

**QUESTIONNAIRE SUR LES QUESTIONS DE DROIT INTERNATIONAL PRIVÉ RELATIVES AU  
STATUT DES ENFANTS, NOTAMMENT CELLES DÉCOULANT DES CONVENTIONS DE  
MATERNITÉ DE SUBSTITUTION À CARACTÈRE INTERNATIONAL**

*établi par le Bureau Permanent*

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**QUESTIONNAIRE ON THE PRIVATE INTERNATIONAL LAW ISSUES  
SURROUNDING THE STATUS OF CHILDREN, INCLUDING ISSUES ARISING FROM  
INTERNATIONAL SURROGACY ARRANGEMENTS**

*drawn up by the Permanent Bureau*

*Document préliminaire No 3 d'avril 2013 à l'attention  
du Conseil d'avril 2014 sur les affaires générales et la politique de la Conférence*

*Preliminary Document No 3 of April 2013 for the attention  
of the Council of April 2014 on General Affairs and Policy of the Conference*

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## INTRODUCTION

This Questionnaire is addressed to Members of the Hague Conference and other interested States in fulfilment of the mandate provided by the Council on General Affairs and Policy of the Conference ("the Council") in April 2012, following consideration of Preliminary Document No 10 of March 2012.<sup>1</sup> The Council requested that the Permanent Bureau "continue the current work under the 2011 Council mandate and further prepare and distribute a Questionnaire in order to obtain more detailed information regarding the extent and nature of the private international law issues being encountered in relation to international surrogacy arrangements, as well as in relation to legal parentage or "filiation" more broadly. The Questionnaire shall seek views on the needs to be addressed and approaches to be taken. The Permanent Bureau is invited to present its final Report to the Council in 2014".<sup>2</sup>

A detailed chronology of the background to this project is available on the website of the Hague Conference < [www.hcch.net](http://www.hcch.net) >, under "The Parentage / Surrogacy Project", then "Chronology of the Project (including relevant documentation)".

This Questionnaire has **five parts**:

- **Part I** contains questions on the internal law concerning the establishment and contestation of legal parentage in Member and interested States;
- **Part II** looks to the private international law ("PIL") and co-operation rules concerning birth registration and the establishment, recognition and contestation of legal parentage;
- **Part III** addresses the particular challenges concerning International Surrogacy Arrangements<sup>3</sup> ("ISAs");
- **Part IV** considers the current bilateral or multilateral instruments in the field; and
- **Part V** asks for thoughts on possible future work in this area.

Please note that the Permanent Bureau has used the same terminology in this Questionnaire as that which was used in the **Glossary** annexed to Preliminary Document No 10 of March 2012. This Glossary is accessible on the webpage of the project, "The Parentage / Surrogacy Project", then "Chronology of the Project (including relevant documentation)" and then "2011 - 2013".

The Permanent Bureau invites responses to the Questionnaire (in either English or French) by no later than **1 August 2013** in order to allow the Permanent Bureau sufficient time to consider the responses and to prepare the final Report requested by Members for the Council of 2014. Answers should be sent by e-mail to < [secretariat@hcch.net](mailto:secretariat@hcch.net) > with the following heading and indication in the subject field: "Questionnaire - Parentage / Surrogacy - [name of Member, State or territorial unit, where applicable]".

It is acknowledged that this is a detailed Questionnaire and that, due to the legal position in some States, it may not be possible for Members and interested States to respond to all of the questions. The Permanent Bureau is extremely grateful for any information which may be provided. It is also hoped that the detailed information in the responses to this Questionnaire may be of use to Members beyond this project: for example, where consideration is being given, now or in the future, to domestic legislation in any of the areas considered below.

<sup>1</sup> Prel. Doc. No 10 of March 2012, "A Preliminary Report on the issues arising from international surrogacy arrangements", drawn up by the Permanent Bureau. See also the earlier Prel. Doc. No 11 of March 2011, "Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements", also drawn up by the Permanent Bureau.

<sup>2</sup> Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference, 17-20 April 2012, para. 21. The "2011 Council mandate" referred to therein can be found at paras 17 to 20 of the Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference, 5-7 April 2011.

<sup>3</sup> See the **Glossary** annexed to Prel. Doc. No 10 of March 2012 (see note 1) for the definition of the terms used in this paper.

Please note: the Permanent Bureau intends, except where expressly asked not to do so, to place replies to this Questionnaire on the website of the Hague Conference.

**Identification**

Name of State (or territorial unit, where applicable): **The Republic of Lithuania**

**Information for follow-up purposes**

Name and title of contact person: Chief expert Jolita Meškelytė

Name of Authority / Office: Ministry of Justice of the Republic of Lithuania

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## QUESTIONNAIRE

**Note: wherever possible, please provide a copy of, or a web-link to, any legislation, rules or case law mentioned in your response, along with a translation into English or French.**

### **Part I: Internal law** concerning the establishment and contestation of legal parentage

#### **A. Birth registration**

1. Please indicate which authorities in your State are responsible for registering the birth of a child:

According to the Civil Code of the Republic of Lithuania, City and regional register offices are responsible for registering births. In each municipality there is one register office. There are 60 register offices within the territory of the Republic of Lithuania. Consular Offices of the Republic of Lithuania have the right to register the birth as well.

2. Please briefly describe the procedure for birth registration in your State, indicating whether such registration is mandatory<sup>4</sup> and providing details concerning any specific rules which must be complied with (e.g., within what timeframe must a birth be registered, who can register a birth and where must the birth be registered):

According to the provisions of the Civil Code of the Republic of Lithuania the birth of a child shall be registered with the register office of the child's residence place or one of the parents' residence place. A birth shall be notified, orally or in writing, by the parents or one of the parents; if the parents are sick, dead or cannot do that for other reasons, the birth shall be notified by relatives, neighbours, the administration of the maternity home where the child was born or the state institution for the protection of the child's rights. The birth of a foundling shall be registered on the application of the person who found the child or the state institution for the protection of the child's rights.

The birth of a child shall be notified and registered within three months of the date of the child's birth; in cases of a stillborn baby – within three days from the time of its birth. An application for the registration of a foundling shall be filed within three days of the moment when the child was found. The registration of the child's birth shall be followed by the issuance of the birth certificate.

3. Please explain what proof (evidence), if any, of legal *maternity* is required by the authorities in your State in order to register a putative<sup>5</sup> legal mother:

Please tick all which apply:

- a)  Hospital birth record (stating the name of the woman who gave birth to the child)
- b)  Sworn statement by the putative legal mother stating that she gave birth to the child
- c)  Signed statement by the putative legal mother stating that she gave birth to the child
- d)  DNA test to prove a genetic link between the putative legal mother and child

<sup>4</sup> See Art. 7 of the United Nations *Convention on the Rights of the Child* ("UNCRC"), 20 November 1989, which states that, "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."

<sup>5</sup> "Putative" means "generally considered or reputed to be" and, in this document, is taken to mean the woman or man *claiming or claimed* (where it is not the individual him or herself making the assertion) to be the legal mother or father, respectively, of the child.

- e)  Other: please explain The Civil Code of the Republic of Lithuania provides for the possibility to establish the maternity in court.
4. Please explain what proof (evidence), if any, of legal *paternity* is required by the authorities in your State in order to register a putative legal father:

Please tick all which apply:

- a)  Formal acknowledgement<sup>6</sup> by the putative legal father
- b)  Formal acknowledgement by the putative legal father, with the legal mother and / or the child's evidenced consent: please specify
- c)  Judicial decision (court order) establishing or confirming legal paternity
- d)  Sworn statement by the putative legal father stating that he is the genetic father
- e)  Signed statement by the putative legal father stating that he is the genetic father
- f)  Signed agreement between the legal mother and putative legal father
- g)  DNA test to prove a genetic link between the putative legal father and child
- h)  Other: please explain
- 1) marriage certificate - where a married woman gives birth to a baby, although the baby may have been conceived before the marriage;
  - 2) death or divorce certificate - where a child is born within three hundred days of the date of separation or the annulment of the marriage or divorce or the death of the husband;
  - 3) marriage certificate and divorce certificate (of previous marriage)- where a mother who contracted a new marriage within less than three hundred days of the dissolution of her previous marriage gives birth to a baby;
  - 4) judicial judgement establishing paternity or an application for acknowledging paternity of a standard form certified by a notary public, divorce certificate (of previous marriage, if the mother of the child was married) - where an unmarried woman gives birth to a baby after more than three hundred days have elapsed from the dissolution of her previous marriage;
  - 5) joint application of the baby's mother, her ex-husband and the man who acknowledges his paternity for acknowledging paternity approved by court - where a divorced mother gives birth to a baby within less than three hundred days of the divorce;
  - 6) an application of a standard form certified by a notary public and written consent of the child if he is at least 10 years old – in case the man considering himself the father of a child together with the mother of the child provide an application seeking to be recognised as the father of the child.
5. What are the legal consequences in the internal law of your State of registering persons in the State records<sup>7</sup> as the parents of a child?
- a)  Those persons are the legal parents of the child for all purposes, unless and until the record is contested, and all the legal consequences which flow from legal parentage in your State will automatically follow (e.g., duty to provide maintenance, inheritance rules, naming rules, etc.):
- b)  Other: please explain
6. Are there any penalties for failing to comply with the rules concerning birth registration in your State: for example, misrepresenting to the authorities who are / is the legal parent(s) of the child?

<sup>6</sup> In some States, this is called a "recognition" of paternity: the term "acknowledgement" is used in this document to avoid confusion with the private international law concept of "recognition". See further **Questions 11 et seq.** below.

<sup>7</sup> It is acknowledged that there are different methods of recording births (and therefore legal parentage) across States, as well as different rules concerning matters such as when birth certificates will be issued, what information should be contained within the certificate and their constitutive value. Where applicable, please provide information concerning the rules in your State.

Depending on the circumstances, administrative or criminal liability (from warning to arrest) may be applied for violations of the procedure for birth registration.

7. Is it possible to give birth anonymously in your State?

- Yes  
 No

If so, please explain any rules which apply to such an anonymous birth and state what will appear on the child's birth record and / or birth certificate:<sup>8</sup>

## **B. Establishment of legal parentage**

8. Who, upon the birth of a child, is the legal mother *by operation of law* in your State (*i.e.*, with no need for the woman to take any steps to establish her legal maternity)?

- a)  The woman who gives birth to the child  
 b)  The genetic mother (*i.e.*, the woman whose gamete (egg) created the child)  
 c)  There is no legal mother *by operation of law*: please explain  
 d)  Other: please explain

9. Who, upon the birth of a child, is the legal father *by operation of law* in your State (*i.e.*, with no need for the man to take any steps to establish his legal paternity)?

- a)  The husband of the woman who gave birth is *presumed* to be the legal father  
 b)  The male partner of the woman who gave birth is *presumed* to be the legal father – please provide any conditions (*e.g.*, the couple must be cohabiting, etc.)  
 c)  The genetic father (*i.e.*, the man whose gamete (sperm) created the child)  
 d)  There is no legal father *by operation of law*: please explain  
 e)  Other: please explain : where a child is born within three hundred days of the date of separation or the annulment of the marriage or divorce or the death of the husband, the ex-spouse of the mother shall be recognised as the child's father.

If legal presumptions operate in your State, please specify in what circumstances, if any, it is possible to "rebut" these presumptions:

The contest of these presumptions is regulated by the Civil Code of the Republic of Lithuania, Articles 3.149-3.154 (please find below).

