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Draft convention of the Council of Europe on the adoption of children (revised)

Request for an opinion from the Committee of Ministers

Letter from Mr Guido Bellatti Ceccoli, Chairperson of the Ministers' Deputies to Mr René van der Linden, President of the Parliamentary Assembly

Strasbourg, 11 April 2007

Dear President,

At the 993rd meeting of the Ministers' Deputies (11 April 2007, item 10.2), the Committee of Ministers decided to invite the Parliamentary Assembly to give an opinion on the draft Council of Europe convention on the adoption of children (revised) contained in document CM(2007)44. I enclose a copy of the draft convention and of its explanatory report.

If the Assembly were to be able to give its opinion by June 2007, it would greatly assist the Committee of Ministers in the early finalisation of this important text.

Yours sincerely,

Guido Bellatti Ceccoli
Chairman of the Ministers' Deputies

PJ:1

Mr René van der Linden
President of the Parliamentary Assembly
of the Council of Europe
Strasbourg

Draft revised Council of Europe Convention on the Adoption of Children – Invitation to the Parliamentary Assembly to give an opinion

Introduction¹

At its 77th meeting in May 2002, the European Committee on Legal Co-operation (CDCJ) entrusted the Committee of Experts on Family Law (CJ-FA) with the task of examining the European Convention on the Adoption of Children (ETS No. 58). For this purpose, the Working Party on Adoption was set up in early 2003 with the task of drafting a report containing detailed proposals on the feasibility of reviewing the European Convention on the Adoption of Children. The Working Party concluded, in its final activity report on adoption, that a new (revised) convention on the adoption of children should be drafted as soon as possible.

At its 79th meeting in May 2004, the CDCJ adopted new terms of reference for the CJ-FA, which instructed the latter to prepare, for the attention of the CDCJ, a new convention on the adoption of children, taking into account the final report containing detailed proposals for the revision of the 1967 European Convention on the Adoption of Children (ETS No. 58) and the submissions made by the member states. At the 890th meeting of the Deputies on 30 June 2004, the Committee of Ministers approved these new terms of reference for the CJ-FA.

The draft of the revised convention and its explanatory report were prepared by the Working Party on Adoption, during two meetings in April and July 2006. They were amended and approved by the CJ-FA during its 36th meeting on 15- 17 November 2006 and by the CDCJ during its 82nd meeting on 26 February - 1 March 2007.

Draft Convention on the Adoption of Children (revised)

Preamble

The member states of the Council of Europe and the other signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that, although the institution of the adoption of children exists in the law of all member states of the Council of Europe, differing views as to the principles which should govern adoption and differences in adoption procedures and in the legal consequences of adoption remain in these countries;

Taking into account the United Nations Convention on the Rights of the Child, of 20 November 1989, and in particular its Article 21;

Taking into account The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption;

Noting the content of Recommendation 1443 (2000) of the Parliamentary Assembly of the Council of Europe on international adoption: respecting children's rights, and the Council of Europe's White Paper on principles concerning the establishment and legal consequences of parentage;

Recognising that some of the provisions of the 1967 European Convention on the Adoption of Children (ETS No. 58) are outdated and contrary to the case law of the European Court of Human Rights;

¹ See document CM(2007)44 of the Committee of Ministers.

Recognising that the involvement of children in family proceedings affecting them has been improved by the European Convention of 25 January 1996 on the Exercise of Children's Rights (ETS No. 160) and by the case law of the European Court of Human Rights;

Considering that the acceptance of common revised principles and practices with respect to the adoption of children, taking into account the relevant developments in this area during the last decades, would help to reduce the difficulties caused by the differences in national laws and at the same time promote the interests of children who are adopted;

Being convinced of the need for a revised Council of Europe international instrument on adoption of children providing an effective complement in particular to the 1993 Hague Convention;

Recognising that the best interests of the child shall be of paramount consideration,

Have agreed as follows:

Part I – Scope of the convention and application of its principles

Article 1 – Application of principles

Each State Party shall adopt such legislative or other measures as may be necessary to ensure the conformity of its law with the provisions of this convention and shall notify the Secretary General of the Council of Europe of the measures taken for that purpose.

Article 2 – Scope of the convention

1. This convention applies to the adoption of a child who, at the time when the adopter applies to adopt him or her, has not attained the age of 18, is not and has not been married and has not reached majority.
2. This convention covers only legal institutions of adoption which create a permanent child-parent relationship.

Part II – General principles

Article 3 – Validity of adoptions

An adoption shall be valid only if it is granted by a court or an administrative authority (hereinafter the "competent authority").

Article 4 – Granting of an adoption

1. The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the best interests of the child.
2. In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home.

Article 5 – Consents to an adoption

1. Subject to paragraphs 2 to 5 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:
 - a. the consent of the mother and the father; or if there is neither father nor mother to consent, the consent of any person or body who is entitled to consent in their place;

b. the consent of the child considered by law as having sufficient understanding; a child shall be considered as having sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years;

c. the consent of the spouse or registered partner of the adopter.

2. The persons whose consent is required for adoption must 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. The consent must have been given freely, in the required legal form, and expressed or evidenced in writing.

3. The competent authority shall not dispense with the consent or overrule the refusal to consent of any person or body mentioned in paragraph 1 save on exceptional grounds determined by law. However, the consent of a child who suffers from a disability preventing the expression of a valid consent may be dispensed with.

4. If the father or mother is not a holder of parental responsibility in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.

5. A mother's consent to the adoption of her child shall be valid when it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as', in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.

6. For the purposes of this convention "father" and "mother" mean the persons who according to law are the parents of the child.

