The European Legal Forum

Forum iuris communis Europae

1-2024
pp. 34 – 39
24th Year January-February 2024

PRIVATE INTERNATIONAL LAW AND INTERNATIONAL CIVIL PROCEDURE

The Hague Conference of Private International Law's "*parentage/surrogacy*" project

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1. Procreative tourism and "limping" parentage

Parentage is undergoing a (r)evolution, which necessarily "affects" its regime (i.e. the rules aimed at establishing and challenging the relationship between a child and one or both parents) including the key principle *mater semper certa est* (meaning that the identity of the mother is always certain and known). Such a (r)evolution is mainly due to the scientific developments in assisted reproductive techniques (hereinafter ARTs) and to their widespread use: while recourse to specific ARTs such as artificial insemination, *in vitro* fertilization, surrogacy and mitochondrial donation[1] is well-established, studies on the possibility of using an artificial womb are still ongoing[2].

National legal systems have to decide whether to allow or restrict the use of these techniques (and under what conditions) and also whether to apply and adapt the rules and principles governing the establishment and contestation of biological parentage to intentional parentage relationships resulting from recourse to these techniques or to develop new ones.

Such choices are complex and necessarily influenced by the social, cultural, and ethical contexts of each legal system. As a consequence, in this field, a real mosaic of rules exists, which, along with the increasing individual mobility, gives rise to the phenomenon of so-called "*reproductive tourism*", i.e. the movement of one or both intending parents to a State where a particular ART is available (or available under different conditions, usually easier to fulfil, than those envisaged in the home State). The establishment of parentage in that State often faces obstacles when the family returns to the home State.

There is a growing number of "limping" parentage relationships[3] having prejudicing consequences for children's rights in particular. This is confirmed not only by the relevant case-law of international and national courts, but also by the ongoing work of the major international actors operating in the field of children's rights and private international law and procedure (such as, for example, the International Social Service[4], the

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The contribution presents part of the research undertaken under the PRIN 2022 project "Fluidity in family structures - International and EU law challenges on parentage matters" (prot. n. 2022FR5NNJ), financed by the Ministry of University and Research of the Italian Republic and by the European Union - Next Generation EU. Views and opinions are of the author only.

1 On this topic, see *A.B. Leiser*, Parentage Disputes in the Age of Mitochondrial Replacement Therapy, in Gerogetown Law Journal, 2016, 104, pp. 416-434.

2 On this topic, see C. Page, Artificial Womb Technology and the Safeguarding of Children's Rights Through an Analysis of the Right to Identity, available at *https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-privaatrecht/jr-page---thesis-2017.pdf.*

3 The terms filiation, parentage and parenthood are frequently used to make reference to the relationship between parents and children. However, differences exist as pointed out by A. Bainham, Parentage, Parenthood and Parental Responsibility: Subtle, Elusive Yet Important Distinctions, in (edited by) S. Gilmore, Parental Rights and Responsibilities, 2017, pp. 159 ss.; R. Leckey, Filiation, 2020, 66:1, RD McGill, 73.

4 The International Social Service (hereinafter ISS) is an international non-governmental organization promoting the protection of children's rights; it is the contact point of the national entities which work in this field. For further information on the ISS's mission, see the official webiste: *https://iss-ssi.org/*. In 2021 ISS adopted the so-called "Verona principles" for the protection of children born following a surrogacy agreement. It is a soft law

United Nations[5], the European Union[6], the International Law Institute[7]).

Among the above actors, the role of the Hague Conference on Private International Law (hereinafter HCCH) is particularly relevant since its mission is to adopt uniform rules of private international law and procedure in order to ensure the continuity of legal relationships across borders and to avoid limping situations[8].

2. The HCCH project "parentage/surrogacy": from the appointment of the Expert Group to the publication of the final report

The HCCH is a global organization with a membership extended to 90 members. Since April 3, 2007, it has included the European Union among its members, following a modification of its statute to allow the membership of Regional Economic Integration Organizations[9]. As mentioned, the mission of the HCCH is to achieve progressive unification of private international law rules through multilateral conventions aimed at facilitating the lives of individuals and legal entities in transborder relations in three main areas: international legal cooperation and disputes, international commercial and financial relations, and family relations and property in an international perspective.

In the so-called "open society"[10], it is increasingly difficult for a situation/family relationship to be connected just to a single legal system. Therefore, there is a need for a legal framework of reference that, while respecting differences between legal systems, provides solutions to the problems deriving from the cross-border dimension of the situation.

