



MINISTERIO
DE JUSTICIA

SECRETARIA DE ESTADO DE JUSTICIA

DIRECCIÓN GENERAL DE COOPERACIÓN
JURÍDICA INTERNACIONAL Y RELACIONES CON
LAS CONFESIONES

SUBDIRECCIÓN GENERAL DE COOPERACIÓN
JURÍDICA INTERNACIONAL

O F I C I O

S/REF.

N/REF. SGCJ/ISV

FECHA: 6 de abril de 2018

ASUNTO: PROCEDURE ARTICLE 56 COUNCIL REGULATION 2201/2003

DESTINATARIO: MINISTRY OF JUSTICE
GERMAN CENTRAL AUTHORITY

MINISTRY OF JUSTICE

GERMAN CENTRAL AUTHORITY
53094 BONN
GERMANY

Following our previous letters dated 24 October 2016 and 5 July 2017, please find enclosed detailed information on the procedure to be followed in Spain for the implementation of Article 56 of the Council Regulation 2201/2003, as requested, in order to specify, as accurately as possible, the applicable requirements enabling to process child placement requests received in this Department on the basis of the aforementioned provision.

The procedure to be followed in Spain for the implementation of Article 56 of the Council Regulation 2201/2003 is as follows:

1.- The German Central Authority shall send the application for the child's placement to this Sub-Directorate General as Spanish Central Authority for the implementation of the Council regulation (EC) No 2201/2003 asking also for its approval.

The documentation contained in Document 1 and in Annexes 1, 2 and 3 herein attached shall be duly completed and shall accompany the application.

2.- This Unit shall forward the application, together with the above mentioned documentation, to the Ministry of Health, Social Services and Equality so that it is forwarded to the competent Autonomous Authority in order to obtain the required prior authorisation.

3.- If the answer received from the Autonomous Authority is favourable, it shall be sent to the German Central Authority indicating that in order to make the placement projected, the placement shall have to be ordered by a competent German Court. Once the judgment has been rendered, the Court shall ask for its preliminary recognition and subsequent enforcement in Spain directly before the Spanish Court with territorial jurisdiction based on Article 39 of the Brussels II bis Regulation.




4.- As stated in Judgment C- 92/12, applications for placement must indicate the expected period of duration. When the consent of the requested State in accordance with Article 56 of the Regulation nº 2201/2003 has been given for a specific period of time, such consent shall not apply to decisions aiming at extending the placement. In such circumstances, the requesting State shall ask for a new approval. In conclusion, a judgment on placement given in your country and declared enforceable in Spain may only be enforced in our country for the given period of time indicated in the placement decision.

In view of the above, we inform you that every child transferred to our country pursuant to Article 56 of the Regulation nº 2201/2003 without following the above mentioned procedure is deemed to be in Spain in an irregular situation since the established procedure has not been complied with and thus, the necessary measures to put an end to this irregular situation can be taken.

We remain at your disposal for any further question or clarification.

Yours sincerely,

THE DEPUTY DIRECTOR,



Paula Mongé





DOCUMENT 1

INFORMATION AND DOCUMENTS WHICH MUST BE ATTACHED TO CHILD PLACEMENT REQUESTS BASED ON ARTICLE 56 OF THE COUNCIL REGULATION 2201/2003

Child placement requests in Spain based on Article 56 of Brussels II bis Regulation must meet certain requirements and therefore must be accompanied by the necessary documents for its evaluation by the Spanish Central Authority in order to verify the conditions of families and centres that would receive them.