Article 6 – Consultation of the child

If the child's consent is not necessary according to Article 5, paragraphs 1 and 3, he or she shall, as far as possible, be consulted and his or her views and wishes shall be taken into account having regard to his or her degree of maturity. Such consultation may be dispensed with if it would be manifestly contrary to the child's best interests.

Article 7 – Conditions for adoption

1. The law shall permit a child to be adopted:

a. by two persons of different sex

i. who are married to each other, or

ii. where such an institution exists, have entered into a registered partnership together;

b. by one person.

2. States are free to extend the scope of this convention to same-sex couples who are married to each other or who have entered into a registered partnership together. They are also free to extend the scope of this convention to different-sex couples and same-sex couples who are living together in a stable relationship.

Article 8 – Possibility of a subsequent adoption

The law shall not permit an adopted child to be adopted on a subsequent occasion save in one or more of the following circumstances:

- a. where the child is adopted by the spouse or registered partner of the adopter;
- b. where the former adopter has died;
- c. where the adoption has been annulled;
- d. where the former adoption has come or thereby comes to an end;
- e. where the subsequent adoption is justified on serious grounds and the former adoption cannot in law be brought to an end.

Article 9 – Minimum age of the adopter

1. A child may be adopted only if the adopter has attained the minimum age prescribed by law for this purpose, this minimum age being neither less than 18 nor more than 30 years. There shall be an appropriate age difference between the adopter and the child, having regard to the best interests of the child, preferably a difference of at least 16 years.

2. The law may, however, permit the requirement as to the minimum age or the age difference to be waived in the best interests of the child:

- a. when the adopter is the spouse or registered partner of the child's father or mother; or
- b. by reason of exceptional circumstances.

Article 10 – Preliminary enquiries

1. The competent authority shall not grant an adoption until appropriate enquiries have been made concerning the adopter, the child and his or her family. During such enquiries and thereafter, data may only be collected, processed and communicated according to the rules relating to professional confidentiality and personal data protection.

2. The enquiries, to the extent appropriate in each case, shall concern, as far as possible and *inter alia*, the following matters:

- a. the personality, health and social environment of the adopter, particulars of his or her home and household and his or her ability to bring up the child;
- b. why the adopter wishes to adopt the child;
- c. where only one of two spouses or registered partners applies to adopt the child, why the other does not join in the application;
- d. the mutual suitability of the child and the adopter, and the length of time that the child has been in his or her care;
- e. the personality, health and social environment of the child and, subject to any limitations imposed by law, his or her background and civil status;
- f. the ethnic, religious and cultural background of the adopter and of the child.

3. These enquiries shall be entrusted to a person or body recognised for that purpose by law or by a competent authority. They shall, as far as practicable, be made by social workers who are qualified in this field as a result of either their training or their experience.

4. The provisions of this article shall not affect the power or duty of the competent authority to obtain any information or evidence, whether or not within the scope of these enquiries, which it considers likely to be of assistance.

5. Enquiries relating to the suitability to adopt and the eligibility of the adopter, the circumstances and the motives of the persons concerned and the appropriateness of the placement of the child shall be made before the child is entrusted with a view to adoption to the care of the prospective adopter.

Article 11 – Effects of an adoption

1. Upon adoption a child shall become a full member of the family of the adopter(s) and shall have in regard to the adopter(s) and his, her or their family the same rights and obligations as a child of the adopter(s) whose parentage is legally established. The adopter(s) shall have parental responsibility for the child. The adoption shall terminate the legal relationship between the child and his or her father, mother and family of origin.

2. Nevertheless, the spouse or registered partner of the adopter shall retain his or her rights and obligations in respect of the adopted child if the latter is his or her child, unless the law otherwise provides.

3. As regards the termination of the legal relationship between the child and his or her family of origin, States Parties may make exceptions in respect of matters such as the surname of the child and impediments to marriage or to entering into a registered partnership.

4. States Parties may make provision for other forms of adoption having more limited effects than those stated in the preceding paragraphs of this article.

Article 12 – Nationality of the adopted child

1. States Parties shall facilitate the acquisition of their nationality by a child adopted by one of their nationals.

2. Loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.

Article 13 – Prohibition of restrictions

1. The number of children who may be adopted by the same adopter shall not be restricted by law.

2. A person who has or is able to have a child shall not on that account be prohibited by law from adopting a child.

Article 14 – Revocation and annulment of an adoption

1. An adoption may be revoked or annulled only by decision of the competent authority. The best interests of the child shall always be the paramount consideration.

2. An adoption may be revoked only on serious grounds permitted by law before the child reaches the age of majority.

3. An application for annulment must be made within a period prescribed by law.

Article 15 – Request for information from another State Party

When the enquiries made pursuant to Articles 4 and 10 of this convention relate to a person who lives or has lived in the territory of another State Party, that State Party shall, if a request for information is made, promptly endeavour to secure that the information requested is provided. Each state shall designate a national authority to which a request for information shall be addressed.

Article 16 – Proceedings to establish parentage

In the case of pending proceedings for the establishment of paternity, or, where such a procedure exists, for the establishment of maternity, instituted by the putative biological father or mother, adoption proceedings shall, where appropriate, be suspended to await the results of the parentage proceedings. The competent authorities shall act expeditiously in such parentage proceedings.

Article 17 – Prohibition of improper gain

No one shall derive any improper financial or other gain from an activity relating to the adoption of a child.

Article 18 – More favourable conditions

States Parties shall retain the option of adopting provisions more favourable to the adopted child.

Article 19 – Probationary period

States Parties are free to require that the child has been in the care of the adopter before adoption is granted for a period long enough to enable a reasonable estimate to be made by the competent authority as to their future relations if the adoption were granted. In this context the best interests of the child shall be the paramount consideration.

Article 20 – Counselling and post-adoption services

The public authorities shall ensure the promotion and proper functioning of adoption counselling and post-adoption services to provide help and advice to prospective adopters, adopters and adopted children.

