

## I. GENERAL PROVISIONS

### MINISTRY FOR SOCIAL RIGHTS AND 2030 AGENDA

#### **15553** Royal Decree 573/2023 of 4 July establishing the Intercountry Adoption Regulation

Royal Decree 165/2019 of 22 March establishing the Intercountry Adoption Regulation involved the implementation of amendments introduced by Law 54/2007 of 28 December on Intercountry Adoption by Law 26/2015 of 28 July modifying the system for the protection of children and adolescents.

Once this Intercountry Adoption Regulation had been adopted, the Government of Catalonia submitted to the Constitutional Court a possible conflict of jurisdiction concerning certain articles, the single transitory provision and the first final provision of Royal Decree 165/2019.

In this regard, the relevant Constitutional Court judgment (STC 36/2021 of 18 February) appeared in the Official Journal (BOE) on 22 March 2021, partially recognising a conflict of jurisdiction between central and regional government. Consequently certain articles of the text were declared unconstitutional.

It is therefore necessary to repeal Royal Decree 165/2019 in order to comply with that ruling, and to adapt the regulation to constitutional requirements and thereby avoid the adverse consequences of a lack of harmonisation in current legislation on intercountry adoption.

Thus, inter alia, the view taken by the Constitutional Court must be noted in particular as regards accreditation. According to the Court, both the accreditation of bodies acting as intermediaries in intercountry adoption and the functions instrumental or related thereto are manifestations of the executive responsibilities of regional government in the field of social services and child protection. Accordingly, although these are evidently liable to state coordination in keeping with foreign policy guidelines, they cannot be abstracted from the sphere of action of regional government and attributed to state bodies without infringing the distribution of responsibilities provided by the Constitution and in regional statutes of autonomy.

Moreover, the judgment finds an infringement in the single transitory provision of Royal Decree 165/2019, where in its sections 1, 2 and 3 it provides a procedure for accreditation by a state entity of bodies that have been previously accredited by regional governments, under the regulation prior to the revision of Law 54/2007 in 2015.

However, in accordance with consolidated doctrine and as required by the constitutional principle of legal certainty (Article 9.3 of the Spanish Constitution), the declarations of unconstitutionality and invalidity contained in the judgment shall not affect consolidated legal situations, and those established by final administrative decisions must be regarded as such, as well as those which have been settled in judicial proceedings by a decision with the force of *res judicata* (Article 40.1 of Organic Law 2/1979 of 3 October on the Constitutional Court; STC 40/2019 of 27 March, FJ 7).

The principles underlying this Royal Decree are the protection of the child's best interests in every phase of the intercountry adoption process, a respect for fundamental rights recognised by international law in the sphere, and, accordingly, enhanced safeguards for preventing any unlawful practice contrary to the principles of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on 29 May 1993 and ratified by Spain on June 20 1995. Moreover, account is taken of the protection of the interests of prospective adoptive parents.

This Royal Decree consists of one article, one additional provision, one transitory provision, one repeal provision and three final provisions, and is followed by the International Adoption Regulations, structured in six chapters, whose contents develop key aspects of the procedures for intercountry adoption along with the creation of a National Register of Accredited Bodies for Intercountry Adoption and of Complaints and Incidents.

Chapter I refers to the object of the regulation, to the parties which, according to their responsibilities, are assigned functions in the field of intercountry adoption, to their general principles of action, and to the general rules of the various procedures.

Chapter II deals with the initiation and suspension of the processing of adoptions in the child's country of origin. This is a responsibility that Law 54/2007 gives to national government in that it affects foreign policy, and this chapter lays down the procedure for such proceedings.

Chapter III provides for the establishment and distribution of intercountry adoption applications. In this regard, criteria are set forth for establishing the number of adoption applications to be processed annually, along with the procedure and criteria for the distribution of applications to be processed through a public entity or by an accredited body.

The criteria to be considered when the process is initiated with a particular country shall be the country's intercountry adoption needs, the profile of the adoptable children and the number of adoptions made by third countries, along with the country's situation in terms of socio-political stability and legal certainty, as described in reports drawn up by international bodies.

Chapter IV deals with accredited bodies acting as intermediaries in intercountry adoption, providing that these shall be active in the whole country and offer services to prospective adoptive parents that are habitually resident in Spain. This provision allows prospective adoptive parents to freely choose the accredited body which they wish to make the adoption with, with no need for prior authorisation by the public entities concerned, as had been the case to date.

Chapter V, divided in turn into four sections, deals with the accreditation of bodies for intermediation in intercountry adoptions, regulating the requirements for such accreditation, the procedure for establishing a maximum number of bodies, the withdrawal of accreditation, cooperation or mergers between bodies, the basic model contract between bodies accredited for intercountry adoption and prospective adoptive parents, and the monitoring and control of the activities of accredited bodies.

Finally, chapter VI regulates the National Register of Accredited Bodies for Intercountry Adoption and of Complaints and Incidents. This registers shall be unitary for the whole country and shall have two sections: a first section devoted to the registration of accredited bodies, which shall be public, general in nature and free of charge, and a second section for the registration of complaints and incidents, with access and processing of information subject to the provisions of applicable legislation on personal data protection.

This Royal Decree complies with the principles of good regulation set out in Article 129 of Law 39/2015 of 1 October on Common Administrative Procedure in Public Administration:

a) The principle of necessity is evident, as this Royal Decree is enacted in compliance with Constitutional Court Judgment 36/2021 of 18 February.

b) The principle of efficacy is fulfilled in that a general interest is pursued by carrying out the legal requirement for the regulatory implementation of Law 54/2007, with the necessary regulation being provided to achieve the aims sought, and for the adaptation of legislation to what is stated in the aforesaid Constitutional Court judgment.

c) The principle of proportionality is present in this legal text in that only the matters provided for in the aforesaid Constitutional Court judgment are regulated, and the remaining implementing regulations regarding intercountry adoption are maintained as previously established.

d) The principle of legal certainty is safeguarded by means of clearly determining the responsibilities of the state and those of regional governments in the sphere of intercountry adoption, and the coordination of actions through state and regional participatory bodies, along with general principles safeguarding the rights of citizens in intercountry adoption procedures.

e) The principle of transparency is safeguarded by means of establishing systems for public access to information throughout the procedure and through the creation of a National Register of Accredited Bodies for Intercountry Adoption and of Complaints and Incidents.

f) The principle of efficiency is fulfilled in that an optimal use of material and human resources is sought at all times with a view to achieving this legal text's stated purposes, as is improvement in the quality of the services provided for herein.

