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und Jugend

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Act on Adoption Placement and Support and on the Prohibition of Surrogacy Placement (Adoptionsvermittlungsgesetz – AdVermiG)

Adoption Placement Act as published on 21 June 2021 (Federal Law Gazette I, p. 2010)

Part 1

Adoption placement and support

Section 1

Adoption placement

'Adoption placement' means the matching of children under the age of 18 years with persons wishing to adopt a child (adoption applicants) with a view to adoption. It also means the furnishing of proof of the opportunity to adopt a child or have a child adopted, including in cases where the child has not yet been born or conceived. Surrogacy placement does not constitute adoption placement.

Section 2

Adoption placement agencies

(1) Adoption placement is the task of the Youth Welfare Office and of the *Land* Youth Welfare Office. A Youth Welfare Office may only carry out adoption placement if it has established an adoption placement agency; the *Land* Youth Welfare Office is required to establish a central adoption agency.

(2) Youth Welfare Offices in neighbouring municipalities or counties may, with the consent of the *Land* Youth Welfare Office's central adoption agency, together establish a joint adoption placement agency. *Land* Youth Welfare Offices may together form a joint central adoption agency. In Berlin, Hamburg and Saarland, the tasks of the Youth Welfare Offices' adoption placement agencies may be transferred to the respective *Land* Youth Welfare Offices.

(3) The following local and central bodies are also authorised to carry out adoption placement in Germany:

1. Diakonie Deutschland (the social welfare organisation of Germany's Protestant churches),
2. the German Caritas Association (the representative of the Catholic welfare association in Germany),

3. Arbeiterwohlfahrt (the Workers' Welfare Association),
4. those professional associations which are affiliated to the organisations referred to in nos. 1 to 3, and
5. other organisations based in Germany.

The agencies referred to in sentence 1 must be accredited as an adoption placement agency by the *Land* Youth Welfare Office's central adoption agency.

(4) As part of its placement activities and the support to be provided in accordance with section 9, the Youth Welfare Offices' adoption placement agencies and the *Land* Youth Welfare Offices' central adoption agencies cooperate in a spirit of partnership with the adoption placement agencies referred to in subsection (3) and section 2a (4) no. 2.

(5) Adoption placement agencies (section 2 (1) and (3), section 2a (4)) cooperate in an interdisciplinary manner with other specialist services and facilities.

Section 2a

Intercountry adoption procedure; principle of placement

(1) 'Intercountry adoption procedure' means an adoption procedure in which a child habitually resident abroad was, is or is to be brought to Germany, either following adoption in his or her home country by adopters habitually resident in Germany or with a view to adoption in Germany or the child's home country. Sentence 1 also applies where the adopters are habitually resident in Germany and the child was brought to Germany within two years before the filing of an application for adoption in Germany or the child's home country. Sentences 1 and 2 apply accordingly where a child habitually resident in Germany was, is or is to be taken abroad by adopters habitually resident abroad.

(2) In the cases referred to in subsection (1) sentence 1 and 2, the placement must be mediated by an adoption placement agency as referred to in subsection (4), in the cases referred to in subsection (1) sentence 3 by an adoption placement agency as referred to in subsection (4) no. 1.

(3) Within the area of application of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Federal Law Gazette 2001 II, p. 1034) (Adoption Convention), the provisions of the Adoption Convention Implementation Act of 5 November 2001 (*Adoptionsübereinkommens-Ausführungsgesetz*, AdÜbAG; Federal Law Gazette I, p. 2950), as amended, also apply.

(4) The following are authorised to carry out intercountry adoption placement:

1. the *Land* Youth Welfare Office's central adoption agency,
2. an accredited foreign placement agency pursuant to section 4 (2) within the bounds of the licence granted to it.

(5) The agencies referred to in subsection (4) cooperate with the Federal Office of Justice in its capacity as the Federal Central Agency for Foreign Adoption (Federal Central Agency) in order to coordinate intercountry adoption placement. To that end, the Federal Central Agency may communicate directly with all the competent agencies in Germany and abroad.

(6) The agencies referred to in subsection (4) are required to

1. transmit to the Federal Central Agency in respect of each placement case within the meaning of subsection (1), from the first instance in which a foreign agency is involved, all the available personal data (name, sex, date of birth, place of birth, nationality, marital status and place of residence or habitual residence) relating to the child, the child's birth parents and the adoption applicants, as well as progress made on the placement procedure,
2. report to the Federal Central Agency once a year, in summary form, about the scope, process and results of its work in the field of intercountry adoption placement, and

3. inform the Federal Central Agency, upon request, about individual placement cases within the meaning of subsection (1) insofar as this is necessary to carry out the tasks referred to in subsection (5) and in section 2 (2) sentence 1 of the Adoption Convention Implementation Act of 5 November 2001 (Federal Law Gazette I, p. 2950), as amended.

