



Council of the European Union
General Secretariat

Brussels, 25 October 2023

Interinstitutional files:
2022/0402 (CNS)

WK 13757/2023 INIT

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WORKING DOCUMENT

From: Commission Services

To: Delegations

Subject: Relations with the HCCH

- EU response to the questionnaire for the Working Group (WG) on Parentage /
Surrogacy

Delegations will find in the annex for their information the EU response to the questionnaire for the Working Group (WG) on Parentage / Surrogacy sent by the Commission to the Permanent Bureau.

Title	Questionnaire for the Working Group (WG) on Parentage / Surrogacy
Document	Questionnaire of September 2023
Author	PB
Agenda Item	N/A
Mandate(s)	C&R No 3-8 of CGAP 2023
Objective	To obtain information for the preparation of the first meeting of the WG
Action to be Taken	For Action <input checked="" type="checkbox"/> For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input type="checkbox"/>
Annexes	N/A
Related Documents	N/A

I. Objectives and scope of the Questionnaire

- 1 At its March 2023 meeting, the Council on General Affairs and Policy (CGAP) of the Hague Conference on Private International Law (HCCH) mandated the establishment of a Working Group¹ (WG) on Parentage / Surrogacy (C&R No 3-8 of CGAP 2023).
- 2 This short Questionnaire has been prepared for the purposes of the upcoming First Meeting of the WG on Parentage / Surrogacy, scheduled to take place from Monday 13 to Friday 17 November 2023, in person at the PB with the possibility of remote participation. It seeks to obtain information for the preparation of the first meeting of the WG.

II. Instructions for Questionnaire completion

- 3 In order to allow the PB to extract parts of the Questionnaire for compilation and analysis of the responses, you are kindly requested to use **this Word version** of the document, and **not to return a PDF version** of the completed Questionnaire.
- 4 You are kindly requested to send your completed Questionnaire to the PB by e-mail to < secretariat@hcch.net > no later than **Friday 13 October 2023** with the following indication in the subject line of the e-mail: “WG PISA – Questionnaire [name of State]”.
- 5 Please address any questions you may have regarding this Questionnaire to < secretariat@hcch.net >. Thank you for your kind cooperation as the PB prepares for the first meeting of the WG.
- 6 The PB intends, except where expressly asked not to do so, to share replies to this Questionnaire with the HCCH Members and the Contracting Parties which are part of this WG. Please clearly identify any responses that should not be shared.

¹ See HCCH Rules of Procedure, section III.E.1.b: “WG are bodies that develop proposed solutions which can take forms such as, but not limited to, draft provisions, principles or guides.”

Questionnaire for the Working Group (WG) on Parentage / Surrogacy

Identification for follow-up purposes:	
Name of State or territorial unit:	European Union
Name of expert:	[REDACTED]
E-mail address:	[REDACTED]
Telephone number:	[REDACTED]

At its 2023 meeting, CGAP mandated a WG “on PIL matters related to legal parentage generally, including legal parentage resulting from an international surrogacy arrangement.” (C&R No 4).

CGAP also mandated:

- a. “the Working Group first to explore provisions for, if possible, one new instrument on these matters, to further inform CGAP on policy considerations in relation to the scope and content of such instrument, including on the feasibility of reaching consensus. The Working Group could later explore the possibility of two instruments, if necessary;
- b. the Working Group to proceed on the basis that the aim of any new instrument would be to provide greater predictability, certainty and continuity of legal parentage in international situations for all persons concerned, taking into account their human rights, including, for children, those enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and in particular their right that their best interests be a primary consideration in all actions taken concerning them;
- c. the Working Group to draw on the ideas and assessments in the Final Report of the Experts’ Group, recognising that a number of elements and approaches identified could feature either on their own or in a combined way;” (C&R No 5)

Policy considerations

1. From the perspective of your State, what are the main policy considerations in relation to the **scope²** of such an instrument?

