



INFORMATION LEAFLET
Cross-border placement of children
abroad by German courts and authorities
– general advice –

1. EU Member States

a) Consultation procedure

If the German courts or authorities (such as the Youth Welfare Offices) intend to place a child¹ in another EU Member State (with the exception of Denmark)², a consultation procedure must be carried out under Article 82 of the Brussels IIb Regulation³ which requires the express prior consent to the placement of the authorities of the State in which the child is to be placed (Receiving State).

The **prior consent** of the competent authorities in the Receiving State is required (Article 82 paragraph 1 Brussels IIb Regulation). Accordingly, the judgment on placement may only be made if the authority having jurisdiction in the Receiving State has consented to the placement (Article 82 paragraph 5 Brussels IIb Regulation).

The only exception that applies to the need for prior consent is where the child is to be placed with a parent (Article 82 paragraph 2 Brussels IIb Regulation). Member States may make further exceptions that their consent is not required for placements within their own territory with certain categories of close relatives (Article 82 paragraph 2 Brussels IIb Regulation).

In the case of placements of children in other EU Member States **made by German Courts** and placements of children made by German Youth Welfare Offices as part of the **granting of youth welfare assistance benefits** on the basis of the Eighth Volume of the Social

¹ According to Article 2 paragraph 2 sentence 1 No 6 Brussels IIb Regulation a child means any person below the age of 18 years.

² Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. The Brussels IIb Regulation does not apply to Denmark. In the case of Denmark, Article 33 of the Hague Child Protection Convention applies instead. Upon completion of the United Kingdom's exit from the European Union, it became a third country with respect to the EU. Accordingly, Article 33 of the Hague Child Protection Convention applies in this respect (see below).

³ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast of the so-called Brussels IIa Regulation).

Code (Section 38 Social Code Vol. VIII – *Sozialgesetzbuch (SGB) VIII*), the prior consent of the competent authorities in the Receiving State in accordance with Article 82 paragraph 1 of the Regulation shall be required without exception.

As set out in Article 82 Brussels IIb Regulation, the consultation procedure is governed by the national law of the Receiving State (Article 82 paragraph 7 Brussels IIb Regulation). National law provides for formal and substantive requirements for consenting to a placement. **In some EU Member States such as Spain or Lithuania, the national law of the country provides that consent can only be given if certain conditions are met, such as that custody of the child must be held by a person in the Receiving State for the duration of the measure.**

It is mandatory that the request for consent be made via the Federal Office of Justice as Central Authority for Germany (see point 5 for address) to the Central Authority of the Receiving State.

Except where exceptional circumstances make this impossible, the decision granting or refusing consent shall be transmitted to the requesting Central Authority no later than **three months** following the receipt of the request (Article 82 paragraph 6 Brussels IIb Regulation).

b) Subsequent consultation procedure

The required consent must be in place **before** the placement can be undertaken (Article 82 paragraphs 1 and 5 Brussels IIb Regulation; also Section 38 Subsection 1 Social Code Vol. VIII). Thus, if a child is already in another EU Member State, without the required consent procedure in the Receiving State having been completed with the result of consent being granted, this would constitute a violation of Article 82 Brussels IIb Regulation (as well as Section 38 Subsection 1 Social Code Vol. VIII) and result in the judgment on the placement made not being recognised by the Receiving State (Article 39 paragraph 1 letter f Brussels IIb Regulation).

Most EU States categorically refuse subsequent approval if the child has already been placed within that country prior to the required consent (e.g. Portugal, Romania, Spain). The ensuing lack of recognition means that the authorities are obliged to end any measures undertaken (see Section 38 Social Code Vol. VIII).

2. Other Contracting States to the Hague Child Protection Convention of 1996

The Hague Child Protection Convention of 1996 (hereinafter referred to as "the 1996 Convention") entered into force in Germany on 1 January 2011⁴. Under Article 33 of the 1996 Convention, too, **every** placement of a child within the territory of another Contracting State requires the **prior** consent of the competent authorities of the Receiving State, and this is the case regardless of whether the child is being placed with the parents or other categories of close relatives. The details of the procedure are also governed by the national law of the Receiving State in question.

