bodies, support offices and adoptive families associations.	Support by accredited bodies or adoptive families associations.
26. Sweden (R)	The prevention of abandonment has a high priority. Placements are to be voluntary as a priority and the biological family keeps the custody. Families of origin are supported. When it comes to national adoptions, support to the biological mother is intensive before and during the placement. Institutional care is avoided and very unusual for children under 12. There are treatment institutions where small children are placed together with their parent(s). The child welfare services are free of charge. In the opinion of the author the right to permanency is not observed for the Swedish foster children. Their situation is sometimes debated, and has been the focus of many public investigations/ expert reports.	Interdisciplinary: social, legal, psychological and psychiatric expertise.	Adoptive parents: compulsory preparation course; dialogue with social worker during home study; dialogue and counselling from accredited bodies. The accredited bodies keep contact with their partners abroad about the counselling for parents of origin, if relevant, and about the preparation of children. They offer to send pictures from the prospective parents, etc.	Accredited bodies organize meetings and follow-up courses.

Country	Suitability in child welfare policy	Interdisciplinary approach	Preparation services	Support in waiting time
27. UK (R)	There is a substantial body of primary and secondary legislation designed to support families of origin, prevent abandonment or relinquishment, rehabilitate child and family when the child has been looked after outside the family home, and to provide the child with a permanent family placement where rehabilitation is not possible or not in the child's best interests. This might include foster care, friends and family care, special guardianship or adoption. It should be noted that the emphasis on implementing the domestic adoption agenda for looked after children, and concern that IA should not detract from that, has led to a two tier system being established since the beginning of the '90's, whereby the costs in domestic adoption are met by the State and the costs in IA are, for the most part, met by the adopters themselves.	Interdisciplinary: legal discipline, social work, psychology, medical reports.	Domestic adoption: counselling and information for birth parent; life story work with the child. Domestic adoption and IA: same process of counselling and preparation services for adoptive parents; preparation of child carried out in country of origin but adopters are encouraged to contribute with their own life story material and disposable cameras. Prospective adopters are invited to an adoption information meeting followed by a preparation course carried out by an adoption agency or adoption support agency. Preparation course compulsory? The agency must ensure that the applicants have "appropriate" preparation and, in practice, this will mean that most adopters attend preparation courses.	As the waiting period is lengthening for IA, some agencies are introducing workshops. These workshops address coping with waiting, practically and emotionally.

## Psycho-social and policy aspects of adoption/adoption process II

Country	Matching	Post-adoption services	Special needs	Forums
1. Austria (R)	Prospective parents receive a proposal from the CA of the child's country; contacts with child before adoption are not foreseen.	No clear, consistent procedure; post-placement reports sent to countries of origin if required.	No specific policy by CA; adoption agencies offer some information on their websites.	Forums for adoptive parents.
2. Belgium (R)	The applicants cannot choose the adopted child. In IA the applicants' file is sent to the country of origin and the professionals of the country of origin do the matching. The exception is with kinship adoption. Then it is normal that the applicants know the child before the consent of the authority.	The CA delegates the follow-up of the family to the accredited bodies because their multidisciplinary staff can offer assistance to the adoptive family.	There is one accredited body for these specific cases.	Not specified.
3. Bulgaria (O)	Collective body; primary considerations: interest of the child and possibilities of the parents.	Monitoring of the child during 2 years; Families of origin: range of services including financial support to prevent future abandonment.	Campaigns to raise public awareness; still very few children with special needs are adopted.	Yes, some for domestic adoptive parents.



Country	Matching	Post-adoption services	Special needs	Forums
4. Cyprus (R)	The matching process takes place once the decision about the adoptability of the child is finalized. The CA asks from all 6 District Welfare Offices to send a short list of those prospective adoptive parents that have already been assessed as suitable to adopt. At the CA a special committee chooses within 3 weeks the most appropriate adoptive parent/s. Article 10 of the national law mentions that “the placement of a minor under the immediate care and custody of a person for purposes of adoption may be effected either through the Welfare Department or directly”. This means that the Law does not forbid the biological parent to place the child directly to carers before the official determination of their suitability or the child’s adoptability. This is another main issue that will be studied and discussed during the drafting of the new adoption law.	Once an IA is finalized post-adoption reports are requested for 3 years after the adoption. The reports are prepared by the District Welfare Offices and sent to the countries of origin through the CA. The National Law does not provide the provision of any other supportive/counselling services to families that have adopted a child.	No special measures or policies to support the adoption of children with special needs in IA or domestic adoptions.	An organization for (prospective) adoptive parents.
5. Czech (O)	Based on the child’s documentation and the applicants’ documentation, the Office for the Mediation of Adoption conducts matching, where specific applicants are selected for a specific child.	Obligatory sending of follow- up reports after the adoption at the following intervals: after 1, 3, 6, 9, 12, 18, 24, 36, and 48 months of the child’s stay in the receiving country.	Not specified.	Not specified.

