

# Initiative on the recognition of parenthood between Member States

25/06/2021

Fields marked with \* are mandatory.

## Introduction

Families are increasingly mobile as they move and travel between Member States. However, given the differences in Member States' laws on the establishment of parenthood, families may face obstacles in having the parenthood of their children recognised when crossing borders within the Union.

The non-recognition in a Member State of the parenthood established in another Member State can have significant adverse consequences for children when travelling or moving to another Member State. Currently, there is no Union legislation governing the recognition of parenthood between Member States<sup>1</sup>. The recognition of parenthood is thus at present governed by the national law of Member States.

Following the announcement by Commission President von der Leyen in her State of the European Union speech of 2020 that "If you are parent in one country, you are parent in every country", the European Commission is considering avenues to ensure the recognition of parenthood within the Union, in particular through the adoption of a legislative proposal on the recognition of parenthood between Member States.

The goal of this initiative will be to ensure that children maintain their rights in cross-border situations, in particular where families travel or move within the Union.

For further information, see the European Commission Inception Impact Assessment at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12878-Recognition-of-parenthood->

This survey aims to identify the problems that may currently arise in cross-border situations in the Union where the parenthood of a child established in a Member State is not recognised in another Member State. The survey also aims to collect views on the adoption of a proposal on the recognition of parenthood between Member States and on its scope. This survey will also feed into the update of the 2009 guidelines on Free Movement aimed at improving legal certainty for EU citizens exercising their right to free movement.

This survey concerns parenthood of both children and adults.

This survey does not prejudice any action by the European Union or affect the remit of its competences. When answering this survey, please reply to the questions that are applicable to you or which you know of based on your experience or the experience of your organisation.

<sup>1</sup> Regulation (EU) 2016/1191 introduces simplifications for the purposes of presenting in a Member State a public document issued in another Member State in certain areas, including parenthood, but its rules cover only the authenticity of public documents and not the recognition of their contents or effects.

## I. Current Situation and Problems relating to the Recognition of Parenthood

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1. Do you think that the lack of EU harmonised rules on the recognition of parenthood in the Union poses a problem?

- Yes, it is a serious problem
- Yes, it is a somewhat serious problem
- Yes, but the problem is not serious
- No, there is no such problem
- I don't know / No reply

2. Are you aware of any instance(s) where the parenthood established in a Member State was not recognised in another Member State?

- Yes
- No
- I don't know / No reply

3. In the instances where parenthood was not recognised, which of the following documents were not recognised?

- Birth certificate of a child
- Adoption certificate of a child
- Judicial decision establishing parenthood
- I don't know / No reply
- Other acts establishing or attesting parenthood:

Please specify:

The national public policy of each country determines whether parenthood is recognised, not the document.

Furthermore, we would like to highlight the European Court of Human Rights' advisory opinion (Request No. P16-2018-001) concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother.

In response to the request for an advisory opinion, the Court held that states are not required to register the details of the birth certificate of a child born through gestational surrogacy abroad in order to establish the legal parent-child relationship with the intended mother, as adoption may also serve as a means of recognising that relationship

More specifically, the ECtHR unanimously delivered the following opinion:

In a situation where a child was born abroad through a gestational surrogacy arrangement and was conceived using the gametes of the intended father and a third-party donor, and where the legal parent-child relationship with the intended father has been recognised in domestic law,

1. the child's right to respect for private life within the meaning of Article 8 of the European Convention on Human Rights requires that domestic law provide a possibility of recognition of a legal parent-child

relationship with the intended mother, designated in the birth certificate legally established abroad as the “legal mother”;

2. the child’s right to respect for private life does not require such recognition to take the form of entry in the register of births, marriages and deaths of the details of the birth certificate legally established abroad; another means, such as adoption of the child by the intended mother, may be used.