This Royal Decree pursues aims of general interest by complying both with the legislative requirement for the regulatory implementation of Law 54/2007, with the necessary provisions for achieving the goals sought, and with Constitutional Court decision STC 36/2021.

Likewise, prior to the drafting of the bill and while it was being processed, active participation by potential target groups was enabled through, respectively, public consultation and public information proceedings, as provided in Article 26(2) and (3) of Law 50/1997 of 27 November, and the aims pursued by this Royal Decree are also justified in its preamble. Finally, this Royal Decree is consistent with the national and international legal order and imposes no unnecessary legal burdens.

During the processing of this Royal Decree, consultations were conducted with the public entities responsible for child protection, accredited bodies, federations of adoptive families and adoptees and also local entities through the Spanish Federation of Municipalities and Provinces. The draft Royal Decree was also reported upon by the State Council of Non-Governmental Organisations for Social Action, the Advisory Council on Intercountry Adoption, the Sectoral Conference on Children and Adolescents, the General Council of the Judiciary, the Fiscal Council and the Spanish Data Protection Agency.

This Royal Decree is enacted in accordance with Articles 149.1.3. and 149.1. 8. of the Spanish Constitution, providing respectively for exclusive state jurisdiction in the fields of international relations and of civil legislation, without prejudice to the preservation, modification and development by regional governments of civil, historic or special rights, if applicable; and in accordance with Article 149.1.1. as regards the regulation of the basic conditions safeguarding the equality of all Spaniards in the exercise and fulfilment of constitutional rights and duties.

By virtue whereof, at the proposal of the Minister for Social Rights and the 2030 Agenda, with the prior approval of the Minister of Finance and the Civil Service, in accordance with the opinion of the Council of State, and following deliberation by the Council of Ministers at its meeting of 4 July 2023,

## THE FOLLOWING IS PROVIDED:

Single article. *Enactment of the Intercountry Adoption Regulation*

The Intercountry Adoption Regulation, whose text appears below, is hereby enacted.

Single additional provision: *No increase in expenditure*

The measures included in this legislation entail no increase in public expenditure.

Single transitory provision: *Accreditation procedure for bodies already accredited by the Directorate General of the Ministry responsible for children and adolescents.*

1. When this Royal Decree comes into force, bodies that were already accredited by the Directorate General at the Ministry responsible for children and adolescents may request accreditation from the public entity with responsibility in the field corresponding to the autonomous community in which they have their registered offices.

2. Subsequently the public entity should seek an account from the Directorate General of the body's compliance with its functions and obligations in the relevant country in the period prior to this Royal Decree's entry into force.

3. Until the competent public entity decides upon the request, the accredited body may continue performing mediation functions in the country, region or state under the accreditation granted by the Ministry's Directorate General.

4. If the accredited body does not submit a request before the expiry of the aforesaid accreditation, or if, having done so, it is not accredited by the relevant public entity due to its not having carried out the functions and obligations referred to in paragraph 2, that body shall cease performing mediation functions in the processing of pending adoption applications in that country, region or state under the accreditation granted by the Directorate General, in accordance with what is provided in the applicable regional legislation.

Single repeal provision. *Repeal of legislation*

Royal Decree 165/2019 of 22 March establishing the Intercountry Adoption Regulation, and any other provisions of equal or lower rank not consistent with what is provided in this Royal Decree, are hereby repealed.

First final provision. *Jurisdiction*

This Royal Decree is enacted in accordance with Articles 149.1.3. and 149.1. 8. of the Spanish Constitution, providing respectively for exclusive state jurisdiction in the fields of international relations and of civil legislation, without prejudice to the preservation, modification and development by regional governments of civil, historic or special rights, if applicable; and in accordance with Article 149.1.1. as regards the regulation of the basic conditions safeguarding the equality of all Spaniards in the exercise and fulfilment of constitutional rights and duties.

Second final provision. *Powers of implementation and execution*

The person in charge at the ministry responsible for children and adolescents is hereby authorised, within the sphere of his/her responsibilities, to enact any provisions necessary for the execution and implementation of what is provided in this Royal Decree.

Third final provision. *Entry into force*

This Royal Decree shall enter into force on the day after its publication in the Spanish Official Journal (BOE).

Done in Madrid on 4 July 2023.

FELIPE REX

Minister for Social Rights and the 2030 Agenda

IONE BELARRA URTEAGA

**INTERCOUNTRY ADOPTION REGULATION**

## CHAPTER I

**General provisions**Article 1. *Object*

The object of this regulation is to implement the following aspects of Law 54/2007 of 28 December:

- a) Initiation and suspension of the processing of intercountry adoptions;
- b) Establishment of the exact number of intercountry adoption applications to be submitted annually to each country of origin, and their distribution among the public entities and accredited bodies;
- c) The basic model contract between bodies accredited for acting as intermediaries in intercountry adoption and prospective adoptive parents;
- d) Coordination of public entities through national government for the monitoring and control of the activities of accredited bodies through the Technical Committee for Monitoring and Control;
- e) Creation and regulation of a National Register of Accredited Bodies for Intercountry Adoption and of Complaints and Incidents.

Article 2. *Subjective sphere of application*

This regulation shall apply to:

- a) The Ministry responsible for children and adolescents, and in particular the Directorate General responsible for children and adolescents, hereinafter the 'Directorate General';
- b) The Sectoral Committee for Children and Adolescents of the Sectoral Conference on Children and Adolescents, hereinafter the Sectoral Committee. The make-up of this Committee is specified in Article 12.1 of the Resolution of 10 December 2021 of the State Secretariat for Social Rights, publishing the decision of the Sectoral Committee for Children and Adolescents adopting its Organisational and Functional Regulation, and is, as follows, as regards the representation of the various tiers of government:

For national government: the person in charge at the State Secretariat for Social Rights and the person in charge at the Office of the State Secretariat for Social Rights.