Country	Matching	Post-adoption services	Special needs	Forums
6. Denmark (R)	Matching in IA is almost always done in the country of origin.	At the moment a trial programme is running offering post-adoption service by psychologists to all families from the arrival until about 4 years after adoption. Additionally, Denmark has a wide range of free or supported offers through the standard health and education system.	Adoptive parents can choose between applying for an average adoption or a more widened spectre (including special-needs adoptions). If they apply for the widened adoption, requirements of parent abilities are higher. The accredited bodies make extra efforts to find adoptive parents for children with special needs.	Several forums for adoptive parents and adoptees (including a large organization for Korean adoptees).
7. Estonia (O)	There are no special criteria/rules for the matching process. Procedure: organizations that have a contract with Estonia own data about children who are free for adoption and who have not found a family in Estonia. If an appropriate family for a child is found then the child is introduced to the prospective parents (photograph/video recording). If the prospective parents agree they are offered the opportunity to meet the child in person in the orphanage. A person cannot go to an orphanage or make direct contacts with institutions with the aim to adopt.	Reports during two years after adoption.	Social workers must explain the character and consequences of the special needs and how to take care of the child. Other special measures are not required.	NGO "Oma Pere" provides information about adoption.
8. Finland (R)	Not specified.	Compulsory adoption counselling; monitor success of the placement; discussion groups etc. (not compulsory).	Not specified.	Yes, many for adoptive parents, few for adoptees.

Country	Matching	Post-adoption services	Special needs	Forums
9. France (R)	French legislation does not fix any set criteria concerning the matching. In the case of domestic adoption, it is up to the legal guardian to choose the adoptive family that best suits the needs of the child. When matching children with adopters, social services and adoption workers take into account specific details from the home study of the adopters (e.g., the desired age of the child). In the case of IA, such details can be taken into account during the drawing up of the home study. A situation in which the adopters would choose their child cannot be fully ruled out in those countries where adopters can file their application individually (without the intermediation of an accredited body) and contact the orphanages.	Support services to the child, starting from the arrival until the transcription of the foreign decision/the pronouncement of an adoption order. Afterwards, support services are provided upon request. The adopted child also benefits from the ordinary child protection measures. Health care professionals are also available for consultation, to assess the children's health at arrival and, if necessary, to provide follow-up. Apart from social services, adoptive parents can seek the help of specialized organizations, such as the centre for parents and children "Arbre vert", and of adoptive parents' associations.	To help find adoptive families for children under State guardianship with special needs, the French State has set up a specific database to link a child to applicants open for special-needs adoption. Two regions have set up a regional network of experts providing consultation on adoption. This is a State-funded service which makes it possible to guarantee adoption workers the constant support of a psychologist, to help them prepare the adoption, find an adoptive family, stay in touch with them and provide post-adoption support. Some accredited bodies have specialized in special-needs adoptions, preparing children and adopters and providing post-adoption services. Concerning IA, a protocol is being considered to better prepare applicants open for special-needs adoption.	Several Internet forums managed by associations of adoptive parents/for the protection of the right to know.
10. Germany (R)	No clear criteria for matching; decisions made in a 'clinical' way?	Families of origin and adoptive families have a right to receive post-adoption services; no valid data on the quality of these services.	Rudimental special policy for supporting the domestic adoption of a special-needs child (to find families in a larger region); yet a decline of special-needs adoptions.	Yes, for adoptive parents and adult adoptees.
11. Greece (R)	Criteria and proceedings not provided by law. Adoption agencies – residential care institutions have developed criteria and procedures for matching.	No structural support systems for post adoption services. Those needing them receive services from the overall system (welfare, mental health, legal, medical, etc.). Nevertheless, upon request of the family, the adoption agencies are providing services of consultation primarily.	Cases are supported by special campaigns through the media and with the cooperation of specialised agencies abroad, e.g., Children's Home Society of Minnesota.	No.