Article 3.149. Conditions for contesting paternity (maternity)

1. Data on the mother or father of a child contained in the record of the child's birth may be contested only in court.
2. Data on the mother or father of a child entered in the record of the child's birth on the basis of a *res judicata* judicial decision may not be contested.

Article 3.150. Grounds for contesting paternity (maternity)

1. The paternity of a child born to a married couple or within three hundred days of the dissolution of marriage may be contested only by proving that the person cannot be the father of the child.

<sup>8</sup> In this document, the "birth record" is taken to mean the information concerning the child's birth (including legal parentage) which is stored in the records of the relevant State authority (usually a registry). In contrast, the "birth certificate" is taken to mean the *extract* from this birth record which is usually given to the legal parent(s) to keep. In some States it may be that the information contained within the birth record is comprehensive (*e.g.*, if the child has been adopted, the birth record will identify the birth parent(s)), whereas the birth certificate may provide only a limited part of this information. See also *ibid*.

2. The maternity or paternity of a child adjudicated on the basis of an application acknowledging parentage may be contested by proving that the child's mother or father not the biological parent of the child.

Article 3.151. Persons entitled to file an action for contesting paternity (maternity)

1. Actions for contesting paternity or maternity may be filed by the person entered in the record of the child's birth as the child's mother or father, or the person who, although not recorded as the child's mother or father in the record of the child's birth, considers himself the mother or the father of the child, or the parents or guardians (curators) of the minor entered in the record of the child's birth as the child's father, or the child on attaining majority, or a minor on attaining full active capacity.

2. Where the child's mother or father is legally incapable or of limited active capacity, an action for contesting maternity or paternity may be filed by his or her guardians or curators.

3. An action for contesting the paternity of a man who is dead may be filed by his descendants if the person recorded as the child's father died within the limitation period provided for in Article 3.152 hereof.

Article 3.152. Limitation period for proceedings

1. The limitation period for filing a suit for contesting paternity (maternity) shall be one year as from the day when the plaintiff became aware of the disputed data in the record of the child's birth or of certain circumstances giving reason to believe that the data are not truthful.

2. Where the persons recorded in the record of the child's birth as a child's mother or father became aware of such a record at the time when they were minors or legally incapable, the one-year limit shall be calculated from the day they attained majority or full active capacity..

3. The res judicata court judgement on the annulment of paternity (maternity) shall be sent to the Registrar's Office that registered the child's birth within three business days of its effective date.

Article 3.153. Mandatory participation of the agency for the protection of the child's rights

In adjudicating paternity or disputes over paternity the participation of the agency for the protection of the child's rights shall be mandatory.

10. a) Is it possible in your State for a non-contentious (*i.e.*, unchallenged) application to be made to the relevant State authorities for a decision (sometimes called a "declaration") establishing or confirming the legal parentage of a child?

Yes – go to **Question 10 b)**.

No – go to **Question 11**.

b) Please explain to which State authorities such an application should be made:

i.  The authority responsible for birth registration (see **Question 1** above)

ii.  The judicial authorities (*i.e.*, the courts): please specify Where the child's mother is dead, incompetent or cannot, for other reasons, file a joint application with the child's father for the recognition of his paternity, or the parents or guardian (curator) of the man who considers himself the father of the child, but who is a minor or of limited legal competence, refuse to recognise his paternity or the child of 10 or over does not give his or her written consent, the application acknowledging paternity may be considered a valid basis for the registration of paternity if the court approves the application.

iii.  Other State administrative authorities: please specify

iv.  Other: please explain

c) Please explain who may bring such an application:

- i.  Only the individuals currently considered to be the legal mother and / or father and / or the child
- ii.  Any person claiming to be the legal mother and / or father of a child
- iii.  Any person determined by the State authorities to have sufficient interest to bring a claim: please explain how the authorities determine this question:
- iv.  Any person
- v.  Other: please explain
  - 1) the man considering himself the father of a child, together with child's mother;
  - 2) the man considering himself the father of the child conceived but not yet born may file a joint application with the child's mother for the recognition of his paternity for the period of pregnancy (if there are circumstances that will bar the filing of an application acknowledging the paternity of a child after the birth of the baby).

d) Is there a timeframe within which such an application must be made?

- Yes, please specify:
- No
- In certain situations: please explain

11. Is it possible in your State for a putative legal father to "voluntarily acknowledge"<sup>9</sup> his legal paternity (if his legal paternity has not arisen by operation of law – see **Question 9** above)?

- Yes
- No

If so, please explain (1) if there are any restrictions placed upon who may undertake such an acknowledgement (*e.g.*, it must be the genetic father, the man must be over a certain age, etc.), (2) the procedure for undertaking such an acknowledgement, and (3) whether the consent(s) of the mother and / or child are required:

(1) In accordance with the Civil Code of the Republic of Lithuania, voluntary acknowledgment of his legal paternity can undertake a man who considers himself father of the baby. Where the man acknowledging his paternity of a child is a minor, the filing of an application for the recognition of paternity with the Registrar's Office requires the written consent of the minor's parents, guardians or curators or care institutions. If the parents, guardians or curators or care institutions refuse to give their consent, such a leave may be handed down by the court at the minor's request.

(2) The procedure for undertaking the acknowledgement of legal paternity:

[The acknowledgment of legal paternity is registered with the Registrar's Office of the domicile of the child's mother provided that the child's birth was not registered or registered with a foreign institution. In the event that paternity is acknowledged after the child's birth has been registered, the acknowledgement of paternity is registered in the Registrar's Office, which has registered the child's birth or keeps an original copy of the child's birth record.

In case the domicile of the father of a child who was born in the Republic of Lithuania or a foreign state is in the Republic of Lithuania and the child's mother has no domicile in the Republic of Lithuania, the acknowledgement of paternity is registered with the Registrar's Office of the father's domicile.

To register the acknowledgement of paternity, the following documents must be submitted:

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<sup>9</sup> See note 6 above.

1. a joint application certified by a notary public filed by a man considering himself the father of a child together with the child's mother for the acknowledgement of paternity;
2. a written consent of a child, who has attained the age of 10, with the acknowledgement of paternity.

Where the child's mother is dead, incompetent or cannot, for other reasons, file a joint application with the child's father for the recognition of his paternity, or the parents or guardian/curator of the man who considers himself the father of the child, but who is a minor or of limited legal competence, refuse to recognise his paternity or the child of 10 or over does not give his or her written consent in the presence of an employee of the Registrar's Office, the application acknowledging paternity may be considered a valid basis for the registration of paternity if the court approves the application.

If paternity has been recognised on the basis of a joint application filed by the child's mother, her ex-spouse and the man considering himself the father of the child, the acknowledgement of paternity is registered on the basis of the joint application approved by the court.

In case a joint application for the acknowledgement of paternity is filed by the man considering himself the father of a child together with the child's mother before the child's birth, the application must be accompanied by a certificate of pregnancy issued by a medical centre.

The court shall examine applications for the approval of the acknowledgement of paternity in a simplified procedure.

The *res judicata* judgement on the approval of the application acknowledging a child's paternity shall be sent to the Registrar's Office that has registered the birth of the child within three business days.

Where the application for the approval of the acknowledgement of a child's paternity is contested by the parents or guardians (curators) of the minor or the person of limited legal capacity who considers himself the father of the child, the application shall be submitted to the court to be examined by contentious proceedings

(3) For the acknowledgement of legal paternity the consent of the mother of the child is required (the man considering himself the father of the child have to file a joint application with the child's mother for the recognition of his paternity). Where the child's mother is dead, incompetent or cannot, for other reasons, file a joint application with the child's father for the recognition of his paternity, the acknowledgement of legal paternity can be undertaken without the consent of the child's mother.

Where the child has attained the age of 10, the Registrar's Office may accept an application for the recognition of the child's paternity only with a written consent of the child.

In cases of the acknowledgement of legal paternity where the child's mother is dead, incompetent or cannot, for other reasons, file a joint application with the child's father for the recognition of his paternity, or the parents or guardian (curator) of the man who considers himself the father of the child, but who is a minor or of limited legal competence, refuse to recognise his paternity or the child of 10 or over does not give his or her written consent, the application acknowledging the paternity of a child may not be registered without the consent of the child who is of full age.

In particular, please state whether it is possible for an individual to acknowledge legal paternity to representatives of your State authorities in another country (*e.g.*, usually to the consulate or embassy in that State). Please explain the procedure and whether there are any conditions which must be fulfilled:

According to the law of the Republic of Lithuania there aren't legal possibilities for an individual to acknowledge legal paternity to representatives of Lithuanian authorities in another country.

12. Is it possible in your State for a putative legal mother to "voluntarily acknowledge" her legal maternity?

- Yes  
 No  
 Not applicable – legal maternity always arises by operation of law (see **Question 8** above).

If so, please explain (1) if there are any restrictions placed upon who may undertake such an acknowledgement (e.g., it must be the genetic mother, the woman must be over a certain age, etc.), (2) the procedure for undertaking such an acknowledgement, and (3) whether the consent(s) of any others is / are required:

In particular, please state whether it is possible for an individual to acknowledge legal maternity to representatives of your State authorities in another country (e.g., usually to the consulate or embassy in that State). Please explain the procedure and whether there are any conditions which must be fulfilled:

13. Please explain the legal consequences in your State of a "voluntary acknowledgement" of legal parentage:

- a)  Once the acknowledgement is authenticated by the State authorities, the author of the acknowledgement is considered a legal parent of the child for all purposes  
 b)  The acknowledgement is merely a declaration by the author that he / she is a legal parent and says nothing of the State's acceptance of that issue  
 c)  Other: please specify

14. Is it possible for legal parentage to be established by agreement between the putative parents?

- Yes  
 No

If so, please explain the procedure which must be undertaken and specify any restrictions which operate:

15. Is it possible in your State for two persons of the same-sex to be the legal parents of a child?

- Yes  
 No

If so, please explain the legal mechanisms available in your State which enable this. Please tick all which apply and provide a brief explanation of the rule(s) and procedure. This may arise by:

- a)  Operation of law:
- b)  Order of the court or other State authorities:
- c)  Adoption:
- d)  Other:

**C. Establishment of legal parentage where assisted reproductive technology ("ART")<sup>10</sup> has been used<sup>11</sup>**

16. Is ART permitted in your State?

- Yes, all forms of ART are permitted
- Yes, but there are certain restrictions on the services available and who may access these services: please specify ART in the Republic of Lithuania is available only for married couples. Only by the Minister of Health approved methods of ART can be used.
- No, all forms of ART are completely prohibited – **please go to Section D.**
- Other: please explain

17. Is there regulation of the use of ART in your State?

- Yes, legislation regulates the use of ART: please briefly explain The artificial insemination procedure for married women is approved by Order No 248 of 24 May 1999 of the Minister of Health of the Republic of Lithuania.
- Yes, there are rules or "codes of practice" concerning the use of ART which emanate from the medical regulatory bodies: please briefly explain
- No, there are no rules at all – **go to Question 19**
- Other: please explain

18. If ART is regulated in your State, please state whether the legislation or rules specify the following matters (please tick all which apply and provide a brief explanation, where applicable):

- a)  Who may access ART services (*e.g.*, relationship status; age or health requirements; nationality / residency requirements, etc.): Under the aforementioned procedure approved by the Order of the Minister of Health, ART services are available in the Republic of Lithuania only to married women by using the semen (seminal cells) of their spouses.  
Only a woman of full active civil capacity is eligible for ART services, upon her and her spouse's, who is of full active civil capacity, written consent. Nobody can force or otherwise influence a woman to have ART services performed on her. Before a woman and her spouse sign the consent forms, they must be familiarised with the ethical, medical and legal consequences of ART. All information must be presented to the spouses in a comprehensible form.  
Only an adult woman, who is not older than 45 years of age and whose health condition allows performing this procedure, is eligible for ART services. Both spouses must undergo a medical examination proving that pregnancy and childbirth will not pose any threat to the life and health of the woman and an unborn child. In case pregnancy or childbirth may cause a threat to the life or health of the woman or an unborn child, ART services are not performed.
- b)  Who may perform ART services: ART services may be performed only by the physician who has the right to engage in obstetrical-gynaecological practice.