4. In the instances where parenthood was not recognised, did the case involve any of the following:

- Parenthood established by operation of law: for example, presumption of parenthood by marriage
- Adoption by two parents
- Second parent adoption by the partner of the biological parent
- Adoption by one single parent
- Child born out of Assisted Reproductive Technology (ART)<sup>2</sup>
- Child born out of surrogacy
- Establishment of parenthood over an adult: for example, adoption of an adult, voluntary acknowledgement of parenthood over an adult, establishment of parenthood over an adult by operation of law for refusing a DNA test
- I don’t know / No reply
- None of the above:

Please specify:

5. In the instances where parenthood was not recognised, what were the reasons invoked by the national authorities for not recognising the parenthood established in another Member State?

- Recognition of parenthood contrary to the national law of the Member State where recognition of parenthood is sought
- Insufficient evidence of biological parenthood provided
- Insufficient evidence of parenthood by adoption provided
- Insufficient evidence of parenthood by operation of law provided
- Parenthood is being contested: for example, in a court of the Member State where recognition of parenthood is sought
- Other:

Please specify:

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<sup>2</sup> For the purposes of this survey Assisted reproductive technology (ART) should be understood as any method used to achieve conception involving artificial or partially artificial means and which is undertaken by a medical/health clinic or institution. Two most common ART methods are artificial insemination and in-vitro fertilisation.

6. In the instances where parenthood was not recognised, which parenthood was not recognised?

- Of both parents, where both parents are biological
- Of both parents, where one is biological and the other is an adoptive parent
- Of both parents, where one is biological and the other is a parent by operation of law
- Of both parents, where both are non-biological but both are adoptive parents
- Of both parents, where both are non-biological but both are parents by operation of law
- Of the non-biological parent, where the parenthood of the biological parent was recognised
- Of a single, biological parent
- Of a single, non-biological but adoptive parent
- I don't know / No reply
- None of the above:

Please specify:

7. In the instances where parenthood was not recognised, which rights of the child and/or obligations derived from parenthood were denied to the child or the parents?

- Parental rights to act as the legal representative(s) of a child including: enrolling a child in school, opening a bank account on behalf of a child, giving a consent to medical treatment of a child
- Parental rights to travel alone with a child or to authorise a child to travel alone
- Issuance of documentation (for example, a birth certificate) by the Member State of nationality necessary for a child to obtain documentation proving nationality (for example, a passport)
- Issuance of passport or identity card for a child by the Member State of nationality
- Recognition of a surname of a child
- Residence rights
- Maintenance obligations
- The child's inheritance rights
- Visitation rights to a child by a parent
- Custody rights by a parent
- Social advantages such as: children and family allowances/benefits, parental leave rights
- Tax advantages
- Rights associated with having a sibling legal relationship (for example, the right to be enrolled in the same school)
- Other:

Please specify:

We would like to note that sometimes there may be maintenance obligations without the parenthood recognised.

8. Has the possible non-recognition of parenthood dissuaded a family from travelling with their child within the Union or from moving with their child to another Member State?

- Yes
- No
- I don't know / No reply
- Other:

Please specify:

9. In the instances where parenthood was not recognised, has the non-recognition of parenthood hindered the exercise of the child's right to travel within the Union with his/her parent(s) or to move to another Member State with his/her parent(s)?

- Yes
- No
- I don't know / No reply
- Other:

Please specify:

10. Please provide here other relevant information about the problems referred to in Q1-9.

In particular:

- the Member State where the parenthood was initially established and the Member State where the recognition of that parenthood was refused;
- references to cases where these are publicly available, such as judgment identification numbers.

*4000 character(s) maximum*

11. In the case(s) where parenthood was recognised, did any of the following problems occur in the recognition procedure?

- The recognition procedure before administrative authorities was excessively lengthy.
- The recognition procedure before administrative authorities was expensive.
- The recognition procedure before administrative authorities required legal advice.
- The recognition required bringing the case to a court.
- None of the above - the recognition procedure was fairly straightforward and efficient.

- None of the above - the recognition was automatic and no procedure was required.
- I don't know / No reply.
- Other :

Please specify:

12. In the case(s) where the parenthood was recognised, what was the estimated length of the recognition procedure before the administrative authorities?