In pursuing this mission, the HCCH has adopted over forty instruments of international law on various subjects over the years and is currently working on various projects[11], including the "parentage/surrogacy" project.

In 2001, during consultations on the organization's future work, the HCCH first considered issues arising from so-called "limping" parentage situations. However, it was only from 2010 that its intergovernmental body (the Council of General Affairs and Policy, here-

act, which has been adopted with a view to provide indications on the protection of children' rights born following the abovementioned ART, The final version of the *Verona principles* is available at the following link: *https://www.iss-ssi.org/wp-content/uploads/2023/03/VeronaPrinciples_25February2021-1.pdf*.

5 Within the UN, particularly relevant is the activity of the Special Rapporteur on the sale and sexual exploitation of children, which in 2018 has adopted a first report, containing inter alia a thematic study on surrogacy and sale of children (see the document available at the following link *https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/007/71/PDF/G1800771.pdf?OpenElement*, pp. 3-20) and in 2019 a thematic study on safeguards for the protection of the rights of children born from surrogacy arrangements (see the document available at the following link: *https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/216/49/PDF/N1921649.pdf?OpenElement*).

6 On 7th of December 2022, the 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 COM (2022) 695 def has been published. On the proposal, see A. Wysocka Bar, EC's initiative on Recognition of Parenthood - An Update, https://eapil.org/2021/ 12/15/ecs-initiative-on-recognition-of-parenthood-an-update/, E.M. Magrone, Un nuovo tassello verso il mutuo riconoscimento delle situazioni familiari: la proposta di regolamento UE in materia di filiazione, in Studi sull'integrazione europea, 2023, pp. 101-135; D. Danieli, La proposta di Regolamento UE sul riconoscimento della filiazione tra Stati membri: alla ricerca di un equilibrio tra obiettivi di armonizzazione e divergenze nazionali, 2023, http://www.sidiblog.org/2023/02/23/la-proposta-di-regolamento-ue-sul-riconoscimento-della-filiazione-tra-stati-membri-alla-ricerca-di-un-equilibrio-tra-obiettivi-di-armonizzazione-e-divergenze-nazionali/; M. Castellaneta, Riconoscimento della genitorialità nello spazio UE, la Commissione europea presenta la sua proposta, www.marinacastellaneta.it, post 9 dicembre 2022; L. Valkova, The Commission Proposal for a Regulation on the Recognition of Parenthood and Other Legislative Trends Affecting Legal Parenthood, in Rivista di diritto internazionale privato e processuale, 2022, pp. 854 ss.; G. Biagioni, Malintesi e sottintesi rispetto alla proposta di regolamento UE in tema di filiazione, 2023, *http://www.sidi blog.org/2023/04/03/malintesi-e-sottintesi-rispetto-alla-proposta-di-regolamento-ue-in-tema-di-filiazione/*.

7 Reference is made to the 2021 Resolution adopted on the topic "Human Rights and private international law", available at the following link *https://www.idi-iil.org/app/uploads/2021/09/2021_online_04_en.pdf* and, in particular, to art. 10 of the above Resolution stating: "*Respect for the human rights to family life and to private life requires the recognition of personal status established in a foreign State in accordance with the law of that State, provided that the person concerned has a significant connection with that State and such recognition does not result in a manifest violation of the international public policy of that State where recognition is sought*". On the contents of the Resolution, see P. Pirrone, La Risoluzione dell'Institute de Droit International su Human Rights and Private International Law: considerazioni generali, In Diritti umani e diritto internazionale, 2022, pp. 243-260. On art. 10 of the Resolution, see G. Rossolillo, Art. 10 della risoluzione dell'Institut de droit international su Human Rights and Private International Law: la continuità degli status come garanzia del rispetto della vita privata e familiare, id, pp. 531-542.

8 See art. 3 of the HCCH Statute, available at *https://www.hcch.net/en/instruments/conventions/full-text*. The European Union is a HCCH member starting from 3 of April 2007 (https://www.hcch.net/en/news-archive/details/?varevent=129). The EU's membership comes in addition to (and therefore does not replace) the one of the EU Member States, which maintain their individual membership to the above organization. On the role of the HCCH, see H. van Loon, The Hague Conference on Private International Law, 2 Hague Just. J., 2007, p. 75 ss.; T. John, R. Gulati, B. Koehler, The Elgard Companion to the Hague Conference on Private International Law, Elgar, 2020.