<sup>10</sup> In this document, "assisted reproductive technology" ("ART") is used in a broad sense to refer to any method used to achieve conception which involves artificial or partially artificial means and which is undertaken by a medical / health clinic or institution: *e.g.*, two of the most common methods are artificial insemination and in-vitro fertilisation. Donated gametes (egg and sperm) may be used but will not always be necessary. In this document, ART does not refer to "do-it-yourself" or "DIY" methods of non-procreative conception: *i.e.*, where medical third parties are not involved in the procedure.

<sup>11</sup> Please note: surrogacy arrangements are dealt with separately in **Section D** below.

c)  The regulation of medical or other institutions which perform ART services (e.g., the licensing of clinics or hospitals): ART services may be performed only in a personal healthcare institution having the right (licence) to perform such services.

d)  Which ART services may be performed:

The following ART services are available in the Republic of Lithuania:

Intrauterin insemination (IUI) is a procedure that uses a catheter to place the adequately prepared sperm of the woman's spouse into her uterus. The procedure is carried out during a natural or stimulated menstrual cycle.

Gamete intrafallopian transfer (GIFT) is a procedure which involves the retrieval of oocytes from the ovary during a stimulated ovulation and placement into tubes. The eggs and the sperm are placed into the Fallopian tube using laparoscopy.

In vitro fertilization (IVF) is a test-tube fertilization procedure in which ovum is retrieved from the ovaries and placed into test-tubes. The sperm of the woman's spouse is placed into the test-tubes containing ovum and fertilization takes places in the test-tube-incubator. The fertilised ovum is grown in the test-tube for two days and the embryos are placed by using a catheter into the woman's uterus.

Intracytoplasmic sperm injection (ICSI) is a procedure in which a single sperm (the man's seminal cell) is injected directly into an egg. The fertilised ovum is grown in the incubator for two days and the embryos are placed by using a catheter into the woman's uterus.

Zygote intrafallopian transfer (ZIFT) is a procedure in which ovum is retrieved from the ovaries during a stimulated ovulation and placed into test-tubes. The sperm of the woman's spouse is placed into the test-tubes containing ovum and fertilization takes places in the test-tube-incubator. The fertilised ovum is placed into the Fallopian tube using laparoscopy.

e)  Whether egg donation is permitted and, if so, under which conditions: Egg donation under Lithuanian law is not permitted.

f)  Whether sperm donation is permitted and, if so, under which conditions: Sperm donation under Lithuanian law is not permitted. For ART only the sperm of spouse may be used.

g)  The costs of ART (including the amount paid to any gamete donors):

h)  The anonymity of gamete donors:

i)  The right of the child to know his / her genetic or birth origins:

j)  The legal parentage of any child born as a result of ART (see also **Questions 19 to 22** below)

k)  Other: please explain By his Order, the Minister of Health has also established the ART Information form for the spouses and the ART Consent form.

19. Please explain the consequences of ART for legal *maternity* arising *by operation of law*:

a)  The woman giving birth to the child will always be considered the legal mother of the child, irrespective of any ART which has led to the birth

b)  Other: please specify

Please explain whether the above position results from legislation, rules, case law or other source(s) of law: This conclusion is derived from the applicable general provisions of the Civil Code of the Republic of Lithuania, under which legal maternity is determined on the basis of the fact whether a woman has given birth to a child.

20. Please explain the consequences of ART for legal *paternity* arising *by operation of law*:

Please tick all boxes which apply:

- a)  The husband of the woman giving birth following ART is the legal father of the child born: please state whether it is necessary for him to have formally consented to the treatment: yes, formal husband's of the woman giving birth following ART consents to the treatment is necessary.
- b)  The male partner of the woman giving birth following ART is the legal father of the child born: please state whether it is necessary for him to have formally consented to the treatment:
- c)  The genetic father will always be the legal father:
- d)  Other: please explain

Please explain whether the above position results from legislation, rules, case law or other source(s) of law: The above position results from the rules set by Minister of Health.

21. Please explain whether gamete donors are, in any situations, considered the legal parent(s) of a child born as a result of ART:

Under the law of the Republic of Lithuania, ART is permitted only by joining her spouse's sperm with the woman's ovum. Taking into consideration the aforesaid, gamete donors will be considered the legal parents of a child born as a result of ART in any situation.

22. If your State permits same-sex couples to access ART services, please specify the consequences concerning legal parentage for any child born to a same-sex couple who have used ART to conceive a child:

23. Is information available concerning how many ART procedures are undertaken in your State each year and how many children are born as a result?

- Yes: please provide a copy of, or a link to, the information
- No
- Other: please explain

#### **D. Surrogacy arrangements**

##### ***Regulation of surrogacy***

24. Does your State permit surrogacy arrangements?

- a)  Yes, *all* forms of surrogacy arrangements are permitted:
  - i.  As a result of express legislation or rules: please specify
  - ii.  By default, because surrogacy is unregulated in internal law.  
Go to **Question 26**.
- b)  No, any form of surrogacy is expressly prohibited by law: please specify, including any sanctions for breach of this prohibition:  
  
Go to **Question 26**.
- c)  It depends upon the nature of surrogacy arrangement (*e.g.*, commercial surrogacy arrangements are prohibited): please specify
- d)  Other: please specify The laws and other legal acts of the Republic of Lithuania do not provide for the concept of surrogacy and do not regulate any other matters related to the legal aspects of surrogacy (child's filiation, citizenship, registration of the birth, etc.); thus, surrogacy is not legalised in the Republic of Lithuania. In the

Republic of Lithuania, surrogacy does not constitute the legal grounds for the origin of paternity/maternity rights. It should be considered that an agreement which could be considered to be a surrogacy arrangement by its nature could be recognised as null and void due to its conflict with the imperative norms of the law, public order or requirements of good moral in compliance with the general provisions of the Civil Code of the Republic of Lithuania prohibiting to enter into any commercial arrangements related to the human body and recognising an individual as a legal entity rather an object of arrangements. It is noteworthy that such assessment could be performed only by a court hearing a specific case. The contents of surrogate maternity are not disclosed in the case-law of the Republic of Lithuania.

Please provide any clarification, where necessary:

25. If your State has legislation or rules permitting certain or all forms of surrogacy arrangements:

a) Are the parties to the surrogacy arrangement required to obtain State approval of the arrangement *prior* to conception?

- Yes, pre-approval by the relevant State authorities is required. Please explain the procedure:
- No, pre-approval is not required – the rules only regulate legal parentage following the birth of the child. Please explain the procedure:
- Other: please specify

b) Please state whether the following aspects of the surrogacy arrangement are regulated in the rules / legislation:

Please tick all which apply:

- i.  Who may be intending parents<sup>12</sup> to an arrangement, including:
- a.  Nationality, domicile or residency requirements:<sup>13</sup>  
please specify
- b.  Marital or other relationship status:
- c.  Age requirements:
- d.  Health requirements:
- e.  Psycho-social requirements:
- f.  Other:
- ii.  Who may be a surrogate mother, including:
- a.  Nationality, domicile or residency requirements:<sup>14</sup>  
please specify:
- b.  Marital or other relationship status:
- c.  Age requirements:
- d.  Health requirements:
- e.  Psycho-social requirements:
- f.  The surrogate mother must already have her own children:
- g.  Other:

<sup>12</sup> Please note that, for simplicity, this document always refers to intending parents in the plural form. However, it is understood that, in some States and in certain circumstances, single persons may enter into a surrogacy arrangement. Please specify this, where relevant, in any response.

<sup>13</sup> See **Parts II** and **III** below for questions concerning the private international law rules regarding legal parentage and international surrogacy arrangements, respectively.

<sup>14</sup> See **Parts II** and **III** below for questions on the private international law rules concerning legal parentage and international surrogacy arrangements, respectively.

- iii.  Which types of surrogacy arrangements are permitted, *e.g.*, traditional and / or gestational,<sup>15</sup> etc.: please specify
  - iv.  Which medical institutions or clinics may facilitate a surrogacy arrangement (where medical intervention is necessary for the type of surrogacy arrangement being undertaken) and the level of financial remuneration which may be paid for these services: please specify
  - v.  Which other bodies or persons may facilitate a surrogacy arrangement (*e.g.*, by acting as an intermediary and undertaking tasks such as advertising for surrogate mothers, "matching" surrogate mothers with intending parents, organising certain aspects of the arrangements for the intending parents, etc.) and whether such bodies or persons may receive financial compensation for their services: please specify
  - vi.  Whether financial remuneration can be paid to the surrogate mother:
    - a.  No financial remuneration at all is permitted
    - b.  Only reasonable expenses may be paid: in which case please state whether the legislation or rules define what are such "reasonable expenses":
    - c.  Compensation beyond reasonable expenses is permitted: please specify what exactly is permitted:
  - vii.  Whether the surrogacy arrangement is contractually enforceable: please specify
  - viii.  Who may make decisions concerning the pregnancy (*e.g.*, whether an abortion should be undertaken in certain situations, what medical treatment should be undertaken if problems arise, etc.): please specify
  - ix.  The legal parentage of the child following his / her birth (see further **Questions 26 to 30** below):
  - x.  Other: please specify
- c) Please explain any legal consequences, both criminal (*e.g.*, penal sanctions) and civil (*e.g.*, for the legal parentage of the child), if the requirements set down in the legislation or rules are not complied with:
- d) Please provide any additional information you think necessary concerning the nature of the regulation of surrogacy in your State:

### ***Surrogacy and legal parentage***

26. Upon the birth of a child following a surrogacy arrangement, who is / are the legal parent(s) *by operation of law* (*i.e.*, without any further steps being taken by any individuals) according to the internal law of your State?

Please explain, including whether this results from legislation, case law or other source(s) of law: In such cases, the general provisions of the Civil Code of the Republic of Lithuania regulating maternal and paternal affiliation, the acknowledgement of paternity, paternity or maternity affiliation or contesting would be applicable. More detailed information on these norms is provided in the replies to the respective questions of this questionnaire.

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<sup>15</sup> See the **Glossary** for the definition of the terms used in this paper.

27. Where necessary, are there any legal mechanisms in your State to enable intending parents to establish their legal parentage?

Please tick all which apply:

- a)  Yes, prior to the birth the intending parents can seek a court order declaring that they will be the parents of the child born to a surrogacy arrangement (a "pre-birth order").

Please specify any legal requirements to obtain such an order (including any nationality / domicile / residency requirements) and state whether this position arises from legislation, case law or other source(s) of law:

- b)  Yes, *following* the birth the intending parents can seek a court order transferring legal parentage to them (in some States, known as a "parental order" or "parentage order").

Please specify any legal requirements to obtain such a transfer of legal parentage (including any nationality / domicile / residency requirements) and state whether this position arises from legislation, case law or other source(s) of law:

- c)  No
- d)  Other: please specify
- e)  Such mechanisms are unnecessary – the surrogacy contract is sufficient to establish the legal parentage of the intending parents.
- f)  Such mechanisms are unnecessary – the intending parents will be the legal parents upon the birth of the child by operation of law: see the response to **Question 26** above.

