

Initiative on the recognition of parenthood between Member States

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^[1]. 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 prejudge 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.

[1] 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

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

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)[1]
- 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

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:

In Dutch case law, it is usually the birth certificate from another State that is not recognized in the Netherlands, in most cases because the birth mother is not included on the birth certificate (left blank or replaced by a non-birth parent). Following this non-recognition, the parenthood of the biological parent is usually eventually recognized in a judicial procedure.

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:

In these cases a lot of the rights mentioned above can be difficult to realize. Primarily, non-recognition of parenthood leads to uncertainty on nationality, parental responsibilities (a variety of rights is related to parental responsibilities e.g. visitation rights), name and health insurance.

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:

In Dutch case law, there are some examples of duo-mothers who wish to change their primary duo-parenthood created in the Netherlands by operation of law or recognition to an adoption, to increase their chances of recognition in another Member State.

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:

See under 8, there is no clear image of differences between cases of possible non-recognition and actual non-recognition.

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.

Information given was based on pending case law with the ECJ and national case law. As The Netherlands has relatively liberal laws on parenthood, problems with the child's right to free movement within the Union usually do not show up directly in national case law. The pending case law with the ECJ is taken to be known.

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:

The length of the procedure diverges, as the procedures in which the question of recognition comes up vary. A procedure for recognition can take up to more than 12 months.

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

If recognition is part of an administrative procedure, the recognition as such is free of costs. This can be the case when applying for a passport or for registration in the municipality's Personal Records Database. Fees can be due for the procedure as such, e.g. the issuing of a passport.

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?

The costs would be around 1250 Euro excluding VAT and without any other possible requirements, such as DNA-research.

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

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 organizing 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
- Other:
Please specify:

To not interfere in material family law any further than absolutely necessary, and in light of the principle of mutual trust, the Union should preferably refrain from applicable law rules, and limit an instrument to rules on recognition. In the rules on recognition, if the starting point would be that all judicial decisions and public documents (establishing, and in case of judicial decisions also changing or annulling parenthood) would be automatically recognized. Exceptions could be applicable in the form of indirect recognition-rules to exclude exorbitant jurisdiction and exceptions for, amongst others, cases where the birth-mother is not registered (in the birth certificate, decision or otherwise traceable) and the protection of due process. In light of the rights of the child, there can be only limited room for public policy exceptions. To be acceptable for the Netherlands, any instrument would need to safeguard the equal treatment of children regardless of the family form in which the parenthood exists.

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:

Every judicial decision effecting parenthood is registered in the birth certificate. In Dutch law it is therefore almost impossible to separate the public document from the judicial decision. If any fact that is registered in a public document that originates from a judicial decision is excluded, many of the less standard ways of becoming parent are excluded from recognition. This would infringe on the rights of the children involved.
See also under 18.

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:

Having regard to the limited scope of EU Regulation 2016/1191 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union (as laid down in article 2, par. 4 of that regulation), and also in light of the differences between member states in legal status of public documents, a European certificate of parenthood could be useful.

21. In your opinion, to what extent a possible EU instrument facilitating the crossborder 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 nondiscrimination

Very Positive

- Children's welfare,

including their emotional and psychological wellbeing

Mildly positive

- Facilitating the exercise of the right of children to travel and move within the Union with their families *Very Positive*
- Legal certainty for families as regards the parenthood of their children in another Member State *Very Positive*
- Legal certainty for national administrations and simplification of their procedures for the recognition of parenthood *Very Positive*
- Costs, time and burden for citizens related to court proceedings on the recognition of parenthood *Very positive*
- Costs, time and burden for national judicial systems related to court proceedings on the recognition of parenthood *Very Positive*

Please add here any other impact you consider relevant:

III. Other

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

The Netherlands fully supports the ambitions of the European Commission in its ambitions regarding the mutual recognition of parenthood within the European Union. It is of great importance that all European children can exercise the rights deriving from parenthood throughout the European Union. In particular, it is important that these children and their parents retain these rights when traveling within Europe.

For the Netherlands all European children within the Union must be able to travel and reside freely in all Member States. The Union is an area of freedom and security, without internal borders. As Commission President von der Leyen said: 'If you are a parent in one country, you are one in all countries'. As a child, you may not lose (one of) your parents at the border of a Member State. This principle is essential for the realization of the principle of the free movement of persons, the right to respect for private and family life and the prohibition of discrimination. For the realization of the rights contained in articles 7 and 21 of the Charter of Fundamental Rights of the European Union and Articles 8 and 14 of the European Convention on Human Rights the recognition of parenthood is inevitable.

The Dutch government therefore welcomes a proposal from the European Commission for a regulation that will ensure that when parenthood is established in a certain member state, it is recognized throughout the EU so that children retain their rights in cross-border situations, even when a child travels or moves within the EU. To be acceptable for the

Netherlands, any legislative instrument would need to safeguard the equal treatment of children regardless of the family form in which the parenthood exists.

In this context, it is also important to refer to the work of an expert's group of the Hague Conference, which is working on an international instrument regarding parenthood. A final report of its work is expected in 2023. The Netherlands supports the work of the Hague Conference, as this can contribute to legal certainty regarding the recognition of parenthood in an increasingly globalizing world.