3. Extension or renewal of a placement or change of accommodation

Whether dealt with in the framework of the Brussels IIb Regulation or the Hague Child Protection Convention, any extension of the placement shall be dealt with as if it were a new application, as shall any change of accommodation⁵. The required documentation must then be handed in on time and the consent procedure undertaken once again. In the event that the required consent to the extension is not in place on time, once the initial consent has expired, no further application can be made unless the child has returned to Germany.

4. Required documents and translations

a) Required documents

According to Article 82 paragraph 1 sentence 2 Brussels IIb Regulation and Article 33 of the 1996 Convention, the request for consent must include a report on the child together with the reasons for the proposed placement or provision of care. In line with Article 82 paragraph 1 sentence 2 Brussels IIb Regulation, it must, in particular, contain information on funding and any other information considered relevant, such as the expected duration of the placement

The Federal Office of Justice is also able to give advice as to which documentation is required by each of the Receiving States in the EU on the basis of our experience in these matters. This is made available on the website, specifically, in the individual data sheets.

⁴ See www.bundesjustizamt.de/sorgerecht → List of States

Article 33 of the 1996 Convention shall only apply to the placement of children from Germany in other Contracting States to the Convention if the child is to be placed in a country which is not an EU Member State, or Denmark. As far as the placement of children in other EU Member States (other than Denmark) is concerned, the conditions of the Brussels IIb Regulation as stated above apply.

⁵ See European Court of Justice Case C-92/12 PPU - (Health Service Executive)

For data protection reasons, all concerned are requested to refrain from sending copies of identity documents when making such requests.

b) Translations

The rules as to **translation requirements** set out in Article 82 paragraph 4 **Brussels IIb Regulation** state that a translation into the official language of the Receiving State or, where there are several official languages in that Member State, into the official language or one of the official languages of the place where the request is to be carried out, or any other language that the Receiving State expressly accepts, is to be included.

The translation requirements for requests for consent according to the 1996 Convention are set out in Article 54 paragraph 1 of the **1996 Convention** as follows:

"Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English."

At present, there is no need for officially certified translations; a translation without any sort of certification is regarded as sufficient. If necessary, this can be carried out by the involved representatives of the youth welfare organisation responsible for the placement of the child.

5. Admissibility of measures abroad under Sec. 38 Social Code Vol. VIII (SGB VIII)

Since 10 June 2021, Section 38 Social Code Vol. VIII has governed the admissibility of measures abroad under German law. Among other things, the first paragraph sets out that such measures may only be carried out abroad if the conditions of Article 82 Brussels IIb Regulation or Article 33 Hague Child Protection Convention are met.

Furthermore, in the case of measures abroad carried out under Section 38 Subsection 5 Social Code Vol. VIII, the German Youth Welfare Offices are obliged to notify the authority which is competent for the service provider and also issues the licence. In accordance with Section 38 Subsection 5 No. 4 Social Code Vol VIII, among other things, proof that the terms of Article 82 Brussels IIb Regulation or Article 33 Hague Child Protection Convention have been complied with is to be sent immediately.

6. Contact details of the German Central Authority

Bundesamt für Justiz (Federal Office of Justice)

Zentrale Behörde für internationale Sorgerechtskonflikte – (Central Authority for International Custody Conflicts)

Adenauerallee 99-103

53113 BONN

Phone: +49 (0) 228 99 410-5212

Fax: +49 (0) 228 410-5401

E-mail: int.sorgerecht@bfj.bund.de

Website: www.bundesjustizamt.de/EN/Topics/citizen_services/HKUE/HKUE_node.html

7. Registration of the child with the local German mission abroad

Irrespective of the necessity of carrying out a consultation procedure, the child should be registered with the local German mission abroad, if possible before the measure is initiated.