28. Where a surrogacy arrangement has been undertaken in your State, will the fact of the surrogacy arrangement be visible on the child's birth record and / or certificate?

- Yes: please describe exactly what will be on the record and / or certificate
- No: please explain see explanations given on the question No. 24

29. Is information available concerning how many surrogacy arrangements take place in your State each year and how many children are born as a result?

- Yes: please provide a copy of, or a link to, the information
- No
- Other: please explain

30. Are you aware of any illegal practices in your State concerning surrogacy arrangements?

- Yes – please state the practices of which you are aware and, if possible, how frequently they are occurring:
- No
- Other: please explain

#### **E. Contestation of legal parentage**

31. Which authority(ies) in your State may determine a dispute concerning legal parentage?

- a)  The authority responsible for birth registration (see **Question 1** above)

- b)  The judicial authorities (*i.e.*, the courts): please specify courts  
 c)  Other State administrative authorities: please specify  
 d)  Other: please explain

32. Who may bring an action to challenge legal parentage?

- a)  Only the individuals currently considered to be the legal mother and / or father and / or the child  
 b)  Any person claiming to be the legal mother and / or father of a child  
 c)  Any person determined by the State authorities to have sufficient interest to bring a claim: please explain how the authorities determine this question

- d)  Any person  
 e)  Other: please explain Actions for contesting paternity or maternity may be filed by the person entered in the record of the child's birth as the child's mother or father, or the person who, although not recorded as the child's mother or father in the record of the child's birth, considers himself the mother or the father of the child, or the parents or guardians (curators) of the minor entered in the record of the child's birth as the child's father, or the child on attaining majority, or a minor on attaining full active capacity.

Where the child's mother or father is legally incapable or of limited active capacity, an action for contesting maternity or paternity may be filed by his or her guardians or curators.

An action for contesting the paternity of a man who is dead may be filed by his descendants if the person recorded as the child's father died within the one year limitation period for filing a suit for contesting paternity.

33. Is there a timeframe within which legal parentage must be challenged (*i.e.*, after which time, any challenge to legal parentage is effectively barred)?

- Yes, please specify: The limitation period for filing a suit for contesting paternity (maternity) is one year as from the day when the plaintiff became aware of the disputed data in the record of the child's birth or of certain circumstances giving reason to believe that the data are not truthful.  
 No  
 In certain situations: please explain

34. On what grounds may legal *maternity* be challenged before the authorities in your State?

- a)  Only on the basis that the "mother" did not, in fact, give birth to the child  
 b)  Only on the basis that the "mother" is not, in fact, the genetic mother of the child (*i.e.*, the woman from whom the gamete (egg) came)  
 c)  Other: please explain

35. On what grounds may legal *paternity* be challenged before the authorities in your State?

- a)  Only on the basis that the "father" is not, in fact, the genetic father of the child (*i.e.*, the man from whom the gamete (sperm) came)  
 b)  Other: please explain The paternity of a child born to a married couple or within three hundred days of the dissolution of marriage may be contested only by proving that the person cannot be the father of the child.

The paternity of a child adjudicated on the basis of an application acknowledging parentage may be contested by proving that the child's father is not the biological parent of the child.

36. What are the legal consequences of a successful challenge concerning legal parentage?

- a)  The decision of the State authorities concerning legal parentage is binding *erga omnes* (*i.e.*, on all persons, for all purposes)
- b)  The decision of the State authorities will only be binding for limited, specific purposes: please explain
- c)  It depends upon the context in which the challenge has been made (*e.g.*, if in the context of a maintenance claim, it will be binding only as concerns the payment of maintenance): please explain
- d)  Other: please explain

37. What happens to a child's birth record and / or birth certificate when legal parentage is successfully challenged?

- a)  The birth record and / or certificate is revised and the old record and / or certificate will be permanently deleted
- b)  The birth record and / or certificate is amended but the original record and / or certificate is retained
- c)  Other: please explain Where the contesting of paternity (maternity) is registered, the entry supplementing, amending or revising the record is made in the act of civil status, which deletes the data on the father (mother) from the child's birth record, and a new birth certificate is issued. The old birth certificate is taken and destroyed under the established procedure.

#### **F. The acquisition of nationality by children**

38. How may a child acquire the nationality of your State?

Please tick all which apply:

- a)  By birth within the territory of the State
- b)  By "descent", where one or both of his / her *legal* parents is / are a national of the State: please explain which law, in this context, will apply to the question of who is / are the child's *legal* parents for the purposes of determining nationality: The origin of a child shall be established either in accordance with the law of the state the citizenship of which the child acquired at his birth, or with the law of the state which is recognized as the domicile of the child at the time of his birth, or with the law of the state in which one of the child's parents is domiciled, or with the law of the state the citizen of which one of the parents was at the time of the child's birth, whichever is more beneficial to the child.
- c)  By "descent", where one or both of his / her *genetic* parents is / are a national of the State: please explain how the genetic link must be evidenced:
- d)  If the child would otherwise be "stateless" (*i.e.*, without the nationality of any other State):<sup>16</sup> please specify
- e)  Other: please specify A child of stateless persons who are legally granted permanent residence in the Republic of Lithuania is a national of the Republic of Lithuania, irrespective of whether he/she was born in or outside the Republic of Lithuania provided that the child has not acquired citizenship of another state by birth.

A child found or residing in the territory of the Republic of Lithuania, whose both parents are not identified, is considered to have been born in the territory of the Republic of Lithuania and acquires Lithuanian citizenship unless it transpires that the child has acquired citizenship of another state or there are any circumstances, under which a child would acquire citizenship of another state. This provision is also applicable to a child whose both parents or one parent have/has died or have/has been acknowledged missing, or whose both parents or one parent have/has been declared incapable, or whose parents or one parent have/has had their/his or her parental authority restricted on a

<sup>16</sup> As to which, see note 4 above, citing Art. 7 of the UNCRC.

permanent basis and permanent guardianship (curatorship) has been established for the child.

A child adopted by a national (nationals) of the Republic of Lithuania acquires citizenship of the Republic of Lithuania as of the date of his or her adoption; however, a child adopted by nationals (national) of another state, who is a national of the Republic of Lithuania, remains a national of the Republic of Lithuania, irrespective of whether he or she has acquired citizenship of another state.

## **G. Legal developments**

39. Please state whether the law in your State concerning the matters covered in **Part I** above (*i.e.*, birth registration, establishment and contestation of legal parentage, ART, surrogacy and nationality concerning children) has changed in the past five years, or whether any initiatives are underway (*e.g.*, in government, before parliament or before the courts) to change the law in future:

The birth registration procedure has been amended for a few times during the past five years by revising the procedure for drawing up the list of children born abroad and providing that the citizenship of the Republic of Lithuania held by a child is included into the child's birth certificate without stating the citizenship of another state held by the child.

The legislation regulating the paternity (maternity) affiliation and contesting has been applicable without any amendments since 1 July 2001, when the new Civil Code of the Republic of Lithuania entered into force.

The artificial insemination procedure for married women has not been amended since 24 May 1999, when it was approved by the Order of the Minister of Health.

The laws regulating the acquisition of a child's citizenship were last amended in 2010, when, taking due account of the resolution of the Constitutional Court of the Republic of Lithuania, the effective Law of the Republic of Lithuania on citizenship was reviewed and revised.

In Lithuania, the first draft Law on assisted reproduction was registered in 2002 and subsequently in 2003, 2004 and 2010. During this period, the draft laws regulating assisted reproduction submitted by different authors were discussed in the committees of the Seimas of the Republic of Lithuania and in the public; however, no agreement has been reached on the legal regulation of ART yet. The draft Law on assisted reproduction registered and considered in the Seimas of the Republic of Lithuania in 2010 proposed *inter alia* to provide that civil arrangements where one woman undertakes to conceive, to carry and to give a baby to another person or persons after the birth, thus waiving her maternity rights to a born baby (surrogacy), are null and void.

The Ministry of Justice is currently preparing a draft law amending and supplementing the articles of the Civil Code of the Republic of Lithuania, which proposes to regulate the legal relationships of partnership between a man and a woman and the legal consequences arising in connection therewith. It is proposed that the matters related to the origin of children born to partners be resolved pursuant to the analogous rules provided for in the Civil Code and applied to paternal (the spouse of the child's mother) affiliation provided that a joint application of both partners for partnership certified by a notary public and signed by both partners has been registered with the Population Register of the Republic of Lithuania.

40. Please provide any other information you consider relevant concerning cases (reported, or otherwise) or other developments which have occurred in your State in relation to the Questions appearing in **Part I** above.

**Part II: Private international law ("PIL") and co-operation rules** concerning birth registration and the establishment, recognition and contestation of legal parentage

**A. PIL and co-operation rules concerning birth registration**

41. Please explain when the relevant authorities in your State will assume (international) jurisdiction to register the birth of a child:
- a)  Only when the child is born on the territory of the State
  - b)  When at least one of the putative *legal* parents is a national of the State, regardless of the place of birth of the child
  - c)  When at least one of the putative *genetic* parents is a national of the State, regardless of the place of birth of the child
  - d)  When the child is considered a national of the State,<sup>17</sup> regardless of the place of birth of the child
  - e)  Other, please specify:
42. When registering a child's birth, which law will the relevant authorities apply to the question of who is / are the legal parent(s) of the child *by operation of law*?<sup>18</sup>
- a)  The *lex fori* (*i.e.*, the internal law of your State) is always applied by the relevant authorities
  - b)  If the situation has foreign elements (*e.g.*, the putative parent(s) or child are foreign nationals, or the child was born overseas, etc.), foreign law may, or must, be applied to this question. Please specify the applicable law rules: The origin of a child will be established either in accordance with the law of the state the citizenship of which the child acquired at his birth, or with the law of the state which is recognized as the domicile of the child at the time of his birth, or with the law of the state in which one of the child's parents is domiciled, or with the law of the state the citizen of which one of the parents was at the time of the child's birth, whichever is more beneficial to the child.
  - c)  Other: please specify
43. Have your State authorities ever encountered difficulties resulting from a child's birth being registered in two (or more) States (*e.g.*, the child is registered in your State as the State of birth, and in the State of the parents' nationality and the registers conflict)?
- Yes: please explain the circumstances of the case(s) and the difficulties which arose:
- No
44. Are there any bilateral or multilateral<sup>19</sup> agreements in force between your State and any other State such that:

<sup>17</sup> As to which, see **Question 38** above.

<sup>18</sup> Please note that the applicable law rules identified in your response to this Question may be the same as the rules you identify in **Question 45** below.

<sup>19</sup> *E.g.*, the *Conventions on the international exchange of information relating to civil status* of 4 September 1958 and of 12 September 1997 or the *Convention on the recognition and updating of civil status booklet*, 5 September 1990, all adopted under the aegis of the International Commission on Civil Status (< [www.ciec1.org](http://www.ciec1.org) >).

- a. When a child's birth is registered which involves foreign elements (e.g., one or more foreign national parents), this information is communicated to the authorities in the other relevant State?

- Yes: please specify  
 There are no formal agreements but this may happen in practice: please explain  
 No

- b. When there are changes to a child's legal parentage *subsequent to* birth registration as a result of steps taken in your State (e.g., due to a subsequent voluntary acknowledgement of paternity in your State, or a contestation of legal parentage, etc.), this information is communicated to the relevant authorities in the State of the child's birth (where this is not your State)?

