

AGF position on the planned EU Parenthood Regulation

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INTRODUCTION

The representatives of the EU Member States are currently negotiating a proposal from the EU Commission for a Council Regulation on the mutual recognition of parenthood in the EU. The aim of the planned regulation is to ensure that the parenthood of a child that is legally established in one EU member state is also recognised by the other member states. This is intended to clarify with legal certainty that parental responsibility and the resulting rights and obligations are equally valid in all member states.

In December 2022, the European Commission presented a proposal for a Council Regulation (COM(2022) 695 final). The proposal contains provisions on applicable law, international jurisdiction, rules on the cross-border recognition of parental decisions and the acceptance of official documents and the introduction of a European certificate of parenthood. In December 2023, the European Parliament approved the proposal without any significant changes. The vote of the Member States in favour of this or a revised proposal, which must be unanimous, is currently being negotiated. There are some points of conflict in the public debate regarding the proposal. These mainly concern possible effects on existing national regulations, in particular regulations relating to same-sex marriages, adoptions and the recognition of surrogacy. The critical voices suspect that this new regulation could lead to a legalisation of parenthood that is not intended by national legislators.

In their position, the family organisations of the AGF demand that the discussion on the topic must take place in a fact-based manner against the background of a pluralistic society in which different family forms have their place regardless of origin, gender, religion and sexual orientation. To this end, the situations of different family forms must be taken into account and measures to improve the reality of families' lives must be implemented without discrimination. To this end, during the discussion of the new parenthood regulation, it's also the critical points that must be openly addressed. However, the core objectives of the proposal to increase legal certainty and predictability for all families in the European Union with regard to the recognition of parenthood must not be lost sight of.

BACKGROUND AND OBJECTIVES OF THE PLANNED REGULATION

The objectives of the planned ordinance touch upon several aspects. The motive behind it is to promote equality between different family forms and prevent discrimination against them. This includes recognising parenthood regardless of the form of the family (e.g. same-sex couples or with regard to how the parental relationship came about, for example through adoption). In particular, children from rainbow families or with binational parent couples often have difficulties clarifying their legal situation when moving to other EU member states, as divergent regulations on marriage, parenthood, adoption and reproductive medicine exist in the member states. This leads to complex legal situations, which entail a high level of recognition and administrative effort for the families concerned, including possible statelessness of the child and divergent parent-child relationships in the different countries. Thus, the existing problems with the recognition of parenthood restrict the freedom of movement of the families within the EU.

The planned regulation should therefore enable all family forms to move from one Member State to another without legal obstacles. The EU Commission's proposal aims to increase legal certainty and predictability for all families in the European Union with regard to the recognition of parenthood. The procedures for recognising parenthood within the EU are to be simplified and harmonised. This should reduce the administrative burden for families and authorities and enable faster and more efficient recognition. The aim is to ensure that children enjoy the same rights and legal protection throughout the EU, regardless of which member state they are in or where they were born.

AGF POSITION ON THE PLANNED PARENTHOOD REGULATION

The member organisations of the AGF support the goal of reducing discrimination against individual family forms. They share the analysis that the current legal regulations can lead to families within the EU having problems when moving to other member states or when applying for identity documents for children. The primary aim is to protect

children's rights to parenthood and create legal certainty for families. In addition, the material and psychological burdens on the families by the sometimes very complicated recognition procedures must be reduced.

This requires, as proposed by the Commission, a system of rules for the cross-border recognition of parenthood. The AGF therefore supports the EU's efforts to establish international rules and competences, the creation of conflict-of-law rules to determine the applicable national law for the determination of parenthood and the mutual recognition of court decisions on parenthood.

The AGF calls on the Member States to conduct the negotiations productively with these objectives in mind and to bring them to a positive end. The solutions to be found must fulfil far-reaching requirements, as the interdependence of the parenthood regulation with other regulations is complex. The central questions of who is a parent of a child and what rights and obligations they have, affect citizenship law, maintenance law and inheritance law. This requires an open and appropriate debate.

With regard to the potential impact on surrogacy, the AGF calls for the concerns to be taken seriously in the concrete formulation of the regulation. It recognises that the Commission's proposal does not aim to introduce surrogacy. The question of legalising surrogacy must be answered in other processes following an intensive social debate. The answer to a question that is so at the heart of social norms must not be provided by legalisation "through the back door" as a result of an EU regulation aimed at other problems. Similarly, it must be avoided that the focus of the debate on the issue of surrogacy is used as an alibi to reject the Commission's actual concerns and to discriminate against family forms. In addition to the challenging issue of surrogacy, the AGF organisations emphasise that the specific design of the European parental certificate provided for in the EU Commission proposal must ensure that children's Right to know their origins is not compromised..

Taking into account these reservations regarding unintended effects, the AGF strongly supports the improvement of legal certainty and predictability in recognising parenthood for all families. Children have a right to legal and social security in their family relationships and to secure parenthood, regardless of their place of residence in the European Union.

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