



Brussels, 30 June 2021

Minutes

1st Meeting of the Expert Group on the recognition of parenthood between Member States 11 June 2021 (via VTC)

The meeting was chaired by the Commission (Directorate-General for Justice and Consumers).

The Expert Group on the recognition of parenthood between Member States (“the Expert Group”) met for the first time on 11 June 2021. The meeting was attended by 12 experts appointed in their personal capacity and five organisations invited as observers (EVS, HCCH, ILGA-Europe, NELFA and UNICEF)¹.

1. Welcome

The Commission welcomed the participants and invited them to present themselves.

The objective of the Expert Group is to assist the Commission with the preparation of a proposal for a legislative instrument on the recognition of parenthood between Member States.

The aim of the first meeting was to have an initial exchange of views on the topic between the Commission and the Expert Group members.

2. Rules of procedure

The Expert Group adopted its rules of procedure.

3. Presentation of the parenthood initiative and initial feedback

a) Presentation of the initiative

The Commission first started considering the recognition of filiation in a Green Paper of 2010 which discussed the recognition of the effects of civil status records.

¹ For details see the list of participants in Annex 1 to these minutes.

Currently, given the absence of Union rules on the recognition of parenthood and the discrepancies in Member States' conflict of laws rules and procedures for the recognition of judgments, parenthood may not be recognised in cross-border situations, for example where a family travels or moves within the Union. This can have a negative impact on the best interests of the child and on children's rights derived from parenthood, for example the right to maintenance and succession rights. The parenthood initiative aims to ensure that the parenthood established in one Member State is recognised across the Union so that children maintain their rights in cross-border situations.

Under the Union Treaties, substantive family law and the legal status of persons falls within the competence of Member States, which means that the establishment of parenthood is governed by national law. Whilst substantive law on parenthood is within the remit of Member States' law, the Union can adopt measures concerning family law with cross-border implications pursuant to Article 81(3) TFEU. The current Union family and succession law instruments exclude parenthood from their scope.

The legislative initiative on the recognition of parenthood will be based on Article 81(3) TFEU. The adoption of legislative measures pursuant to Article 81(3) TFEU requires unanimity in the Council, which may be difficult to achieve.

The adoption of an instrument on the recognition of parenthood would have a positive impact on the protection of children's rights and would reduce the costs of litigation for both citizens and national judicial systems.

b) Initial feedback

The Commission has started to gather feedback on the parenthood initiative from the public and stakeholders. The Commission is seeking feedback through: (i) comments to the Inception Impact Assessment; and (ii) an open public consultation.

(i) The Commission has received more than 700 comments on the Inception Impact Assessment, the majority of which from Central Europe. Many of the replies are critical of the initiative. However, other respondents stressed the urgent need for an initiative on this matter given the negative consequences of the current situation on children and their families.

(i) The open public consultation aims to gather information from the public and stakeholders on the problems currently experienced by families as well as views on the initiative and its policy options. The consultation was launched in May and is open until August 2021.

4. Brief presentation of the HCCH Parentage/Surrogacy Project

The observers representing the Hague Conference on Private International Law (HCCH) presented briefly the HCCH Parentage/Surrogacy Project. They explained the background and history of the Project, including the different documents, questionnaires and studies published, and the work of the HCCH Experts' Group whose mandate is to "explore the feasibility of advancing work in the area of private international law rules regarding the legal status of children in cross-border situations, including in international surrogacy arrangements (ISAs)". They also explained that one of the first questions that the HCCH Experts' Group dealt with was to confirm, based on the responses to the

questionnaires and further research, that the main three methods to establish legal parentage are by operation of law, by an acknowledgement and by a (judicial) decision.