- Yes: please specify  
 There are no formal agreements but this may happen in practice: please explain  
 No

## **B. PIL rules concerning the establishment of legal parentage**

### ***By operation of law or agreement***

45. Does your State have rules specifying which law is applicable to the establishment of legal parentage by operation of law?<sup>20</sup>

- Yes: please specify To the establishment of legal parentage the law of the state the citizenship of which the child acquired at his birth, or the law of the state which is recognized as the domicile of the child at the time of his birth, or the law of the state in which one of the child's parents is domiciled, or the law of the state the citizen of which one of the parents was at the time of the child's birth, whichever is more beneficial to the child, is applicable.  
 No: the *lex fori* (i.e., the internal law of the State) will always be applied where a question of legal parentage arises

46. Does your State have rules specifying which law is applicable to the establishment of legal parentage by agreement?

- Yes: please specify  
 No: the *lex fori* (i.e., the internal law of the State) will always be applied where a question of legal parentage arises  
 Not applicable: it is not possible to establish legal parentage by agreement

### ***By voluntary acknowledgement***

47. Please explain in which circumstances your State authorities will consider they have (international) jurisdiction to accept a voluntary acknowledgement of legal parentage by a putative parent:

Please tick all which apply:

- a)  When the child is (habitually) resident in your State: please specify According the Civil Code of the Republic of Lithuania, domicile of minor natural persons is deemed to be the domicile of their parents or guardians (foster parents). Where parents of a minor natural person fail to have a common domicile, the domicile of a minor is deemed to be the domicile of one of his parents with

<sup>20</sup> Please note that the applicable law rules identified in your response to this Question may be the same as the rules you identified in **Question 42** above.

whom the minor resides most of the time, unless the court has established the domicile of a minor with one of his parents.

- b)  When the child is a national of your State
- c)  When the individual acknowledging the child is (habitually) resident in your State: please specify
- d)  When the individual acknowledging the child is a national of your State
- e)  Other: please specify If one of child's parents is domiciled in the Republic of Lithuania

Please specify whether these criteria (*i.e.*, the (habitual) residence / nationality of the individual(s) – depending upon the boxes ticked above) have to be fulfilled:

- i.  At the time of the child's birth
- ii.  At the time of the acknowledgement, or
- iii.  At another time: please specify

48. Which law will be applied to determine: a) the formal validity of the acknowledgement; and b) the substantive validity of the acknowledgement, *i.e.*, whether it validly establishes legal parentage?

Please tick all which apply:

- a) For the formal validity of the acknowledgement:
  - i.  The *lex fori* (*i.e.*, the internal law of your State)
  - ii.  The law of the State of the child's nationality
  - iii.  The law of the State of the (habitual) residence of the child: please specify According the Civil Code of the Republic of Lithuania, domicile of minor natural persons is deemed to be the domicile of their parents or guardians (foster parents). Where parents of a minor natural person fail to have a common domicile, the domicile of a minor is deemed to be the domicile of one of his parents with whom the minor resides most of the time, unless the court has established the domicile of a minor with one of his parents.
  - iv.  The law of the State of the putative parent's nationality
  - v.  The law of the State of the putative parent's (habitual) residence: please specify
  - vi.  Other: please specify
- b) For the substantive validity of the acknowledgement:
  - i.  The *lex fori* (*i.e.*, the internal law of your State)
  - ii.  The law of the State of the child's nationality
  - iii.  The law of the State of the (habitual) residence of the child: please specify child has to have his or her domicile in that State at the time of his or her birth.
  - iv.  The law of the State of the putative parent's nationality
  - v.  The law of the State of the putative parent's (habitual) residence: please specify The parents' (the father's or the mother's) legal active capacity in acknowledging paternity (maternity) is governed by the law of the state of his or her domicile at the time of the acknowledgement.
  - vi.  Other: please specify the law of the state the citizen of which one of the parents was at the time of the child's birth, shall be applicable as well.

Please state whether, in relation to a) and / or b), one or more of these laws will be applied (possibly in a "cascade"), with a view to favouring the establishment of legal parentage: For the formal validity of the acknowledgement either internal law of the Republic of Lithuania either the law of the state of the child's domicile will be applied. The parents' (the father's or the mother's) legal active capacity in acknowledging paternity (maternity) will always be governed by the law of the state of his or her domicile at the time of the acknowledgement.

For the substantive validity of the acknowledgement one of the laws mentioned in paragraph vi. which is considered by the court as more beneficial to the child will be applied.

Please specify, in relation to a) and b), whether these criteria (*i.e.*, the (habitual) residence / nationality of the individual(s) – depending upon the boxes ticked above) have to be fulfilled: (1) at the time of the child's birth; (2) at the time of the acknowledgement; or (3) at another time (in which case, please specify):

a) (2)

b) (1); the criteria of domicile of the child's father's or the mother's have to be fulfilled at the time of the acknowledgement.

### **C. PIL rules concerning the recognition of legal parentage established abroad**

#### ***Birth certificates***

49. Please explain when, if ever, a birth certificate drawn up in another State will be recognised in your State *as validly establishing the legal parentage of those persons recorded within it (i.e., the recognition of the content of the certificate)*.<sup>21</sup>

Please explain in your answer:

- a) which authorities are responsible for determining whether the foreign birth certificate will be recognised;
- b) the procedure which must be undertaken for recognition;
- c) any conditions for recognition (*e.g.*, the birth certificate must be authenticated by way of legalisation or apostille<sup>22</sup>); and
- d) any grounds of *non*-recognition.

The recognition of birth certificates issued in foreign states in the Republic of Lithuania is called the inclusion of children born abroad into the respective register. This procedure is established in the Civil Registration Rules approved by Order No 1R-160 of 19 May 2006 of the Minister of Justice. This procedure is carried out by the Registrar's Office of the domicile of the child's parents or one of them, who is a national of the Republic of Lithuania. In the event that a child's parents do not have a domicile in the Republic of Lithuania, the child's birth is included into the respective register of the Registrar's Office of their last domicile in the Republic of Lithuania or in the Vilnius City Registrar's Office. The procedure for the inclusion of a child born abroad into the respective register is not complicated. A child's birth certificate issued in a foreign state must be submitted to the Registrar's Office. Unless otherwise provided for in the international treaties of the Republic of Lithuania and the EU legislation, this certificate must be authenticated by way of legalisation or Apostille, and it also must be accompanied by a translation into the Lithuanian language. The child's birth recorded in a foreign institution is included into the respective register by making a birth record and issuing a birth certificate. In the birth record, data about the child and his or her parents are rewritten from the birth certificate issued by a foreign institution. In case the birth certificate issued by a foreign institution contains no data about the child's father, they are entered under the procedure laid down in the Civil Code of the Republic of Lithuania.

If public policy ("*ordre public*") is a ground for the non-recognition of a foreign birth certificate, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

<sup>21</sup> It is understood that, from time to time, this issue may arise in the course of other proceedings (*e.g.*, proceedings concerning succession or maintenance).

<sup>22</sup> See, in this regard, the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Apostille Section".

The legislation applicable in the Republic of Lithuania do not provide for any grounds for non-recognition/non-inclusion into the respective register of the birth certificate issued in a foreign state.

### **Voluntary acknowledgements**

50. Please explain when, if ever, a voluntary acknowledgement undertaken in another State will be recognised in your State *as validly establishing the legal parentage of the author of the acknowledgement* (i.e., the recognition of the content of the acknowledgement).<sup>23</sup>

Please explain in your answer:

- a) which authorities are responsible for determining whether the foreign acknowledgement will be recognised;
- b) the procedure which must be undertaken for recognition;
- c) any conditions for recognition; and
- d) any grounds of *non*-recognition.

Where a foreign birth certificate indicates the parents of a child, the Registrar's Office of the Republic of Lithuania does not question the origin of the child. A child's parents or one of them may contact any Registrar's Office of his/her choice and submit to it a foreign birth certificate containing new data about the father entered on the basis of the procedure for the acknowledgement of paternity conducted in that foreign state. Unless otherwise provided for in the international treaties of the Republic of Lithuania and the EU legislation, this certificate must be authenticated by way of legalisation or Apostille, and it also must be accompanied by a translation into the Lithuanian language. The data in the Lithuanian child birth's record and in the birth certificate issued on the basis of this record are revised having regard to the new data about the child's father given in the issued foreign certificate.

If public policy ("*ordre public*") is a ground for the non-recognition of a foreign acknowledgment of parentage, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

The legislation applicable in the Republic of Lithuania do not provide for any grounds for the non-recognition of the acknowledgement of parentage conducted in a foreign state.

### **Decisions of judicial authorities**

51. Please explain when a decision of the relevant judicial authority of another State establishing a child's legal parentage (i.e., a court judgment or order) will be recognised in your State as validly establishing legal parentage.<sup>24</sup>

Please explain in your answer:

- a) which authorities are responsible for determining whether the foreign decision will be recognised;
- b) the procedure which must be undertaken for recognition;
- c) any conditions for recognition; and
- d) any grounds of *non*-recognition.

Under the Code of Civil Procedure of the Republic of Lithuania the Lithuanian Court of Appeal is a body authorised by the State to recognise judgments of foreign courts (arbitration tribunals).

Any persons having a legal interest in the proceedings may apply to the Lithuanian Court of Appeal for recognition of a judgment of a foreign court (arbitral award). When

<sup>23</sup> It is understood that, from time to time, this issue may arise in the course of other proceedings (e.g., proceedings concerning succession or maintenance).

<sup>24</sup> *Ibid.*

submitting for recognition a decision of a foreign court in the Republic of Lithuania, it shall be accompanied by its translation into the Lithuanian language approved in the order prescribed by laws, a confirmation that the decision is effective, evidence supporting the fact that the party, which did not participate in court hearing, was properly informed of the place and time of the civil proceedings.

Judgments of foreign courts in the Republic of Lithuania are being recognised on the basis of international treaties. In case of absence of the international treaty, recognition of foreign judgments is disallowed in the following cases:

- 1) the judgment is not *res judicata* under laws of the country where the judgment was passed;
- 2) the proceedings are attributed to the exclusive authority of courts of the Republic of Lithuania or a third country in accordance with provisions of the law of the Republic of Lithuania or international treaty;
- 3) a party absent in the proceedings was not properly informed about institution of civil proceedings and was not provided with opportunity to exercise procedural remedies or proper representation (if the party was legally incapable) during the proceedings either;
- 4) the judgment of a foreign court which recognition is requested is incompatible with a judgment passed by a court of the Republic of Lithuania in the proceedings between the same parties;
- 5) the judgment is against the public order stipulated in the Constitution of the Republic of Lithuania;
- 6) with passing the judgment, a court of a foreign country resolved matters on legal capacity, legal representation, family property or inheritance legal relations of a citizen of the Republic of Lithuania, and this is against the international private law of the Republic of Lithuania, except for cases when Lithuanian courts would have passed the same judgment in the proceedings.

When resolving recognition of a judgment of a foreign court, lawfulness and reasonability of the judgment may not be checked.

If public policy ("*ordre public*") is a ground for the non-recognition of a foreign decision, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

The Supreme Court of Lithuania, which forms uniform court practice of courts of general jurisdiction in the Republic of Lithuania in interpreting and applying the laws and other legal acts, interprets in its case-law public order being the grounds for the rejection of recognition and enforcement of a court judgment of another state as international public order encompassing the fundamental principles of a fair process as well as imperative legal norms that entrench the basic generally accepted legal principles. International public order has a narrower meaning than national public order and comprises the principles which are distinguished for universality and protect the most important values.