The obligation under sentence 1 no. 1 is limited to transmission of notification that the placement procedure has been concluded, unless it concerns Germany's relations with other Contracting States to the Adoption Convention.

(7) The Federal Central Agency stores the data transmitted in accordance with subsection (6) sentence 1 no. 1 in a central file system. A record is to be kept of the data transmission. Data concerning an individual placement case are to be stored for 100 years, beginning on the placed child's date of birth, and are then to be deleted.

Section 2b

Unmediated foreign adoption

An intercountry adoption procedure is prohibited where it is to be carried out without the mediation of an adoption placement agency (section 2a (4)).

Section 2c

Principles of intercountry adoption placement

(1) As part of an intercountry adoption placement (section 2a (1) sentence 1 and 2 and (2)), the adoption placement agency (section 9b and section 2 (3)) is to check the general suitability of the adoption applicants pursuant to sections 7 and 7b and the adoption placement agency (section 2a (4)) is to check the country-specific suitability of the adoption applicants pursuant to section 7c.

(2) The adoption placement agency (section 2a (4)) is required to ensure that there is a specialist office in the child's home country which is responsible for adoption placement and which is willing to cooperate (home country specialist office) and that the adoption is permitted by law.

(3) When examining a proposal for a child to be placed which was made by the home country specialist office, the adoption placement agency (section 2a (4)) is to make certain that

1. the adoption is in the child's best interests,
2. the child is adoptable and there are no indications, based on the home country specialist office's own examination, that a suitable placement can be arranged for the child in his or her home country,
3. the birth parents or other persons, authorities and institutions whose consent to the adoption is required have been instructed about the effects of the adoption and have voluntarily consented to the child's adoption in the statutorily required form and the birth parents have not revoked their consent,
4. the child has been instructed, in an age- and developmentally-appropriate manner, about the effects of the adoption, the child's wishes have been taken into consideration and the child has voluntarily consented to the adoption in the statutorily required form, and
5. there are no indications that the consent of either the birth parents or of the child was obtained through the payment of any money or the granting of any other consideration.

The adoption placement agency is required to examine the proposal for a child to be placed which was made by the home country specialist office as regards whether the adoption applicants are suited to caring for the child. In the cases referred to in section 2a (1)

sentence 3, subsection (3) sentence 1 and 2 applies accordingly. The result of the examination referred to in sentences 1 and 2 is to be placed on file.

(4) The adoption placement agency (section 2a (4)) may only approve the proposal made by the home country specialist office if the result of the suitability check, of the country-specific suitability check and of the examination referred to in subsection (3) sentence 4 is positive.

(5) Where the adoption placement agency (section 2a (4)) approves the proposal made by the home country specialist office, it informs the adoption applicants of the proposal and advises them about whether to accept it. If the adoption applicants accept the proposal for a child to be placed, the adoption placement agency makes a declaration to the effect that it consents to the adoption procedure continuing.

(6) The adoption placement agency (section 2a (4) no. 2) forwards the declaration referred to in subsection (5) sentence 2 to the *Land* Youth Welfare Office's central adoption agencies in accordance with section 11 (2). The adoption placement agency (section 2a (4)) forwards the declaration referred to in subsection (5) sentence 2 to the home country specialist office.

Section 2d

Certification of an intercountry adoption procedure

(1) As part of the intercountry adoption procedure, the adoption placement agency (section 2a (4)) which has mediated the intercountry adoption is to issue the adopters with certification that such mediation pursuant to section 2a (2) has occurred where

1. the declaration referred to in section 2c (5) sentence 2 has been made and has been forwarded to the home country specialist office, and

2. the adopters have filed an application for recognition in accordance with section 1 (2) of the Adoption Effects Act (*Adoptionswirkungsgesetz*).

(2) The certificate must state the date on which the declaration referred to in section 2c (5) sentence 2 was made and details concerning compliance with the principles set out in section 2c (1) to (3). The certificate is to be submitted to the German authorities, which are to assess the effectiveness of a foreign adoption before taking a decision on recognising it in Germany in accordance with section 7 of the Adoption Effects Act.

(3) The certificate is valid for two years. Its validity is to be extended by one year upon application by the adopters. The validity of the certificate expires upon a decision on recognising the foreign adoption being given.

Section 3

Personal and professional suitability of staff

(1) Only professionals may be entrusted with adoption placement who are suitable on account of their personality, training and professional experience. The same requirements are made of persons who issue technical instructions to staff who are entrusted with carrying out adoption placement. Staff who are not directly involved in any placement activities must meet those requirements which correspond to the responsibilities assigned to them.