Article 21 – Training

States Parties shall ensure that social workers dealing with adoption are appropriately trained in the social and legal aspects of adoption.

Article 22 – Access to and disclosure of information

1. Provision may be made to enable an adoption to be completed without disclosing the identity of the adopter to the child's family of origin.
2. Provision shall be made to require or permit adoption proceedings to take place in camera.
3. The adopted child shall have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin have a legal right not to disclose their identity, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose identifying information, having regard to the circumstances and to the respective rights of the child and his or her parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority.
4. The adopter and the adopted child shall be able to obtain a document which contains extracts from the public records attesting the date and place of birth of the adopted child, but not expressly revealing the fact of adoption or the identity of his or her parents of origin. States Parties may choose not to apply this provision to the other forms of adoption mentioned in Article 11, paragraph 4, of this convention.
5. Having regard to a person's right to know about his or her identity and origin, relevant information regarding an adoption shall be collected and retained for at least 50 years after the adoption becomes final.
6. Public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a legitimate interest from learning whether a person was adopted or not, and if this information is disclosed, the identity of his or her parents of origin.

Part III – Final clauses

Article 23 – Effects of the convention

1. This convention shall replace, as regards its States Parties, the European Convention on the Adoption of Children, which was open for signature on 24 April 1967.

2. In relations between a Party to the present convention and a Party to the 1967 convention which has not ratified the present convention, Article 14 of the 1967 convention shall continue to apply.

Article 24 – Signature, ratification and entry into force

1. This convention shall be open for signature by the member states of the Council of Europe and the non-member states which have participated in its elaboration.

2. The convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three signatories have expressed their consent to be bound by the convention in accordance with the provisions of paragraph 2 of this article.

4. In respect of any state mentioned in paragraph 1, which subsequently expresses its consent to be bound by it, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 25 – Accession

1. After the entry into force of this convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties, invite any state not a member of the Council of Europe and not having participated in its elaboration to accede to this convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the States Parties entitled to sit on the Committee of Ministers.

2. In respect of any acceding state, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 26 – Territorial application

1. Any state may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this convention shall apply.

2. Any State Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 27 – Reservations

1. No reservations may be made to this convention except in respect of the provisions of Article 5, paragraph 1.b, Article 7, paragraph 1.a.ii and 1.b, and Article 22, paragraph 3.

2. Any reservation made by a state in pursuance of paragraph 1 shall be formulated at the time of signature or upon the deposit of its instrument of ratification, acceptance, approval or accession.
3. Any state may wholly or partly withdraw a reservation it has made in accordance with paragraph 1 by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

Article 28 – Notification of competent authorities

Each State Party shall notify the Secretary General of the Council of Europe of the name and address of the authority to which requests under Article 15 may be addressed.

Article 29 – Denunciation

1. Any State Party may, at any time, denounce this convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 30 – Notification by the Secretary General

The Secretary General of the Council of Europe shall notify the member states of the Council of Europe, the non-member states which have participated in the elaboration of this convention, any State Party, and any state which has been invited to accede to this convention, of:

- a. any signature;
- b. any deposit of an instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this convention in accordance with Article 24 thereof;
- d. any notification received in pursuance of the provisions of Article 1;
- e. any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 26;
- f. any reservation and withdrawal of reservations made in pursuance of the provisions of Article 27;
- g. any notification received in pursuance of the provisions of Article 28;
- h. any notification received in pursuance of the provisions of Article 29 and the date on which denunciation takes effect.

In witness whereof, the undersigned, being duly authorised thereto, have signed this convention.

Done at ..., this ... day of ... 2007, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member state of the Council of Europe, to the non-member states which have participated in the elaboration of the convention and to any state invited to accede to this convention.

Draft explanatory report to the European Convention on the adoption of children (revised)

Introduction

The 1967 convention

1. The 1967 European Convention on the Adoption of Children was prepared within the framework of the Council of Europe in reply to a request made by the Social Committee, taking into consideration Recommendation 292 (1961) of the Consultative Assembly.
2. The convention was opened to signature by member states of the Council of Europe on 24 April 1967. It entered into force on 26 April 1968 and today has been ratified by 18 states and signed by 3.
3. However, due to the social and legal changes which have occurred in Europe since the late 1960s, many member states of the Council of Europe revised their laws on adoption with the consequence that certain provisions of the convention became outdated over the years.
4. The first proposals for updating the European Convention on the Adoption of Children were made already in 1977, during the First European Conference on Family Law in Vienna. Then, in 1988, the CJ-FA included questions on the adoption of children in its agenda, but decided to wait for the outcome of the work of the Hague Conference on Private International Law on the matter, which resulted in the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption of 1993 (hereinafter the "1993 Hague Convention").
5. While the 1967 convention is the main instrument of the Council of Europe in the field of adoption, there is a more recent, although legally non-binding instrument, which is the Parliamentary Assembly Recommendation 1443 (2000) on international adoption: respecting children's rights. Also relevant, to a certain extent, are the non-binding suggestions made in the White Paper on principles concerning the establishment and legal consequences of parentage (hereinafter the "White Paper"). The Recommendation draws the attention of member states to the need to respect children's rights in the context of an international adoption. The White Paper draws attention to the fact that member states had revised their laws since the 1960s.
6. Albeit not as recent as the above, the European Convention on the Legal Status of Children born out of Wedlock (1975, ETS No. 85), which aims to assimilate the legal status of children born out of wedlock with that of children born in wedlock, contributed to updating the 1967 convention. This was done by using that convention to support the view that, in cases of adoption, it was important that the consent of the father, as well as that of the mother of the child, to an adoption, be sought regardless of whether the child was born in or out of wedlock.
7. Furthermore, it was also important to reconsider the standards of the 1967 convention in order to complement usefully the Hague Convention of 1993. The latter establishes safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child's fundamental rights as recognised in international law. It also establishes a system of co-operation amongst States Parties to ensure that those safeguards are respected and thereby prevent the abduction or the sale of, or traffic in, children and finally to secure the recognition in Contracting States of adoptions made in accordance with the convention. However, an adoption will only come within the scope of the convention where a child who is habitually resident in one of the Contracting States (the "state of origin") has been, is being or is about to be moved to another Contracting State ("the receiving state"), following adoption in the state of origin or for the purposes of adoption in the receiving state. The Hague Convention of 1993 therefore only deals with international adoptions, leaving aside the substantive adoption law of the States Parties.