The content of the concept 'public order' is also influenced by international agreements: the access of the Republic of Lithuania to the European Union determined the dynamics of the contents of the basic principles of Lithuanian laws because the assumed international commitments determine the superiority of European Union law in certain fields. The content of the public order clause which is applied in compliance with the provisions of the EU legislation is interpreted pursuant to the practice formulated in the jurisprudence of the EU Court of Justice. The ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Supplementary Protocols has also influenced the contents of this concept and the interpretation thereof based on the case-law of the European Court of Human Rights.

The case-law of the Republic of Lithuania do not contain any specific clarifications as to how the public order should be applied when refusing to recognise a decision of a foreign court acknowledging paternity or maternity.

52. Please specify the *effects* of the recognition of the legal parentage established abroad (see **Questions 49 to 51** above) and which law(s) govern(s) these effects:

Judgments of foreign courts may be enforced in the Republic of Lithuania only after being sustained by the Lithuanian Court of Appeal.

The legal consequences of legitimation are governed by the law of the state of domicile of the child.

**D. PIL rules concerning the contestation of legal parentage**

53. Please explain when the relevant State authorities (which you identified in **Question 31** above) have (international) jurisdiction to determine a dispute concerning a child's legal parentage:

- a)  When the child whose parentage is disputed is (habitually) resident in your State: please specify According the Civil Code of the Republic of Lithuania, domicile of minor natural persons is deemed to be the domicile of their parents or guardians (foster parents). Where parents of a minor natural person fail to have a common domicile, the domicile of a minor is deemed to be the domicile of one of his parents with whom the minor resides most of the time, unless the court has established the domicile of a minor with one of his parents.
- b)  When the child whose parentage is disputed is a national of your State
- c)  When a putative parent disputing legal parentage is (habitually) resident in your State: please specify According the Civil Code of the Republic of Lithuania, natural person is deemed to be domiciled in the Republic of Lithuania when of his own will he establishes and maintains the only or principal residence with the intention to make it a seat of his personal, social and economic interests. This intention, inter alia, may manifest itself by person's actual presence on the territory of the Republic of Lithuania as well as the establishment of personal or business relations between him and the persons of the Republic of Lithuania or by some other criteria. Domicile of a married person not depends on the domicile of his spouse, although the domicile of one of the spouses is the fact, which has to be taken into consideration in establishing the domicile of the other spouse.
- d)  When a putative parent disputing legal parentage is a national of your State
- e)  Other: please specify

Please specify whether these criteria (*i.e.*, the (habitual) residence / nationality of the individual(s) – depending upon the boxes ticked above) have to be fulfilled:

- i.  At the time of the child's birth
- ii.  At the time the relevant State authorities are seised with the dispute, or
- iii.  At another time: please specify

54. In the context of a contestation of legal parentage, which law will the authorities apply to the question of who is / are the legal parent(s) of a child?

Please tick all which apply:

- a)  The *lex fori* (*i.e.*, the internal law of your State)
- b)  The law of the State of the child's nationality
- c)  The law of the State of the (habitual) residence of the child:  
please specify child has to have his or her domicile in that State at the time of his or her birth.
- d)  The law of the State of the putative parent's nationality
- e)  The law of the State of the putative parent's (habitual) residence:  
please specify

- f)  Other: please specify To the establishment of legal parentage the law of the state in which one of the child's parents is domiciled, or the law of the state the citizen of which one of the parents was at the time of the child's birth, is applicable as well.

Please state whether one or more of these laws will be applied (possibly in a "cascade"), with a view to favouring the establishment of legal parentage: For the establishment of legal parentage the law of the State, whichever is more beneficial to the child, will be applied.

#### **E. "Cross-border reproductive care"<sup>25</sup> and the consequences for legal parentage**

55. If persons resident in your State access ART services in another State, are there any specific PIL rules concerning the establishment of the legal parentage of the child born as a result (e.g., the law of the State in which the ART service was obtained will apply to the question of the child's legal parentage)?

- Yes: please explain  
 No  
 Other: please explain

56. Are you aware of any cases, other than international surrogacy cases (see **Part III** below), where difficulties concerning the establishment or recognition of a child's legal parentage have arisen as a result of individuals resident in your State accessing ART services in another country, or individuals resident abroad accessing ART services in your State?

- Yes: please provide details  
 No

#### **F. Legal developments and practical challenges**

57. Please state whether the law in your State concerning the matters covered in **Part II** above (i.e., the PIL and co-operation rules concerning birth registration and the establishment, recognition and contestation of legal parentage) has changed in the past five years, or whether any initiatives are underway (e.g., in government, before Parliament or before the courts) to change the law in future:

The international private law rules of the Republic of Lithuania concerning birth registration and the establishment, recognition and contestation of legal parentage as well as the general rules for the recognition and enforcement of foreign judgements have not been amended during the past five years. No initiatives proposing to amend the aforementioned effective rules have been submitted either.

58. Other than cases involving international surrogacy arrangements (as to which see **Part III** below), are there any other cases of which you are aware where difficulties have arisen in your State in relation to establishing, contesting, or recognising a child's legal parentage as a result of the cross-border movement of the child and / or his / her putative parents?

(Some possible examples can be found at Part IV (b) of Prel. Doc. No 11 of March 2011.)

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<sup>25</sup> In this paper, "cross-border reproductive care" is taken to mean when person(s) who wish to access ART services cross a border to do so, for whatever reason (often it is linked with the restrictive rules in their "home" jurisdiction, lower costs or better success rates abroad).

Please provide as much detail as possible concerning the situation which arose and the difficulties encountered: Ministry of Justice of the Republic of Lithuania doesn't possess the following information.

**Part III: The particular challenges concerning International Surrogacy Arrangements<sup>26</sup> ("ISAs")**

*This Part asks for information regarding the experience of State authorities with ISAs. It is divided into two sections:<sup>27</sup>*

- **Section A** asks a number of questions concerning "**Incoming cases**" of ISA: i.e., those cases in which your State was the State of residence of the intending parents, and the State to which it was sought to bring child(ren), born to a surrogate abroad, to live.
- **Section B** continues with questions concerning "**Outgoing cases**" of ISA: i.e., those cases where your State was the State in which the surrogate mother gave birth and from which the child(ren) needed to leave to travel to the State of residence of the intending parents in order to live with them in that State.

**A. Incoming cases<sup>28</sup>**

**This Section is inapplicable – there have been no "Incoming cases" of ISA in this State. Go to Section B.**

**Basic empirical data**

59. Do you have any information concerning:

a) The number of **Incoming cases** of ISA which have required the assistance of your State authorities in recent years?

Yes – please provide any figures available:

Pre-2009

2009

2010

2011

2012

2013 (so far)

No information is available

b) How many children have been born to surrogate mothers in another State as a result of ISAs involving intending parents resident in your State?

Yes – please provide any figures available:

Pre-2009

<sup>26</sup> See the **Glossary** for the definition of the terms used in this paper.

<sup>27</sup> Please note: it is understood that, in relation to both "Incoming" and "Outgoing" cases, there may be more than two States involved in a particular case: e.g., the surrogate may be resident in a different State to the State in which she travelled (or, in some cases, was trafficked) to give birth; in other cases, a gamete donor may be resident in a third State etc. Please explain any such elements in your responses to the questions in this part.

<sup>28</sup> I.e., those cases where your State was the State of residence of the intending parent(s), and the State to which it was sought to bring the child(ren), born to a surrogate abroad, to live.

2009  
 2010  
 2011  
 2012  
 2013 (so far)

No information is available

If you have provided any figures above, please comment upon whether you consider that these figures reflect the true number of Incoming cases of ISA involving your State<sup>29</sup> and, further, please provide a general comment concerning the prevalence of Incoming cases of ISAs and whether such cases have increased in the past five years:

If you have not provided figures above, are you able to provide any comment concerning the prevalence of Incoming cases of ISAs involving your State and / or whether this has increased in the past five years:

60. Please list all the States in which intending parents resident in your State have engaged a surrogate mother (*i.e.*, entered into an ISA), insofar as you are aware:

### ***The procedure for Incoming cases of ISA***

61. Please explain the procedure, including any immigration and legal processes, which intending parents resident in your State need to undertake (before leaving your State, before returning to your State or upon return to your State, as applicable) in order to:

- a) Enter your State with a child born abroad as a result of an ISA:
- b) Reside permanently in your State with the child:
- c) Have their legal parentage recognised (or established) under the law of your State (*if* this is possible):

Please include an estimate of the time it may take to complete each stage of this process:

- a)
- b)
- c)

If the answer to this question varies depending upon the factors set out below, please provide a brief explanation, including the impact the particular factor has on the procedure which must be undertaken and any timeframes.

Please tick all which apply:

- i.  The country in which the child was born: please explain

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<sup>29</sup> Since it is recognised that there may be many cases which do not come to the attention of the State authorities.

- ii.  The particular document(s) produced by the intending parents to establish their legal parentage (*e.g.*, a birth certificate, voluntary acknowledgement, court decision, etc.): please explain
- iii.  Whether the child(ren) is / are genetically related to one or both of the intending parents: please explain
- iv.  The nationality of the intending parents: please explain
- v.  Any other factor: please explain

62. Have your State authorities engaged in cross-border administrative or judicial co-operation with the authorities in any other State in order to resolve an ISA case?

- Yes – please specify:
- a) Which authorities in each State were involved:
  - b) The nature of the co-operation:
  - c) Whether the co-operation resulted from legislation, guidelines or practice:
  - d) The result:
- No

63. In your experience, which documents are generally produced to your State authorities to substantiate the claim of the intending parents to an ISA to legal parentage?

Please tick all which apply:

- a)  A birth certificate from the State of birth, including the name(s) of the intending parents: please state from which countries these birth certificates originate and any other details necessary:
- b)  An amended birth certificate from the State of birth, including the name(s) of the intending parents: please state from which countries these amended certificates originate and any other details necessary:
- c)  A pre-birth court order from the State of birth: please state from which countries these orders originate and any other detail necessary:
- d)  A post-birth court order from the State of birth (*i.e.*, transfer of parentage): please state from which countries these orders originate and any other details necessary:
- e)  An adoption order from the State of birth: please state from which countries these orders originate and any other details necessary, including whether use of the 1993 Convention<sup>30</sup> was attempted by either State<sup>31</sup>:
- f)  Other: please specify

If possible, please state (using the relevant letter) which of the above documents your authorities are presented with most frequently in these cases:

64. In general, what is the outcome of these cases in your State for the child:

Please tick all which apply and provide as much detail as possible:

- a)  The child is able to travel to your State and reside there with the intending parents *and* the intending parents are recognised as the legal parents of the child.

Please explain how this is achieved:

- b)  The child is able to travel to your State and reside there with the intending parents *but* one or both of the intending parents is not able to be recognised as the child's legal parents: please explain

<sup>30</sup> Full title: the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, "1993 Convention"). For further information, please see < [www.hcch.net](http://www.hcch.net) >, under "Intercountry Adoption Section".

<sup>31</sup> See the Conclusions and Recommendations of the Special Commission meeting on the practical operation of the 1993 Convention (17-25 June 2010), which concluded that use of the 1993 Convention in cases of international surrogacy arrangements was "inappropriate", paras 25-26.

- c)  The child is not able to travel to your State and has to remain in the State of his / her birth: please explain why and what has happened to the children in such cases
- d)  Other: please explain

If possible, please state which of the four outcomes above occurs most frequently in your State:

### ***The challenges encountered***

65. In general, which of your State authorities are involved in assisting those who encounter difficulties as a result of Incoming cases of ISA?