(2) Adoption placement agencies (section 2 (1) and (3)) are to be staffed with at least two full-time professionals or a corresponding number of part-time professionals; the majority of these professionals' tasks must be linked to adoption placement. The *Land* Youth Welfare Office's central adoption agency may permit exceptions to sentence 1.

Section 4

Accreditation as an adoption placement agency

(1) Accreditation is given to an adoption placement agency within the meaning of section 2 (3) by the central adoption agency of that *Land* Youth Welfare Office in whose area the adoption placement agency has its seat, and may be given where proof is furnished that the agency

1. fulfils the criteria laid down in section 3,

2. raises the expectation that it will properly fulfil its tasks, in particular in light of its method of working and the financial circumstances of its legal entity, and

3. is sponsored by a legal person or an association of persons which pursues tax-privileged purposes within the meaning of sections 51 to 68 of the Fiscal Code (*Abgabenordnung*).

Adoption placement may not be the subject of any taxable economic activity.

(2) In order to be able to carry out intercountry adoption placement, an adoption placement agency within the meaning of section 2 (3) requires a special licence, which is to be issued by the central adoption agency of that *Land* Youth Welfare Office in whose area the adoption placement agency has its seat. The licence is issued in respect of the placement of children from one or more specific foreign countries (home countries). The licence entitles the agency to use the designation 'anerkannte Auslandsvermittlungsstelle' (Accredited Foreign Placement Agency); this designation may not be used without such licence. The licence may be issued where proof is furnished that the agency meets the accreditation criteria under subsection (1) to the specific degree necessary to carry out work in the field of intercountry adoption; it is to be refused where this is precluded by overriding concerns relating to cooperation with the respective home country. The *Land* Youth Welfare Office's central adoption agency and the Federal Central Agency notify each other of any facts and circumstances relating to an accredited foreign placement agency as referred to in subsection (1).

(3) Accreditation in accordance with subsection (1) or licensing in accordance with subsection (2) is to be withdrawn where the criteria for its being given were not met. It is to be revoked if the criteria subsequently cease to be met. Provisions incidental to accreditation or licensing as well as the consequences of infringing a particular criterion are subject to generally applicable legal provisions.

(4) In order to be able to examine whether the criteria under subsection (1) or (2) sentence 3 continue to be met, the *Land* Youth Welfare Office's central adoption agency is authorised to obtain information about the work of the adoption placement agency in general and in a specific individual case, about the personal and professional suitability of its management and staff, its legal circumstances and organisational structure, and about its legal entity's financial circumstances. Where necessary to that end,

1. the *Land* Youth Welfare Office's central adoption agency may request information, inspection of the files and submission of proof,

2. staff tasked with conducting this examination are permitted to enter property and business premises in the course of normal business hours; the fundamental right to inviolability of the home (Article 13 of the Basic Law (*Grundgesetz*)) is restricted to that extent.

The adoption placement agency (section 2 (3), section 2a (4) no. 2) immediately informs the central adoption agency of that *Land* Youth Welfare Office in whose area the adoption placement agency has its seat where it has received information that it will no longer be in a position to properly fulfil its tasks. This is, in particular, to be assumed to be the case where the criteria under section 3 and subsection (1) sentence 1 no. 2 are no longer met.

(5) Objections and contestation suits against orders issued by the *Land* Youth Welfare Office's central adoption agency do not have suspensive effect.

Section 4a

Procedure upon closure of an adoption placement agency

(1) Where it is clear that an adoption placement agency (section 2 (3), section 2a (4) no. 2) is to close, it must immediately notify the central adoption agency of that *Land* Youth Welfare Office in whose area it has its seat, as well as the adoption applicants and adopters whom it is supporting, about the fact that it will be closing. Further, it must inform the adoption applicants and adopters about the consequences of its closing, in particular about the

possibility of the placement procedure continuing and about file retention. Sentences 1 and 2 apply accordingly where the adoption placement agency (section 2a (4) no. 2) permanently loses its licence in a home country.

(2) Where an adoption placement agency (section 2 (3), section 2a (4) no. 2) closes, it immediately forwards those records and documents concerning each individual placement case (placement files) in all concluded and ongoing placement procedures to the central adoption agency of that *Land* Youth Welfare Office in whose area it had its seat. Where it is already clear when an adoption placement agency (section 2 (3), section 2a (4) no. 2) closes which adoption placement agency (section 9b, section 2 (3), section 2a (4)) is to continue an ongoing placement procedure, the adoption placement agency which is closing immediately forwards the placement files to that adoption placement agency.