For the regional governments and the city governments of Ceuta and Melilla: A representative of each one with the rank of at least the person in charge at the Sub-directorate General responsible for children and adolescents.

The Committee's functions are regulated by Article 13 of the aforesaid resolution.

- c) The Technical Committee for Monitoring and Control, whose make-up is specified in Article 26;
- c) The public authorities or entities with responsibilities in the field of child protection and with functions assigned in the sphere of intercountry adoption in the framework of their regional responsibilities and scope, hereinafter the 'public entities';
- e) The Ministry for Foreign Affairs, European Union and Cooperation;
- f) Bodies accredited for mediation in intercountry adoption, hereinafter the 'accredited bodies'.

Article 3. *General principles of action*

1. National government and the competent public entities shall abide in the application of this regulation by the following principles:
  - a) The principle of the protection of the child's best interests;
  - b) The principles of equality, legal certainty, urgency and respect for fundamental rights recognised in international law for children who are to be adopted;
  - c) The principles of equal treatment and non-discrimination for the persons, social groups and situations listed in Article 2.1 of Law 15/2022 of 12 July on equal treatment and non-discrimination;
  - d) The principle of effective cooperation between competent authorities;
  - e) The competent authorities principle, by virtue of which intercountry adoptions shall be processed only by the authorities designated by each state;
  - f) Principles aimed at establishing safeguards to prevent the abduction, sale or trafficking of children;
  - g) The principles contained in Article 3.1 of Law 40/2015 of 1 October on Legal Arrangements in the Public Sector.

Moreover, account should be taken of the rights of prospective adoptive parents and of other persons taking part in the whole intercountry adoption process.

2. The accredited bodies shall act throughout the adoption process in accordance with:
  - a) International child protection standards, Spanish law, international treaties which Spain is a party to, and the legislation of the country of origin;
  - b) The principles of good faith, legitimate expectations, transparency, and respect for the child's best interests, avoiding financial gain other than that required strictly to cover mediation costs, along with any practice contrary to the principles of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on 29 May 1993 and ratified by Spain on June 20 1995;
  - c) The prohibition on collecting any revenue other than that strictly required to cover mediation costs, along with any other practice contrary to the principles of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on 29 May 1993 and ratified by Spain on June 20 1995.

Moreover, account should be taken of the rights of prospective adoptive parents and other persons taking part in the whole intercountry adoption process.

Article 4. *Bilateral agreements of an administrative nature in the field of intercountry adoption*

It shall be the task of the person in charge at the ministry responsible for children and adolescents to sign bilateral agreements of an administrative nature to facilitate mutual relations, both with countries of origin whose legislation so requires and with countries that deem it appropriate to have such an instrument, in accordance with Article 39.2 of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on 29 May 1993.

Prior to the signing of such agreements, a report shall be requested from the Ministry for Foreign Affairs, European Union and Cooperation, in keeping with the provisions of Article 39 of Law 25/2014 of 27 November on Treaties and other International Agreements.

## CHAPTER II

### **Initiation or suspension of the processing of adoptions in the children's country of origin**

#### *Article 5. Procedure for initiating the processing of adoption applications with a particular country*

1. The Directorate General shall, after consulting the public entities, resolve to initiate the processing of adoption applications with a country. To this end it shall request a report from the Ministry for Foreign Affairs, European Union and Cooperation, which should be submitted within one month and contain at least the following details:

- a) Legislation on adoptions in the country of origin;
- b) Existence of a specific authority in the country of origin for controlling and safeguarding adoption as provided in Article 4.2.b) of Law 54/2007, and if there is such an authority, its identifying details and a full description of its role in the intercountry adoption processes;
- c) Assessment of whether the country of origin has sufficient legal safeguards for adoption, and of whether its adoption practices and procedure respect the child's best interests;
- d) Number of intercountry adoptions granted by the country in the last three years and main recipient countries;
- e) Profile of adoptable children;
- f) Appraisal by the main foreign diplomatic representations in the country of origin of their experience in the processing of intercountry adoptions, and of the procedural safeguards;
- g) In the case of a previously suspended country, specific appraisal of whether the circumstances giving rise to that suspension have changed.

2. Moreover, the Directorate General shall gather data from accredited bodies that may have any information on that country and from third countries that have initiated, suspended or halted the processing of adoptions with the country of origin, from the Permanent Bureau of the Hague Conference on Private International Law, from any public or private national and international bodies as deemed necessary, and, if applicable, from associations representing adoptive families in the country concerned.

#### *Article 6. Procedure for suspension of the processing of adoption applications with a particular country*

1. The Directorate General may, after consulting the Sectoral Committee, temporarily suspend or stop the processing of adoption applications with a particular country. To this end, the Directorate General shall request a report on the situation in the country from the Ministry for Foreign Affairs, European Union and Cooperation, as well as from the bodies accredited in it, which should be submitted within one month.

Moreover, the Directorate General may gather information from third countries that have initiated, temporarily suspended or stopped the processing of adoptions with the country of origin, from the Permanent Bureau of The Hague Conference on Private International Law, from any public or private national and international bodies as deemed necessary, and, if applicable, from associations representing adoptive families in the corresponding country and from adoptees.



2. Notwithstanding what is provided in the previous paragraph, should any of the circumstances provided for in Article 4.2 of Law 54/2007 come to light, the Directorate General may decide ex officio to suspend the processing of adoptions on a precautionary basis, with the scope of suspension that it determines. In such events the suspension should be ratified or lifted, following deliberations by the Sectoral Committee, within no more than one year from when the suspension was decided upon.

*Article 7. Common rules in the procedures for the initiation and suspension of the processing of adoption applications with a particular country*

1. No offers of adoption shall be processed regarding children that are nationals of another country or habitually resident in another state in the circumstances referred in, in Article 4.2 of Law 54/2007.

2. The Directorate General shall, after consulting the competent public bodies, determine at any time which countries are applied to by the circumstances referred in the previous paragraph, for the purposes of deciding whether to initiate, temporarily suspend or stop the processing of adoptions in them.