The revised convention

8. All of the above led the CDCJ, at its 77th meeting in May 2002, to entrust the CJ-FA with the task of examining the 1967 European Convention on the Adoption of Children, taking into account the European Convention on the Legal Status of Children born out of Wedlock and the White Paper, with a view to ascertaining the feasibility of reviewing it and bringing it up to date and reporting back to the CDCJ in 2004.
9. In order to achieve this task, the Working Party on Adoption (the CJ-FA-GT1, hereinafter the "Working Party") was set up in early 2003 with the task of drafting a report containing detailed proposals on the feasibility of reviewing the 1967 European Convention on the Adoption of Children.
10. The Working Party completed in March 2004, for the attention of the CDCJ, a final report on proposals for the revision of the 1967 convention. It based its proposals and conclusions primarily on the replies received to a questionnaire. 24 replies to the questionnaire were received: 23 replies from states and one from the International Social Service (ISS). Of the 23 states replying, 11 had ratified the 1967 European Convention on the Adoption of Children and 3 had signed it. The 9 other states that replied had neither signed nor ratified the 1967 convention.
11. The CDCJ, at its 79th meeting in May 2004, approved the project to draft a revised convention. The Committee of Ministers approved the new terms of reference of the CJ-FA at its 890th meeting on 30 June 2004, in which it is instructed to prepare, for the attention of the CDCJ, a new convention on the adoption of children, taking into account the final report containing detailed proposals for the revision of the 1967 European Convention on the Adoption of Children [ETS No. 58] and the submissions made by the member states.
12. The draft of the revised convention and its explanatory report were prepared by the Working Party on Adoption, during two meetings in April and July 2006. They were amended and approved by the CJ-FA during its 36th meeting on 17 November 2006 and by the CDCJ during its 82nd meeting on 1 March 2007.
13. The draft revised convention was submitted by the CDCJ to the Committee of Ministers which adopted the text and decided to open it for signature on.....2007.

General considerations

14. In a sense, there is only one principle essential to good adoption practice, namely that adoption should be in the best interests of the child as stated in Article 4, paragraph 1, of the convention. This principle is indispensable but if taken by itself it might not be totally effective. For this reason the convention develops this principle so as to give it precision and define its scope. This principle is also specifically mentioned in the context of a revocation or an annulment of an adoption (Article 14, paragraph 1).
15. When drafting the 1967 convention, it was decided to select as many of the more important features as were both suitable for inclusion in a legal instrument and likely to gain wide enough acceptance by governments of the member states of the Council of Europe. These features had been included in Part II ("Essential provisions") of the 1967 convention.
16. But there were certain other features of good adoption practice which were not suitable for inclusion in a legal instrument on an obligatory basis. They had been inserted into Part III ("Supplementary provisions") and States Parties were free to give effect to them on a voluntary basis (see Article 2 of the convention of 1967: "to give consideration to...").
17. The replies received to the Working Party's questionnaire indicated that a majority of states were in favour of moving the content of Article 20, paragraphs 2 and 3, of the 1967 convention from Part III to Part II because the provisions concerning access to information

about the adopted child's identity should be obligatory. Therefore, when drafting the revised convention the previous structure was abandoned.

18. Furthermore, any difference of treatment between children born in and children born out of wedlock has been eliminated throughout the whole revised convention (in particular in Articles 5, 10 and 12 of the 1967 convention). Any legal solution which makes a discriminatory distinction in relation to the rights of children born to married and non-married parents is contrary to numerous international instruments and the case-law of the European Court of Human Rights.
19. While international adoption is covered formally only by Articles 12 and 15, clearly the convention as a whole will exert an important influence on international adoptions. It will provide an effective complement to the Hague Convention of 1993, notably by ensuring that adoptions which are not covered by the Hague Convention of 1993 are regulated in such a manner as to comply with the underlying aims of any adoption, which must be child-centred, in the child's best interests and should provide him or her with a harmonious home.

Commentary on the articles of the convention

Article 1 – Application of principles

20. The measures referred to in this article will usually take the form of legislative or administrative texts. A State Party will, however, be considered to have brought its law into line with the provisions of the convention if a firm and constant practice implementing those provisions exists. This is made clear by the term "legislative or other measures", to mean legal rules of general application, including a firm and constant practice.

Article 2 – Scope of the convention

21. Paragraph 1 limits the scope of the convention to the adoption of persons under the age of 18 excluding those who are married or have reached majority. The age of 18 years has been identified in the convention as it is the usual age of majority in the Council of Europe member states. This is consistent with the United Nations Convention on the Rights of the Child.
22. The convention shall not apply to children who have entered into a registered partnership where such an institution has effects similar to those of marriage as far as their legal capacity is concerned.
23. Paragraph 2 recalls that the establishment of a permanent parent-child relationship is an essential element of the legal institution of adoption, as mentioned in Article 2 of the Hague Convention of 1993.

