

Germany: Legal Consequences of the Draft Legislation on Child Marriage

On 17 February 2017, the German government presented a legislative draft on child marriage that represents a significant departure from current court practice (the text of the draft is available [here](#)). The legal status quo envisages a case-by-case examination whether a marriage was lawfully concluded outside of Germany. Such a determination considers both whether the marriage was consistent with German public policy and whether the surrounding circumstances of the individual situation of the minor spouse were taken into account. Particularly in cases where the marriage was concluded already some time ago and the spouses have since then voluntarily stayed together and established a family life, German courts have in the past upheld foreign marriages that would have been regarded as offensive at the time of their conclusion. Contrary to this case-by-case approach, the centerpiece of the recent draft is the automatic and strict non-recognition of marriages concluded outside of Germany by persons under the age of sixteen. Furthermore, marriages concluded by persons between the ages of sixteen and eighteen shall only be recognized if severe negative consequences were to occur otherwise.

In a recently published interview, Professor Jürgen Basedow, Director of the Max-Planck-Institute for Comparative and Private International Law in Hamburg, criticizes the rigid setting of a minimum age and the underlying assumption of the draft that a strict non-recognition of an under-age marriage would always be beneficial to the person concerned: “This overlooks many realities: In many instances the under-aged wife does not desire such assistance; for many young women marriage represents a recognition of their adulthood within

their particular social setting.” Basedow states further that there is no sensible way to avoid a meticulous case-by-case analysis of the particular circumstances of the individual case. The proposed draft, however, would lead to inflexibility and offer only little leeway to take the cultural identity of the spouses and their personal decisions into account.

The full interview with Jürgen Basedow is accessible [here](#).