(3) Where, after an adoption placement agency (section 2a (4) no. 2) closes, reports concerning a child's development (section 9 (4) sentence 1) still need to be prepared, the placement files are to be immediately forwarded to the local adoption placement agency (section 9b), which thereupon prepares these reports. The local adoption placement agency sends the reports to the central adoption agency of that *Land* Youth Welfare Office in whose area the adopters are habitually resident for forwarding in accordance with section 9 (4) sentence 1 no. 2. Once the last report has been prepared, the placement files are to be handed over to the central adoption agency of that *Land* Youth Welfare Office in whose area the adoption placement agency which closed had its seat so that they may be stored in accordance with section 9c (1).

Section 5

Prohibitions relating to placement

(1) Adoption placement may only be carried out by those Youth Welfare Offices and *Land* Youth Welfare Offices which are authorised in accordance with section 2 (1) and by those agencies which are authorised in accordance with section 2 (3); all other agencies are prohibited from carrying out adoption placement.

(2) It is prohibited, by means of giving or providing, for a commercial or business purpose, pregnant women resident or habitually resident within the area of application of this Act the opportunity to give birth outside the area of application of this Act,

1. to determine that they are to hand over their child there for adoption,
2. to assist them in giving up their child in this way.

(3) It is prohibited to carry out placement activities with the objective of enabling a third party to permanently take in a child, in particular by means of a man acknowledging paternity of a child which he did not father. Any authorisation to mediate adoption which results from other legal provisions remains unaffected.

Section 6

Advertising

(1) It is prohibited to seek or offer children for adoption or adoption applicants by means of public declarations, in particular newspaper advertisements or newspaper reports. Section 5 remains unaffected.

(2) Publication of a declaration as referred to in subsection (1) together with an identifier is prohibited.

(3) Subsection (1) sentence 1 applies accordingly to public declarations which refer to placement activities as referred to in section 5 (3) sentence 1.

(4) Subsections (1) to (3) also apply where a child has not yet been born or has not yet been conceived, unless the declaration refers to surrogacy.

Section 7

Right to conduct of a suitability check when adopting a child in Germany; scope of the suitability check

(1) On application by the adoption applicants, the adoption placement agency (section 2 (1)) conducts a check of their general suitability (suitability check) to adopt a child habitually resident in Germany. The adoption placement agencies referred to in section 2 (3) are also authorised to conduct the suitability check.

(2) The suitability check in particular encompasses the following:

1. the adoption applicants' personal and family circumstances,
2. the adoption applicants' state of health,
3. the adoption applicants' social environment,
4. the adoption applicants' motivation for wanting to adopt,
5. the characteristics of those children for whom the adoption applicants are able and willing to care.

(3) The adoption placement agency (section 2 (1) and (3)) prepares a report detailing the result of its suitability check. The result of the suitability check is to be notified to the adoption applicants. The report which positively attests to their suitability may not be handed over to the adoption applicants.

Section 7a

Appropriate enquiries in the case of the adoption of a child in Germany

(1) Where an adoption placement agency (section 2 (1) and (3)) becomes aware of a child who is being considered for adoption placement, it immediately conducts appropriate enquiries in respect of the adoption applicants, the child and the child's family in preparation for the adoption placement procedure. In particular, it examines whether the adoption applicants are suited to adopt the child, thereby taking account of the child's personality and specific needs.

(2) The appropriate enquiries in respect of the adoption applicants and the child's family are as a rule to begin before the child is born where it is to be expected that consent will be given to the child's adoption.

(3) Upon the request of an adoption placement agency (section 2 (1) and (3)), the local adoption placement agency (section 9b) in whose area the adoption applicants are habitually resident conducts the appropriate enquiries in respect of the adoption applicants.

(4) The result of the appropriate enquiries is to be notified to those concerned in each case.

Section 7b

Right to conduct of a suitability check in the case of the adoption of a child from abroad

(1) On application by the adoption applicants, a local adoption placement agency within the meaning of section 9b conducts a suitability check of the adoption applicants in respect of the adoption of a child habitually resident abroad. The adoption placement agencies referred to in section 2 (3) are also authorised to conduct the suitability check.

(2) The adoption placement agency (section 9b, section 2 (3)) prepares a report detailing the result of its suitability check, which it then forwards to an adoption placement agency (section 2a (4)) designated by the adoption applicants. Section 7 (3) sentence 2 and 3 applies.

(3) Where the suitability check is conducted by an adoption placement agency as referred to in section 2 (3), this agency may not also be the adoption placement agency (section 2a (4) no. 2) designated by the adoption applicants.

Section 7c

Country-specific suitability check in the case of the adoption of a child from abroad

(1) If the result of the suitability check has been determined to be positive, the adoption placement agency (section 2a (4)) designated by the adoption applicants conducts a check of the adoption applicants' country-specific suitability.

