



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Directorate A: Civil and commercial justice
Unit A.1: Civil justice

Brussels, 20 February 2022

Minutes

6th Meeting of the Expert Group on the recognition of parenthood between Member States 9 February 2022 (via VTC)

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

The meeting was attended by twelve experts appointed in their personal capacity and two organisations invited as observers (EVS and HCCH).

1. APPROVAL OF THE MEETING AGENDA AND MINUTES OF THE PREVIOUS MEETING

The Expert Group adopted the agenda of the meeting as well as the minutes of its fifth meeting.

The sixth meeting of the Expert Group was dedicated to discussing five main topics:

- terminology;
- territorial scope of the proposal;
- jurisdiction;
- the European Certificate of Parenthood (ECP);
- definitions and adaptation.

To facilitate the debate, the following documents were distributed prior to the meeting:

- a discussion paper by the subgroup dealing with jurisdiction;
- a draft proposal on terminology and the right of children to know their origin, together with a graphic presentation concerning the ancestry of children and a certificate of filiation;
- a report on the recognition of status in the EU prepared by one of the experts.

2. TERMINOLOGY

As the legislative instrument would apply to both minors and adults, the group discussed whether the instrument should use the term ‘child’ or the more generic term ‘person’. The group preferred the term ‘child’. In order to cover both minors and adults, the term ‘child’ would need to be defined as referring to ‘son or daughter of any age’.

An expert noted the proprietary connotation underlying the term ‘parenthood’. She explained that there has been a linguistic evolution in the designation of the legal relationship between children and their parents and that, for this reason, a more child-focused term such as ‘filiation’ should be preferred.

3. TERRITORIAL SCOPE OF THE LEGISLATIVE INSTRUMENT

The legislative instrument would not harmonise the rules governing the recognition of court decisions or authentic instruments on parenthood issued in a third country. The recognition of such documents would thus continue to be subject to each Member State’s national law.

Often Member States recognise and register in their civil or population register the parenthood of their nationals established in a third country. The question thus arises how can the authority of the Member State where recognition is sought on the basis of a document on parenthood issued in another Member State know whether the document concerns (i) parenthood established in that Member State, or (ii) parenthood established in a third State but already recognised in that Member State under its national law.

The answer to that question is relevant because, if the document on parenthood issued in another Member State results from the prior recognition of a document on parenthood issued in a third State, the receiving authority will continue to apply its national law on the recognition of foreign documents.

The group discussed the possibility that the Member State authority issuing the document on parenthood should specify, in the certificate accompanying the parenthood document, whether the national document is based on the prior recognition under national law of a document on parenthood issued in a third State. By doing so, the receiving authority would be able to know whether to apply the new legislative instrument or its national rules on recognition of foreign documents.

4. JURISDICTION

The subgroup presented its discussion paper on jurisdiction rules. After a discussion the group reached the following conclusions:

- Grounds:
 - General alternative grounds:
 - Member State of the habitual residence of the child, or
 - Member State of the nationality of the child, or
 - Member State of the habitual residence of the defendant

A recital would explain that the habitual residence of the person who gave birth can be used as one of the criteria to determine the habitual residence of the child.

- Specific grounds:
 - in proceedings on parenthood matters which, under the law of a Member State, can be initiated by a public authority, the courts of that Member State
 - in proceedings which have as their object the validity of entries in a public register, the courts of the Member State in which the register is kept
- Additional grounds of jurisdiction:
 - presence of the child (covering both child and adult)
 - *forum necessitatis*
- Incidental questions: a provision on incidental questions should be included in line with the Brussels IIb Regulation as the conclusion on the incidental question on parenthood would not have *res iudicata* effects
- Hearing of the child: a provision on the right of the child to express his or her views in proceedings on parenthood should be included in line with the Brussels IIb Regulation (this provision would apply when it is not the child who initiates the proceedings)
- No provisions should be included on:
 - counterclaims
 - choice of court
 - transfer of jurisdiction or request for the transfer of jurisdiction

One expert proposed introducing in the proposal a provision on the right of the child to know its origins and the obligation on Member States to set up an adequate system of data recording and access rights. The Commission noted that such a provision would concern substantive law and could raise questions of Union competence.

5. EUROPEAN CERTIFICATE OF PARENTHOOD

The experts agreed that, in line with the Succession Regulation, the issuance of an ECP would be facilitated if the proposal also included an optional standard form to apply for an ECP in addition to a mandatory form to issue the ECP.

6. DEFINITIONS AND ADAPTATION

The experts agreed on the need to discuss the definitions of ‘parenthood’, ‘child’ and ‘domestic adoption’, as well as a possible provision on adaptation in connection with simple and full adoption.

7. NEXT MEETINGS

The next and final meeting of the Expert Group was scheduled for 22 February 2022.