Article 3 – Validity of adoptions

24. The object of this article is to prevent a child from being adopted by private contract without any intervention by a state authority, with a view to ensuring that the adoption is in conformity with the best interests of the child. The competent authority has the task of verifying that all the necessary conditions have been fulfilled. In order to make it clear that the competent authority has the power to permit or refuse adoption, the term "granted" has been used.
25. Administrative authorities have been included, as the powers which belong to courts are also, in some states, exercised by administrative authorities.
26. Article 3 does not prevent there being two competent authorities, one of which would examine conditions of substance, and the other, conditions of form, of adoption.

Article 4 – Granting of an adoption

27. In the English text the word "interests" (intérêt) has been used rather than "welfare" (bien) to avoid any misunderstanding. The same meaning should be attributed to the words "best interests" in the English text and the words "intérêt supérieur" in the French text of the revised convention.

Article 5 – Consents to an adoption

28. Paragraph 1 of this article specifies the persons whose consent must be obtained. The words “at least” in this provision are intended to indicate that a State Party may insist on the consent of other persons as well.
29. Paragraph 1 also states that the consents must be valid at the time the adoption is granted by the competent authority and that they must relate to a specific adoption, but the identity of the adopter may be concealed from the parents of origin (see Article 22, paragraph 1). The question of the withdrawal of consents is left by the convention to be determined by the States Parties.
30. The 1967 convention, under Article 5, paragraph 1, sub-paragraph (a), requires only the consent of the father of a child born in wedlock (“where the child is legitimate”) while the consent of the father of a child born out of wedlock is not at all necessary. This is contrary to the case-law of the European Court of Human Rights, which clearly necessitates the consent of the unmarried father of a child where family ties have been established (see *inter alia* Keegan v. Ireland, Judgment of 26 May 1994; Kroon v. the Netherlands, Judgment of 27 October 1994). Therefore the revised convention requires the consent of the child’s father in all cases, with the possibility of a dispensation according to paragraphs 3 and 4.
31. The 1967 convention did not take a strong position on the child’s consent to an adoption (see Articles 5 and 9, paragraph 2, sub-paragraph (f) of the 1967 convention). Taking into account the strengthening of the legal status of the child by the United Nations Convention on the Rights of the Child (Article 12), the European Convention on the Exercise of Children’s Rights (1996, ETS No. 160) and the Hague Convention of 1993, the consent of the child is now necessary according to paragraph 1, sub-paragraph (b), if the child has sufficient understanding. It is up to the national law to fix the age when a child must give his or her consent to his or her adoption, provided always that consent must be obtained from children having reached the age of 14. Exceptions to the required consent are foreseen in Article 5, paragraph 3. Furthermore Council Regulation (EC) 2201/2003 (Article 11 (2)) now supplements the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children and places emphasis on the importance of giving the child an opportunity to be heard in proceedings affecting him or her unless this hearing is inappropriate having regard to the age or degree of maturity of the child (see also paragraphs 40 and 42 hereinafter).
32. Paragraph 1, sub-paragraph (c) also takes into account the situation when the child is adopted by one of two registered partners. This reflects the fact that since 1967 many states have introduced into their legislation the concept of registered partnership which often has effects similar to those of marriage. Requiring the consent of the registered partner in such a situation does not oblige states that do not provide for the institution of registered partnership to introduce it into their domestic law.
33. Paragraph 2 emphasises that it is essential that the person giving consent has been well informed in advance of the consequences of doing so and that consent is given freely and in writing.
34. Paragraph 3 stipulates that in every case national law should provide for grounds on which the competent authority could, in exceptional cases, dispense with the consent or overrule the refusal to consent. Clearly this provision leaves the way open for the exclusion of any exception.
35. The exceptional grounds foreseen in paragraph 3 are for example:

- a. one in which persons whose consent is required cannot be traced or are incapable of giving their consent;
- b. one in which the persons concerned refuse their consent for reasons which may be regarded as a misuse of their right to do so.

The fact that the person's consent is dispensed with does not mean that he or she should not be informed of the adoption proceedings.

36. Furthermore, dispensing with the child's consent may be provided for where the child cannot give a valid consent because of his or her disability. Even in such a situation the child must, as far as possible, be consulted (Article 6). The consent of a child having sufficient understanding (Article 5, paragraph 1, sub-paragraph (b)) who is not suffering from a disability can only be dispensed with on exceptional grounds provided by law. By this provision the legal position of the child is considerably improved: an adoption against his or her will cannot take place.
37. Paragraph 4 enables the States Parties to specify that the consents of fathers and mothers who are not holders of parental responsibility shall not be required. The wording of this paragraph allows for the case where the law makes it possible to deprive the parents of origin of certain parental responsibilities while leaving them the right to consent to adoption. Additionally, the term "parental rights" is replaced by "parental responsibility" which reflects the evolution in family law as regards the role of parents (see in particular Recommendation No. R (84) 4 of the Committee of Ministers to the member states of the Council of Europe on parental responsibilities). This does not mean that such a parent should not be informed, as far as possible, of the adoption proceedings.
38. The object of paragraph 5 is to avoid premature adoptions to which mothers give their consent as a result of pressure exerted before the birth of the child or before their physical health and psychological balance have been restored after the child's birth.
39. Paragraph 6 contains a definition of the terms "father" and "mother". Given this definition, the consent provided for in this article does not apply to parents of origin when legal affiliation has not been established.

