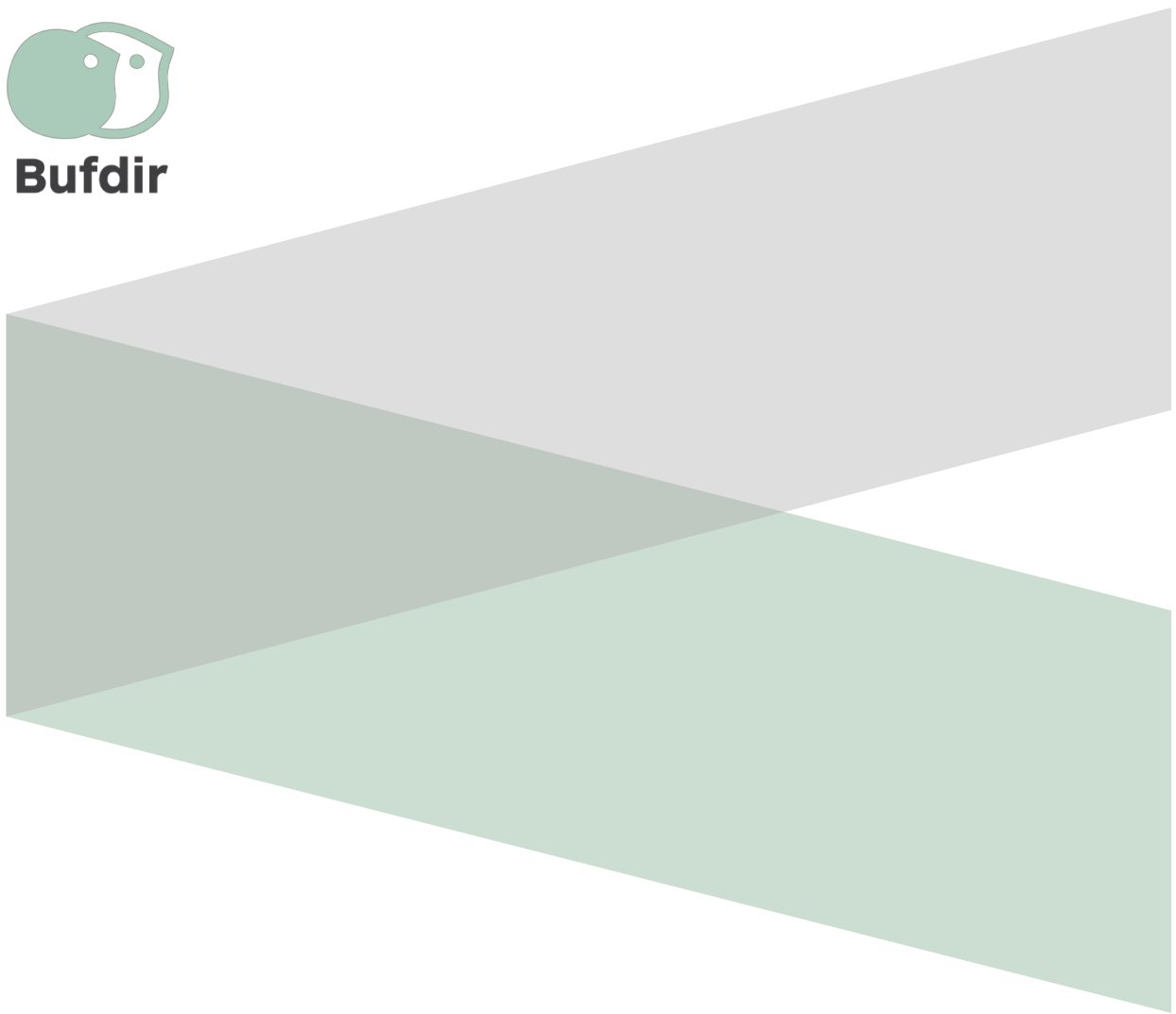


# Assessment of temporary suspension of foreign adoptions

Recommendation to the Ministry of Children and Family  
Affairs



**Bufdir**



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## Introduction to the report

The report and recommendation to the Ministry of Children and Family Affairs on the temporary suspension of intercountry adoptions is a professional assessment of the soundness of the system for arranging adoptions from abroad to Norway. The assessment is fundamental from an administrative perspective and is based on a risk assessment of the current system and division of responsibilities for international adoptions.

We have not assessed whether adoptions to Norway have been carried out on improper grounds or what the system for international adoptions should look like in the future.

In our recommendation, we look at both the weaknesses of the current system in Norway and we describe the risks associated with adoption processes abroad.

Intercountry adoption to Norway has been going on for over 50 years. Until recently, few have questioned the system we have in place for international adoption, with private actors and a trust- and relationship-based co-operation across national borders. Until now, the political guidelines have largely been to carry out more adoptions to Norway and speed up adoption processes.

The field is changing, both internationally and nationally. Falling adoption figures show that the need for countries of origin to adopt their children abroad is less, and interest from Norwegian families is declining. In addition, several adult adoptees have recently questioned both the legality of their own adoptions and whether foreign adoptions are at all in the best interests of children.

Norway is not obliged to co-operate on adoptions from abroad, and this recommendation does not contain a principled assessment of whether it is generally in a child's best interests to be adopted from abroad to Norway. These are questions that may need to be considered after the government-appointed investigation committee has submitted its report.

## Why are we considering this now?

In 2021, a report was published by the Dutch committee that investigated intercountry adoptions<sup>1</sup>, which revealed illegal adoptions. Since then, there has been increased awareness in many countries about possible illegal practices in international adoptions. In the report, the Dutch authorities were criticised because they had been notified but had not taken action.

In 2022, Bufdir was commissioned by the Ministry of Children and Family Affairs to assess the need for an review of the adoption system in Norway. In May 2022, we submitted our recommendation for an external review of intercountry adoptions to Norway. We recommended that both adoptions before and after 1998, when Norway acceded to the 1993 Hague Convention on Intercountry Adoptions (the Hague Convention), was to be investigated. Bufdir was first commissioned to carry out the investigation. It was then decided to appoint an external committee. The committee began its work in December 2023 and is due to deliver its report in the form of an NOU in two years' time.

Several countries are in the process of investigating whether illegal adoptions have taken place in historical cases. Illegal adoptions have been uncovered in some countries in recent years.

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<sup>1</sup>[Summary+of+the+report+of+the+Committee+Investigating+Intercountry+Adoption.pdf](#)

"Concluding recommendations from the UN Committee on the Rights of the Child and country reports from the international organisation International Social Services (ISS) confirm that there is still a risk of children being illegally taken from their biological parents and wrongfully adopted abroad. In this connection, we refer in particular to a joint statement from the UN<sup>2</sup> of September 2022 which

emphasises the duty of states to prevent illegal intercountry adoptions.

From the autumn of 2022, the media began to extensively request access to documents from Bufdir, the Ministry of Children and Family Affairs, the Ministry of Foreign Affairs and the adoption organisations. The press received inspection and fact-finding mission reports and communications between the Norwegian ministries involved, embassies, adoption organisations and the authorities in the country of origin. Parts of the documentation contained information that was worrying from today's perspective.

In recent years, there has been considerable international attention to the risk of illegal adoptions. In March 2023, the Council of Member States of the Hague Conference on Private International Law adopted a guide aimed at preventing and addressing illegal practices in international adoptions. This was published by the Hague Conference on Private International Law private law in June 2023.

Bufdir has implemented measures to strengthen the control of adoptions from abroad to Norway. The Hague Convention does not specify which specific documents must be available in each case, but which conditions must be met. In several contexts, we have reported on guidelines for adoption organisations regarding documentation in cases and requirements for translation requirements. In addition, the "Toolkit for preventing and addressing Illicit practices in intercountry adoption", published by the Hague Conference on Private International Law in June 2023, has been shared with the organisations.

the organisations. Based on this, Bufdir has checked the documents in individual cases more thoroughly than previously, both in cases to be presented to the professional advisory committee for adoption cases and in connection with the registration of adoptions.

Irrespective of adoption organisations and countries of origin, the document checks show that the legal documentation is inadequate in many cases. We are therefore now asking for more documentation in newer cases and more information when needed. We now require original documents or copies certified by the authority that issued the document.

The number of demands from adoptees to Norway, who are now adults, for access to their adoption documents is increasing rapidly. Many question the documentation in their cases. When reviewing case documents in connection with requests for access from from adoptees, we see that the documentation in several cases is inadequate.

Following an overall assessment of the risks associated with intercountry adoptions that have emerged in reports, in individual cases and through Bufdir's own involvement in both older and more recent adoption cases, we have decided that there is now a need to consider temporarily suspending all intercountry adoptions to Norway until the investigative committee has submitted its report and made recommendations on what a possible future adoption system should look like.