3. The decisions made by the Directorate General for these purposes shall be notified to the Ministry for Foreign Affairs, European Union and Cooperation, to the public entities and to the accredited bodies concerned. The Ministry for Foreign Affairs, European Union and Cooperation shall in turn serve appropriate notice to Spanish representations abroad.

4. The decisions referred to in the previous paragraph shall be published in the Spanish Official Journal (BOE) and on the website of the ministry with responsibility in the sphere of children and adolescents.

CHAPTER III

**Establishment and distribution of the maximum number of intercountry adoption applications to be processed annually in each country of origin**

*Article 8. Criteria for establishing the maximum number of applications to be processed annually in each country of origin*

1. In the event that the processing of adoptions is initiated in a new country, the establishment of the number of applications to be processed annually shall involve assessing:

- a) The intercountry adoption needs in that country and the profile of its adoptable children;
- b) The number of adoptions made by third countries in the last two years;
- c) Reports by public or private national and international bodies on the political and social stability of the country of origin, along with the legal certainty offered and the practices employed in the processing of intercountry adoption procedures.

2. In the event that the processing of adoptions is to be continued in a country where adoptions are already being processed, in order to determine the annual number of new applications to be submitted, in addition to the criteria set out in paragraph 1, account shall preferentially be taken of the criteria provided in Article 4.5(1) and (2) of Law 54/2007.

3. The establishment of the total number of applications to be processed annually in each country of origin shall not affect the adoption of children with special needs, except in cases where the country of origin sets a limit on the number of applications to be processed, the number of applications

pending placement is high in relation to the number of adoptions made, or where any other circumstance so justifies.

*Article 9. Procedure for establishing the maximum number of applications to be processed annually in each country of origin*

1. The public entities shall by electronic means send the Directorate General an up-to-date list, with the details and format that may be determined by the Sectorial Committee, of the intercountry adoption applications being processed by country of origin. This list shall be updated continually.

2. The Ministry for Foreign Affairs, European Union and Cooperation shall by electronic means, through Spain's representations abroad, furnish the Directorate General with information on adoptions made in each country of origin by residents in Spain. This information shall be updated continually.

3. The Directorate General may, after consulting the Sectorial Committee, annually establish the number of new applications that may be processed with each country of origin according to the criteria provided in Article 8, and this shall be notified to the competent public entities and to the accredited bodies.

4. The number of applications referred to in the previous paragraph may be modified by the Directorate General, after it has consulted the Sectorial Committee, in keeping with any changes occurring in the country of origin or the trend in adoptions, and this shall be notified to the competent public entities and to the accredited bodies.

For these purposes, the Directorate General shall prepare and send to the members of the Sectorial Committee a report on the adoption situation in the country of origin, which may contain information gathered from the administrative authority responsible for adoptions in the country of origin, from international child protection bodies and from other official sources as considered necessary.

*Article 10. Distribution of the maximum number of applications to be processed between public entities and accredited bodies*

1. The distribution of the maximum number of applications to be processed, either through a public entity or an accredited body for each country of origin, shall be determined by order of precedence according to the date and time of adoption offers by persons with a certificate of suitability included in the up-to-date list provided for in Article 91.

2. In the event of an adoption offer for a country other than the one initially chosen, the submission date of this new offer shall apply in determining precedence. The list shall not include any offers made prior to the decision to start processing applications with a country of origin.

3. The Sectorial Committee shall approve the distribution of the maximum number of applications resulting from the criteria provided for in the above paragraphs.

#### CHAPTER IV

#### **Accredited bodies for mediation in intercountry adoption**

*Article 11. Sphere of action*

1. The accredited bodies shall perform their activity in the whole country, providing their services to prospective adoptive parents that are habitually resident in Spain.

2. Their action abroad shall be confined to the country or countries for which they have been accredited, without prejudice to their complying with any requirements and conditions that may be established by the child's country of origin.

3. In the performance of its mediation functions in intercountry adoption, the actions undertaken by accredited bodies shall be confined to the activities indicated in the accreditation decision and should be carried out on the terms and conditions provided therein.

4. Notwithstanding what is provided in the previous paragraph, the purposes and activities of accredited bodies may include other social and child protection services, provided that the intercountry adoption mediation activity is clearly identified, differentiated and separated from its other activities, especially as regards its statutes, organisational structure and accounting.

5. No other entity or person other than the accredited bodies and the competent public entities may intervene in intercountry adoption mediation functions.

*Article 12. Functions in Spain of accredited bodies for mediation in intercountry adoption*

Bodies accredited for mediation in intercountry adoption shall perform at least the following functions in Spain, without prejudice to the provisions of applicable regional legislation:

a) Ensuring that prospective adoptive parents comply with the requirements stated by the country of origin;

b) Acting as an intermediary between prospective adoptive parents having a certificate of suitability and the authorities of the country of origin;

c) Collaborating actively and diligently with all the agents involved in adoption in order to ensure that the application is processed properly;

d) Offering assistance and advice to prospective adoptive parents on the formal and material aspects of the steps involved in the granting of adoptions in the child's country of origin;

e) Keeping prospective adoptive parents informed of any change or progress affecting the processing of the application, without prejudice to replying to any requests for additional information;

f) Participating in the development of best practice relating to intercountry adoption in order to prevent the most common problems or difficulties, including those arising from adaptation after adoption;

g) Providing the Directorate General and the public entities with information on the profile of adoptable children in the countries of origin, as well as on any changes in legislation, procedures or criteria for intercountry adoption in the country of origin of which they become aware;

h) Providing training courses complementary to those given by the public entities to prospective adoptive parents, as referred to in Article 6.3.b) of Law 54/2007;

i) Preparing, where appropriate, post-adoption follow-up reports on the child's development and adaptation to his/her new family, with the frequency determined by the country of origin;

j) Sending post-adoption reports to the competent body in the country of origin;

k) Collaborating with the competent public bodies in the exercise of adoptees' right to know their biological origins.