With regard to feasibility, the Experts' Group divided its work between a possible draft Convention on legal parentage in general and a possible Protocol on legal parentage established as a result of an ISA specifically. Both instruments would aim at providing predictability, certainty and continuity of legal parentage. The Protocol would also aim at protecting the fundamental rights of all those involved, in particular the best interests of the child. So far, the Group has been exploring the feasibility of including rules on the recognition of judicial decisions and uniform applicable law rules (in particular for legal parentage established by operation of law or by an acknowledgment). The HCCH Experts' Group is also discussing how to address the use of public documents recording legal parentage. In addition, in particular for surrogacy cases, the Group is exploring rules on the recognition of the legal status (i.e., the legal parentage) if some minimum safeguards are respected.

The slides presented are attached:



5. Discussion topics

5.1 “Parenthood” or “parentage”?

The first question that the Commission proposed for discussion was whether the initiative should use the term “parenthood” or “parentage”. The Commission recalled the definition of the terms under British and US English and noted that the EU family law *acquis* uses the term “parenthood” except in the Maintenance Regulation, where the term “parentage” is used after the HCCH Convention on Maintenance, which it takes into account.

It was noted that the HCCH Parentage/Surrogacy Project uses the term “legal parentage” as it is more broadly used worldwide in legislation and case law. It was also mentioned that if in the future there is an EU Regulation and an HCCH Convention on this subject, the use of two different terms may be confusing for citizens. Some experts were of the view that the word “legal” should be added to any term used in order to distinguish the concept of legal parenthood from biological or social parenthood.

Some experts thought that the parenthood initiative should place a stronger focus on children by including the word “child” in its title, for example by preferring the terms “child-parent relationship”, also used in the *acquis*. Others were of the view that this term was not sufficiently specific and that it was rather an umbrella term.

Some experts considered that in British English the term “parenthood” should be preferred because the term “parentage” refers to a biological relationship with the child, which could be discriminatory for a child born out of surrogacy or in a rainbow family.

5.2 Commission proposal on blocks for discussion

The Commission proposed organising the future work of the Expert Group by dividing discussions into thematic blocks. Subgroups would be set up for each block so that topics can be examined in detail and proposals can be made on each topic.

Subgroups would be set up in the second meeting after the initial exchange of views on the various aspects of the parenthood initiative held in the first and second meetings of the Expert Group.

The proposals made by each subgroup on each topic would all be discussed in plenary.

5.3 First discussion on the territorial scope of the parenthood initiative

The conflict of laws rules in the proposal would have a universal character. However, the Expert Group should examine whether the proposal, which concerns recognition between Member States, should cover only documents issued by the authority of a Member State or also documents issued by the authority of a third country but subsequently recognised in a Member State. Some members of the Expert Group advocated a wide scope. The limits of the EU external competence as regards the recognition of documents issued by the authority of a third country were noted.

5.4 First discussion on the conflict of laws rules

A brief exchange was held on conflict of laws rules.

The possibility of recognising documents on civil status when issued in accordance with certain conflict of laws rules was confirmed. Information was given that some Member States recognise administrative documents by applying the same rules that they apply to the recognition of judgments.

The discussion would continue at the next meeting of the Expert Group.

6. Next meetings of the Expert Group

The next meetings of the Expert Group are planned on the following dates :

- 30 June 2021
- 15 September 2021
- October 2021
- November 2021
- In principle, two more meetings in 2022.

Annex 1

List of participants

Experts:

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Claire FENTON-GLYNN
Susanne GÖSSL
Cristina GONZÁLEZ BEILFUSS
Tobias HELMS
Michal KUBALSKI
Ilaria PRETELLI
Nadia RUSINOVA
Jens Martin SCHERPE
François TRÉMOSA
Alina TRYFONIDOU
Patrick WAUTELET

Observers:

EVS (European Association of Registrars)	Steve HEYLEN
HCCH (Hague Conference on Private International Law)	Laura MARTÍNEZ-MORA Capucine PAGE
ILGA-Europe	Arpi AVETISYAN
NELFA (Network of European LGBTIQ* Families Associations)	Björn SIEVERDING
UNICEF (United Nations Children's Fund)	Kirsten DI MARTINO

European Commission:

Andreas STEIN
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