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<sup>2</sup>[JointstatementICA\\_HR\\_28September2022.pdf \(ohchr.org\)](#)

## Historical background

The first foreign adoptees came to Norway after the Second World War, from war-torn countries in Europe. Subsequently, the Korean War and the Vietnam War led many to become involved in adopting children from these countries.

There are four organisations that have facilitated the adoption of foreign children: Verdens Barn (formerly the Norwegian Korea Association), Adopjonsforum, Foreldreforeningen for barn fra andre land (formerly the parents' association for children from Vietnam) and InorAdopt.

Before formal permits from the Norwegian authorities were in place, adoption organisations assisted Norwegian adoption applicants in arranging individual and private adoptions through their network of contacts in the children's countries of origin. The work of the adoption organisations had good intentions. It was considered to be in a child's best interests to grow up in a family, and international adoption gave an orphaned child abroad the opportunity to have a new family and a safe upbringing in Norway.

The first placement licence was granted in 1969 to the Norwegian Korea Association, the forerunner of the adoption organisation Verdens Barn, but already in the years 1954-1968, 172 children came to Norway from Korea for adoption.

In 1967, the organisation Committee for Southeast Asia received permission from the Ministry of Social Affairs to bring 60 children from Vietnam to Norway for adoption on specific terms. At this time, the war in Vietnam was in full swing.

In 1973, the association Foreldreforeningen for barn fra Vietnam (Parents' Association for Children from Vietnam) was granted a licence by the Ministry of Social Affairs to operate an adoption agency in Vietnam. The licence was granted on a trial basis and a total of 50 children were brought to the country.

In 1975, Adopjonsforum applied to the Ministry of Social Affairs for authorisation to place children for adoption. In 1978, the organisation was granted permission to place children from Bangladesh and Colombia.

InorAdopt was founded in 1981, and in 1989 was approved for some trial adoptions from Brazil.

To date, more than 20,000 adoptions have been completed from abroad to Norway. In total, there have been children from 37 countries.

Both the number of partner countries and the number of adoptions to Norway have fallen sharply over the past twenty years. In 2002, 747 adoptions were arranged via the Norwegian adoption organisations from 24 countries. In 2012, for the first time, fewer than 250 children arrived in Norway from 19 different countries. This was the lowest number of adoptions since 1979. In 2022, 45 children were placed via the Norwegian adoption organisations. In the autumn of 2023, Bufdir stopped adoptions from Madagascar,

Philippines, Thailand and Taiwan (the Madagascar decision has been appealed, the other three can be appealed). Today, the adoption organisations cooperate with seven countries: Bulgaria, Colombia, Peru, South Africa, South Korea, Czech Republic and Hungary.

The regulation of adoption agencies was sparse in both the Adoption Act of 1917 and the Adoption Act of 1986, as originally adopted. There was a provision in the Child Welfare Act of 17 July 1953 no. 14 that prohibited private individuals from conducting placement of children with or without the intention of adoption.

Nor could organisations conduct such activities without a licence from the Ministry. There was a blurred line between information activities and adoption mediation activities. For a presentation of the regulations and practice relating to adoptions from abroad, we refer to NOU 1976:55 Adoption and adoption mediation.

It was not until a legislative revision in 1999, after the 1993 Hague Convention had entered into force for Norway on 1 January 1998, that the Adoption Act was given a separate chapter on adoption mediation (Chapter 3A)<sup>3</sup>.

## Attitudes to intercountry adoption

Attitudes in Norway have largely been characterised by the perception that international adoption is a win-win situation. Orphans who would otherwise face a difficult and uncertain future in their country of origin are given a safe family and good prospects in Norway. At the same time, there is an opportunity for childless people in Norway to become parents. This is reflected in proposals and statements from the Norwegian parliament and government, and in public reports on adoption. Among other things, there has been a focus on increasing the number of countries from which Norway adopts and ensuring that adoption processes are faster and simpler. The following quotes illustrate this:

*Representative proposal from the Liberal Party in 2008<sup>4</sup>:*

*"The Storting asks the Government to facilitate a less bureaucratic and more predictable adoption process, and at the same time asks the Government to ensure that Norway seeks to enter into co-operation agreements with more countries and that the state plays a more active role in the preparation of new agreements."*

The proposal was unanimously adopted by the Storting and is attached to the minutes.

*Written response from Anniken Huitfeldt, Minister for Children and Equality, to the Storting on 14 October 2008<sup>5</sup>*

*"Furthermore, we are looking at the possibility of the adoption organisations expanding existing cooperation with the countries of origin and establishing cooperation with new countries of origin. In this connection, I can mention that the Ministry is in the process of considering the conclusion of a bilateral adoption agreement between Vietnam and Norway."*

*NOU 2009:21 Adoption in the best interests of the child, pt. 14.8.2:*

*"However, the Committee believes that there are still countries where Norwegian authorities could increase their international involvement bilaterally. The principle of subsidiarity in the Hague Convention cannot legitimise Norwegian passivity in relation to countries where many children are orphaned and the authorities in this country are unable to meet the children's need for protection and care." [...].*

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<sup>3</sup>[Ot.prp. nr. 63 \(1997-98\) - regjeringen.no](https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Representantforslag/2006-2007/dok8-200607-093/Representative-proposal-of) chapter 2

(4) [https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Representantforslag/2006-2007/dok8-200607-093/Representative proposal of](https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Representantforslag/2006-2007/dok8-200607-093/Representative-proposal-of) 23 May 2007 from Storting representatives Trine Skei Grande, Gunnar Kvassheim and Gunvald Ludvigsen on measures to simplify the adoption process. Document no. 8:93 (2006-2007)

The proposal was unanimously adopted by the Storting and is attached to the minutes. Recommendation submitted on 5 February 2008. Discussed in Storting: 12.02.2008.

<sup>5</sup><https://www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=41269>

*"In practice, responsibility for establishing partner countries is currently left to the organisations. The Adoption Act Committee finds that the organisations should continue to be responsible for this, but that the authorities must assist the organisations to a greater extent and in different ways so that the organisations can also exercise this function in practice."*

*NOU 2014 :9 New Adoption Act pt. 17.1:*

The committee refers to the fact that adoption figures are falling very rapidly and that adoption organisations are reporting difficult financial conditions. The Committee goes on to write:

*"Naturally, the organisations are dependent on completed adoptions for their continued operation. The Adoption Act Committee is aware of the difficult situation and agrees with what the Hove Committee wrote in its report. These views apply even more strongly now that adoption figures are even lower than in 2009. The Family and Culture Committee addressed the issue in its comments on Prop. 171 L (2012-2013), see Innst. 143 L (2013-2014) p. 9. The committee emphasised that it is "important to assist voluntary organisations in their efforts to put in place the necessary legislation and systems to establish agreements with more countries". The committee also advocated considering whether the foreign service missions could play a more active role."*

*Allocation letter from the Ministry of Children and Family Affairs to Bufdir 2019:*

*Adoption processes should be made faster and simpler both domestically and abroad.<sup>6</sup>*

## The current system

### 5.1 Introduction to the current system

International adoptions are regulated by the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, which entered into force in Norway on 1 January 1998.

The provisions of the Adoption Act of 16 June 2017 on international adoptions, with associated regulations, implement the Hague Convention in Norwegian law. Norway is bound by the UN Convention on the Rights of the Child (CRC) and the European Convention on Human Rights (ECHR), both at system level and in individual cases. Norwegian authorities and adoption organisations apply the Hague Convention's system and requirements, also in cooperation with countries of origin that have not acceded to the Convention.

The Hague Conference on Private International Law has published guidelines for interpretation and practice of the Convention's provisions. *"Guide to Good Practice"* no. 1<sup>(7)</sup> (published in 2008) and no. 2<sup>(8)</sup> (published in 2013) and *"Toolkit for preventing and addressing Illicit practices in intercountry adoption"*<sup>(9)</sup> (published June 2023) are the most relevant in this context. In addition, Conclusions & Recommendations from Special Commissions in The Hague are key documents.

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<sup>6</sup>Pkt. 2.1.5 [Bufdir - work with TB 2019 \(regjeringen.no\)](#)

<sup>7</sup>[HCCH| The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice](#)

<sup>8</sup>[HCCH| Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2](#)

<sup>9</sup>[HCCH| Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption](#)



The preparatory work for Norway's consent to ratification of the Convention, St. prp. No. 77 (1995 - 1996)<sup>10</sup>, the preparatory work for the new Adoption Act, Prop. 88 L (2016-2017)<sup>11</sup>, and NOU 2009: 21 "*Adoption in the best interests of the child*"<sup>12</sup> and NOU 2014:9 "*New Adoption Act*"<sup>13</sup> are also important sources of knowledge about the current system.