Article 13. *Functions in countries of origin of accredited bodies for mediation in intercountry adoption*

Accredited bodies for mediation in intercountry adoption shall perform at least the following functions in the countries of origin, without prejudice to the provisions of applicable regional legislation:

- a) Collaborating with the competent authorities of the country of origin and with the Spanish consular office or section;
- b) Keeping the authorities of the country of origin informed of the situation of each adoption application;
- c) Training, supporting and supervising the staff of the accredited body in the country of origin;
- d) Representing prospective adoptive parents to the competent authorities of the country of origin;
- e) Gathering up-to-date information on the children, once placed, at the request of the competent public authorities;
- f) Guiding and supporting prospective adoptive parents throughout their stay in the country of origin, constantly offering them appropriate and reliable services.
- g) Ensuring that, before the meeting with the family, preparation for intercountry adoption is provided in accordance with the child's best interests, in collaboration with the country of origin, helping the child to understand what the procedure involves, adapting the preparation according to his/her age with the assistance of psychosocial counsellors in the country of origin and assuring that the number of prior contacts with the future adoptive family as provided by the legislation of the country of origin are made, via any possible electronic means or by correspondence, once approval of the placement has been notified by both the public entity and the family;
- h) Guaranteeing, in collaboration with the country of origin, that the meeting and the initial adaptation between the child and the prospective adoptive parents proceeds in accordance with the child's best interests, and in no event prior to the placement date.

Article 14. *Obligations of accredited bodies*

Accredited bodies shall have at least the following obligations in the performance of their functions, without prejudice to the provisions of applicable regional legislation:

- a) Ensuring compliance with legislation on adoption and child protection both in Spain and in the country of origin;
- b) Ensuring that there is no payment or compensation of any kind for the child's adoption, other than that provided for legally;
- c) Reporting and complaining, where appropriate, to the competent authorities and bodies of any irregularity, abuse or financial benefit further to the amounts that are necessary strictly to cover the costs involved in mediation, of which they have knowledge;
- d) Signing a contract for mediation in intercountry adoption with prospective adoptive parents that have a certificate of suitability, on the basic approved model contract provided in chapter V section 3;
- e) Notifying the public entity of any change affecting their authorisation in the country of origin. They should in all events report their periodic renewals of authorisation and, if applicable, their temporary suspension or withdrawal. Moreover, they should notify the public entity of any change relating to their work programme, both in Spain and in the country of origin, on the terms provided in the applicable regional legislation;

- f) Keeping and assuring the professional secrecy of information and the protection of data concerning prospective adoptive parents, biological families and adopted children;
- g) Assuring compliance with the inherent duties of their staff and the members of their governing and representative bodies, and in particular requesting from all staff, whatever organisational, employment or collaborative relationship they have with them, proof of not having been convicted by final judgment of any offence against sexual integrity and freedom, or of human trafficking, as provided in Organic Law 8/2021 of 4 June on the integral protection of children and adolescents from violence, by providing a clearance certificate from the Central Register of Sex Offenders;
- h) Providing the information that the national government deems necessary for the assessment of the professionals employed by the accredited bodies in the children's countries of origin;
- i) Performing supervisory, monitoring and control tasks as regards the activities of their staff and of the members of their governing and representative bodies in the fulfilment of the obligations and requirements provided by applicable legislation. In particular, the bodies shall be responsible for all acts performed on their behalf by their representatives, on the terms provided in Law 54/2007;
- j) Facilitating the competent public entity's monitoring and control tasks, and in particular those referred to in chapter V section 4.

## CHAPTER V

### **Accreditation of bodies**

#### *Section 1. Requirements and procedure for the establishment of the maximum number of bodies; withdrawal and temporary suspension of accreditation*

#### *Article 15. Criteria for the establishment of the maximum number of bodies liable to be accredited*

Annually the Directorate General shall, after consulting the Sectoral Committee, establish the maximum number of intercountry adoption mediation bodies that may operate in each of the countries of origin, notifying the competent public entities thereof as provided in Article 151.2 of Law 40/2015.

The following criteria shall be taken into account for determining this number:

- a) The information available on intercountry adoption needs in the countries of origin and on the profile of adoptable children;
- b) The number of intercountry adoptions made by Spanish residents in each of the countries of origin in the last two years in relation to the number of adoption applications for those countries in this period and the number of bodies for mediation already accredited by other recipient countries. Where the processing of adoptions is being started in a new country, this number shall be determined according to the information available on expectations for adoption with the country, taking account of the number of adoptions made by third parties in the last two years;
- c) Any limitation that may be established by each country of origin on the number of foreign entities that may provide mediation services on their territory;

- d) Any requirement that may be imposed by each country of origin to the effect that intercountry adoptions in that country may be processed only through accredited bodies;
- e) The number of Spanish mediation bodies that are currently accredited.

Article 16. *Procedure for establishing the number of bodies liable to be accredited in new countries of origin*

1. During the first quarter of the year, the Directorate General shall inform the Sectoral Committee of the maximum number of bodies to be accredited by each new country of origin in which it is possible to process new intercountry adoption applications. Where it has been agreed with a particular country that applications will start to be processed outside the first quarter of the year, in the immediately subsequent month and after consulting the Sectoral Committee, the Directorate General shall establish the maximum number of bodies to be accredited for that country and inform the latter thereof.

2. Moreover, within two months of the notice being served to the Sectoral Committee, the public entities concerned may, in the way established by the relevant regional legislation, publish the corresponding announcement for the granting of new accreditations to intercountry adoption mediation bodies that have their registered offices in their territory, for that country of origin.

3. After studying the proposals submitted and issuing the corresponding accreditation decisions for bodies meeting the requirements provided in applicable legislation, the public entities shall inform the Sectoral Committee of the names of the bodies that have been accredited along with their order of precedence, if there are several for a single country, and a report allowing the objective criteria listed in the following paragraph to be assessed. The efficacy of the accreditation issued by the public entity shall be conditional upon the decision taken within the Sectoral Committee, taking into account the order of precedence established following the receipt of accreditations granted by all the public entities that advertised the corresponding invitation within their territory.