Article 6 – Consultation of the child

40. If the child's consent is not necessary according to Article 5, paragraph 1, sub-paragraph (b) or if the consent may be dispensed with (see Article 5, paragraph 3), the child shall, as far as possible, be consulted and his or her views and wishes shall be taken into account. Such a consultation is not necessary if it would be manifestly contrary to the child's best interests.
41. Article 5, paragraph 1, sub-paragraph (b) and Article 6 improve the legal position of the child. As already mentioned, the European Convention on the Exercise of Children's Rights (ETS No. 160, hereinafter the "1996 convention") specifically provides procedural rights for children under the age of 18, so that they can avail themselves of the rights afforded under the United Nations Convention on the Rights of the Child. Article 1 of the 1996 convention acknowledges a child's right to be informed and participate in proceedings affecting him or her before a judicial authority. Article 2, sub-paragraph (d), of the 1996 convention provides that the term "relevant information" means information which is appropriate to the age and understanding of the child, and which will be given to enable the child to exercise his or her rights fully unless the provision of such information were contrary to the welfare of the child. It is also noteworthy that the text of the new European Union Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, emphasises the importance of hearing the voice of the child in matters relating to parental responsibility over him or her in accordance with his or her age and maturity.

42. Furthermore the case-law of the European Court of Human Rights on the issue of the involvement of children in court proceedings affecting them is used as an important guideline for the improvement of this involvement (see *Sahin v. Germany*, Judgment of 8 July 2003; *Sommerfeld v. Germany*, Judgment of 8 July 2003; *Elsholz v. Germany*, Judgment of 13 July 2000; *Kutzner v. Germany*, Judgment of 26 February 2002 and *Hoffmann v. Germany*, Judgment of 11 October 2001).

Article 7 – Conditions for adoption

43. This article provides for adoption either by a couple or by one person.
44. While the scope of the 1967 convention is restricted to heterosexual married couples, the scope of the revised convention is extended to heterosexual unmarried couples who have entered into a registered partnership in states which recognise that institution. By such a regulation the trend in many states is taken into account.
45. An adoption by a married couple or by a registered couple (in states where the institution of registered partnership for partners of different sex exists) can take place simultaneously or successively. States are free to decide whether to allow either simultaneous or successive adoption in these cases. In states where adoption may be undertaken successively, paragraph 1 excludes the possibility of a second adoption by a person who is not the spouse or the registered partner of the first adopter.
46. Concerning paragraph 2 it was noted that Sweden denounced the 1967 convention in July 2002 on the ground that same-sex registered partners under Swedish law may apply jointly to become adoptive parents and that this was not in line with the convention. Similar situations in other states could also lead to the denunciation of the 1967 convention. However, it was also noted that 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.
47. In these circumstances, paragraph 2 shall enable those states which wished to do so, to extend the revised convention to cover adoptions by same-sex couples who are married or registered partners. In this respect, it is not unusual for Council of Europe instruments to introduce innovative provisions, but to leave it to States Parties to decide whether or not to extend their application to them (see Article 5, paragraph 2, of the 2003 Convention on Contact concerning Children, ETS No. 192).
48. States are also free to extend the scope of the convention to different- or same-sex couples who are living together in a stable relationship. It is up to the States Parties to specify the criteria for assessing the stability of such a relationship.
49. If a State Party has extended the scope of the convention its provisions have to be applied *mutatis mutandis*.

Article 8 – Possibility of a subsequent adoption

50. The object of this article is to specify the conditions in which it is possible to adopt a child who has already been adopted. The principle is that an adopted child can belong only to one adoptive family. Five situations are mentioned. Sub-paragraph (e) allows a subsequent adoption if there are serious grounds and if the first adoption cannot in law be brought to an end (for example if the child is once again abandoned or is ill-treated). In all cases, parental responsibility can only be exercised by one adoptive family.

Article 9 – Minimum age of the adopter

51. This article does not prevent national law from prescribing a higher minimum age for the adopter than 18. However, the upper minimum age must be in keeping with the principle of adoption as conceived by the convention, and this age may not therefore exceed 30. Article 7, paragraph 1 of the 1967 convention had fixed the upper minimum age at 35 years. This age was felt to be too high; it is now fixed at 30 years which is more in line with the majority of national laws. The convention does not lay down a maximum age for the adopter.
52. Following the tendency in national laws to fix an age difference between the adopter and the child, an addition to paragraph 1 was made. In the best interests of the child in view of the

situation generally obtaining in the families of origin, the age difference should preferably be at least 16 years.

53. The requirements of minimum age or age difference should only be waived on the ground of exceptional circumstances when this is in the best interests of the child. An example of such exceptional circumstances is when younger siblings have already been adopted by the family and the age-difference requirement for adopting the older sibling is not met.

Article 10 – Preliminary enquiries

54. This article deals with the different enquiries to be carried out by the competent authorities in the context of adoption, namely enquiries before the actual grant of the adoption and, if appropriate, enquiries before the child is entrusted to the care of the prospective adopter.
55. Under paragraph 1, the enquiries to be carried out before granting an adoption shall be "appropriate", which means that they should be adapted to suit each individual case. For example, when adoption takes place within a family (an uncle adopts his orphaned nephews), there is generally no need for such extensive enquiries as in the case of adoption by persons who have never had any link with the children.
56. Paragraph 1 refers to the need to observe the rules on professional confidentiality and personal data protection because the data collected include data relating to the health of individuals, their ethnic origins and their religious beliefs. The sensitive nature of these data and the special guarantees which should apply to their treatment and their communication, need to be recalled, notably having regard to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).
57. Paragraph 2 contains a list of factors which the competent authority must take into consideration before concluding that the proposed adoption will be in the best interests of the child, as laid down in Article 4, paragraph 1. The words "*inter alia*" are inserted to show that the list in paragraph 2 is not exhaustive. The factors first listed are the personality, health and social environment of the adopter, particulars of his or her home and household and his or her ability to bring up the child, since the most important consideration is the family life which will be offered to the adopted child. However, all the factors listed in sub-paragraphs (a) to (f) are equally vital, since this paragraph sets out to cover the gamut of concrete hypotheses, and an error or serious omission in respect of any one of these matters may jeopardise the success of an adoption. The phrase "as far as possible" has been inserted to indicate that the list in paragraph 2 of this article is not obligatory. Indeed, it would seem inappropriate to examine all these factors in the context of certain adoptions, for example when the child is already living with the prospective adopter.
58. Sub-paragraph (d) may be related to Article 19 which concerns a probationary period. The latter provision gives the possibility to States Parties not to require a probationary period, although social experts attach great importance to it.
59. Sub-paragraph (e) provides a limitation on enquiries into the child's former background and civil status. In a few member states of the Council of Europe, the law forbids the disclosure of certain information in this respect.
60. Sub-paragraph (f) is based on the wording of the Hague Convention of 1993; the terms "ethnic and cultural background" have been added because this information is also important.
61. Paragraph 3 emphasises the fact that the enquiries must be conducted by persons or bodies competent in matters of adoption.
62. Paragraph 4 authorises the competent authority to make further enquiries, at least on certain points, if it thinks fit, either on its own or through channels other than the standard social enquiry.

