



Bundesministerium der Justiz

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Postanschrift:

Bundesministerium der Justiz, 11015 Berlin

Haus- und Lieferanschrift:

Mohrenstraße 37, 10117 Berlin

Telefon: (0 30) 20 25 - 70

bei Durchwahl: (0 30) 20 25 -

Telefax: (0 30) 20 25 - 95 25

Hague Conference on Private International Law
The Permanent Bureau
6, Sreveningse Weg
2517 KT - The Hague
Netherlands

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Subject: Fourth Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 which took place at The Hague from 22-28 March 2001;

here: Implementation of the Conclusions and Recommendations of the Special Commission

Ref.:

- 1.) Your letter of 29 January 2002
Your reference number: L.c. ON No 79 (02)
- 2.) Additional e-mail further to this of 29 April 2002 (Sent by: Ms. Andrea Schulz)
- 3.) Your invitation of 6 June 2002 to attend the Special Commission concerning the Hague Convention
Your reference number: L.c. ON No 17 (02)

The Federal Ministry of Justice would like to hereby reply to your three letters referenced above. Allow me to convey my sincere thanks for the invitation to a further Special Commission meeting concerning the Hague Convention to take place from 27 September to 3 October 2002. You will contemporaneously receive our registry of Government representatives planning to attend within the next several days.

The Questionnaire you provided, along with the draft of the Good Practice Guide concentrating on implementing measures, and the Special Commission you convoked all clearly demonstrate that the Hague Convention on the Civil Aspects of International Child Abduction continues to gain importance. We share the view here as well that making further progress on the Hague Convention represents one of the most significant challenges facing us in this area of

law. This is underscored by the fact that the Parliamentary Assembly of the Council of Europe (Resolution of 3 June 2002) and the European Union are focusing efforts on the same task. In light of this, it seems particularly imperative to make instruments available which are effective in practice. Our Government also hopes that the necessary course of action will be taken to this end at the next Special Commission meeting.

We would like to draw your attention to the following details:

1.) Regarding the Questionnaire

The fact that in the Hague Conference work on a Good Practice Guide has begun indicates that, in a strict sense, you yourself have already answered certain questions posed in the Questionnaire. The course has already been set. The development of a guide has already begun; and conversely, the contemplation of adopting a new legal instrument was shelved, at least for the time being.

The Federal Ministry of Justice also sees no need at present for the adoption of an additional legal instrument regarding good practice. In respect of this, we would like to make particular reference to the following legal instruments:

- The Hague Convention of 5 October 1961 concerning the jurisdiction of authorities and the law applicable in respect of the protection of minors;
- The European Convention of 20 May 1980 on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children;
- Council Regulation (EC) No. 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility for children of both spouses (Brussels II). And in addition the European Convention on the exercise of children's rights drawn up at the Council of Europe.

In light of this, it would seem advantageous to expedite the ratification of the Hague Convention of 1996 and urge other states to ratify it. In the European Union, any future co-operation would undoubtedly align itself with the EU instrument to be adopted. A watered-down convention "light" would, for one, be detrimental to a ratification by as many states as possible of the Hague Convention of 1996 itself, and would therefore endanger, in particular, a desirable standardisation of international jurisdiction rules. Moreover,

this would mean the parallel existence of diverse legal instruments in relation to different states and would thus result in further complications in the practical application of these already problematical cases.

Therefore, we voice our approval of the work on a "Good Practice Guide" which was endorsed by the Special Commission in March 2001 and has begun in the meantime .

In view of the other aspect of the Questionnaire, the improvement of the co-operation between contracting states, allow me to mention the following:

The formal appointment of a German judge as "liaison judge", if this is what is meant in the Questionnaire under III B 1 ("nomination"), is not possible if such appointment entails the delegation of executive functions, or for instance the obligation to consult or inform public authorities. The only viable alternative in this respect would be the creation of a public authority ("liaison officer"), as is accounted for in the Questionnaire under III A 1 or III A 2 (other person or authority...).

Under the German law governing judges, a judge can only voluntarily assume the function of a "judicial contact" in the aforementioned area. The transfer of such a function which is solely assumable on a voluntary basis does not seem to be the most efficient solution in our view.

More propitious, on the other hand, seems to be the increased usage of the European Judicial Network installed by the EU Commission. This Network is designed to provide information on other legal systems to citizens as well as Offices and Courts, whilst acting as an interface for the transnational exchange of information. Particularly the latter function could be employed with success. The Judicial Network will be supported by a structure of centralised contacts to be co-ordinated by the European Commission, which will include additional select contacts of the contracting states, as well as those of liaison judges, public prosecutors and other judicial and administrative authorities. For Germany, the central authority in this judicial network would be the Office of the Federal Public Prosecutor General (*Generalbundesanwalt*). Given that this Office is concurrently the Central Authority in the scope of the Hague Convention, this presents an excellent opportunity to make use of synergies.

2.) Regarding the Good Practice Guide

Your outline provides an excellent basis for the planned preparation of a good practice guide. It elucidates the basic structures of the Hague Convention, the functions of the Central Authorities, as well as key aspects of the judicial process to be considered in implementation.

In our view, it would be advisable for those sections of the text that relate to Articles of the Hague Convention to make specific reference to them in the text itself (e.g., 6.5.1; e.g. 4.2.1 should be changed). We will review any footnotes concerning references made to Germany.

As regards further sections of the guide, it would be helpful to elaborate in their respective context on practical aspects of court proceedings such as closing dates, application eligibility, and similar such topics. In addition, the complicated balance within the Convention between the principle of repatriation of the children and the provision made for limited exceptions in Article 13 should also be explained in a general way. For both practical application as well as for the legislative body responsible for introducing the Hague Convention into national law, an explanation of this kind would be a considerable benefit; as an illustration of this, I refer to the example set by the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, to which a comparable guide was written by the Hague Conference. All authorities in contracting states would then be able to take into consideration the intentions of the contracting states, as outlined in such a guide, when applying Article 12 or 13 to concrete cases.

The forthcoming Special Commission should provide an opportunity to further expound on these initial impressions.

For the Federal Ministry of Justice,
Dr. Heger