4. If, once all the accreditations issued by the public entities have been sent to the Sectoral Committee, the number of accredited bodies exceeds that previously established for any country of origin, the Sectoral Committee shall take account of the following objective criteria in assessing the bodies, after studying the report to be sent by the public entity, on the basis of the documentation provided by the accredited body regarding:

- a) Experience and performance of the body and its members in the sphere of intercountry adoption;
- b) The body's track record in the performance of its activities according to its statutory aims;
- c) Material and personal resources for the performance of intercountry adoption functions;
- d) The body's action plan;
- e) The body's financial approach, taking account of the relationship between service quality and cost.

5. After taking account of the above criteria, the Sectoral Committee shall decide which of the accreditations issued to the bodies by the public entity shall take effect. If the Sectoral Committee deems it necessary to gather complementary information so that a consensual decision may be taken, it may determine that the relevant reports be requested by the Directorate General from the following bodies and entities, to be submitted within one month:

a) From the Ministry for Foreign Affairs, European Union and Cooperation, a report giving details of the past activity, if any, of the body requesting accreditation in the country of origin;

b) From the competent public entity in the territory where the body has its registered office, a report providing, among other aspects, an assessment of the body's staff and, if applicable, an appraisal of its mediation activity in other countries of origin;

c) From other bodies or entities as considered appropriate to supplement the assessment, such as the Technical Committee for Monitoring and Control or the competent public entity in the territory in which the body has previously carried out its intercountry adoption mediation activity.

6. After studying the reports, and consistently with the criteria provided in paragraph 4, the Sectoral Committee shall decide which of the various bodies are to be finally authorised for the processing of adoptions in that country of origin. If there is no agreement within the Sectoral Committee, the assessments and reports on the bodies shall be submitted to the central authority of the country of origin, as provided in Article 7.5 of Law 54/2007, and it shall be asked to choose the bodies with which it prefers to work. Once the selection is complete, the public entities shall serve notice of the authorisation to the corresponding bodies in their respective territories.

7. For countries of origin in which the maximum number of bodies to be accredited has not been covered, after the meeting held by the Sectoral Committee, the public entities concerned shall have three months in which to advertise an invitation for the accreditation of bodies for that country, following the procedure described above.

8. Moreover, in the event that, in a country of origin in which intercountry adoptions are being processed through accredited bodies, any of these should cease to exist owing to unforeseen circumstances, the public entity should report this to the Sectoral Committee. If at that time there are any bodies which, after obtaining accreditation in the previous invitation, could not be authorised for mediation in intercountry adoption, the public entity shall ask the next accredited body in the order of precedence for information allowing it to ascertain that the body continues to meet the requirements as it did when it was accredited. This accreditation shall then take full effect for mediation in the aforesaid country of origin. If there is no body with prior accreditation for that country of origin, the procedure followed shall be that provided in paragraph 7.

#### Article 17. *Transfer of applications between accredited bodies*

If any country of origin were to establish a limit on the number of applications to be processed by each accredited body in its territory and it turns out that some of them have no applications to be processed in that country, the bodies may, after informing the public entities corresponding to the place of residence of the prospective adoptive parents, and with the consent of the latter, take on applications that are being processed by other accredited bodies that have a large number of current applications, so as not to unnecessarily delay their completion, if the body which began the processing is in agreement, and without prejudice to the applicable provisions of regional legislation. The body which began the processing must comply with the obligations provided in regional legislation as regards the rescission of the contract signed with the prospective adoptive parents.



#### Article 18. *General requirements for accreditation*

Bodies interested in performing mediation functions in intercountry adoption should meet the following general requirements for accreditation, without prejudice to what is provided by applicable regional legislation:

- a) Being a non-profit organisation, legally established and currently registered in the corresponding register;
- b) Having as their corporate purpose, pursuant to their statutes, the protection of children in accordance with the provisions of Spanish legislation and the principles set out in the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, in the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on 29 May 1993, and any other applicable law;
- c) Having their registered office on Spanish territory and an office in the country of origin;
- c) Providing all the mediation services mentioned in the above articles to prospective adoptive parents habitually resident in Spain, in any of its autonomous community;
- e) Being up to date in complying with their tax and social security obligations, as may be checked by the competent public entity by directly consulting the Spanish Tax Agency and General Social Security Treasury, in order to ascertain the relevant information on these matters while the procedure is in progress, provided that the body concerned has given express authorisation for the purpose;
- f) Having a financial plan allowing them to meet the obligations undertaken, to keep accounts in accordance with what is provided in the standard chart of accounts for non-profit organisations and having a head office in Spain with the necessary material resources to ensure that families are adequately attended to.

#### Article 19. *Accreditation procedure*

Bodies interested in performing intercountry adoption mediation functions should be accredited by the procedure established in the applicable legislation of the autonomous community where their registered office is located. This region shall be the only one in which any body may submit an accreditation request.

#### Article 20. *Accreditation decision*

1. The decision of the public entity accrediting a body for performing intercountry adoption mediation functions shall specify the functions and actions referred to in this regulation and in applicable regional legislation for which it is accredited, along with the country of origin or, if applicable, the region or state thereof for which the accreditation is granted, as well as the authorised costs for the processing of an adoption offer for that country, distinguishing between amounts for indirect costs and for direct costs, as detailed in Article 24.

2. The Directorate General shall report to the Permanent Bureau of The Hague Conference on Private International Law the names and registered addresses of the bodies accredited by the public entities, once the latter have supplied the corresponding information, according to the procedure provided in Article 28.2.

#### Article 21. *Withdrawal and temporary suspension of accreditation*

1. The public entity that accredited a body for a country of origin may withdraw that accreditation



by means of a reasoned decision, issued following a proceeding in which the view of the body may be heard, in the form and in the events provided for in applicable regional legislation, and in all events where any of the following situations arise:

- a) The body ceases to meet the applicable requirements and conditions;
- b) The obligations and/or functions provided for in this regulation are not performed;
- c) It is disqualified by the compatible authority in the country of origin for which it was accredited.

Likewise, the public entity may decide to temporarily suspend the delivery of applications to an accredited body by means of a reasoned decision specifying the suspension period.

2. A body whose accreditation is withdrawn for reasons attributable to itself may not request new accreditation for the country of origin until the period indicated in the applicable regional legislation has elapsed, which shall in all events be no longer than ten years.