Under the EU Treaties, substantive family law, including parenthood, falls within the competence of the EU Member States. This comprises provisions laying down (i) requirements and procedures for the establishment of parenthood, (ii) requirements and procedures regarding domestic or international adoption, and (iii) requirements and procedures regarding domestic or international surrogacy arrangements. However, the EU has competence on family law, including parenthood, with cross-border implications.

On 7 December 2022 the Commission adopted a proposal on the recognition of parenthood between the EU Member States (please see the response to question 14

2. Scope issues include, for example:

- Possible inclusion of rules for legal parentage established without a judicial decision in the instrument (see section 3.3 of the [Final Report of the Experts’ Group](#) “The feasibility of one or more private international law instruments on legal parentage” (Final Report of the EG)).
- Possible inclusion of rules for legal parentage recorded in a public document in the instrument (see section 3.4 of the Final Report of the EG).
- Possible inclusion of rules on the recognition of domestic adoptions (see section 3.1.2 of the Final Report of the EG).
- Possible inclusion of rules on the recognition of domestic surrogacy arrangement (see section 5.1 of the Final Report of the EG).

for further information) which is currently being negotiated. The EU has not yet established a coordinated position as regards an HCCH convention on the establishment and/or recognition of parentage ("convention on parentage").

2. From the perspective of your State, what are the main policy considerations in relation to the **content**³ of such an instrument?

The EU has not yet established a coordinated position as regards an HCCH convention on parentage.

The Commission proposal of 7 December 2022 covers the recognition of parenthood established in an EU Member State, including the parenthood of children born out of surrogacy in another EU Member State under the rules of that EU Member State. However, the proposal leaves the recognition of parenthood established in a non-EU State to the recognition rules of each EU Member State. This and other aspects of the proposal are currently being discussed.

3. From the perspective of your State, what would increase the **feasibility** of reaching consensus on the scope and / or content of an instrument?

The answer to this question depends on the establishment of a coordinated EU position.

4. Are there elements that pose a **fundamental issue** and could lead your State to go as far as oppose the continuation of the work of the HCCH on a possible instrument? If so, what are they?

At the CGAP meeting of March 2023 the EU and its Member States supported the continuation of work on an HCCH instrument at Working Group level.

This is without prejudice to the establishment of an EU coordinated position concerning the individual elements of the future work.

Working methods for exploring provisions for one possible new instrument

5. How should the WG tackle the different issues raised in the Final Report of the EG, particularly the main challenges mentioned in the conclusion? Should the WG start to explore provisions on legal parentage in general or on legal parentage resulting from an international surrogacy arrangement?

As indicated in the EU coordinated position transmitted to the CGAP meeting of March 2023, in view of resource implications the Working Group should first focus on a convention on parentage and leave the consideration of a protocol on international surrogacy arrangements for a later stage.

6. Should the WG start from scratch or should, for some matters, refer to the Background Notes and other documents prepared for the EG meetings?

Subject to the establishment of an EU coordinated position, the work already done by the Expert Group should inform and guide the work of the Working Group.

7. What working method(s) should the WG adopt in general terms?

Please see the responses to questions 8 and 10.

³ The content of the instrument refers in particular to the approach to be followed for legal parentage established following an international surrogacy arrangement (see sections 4.3.4 and 4.3.6 of the Final Report of the EG).

8. Regarding the working methods for drafting provisions in particular, how should the drafting be organised?

- The Chair / PB should draft provisions which the WG can then discuss.
- Subgroup(s) should draft provisions during the intersessional period with the assistance of the chair / PB which the WG can then discuss.
- The WG should draft the provisions together during the meeting.
- Depending on the provisions, different approaches should be taken. Please explain:
Please insert text here
- Any other idea. Please explain:
Please insert text here

First meeting of the WG

9. Considering the mandate of the WG, how would you organise the first meeting? For example, what do you think the WG should discuss at the first meeting? Please provide as much details as possible.