## 5.2 Overview of the Hague Convention's system for co-operation in international adoptions

The Hague Convention stipulates that responsibility for intercountry adoptions should be shared between the country of origin and the receiving country.

The country of origin is responsible for ensuring that the child has been legally released for intercountry adoption, including that the necessary consents have been given by the persons and authorities concerned and that the country of origin has carefully endeavoured to place the child in the country of origin (the principle of subsidiarity) and that it is in the best interests of the child to be adopted abroad (Article 4 and Article 16).

The receiving country is responsible for ensuring that the adoptive applicants are recognised as adoptive parents and that they have received the necessary counselling. The receiving country is also responsible for ensuring that the child receives entry permit and permanent residence permit (Article 5 and Article 15).

When the country of origin has proposed parents for a child (matching), the receiving country is responsible for checking the documents and assessing whether the requirements of the Convention have been complied with, and whether consent can thus be given for the adoption to proceed (Article 17 c). Such Article 17c consent must be given by both the country of origin and the receiving country.

The country of origin shall finally assess whether the entire process has been carried out in accordance with the Convention and, if so, issue a declaration confirming that an adoption has been completed in accordance with the Convention (Article 23).

The Convention has established a system of co-operation between *Central Authorities* to carry out the duties and tasks under the Convention (Articles 6 and 7). Central Authorities may act themselves, through other public authorities or through bodies that are officially recognised in the State concerned. These may, for example, be recognised adoption organisations. The Central Authority may only delegate certain tasks under the Hague Convention to public authorities or private bodies that fulfil certain minimum requirements under the Convention and are approved by the State itself (Article 22).

## 5.3 Central Authority for the Hague Convention 1993

Pursuant to section 17 of the Adoption Act, the Ministry has appointed Bufdir to be the central authority under the 1993 Hague Convention<sup>14</sup>. It follows from the same provision that Bufdir can delegate its tasks as central authority to organisations that have operational and

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<sup>10</sup><https://www.regjeringen.no/globalassets/upload/kilde/bfd/red/2004/0029/ddd/pdfv/222699-pixeditdoc5.pdf>

<sup>11</sup>[Prop. 88 L \(2016-2017\) - regjeringen.no](https://www.regjeringen.no)

<sup>12</sup>[NOU 2009: 21 - regjeringen.no](https://www.regjeringen.no)

<sup>13</sup>

<https://www.regjeringen.no/no/dokumenter/NOU-2014-9/id2008251/>

<sup>14</sup>See VI in [Decisions on delegation of authority under the Adoption Act - Lovdata](#)

mediation licence. The Directorate cannot delegate tasks to the adoption organisations beyond the rules that follow from the Hague Convention.

The assessment and approval of Norwegian applicants has been assigned to Bufetat's regions, with Bufdir as the

<sup>15</sup>Responsibility for adoption enhancement courses has been assigned to Bufetat Region East as of 24 February 2020.

In Norway, the responsibility for assessing proposed ordinary adoptions, as well as whether the documentation about the child and the adoption process complies with the requirements of the Convention, and issuing a declaration of consent for the adoption to proceed (Article 17 c) has been delegated to

adoption organisations. See more about this under section. 5.6. As regards the allocation of children in need of special support, these are assessed by Bufdir after consideration and advice from the professional advisory committee for adoption cases.

Bufdir checks and archives the documents in all adoption cases from abroad in connection with the registration of the adoption in the adoption register.

#### 5.4 Operating and mediation licences

As a general rule, adoptions from abroad must take place through authorised adoption organisations. Only in exceptional cases and on special conditions can the adoption authority consent to adoption outside an organisation, cf. section 20 of the Adoption Act. 88 L pkt. 15.7.2:

*"Adoption through an approved organisation ensures that adoptions take place safely and in the best interests of the child. Processing adoption applications outside the system established by the organisations in cooperation with Norwegian and foreign authorities is both time-consuming and resource-intensive".*

There are three adoption organisations<sup>16</sup>that have time-limited permits to carry out adoption mediation (operating permit, cf. section 31 of the Adoption Act) and permits for adoption mediation from individual countries (mediation permit, cf. section 32 of the Adoption Act).

Adoption mediation without a licence from the adoption authority is prohibited, cf. the Adoption Act. § Licences may be withdrawn if the law, regulations or conditions for the licence are not met, cf. Article 34, third paragraph. More detailed requirements for the organisations and conditions for the permits are given in Chapter 5 of the Adoption Regulations.

Bufdir decides on applications for operating and intermediary licences. The Ministry is the appeal body. Operating licences are granted for 7 years at a time. Placement licences for individual countries are granted for up to three years, cf. section 19, second paragraph of the Adoption Regulations.

#### 5.5 Supervision

In addition to a public approval system, through operating and intermediary licences, the adoption organisations themselves must comply with the provisions and principles that follow from

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<sup>15</sup>Ibid.

<sup>16</sup>Adoption Forum, InorAdopt and The World's Children

The Hague Convention. The central authority must ensure this by supervising the organisations.<sup>17</sup>

The adoption authority is responsible for supervising all aspects of the activities of the adoption organisations, cf. section 34 of the Adoption Act. The organisations may be ordered to rectify their situation and licences may be withdrawn if the law, regulations or conditions for the licence are not met.

In the preparatory works, this is stated in the annotation to section 34 of the Adoption Act<sup>18</sup>

*"Due to the invasive legal effects of adoptions and the central role played by adoption organisations play in the field, there is a need for the supervision to cover "all aspects" of the activities".*

5.6 Section 22, first paragraph, of the Adoption Act stipulates that the allocation of children from abroad must be approved by the adoption authority. Section 22, second paragraph of the Adoption Act allows for the approval of

may be delegated to approved adoption organisations. This implements the obligation in Article 17 c of the Hague Convention that the Norwegian central authority or the person to whom the authority has been delegated must approve the allocation and consent to the adoption process continuing in the individual adoption case. The responsibility for this

The responsibility for this assessment and control during the adoption process has always rested with the adoption organisations. In the preparatory work for the current Adoption Act, Prop. 88 L sect. 17.8.1, reference is made to a letter from the Ministry to the adoption organisations dated 3 March 2004, in which the Ministry assumes that the organisations will perform this task.

This is quoted from the letter to the organisations in NOU 2014:9 New Adoption Act, section 17.3.5.3. 17.3.5.3 about

*The adoption organisations' other tasks:*

*"Declaration under the Hague Convention*

*After the country of origin has allocated a child to adoption applicants, it follows from Article 17 of the Hague Convention that certain conditions must be met for the adoption to be finalised. One of the conditions is that the central authorities in both the receiving country and the country of origin agree that the adoption process can continue, cf. Article 17(c) of the Hague Convention. In Norway, it is not clarified in the legislation or the ministry's guidelines who is responsible for issuing Article 17(c) declarations. declarations. However, it is stated in a letter to the adoption organisations that the Ministry expects the organisations to carry out this task (letter from the Ministry dated 3 March 2004).*

*"The Ministry continues to assume that prior consent to adoption pursuant to Section 16e of the Adoption Act, in conjunction with the system for processing cases relating to special allocations, is formally sufficient to fulfil the requirement for consent under Article 17(c) of the Hague Convention. However, the Ministry believes that it may be appropriate to clarify the organisations' tasks and role in this phase.*

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<sup>17</sup>Section. 16.6.2 in Prop. 88 L (2016-2017)

<sup>18</sup>Prop. 88 L (2016-2017) Chapter 27 Notes to the individual provisions of the bill, Section 34

*of the adoption process by issuing a written consent for the adoption process to continue."*

In the letter, the Ministry assumes that the consent under Article 17(c) will not constitute an individual decision. In addition, the Ministry refers to the fact that, even before 2004, the organisations were responsible for informing the authorities of the partner country that the applicants' that the applicants' prior consent fulfils the requirement in Article 17(c) of the Hague Convention. Apart from the fact that the organisations must issue a written consent pursuant to Article 17(c) of the Hague Convention, the Ministry was therefore of the opinion that issuing Article 17(c) declarations would not mean that the adoption organisations were given more tasks than before.

The authority and responsibility for authorising adoptions is still carried out by adoption organisations, with the exception of adoptions of children in need of special support. In these cases, Bufdir is responsible for assessing and deciding on the allocations on the advice of the professional advisory committee for adoption cases.

In June 2023, the Hague Conference on Private International Law published a new guide with a practical and pedagogical explanation of assessments in the various stages of an international adoption process<sup>19</sup>. In summary, it is suggested that the competent authority in the receiving state, when it receives a grant from abroad, must carefully scrutinise all the case documents both in terms of content and correlation between information, legal documentation and the authenticity of the documents. This applies in particular to the identity of the child, the conditions under which a child can be adopted and compliance with the principle of subsidiarity. Supplementary documentation or information must be requested if necessary. If there are indications of uncertainty regarding, for example, the child's identity or consent to adoption, the grant may cannot be accepted and the receiving country cannot consent to the adoption being carried out.