(2) The country-specific suitability check in particular encompasses the following:

1. the adoption applicants' knowledge of and engagement with the culture of and social situation in the child's home country,
2. the adoption applicants' willingness to integrate the child's origin into their future family life, and
3. the adoption applicants' willingness to engage with the child's specific needs on account of his or her origin and on account of the child switching cultures.

If the adoption placement agency (section 2a (4)) designated by the adoption applicants feels that they fulfil the criteria of the country-specific suitability check, it includes the result of its country-specific suitability check in the report on the suitability check. The adoption applicants are to be notified of the result of the country-specific suitability check. The report which determines the positive result may not be handed over to the adoption applicants.

(3) If the result of the suitability check and of the country-specific suitability check has been determined to be positive, the adoption placement agency (section 2a (4)) designated by the adoption applicants forwards the report to the specialist office in the child's home country.

Section 7d

Certification for adoption applicants living abroad

(1) On application by German adoption applicants habitually resident abroad, the Federal Central Agency conducts a check as to whether the adoption applicants are legally entitled to adopt a child in accordance with German substantive legal provisions.

(2) If the Federal Central Agency determines that the adoption applicants are legally entitled to adopt, it issues them with a certificate attesting thereto.

(3) The check and the certification encompass neither the health of the adoption applicants nor their suitability to adopt a child pursuant to sections 7b and 7c; reference thereto is to be made in the certificate.

Section 7e

Adoption applicants' duty to cooperate

Adoption applicants are obliged to provide the necessary details and furnish suitable proof for the following:

1. the suitability check (section 7 and section 7b (1) and (2)),
2. the appropriate enquiries (section 7a (1) and (2)),
3. the country-specific suitability check (section 7c (1) and (2)),
4. the check conducted in accordance with section 7d (1).

The provisions of Title 3 Part 3 of Book One of the Social Code (*Erstes Buch Sozialgesetzbuch*) apply accordingly.

Section 8

Start of adoptive care

A child may not begin the period of acclimatisation in the care of the adoption applicants (adoptive care) until it is clear that the adoption applicants are suited to adopt the child.

Section 8a

Information-sharing or contact before and after adoption

(1) Before the adoptive care begins, the adoption placement agency (section 2 (1) and (3)) is to discuss with both the adoption applicants and the child's birth parents whether, in future, the adoption applicants and the child on the one hand and the child's birth parents on the other hand may share information or contact may take place in the child's interests and what form that information-sharing and contact may take. The adoption placement agency places the results of these discussions on file.

(2) With the consent of the placing parents and of the adopters, the adoption placement agency (section 2 (1) and (3)) is as a general rule to repeat the discussions referred to in subsection (1) sentence 1 at appropriate intervals following the adoption. This applies until the child reaches the age of 16 years. The result of each of these discussions is to be placed on file. Consent is as a rule to be obtained before the family court issues the decision to grant the adoption, and must be given at the latest following that decision. Consent may be revoked at any time.

(3) The child is to be involved in the discussions referred to in subsections (1) and (2) in a developmentally-appropriate manner, and appropriate consideration is to be given to the child's interests.

(4) If the result of the discussion concerning information-sharing or contact is not implemented or unanimity cannot be reached about implementing the result, the adoption placement agency (section 2 (1) and (3)) is to work towards finding a solution within existing possibilities.

Section 8b

Right of the placing parents to general information about the child and the child's situation in life following adoption

(1) The placing parents have a right vis-à-vis the adoption placement agency (section 2 (1) and (3)) to be given access to that general information about the child and the child's situation in life which the adopters have voluntarily provided to the adoption placement agency, thereby safeguarding the child's personal rights, for the purpose of its being passed on to the placing parents. The adoption placement agency grants the placing parents access to this information, unless this is contrary to the child's best interests.

(2) With the adopters' consent, the adoption placement agency (section 2 (1) and (3)) is to work towards the adopters providing it with general information as referred to in subsection (1) in writing and at regular intervals until the child reaches the age of 16 years, unless this is contrary to the child's best interests. The child is to be involved in a developmentally-appropriate manner. Consent is as a rule to be obtained before the family court issues the decision to grant the adoption, and must be given at the latest following that decision. Consent may be revoked at any time.