In this regard, the following documents shall be attached to the application:

A.- DOCUMENTATION REGARDING FAMILIES/ CENTRES

1. Identification of families / centres under the responsibility of which the minor is placed in Spain and that holds legal guardianship:
 - In the case of families: Identification of all members of the foster family as well as their suitability for such placement.
Supporting document: Copy of identification document (Identity Card, Passport; Social Security Number; Driving License (where appropriate).
 - In the case of centres: The corresponding authorisation and accreditation allowing the centre to provide residential service to minors in situation of vulnerability granted by the competent Spanish authorities and be registered in the Register of Institutions and Social Centres and Services of the competent Autonomous Community where the centre is located.
Supporting document: Certificates proving both circumstances and Spanish Tax Identification Code (CIF).
2. State of health of all members of the foster family, suitable to accomplish the task of receiving minors.
Supporting document: Medical certificate proving the state of health
3. Suitable housing and hygiene conditions to perform the activity.
Supporting document: Report issued by the requesting authority proving the suitability of the housing conditions of the foster family / centre in accordance with (Annex 1), including pictures of the house in which the minor shall be accommodated.



4. Level of education of the members of the family / or person in charge of the foster family.(being an essential requirement to have at least the level of compulsory education in the country of origin).

Supporting document: Study certificates of the members of the foster family.

5. None of the home members must have been convicted by a final judgment for Offences against life and physical integrity, liberty of persons, sexual self-determination, drug trafficking offences or gender violence and sexual offences.

Supporting document: Certificate of criminal records from the country of origin, Spanish certificate for crimes of sexual nature issued by the Spanish Ministry of Justice (compulsory for all professionals and volunteers usually working with minors) of all the members of the foster family.

6. Economic conditions of the foster family/ centre in Spain.

Supporting document: Income Tax declaration within the last 3 years as well as any other document that may prove economic solvency (Annex 2).

B.- DOCUMENTATION REGARDING MINORS

1. Identification and description of the child or youth.

Supporting document: Identification and Description file of the Child/Youth (Annex 3), accompanied by Medical certificate proving the state of health

2. Description of the circumstances / behavioural situation that motivates the placement request in another Member State.

Supporting document: Reasons for the proposed placement, explicitly explaining the reasons that led the administrative or judicial authority to decide the enforcement of the resolution, with explicit indication of its duration. For the description of the circumstances of the minor, the request must also be accompanied by additional information, psychological or medical report justifying the decision of placement outside de country of origin.

All documents must be accompanied by a certified translation into Spanish.

Once the evaluation is completed, the Spanish Central Authority shall approve or deny the request and will send it, where appropriate, to the competent Spanish authority for **prior authorisation, according to the criteria set out above and with the supporting documentation sent.**



ANNEX 1

REPORT ON THE ADEQUACY OF HEALTH AND HOUSING CONDITIONS TO CARRY OUT THE ACTIVITY OF RECEIVING MINORS

The Centre /Foster family _____ of which the person in charge is _____ with NIF/ID/Passport No. _____ hereby declares that as regards the points shown below, the family benefits from adequate housing and hygiene conditions to undertake the activity of receiving children and youths, in accordance with Article 56 of the Council Regulation (EC) No 2201/2003 of 27 November.

1. Type of housing:

House Apartment Other _____

2. Type of occupation:

Own Borrowed Rented Other _____

3. Infrastructure

Stove Oven Radio WC Fridge TV
Water Boiler, heater or similar Video/ DVD
Electricity Washing machine Telephone /mobile Drainage
Dishwasher Computer Heating/Air Conditioned Microwave oven

4. Physical obstacles

No Yes (please indicate) _____

5. Housing conditions

Tidy: Yes No

Clean: Yes No

Number and type of bedrooms:

Is there a bedroom for the fostered child: Yes No

6. Conservation status

Inside:

Good

Acceptable

Damaged

Outside:

Good

Acceptable

Damaged

7-Resources of the environment

Urban description

Rural area (isolated)

Rural area (non- isolated)

Urban area

Urban conditions:

Non-degraded residential area

Degraded residential area



Social housing project /relocation

Social description:

Area with social problems (e.g. Delinquency, drugs, prostitution, among others)

Area where children/youths can play/walk in safety

Accessibility:

The Centre/ family has its own means of transport: Yes No

Area with access to public transport: Yes No

Surroundings and resources

Area with green spaces

Near social /leisure facilities

Close to basic services (e.g. Supermarkets, pharmacy)

Near school facilities

Close to medical services

Existence of a neighbourhood network

Date: ____/____/201

Place:

Signature: _____

(with the stamp of the institution)

Note: Please enclose recent pictures of the house



ANNEX 2
REPORT ON THE ECONOMIC SITUATION OF THE FAMILY / CENTRE

The Centre /Foster family _____ of which the person in charge is _____ with NIF/ID/Passport No. _____ responsible for the placement of the child/youth _____ hereby declares that the family benefits from adequate economic conditions to carry out the activity of receiving minors, in accordance with Article 56 of the Council Regulation (EC) No 2201/2003 of 27 November.

It is also provided that the above person shall be responsible for all the expenses arising from the adequate stay of the minor in national territory, and for his/her return to the country of origin.

Date: ____/____/201

Place:

Signature: _____
(with the stamp of the institution)

Note: False testimony is punishable by Law



ANNEX 3 IDENTIFICATION AND DESCRIPTION FORM OF THE CHILD OR YOUTH

1. Identification of the child / Young person:

Name: _____

Age: _____ Date of birth: ___/___/___ Sex: F M

Number of Identity Card _____

2. Custody or guardianship regime:

3. Physical and mental health conditions:

3.1 ¿Has he been diagnosed with a mental health disorder? No Yes
If so, ¿which one? _____

3.2 ¿Has he been diagnosed with a physical health disorder? No Yes
If so, ¿which one? _____

3.3. ¿Is there any drug addiction problem? No Yes
If so, ¿which one? Cannabinoids Opiate Alcohol
¿Sporadic drug abuse? No Yes _____

4. Schooling situation in the country of origin:

Course attended: _____

¿Is he in a position to complete his studies? No Yes

If so, level of education: _____

¿Has he completed his compulsory education? No Yes

If not, ¿when shall he complete it? _____

5. Behavioral Schemes

- He often insults, threatens or intimidates others
- He frequently begins physical fights
- He has used a weapon that causes physic harm to others (stick, bricks, broken bottles, knives, firearms)
- He has stolen facing the victim (pick-pocketing, extortion, robbery)
- He has forced somebody to have sexual contact
- He has shown cruelty to animals
- He has shown physical cruelty to people
- He has set fire with the intent to cause damage



- He has intentionally destroyed other people's property (smashing car windows, acts of vandalism)
- He often lies to people for personal gain or advantage or in order to avoid obligations
- He steals objects of some value without confronting the victim (for example, in shops but without forcing the entry, forgery)
- He often spends the night away from home, though it is banned by parents
- Frequent absences from school, initiated before he was 13 years old. Robbery with force in a house, building or car
- Thefts (mobile phones, money, clothes, backpacks)
- Taking without consent (cars, motorcycles) Belonging to a gang
- Inability to manage his sexuality
- Prostitution or suspicion of prostitution
- Suspicion of membership of a paedophilia network
- Serious conflict with family members
- Vagrancy
- Repeatedly escapes

Under no circumstances will authorisation for placement be granted for minors who have been convicted or punished for any criminal offense.

6. Other information of interest:

1. Child's/youth's right to a hearing

¿Had he the opportunity to a hearing? No Yes

If so, ¿in what form?

If not, ¿when is it scheduled?

7. Statement of the reasons for recommending the placement in other Member State:



8. Documents to be attached:

8.1 Reason that justifies the stay of the minor in Spain

8.2 The reason and grounds for the foreign authority's envisaged decision, certified and translated into Spanish

8.3 Duration of stay in Spain, specifying entry and departures dates

8.4 Personal project and/or occupation in Spain

8.5 Entity responsible for the minor in the requesting country.

8.6 Other relevant documents supporting the placement request