9 The European Union is a HCCH member starting from 3 of April 2007 (https://www.hcch.net/en/news-archive/details/?varevent=129). The EU's membership comes in addition to (and therefore does not replace) the one of the EU Member States, which maintain their individual membership to the above organization. On this topic, see H. van Loon, The Hague Conference on Private International Law, at p. 78.

10 On this topic and on the role of private international law in the global society, see J. Basedow, The Law of Open Society. Private Ordering and Public Regulation in the Conflict of Laws, Brill, 2015.

11 A list of the ongoing projects is available at the following link: L'elenco dei progetti attualmente in corso è reperibile al seguente link: *https://www.hcch.net/en/projects/legislative-projects*.

inafter 'CGAP')[12] invited the Permanent Bureau to work on private international law issues concerning the status of children[13], particularly the issue of the establishment and recognition of the parent-child relationship[14].

The CGAP decided to establish an Experts' Group (hereinafter EG) with the task of considering the feasibility of addressing private international law issues related to the status of children, including those arising from international surrogacy agreements[15]. According to the rules of procedure of the HCCH, the EG is considered an "exploratory body", conducting research, analysis or, as in this case, considering issues within its mandate. EGs as well as Working Groups (hereinafter WGs) lack decision-making power: they can adopt non-binding acts, known as conclusions and recommendations, which may be approved by the CGAP[16].

The EG for the parentage/surrogacy project was composed of delegates from twenty-four HCCH member States[17] and four observers, including UNICEF and the International Social Service given their role in protecting children's rights. The Experts' Group met twelve times between 2015 and 2022 and published a report on the progress reached after each meeting[18].

From the beginning, the EG was divided on whether to consider all private international law and procedural issues that may arise in cases of cross-border parentage and whether to adopt a more functional approach focused on the recognition of the parentage relationship, which seemed to be more problematic issue in practice. Despite this tension, the EG has considered all private international law issues related to parentage over the years and has discussed possible solutions.

In December 2022, the final report was published, outlining the general characteristics of two possible international law instruments: (i) an instrument on parentage in general (the so-called convention); and (ii) an instrument dedicated to parentage resulting from international surrogacy agreements (the so-called protocol), for which the need for specific analysis and regulation was confirmed during the work.

Far from presenting unique solutions to the numerous issues raised, the final report reflects the diversified positions that emerged during the work, highlighting the need to continue work on the subject. The final report was submitted for the attention of the CGAP, which, during the annual meeting in April 2023, decided to continue the work through the establishment of a WG[19].

Before analyzing the main distinctive features of each of the instruments elaborated by the EG, the ones they have in common will be considered.

Both instruments aim to reconcile the objectives of predictability, certainty, and continuity in parentage relationships for all parties involved, this being the typical goal of private international and procedural law instruments, with the need to protect the human rights of individuals involved in parentage relationships, particularly the rights enshrined in the UN Convention on the Rights of the Child.

It is an ambitious goal, considering that the HCCH has a very specific mission, limited to the adoption of uniform rules of private international law. However, at the current stage of evolution, the irreversible interaction between private international law rules and human rights rules, especially in such a delicate matter as parentage relationships, needs to be specifically considered.

A second common element of the two instruments is that, according to the final report, they should apply to all individuals regardless of the age, a person's status being relevant throughout their entire life.

However, both instruments should only apply to the issue of parentage, excluding all consequences deriving from the establishment of legal parentage, such as citizenship, parental responsibility, maintenance rights, or succession rights. The common goal of both instruments is to ensure that children have the same parents in all member States.

Therefore, it is up to the requested State to determine the nature and extent of rights and obligations arising from the recognition of legal parentage according to its internal rules (private international law rules included).

An alternative (also to make both instruments more attractive to States) could also be to envisage "*de mini-*

[12] Under art. 4 of the HCCH Statute, the CGAP is composed by all Members and its meeting are held, in principle, every year. It directs the activities of the Permanent Bureau (see art. 6).