- less than 6 months
- 6 months to 12 months
- 12 months to 24 months
- I don't know / No reply
- Other:

Please specify:

13. In the case(s) where the parenthood was recognised but the recognition required bringing a case to court, what was the estimated length of the recognition proceedings before the court?

- less than a year
- between 1 and 2 years
- more than 2 years
- I don't know / No reply
- Other:

Please specify:

14. In the case(s) where the parenthood was recognised, what were the (average) estimated costs for the recognition procedure before the administrative authorities?

*Please indicate the currency. Where applicable, please include also costs of legal advice.*

15. In the case(s) where the parenthood was recognised but the recognition required bringing a case to court, what were the (average) estimated costs for the recognition proceedings before the court?

*Please indicate the currency. Where applicable, please include also costs of legal advice.*

## II. Possible Union Instrument on the Recognition of Parenthood between Member States

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16. In your opinion, should the Union adopt legislation to facilitate the cross-border recognition of parenthood, as opposed to leaving recognition to the national law of Member States as is currently the case?

- Fully agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Fully disagree
- I don't know / No reply

17. In your opinion, should the Union play any other role in facilitating the recognition of parenthood between Member States?

- Yes, in promoting cooperation on the matter between national authorities, for example by organising judicial trainings or thematic meetings in the framework of the European Judicial Network in Civil and Commercial matters
- Yes, in issuing guidance
- Yes, in raising citizens' awareness about the existing problems with the recognition of parenthood
- No role
- Other role:

Please specify:

18. In the case that the Union should legislate on the cross-border recognition of parenthood, which law do you think should determine the parenthood of a person, whether a child or an adult?

- the law of the habitual residence of his/her parents
  - the law of the habitual residence of his/her parents provided the parents have lived in the Member State a minimum number of years
- the law of the habitual residence of the person
- the nationality of the person
- the law of the country where the person is born
- the person should be able to choose any of the above
- I don't know / No reply
- Other:

Please specify:

The law of the habitual residence of his/her parents, taking into account that habitual residence is understood in accordance with the decisions of the European Court.

19. In the case that the Union should legislate on the cross-border recognition of parenthood, should the legislative instrument include rules on the recognition of judicial decisions?

- No opinion
- No, the legislative instrument should only set out rules on the recognition of parenthood as attested by a public document (such as a birth certificate)
- Yes, the legislative instrument should also include rules on the recognition of judicial decisions
- Other opinion:

Please explain:

20. Do you think it would be useful for the possible EU legislative instrument to provide for a European certificate of parenthood acceptable throughout the Union? (*Such European certificate of parenthood would be issued on request by national authorities*)

- No, the currently available national documentation is sufficient.
- Yes, a European certificate of parenthood would be useful.
- Yes, a European certificate of parenthood would be useful and including it in the possible EU legislative instrument should be a priority.
- No opinion

Please explain, if needed:

Yes, a European certificate of parenthood would be useful as the point of the instrument is the recognition across the EU.

21. In your opinion, to what extent a possible EU instrument facilitating the cross-border recognition of parenthood would impact the following:

	Very positive impact	Mildly positive impact	No impact	Negative impact	No answer
Children's fundamental rights, such as the right to a family life and the right to non-discrimination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Children's welfare, including their emotional and psychological wellbeing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitating the exercise of the right of children to travel and move within the Union with their families	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal certainty for families as regards the parenthood of their children in another Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal certainty for national administrations and simplification of their procedures for the recognition of parenthood	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs, time and burden for citizens related to court proceedings on the recognition of parenthood	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs, time and burden for national judicial systems related to court proceedings on the recognition of parenthood	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please add here any other impact you consider relevant:

### III. Other

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22. Please provide here any comment or additional information you would like to share on the recognition of parenthood between Member States.

*Please feel welcome to share views on specific aspects of the initiative and/or references to relevant research.*

It would be a great step forward to consider the recognition of parenthood in relation to third countries as well, not only between the EU Member States. In addition, it would be useful for the EU to engage with the Hague Convention relating to matters of family law.

Furthermore, it should be kept in mind that every recognition can potentially cause a non-recognition of other parents. Other than in divorce or classical custody proceedings, recognition of parenthood can imply several persons.