Country	Matching	Post-adoption services	Special needs	Forums
12. Hungary (O)	The proper family for a child is always chosen by a member of the CA, by a psychologist who knows the child and by a person who works in the field and is responsible for the adoption. This is always a common decision, written down and signed by everyone. Prospective adoptive parents do not have the possibility to find and choose a child.	Follow-up reports are required from adoptive parents from abroad (one in 2 months and one in 1 year after adoption). Adoptive parents in Hungary are not obliged to write follow-up reports and there are no compulsory post adoption services. There will be a passage in the new civil code about this obligation, but this is not elaborated yet. There are some self-help groups and independent psychologists. Local child protection services help adoptive parents if problems arise.	In general, it is very rare that Hungarians adopt special-needs children, but the Hungarian CA has good cooperation with some other countries where adoptive parents are sometimes very accepting, and it is possible to find adoptive parents for some special-needs children.	Ministry's website; some forums for adoptive parents.
13. Ireland (R)	Countries that have bi-lateral agreements with Ireland conduct the matching process through the Adoption Board; e.g., the China Centre of Adoption Affairs assists in matching children with applicants and then forwards details to the Adoption Board, who informs the applicants. In some countries (Russia, Romania, Guatemala, Kazakhstan), private adoption agencies, either in the sending country or in the USA, facilitate the adoption, and fees are paid directly by parents to these agencies. In domestic adoption, the birth mother has some say in the matching process but not a veto.	No statutory post-adoption services. Social workers do follow-up reports if required. However, once a child has been adopted there is no statutory follow-programmes up. IA support groups offer post placement support through help lines, newsletters, Internet chat rooms, parent-to-parent contact and cultural/ social events. These groups receive small amounts of funding. Some groups believe that ongoing pre- and post-adoption services should be provided by a centralized unit.	No special measures or policies for supporting/ restricting special-needs children in IA or domestic adoptions.	Forums for adopted people and adoptive parents.
14. Italy (R)	IA: by the foreign authorities or the Italian accredited bodies. Domestic adoption: matching is carried out by the Juvenile Court. No possibility to choose the child or have contact with the biological parents.	Accredited bodies take care of the post-adoption follow-up required by the foreign authorities. Welfare services provide support when requested.	Domestic adoption and IA: measures of economic support are provided.	Forums for adoptive parents.

Country	Matching	Post-adoption services	Special needs	Forums
15. Latvia (O)	The Latvian Ministry receives the applications from prospective adopters, and (after evaluation) provides information about children available for adoption. If a foreign adopter has chosen a child the Ministry issues a warrant so that the adopter can get personally acquainted with the child.	Not specified.	No.	Not specified.
16. Lithuania (O)	The Lithuanian CA is responsible for the matching of the child and the prospective adoptive parents, whereas the final decision on the adoption is taken by the court. The Lithuanian CA chooses a family that in the best way according to their age, health, living conditions may satisfy the needs of the child. Children eligible for adoption shall be offered to the family according to the family's position on the waiting list and considering the family's requests regarding the age, sex and health of the child.	Following the adoption, the foreign adoptive family (or an accredited adoption agency that represents the adoptive family) must provide feedback to the Lithuanian CA consisting of reports about the integration of the adopted child into the family, living conditions, development, health (including pictures and videos): a) twice a year during the first two years following the adoption; b) once a year for the following two years; c) at the request of the Lithuanian CA after four years following the adoption.	The objective of a Specification (Order No. A1-32, 2007) is to ensure the right of every child to be raised in a family irrespective of the child's age, health or social origin by allowing foreign institutions authorized in respect of IA in the Republic of Lithuania to search for families ready to adopt special-needs children from the waiting list of special-needs children eligible for adoption provided by the Lithuanian CA.	No.
17. Luxembourg (R)	Matching is done in the State of origin; contact with the child before adoption is not foreseen.	Child follow-up reports by the accredited bodies; post-adoption services by the multi-disciplinary team of the Adoption Resource Centre (started in 2006), free of charge; quality not specified.	Social workers and psychologists must be trained in working with special-needs children; last 3 years no special-needs adoptions although accredited bodies make special efforts to recruit parents for special-needs children.	Only websites of accredited bodies.
18. Malta (R)	Matching is carried out by the country of origin. Contact with the child usually occurs only after matching and contact with the parents of origin is not usually contemplated.	Post adoption visits are carried out for the compilation of post adoption reports, in accordance with the requirements of the countries of origin.	No unique policies for children with special needs. However, financial and social support does exist to encourage parents to adopt children with special needs.	No Internet forums.