The Hague Conference's guidance clarifies the recipient state's responsibility for both document control and for ensuring that the prior process complies with the requirements of the Convention. The guidance clarifies the control in connection with the approval of adoptions and the issuance of the Article 17c consent.

Until now, Norwegian stakeholders, and particularly adoption organisations, have focused primarily on obtaining good documentation about the child's background and possible health challenges in order to provide good information to prospective adoptive parents. Expectations of how the organisations should carry out document control have recently been tightened and, as mentioned above, Bufdir has Bufdir has implemented measures to strengthen the control of adoptions from abroad to Norway. We are working to implement a practice in the organisations that ensures the necessary legal documentation for all steps in the process that proves that the child has been legally released for adoption.

Implementation of the Hague Conference Guidance is likely to mean that fewer adoptions can be approved. In order for the required assessments to be made in an ethical and a prudent manner, high demands are placed on the expertise and resources of the actor responsible for the assessments.

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(19) <https://assets.hcch.net/docs/7aa25208-63fe-41ac-850a-16e732597b88.pdf> [see](#) in particular step 7 p. 161)

## 5.7 Financial framework conditions for Norwegian adoption organisations

The three Norwegian adoption organisations are not fully funded by the state. The organisations are therefore financially dependent on new applicants and completed adoptions.

The Norwegian adoption organisations are humanitarian, religiously neutral and politically independent, and are based on membership. They receive an annual operating grant from the state, which is paid by Bufdir. For 2023, the operating grant totals NOK 3.2 million, of which NOK 1,776,000 is distributed equally between the organisations and NOK 1,424,000 is distributed on the basis of the number of completed adoptions over the past five years<sup>20</sup>.

Adoption applicants pay three fees in advance to their adoption organisation during the adoption process. The applicants' travel and accommodation expenses in the country of origin are not considered fees, and are in addition. Norwegian applicants pay the same amount regardless of which countries they adopt from because the organisations apply the so-called "solidarity principle".

Article 32(1) of the Hague Convention states that no one shall derive unjust financial or other advantage from activities connected with intercountry adoption. Only costs and expenses, including reasonable fees for professional assistance from persons who have been involved in the adoptions, may be claimed or paid, cf. Article 32(2).

The Hague Convention and Section 33 of the Adoption Act limit what the organisations can charge for. What the organisations can charge for must be specified and linked to the specific adoption process.

All three adoption organisations carry out some form of humanitarian work in one or more of their partner countries. This activity is separate from the and must be financed through, for example, lotteries or fundraising.

The financial situation of the adoption organisations was affected by the pandemic because few adoptions could be carried out, but the organisations received corona support from the government. In the autumn of 2023, two of the organisations reported a difficult financial situation due to a persistent decline in the number of adoptions. Rejections of applications for mediation licences for countries in recent years has also had a negative impact on the organisations' finances.

The Guide to Good Practice 2008 <sup>21</sup>states that organisations in the adoption field must be guaranteed sufficient resources, cf. paragraph 118.

## 6 Considerations behind international adoption

Good intentions to help orphans in poor countries have been a main consideration behind international adoption. At the same time, adoption from abroad has been an option for childless people who want to become parents.

The overall international objective is that children should be able to be cared for by their family or by another suitable family in their home country. It also follows from the introduction in

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<sup>20</sup>Adoption Forum: 1 133 120,- Children of the World: 1 190 080,- InorAdopt: 876 800,-

<sup>21</sup><https://www.hcch.net/en/publications-and-studies/details4/?pid=4388>

According to the Hague Convention, the signatory states "*recognise that intercountry adoption can provide a child with the benefit of a permanent family when no suitable family exists in the State of origin*" (the principle of subsidiarity).

However, the reality is that some countries cannot give children in need a new family in their own country. In some countries, there is no culture of raising children who are not related to you. Some countries have inadequate welfare and child protection systems, with no opportunity to implement the necessary measures.

necessary measures.

Under the Convention, adoption by a family in another country is considered to be a better alternative for children only when the alternative is growing up in an institution.<sup>22</sup>

In 2005, the former chairman of the UN Committee on the Rights of the Child, Jaap Doek, stated that international adoption is a globalisation of child protection. Even in Norway today, there is talk of children who are adopted to Norway being other countries' child welfare children.

In the preparatory work for the new Adoption Act<sup>(23)</sup>, the Ministry emphasised that the aim of international adoption is not to provide adoption applicants with a long-awaited child, but to give children who cannot grow up in a family in their home country a good and safe upbringing in a new family in another country.

## 7 Considerations behind the convention

In light of the fact that intercountry adoptions had become widespread, and because the way in which intercountry adoptions had been carried out in some countries had generally been criticised The Hague Conference on Private International Law decided to work towards establishing an internationally binding framework. The purpose was to ensure a reassuring procedure for cross-border adoptions and to counteract the abuses that were uncovered from time to time. Both countries of origin and recipient countries participated in drafting the text of the convention.

Many important provisions in the convention became compromise provisions due to major differences between countries in terms of religion, culture, family traditions, economy and living conditions. Nevertheless, there was broad agreement on the fundamental principles, such as that the best interests of the child should be the primary consideration in any adoption and that countries must

co-operate to prevent the abduction and trafficking of children.

The principles of the UN Convention on the Rights of the Child form the basis of the convention. Article 21 of the

The Convention on the Rights of the Child allows for intercountry adoption as an alternative for children who cannot be adequately cared for in their home country. Through the Hague Convention, the principle of subsidiarity has been elaborated and built upon.

Both the UN Convention on the Rights of the Child and the Hague Convention are based on the principle of the best interests of the child. Both conventions are based on the fact that every state should prioritise taking measures to ensure that children

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<sup>22</sup>Guide to Good Practice no. 1 pt. 53

<sup>23</sup>Prop. 88L 2016-2017 pt. 16.1

can remain in the care of his/her own family, and if this is not possible, it is assumed that attempts will be made to find other satisfactory care alternatives for the child in the country of origin.

The Hague Convention states that it is necessary to take measures to ensure that intercountry adoptions take place in the best interests of the child, with respect for the child's fundamental rights and to ensure that child abduction and trafficking do not take place.

The purpose of the convention is threefold:

- The Convention establishes safeguards to ensure that intercountry adoptions take place in the best interests of the child and with the child's fundamental rights in mind
- The Convention establishes a system of co-operation between countries to ensure that these guarantees are respected, thereby preventing the abduction and trafficking of children
- The Convention ensures mutual recognition between countries of adoptions made in accordance with the Convention<sup>24</sup>

The requirement for all intercountry adoptions to be made through a central authority or a state-accredited organisation is intended to improve international adoption standards in general and make private adoptions more difficult. The Convention's mandatory procedures for the accreditation and supervision of adoption organisations were considered a pioneering initiative and one of the Convention's most important instruments against child abduction and trafficking<sup>25</sup>.

The requirements in the Hague Convention are minimum requirements, and states may set stricter national requirements than those set out in the Hague Convention, cf. section. 16.6.2 in Prop. 88 L. According to Guide to Good Practice no. 2, work on the implementation of the Convention is a continuous process<sup>26</sup>.

## 8 Trust and risk

The Hague Convention regulates co-operation between countries on intercountry adoptions and sets requirements for the partner countries' regulations, and requirements for the approval and supervision of adoption organisations. Nevertheless, cooperation between countries and the relationship between the central authority and adoption organisations must largely be based on trust. In light of review of a number of cases and documents mentioned above, Bufdir believes there is reason to question whether cooperation on international adoptions has been based too much on trust, both between partner countries and between adoption authorities and adoption organisations.

The Adoption Act Committee found that the risk of human rights violations against children forms a backdrop to all adoption mediation and its regulation. *"A particular challenge is that actors to varying degrees follow the international rules of the game that have been set up"*.<sup>27</sup> When many adoption organisations have to place children from the same country, it can create an unhealthy

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<sup>24</sup>St prp nr 77 (1995-1996) on consent to the ratification of the Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption, chapter 1.

<sup>25</sup>NOU 2014:9 pt. 17.3.1

<sup>26</sup><https://www.hcch.net/en/publications-and-studies/details4/?pid=5504&dtid=3>, see item. 14 on page 15

<sup>27</sup>NOU 2014:9 New Adoption Act, section 17.1

competitive atmosphere that does not comply with the principle that the best interests of the child are the decisive consideration in adoption. Both the adoption organisations and the adoption authorities are therefore constantly faced with many difficult priorities and ethical dilemmas related to the expectations of partners, the organisation's finances and the needs of applicants in the adoption queue.