Please tick all which apply and provide information concerning their particular role:

- a)  The embassies / consulates in the State of the child's birth
- b)  The immigration authorities
- c)  The judicial authorities (*i.e.*, the courts): please specify which
- d)  The Ministry of Justice (or equivalent)
- e)  The Ministry of Foreign Affairs (or equivalent)
- f)  The Ministry of Health (or equivalent)
- g)  The Ministry of Social Affairs (or equivalent)
- h)  Other: please explain

66. Please explain any legal problems your State has encountered in relation to Incoming cases of ISA.

*Please tick all boxes which apply and provide explanations, including the other country(ies) involved in the ISA. Where reported cases are referred to please provide the full text of the judgment, including a translation into English or French where possible.*

Problems relating to:

- a)  The child being able to leave his / her State of birth:
- b)  The child being able to enter your State:
- c)  The child being able to reside in your State:
- d)  The child's nationality:
- e)  The child's legal parentage:
- f)  The behaviour of any party(ies) which is criminal according to international legal standards or according to the domestic rules of the countries involved (*e.g.*, trafficking, sale of children, exploitation of women, etc.):
- g)  The treatment of the surrogate mother in any State (*e.g.*, whether her consent was free and informed, concerning the financial payments made to her, the medical care provided, etc.): please specify
- h)  The breakdown of the ISA: *e.g.*, due to either of the parties reneging on the agreement, for example, due to the child's disability or ill health, the wish of the surrogate mother to keep the child, the relationship breakdown of the intending parents or the clinic using the wrong gametes or another reason, etc.: please explain
- i)  Other: please explain

Please provide any further information you consider relevant concerning the above problems:

67. Using the categories set out below, please provide any available information concerning the costs intending parents resident in your State have paid for an ISA. If, in your experience, costs have varied significantly depending upon the country in which the surrogate mother resided or gave birth, please specify per country.

Please tick all which apply and provide any known figures and a description of to whom the money was paid and for what service:

- a)  Medical costs:
- b)  Legal costs:
- c)  Fees or other costs paid to an intermediary: *e.g.*, a surrogacy agency:
- d)  Expenses and / or other costs paid to the surrogate mother:
- e)  Other: please explain

### **Areas of concern**

68. Do any of the following areas give your State authorities cause for concern in these cases?

In each case, where possible, please specify your particular concerns in the field provided:

- a)  The uncertainty of the legal status of children born to ISAs, in particular in terms of their legal parentage:
- b)  The nationality of children born to ISAs:
- c)  The right of children born to ISAs to know their (genetic and birth) origins:
- d)  The surrogate mother's free and informed consent to the surrogacy arrangement:
- e)  The psychological impact of an ISA on the surrogate mother:
- f)  The medical or other care provided to the surrogate mother:
- g)  The financial aspects of ISAs:
- h)  The competency and / or conduct of the intermediaries involved (lawyers, agencies, etc.):
- i)  The (mis)-information provided to intending parents or surrogate mothers:
- j)  The eligibility and / or suitability of the intending parents to care for the child (*e.g.*, in terms of age, criminal records, psycho-social suitability, etc.):
- k)  Contractual matters: *e.g.*, issues surrounding the enforceability of the surrogacy agreement or the capacity of any of the parties to enter into the agreement:
- l)  Other:

Please state (using the letters above) which of the concerns you have identified above are the most troubling:

### **Legal developments**

69. Does your State have any legislation, rules or guidance which has been specifically enacted or drawn up for intending parents resident in your State engaging in ISAs?

- Yes: please explain
- No

If your State is contemplating any such legislation, rules or guidance in future, please provide further information:

70. Please provide any other information you consider relevant concerning your State's experience of Incoming cases of ISA:

### **B. Outgoing cases**<sup>32</sup>

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<sup>32</sup> *I.e.*, those cases where your State is the State in which the surrogate mother gives birth and from which the child has to leave to travel to the place of residence of his / her intending parents.

**This Section is inapplicable – there have been no “Outgoing cases” of ISA in this State. Go to Part IV.**

***Basic empirical data***

71. Do you have any information concerning:

a) The number of **Outgoing cases** of ISA which have required the assistance of your State authorities in recent years?

Yes – please provide any figures available:

Pre-2009

2009

2010

2011

2012

2013 (so far)

No information is available

b) How many children have been born to surrogate mothers in your State as a result of ISAs involving intending parents resident in another State?

Yes – please provide any figures available:

Pre-2009

2009

2010

2011

2012

2013 (so far)

No information is available

If you have provided any figures above, please comment upon whether you consider that these figures reflect the true number of Outgoing cases of ISA involving your State<sup>33</sup> and, further, please provide a general comment concerning the prevalence of Outgoing cases of ISAs and whether such cases have increased in the past five years:

If you have not provided figures above, are you able to provide any comment concerning the prevalence of Outgoing Cases of ISAs involving your State and / or whether this has increased in the past five years?

72. Please list any States in which intending parents, engaging a surrogate mother in your State by way of ISA, have been resident:

***The procedure for Outgoing cases of ISA***

73. In general, which of your State authorities are involved in assisting those who undertake an ISA with a surrogate mother in your State?

Please tick all which apply and provide information concerning their particular role:

a)  The immigration authorities: please specify

b)  The judicial authorities (*i.e.*, the courts): please specify which

c)  The Ministry of Justice (or equivalent)

d)  The Ministry of Foreign Affairs (or equivalent)

<sup>33</sup> Since it is recognised that there may be many cases which do not come to the attention of the State authorities.

- e)  The Ministry of Health (or equivalent)
- f)  The Ministry of Social Affairs (or equivalent)
- g)  Other: please explain

74. Do foreign-resident intending parents require a visa or any other immigration document(s), or do they have to meet any other conditions, to *enter* your State to be able to undertake the necessary meetings and medical procedures to enter into an ISA in your State?

Please tick all which apply:

- Yes, they have to meet the following conditions – please specify:
- Yes, they have to obtain a visa or other immigration document(s) – please specify what type of document is required, the conditions for obtaining it and the procedure:
- No
- It depends upon the State of residence or nationality of the intending parents: please specify

75. Is the law of the State of the habitual residence of the intending parents taken into account in any way when considering whether intending parents are permitted to undertake an ISA in your State (e.g., where this law forbids surrogacy arrangements).<sup>34</sup>

- Yes – please explain how this law is taken into account:
- No
- It depends upon the State of residence or nationality of the intending parents: please explain

76. How do foreign-resident intending parents, who are party to an ISA, obtain legal parentage for a child born to a surrogacy arrangement in your State?

*Your response to this question will likely depend upon your answer to **Questions 26 to 27** above.*

Please tick all which apply:

- a)  They will be the legal parents by operation of law and therefore their names will be placed immediately on the child's birth certificate: please explain
- b)  They can obtain an amended birth certificate: please explain
- c)  They can obtain a *pre*-birth court order confirming their legal parentage: please explain any conditions for obtaining such an order
- d)  They can obtain a *post*-birth court order (*i.e.*, a transfer of parentage): please explain any conditions for obtaining such an order
- e)  They can adopt the child: please explain, including whether use of the 1993 Convention has been attempted in this regard<sup>35</sup>
- f)  Other: please specify

Please explain the procedure for any of the options ticked above and any specific requirements which apply to *foreign*-resident intending parents:

<sup>34</sup> *E.g.*, see clause 34(19) of the *Indian Assisted Reproductive Technologies (Regulation) Bill 2010* still pending, explained in Prel. Doc. No 10 of March 2012 (note 1) at para. 45. In addition, the recent Indian visa requirements now impose on foreign nationals visiting India to undertake a surrogacy arrangement, a condition to similar effect: *i.e.*, that the intending parents must have a letter from the embassy of their State of residence indicating that the State recognises surrogacy and that the child born will be permitted to enter this State. See also the Ukrainian Draft Law No 0989 (former No 8282) on the restrictions pertaining to the use of assisted reproductive technology (rejected by the Parliament of Ukraine on 21 March 2013). This bill also envisaged, in particular, restrictions on the use of surrogacy arrangements for nationals of those States where surrogacy is prohibited by law.

<sup>35</sup> See note 31 above concerning the 2010 Special Commission meeting on the practical operation of the 1993 Convention which concluded that use of the 1993 Convention in cases of international surrogacy arrangements was "inappropriate".

Please further specify whether the surrogate mother's consent, and her husband or partner's consent where applicable, is required for any of these procedures and the consequences if this consent is not forthcoming at the relevant time:

77. Please explain the procedure, including any immigration and legal processes, which foreign-resident intending parents need to undertake in order to *leave* your State with a child born to a surrogacy arrangement:

Please state the time it may take to complete this process:

If the answer to this question varies depending upon the factors set out below, please provide a brief explanation, including the impact the particular factor has on the procedure which must be undertaken and any timeframes.

Please tick all which apply:

- a)  The country in which the intending parents live: please explain
- b)  The particular document(s) produced by the intending parents to establish legal parentage (e.g., a birth certificate, voluntary acknowledgement, court decision, etc.): please explain
- c)  Whether the child(ren) is / are genetically related to one or both of the intending parents: please explain
- d)  The nationality of the intending parents: please explain
- e)  Any other factor: please explain

78. Have your State authorities engaged in cross-border administrative or judicial co-operation with authorities in any other State in order to resolve an ISA case?

- Yes – please specify:
  - a) Which authorities in each State were involved:
  - b) The nature of the co-operation:
  - c) Whether the co-operation resulted from legislation, guidelines or practice:
  - d) The result:

No

79. In general, what is the outcome of these cases in your State for the child?

Please tick all which apply:

- a)  The child is able to leave your State, travel to the State of residence of the intending parents, reside there with the intending parents *and* the intending parents are recognised as the legal parent(s) of the child.  
Please explain how this is achieved:
- b)  The child is able to leave your State, travel to the State of residence of the intending parents, reside there with the intending parents *but* one or both of the intending parents are not able to be recognised as the child's legal parents: please explain
- c)  The child is able to leave your State but is not able to travel to the State of residence of the intending parents and has to remain in your State: please explain what has happened to the children in such cases
- d)  The child is not able to leave your State: please explain why and what has happened to the children in such cases
- e)  Other: please explain

If possible, please state which of the five outcomes above occurs most frequently in your State:

### **The challenges encountered**

80. Please explain any legal problems your State has encountered in relation to Outgoing cases of ISA.

*Please tick all boxes which apply and provide explanations, including the other country(ies) involved. Where reported cases are referred to please provide the full text of the judgment, including a translation into English or French where possible.*

Problems relating to:

- a)  The child being able to leave your State:
- b)  The child being able to enter the State in which his / her intending parents are resident:
- c)  The child being able to reside in the State in which his / her intending parents are resident:
- d)  The child's nationality:
- e)  The child's legal parentage:
- f)  The behaviour of any party(ies) which is criminal according to international legal standards or according to the domestic rules of the countries involved (e.g., trafficking, sale of children, exploitation of women, etc.):
- g)  The treatment of the surrogate mother in any State (e.g., whether her consent was free and informed, concerning the financial payments made to her, the medical care provided, etc.): please specify
- h)  The breakdown of the ISA: e.g., due to either of the parties reneging on the agreement, for example, due to the child's disability or ill health, the wish of the surrogate mother to keep the child, the relationship breakdown of the intending parents or the clinic using the wrong gametes or another reason, etc.: please explain
- i)  Other: please explain

Please provide any further information you consider relevant concerning these legal problems:

81. Using the categories set out below, please provide any information you have concerning the costs intending parents resident abroad have paid for an ISA in your State. If, in your experience, costs have varied significantly depending upon the country in which the intending parents resided, please specify per country.