[13] See M. Albornoz, *Parentage and international surrogacy – common solutions for a contentious issue?*, in (edited by) T. John, R. Gulati, B. Ben Köhler, The Elgar Companion to the Hague Conference of Private International Law, Edward Elgar, 2020, pp. 361-372

[14] See "Observations concerning the Strategy of the Hague Conference – Observations made by other international organisations and observations made in a personal capacity in response to the Secretary General's letter of 30/31 July 2001" (Prel. Doc. No 20 for the attention of the Nineteenth Session), available at the following link: *https://www.hcch.net/de/projects/legislative-projects/parentage-surrogacy/surrogacy-2010-and-prior.*

[15] See Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference, 24-25 Marzo 2015, available at the following link: *https://assets.hcch.net/upload/wop/ gap2015concl_en.pdf.*

[16] See lit. E of the Rules of procedure available at *https://www.hcch.net/ en/governance/rules-of-procedure.*

[17] Experts come from the following Members; Argentina, Australia, Canada, China, European Union, France, Germany, India, Israel, Italy, Japan, Mexico, The Netherlands, New Zealand, Philippines, Russian Federation, South Africa, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States.

[18] Reports are availabe at the following address: *https://www.hcch.net/ en/projects/legislative-projects/parentage-surrogacy.*

[19] See the Final Report "The Feasibility of one or more private international law instruments on legal parentage", Prel. Doc. No 1 November 2022, available at *https://assets.hcch.net/docs/6d8eeb81-ef67-4b21-be42-f7261d0cfa52.pdf.*

mis" legal effects deriving from the establishment of parentage. In doing this, attention shall be paid to the need not to hinder the operation of other international law instruments adopted under the HCCH aegis (such as, for example, the 1996 Hague Convention on measure of protection for children or the 2007 Hague Convention on maintenance obligations)[20].

With specific reference to children born following international surrogacy agreements (hereinafter ISAs), given the strong differences in the rules existing at national level on this topic as well as the significant human rights protection issues arising, the EG clarified that its activity on the topic should not be understood as endorsing the practice of surrogacy and the possible adoption of any instrument should not be intended to encourage States to introduce surrogacy as a permitted practice[21].

3. The project's results so far: the draft convention on parentage

In addition to excluding surrogacy-related filiation arising from international agreements (which, as mentioned, falls within the scope of the Protocol, see the following paragraph), the draft convention also excludes parentage as a result of inter-country adoption. This choice is justified by the need for the HCCH to coordinate the scope of this instrument with that of the 1993 Inter-country Adoption Convention[22].

While the EG has reached a uniform position on the above choice and, therefore, on the exclusion of parentage following inter-country adoption falling within the scope of application of the above convention, the issue concerning the possibility of including adoptions lacking cross---border elements within the scope of this instrument (so-called domestic adoption) is controversial.

Since adoption is a typical method of establishing parentage, it would seem reasonable to include it in the scope of application of the protocol, taking also into consideration that, in the case of its exclusion, discrimination would arise vis-à-vis children whose parentage has been established following a domestic adoption.

On the other hand, adoption is a protection measure[23] and in respect of purely domestic adoptions the regime is far from uniform. In some legal systems, for example, purely domestic adoption is the instrument to establish parentage for children born following an ISA and where there are no biological ties between the intended parents and the children.

With reference to the scope of application of the protocol, the EG considered three different categories of rules: (i) rules dedicated to filiation established (or not established, following contestation) through a judgment; (ii) rules dedicated to filiation established without judicial proceedings, i.e., automatically ex lege or through an act (for example, a recognition act), and finally, (iii) rules on filiation recorded in a public document, such as a birth certificate.

In relation to the first category, attention has focused on the development of a rule of automatic recognition, without the possibility of reviewing the judgment's merits and without the need to initiate a recognition procedure in the State where recognition is sought, provided that the decision is final and produces legal effects in the State where it was pronounced.

Classic grounds for non-recognition have been discussed by the EG in its meetings: particular attention has been paid to public policy and its interaction with the child's best interests principle.

There has been discussion about considering fraud on the law as an obstacle to recognition, along with the lack of consideration for the child in proceedings establishing the filiation relationship.

The discussion has also extended to the possibility of establishing jurisdiction and applicable law rules, as well as the possibility of introducing a tool (such as a certificate) that, once attached to the judgment establishing the existence of a filiation relationship, could facilitate its circulation among contracting States.

Concerning conflict rules, the identification of relevant connecting criteria is in fact problematic: while the birth State of the child appears suitable to constitute a connecting element applicable in general[24], due to the fact that such law is easily identifiable, given the obligation in all legal systems to proceed with birth registration[25], relevant is also the connection with the State of habitual residence of the woman/person who gave birth to the child as well as the child itself when such a

[20] Reference is made to the Convention of 19 October 1996 on jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of parental responsibility and measures for the protection of children, available at the following link *https://www.hcch.net/ en/instruments/conventions/full-text/?cid=70* and to the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Maintenance, available at the following link *https://www.hcch.net/en/instruments/conventions/ full-text/?cid=131*.