Attention to the risks associated with international adoptions was also a topic at the Special Commission in The Hague in the summer of 2022 on the 1993 Hague Convention. In the joint Conclusion & Recommendation no. 11 from this meeting, it was recommended that a new group of experts be established to identify possible ways to prevent illegalities in adoption cases related to financial matters. This recognises that there is still a risk of irregularities occurring and that work is being done on ways to prevent this.<sup>28</sup>

The topic of preventing and addressing illegal practices in intercountry adoption was also discussed in The Hague both during the Special Commission in 2010 and in 2015. See, for example, Fact Sheet no. 3 to the Special Commission in 2015<sup>29</sup>. This shows that work has been done on this topic for a long time, but that the risk is still there.

Against the background of this risk, extensive work has been carried out in Hague Conference on Private International Law in recent years. As mentioned earlier, this work resulted in a practical guide for preventing and addressing the risk. In connection with the publication in the summer of 2023, HCCH wrote on its website, "[...] *illicit practices may thus still occur.*"

Large social inequalities between receiving countries and countries of origin mean that no matter how international adoptions are regulated, organised and funded, there will be a risk that children may unfairly end up in an international adoption process. As a minimum, regulations and practices must therefore be required that ensure the fulfilment of children's rights under the Convention on the Rights of the Child and that the rules and principles of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption are properly followed.

The minimum requirement for proper compliance with international and national regulations in the field must apply both to the part of the process that takes place abroad and the part of the process for which Norwegian authorities are responsible.

Norwegian authorities cannot fully control or guarantee the legality of processes carried out in other countries, by other countries' authorities. And even if an adoption process itself has taken place legally abroad, the Norwegian authorities cannot check or guarantee that the child has not entered an adoption process illegally, e.g. if a child is handed over to an orphanage through a criminal act such as kidnapping, but the adoption process itself has been conducted correctly. As the Dutch Ministry of Justice and

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<sup>28</sup> [2022 Adoption SC - C&Rs \(hcch.net\)](https://www.hcch.net/en/instruments/adopted/1993_hague_convention_on_protection_of_children_and_co-operation_in_respect_of_intercountry_adoption/2022_adoption_sc_-_c&r_s)

<sup>29</sup> [37252f9f-5542-44bb-8ffb-d248d3b33d73.pdf \(hcch.net\)](https://www.hcch.net/en/instruments/adopted/1993_hague_convention_on_protection_of_children_and_co-operation_in_respect_of_intercountry_adoption/2015_fact_sheet_no_3)



The Minister for Security Sander Dekker stated in a news item on the ministry's website on 4 June 2021: *"There will always be a risk of wrongdoing with intercountry adoption"*<sup>30</sup>.

The risk is also mentioned by International Social Services (ISS) in "The Grey zones of adoption":

*"The Hague Convention does not in itself seek to replace a State's internal laws, nor cover all the loops that a child must theoretically go through to be considered in need of intercountry adoption. When we look more closely at it, adoption misconduct clearly takes place well before the steps in the adoption covered by the Convention have even commenced. To give a simple example: if you falsify the civil status of a child by erasing its birth family and thereby have it declared abandoned, a review of its file will not raise any doubts about the child's adoptability. Clearly it is not the Hague Convention that deals with how official documents must be kept, or with the consequences of their misuse. Nevertheless, if misconduct is not identified, a Convention adoption can still be duly conducted, despite the circumstances of the case being a lie from the very beginning."*

In other words, International Social Services believes that it is practically impossible for many of the actors involved in an intercountry adoption process to know whether a child has been legally or illegally released for adoption. The adoption documents of a child who has been genuinely abandoned by his or her parents and where the authorities in the country of origin have done everything they can to establish the child's identity may be identical to the documents of a child who has been fraudulently taken from his or her biological family, e.g. for payment, undue pressure, or where the parents have consented to the adoption but without being told what it actually means to give up their child for adoption.

In other words, the question is not *whether* there is a risk of illegality in international adoptions, but how great a risk Norwegian authorities should accept, given the consequences if a child is illegally deprived of his or her biological family or if opportunities to grow up in his or her own family or in his or her own country have in reality not been attempted.

## 9 The situation now (the zero alternative) and alternatives for closure

### 9.1 Continued operation as now (the zero alternative)

The zero alternative means that no changes are made to the responsibilities or tasks of the adoption organisations or Bufdir, nor are any regulatory changes adopted. The work of assessing all placement licences will continue as planned. Adoptions from abroad are carried out in accordance with stricter requirements from Bufdir that have already been communicated to the adoption organisations. the adoption organisations. Bufdir continues to carry out the necessary supervisory activities within the resources currently available.

The Directorate has increased staffing in the field, but is challenged by continued pressure in the adoption area. Continuing as at present means that, regardless of resources, there will be a risk of children being wrongfully adopted to families in Norway. Based on statements and guidelines from several UN institutions, ISS and the Hague Conference on Private International Law, Bufdir assumes, as mentioned above, that there is a risk of illegal adoptions in the current system.

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<sup>30</sup><https://www.government.nl/latest/news/2021/06/04/dekker-there-will-always-be-a-risk-of-wrongdoing-with-intercountry-adoption>

Stricter requirements for the organisations' case processing and more supervision will not, in our opinion, contribute sufficiently to reducing this risk. Although the measures already implemented could reduce the risk of children being unlawfully adopted to Norway, the consequences are serious if this were to happen.

Consideration for the legal security of future adoptive children does not indicate a continuation of the current system and framework. We do not recommend this option.

## 9.2 Alternative 1 - Permanent suspension

This option means that adoption from abroad is permanently cancelled. In line with its mandate, the government-appointed committee will assess the need for forward-looking measures and make recommendations on the system for adoption in the future. This option is therefore not recommended before the committee has submitted its report.

## 9.3 Alternative 2 - Temporary suspension

This option means that the mediation of adoptions from abroad to Norway is suspended until the committee has submitted its report and a new assessment is then made.

A temporary suspension is justified by the risk of illegality and the fact that the current adoption system and framework are not sufficiently robust to ensure that the mediation of adoptions to Norway is carried out in a responsible manner. The crucial consideration is the children's children's legal protection. In this connection, we refer to the account of risk set out above under the section "Trust and risk" in section. 8.

Temporary suspension will have negative consequences for, and greatly affect adoption organisations, applicants in the process and future adoptive applicants. However, adoption is not primarily about applicants or organisations. Legal certainty for children in adoption processes, and for their biological parents, is key.

A temporary suspension of adoptions to Norway will mean that no adoptions of children to Norway will take place for the duration of the suspension. Even if a temporary suspension is justified by a general risk of illegality, it does not mean that all adoptions would be flawed. For many of the children, it would have been a good thing to come to a Norwegian adoptive family. At the same time, the children who need a new family abroad could be allocated to suitable applicants from other receiving countries. We place limited emphasis on this consideration in light of the risk of errors and illegalities.

Because Norwegian authorities do not have control over the entire process, regardless of how international adoptions are regulated, organised and financed, there is a risk that children may be wrongfully placed in an international adoption process.

Until the committee has delivered its report, we recommend that adoptions from abroad are temporarily suspended. Adoptions to Norway and how best to safeguard the legal rights of children who are to be adopted to Norway should be considered after the committee has submitted its report.

A temporary suspension should cover all adoptions from abroad, i.e. both those carried out through adoption organisations and the few carried out outside approved adoption organisations.

In the event of a temporary suspension, it must be considered whether it should only apply to new applicants or where the cut-off point should be.

There are different degrees of temporary suspension, as different cut-off points can be defined:

- I. Temporary suspension, but that applicants who have received prior authorisation from Bufetat may continue their adoption process.
- II. Temporary suspension, but that applicants who have received pre-approval from Bufetat and have had their application for adoption approved in the country of origin are allowed to continue their adoption process.
- III. Temporary suspension, but that applicants who have been allocated (matched with) one or more specific children may continue their adoption process.
- IV. Full suspension for all applicants in the process.

The point at which the cut-off point is set is first and foremost a question of the best interests of the child, which must be the overriding consideration in adoption cases.

The Convention on the Rights of the Child refers to adoption in Article 21. The first sentence of Article 21 of the Convention on the Rights of the Child reads:

*"Parties recognising and/or allowing adoption shall ensure that the best interests of the child shall be a primary consideration."*

It follows from the wording of the article that the consideration of the best interests of the child is even stronger in adoption cases than in other contexts. In general, the best interests of the child shall be *a fundamental consideration*. In adoption cases, the best interests of the child shall be *the overriding consideration*.

The Committee on the Rights of the Child has stated that the best interests of the child shall be the determining factor in adoption cases. The fact that the best interests of the child shall be a fundamental consideration also follows from section 4 of the Adoption Act.

The wording "shall ensure" implies an obligation on the part of the states, and also means that *the states that allow adoption cannot choose to have arrangements that do not ensure that the best interests of the child are the overriding consideration* <sup>(31)</sup>.