Country	Matching	Post-adoption services	Special needs	Forums
19. Netherlands (R)	Prospective adopters are not allowed to choose a child or have contact with the child/biological family before the matching process. The accredited body, together with the country of origin, carries out the matching. The agency approaches the adopter(s) with a proposal. After acceptance, names, photographs and full details of the child are revealed.	Video Interaction Guidance is available after placement. This is a specialized, preventive intervention aimed at enhancing attachments in the adoptive family. There is a small fee involved; the rest is subsidized by the government. In the regular health care system, there is limited adoption expertise. A small number of private adoption-experts give support/counselling. Funding of support services goes through health insurance but often adoptive parents have to pay for (specialized, private) services themselves.	No specific policies for children with special needs. Parents may receive extra information from the accredited body (if available). Video Interaction Guidance is available for all adopted children including special-needs adoptions and sibling adoptions. The recent increase in special-needs adoptions resulted in the need for more information and support for families adopting these children.	Forums for adopted persons, adoptive parents and birthmothers. Also forums for parents adopting special-needs children.
20. Poland (O)	Not specified.	Not specified.	Not specified.	Forums for people interested in adoption.
21. Portugal (O and R)	Not specified.	S: After placement: pre-adoption period supervised by the DGSS; result of the evaluation is reported to adoption services and court; followed by an adoption decision R: pre-adoption period up to 6 months; adoption services assesses child's situation.	Not specified.	Not specified.

Country	Matching	Post-adoption services	Special needs	Forums
22. Romania (1990 to 2005: O)	Matching is based on the assessment of all information regarding the child (e.g., age, sex, ethnic origin), the biological family (age, education, etc.) and the adopter (e.g., age, education), and the estimated compatibility between the child and the adopter. The child, the adopters and other persons who are important in the child's life are informed and prepared in order to ensure the adaptation of the child. A visiting schedule is made for the meetings between the adopters and the child. The adopters cannot choose a child and they are not allowed to meet the child before the matching.	Adoptive parents and the adopted child benefit of post adoption services, each trimester during two years. Professionals visit the adoptive family, provide counselling and elaborate follow-up reports. Post-adoption services are not provided for the biological parents; they benefit of pre-adoption services – counselling and information prior to their consent.	A normative act draft was initiated and its approval is pending. It will be enforced in 2009 and views the promotion of domestic adoption of children with special needs by new measures meant to support Romanian families adopting children with special needs. It provides a leave for 6 months for the person/one of the spouses in the adoptive family and a monthly allowance of 800 lei. The leave is meant to offer the adopter the possibility to create a stable/ secure environment for the child.	No forums on Internet. There are regional associations for adoptive parents.
23. Slovakia (O)	At the office of the CA a commission composed by specialists (psychologist, social workers, legal specialist): most suitable family from the list of prospective adoptive parents for a concrete child. The prospective adoptive parents receive documentation/video of the child.	During the first year the Centre receives reports on the child's development in the new family, including the family's general situation. The reports in the first year are sent at three-month intervals, later once a year.	Roma and handicapped children have few adoption possibilities in Slovakia.	Not specified.
24. Slovenia (R)	Prospective adoptive parents cannot choose a child. The purpose of the adoption is to find an appropriate family for the child. Some expectations of the prospective adoptive parents can be taken into consideration and the prospective adoptive parents can enter into contact with the child or the birth parents/carers before the child's adoptability and the suitability of the prospective adoptive parents are formally assessed.	General social services for families and individuals (no specific post adoption service).	No specific measures.	Some message boards and forums for people interested in adoption.

Country	Matching	Post-adoption services	Special needs	Forums
25. Spain (R)	IA: accredited bodies together with countries of origin. Domestic adoption: the matching is carried out by a multidisciplinary team considering the needs of the child and the capacities of the parents. It is not possible to choose a child or contact the child or birth family before the matching.	Domestic adoption: no specific post-adoption services. IA: monitoring by the accredited bodies to fulfil the requirements (e.g., follow-up reports) of the countries of origin. No specific post-adoption support for adoptive families; parents must turn to general services for families.	Campaigns for domestic special-needs adoption. IA: the subject of special needs is addressed during the preparation/home study.	Forums for (prospective) adoptive parents.
26. Sweden (R)	Most matching is done in the countries of origin. In some cases, e.g., special-needs children, matching is carried out by the accredited body in consultation with the local Swedish social service and the partner in the country of origin. Contact before matching is never allowed. Choosing a child is avoided.	Social services have the obligation to support adoptive families after adoption. This is done well by some municipalities (e.g., Stockholm and Gothenburg) but there are many municipalities with (almost) no possibility to fulfil the obligation. This has been criticized and debated. The accredited bodies offer a network and organize meetings. Their staff is available for advice (no extra fee). There are private psychologists/social workers specialized in adoption and listed on the web page of the CA.	No special measures/policy. The accredited bodies make special efforts to recruit parents for special-needs children, but are careful not to put pressure upon prospective parents who are not really prepared for a special-needs child.	Organizations and forums for adopted people and for adoptive parents.