3. The Directorate General shall notify the central authority in the country of origin, as well as the Permanent Bureau of The Hague Conference on Private International Law, of the withdrawal of the accreditation of a body by the public entity, once the latter has provided the corresponding information, according to the procedure provided in Article 28.2.

#### *Section 2. Cooperation and mergers between accredited bodies*

##### *Article 22. Cooperation and merger agreement between accredited bodies*

1. Where two or more accredited bodies sign a cooperation agreement in response to unforeseen situations or in order to better carry out their purposes, they should notify the public entities where each one has its registered office of the detailed content and terms of the cooperation and of the actions corresponding to each body pursuant to the agreement. The public entity or entities concerned shall submit a detailed report on the content and terms of the cooperation to the Technical Committee for Monitoring and Control, within ten business days of the contract being concluded.

2. Where two or more accredited bodies merge, giving rise to a new body with a single legal personality, the new body shall request from the public entity corresponding to the location where it is to establish its head office, which must necessarily be in the autonomous community where one of the merging bodies is accredited, accreditation for intermediation in the country or countries of origin which either/any of the bodies were previously accredited for. Once it has checked compliance with the requirements provided in this regulation and in the applicable regional legislation, the public entity shall directly issue an accreditation decision concerning the new body. The public entity accrediting the resulting body shall report in detail to the Technical Committee for Monitoring and Control on the content and terms of the merger within ten business days of the issue of accreditation.

3. The Directorate General shall notify the competent authorities of the country of origin, along with the Permanent Bureau of The Hague Conference on Private International Law, of the name and registered address of the new accredited body, once the corresponding information has been provided by the public entity granting the accreditation, following the procedure provided in Article 28.2.

*Section 3. Basic model contract between accredited bodies for mediation in intercountry adoption and prospective adoptive parents*

*Article 23. Official approval of the contract*

1. The Sectoral Committee shall adopt the approved basic model contract between accredited bodies for mediation in intercountry adoption and prospective adoptive parents, after seeking contributions from the accredited bodies.

2. Contributions may be sought from other bodies or organisations involved in or linked to the field of adoption. In any event, a report should be sought from the Spanish Data Protection Agency as regards the contract clauses referring expressly to the processing and transfer of personal data.

3. The form and content of any contract between the body and prospective adoptive parents should always be in line with this officially approved model.

*Article 24. Content of the model contract*

1. The model contract shall contain the basic clauses for the processing of intercountry adoption applications, which should appear in every contract. To this contract shall be annexed the processing costs and specific and particular aspects of processing in certain countries of origin, which should be approved by the corresponding public entity.

2. The model contract shall include at least the following elements:

- a) Subject-matter of the contract;
- b) Functions of the accredited body for mediation in intercountry adoption;
- c) Obligations of the accredited body for mediation in intercountry adoption;
- d) Obligations of prospective adoptive parents;
- e) Rights of the accredited body for mediation in intercountry adoption;
- f) Rights of prospective adoptive parents;
- g) Data protection and confidentiality;
- h) Grounds for rescission of the contract and procedure for its liquidation according to the grounds of rescission;
  - i) Start and termination;
  - j) Contract price review clause regarding the possibility of updating the costs for the processing of an adoption application in situations that so justify, following authorisation by the public entity in whose territory the accredited body has its registered office as regards costs originating in Spain;
  - k) Payment formula;
  - l) Formula for early termination of the contract;
  - m) Questionnaire for assessment of the service provided by the accredited body which the adoptive family should submit, once the application has been processed, to the public entity that processed their application.

3. The annex concerning the costs of the adoption procedure shall include a detailed account of at least the following elements:

- a) Direct and indirect application processing costs incurred in Spain;
- b) Direct and indirect application processing costs incurred in the child's country of origin;
- c) Costs arising from post-adoption follow-up.



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*Section 4. Monitoring and control of the accredited bodies activities*

*Article 25. Monitoring and control functions*

1. Public entities that have accredited mediation bodies shall perform monitoring and control functions with regard to the general operation of the accredited bodies in the territory of their region, and also to their activity in the country of origin. For the latter functions, they shall proceed in coordination with the Directorate General, which shall convey the public entities' collaboration requests to the Directorate General responsible for consular affairs at the Ministry for Foreign Affairs, European Union and Cooperation.

2. The monitoring and control of an accredited body that has processed an adoption application shall be a task for the public entities that processed or are processing the application of the prospective adoptive parents.

*Article 26. Technical Committee for Monitoring and Control*

1. The role of the Technical Committee for Monitoring and Control, to be created in the framework of the Sectoral Committee for Children and Adolescents as provided in Article 14 of its Organisational and Functional Regulation, shall be to coordinate measures for monitoring and control of the accredited bodies.

2. The Technical Committee for Monitoring and Control shall consist of:

- a) One person on behalf of the Directorate General, who shall act as the Committee's chair;
- b) One person on behalf of the Directorate General, who shall act as the Committee's secretary;
- c) One person on behalf of each of the competent public entities;
- d) One person, in an advisory capacity, on behalf of the Ministry for Foreign Affairs, European Union and Cooperation;
- e) Public officials from other ministries involved may also take part in an advisory capacity.

3. As provided in the aforesaid Article 14, the aspects to be determined shall include its functions, the frequency of its meetings, the quality system for objective and continuous assessment of the service provided by accredited bodies, the procedure for the implementation of monitoring and control functions, and supervisory actions by the accredited bodies.

CHAPTER VI

**National Register of Accredited Bodies for Intercountry Adoption and of Complaints and Incidents**

*Article 27. Creation and organisation of a National Register of Accredited Bodies for Intercountry Adoption and of Complaints and Incidents*

1. A National Register of Accredited Bodies for Intercountry Adoption and of Complaints and Incidents, hereinafter 'Register', is hereby created. It shall be a single register for the whole country, attached to and coming under the Directorate General.

2. The Register shall be implemented and monitored through the ADIN IT system, to which the public entities shall have access in order to enter and consult data concerning the accredited bodies. The functions of the Register corresponding to national government shall be without prejudice to the executive functions corresponding to the public entities, and it must accept as binding the proposals for

registration and authorisation or cancellation and revocation made by the aforesaid public entities with executive responsibilities in the field.