### 9.3.1 Temporary suspension option I

The alternative means that the cut-off time is set for applicants who have received prior consent from Bufetat at the time of cancellation, but where the case has not yet been sent abroad. As of 6 December 2023, this applies to 59 families applying through adoption organisation.

When the Netherlands temporarily suspended adoptions from abroad, they decided that applicants who had received pre-approval could continue the adoption process. As a risk mitigation measure, the

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<sup>31</sup>Karnov Legal Commentary on Article 21 of the Convention on the Rights of the Child

the central authority's procedures for assessing the allocation proposals and document control were tightened to ensure that the process was carried out in accordance with the Hague Convention. I In the Netherlands, the decision to temporarily suspend was of little practical significance because there were already so many approved adoption applicants on the waiting list to be allocated children from abroad that children were allocated throughout the period. The decision only had an impact on any new applicants, who were not given the opportunity to start the adoption process during the temporary suspension.

#### 9.3.1.1 Assessment of the alternative

This solution will mean that many people will still be able to continue their adoption process, and will mean that a decision on temporary suspension will have little reality. The alternative means that consideration is given to applicants who have a desire and expectation to adopt a child.

If this option is chosen, the considerations of the adoption applicants will be weighted more heavily than the legal protection of future adoptive children. We do not recommend this option.

### 9.3.2 Temporary stop option II

This alternative means that the cut-off point is set for applicants who have progressed somewhat further in the process than outlined in alternative I, in that the application has been received/approved abroad. As of 6 December, this applies to 121 families applying through an adoption organisation.

#### 9.3.2.1 Assessment of the alternative

Nor can we see good reasons for making an exception for this group for any decision to temporarily suspend foreign adoptions. Being able to adopt is not a right, and in any adoption process there is a risk of unforeseen events that mean that the process that has begun cannot be finalised.

By choosing this option, the interests of the adoption applicants are weighted more heavily than the legal security of future adoptive children. We do not recommend this option.

### 9.3.3 Temporary stop option III

This option means that the cut-off point is set for applicants who have progressed somewhat further in the adoption process than options I and II. In this group, the applicants have been assessed as suitable adoptive parents for a specific child. The adoptive applicants have received information about the child, its health and family background, they have seen photos or videos of the child, and an expectation has been

created an expectation in the applicants that they can adopt this specific child. The child may also have been given expectations of being adopted by this particular family, and there may also have been regular contact between the child and the applicants over time, through Skype conversations etc. As of 6 December 2023, this applies to 23 families applying through an adoption organisation.

#### 9.3.3.1 Assessment of the alternative

It can be argued that the best interests of the child dictate that the adoption should go ahead. In addition, a break in the adoption process will be a greater burden for the adoption applicants at this point in the process. However, no decisive emphasis is placed on the latter.

Completion of an adoption with this cut-off point must in that case take place after a decision by Bufdir in the individual case, including a specific assessment of the relationship that has been established, a thorough document review that documents that all steps in the process have proceeded legally without any suspicion of illegality being uncovered in the specific case. case. Bufdir recommends this intersection.

#### 9.3.4 Temporary suspension option IV

This option means that no one is allowed to finalise their adoption process, regardless of how far they have come in the process at the time of suspension.

##### 9.3.4.1 Assessment of the alternative

The advantage of a full temporary suspension is the certainty that no children will be wrongfully adopted to Norway. Such an intersection also means that it will not be necessary to use resources on any administrative temporary changes that are considered necessary for international adoption mediation to be justifiable.

In practice, this option could mean that adoptive parents who have had weekly digital conversations over many months with a child they have been assigned and who they have become acquainted with and who have become acquainted with them, are not allowed to complete the process and collect the child.

In practice, the alternative may also mean that those who have come so far in the process that they are travelling to pick up their child, who have had the daily care of the adopted child in the child's country of origin for a few days, weeks or months, and who are waiting for the appeal deadline for the adoption decision to become final, are not allowed to travel home to Norway with the child. These children may be placed in a difficult situation, as they may be considered adopted by a Norwegian family according to the country of origin, while the child is not adopted under Norwegian law.

Based on this, Bufdir does not recommend this intersection.

All of the above options can be combined with risk mitigation measures. See option 4.

#### 9.4 Option 3 - No suspension, but significant strengthening of the field to implement risk mitigation measures

This option means that adoption from abroad through approved organisations is not stopped, but that measures are implemented to reduce the risk of children being wrongfully adopted from abroad to Norway.

We outline relevant risk-reducing measures here.

##### 9.4.1 Bufdir assumes responsibility for assessing and possibly approving all adoptions from abroad

Assessing whether the adoption process for assigned children from abroad has proceeded correctly in the child's country of origin and fulfils the conditions set out in the Hague Convention 1993, is a great responsibility. In order to ensure as far as possible that adoptions to Norway are legal, those

assessments must be thoroughly familiar with the requirements and recommendations of the Convention.

With the exception of cases that are to be presented to the professional advisory committee for adoption cases (FRU), Bufdir is currently not involved in individual cases until the adoption process is complete.

the process is finalised abroad.

In the cases that have been dealt with by the professional advisory committee for adoption cases and in the registration cases, we have, as mentioned above, recently become aware that the legal documentation in particular is consistently inadequate. In all cases, there is a need to request additional documentation. The documents are often not translated in their entirety. We therefore question whether it is possible to carry out the checks in a responsible manner. It is time-consuming for Bufdir to complete the case. It is not uncommon for the case to be postponed before it can be dealt with by the professional advisory committee for adoption cases.

In our experience, adoption organisations place great emphasis on the applicants' situation and fast processes. There is a risk that the adoption organisations may experience pressure from adoption applicants who may have spent several years in the adoption queue, awaiting an allocation. Considerations of time pressure and the desire to meet the expectations of the adoption applicants may lead to less stringent control than required and to documents that should have accompanied the child's case not being requested by the organisations on their own initiative.

Bufdir is also concerned about the financial situation that some of the adoption organisations find themselves in after the pandemic and after many years of drastic decline in adoption numbers. There is a general risk that organisations in such a situation may find themselves in a position where they are unable to refuse to allocate children to Norwegian applicants for financial reasons, despite inadequate documentation.

Assessments relating to documentation of the child's identity, whether the child has been legally released for adoption and whether the principle of subsidiarity in the Hague Convention has been observed can be particularly demanding. The person responsible must check that all relevant documentation is available, that the case is sufficiently well-informed and that all documents have been issued by a competent authority. The persons responsible must have the necessary certainty that the adoption has been carried out in a lawful manner in accordance with the Hague Convention before consent is given for the adoption to be granted.

[The new guidelines from the Hague Conference](#) tighten up the requirements for the checks that a court in Norway must carry out on the documentation from abroad before consent to the adoption can be given. The requirements have been clarified and practice tightened.

One risk-reducing measure could be for Bufdir to take responsibility for the assessment of all grants and issuances of Article 17c consents. The issuance of Article 17c declarations should therefore be carried out by Bufdir.

As explained above, this requires thorough checks in all adoption cases and will require more resources for the Directorate to be able to fulfil this important responsibility in a responsible manner.

#### 9.4.2 Cooperation with the National ID Centre

As part of the above measure, we propose entering into a partnership with the Norwegian ID Centre. The Norwegian ID Centre is an independent expert body that aims to ensure the high quality of the ID work carried out by the police, the immigration administration and other public sector organisations.

Buudir is a potential partner for NID. In the event of co-operation, both counselling and document searches will be available to Buudir. Buudir would have access to the ID database, where NID has gathered identity-related information about different countries in one place. I

In addition, Buudir can gain access to, for example, the reference database DISCS, which contains information about genuine and false supporting documents from a large number of countries. The National ID Centre

Centre also offers training at various levels to key ID actors. They offer courses in ID control at first- and second-line level, training in ID control for people who will be working with identity assessments, and customised training. NID will also be able to act as a third line if necessary, for example if Buudir has doubts about the authenticity of a birth certificate in a given adoption case.

Website: [Start - National ID Centre \(nidsenter.no\)](https://nidsenter.no)

The measure involves Buudir and NID entering into a cooperation agreement so that Buudir can utilise NID's services in connection with the assessment of documents in adoption cases. The measure also means that Buudir will spend time and resources on getting a basic introduction to ID assessments of relevant documents, as well as dialogue with NID as needed in connection with individual cases.

#### 9.4.3 The organisations are fully funded by the state

The risks associated with the current funding model in individual cases are described in the section above. The current funding model also poses a general risk that the organisations are not sufficiently critical of the countries of origin with which they maintain cooperation.