Country	Matching	Post-adoption services	Special needs	Forums
27. UK (R)	<p>So far as IA in the UK is concerned, the matching process is solely the responsibility of the relevant authority in the country of origin. It is possible for prospective adopters to identify a child (e.g., adoption of kin or through living/working in a State of origin) and, as a result, getting to know a child who is free for adoption. It is thus possible for adopters to have contact with the child's parents/ carers prior to their approval as suitable to adopt or confirmation that the child is available for IA. However, adopters habitually resident in the UK commit an offence if they do not comply with the regulations before bringing the child to the UK for the purposes of adoption. This means that they need to return to the UK to complete the preparation and assessment process before they can apply for the child to be granted entry to the UK.</p>	<p>IA: there is no statutory follow-up in England, Wales and Scotland, although it is usual for adoption agencies to make one visit to the family after the child's arrival. Adopters are expected to commission an adoption agency to complete post adoption reports as may be required by the State of origin.</p> <p>Northern Ireland differs: there are post arrival support arrangements for all children.</p>	<p>IA: no specific programmes.</p>	<p>Associations for birth parents, adoptive parents and adopted adult organizations; chat rooms.</p>

## ANNEX 7

### FUNDAMENTAL GUIDELINES FOR THE STUDY

The research and analysis includes a comparative and multidisciplinary (law, sociology, psychology, statistics) focus. The Scientific Committee fully base their work on the fundamental guidelines on child care and protection in the European Union to be found in the child and human rights international instruments, notably

- the European Convention on Human Rights and the Case-Law of the European Court of Human Rights;
- the United Nations Convention on the Rights of the Child and its Optional Protocol on the sale of children, as well as the Recommendations of the Committee on the Rights of the Child;
- The Hague Convention 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, considered as a common European framework even if not in force in every Member State.

According to these international texts, some core concepts may be defined in the following way:

#### *Intercountry adoption*

The criteria to distinguish between domestic and intercountry adoption are the respective habitual residences of the child and of the prospective adoptive parents in different countries, and the necessity for the child to move from the country of origin to the receiving country as a consequence of the adoption project. The criterion is thus not the citizenship of the concerned persons.

#### *Best interest of the child*

Adoption as any other child care option has to be decided in the best interest of the individual child concerned, and not primarily in the interest of the adults, being the parents/family of origin or the prospective adoptive parents, nor of the States, being the State of origin or the receiving State.

As far as possible, children should grow up in a permanent and family setting.

#### *Subsidiarity principle*

Every child has the right to know and to be cared for by his or her own parents, whenever possible. The State has positive obligations to take any available step in order to sustain the parents and the family of origin, to maintain or reintegrate the child and to prevent abandonment as far as it coincides with the best interest of the child.

If this is not possible, the child has the right to be adopted in priority in his or her own country of origin, taking into consideration the desirability of continuity in a child's upbringing and the child's ethnic, religious, cultural and linguistic background.

If necessary, international cooperation has to support every State in order to help to respect these obligations.

Intercountry adoption is thus twice subsidiary: to maintaining the child in the family of origin then to domestic adoption.

#### *Participation of the child*

The child who is capable of forming his or her own views has the right to express those views freely, these being given due weight in accordance with the age and maturity of the child. For

this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body.

*Non discrimination principle*

Children may not be discriminated in the adoption process, especially relating to their origin. This means for example that children adopted domestically must enjoy safeguards and standards equivalent to children adopted intercountry and *vice versa*; the same for children from non Hague States compared with children from Hague States or for children from non European Union Member States compared with children from European Union Member States.

*Non profit principle and fight against trafficking*

Adoption may not provide any financial or undue profit.

The adoption process has to protect children, families of origin and prospective adoptive parents from any type of trafficking.