Subject to the establishment of an EU coordinated position on the organisation of the work of the Working Group, the Working Group could hold exploratory discussions and address (some of) the following general matters at the first meeting:

i) organisation of the work to be carried out: whether the WG should first work on a convention on parentage and then on a protocol on international surrogacy arrangements, or whether work on a convention and a protocol should be carried out in parallel by, for example, different sub-groups that would then present their work to the WG in different meetings;

ii) goals of the convention on parentage: for example, should the convention cover only the recognition of parentage or also the establishment of parentage in cross-border situations (for example, through common rules on applicable law);

iii) in the light of the goals of the convention on parentage, the mechanisms to achieve the goals:

- should the convention include only direct jurisdiction rules or also rules on applicable law?

- should the convention include only recognition of court decisions or also recognition/acceptance of public documents?

- should the recognition/acceptance of public documents be subject to compliance with the jurisdiction rules (indirect jurisdiction rules)?

- should court decisions/public documents invoked for recognition/acceptance in another Contracting State be accompanied by a mandatory/optional certificate created by the convention?

Friends of the Chair⁴

10. Would you recommend a *Friends of the Chair* Group to assist the Chair?

⁴ *Friends of the Chair* refers to participants in an Experts' Group or Working Group which meet outside of the meetings of the Group (either after the meetings at the end of the day or in between two meetings) and assist the Chair in fulfilling its role.

Yes. Please explain:

Subject to the establishment of an EU coordinated position, a Friends of the Chair Group is generally useful to support the Chair in carrying the work forward.

No. Please explain:

11. Would you be interested in being a member of the *Friends of the Chair* Group?

Yes.

No.

Information session

12. Depending on the number of States an experts that have not participated in the EG, the PB may consider organising an information session on the work done by the EG on Monday, 6 November 2023. Would you be interested in participating in the information session?

Yes.

No.

Practices and lessons learnt from the Expert's Group on Parentage / Surrogacy (2016 - 2022)

13. If your State participated in the EG, are there any lessons learnt (either positive or negative) from this EG that you would like to mention for this WG?

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Legislative updates and case law in your State

14. Are there any relevant legislative updates or significant case law in your State on legal parentage, including surrogacy?

The European Commission adopted on 7 December 2022 a proposal for a regulation on the recognition of parenthood between the EU Member States: 'Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood':

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0695>.

The proposal aims to facilitate the recognition in an EU Member State of the parenthood established in another EU Member State by harmonising the EU Member States rules on:

- international jurisdiction

- applicable law for the establishment of parenthood

- recognition of court decisions and of public documents establishing parenthood

- acceptance of public documents not establishing parenthood but having evidentiary effects in the EU Member State of origin of (i) the parenthood already established (for example, a birth certificate), or (ii) another fact (for example, a notarial act recording consent by a spouse to the use of assisted reproductive technology, or an acknowledgment of paternity).

The proposal also provides for the creation of a European Certificate of Parenthood for use by the child or its legal representative to prove parenthood in another EU Member State.

The proposal covers the recognition of the parenthood of all children irrespective of how the child was conceived or born, of the child's type of family and of the child's age, provided the parenthood has been established in an EU Member State. The recognition of parenthood established in a non-EU State would continue to be governed by the law of each EU Member State.

The proposal would cover the recognition of the parenthood of a child after a domestic adoption in an EU Member State or after domestic surrogacy arrangements under the rules of an EU Member State. The proposal excludes the recognition of parenthood further to an intercountry adoption, whether or not the intercountry adoption is covered by the 1993 Hague Convention on intercountry adoption.

The proposal is currently being discussed with the EU Member States in the Council of the EU and in the European Parliament.

Further information can be found on this page:

https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/family-law/recognition-parenthood-between-member-states_en#documents

Any other comments / suggestions

15. Please insert here any other comments or suggestions for the upcoming WG you may have:

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