[21] See Report of the January/February 2019 meeting of the Experts' Group on Parentage/Surrogacy, para. 9, available at the following link: *https://assets.hcch.net/docs/55032fc1-bec1-476b-8933-865d 6ce106c2.pdf*.

[22] Reference is made to the Convention of 29 May 1993 on Protetion of Children and Co-operation in Respect of Inter-country Adoption, available at the following link: *https://www.hcch.net/en/instruments /conventions/full-text/?cid=69*.

[23] See art. 20 of the New York Convention on the rights of the child of 20th of November 1989.

[24] See para. 57 of the Final Report.

[25] On this topic, see F. Jault Seseke, White paper 10, civil status, available at the following link: *https://www.ilaparis2023.org/en/white-paper/civil-status/*.

solution is suitable to satisfy the principle of the child's best interests.

With regard to the rules applicable to filiation recorded in public documents (such as the birth certificate, but also in the case of a notarial deed or an extract from the civil status register), the EG has considered adopting specific rules since, in practice, filiation often results from such documents rather than through a judicial procedure and, therefore, a judgment.

The main problem arising concerns the effects that can be attributed to the public document. If, with a view to ensuring continuity in the filiation relationship, the foreign public document could, in principle, be granted the same effects as those produced in the State where the public document was issued, this solution could result in attributing even stronger effects to the "foreign" document compared to the analogous public document that could be issued in the State required to proceed with recognition[26].

Less problematic, but also less effective from the perspective of the continuity of legal parentage, would seem to be the solution of recognizing only probative effects to the foreign public document, with the possibility of overcoming the presumption when there is evidence to the contrary.

Additional aspects explored during the EG's work include (i) the possibility of introducing a parentage certificate to overcome translation problems and issues related to the effectiveness of the public document in space; (ii) a general obligation on States regarding access to and preservation of information[27]; and finally, (iii) cooperation rules[28].

4. The draft protocol on parentage following ISAs

In addition to the specificities characterizing cases of filiation resulting from ISAs, the choice of envisaging a specific instrument for these relationships also found justification in the fact that not all States may be interested in having uniform private international law rules on the matter.

Therefore, the potential lack of interest of a State in the instrument dedicated to parentage resulting from ISas would not prejudice the possibility for that State to become a contracting party to a different instrument dedicated to parentage resulting from ARTs other than surrogacy.

When considering specific rules for parentage resulting from ISAs, a first issue concerned the scope of application of these rules, particularly whether they should be limited to the most frequent cases of parentage established through a judgment or if it would be appropriate to extend the application of the instrument to cases of automatic establishment of parentage *ex lege* or through a public act/document.

Alongside this issue, two other delicate questions arose regarding the purpose of the protocol and possible solutions to the recognition problem. Indeed, both questions have in common the theme of the so-called 'safeguards,' i.e., the requirements that ISAs should meet to make the recognition of the related filiation relationship possible. It is complex for States to converge on these requirements, even though soft law instruments exist that attempt to define *de minimis* conditions for surrogacy so that this controversial practice can be considered compatible with human rights.

There is no consensus regarding recognition techniques and the role that the so-called safeguards or human rights protection standards can play in this regard. The results of the discussion on these aspects are particularly interesting: various solutions are mentioned in the EG's final report.

The first is the so-called '*a priori*' approach, which bears similarities to the approach used in the 1993 Hague Convention. It envisages *ex ante* coordination, i.e., before the child is born, among the states involved. Once it is ascertained that a particular ISA is compatible with *de minimis* guarantees for the fundamental rights of the individuals involved – guarantees expressly identified in the instrument and possibly additional guarantees foreseen by the State where recognition is sought – parentage established in the State where the child is born will be automatically recognized in the requested State in this regard.

The main advantage of this solution lies precisely in the fact that coordination occurs *ex ante*, before the birth of the child. Consequently, the State requested to proceed with recognition does not find itself in the uncomfortable position of a *fait accompli*, and therefore, an already existing parentage that may be problematic. The *a priori* approach requires an effort from all legal systems, whether liberal or more conservative. Liberal legal orders, for instance, need to make changes to their domestic regulations regarding the regulation of ISAs to align them with the minimum guarantees provided by the instrument (and any specific features specified by other legal systems). Conversely, more conservative States would be required to proceed with recognition of parentage whenever a surrogacy agreement is compatible with the *de minimis* requirements stipulated by the Protocol.

