



European Parliament

LEGISLATIVE TRAIN 02.2024

7 AREA OF JUSTICE AND FUNDAMENTAL RIGHTS / UP TO €7BN

CROSS-BORDER ASPECTS OF ADOPTIONS / UP TO €1.65M

[LEGISLATIVE INITIATIVES]

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CONTENT

All Member States have national provisions governing the recognition of adoption orders, but legal procedures differ significantly across the EU. As legislation currently stands, there is no legal protection or guarantee that domestic adoptions carried out in one EU Member State will be recognised in another. This means that European families who move to another Member State after adopting a child may face significant practical problems, and may be obliged to go through national recognition procedures or even to re-adopt their child. The situation leads to legal uncertainty and may harm children's rights, including the right to family life, non-discrimination, inheritance rights and the right to nationality.

Substantive family law is an area of national competence, but the EU may adopt measures on aspects of family law with cross-border implications. Parliament adopted a resolution on improving adoption law in 1996. In 2009, the European Commission and the European Parliament both issued studies showing that there was public support and further scope for EU action on adoption of children and putting forward concrete recommendations. The European Parliament subsequently adopted a Resolution on international adoption in the European Union, which called for consideration of coordinated European level strategies and mutual legal recognition of the documents necessary for adoption. This EP Resolution has not so far been followed by a legislative initiative by the European Commission.

During the European Parliament's eighth term, its Committee on Legal Affairs (JURI) issued a legislative initiative report on cross-border recognition of adoptions with specific recommendations to the Commission (rapporteur, Tadeusz ZWIEFKA, EPP, Poland). The preparatory work highlighted that whilst the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption requires automatic recognition of adoptions, it only applies to situations where adoptive parents and the adopted child come from two different countries and does not cover domestic adoptions, i.e. situations where the adopters complete the adoption procedure in one Member State, and then later, decide to move to another EU Member State with the child. In addition, the Brussels II Regulation does not cover adoption or the recognition of adoption orders. Therefore, at the EU level, there is currently no legal instrument, which regulates the recognition of an adoption order made in another Member State.

The European Added Value Assessment (EAVA) accompanying the report analysed possible policy options and the potential additional value of taking legislative action at the EU level. It estimated that, as well as the social, health and fundamental rights consequences for individuals, the cost of the lack of EU rules on automatic recognition of adoption decisions is approximately €1.65 million per annum. It argues that EU legislation would reduce administrative and legal costs and allow for better protection of the interests of the child

and of the fundamental rights of adoptive parents. Any EU legislation should cover: issues of jurisdiction and conflict of law; a uniform certification process and adoption certificate, as well as the effects of certification; conditions for recognition of adoption orders; a principle of mutual recognition as a default principle; and grounds for non-recognition.

The subsequent European Parliament resolution of 2 February 2017 with recommendations to the Commission on cross border aspects of adoptions, based on the own-initiative legislative report:

- Considers that there is an urgent need for a European instrument covering the automatic recognition of adoptions which have taken place in another Member State.
- Requests the Commission to submit a proposal for a regulation providing for automatic cross-border recognition of adoption orders across the EU by 31 July 2017, based on Article 67(4) of the Treaty on the Functioning of the European Union, which concerns the mutual recognition of judgements and decisions and Article 81(3) TFEU, which concerns measures in the field of family law.
 - Specific recommendations include the creation of a European adoption certificate, to speed up recognition, through a Commission delegated act.
 - Stresses that the best interests of the child must be paramount in all decisions in adoption matters and that cases must be assessed on their individual merits.

On 28 April 2017, Parliament also adopted a resolution on safeguarding the best interests of the child across the EU on the basis of petitions addressed to the European Parliament, which stresses that it is children who pay the price when EU member states fail to cooperate and protect children's best interests in legal proceedings such as cross-border adoption decisions, once again notes the lack of a mechanism for automatic recognition of domestic adoption orders issued in other Member States; and calls on the Member States and the Commission to regulate on recognition of domestic adoption.

The European Commission has taken note of the recommendations set out in Parliament's resolution of 2 February 2017, stating, *inter alia*, that given the sensitivity of this area of law, a legislative proposal would require unanimity in the Council to be adopted and any initiative on the recognition of adoption orders at EU level needs to be evidence based.

In March 2019 the Hague Conference on Private International Law issued a report on recognition of domestic adoptions illustrating the difficulties that can result when recognition is not automatic. It finds that cases where families are seeking cross-border recognition of domestic adoptions are occurring in practice and in significant numbers in some EU countries. The report also notes that many of the problems identified by the Parliament were also flagged by HCCH Members.

References:

- European Parliament, [Resolution of 12 December 1996 on improving the law and cooperation between the Member States on the adoption of minors](#), 1995/2106(INI)
- European Commission, [Final Report of the comparative study relating to procedures for adoption among the Member States of](#)

[the European Union, practical difficulties encountered in this field by European Citizens within the context of the European Pillar of Justice and Civil Matters and means of solving these problems and of protecting children's rights](#), 2009.

- European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs, [International adoption in the European Union](#), Study, 2009
- European Parliament, [Resolution of 19 January 2011 on international adoption in the European Union](#), 2010/2960(RSP)
- European Parliament, Policy Department C, [Adoption: Cross-Border Legal Issues](#), PE 536.477, 25 November 2015. A compilation of briefing notes prepared for a [joint workshop](#) by the JURI and PETI Committees on 1 December 2015.
- European Parliament, Policy Department C, [Adoption: Cross-border Legal Issues and Gaps in the European Union](#)
 - European Parliament, EPRS, European Added Value Unit, [Cross-border recognition of adoptions](#), European Added Value Assessment (EAVA), 30 November 2016
 - European Parliament, [Resolution of 2 February 2017 with recommendations to the Commission on cross border aspects of adoptions](#), 2015/2086(INL)
 - European Parliament, [Resolution of 28 April 2017 on safeguarding the best interests of the child across the EU on the basis of petitions addressed to the European Parliament](#), 2016/2575(RSP)
 - European Commission, [Follow up to the European Parliament resolution of 2 February 2017 on cross border aspects of adoptions](#), SP(2017)188, 10 April 2017
 - Hague Conference on Private International Law (HCCH), [Report on the cross-border recognition of domestic adoptions](#), March 2019

Further Reading:

- European Parliament, EPRS, [Cross-border aspects of adoptions](#), At a glance, February 2017

For a more extensive list of references and further reading, please see previous versions.

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