Adoption organisations have an independent responsibility to only cooperate with countries where they have the necessary assurance that illegalities do not take place in the process from a child comes under public care until it is released for adoption to Norway. To ensure this, one option is for the organisations to be fully funded by the state. In this context, it should be considered whether there is still a need for three adoption organisations.

Full state funding of the adoption organisations requires that the field is provided with financial resources.

#### 9.4.4 Fewer or no adoption organisations

In the allocation letter for 2022, assignment 14 read: "Assess the need for and propose the direction of a possible review of the adoption system. A more detailed description of the assignment will be forwarded to Buudir." The subsequent description received on 3 February 2022 specified that we were to investigate whether international adoptions should be organised differently, e.g. through fewer

organisations, mergers, nationalisation or possible Nordic cooperation.

In Buudir's opinion, the significant decline in adoption figures indicates that three adoption organisations is too many. In meetings with Buudir, the organisations have not

expressed support for a merger, but written statements on this have not been obtained. There are Moreover, there is no guarantee that countries of origin will continue the cooperation they currently have with one of the Norwegian adoption organisations after any organisational changes and mergers.

If the system of adoption organisations is to continue, Bufdirs assessment is that there is no need for three adoption organisations given the significant decline in the number of intercountry adoptions. In that case, we propose that the number of adoption organisations be reduced to one, as has been done in Denmark, or possibly two.

We are considering this from an administrative perspective and with regard to soundness. However, if the intermediary role with adoption organisations is discontinued and communication and cooperation takes place directly between the central authorities, there will be fewer actors involved in an adoption process. Fewer actors could reduce the risk of illegality.

As we have discussed in the chapter above, in the current system with adoption organisations as key players, there is a risk at system level that approved adoption organisations may be influenced by financial incentives, time pressure and a general risk that documentation is not reviewed with a sufficiently critical eye. The risk factors that can threaten children's legal protection can be reduced through co-operation between authorities. This speaks in favour of a arrangement where the adoption organisations are wound up and the state takes over the tasks in their entirety.

#### 9.4.5 Do not have adoption co-operation with countries of origin that have weak social and child welfare systems

Some of the countries with which Norway currently co-operates on adoption charge more for international adoptions than for national adoptions. It is not uncommon for the country of origin to charge for care costs for the period from the granting of the adoption licence until the adoption is completed. This can undermine the principle of subsidiarity, and makes the country of origin's authorities and institutions depend on intercountry adoptions to fund the operation of orphanages and/or the central authority in the country of origin.

In some countries of origin, the welfare system and child welfare services are so weak that poverty alone is the reason why children are given up for adoption. The ability of the biological parents to care for their children would be good enough if the family received financial support to foster the children, and possibly also support from the child welfare authorities that can help the children to remain in their original family or have contact with their biological family. family or have contact with the biological family. What the country of origin needs, and what is best for the children in question, is not necessarily that the children are adopted abroad, but that the biological families are helped so that the children can grow up in their own family, or can be placed in family-based care programmes in the home country.

The question is therefore whether international adoption contributes to maintaining this solution so that the countries in question do not implement the necessary measures at system level to ensure that children can remain in their biological families. If Norway wants to help these children, earmarked aid funds could be a better alternative for the children in question than international adoption.



#### 9.4.6 Stricter legal requirements for placement licences

Section 32 of the Adoption Act reads:

##### *32 Authorisation for adoption mediation from individual countries (mediation authorisation)*

The adoption authority can grant organisations that have a permit pursuant to section 31 a special time-limited permit to place children from individual countries. A permit is granted on the condition that the organisation also receives permission from each individual country to mediate adoptions from that country.

The Ministry may lay down more detailed rules on mediation licences in regulations.

Section 21 of the Adoption Regulations reads:

##### *§ Terms and conditions for brokerage licences*

The Norwegian Directorate for Children, Youth and Family Affairs can only grant a licence to mediate when

- a. the country in question has a need for adoptive families abroad
- b. the organisation has insight into and knowledge of laws, other rules and procedures that apply to international adoptions in the country.

As the central authority, Bufdir currently carries out thorough assessments of applications for intercountry adoption licences in accordance with both the Norwegian regulations and the internationally binding

regulations Norway has ratified. We believe that the requirements for soundness, legal certainty and risk assessment should be specified and clarified directly in the provisions relating to both in the Norwegian Adoption Act and in the Adoption Regulations. This will emphasise the authority's focus on legal processes where legal certainty is central to a far greater extent than is currently reflected in the requirements of the law and regulations.

#### 9.5 Summary of the report

We recommend the option of a temporary suspension, with an intersection point as described in option III.

However, if a temporary suspension of foreign adoptions is not desired, the Ministry will be able to consider whether and which alternative measures should be implemented. Our assessment is that a combination of these measures is necessary if the effect is to contribute to a reduced risk of illegality in the period until the committee has submitted its report. The individual proposals could contribute to reducing the risk of illegal adoptions in different ways.

At the same time, we believe that it would be natural to assess the state costs of a changed and strengthened system in relation to the steadily declining adoption figures. If it is considered to measures to significantly strengthen the field in order to reduce the risk, this assessment should also assessment should also take into account the challenges Norway faces in recruiting foster homes for its own child welfare children.

## 10 Legal basis for temporary suspension

The legal basis for the temporary suspension of intercountry adoptions follows from both the Hague Convention of 1993 and the Adoption Act.

The fundamental consideration behind the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption<sup>32</sup> and the provisions of the Adoption Act on the intermediation of adoptions from abroad is to ensure safe and sound adoption processes in the best interests of the child, with respect for the child's fundamental rights and to ensure that child abduction or trafficking does not take place. It follows from the provisions of the Adoption Act, which regulates the system for international adoptions in Norway, that the adoption authority has the following responsibilities

overall responsibility for ensuring that tasks and responsibilities in the field of adoption are organised in such a way that intercountry adoptions can be carried out in a legal, ethical and responsible manner in accordance with the rules and principles of the Hague Convention.

Article 8 reads:

*Central Authorities shall, themselves or through public authorities, take all necessary measures to prevent improper financial or other gain in connection with adoption and to prevent all practices contrary to the purposes of the Convention.*

In Explanatory report <sup>33</sup>, para. 220 states the following: Since the obligations under Article 8 are formulated in very general terms, it is up to each member state to determine when a practice must be said to be contrary to the purpose of the Convention.

Article 33 reads:

*If the competent authority finds that a provision of the Convention has not been respected or that there is a serious risk that it will not be respected, it shall immediately inform the central authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.*

In the Explanatory report<sup>34</sup>pt. 536 of the Explanatory Report(34) to Article 33 states that the wording of the first sentence is very broad and that the Member States' obligations therefore cover not only individual cases, but also any sign of systematic non-compliance with the Convention.

The Adoption Act does not contain an explicit legal basis for temporary suspension, but it follows from *Prop.88 L (2016-2017) Lov om adopsjon (adoptionsloven)* pkt. 16.7 that:

*"[...] the Ministry assumed that the rules of the Adoption Act were in accordance with the convention obligations."*

The Ministry's assessments and proposals are set out in section. 16.7.4:

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<sup>(32)</sup> "Preamble" to the 1993 Hague Convention.

<sup>33</sup> Postscript/commentary edition to the convention provisions [78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf \(hcch.net\)](https://www.hcch.net/doc/78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf)

<sup>34</sup> Ibid.

*"The Ministry assumes that the Adoption Act shall be interpreted in accordance with the Hague Convention in international adoptions."*

It therefore follows from both the Hague Convention and the Adoption Act that Norwegian authorities are responsible for taking the necessary appropriate measures.

However, the Adoption Act contains a legal basis for withdrawing operating and licences if the law, regulations or conditions for the licences are not met, cf. section 34, third paragraph of the Adoption Act, with immediate effect.

Withdrawal of operating licences is the strictest measure Bufdir can take against adoption organisations. A temporary suspension of the adoption agency will be a less invasive measure. We are therefore of the opinion that the Adoption Act does not preclude a decision by the responsible Norwegian authorities or a political decision to temporarily suspend adoptions from abroad.

If the Ministry is of the opinion that the adoption authority does not have a legal basis for temporarily suspending all adoptions from abroad without assessing the individual placement licence or operating licence, Bufdir recommends that the Ministry propose legislation that entails temporary suspension or ensure the necessary legal basis.

Please note that when the Dutch central authority decided to temporarily suspend intercountry adoptions, this was also authorised by Articles 8 and 33 of the Convention.

## 11 Consequences of temporary suspension

### 11.1 The consequences for the children concerned

A temporary suspension of adoptions from abroad to Norway will have consequences for the children who could have been adopted to Norway. It is difficult to estimate the direct consequences for individual children, but for some it could mean growing up in an institution in their country of origin

country of origin rather than growing up in a family in Norway. On the other hand, for children who may have been exposed to possible illegalities prior to or during an adoption process, a temporary suspension will have a positive consequence. The recommendation for a temporary suspension is based on the risk of illegality, considerations of due process and the legal protection of the child and the biological parent.

legal protection of the child and the biological parent.

