**Call for submissions for the thematic report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material - Contribution of Germany**

Germany would like to submit the following contribution to the Questionnaire on Safeguards for the Protection of the Rights of Children born from Surrogacy arrangements (Call for submissions for the thematic report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other sexual abuse material):

**Identity, origins and parentage:**

*6. Specify how the establishment of parentage occurs in the context of surrogacy arrangements. Indicate specifically how the best interests of the child are factored in.*

**In Germany, surrogacy and consequently also contracts concerning surrogacy are illegal. Therefore, there are no legal provisions in German law concerning establishment of parentage in cases of surrogacy.**

**Data**

*5. Following on the previous question, please indicate under which circumstances authorities have allowed their nationals to bring the child born from a surrogacy arrangement back into their country of origin and if so please indicate which ones (e.g. domestic parenting orders, judgements, best interests of the child determinations, etc.), and how often they have been used.*

**German law distinguishes two different situations:**

**(1) Recognition of foreign decisions on parentage under section 108 and 109 of the Law on procedure in family cases (FamFG), and**

**(2) Establishment of parentage via determination of the applicable legal system and parentage under that system.**

**(1):**

**If the child is genetically related to at least one of the intended parents, according to the jurisprudence of the Federal Supreme Court (BGH) a foreign judicial decision on parentage will generally be recognized under section 108 para 1 FamFG. Such foreign decisions will as a rule not violate the procedural order public (section 109 para 1 No. 4 FamFG) although they contravene section 1591 of the Civil Code (the mother of a child is the woman who has given birth). The Federal Supreme Court sees the best interests of the child as the decisive factor for recognition of the foreign judicial decision under such circumstances. The reasoning is as follows:**

**- the right of the child to legal assignment to reliable parents is paramount. Generally, the intended parents (other than the surrogate mother) will be prepared to take over the responsibilities and to provide for the wellbeing of the child.**

**- It is in the interest of the child to avoid diverging parentage situations under different legal regimes, which could be the case if a foreign judicial decision awarded the parentage to the intended parents while under German law the surrogate mother would be deemed to be the mother.**

**As yet, there has been no decision of the Supreme Court in cases where the child is not genetically related to either of the intended parents.**

**(2):**

**If the parentage is established by a decision of a foreign authority, which is not a judicial decision (e.g. entry in the birth register), such a decision will not be recognized under section 108 FamFG. In such cases, the applicable legal system is to be determined by the rules of international private law. If the applicable law does not allow the assignment of the parentage to the intended parents (e.g. if German law is applicable), the only way for the intended parents to establish parentage is adoption.**