



INFORMATION LEAFLET

Cross-border placement of children in Germany by courts and authorities in other countries

I. EU Member States (with the exception of Denmark)

1. Necessity of the consultation procedure

If a court or an authority of another Member State of the EU (with the exception of Denmark)¹ intends to place a child in Germany, the rules of Article 82 of Regulation (EU) No 2019/1111², the so-called Brussels IIb Regulation, must be complied with. According to paragraph 7 of said Article, the national law of the Receiving State shall govern the details.

In Germany, Sections 45-47 of the International Family Law Procedure Act (IFLPA – *Internationales Familienrechtsverfahrensgesetz (IntFamRVG)*) govern the further details. Only if the child is to be placed in Germany with a parent is it not necessary to conduct a consultation procedure (Article 82 paragraph 2 Brussels IIb Regulation). Germany has not specified to the Commission any other categories of close relatives with which a placement may be made without prior consent in accordance with Article 82 paragraph 2 Brussels IIb Regulation.

2. Sequence of the consultation procedure

a) Consent of the competent supra-local agency responsible for the public youth welfare service (*Landesjugendamt*)

Such a placement shall require the prior consent of the **supra-local agency responsible for the public youth welfare service** in the jurisdiction of which the child is to be placed. In Germany, with its 16 federal states (known as a "*Land*" in German), there are 17 supra-local agencies responsible for the public youth welfare service (one each per most of the federal states and two in North Rhine-Westphalia; list of addresses under www.bagljae.de, then click on "Landesjugendämter"). If there is not yet a specific proposal for the location of the placement, the supra-local agency which the German

¹ 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. 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 to the UK in this respect.

² 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 what is referred to as the Brussels IIa Regulation).

Central Authority establishes as having the closest link to the case shall be competent. Alternatively, competence shall lie with the *Land* of Berlin (Section 45 IFLPA).

The **German supra-local agency responsible for the public youth welfare service** which is locally competent according to the aforementioned directives is to approve the request according to Section 46 Subsection 1 IFLPA as a rule if

1. the intended placement in Germany is in the best interests of the child, in particular because he or she has a particular connection with the country,
2. the authority abroad has presented a report and, to the extent necessary, medical certificates or reports setting out the reasons for the intended placement,
3. the child has been heard in the proceedings abroad unless this appeared inappropriate on the ground of the child's age or degree of maturity,
4. the consent of the appropriate institution or foster family has been given and there are no reasons against such placement,
5. approval required by the law governing aliens has been given or promised, and
6. the issue of assumption of costs has been dealt with.

A placement involving deprivation of liberty (in a secure facility) can only be approved if a court in the Requesting State makes a decision on the placement and, taking the facts of the case as provided into account, a placement involving deprivation of liberty would also be permissible if German law were applied (Section 46 Subsection 2 IFLPA).

The authority abroad can be requested to provide supplementary information (Section 46 Subsection 3 IFLPA).

Where there is the request for the placement of a foreign child, the supra-local agency responsible for the public youth welfare service shall obtain the opinion of the aliens authority pursuant to Section 46 Subsection 4 IFLPA.

b) Prior approval of the intended consent by the *supra-local agency* through the Family Court

The supra-local agency responsible for the public youth welfare service must have the intended granting of consent approved by the **Family Court** competent for its area before declaring its consent to the requesting authority abroad (Section 47 Subsection 1 Sentence 1 IFLPA). Jurisdiction in Germany is with the 24 family courts in the area of which one of the 24 German Higher Regional Courts is based (Section 47 Subsection 2 in combination with Section 12 Subsections 2 and 3 IFLPA). In the *Land* of Lower Saxony with three Higher Regional Courts, the competence has been concentrated on one sole family court (Celle) by way of the *Land's* own legislation, with the result that 22 family courts are responsible nationwide.

According to Section 47 Subsection 1 Sentence 2 IFLPA, the Court is to give its approval as a rule where the conditions referred to above under numbers 1-3 have been fulfilled and there is no apparent impediment to recognition of the intended placement. Impediments to recognition are stated in Article 39 paragraphs 1 and 2 of the Brussels IIb Regulation.

The authority abroad can be requested to provide supplementary information (Section 47 Subsection 1 Sentence 3 in conjunction with Section 46 Subsection 3 IFLPA). This can be considered, for example, if it cannot be seen from the foreign placement decision or the request whether the child or the parents have been heard by a court.

The decision of the Family Court is incontestable (Section 47 Subsection 3 IFLPA).³

3. Questions of competence and procedure

Placement requests from abroad shall be submitted to the Central Authority of the State issuing the request, which in turn forwards them to the Central Authority in Germany, i.e. the Federal Office of Justice (Article 82 paragraph 1 Brussels IIb Regulation). It will then transmit the request to the competent German **supra-local agencies responsible for the public youth welfare service** (a list of addresses can be found at www.bagljae.de)

The request shall include a report on the child together with the reasons for the proposed placement or provision of care, information on any contemplated funding and any other information considered relevant, such as the expected duration of the placement (Article 82 paragraph 1 sentence 2 Brussels IIb Regulation).

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. Accordingly, the request shall include a **translation** into German.

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).

³ After the competent family court has approved or rejected the consent, the German supra-local agencies responsible for the public youth welfare service informs the requesting authority abroad as well as the German Central Authority and the institution or foster family where the child is to be placed of its decision. This decision is also incontestable and the reasons for the decision shall be given (Section 46 Subsection 5 IFLPA)

4. Subsequent consultation procedure

If a child is already in Germany without the consultation procedure having been completed in Germany on the part of the EU Member State placing the child, it must be held subsequently without delay. The competent supra-local agencies responsible for the public youth welfare service decide whether it is possible and permissible to subsequently perform the consultation procedure.

Placement linked with **deprivation of liberty** without the required prior consent shall be ended without delay until the consultation procedure has been held or the German courts have taken urgency measures pursuant to Article 15 of the Brussels IIb Regulation.

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

On 1 January 2011, the 1996 Hague Child Protection Convention took effect between Germany and 25 other States. Meanwhile it has more than 50 Contracting States.⁴ According to Article 33 of the Convention, a consultation and consent procedure is necessary for **every** cross-border placement of a child in another Contracting State. The consultation and consent procedure described above under point 1 is, thus, also to be held for requests for placement from Contracting States of the Convention. Sections 45 to 17 IFLPA also apply in these circumstances, as described in more detail above.

With a view to all and any **requirements for translation**, Article 54 paragraph 1 of the Convention sets out:

"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."

⁴ www.bundesjustizamt.de/sorgerecht contains a list of states which shows the states to which this Convention applies in relations to Germany.

In relations between EU Member States (apart from Denmark), the Brussels IIb Regulation however replaces the Convention to the extent that a question has been regulated in both documents.

III. 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

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

Fax: +49 (0) 228 410-5401

Email: int.sorgerecht@bfj.bund.de

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