Please tick all which apply and provide any known figures and a description of to whom the money was paid and for what service:

- a)  Medical costs:
- b)  Legal costs:
- c)  Fees or other costs paid to an intermediary: e.g., a surrogacy agency:
- d)  Expenses and / or other costs paid to the surrogate mother:
- e)  Other: please explain

### **Areas of concern**

82. Do any of the following areas give your State authorities cause for concern in these cases?

In each case, where possible, please specify your concerns in the field provided:

- a)  The uncertainty of the legal status of children born to ISAs, in particular in terms of their legal parentage:
- b)  The nationality of children born to ISAs:
- c)  The right of children born to ISAs to know their (genetic and birth) origins:

- d)  The surrogate mother's free and informed consent to the surrogacy arrangement:
- e)  The psychological impact of an ISA on the surrogate mother:
- f)  The medical or other care provided to the surrogate mother:
- g)  The financial aspects of ISAs:
- h)  The competency and / or conduct of the intermediaries involved (lawyers, agencies, etc.):
- i)  The (mis)-information provided to intending parents or surrogate mothers:
- j)  The eligibility and / or suitability of the intending parents to care for the child (e.g., in terms of age, criminal records, psycho-social suitability, etc.):
- k)  Contractual matters: e.g., issues surrounding the enforceability of the surrogacy agreement or the capacity of any of the parties to enter into the agreement:
- l)  Other:

Please state (using the letters above) which of the concerns you have identified above are the most troubling:

### **Legal developments**

83. Does your State have any legislation, rules or guidance which has been specifically enacted or drawn up for intending parents or surrogate mothers engaging in ISAs in your State?

- Yes: please explain
- No

If your State is contemplating any such legislation, rules or guidance in future, please provide further information:

84. Please provide any other information you consider relevant concerning your State's experience of Outgoing cases of ISA:

### **Part IV: Current bilateral or multilateral instruments** in the field

85. Please list any bilateral, regional or multilateral instruments which currently, or may in future, bind your State concerning:

- a) Any matters related to the establishment, recognition or contestation of the legal parentage of children;

Bilateral Agreements on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases:

between the Republic of Lithuania and the Republic of Armenia (entered into force in 2005, July 8)

between the Republic of Lithuania and the Republic of Azerbaijan (entered into force in 2002, November 22)

between the Republic of Lithuania and the Republic of Belarus (entered into force in 1993, July 11)

between the Republic of Lithuania and the Republic of Kazakhstan (entered into force in 1999, April 8,)

between the Republic of Lithuania and the Republic of Poland (entered into force in 1993, October 18);

between the Republic of Lithuania and the Republic of Moldova (entered into force in 1995, February 18);

between the Republic of Lithuania and the Russian Federation (entered into force in 1995, January 21);  
 between the Republic of Lithuania and the Republic of Ukraine (entered into force in 1994, November 20);  
 between the Republic of Lithuania and the Republic of Uzbekistan (entered into force in 1998, July 10);

Treaty between the Republic of Lithuania and the People's Republic of China on judicial assistance in civil and criminal matters (entered into force 2002, January 29).

Agreement on Legal and Judicial Cooperation in Commercial and Civil Matters between the Republic of Lithuania and the Republic of Turkey (entered into force 2004, August 15).

European Convention on the Legal Status of Children Born out of Wedlock (1975) (in the Republic of Lithuania applicable from 1997).

Convention on the Rights of the Child, 1989 (in the Republic of Lithuania applicable from 1992).

b) Any matters specifically related to surrogacy arrangements;

There are no bilateral, regional or multilateral instruments which bind the Republic of Lithuania in matters specifically related to surrogacy arrangements.

Please provide any detail you consider necessary:

#### **Part V: Thoughts on possible future work**

86. What, if any, are the **needs** you consider ought to be addressed by any possible future global work in this area?

Please specify: The Ministry of Justice of the Republic of Lithuania agrees that the international problems related to the children's legal status, parentage and establishment thereof, which are disclosed in the preliminary documents drafted by the Permanent Bureau of the International Hague Conference in 2011 and 2012 are relevant, particularly taking into consideration the legal challenges that have occurred as a result of the global evolution of legal family relationships and medical science, as well as the growing population mobility and increasingly popular 'reproductive tourism'.

On the other hand, the legal regulation of the children's legal status, assisted reproduction, surrogate maternity and other related relationships are closely linked to the cultural, political and social environment of each state. Taking into consideration the aforesaid, the possibility of achieving progress in resolving the problems identified in the preliminary documents at the international level may be hindered by the public order clauses applied by states. Irrespectively, we believe that there is a need to take measures on an international scale, particularly, those that would ensure that there are no stateless children or children whose filiation has not been determined.

87. Please provide your thoughts concerning the **approach** that should be taken in relation to any possible future regulation of any of the matters mentioned in this Questionnaire.

*In this response, you may wish to consider and comment upon the thoughts set out in Section VIII of Preliminary Document No 11 of March 2011 and Section IV of Preliminary Document No 10 of March 2012.*

*You may also wish to comment upon the **nature** of any possible future regulation: e.g., whether a binding instrument should be considered or whether approaches such as a model law, non-binding principles or guidance, etc. would meet the needs you identified in **Question 86** above.*

Having evaluated the proposals provided for in the preliminary documents regarding possible directions of international regulation and/or cooperation, the Ministry of Justice of the Republic of Lithuania believes that at this stage the most realistic step in the area of legal regulation of parentage determination and contesting would be to reach an agreement on the international private law instrument, the scope of which would be restricted by the recognition of the decisions related to the acknowledgment and contesting of parentage.

Optional rules or general principles based on the most advanced practice of the states in the area of establishment and contesting of parentage (particularly, in applying assisted reproduction or using the institutes of surrogate maternity) could be also very useful for the states in improving national legal regulation or resolving ad hoc related practical issues.

Although the legal acts applicable in the Republic of Lithuania do not provide for gamete donation and do not regulate the issues related to the legal aspects of surrogacy and the draft Law on assisted reproduction registered in the Seimas of the Republic of Lithuania does not regulate any matters related to the legal aspects of surrogacy, the issue of the filiation of a child born as a result of using the donors' gametes and/or a surrogate mother could also be relevant to the Republic of Lithuania in case the individuals who permanently reside in the Republic of Lithuania take advantage of the assisted reproduction or surrogate maternity services provided in other states. In our opinion, first of all, it would be expedient to consider the possibility of drafting an international instrument that would introduce a mechanism for cooperation between the competent authorities of the states of parents and surrogate mothers of children born by using such method, which would allow resolving any legal matters related to the child's filiation and citizenship ex-ante, i.e. before conception.

88. If the Hague Conference were to develop a global instrument on the private international law issues surrounding the status of children (in particular, the cross-border recognition of legal parentage), which of the following general features *may* be desirable to include in such an instrument?

Please tick all which apply (and please note that these features are not mutually exclusive and necessarily overlap):

***The child's legal status***

- a)  Harmonisation of the private international law rules relating to the establishment, recognition and contestation of legal parentage: please comment
- b)  Recognition *by operation of law* of child(ren)'s legal parentage established in one State Party, in compliance with the instrument's rules, in all other States Parties: please comment when establishing the rules of this nature, the right balance should be struck between the stability of a child's parentage established pursuant to the law of one state, on the one hand, and the respect for public order by the state, in which it is sought to recognise the legal parentage established pursuant to the law of another state, on the other hand.

***Safeguards***

- c)  The establishment of safeguards (minimum standards) to ensure that any procedures for the establishment, recognition and contestation of legal parentage take place with respect for the fundamental rights and welfare of all parties involved, in particular the child(ren) concerned: please comment the establishment of such minimum standards could be particularly significant in seeking to restrict the application of the public order clause in rejecting the recognition of legal parentage established in another state and the uncertainty of the child's legal status as a result thereof.

### **Co-operation**

- d)  The establishment of a system for co-ordination, communication and co-operation between States in relation to the establishment, recognition and contestation of legal parentage. Such a system may include a clear division of responsibilities between States, as well as the establishment of defined channels for communication between the relevant authorities.

Please comment, including in relation to whether you see a need for the establishment of "central authorities" within such a system: Appointment of "central authorities" dealing with the issues related to cross-border recognition of legal parentage could be useful in providing all necessary information and assistance

### **Other**

- e)  Other: please specify

89. If the Hague Conference were to develop a global instrument specifically on international surrogacy arrangements,<sup>36</sup> which of the following general features *may* be desirable to include in such an instrument?

Please tick all which apply (and please note that these features are not mutually exclusive and necessarily overlap):

### **The child's legal status**

- a)  Harmonisation of the private international law rules relating to the establishment, recognition and contestation of legal parentage, limited to legal parentage arising following a surrogacy arrangement: please comment
- b)  Recognition *by operation of law* of child(ren)'s legal parentage established in one State Party following a surrogacy arrangement, in compliance with the instrument's rules, in all other States Parties: please comment
- c)  Provisions concerning the child(ren)'s nationality: please comment

### **Safeguards**

- d)  The establishment of safeguards (minimum standards) to ensure that such arrangements take place with respect for the fundamental rights and welfare of all parties involved, *i.e.*, the child(ren) to be born, the surrogate mother and intending parents: please comment, including in relation to which elements you consider there ought to be such minimum standards (*e.g.*, the surrogate mother's free and informed consent, the child's right to know his / her origins, etc.)
- e)  Safeguards (minimum standards) specifically in relation to the intermediaries involved in such arrangements (*e.g.*, surrogacy agencies, lawyers, etc.). These standards may be combined with a system of licensing and supervision to ensure compliance: please comment

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<sup>36</sup> See **Part III** of the Questionnaire above.

- f)  Safeguards (minimum standards) specifically in relation to medical institutions undertaking the procedures connected with international surrogacy arrangements: please comment

### **Co-operation**

- g)  The establishment of a system for co-ordination, communication and co-operation between States in relation to such arrangements. This may include a clear division of responsibilities between States, for example, such that: (a) the competent authorities of the State of the habitual residence of the intending parents would be responsible for determining that the intending parents are eligible to enter into the arrangement, and that any child born as a result will be permitted to enter and reside in their State;<sup>37</sup> and (b) the competent authorities of the State in which the surrogate mother habitually resides would be responsible for determining that the surrogate mother is eligible and suitable to enter into the arrangement and that the child will be entitled to leave this State following his / her birth. The co-operation system could also include the creation of defined procedures which must be complied with by the parties to such arrangements.

Please comment, including in relation to whether you see a need for the establishment of "central authorities" within such a system:

### **Other**

- h)  Provisions concerning the financial aspects of international surrogacy arrangements: please comment  
i)  Other: please specify

90. What priority would you give working towards a future instrument on the private international law issues concerning the status of children (in particular, the cross-border recognition of legal parentage) generally?

- a)  High priority / urgent  
b)  Medium priority – desirable but not urgent  
c)  Low priority – possibly desirable but other projects should take priority  
d)  No priority – no further work should be done in this field  
e)  Other: please specify

91. What priority would you give working towards a future instrument specifically on the challenges occurring as a result of international surrogacy arrangements?

- a)  High priority / urgent  
b)  Medium priority – desirable but not urgent  
c)  Low priority – possibly desirable but other projects should take priority  
d)  No priority – no further work should be done in this field  
f)  Other: please specify

92. Please provide any other comment(s) you may have concerning the possible future global regulation of matters contained within this Questionnaire:

**Thank you for your time: this information will greatly assist the work of the Permanent Bureau.**

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<sup>37</sup> Following the trend in some States in which international surrogacy arrangements are regularly entered into to take into account the legal position in the State of the habitual residence of the intending parent(s) before permitting the surrogacy arrangement to proceed: see note 34 above.