3. The aforesaid IT system shall be fully operative six months after this regulation's entry into force.

4. The Register shall consist of two sections:

- a) First section: Register of Accredited Bodies;
- b) Second section: Register of Complaints and Incidents

*Article 28. First section: Register of Accredited Bodies*

1. The first section of the Register shall be public, general in nature and free of charge. Notwithstanding the above, the data referred to in paragraphs 3.a).4th and 3.b).2nd may be accessed only where a legitimate interest for the purpose is demonstrated.

2. In this section, the public entities shall, ex officio, register the bodies that have been accredited in their territory and authorised in the country of origin by the competent authorities.

3. The Register entry for each body shall expressly record:

a) General data:

- 1st. Identifying details of the mediation body
- 2nd. Registered address
- 3rd. Make-up of its governing and representative bodies
- 4th. Make-up of its technical team and any respective changes

b) Specific data by country of origin:

- 1st. Identification of the country for which the body has been accredited
- 2nd. Identification of the representative in the country of origin
- 3rd. Authorised costs for the processing of each adoption application, including both direct costs and indirect costs in Spain and in the country of origin, along with costs authorised for the preparation of post-adoption follow-up reports

c) In relation to accreditation in Spain:

- 1st. Date of accreditation, public entity granting accreditation, and current validity of accreditation
- 2nd. Date of any extensions granted or of successive authorisations and of any refusals, if applicable, indicating the reasons therefor, any appeals lodged, and the resulting decision rendered
- 3rd. Date of any decision temporarily suspending the delivery of applications to the mediation body and the suspension period, if applicable
- 4th. Date on which the suspension was lifted, if applicable
- 5th. Date of any decision withdrawing accreditation, if applicable, along with the reasons therefor, any appeals lodged, and the resulting decision rendered

d) In relation to the authorisation granted in the country of origin:

- 1st. Date of authorisation in the country of origin, body granting authorisation, and current validity of authorisation
- 2nd. Date of extensions granted or of successive authorisations and of any refusals, if applicable
- 3rd. Date of decision temporarily suspending the authorisation for the mediation body's activity and the suspension period, if applicable

4th. Date on which the suspension was lifted, if applicable

5th. Date of any decision withdrawing authorisation, if applicable, along with the reasons therefor, any appeals lodged, and the resulting decision rendered

e) Collaboration agreements with other bodies.

4. Mediation bodies must notify the public entity that granted their accreditation within a period of one month of any changes to the data referred to in this article.

5. The disappearance of an accredited body shall entail a deregistration entry being made in the Register, recording the reason for the disappearance and its date of effect.

6. The person in charge at the Directorate General shall issue certificates of the data appearing in the Register, entered by the public entities.

7. Anyone interested shall have access to the information contained in the Register's first section through the website of the ministry with responsibility in the sphere of children and adolescents, without prejudice to what is provided in paragraph 1.

Article 29. *Second section: Register of Complaints and Incidents*

1. The second section of the Register shall record complaints and incidents submitted by any user of a mediation body in relation to the services provided thereby, along with the acceptance or rejection of the complaint or incident reported.

2. Entries made for complaints and incidents shall indicate at least the date of submission of the complaint or incident along with the outcome, if applicable, of monitoring and control actions by the competent body and the decision taken on the complaint or incident.

3. The competent public entity for deciding on the complaint or incident shall be responsible for the processing of the intercountry adoption application. If this entity is not the one that granted accreditation to the body concerned, the entity processing the application may contact the one that granted the accreditation in order to request a report and to complete the process.

4. The submission of complaints or incidents concerning the activities of mediation bodies in Spain or in the country of origin shall be subject to the following rules:

a) All accredited bodies shall make available complaint and incident forms regarding their activities, along the lines established by the public entity in whose territory they have their registered offices, and must put them on public show in a visible place and post them on their websites. The Directorate General shall, as provided in the third additional provision of Law 26/2015 of 28 July, develop a common model form with the public entities.

b) The complaint and incident forms shall also be available on the websites of the public entities;

c) Users of the accredited bodies may submit their complaints or report incidents, accompanied by documentation in support of the facts referred to and preferably by electronic means, to the public entity that processed their intercountry adoption offer and at any of the places referred to in Article 16.4 of Law 39/2015. The necessary parameters and conditions of accessibility shall be put in place so that persons with disabilities may also submit any complaints and incidents to the Register;

d) In the event that they are submitted to the public entity responsible for processing the application, the entity shall make the corresponding entries in the Register as provided in sections 1 and 2, within ten business days of their submission, so that the Technical Committee for Monitoring and Control may be informed. The public entity should also notify the Technical Committee for Monitoring and Control of the decision on the complaint or incident, within ten business days of its being made, through an entry in the Register;

e) In the event that complaints or incidents are submitted to a public entity other than the one responsible for processing the application, or directly to mediation bodies, the aforesaid entity or body, if applicable, shall forward the complaint or incident to the public entity responsible for processing the application, within ten business days of its being submitted, so that the latter may proceed as provided in the previous paragraphs;

f) If the complaint or incident arises from an infringement by the mediation body of the obligations inherent in its accreditation, as provided in applicable legislation, the public entity that granted the accreditation shall ex officio launch proceedings in which both sides may be heard, on the terms provided in regional legislation, and serve notice thereof within ten business days to the Technical Committee for Monitoring and Control.

5. The following shall have access to the second section of the Register:

- a) The persons who submitted the complaint or incident, as regards their complaint or incident;
- b) The bodies referred to thereby, as regards the applications that they have processed;
- c) The public entities competent in the field of intercountry adoption, as regards the applications that they have processed;
- d) The Spanish consular offices or sections in the countries of origin, as regards the applications processed for that country;
- e) The members of the Technical Committee for Monitoring and Control.

6. The data entered in the second section of the Register shall be accessed and processed in accordance with the relevant provisions of legislation on personal data protection.

7. The person in charge at the Directorate General shall issue certification of the data in the Register entered by the public entities.