Section 9

Right to adoption support

(1) Adoption placement agencies (section 2 (1), section 2a (4) no. 1) are required to support the adoption applicants, the birth parents and the child before and during the adoption placement procedure as well as throughout the period of adoptive care. The adoption placement agencies referred to in section 2 (3) and section 2a (4) no. 2 are also authorised to provide adoption support. Adoption support in particular encompasses the following:

1. the provision of general counselling to the adoption applicants, the birth parents and the child on issues relating to the adoption and the provision of needs-based support,
2. the provision of information about the conditions for and course of the adoption procedure, as well as about the legal consequences of the adoption,
3. the provision of information to the placing parents concerning supporting measures provided by the child and youth welfare services as an alternative to adoption, as well as the provision of support to the placing parents in dealing with the social and psychological effects associated with being about to or already having provided consent to the child's adoption,
4. the provision of information about the child's rights, with emphasis being placed on how important it is for the child's development to know his or her origin,
5. working towards the adoption applicants telling the child, from the very beginning, about his or her origin in an age- and developmentally-appropriate manner,

6. the provision of information about the possibilities for and means of organising the information-sharing or contact between the adoption applicants and the child on the one hand and the birth parents on the other, in accordance with sections 8a and 8b,
7. the discussion of how to structure the information-sharing or contact between the adoption applicants and the child on the one hand and the birth parents on the other hand, in accordance with section 8a, and
8. the provision of information about the right to inspect the files under section 9c (2) and information about the possibilities for finding out the child's origin.

(2) After the family court issues the order to grant the adoption, the child, the adopters and the placing parents are entitled to follow-up adoption support from the adoption placement agency (section 2 (1), section 2a (4) no. 1). The adoption placement agencies referred to in section 2 (3) and in section 2a (4) no. 2 are also authorised to provide follow-up adoption support. Follow-up adoption support in particular encompasses the following:

1. the provision of needs-based counselling and support to the child, the adopters and the placing parents,
2. the encouragement and support of information-sharing or contact between the adopters and the child on the one hand and the placing parents on the other hand, in accordance with sections 8a and 8b,
3. the provision of support to the placing parents in dealing with the social and psychological effects associated with their decision to consent to the child's adoption, in particular by indicating what help is available from other specialist services,
4. the provision of support to the adopters when it comes to telling the child, in an age-appropriate manner, about his or her origin,
5. the provision of support to the child in seeking his or her origin, including supporting a child whose birth was confidential when inspecting the files regarding his or her origin pursuant to section 31 (1) of the Act on Pregnancies in Conflict Situations (*Schwangerschaftskonfliktgesetz*).

(3) In the context of providing adoption support within the meaning of subsections (1) and (2), the adoption placement agency (section 2 (1) and (3), section 2a (4)) is to indicate, as and when necessary and with the agreement of those to be counselled, what assistance and support is available from other specialist services. If those to be counselled so wish, it is to contact those other specialist services.

(4) Insofar as it is necessary to fulfil the adoption criteria laid down by a home country, the adoption applicants and the adoption placement agency (section 2a (4)) may agree in writing that the adoption placement agency will

1. monitor, for a period of time to be determined in the agreement, the child's development following adoption, and
2. report to the competent agency in the home country about the child's development.

With the consent of another adoption placement agency (section 2 (1) and (3), section 2a (4)), agreement may be reached that this agency will take on the task described in sentence 1 no. 1 and forward the results to the adoption placement agency referred to in sentence 1. Section 4a (3) applies in the event of the adoption placement agency (section 2a (4) no. 2) closing.

Section 9a

Obligatory counselling in the case of stepchild adoption

(1) Where one spouse alone adopts his or her spouse's child, the following must undergo counselling by the adoption placement agency (section 2 (1) and (3)) in accordance with section 9 (1) before they make the necessary declarations and applications relating to the adoption:

1. the adoptive child's birth parents,
2. the adopters,
3. the child pursuant to section 8 of Book Eight of the Social Code (*Achtes Buch Sozialgesetzbuch*).

(2) The adoption placement agency is required to issue a certificate concerning the counselling.

(3) Counselling of the following is not necessary:

1. a parent who is permanently not in a position to make a declaration,
2. a parent whose place of residence is permanently unknown,
3. a parent whose consent is substituted in accordance with section 1748 of the German Civil Code (*Bürgerliches Gesetzbuch*), or
4. a placing parent who is habitually resident abroad.

(4) The obligation to undergo counselling in accordance with subsection (1) does not apply where the adoptive parent is married to the child's birth parent at the time of the child's birth. The adopting and the other parent's obligation to undergo counselling still applies if the child was born abroad and the placing parent is habitually resident abroad.

(5) Subsections (1) to (4) apply accordingly in the cases referred to in section 1766a of the German Civil Code.

Section 9b

Local adoption placement agency; mandatory tasks

The Youth Welfare Offices are required to ensure that the tasks referred to in sections 7, 7a, 7b, 8a, 8b, 9 and 9a are carried out in their respective areas. Local jurisdiction in respect of adoption applicants and adopters is determined by their place of habitual residence.

Section 9c

Placement files

(1) Placement files are to be stored for 100 years, beginning on the day of the child's birth.