63. Paragraph 5 clearly indicates that enquiries relating to the suitability to adopt and the eligibility of the adopter should, except where the child is already living with the adopter, be made before a child is entrusted to the care of the prospective adopter, not merely before an adoption is granted. If such enquiries are not made, an adoption may not be granted. This matter indeed gives rise to discussions on the advantages and disadvantages of independent adoptions (i.e. private adoptions) and adoptions through intermediaries (e.g. state agencies). Many states are in favour of promoting adoption through intermediaries, indicating however that in some situations independent adoptions should not be forbidden, e.g. where the adoption is taking place within a family (blood relations). However, it would not be realistic to limit adoptions solely to intermediary adoptions and to forbid independent adoptions (although practice shows that most abuses are associated with independent adoptions). The compromise is to underline the importance of making the enquiries before a child is entrusted to the care of the prospective adopter(s).

Article 11 – Effects of an adoption

64. The revised convention mainly deals with “full” adoption (which is an adoption that severs all ties with the family of origin) without preventing those states that have “simple” adoption (which is an adoption that does not sever the relationship with the family of origin so that the adopted child is not entirely integrated into his or her adoptive family) from continuing to use this form of adoption.
65. The main object of this article is to ensure that an adopted child is treated from every standpoint like a child of the adopter and his or her family and that, in principle, all ties with the child’s family of origin should be severed.
66. According to paragraph 1 the child shall be fully integrated into the family of the adopter(s) (“full” adoption). This means that the adopted child has the same rights and obligations as a child of the adopter(s). These rights and obligations are not confined to a single category, such as personal, as opposed to economic, rights and obligations. Although the notion “rights and obligations” includes the parental responsibility of the adopter(s) for the child, it is expressly mentioned in paragraph 1 because of its great importance.
67. According to paragraph 2, the parent whose child is adopted by his or her spouse or registered partner retains his or her rights and obligations in respect of the child, unless the law otherwise provides.
68. Paragraph 3 enables States Parties to provide certain exceptions to the principle that the legal relationship between the adopted child and his or her family of origin is terminated. Two specific matters are mentioned in the text as examples:
- a. the automatic acquisition of the adopter’s surname is not an absolute rule. States may provide other solutions, for example the child could keep his or her name of origin.
In some countries the competent authority may, on special grounds, permit the child to take a name other than that of the adopter; in others, the adopter is allowed to choose the child’s surname. In some countries, a child adopted by a woman does not necessarily acquire her name;
 - b. the blood relationship between the adopted child and certain categories of members of the family of origin may continue to be an impediment to marriage or the conclusion of a registered partnership.
69. Paragraph 4 enables States Parties to provide for other forms of adoption (“simple” adoptions). The legal consequences of such other forms of adoption may differ considerably from State to State. Therefore paragraph 4 does not give examples but only indicates that the effects of the adoption are more limited than those of a “full” adoption mentioned in paragraphs 1 to 3.

Article 12 – Nationality of the adopted child

70. The provision of paragraph 1 is not contrary to any national laws which provide for automatic acquisition of nationality but does not oblige every State Party to recognise this principle. The scope of this paragraph is not limited to adoptions taking place in the country of which the adopter is a national. The provision is consistent with Article 6, paragraph 4, of the European Convention on Nationality (1997, ETS No. 166).
71. Paragraph 2 takes account of the general rule that statelessness is to be avoided wherever possible and also of the fact that it is clearly in the best interests of the child that he or she should not become a stateless person.

Article 13 – Prohibition of restrictions

72. The aim of this article is to remove the two most frequently encountered obstacles to adoption:
- (a) restrictions on the number of children who may be adopted by the same adopter;
 - (b) prohibition of a person from adopting a child on the ground that he or she has, or is able to have, his or her own children.

Article 14 – Revocation and annulment of an adoption

73. Paragraph 1 lays down the principle that the revocation and annulment of an adoption can be pronounced only by decision of the competent authority and that the best interests of the child shall be the paramount consideration.
74. Paragraph 2 deals with revocation during the minority of the child. It goes without saying that this paragraph in no way obliges a State Party to make provision for revocation in its domestic law. Such revocation is a serious step and must therefore be surrounded by very explicit guarantees in law and in its implementation.
75. Paragraph 3 deals with annulment of an adoption, on which the 1967 convention was rather vague (see Article 13, paragraph 2, sub-paragraph (a)). It was felt necessary to deal with annulment in a more detailed manner in the revised convention. In order to prevent the granting of an annulment under too broad conditions, the convention lays down a strict condition regarding the application for an annulment, which must be filed within the time-limits prescribed by law. States Parties must therefore determine these time-limits and are free to add further conditions.