The second proposed method is the so-called *a posteriori* approach, under which any assessment of the compatibility of a filiation bond occurs following the birth of the child. Consequently, if the receiving State does not approve the methods by which the surrogacy agreement was reached (for example, because there is

[26] See para. 64 of the Final Report concerning the effects of public documents.

[27] See para. 74 of the Final Report. A similar rule is envisaged under art. 30 of the 1993 Hague Convention.

[28] See paras. 75-76 of the Final Report.

no genetic link between the child and the intended parents or because compensation significantly exceeding the costs associated with gestation was provided), the filiation relationship will not be recognized.

A third solution that the EG considered is related to the combination of the two methods: in principle, the *a posteriori* approach is considered as a general discipline, but the *a priori* approach has nevertheless provided for optional rules to which States can decide to commit at any time.

5. Concluding remarks: the "Parentage/Surrogacy" Project in future perspective

During the annual meeting in April 2023, the CGAP acknowledged the recommendations in the final report of the EG regarding the need for further work on both instruments and decided to establish a WG. Over a month after the publication of the final report, the European Commission released a proposal for a regulation on parenthood. Without entering into the details of the Commission's proposal[29], it is worth noting that the main difference between the two legislative projects is that the Commission's proposal does not aim to identify specific rules for cases of filiation resulting from ISAs.

It seems that the CGAP's intention is to follow this approach, since it has given to the WG the mandate to work on a new unified instrument. This involves assessing the possibility of obtaining consensus and, if necessary, considering the possibility of two instruments at a later stage. It is noteworthy that the CGAP has emphasized the need for Member States to designate delegates to participate in the Working Group who can express the policy views of their respective States. This reflects the intention to identify possible regulatory solutions among the various options proposed in the final report prepared by the EG.

In any case, the future of both the "Parentage/Surrogacy" project and the Commission's proposal, and thus the most important draft instruments of private international law in the considered matter, remains uncertain. On the one hand, within the works of the HCCH, the difficulties in reaching shared solutions highlighted in the reports prepared by the EG confirm a strong fragmentation of positions. On the other hand, in the context of the European Union, a regional setting characterized by a higher level of harmonization, at least in terms of protected fundamental values, the Commission's proposed solutions, while extremely innovative and pragmatic, do not currently seem reconcilable with the positions adopted internally by many EU Member States.

While awaiting the consideration of the future development of the two legislative projects, some distinctive features can be identified. One of the most characteristic aspects of the "Parentage/Surrogacy" project is undoubtedly the draft project and the regulatory solutions it envisages, especially concerning different approaches to the recognition of parentage resulting from ISAs.

On the contrary, the Commission's proposal, by providing a scope suitable to encompass all scenarios of establishing parentage, albeit not capturing the specificities of ISAs, has the merit of being a simpler and likely more enduring instrument. The developments in ART's techniques are still unpredictable. Therefore, the Commission's regulation, focusing on establishing filiation, regardless of the reproductive techniques used, might be more flexible. However, for the same reason, it may not be "acceptable" to all EU Member States.

Significant differences are also noted regarding the solutions identified on parentage established through public documents. The Commission's proposal dedicates ample space to the recognition of public documents, distinguishing between documents with binding effects and those without such effects. In contrast, the Hague project envisages a single category of public documents.

The main challenge both instruments face is the "management" of the interaction between private international law rules and rules protecting fundamental rights, which is central and particularly complex in this matter, especially when recognition is at stake. While, in the Commission's proposal, human rights constitute the primary objective of the instrument, only secondarily considering the classic goals of certainty and predictability that have always inspired the European Union's actions in the field of civil judicial cooperation, within the HCCH, the traditional activity of producing uniform rules in private international law that also respect the human rights of those involved seems more problematic.

Despite this, the considerations made by the EG regarding the methods of recognizing filiation resulting from surrogacy agreements, and particularly the proposal to adopt the *a priori* recognition method, represent a significant advancement, perhaps the most important in the subject matter. One can only hope for its appreciation by the WG and also in the EU context.

[29] See I. Queirolo, F. Pesce, S. Dominelli, F. Maoli *supra*.