(2) Insofar as the placement files concern the child's origin and biography or another legitimate interest exists, the child's legal representative and, when the child has reached the age of 16 years, the child himself or herself may apply to inspect the files under the supervision of a professional. Inspection of the files is to be refused where this is precluded by the overriding interests of the data subject.

(3) The adoption placement agency (section 2 (1) and (3), section 2a (4)) is required to inform the adopters of the child's right to inspect the files as per subsection (2) sentence 1 as soon as the child reaches the age of 16 years.

Section 9d

Implementing provisions

(1) The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is authorised, with the agreement of the Federal Ministry of Justice and Consumer Affairs, to make detailed provision, by way of a statutory instrument requiring the consent of the Bundesrat, concerning the accreditation and supervision of adoption placement agencies pursuant to section 2 (3) and sections 3 and 4, concerning cooperation in relation to intercountry adoption placement pursuant to section 2a (5) and (6), appropriate enquiries pursuant to section 7a, the suitability check pursuant to sections 7, 7b and 7c, certification pursuant to

section 7d, adoption support pursuant to section 9, the granting of inspection of the files pursuant to section 9c and the principles which the adoption placement agencies must comply with in that regard. The following in particular may be regulated by way of a statutory instrument in accordance with sentence 1:

1. the timing, structure and form of the reports to be prepared in accordance with section 2a (6) sentence 1 no. 1 and no. 2, and sentence 2,
2. the requirements made of the personal and professional suitability of staff working in an adoption placement agency (section 3, section 4 (1) sentence 1 no. 1),
3. the requirements made of the method of working and financial circumstances of an adoption placement agency's legal entity (section 4 (1) sentence 1 no. 2),
4. the special requirements for licensing in respect of intercountry adoption placement (section 4 (2)),
5. the filing of applications and proof to be furnished in the procedure described in section 7d,
6. the timing and form of the notification to be made to adopters in accordance with section 9 (1) and (2) about the range of adoption support services available,
7. the procedure in accordance with section 4a in the event of an adoption placement agency closing.

(2) Moreover, a statutory instrument as referred to in subsection (1) sentence 1 may also regulate that the body responsible for governmental adoption placement agencies may levy fees from adoption applicants for the conduct of the suitability check pursuant to sections 7, 7b and 7c or in relation to intercountry adoption placement as well as expenses incurred for the procurement of documents, for translations and the remuneration of experts. The individual fees and the amount of the fees are to be determined; the total fees levied for each individual placement procedure may not exceed two thousand five hundred euros. As long as the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth does not make use of its authorisation under subsection (1) sentence 1 in conjunction with sentence 1, this authorisation may be exercised by the *Land* governments; the *Land* governments may transfer this authorisation to the highest *Land* authorities by way of a statutory instrument.

Section 9e **Data protection**

(1) Chapter 2 of Book Ten of the Social Code (*Zehntes Buch Sozialgesetzbuch*) applies to the processing of personal data, with the proviso that data which have been gathered for adoption placement and for other purposes under this Act may only be processed for the following purposes:

1. adoption placement or adoption support,
2. the accreditation, licensing or oversight of adoption placement agencies,
3. the monitoring of prohibitions relating to placement,
4. the prosecution of serious criminal offences (*Verbrechen*) or other offences of substantial significance,
5. international cooperation in these areas, or
6. the carrying out of specific scientific projects to conduct research into possible politically motivated adoption placement in the German Democratic Republic (GDR).

In the cases referred to in sentence 1 no. 6, the data subjects may not be contacted. Provisions concerning international mutual assistance remain unaffected.

- (2) The Federal Central Agency transmits to the competent agencies, upon their request, the personal data required for the purposes referred to in subsection (1). The request must state the purposes for which the data are required.
- (3) The requesting agency bears responsibility for the permissibility of the data transmission. The Federal Central Agency only examines whether the request for data transmission falls within the bounds of the tasks of the requesting agency, unless there is special reason to examine the permissibility of the data transmission.
- (4) When transmitting data to a foreign agency or to a domestic non-public agency, the Federal Central Agency indicates that the data may only be processed for the purpose for which they are being transmitted.

Section 10

Notification of the *Land* Youth Welfare Office's central adoption agency

- (1) Adoption placement agencies must notify the *Land* Youth Welfare Office's central adoption agency where a child cannot be placed in the care of the adoption applicants with a view to adoption within three months following conclusion of its enquiries. Such notification is not necessary if, upon the expiry of this time limit, it is guaranteed that the child will be placed in adoptive care.
- (2) Subsection (1) applies accordingly where adoption applicants who have been subject to enquiries are willing and suited to adopting a child who is difficult to place insofar as the adoption applicants consent to the central adoption agency being notified.
- (3) In the cases referred to in subsection (1) sentence 1, the adoption placement agency and the central adoption agency seek suitable adoption applicants. They notify each other of the results of their efforts. In individual cases the central adoption agency may itself take on the task of placing a child.