Article 15 – Request for information from another State Party

76. This provision, which is drafted in general terms, marks the need for genuine co-operation between the competent authorities of different States Parties whenever it is necessary to obtain information in connection with an adoption. Under Article 28 States Parties must notify the Secretary General of the Council of Europe of the authority competent for this purpose.

Article 16 – Proceedings to establish parentage

77. This provision applies to situations in which a putative biological father or mother institutes judicial proceedings to have his or her parentage link to the child established. In such a case the adoption proceedings must, if such a course is appropriate having regard to the child's best interests, be suspended pending the outcome of the proceedings to establish parentage. This mechanism may allow biological parents to consent to the adoption of their child if their parentage is established (see Article 5, paragraph 1, sub-paragraph (a)). Nevertheless, this does not oblige States Parties which do not know the procedure for

establishing maternity to introduce it in their legal system; however, if such a procedure does exist, the father and mother must be placed on an equal footing.

Article 17 – Prohibition of improper gain

78. This article stresses that any improper gain arising out of an adoption must be prohibited by law. It prohibits only improper financial or other sorts of gain. All proper gain is therefore not prohibited: the reimbursement of direct and indirect costs and expenses of an adoption and the payment of reasonable remuneration in relation to services rendered are allowed.

Article 18 – More favourable conditions

79. This article gives an interpretation of the convention: the latter sets minimum standards but does not prevent a State Party from going beyond the requirements set out in its articles.

Article 19 – Probationary period

80. States Parties are not prevented from providing that an adoption may not be granted until the child has been in the care of the adopters for a period which is not specified except that it should be long enough to enable the competent authority to arrive at a reasonable assessment of their future relations if the adoption were granted. This solution takes into account that some member states of the Council of Europe make provision for an obligatory probationary period before an adoption is granted.

Article 20 – Counselling and post-adoption services

81. This article takes account of the fact that in most states adoptions can generally be effected only through agencies, various public or private institutions, social services, etc. It is essential that such persons or bodies should be both well-informed, encouraged and supervised. As in the Hague Convention of 1993, not only adoption counselling should be provided, but also adequate post-adoption services (e.g. appropriate assistance by social services or psychologists to support the family when needed).

Article 21 – Training

82. This article should be read in conjunction with Article 10, paragraph 3, on preliminary enquiries.
83. States are free to delegate the training obligation to an appropriate body or organisation which has the role of accrediting or supervising social workers.

Article 22 – Access to and disclosure of information

84. The purpose of paragraphs 1, 2, 4 and 6 is to avoid difficulties which may arise:
- a. in situations where the parents of origin know the adopter's identity (especially in "full" adoptions);
 - b. from the publicity of adoption proceedings or public records relating to adoption.
85. Paragraph 3 underlines the right of the adopted child to know his or her origins especially in the light of Article 7 of the United Nations Convention on the Rights of the Child and also taking into account Principle 28 of the White Paper. But this is not an absolute right: a balance must be struck between the right of the child to know his or her origins and the right of the parent of origin to remain anonymous. The task of dealing with this sensitive question shall be entrusted to a competent authority (see *Odièvre v. France*, Judgment of 13 February 2003 of the European Court of Human Rights).
86. The first sentence of paragraph 4 enables the adopter and the adopted child to obtain extracts from public records which do not reveal the fact of adoption or the identity of the child's parents of origin. However, this does not affect the right of the persons concerned to obtain full copies of the birth records which may reveal the adoption and eventually the identity of the parents of origin.
87. To guarantee the effectiveness of this right, paragraph 5 provides that the information has to be kept for a minimum period of 50 years, as people often start searching for this type of information in their 40s, after having had children themselves or after the adopters have died.

Article 23 – Effects of the convention

88. This provision clarifies the relationship between the 1967 convention and the revised convention. If a State Party to the 1967 convention ratifies the revised convention this State has to adopt the necessary measures (see Article 1) to implement the additional provisions of the revised convention going beyond the scope of the 1967 convention. By this system States Parties are obliged to improve their national laws. The 1967 convention remains in force for the States Parties thereto pending ratification of the present convention. For those States Parties which ratify the present convention, this new treaty will apply in their mutual relationship. In the relationship between a State Party to this convention (which is also a Party to the 1967 convention) and a State Party to the 1967 convention, which has not ratified the revised convention, Article 14 of the 1967 convention continues to apply.
89. States which are Parties to the 1967 convention are encouraged to ratify the revised convention. The revised convention contains different rules which are more in line with present-day practices.

Articles 24, 25 and 26 – Signature, ratification and entry into force; accession; territorial application

90. Due to the importance of allowing a large number of states to become Parties, the convention is also open to accession by non-member states, after its entry into force, in accordance with the procedure laid down in Article 25.
91. The convention is also open to signature by non-member states of the Council of Europe which have participated in its elaboration. These states are Canada and the Holy See.

Article 27 – Reservations

92. With a limited number of exceptions, reservations are not permissible in respect of the convention. Reservations are admissible with regard to Article 5, paragraph 1, sub-paragraph (b), Article 7, paragraph 1, sub-paragraphs (a) (ii) and (b) and Article 22, paragraph 3 only.
93. Article 27 imposes no obligation to withdraw reservations and no time-limit for doing so.
94. As regards any reservation which they make, States Parties are furthermore invited to notify the Secretary General of the Council of Europe of the relevant contents of their internal law or of any other relevant information.

Articles 28, 29 and 30 – Notification of competent authorities; denunciation; notifications

95. Article 28 refers to enquiries under Articles 4 and 10 involving the participation of another State Party. To facilitate the application of Article 15, States Parties shall provide the name and address of the competent authority to which another State Party may address a request for information.
96. Article 29 enables a state which is a Party to the convention to denounce it.
97. Information concerning steps taken by states in relation to the convention will be sent by the Secretary General of the Council of Europe, depositary of the convention, to other states in compliance with Article 30.