### 11.2 The consequences for adoption applicants who are in the queue

As mentioned above in section. 9.3 above, there are different degrees of temporary suspension, as different intersection points can be identified:

- I. Temporary suspension, but that applicants who have received prior authorisation for adoption from Bufetat are allowed to continue their adoption process.
- II. Temporary suspension, but that applicants who have received pre-approval for adoption from Bufetat and have had their application for adoption approved in the country of origin are allowed to continue their adoption process.
- III. Temporary suspension, but applicants who have been allocated (matched with) one or more specific children may continue their adoption process.
- IV. Full suspension for all applicants in the process

Reference is made to the explanation above under section. 9.4 et seq. above, which discusses in more detail the expectations of adoptive applicants about adopting a child and the practical consequences for applicants at the various stages of the adoption process.

A temporary suspension also means that new applicants cannot start an adoption process either with the organisations or with Bufetat. Those who have begun an investigation or are waiting for a decision on prior consent must end their process.

### 11.3 Consequences for the organisations

As described above, the existence of adoption organisations is dependent on income from adoption agencies. With an already strained economy due to few adoptions annually, a temporary halt in adoption mediation will eventually make it impossible for adoption organisations to maintain their operations. Ultimately, a temporary suspension could mean that the adoption organisations have to cease operations, cf. section 27 of the Adoption Regulations.

The adoption organisations may have to repay money to applicants who are unable to complete the adoption process they have started.

If the temporary suspension of all adoption mediation means that the adoption organisations have to cease operations, there is a high probability that employees in the organisations will find other work and that important expertise, knowledge and history of intercountry adoption will be lost. The organisations' work of following up adoptees and adoptive parents after the adoption with advice and guidance and follow-up reports will have to be discontinued and taken over in its entirety by the state. It could also be difficult to re-establish the organisations if the temporary suspension is lifted. In the short term, discontinuation will mean that adoption organisations will not be available as informants for the committee that will investigate the system for intercountry adoptions for at least the next two years.

If the state wishes to retain the adoption organisations until the committee has submitted its report in order to avoid the negative consequences mentioned above, the state can temporarily fund the adoption organisations for the duration of the temporary suspension.

A suspension also means that it will not be possible to apply for new partner countries or renewal of time-limited licences.

### 11.4 More tasks for Bufdir and the need for more resources

Bufdir will be faced with tasks that will require increased resources, both in the event of a temporary suspension or continued operation in combination with risk-reducing measures.

A temporary suspension of all intercountry adoptions in an interim period will have different consequences for Bufdir depending on whether the adoption organisations are funded by the state or not. If the adoption organisations discontinue their activities, Bufdir must ensure that the responsibilities and tasks under the Hague Convention that currently lie with the organisations are properly taken care of. If the organisations continue to exist, we nevertheless consider it necessary for Bufdir to assess allocations and carry out document checks in cases that are finalised. How extensive this task will be depends on where in the adoption process the cut-off point is set.

If the organisations are wound up, the operating subsidy currently provided by the state will cease. This will nor will there be a need for supervision of the organisations by Bufdir. If the organisations continue to exist

If the organisations are maintained and fully financed, this will require increased budget resources for the field until the committee has completed its report.

Instead of processing applications for renewal of intermediation licences and approval of new partner countries, assessments of partner countries and conditions for cooperation will be carried out by Bufdir in accordance with the requirements of the Convention, directly with the central authorities in the partner countries.

Even if some tasks are cancelled and funds corresponding to the current operating grant are transferred to Bufdir, the directorate, as the central authority, will need to be provided with resources.

**11.5 Consequences for Bufetat and the professional advisory committee for adoption cases** Temporary suspension will mean that Bufetat and the professional advisory committee for adoption cases will have fewer tasks for a period of time.

The suspension of intercountry adoptions means that Bufetat will not process any new applications for prior consent to adoption from abroad for the duration of the suspension. The regions have already reported a sharp decline in the number of new applications for prior authorisation. For information, the regions received 105 new applications for prior authorisation for adoption through an organisation in 2022 and 50 new applications in 2023 through November. The same will apply to Bufetat, Region East, which processes applications for adoption outside an adoption organisation. Region East received 1 new application for prior consent for adoption of an unknown child outside an organisation in 2022 and 3 new applications in 2023 up to and including November. In 2022, Region East received 13 new applications for adoption of a specific child from abroad and 7 new applications in 2023 up to and including November.

A temporary suspension of international adoptions may result in an increase in the number of applications for national infant adoption.

When it comes to adoption preparation courses, the temporary suspension of international adoptions will mean that the courses will only be held for applicants for national infant adoption for a period of time.

The temporary suspension of foreign adoptions will also have consequences for the professional advisory committee for adoption cases, which during the period will only assign parents to infants born in Norway who have been released for adoption.

#### **11.6 Risk of illegal activities**

If many countries stop international adoptions, there is a risk that a "black market" for unregulated adoptions through illegal activities will emerge. That said, the trend in countries that have long been countries of origin is that they are increasingly able to find suitable families for children in need of a new family in the children's home countries. There is reason to expect that several countries that have so far been countries of origin will in the near future have no need for international adoption. In any case, a black market for adoption must be managed and counteracted nationally and globally.

#### **11.7 Adoption outside an adoption organisation and recognition of adoptions**

As mentioned, adoptions outside an approved adoption organisation may be permitted in exceptional cases. These applications are processed by Bufetat Region East, and may concern an unknown child or a child the applicants have a connection to. Although the co-operation in these cases takes place from authority to

authority, our assessment is that a temporary suspension should also apply to these adoptions. Non-organisational adoptions are covered by the committee's mandate and the risk that children may be wrongfully released for adoption even if the co-operation takes place from authority to authority. In our opinion, there is a need to implement the new guidelines from the Hague Conference also in these cases.

One possible consequence of the temporary suspension of adoptions from abroad is that more people with ties to another country carry out a national adoption in that country, which is then recognised in Norway. When this procedure is used by people living in Norway, who under current regulations must have prior consent from the Norwegian authorities in order to adopt, there is generally a great risk that the adoption will not be recognised here and that the child will not have the opportunity to live with their adoptive parents in Norway. The child is thus placed in a difficult situation, both factually and legally.

## 12 Bufdir's recommendation

International adoptions place a great deal of responsibility on both the country of origin and the receiving country. The country of origin has the important responsibility of ensuring that children are legally released for adoption abroad. For its part, the receiving country must ensure the preparation of applicants and the necessary authorisation of these.

Co-operation in adoption cases means that key international legal standards must be followed, but even with a significant strengthening of control and supervision, the authorities of the receiving state cannot guarantee that mistakes can never happen in adoption cases - we cannot control and fully ensure that all actions that take place in another state prior to and during an adoption process will always be in line with the principles of the Convention.

In our assessment, we assume that cooperation in international adoptions is based on a high degree of trust and that there will always be a risk of wrongdoing. Our assessment is based on illegal adoptions uncovered in other countries, statements from International Social Services (ISS), concluding recommendations from the UN Committee on the Rights of the Child, among others, and the work on the topic in the Hague Conference on Private International Law. Bufdir also refers to its own

Bufdir also refers to its own document reviews and that findings in Norwegian documents have contained information that gives cause for concern from today's perspective.

In June 2023, the Hague Conference on Private International Law issued a new guide that, among other things, mentions the recipient state's responsibility for document control to ensure that the preceding process is in accordance with the requirements of the Convention. The guidelines clarify the guidelines for both countries of origin and receiving countries such as Norway on checking the documentation before consent for the adoption process to continue can be given.

Based on this and other factors, Bufdir has inspected documents submitted by the adoption organisations for registration or for consideration of the case by the Professional Advisory Committee. The control of the legal documentation shows that it is generally inadequate. Several cases are therefore temporarily suspended today until the necessary documentation is obtained.

We consider it important to view the system and the handling of foreign adoptions internationally and in Norway in a historical perspective and in light of stricter guidelines for documentation and control both nationally and internationally. In addition to the aforementioned risks associated with conditions in other countries, it is our assessment that the system and division of responsibilities in Norway have some inherent risks at system level. Reference is made here to the above descriptions of responsibility and responsibility and organisation.

The Directorate's assessment is that the risk of illegality is real and at a level that leads us to recommend a temporary suspension of adoptions from abroad.

Based on an overall assessment, we recommend temporary suspension option III, that those who have been allocated a specific child are allowed to finalise the process, but then only after special assessment by Bufdir. Unless the Ministry chooses to adopt temporary suspension option III or IV, it is our assessment is that risk-reducing measures should be implemented, cf. alternative 4.