Section 11

Tasks of the *Land* Youth Welfare Office's central adoption agency

- (1) The *Land* Youth Welfare Office's central adoption agency supports the work of the adoption placement agency, in particular by providing technical guidance
1. where a child is difficult to place,
 2. where an adoption applicant or the child is a foreign national or stateless person,
 3. where an adoption applicant or the child is resident or habitually resident outside the area of application of this Act,
 4. in other difficult individual cases.
- (2) In the cases referred to in subsection (1) no. 2 and no. 3, the adoption placement agency (section 2 (1) and (3), section 2a (4) no. 2) is to involve the central adoption agency of that *Land* Youth Welfare Office in whose area it has its seat as well as the central adoption agency of that *Land* Youth Welfare Office in whose area the adopters are habitually resident as soon as the appropriate enquiries pursuant to section 7a begin. Documents of the kind referred to in Articles 15 and 16 of the Adoption Convention are to be submitted for inspection to the central adoption agencies referred to in sentence 1.

Section 12 (repealed)

Section 13

Staffing of the *Land* Youth Welfare Office's central adoption agency

In order to be able to fulfil its tasks the central adoption agency must as a rule to have at its disposal at least one paediatrician or child psychiatrist, one psychologist with experience in the field of child psychology, a legally trained person, as well as social pedagogues or social workers with several years of professional experience.

Part 2 Surrogacy

Section 13a Surrogate mother

'Surrogate mother' means a woman who is willing, on the basis of an agreement,

1. to undergo artificial or natural insemination, or
2. to undergo implantation of an embryo which is not her own or to otherwise carry such an embryo to term,

and, after giving birth, to hand the child over to third parties for adoption or other placement in permanent care.

Section 13b Surrogacy placement

'Surrogacy placement' means the matching of persons wishing to adopt or permanently care for a child born to a surrogate mother (commissioning parents) with a woman who is willing to act as surrogate. It also means the provision of proof of the opportunity to conclude an agreement as referred to in section 13a.

Section 13c Prohibition of surrogacy placement

Surrogacy placement is prohibited.

Section 13d Prohibition of advertising

It is prohibited to seek or offer surrogate mothers or commissioning parents by means of public declarations, in particular newspaper advertisements or newspaper reports.

Part 3 Criminal and administrative fines provisions

Section 14 Administrative fines provisions

(1) Anyone who,

1. contrary to section 5 (1) or (3) sentence 1, carries out placement activities, or
2. contrary to section 6 (1) sentence 1, also in conjunction with (2) or (3), or section 13d, by public declarations seeks or offers
 - a) children for adoption or adoption applicants,
 - b) children or third parties for the purposes referred to in section 5 (3) sentence 1,
 - c) surrogate mothers or commissioning parents,

is deemed to have committed an administrative offence.

(2) Anyone who,

1. contrary to section 5 (1) or (3) sentence 1, carries out placement activities and thereby causes a child to be brought into the area of application of this Act or to be taken out of the area of application of this Act, or
2. for a commercial or business purpose,
 - a) contrary to section 5 (2) no. 1, determines that a pregnant woman is to hand over her child, or

- b) contrary to section 5 (2) no. 2, assists a pregnant woman in handing over her child,

is also deemed to have committed an administrative offence.

(3) In the cases referred to in subsection (1), an administrative fine of up to five thousand euros may be imposed as a penalty for the administrative offence, in the cases referred to in subsection (2) an administrative fine of up to thirty thousand euros.

Section 14a (repealed)

Section 14b

Criminal provisions relating to surrogacy placement

(1) Anyone who, contrary to section 13c, carries out surrogacy placement incurs a penalty of up to one year's imprisonment or an administrative fine.

(2) Anyone who receives or accepts a promise of a pecuniary benefit for surrogacy placement incurs a penalty of up to two years' imprisonment or an administrative fine. Where the offender acts for a commercial or business purpose, the penalty is up to three years' imprisonment or an administrative fine.

(3) In the cases referred to in subsections (1) and (2), the surrogate mother and the commissioning parents go unpunished.

Part 4

Transitional and final provisions

Section 15

Applicable law

From the point in time at which an amendment to this Act enters into force, the further conduct of an adoption placement procedure which began before that amendment entered into force is governed by the amended provisions, unless otherwise provided.

Section 16

Report

The Federal Government will, by 30 September 2026, submit to the German Bundestag a report concerning the impact of sections 2a, 2b, 2c, 2d, 8a, 8b and 9a, as well as concerning any amendments to these provisions which may be necessary. The report may not contain any personal data.