

**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): **Finland**

**Information for follow-up purposes**

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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:

The Population Information System is a computerised national register that contains basic information about Finnish citizens and foreign citizens residing permanently in Finland. The Population Information Act (661/2009) and the Population Information Decree (128/2010) regulate the Population Information System. The Population Information System is maintained by the Population Register Centre and Local Register Offices (Section 4 in the Act). Basic personal data recorded in the system include name, personal identity code, address, citizenship and native language, family relations and date of birth and death (Chapter 1 in the Decree). Registration of information is based on statutory notifications made by private individuals and public authorities (including e.g. doctors) (Chapter 3 in the Act and Section 32 in the Decree). For more detailed information, please see the answer to question number 2.

The Act and the Decree in Finnish and Swedish can be found at: <http://finlex.fi/fi/laki/ajantasa/2009/20090661> and <http://www.finlex.fi/fi/laki/ajantasa/2010/20100128>. Unfortunately no English translations are available.

Please see the following web-links for further information in English about the Population Information System and Population Register Centre: <http://www.vrk.fi/default.aspx?id=39> and the Local Register Offices: <http://www.maistraatti.fi/en/>.

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):

Registration of a birth into the Population Information System is mandatory.

According to the Population Information Decree, Section 32, a healthcare unit where the birth took place is obligated to inform the Personal Information System about every child born alive. A doctor, nurse, midwife or other healthcare professional assisting the mother in the childbirth outside the hospital has the same obligation. If the child is born in other circumstances the mother or person taking care of the child is obligated to inform a healthcare unit, doctor, nurse or midwife who forwards the information about the birth to the Personal Information System.

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<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."

The announcement of the birth must be done no later than the day following the birth or the notice of the birth outside the hospital. The announcement can be made through an electronic user connection or in writing to a Local Register Office.

Information about a birth (date, place and state) is thus obtained directly from the hospital, healthcare professional or other healthcare unit, or if these are not aware of the birth, the mother is obliged to give the information to the registrar. The child is then according to the Population Information Act automatically provided with a personal identity code from the Personal Information System. However, if the child is not a Finnish citizen according to the Nationality Act (359/2003) separate provisions apply. For details, please see the answer to question number 38.

The Personal Data Act (523/1999) regulates the processing of personal data and the protection of private life and the other basic rights which safeguard the right to privacy, as well as promotes the development of and compliance with good processing practice. The Act is available in English at: <http://www.finlex.fi/en/laki/kaannokset/1999/19990523>.

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
- e)  Other: please explain

The woman who gives birth to the child is according to established legal practice the legal mother of the child. No legislation about establishment of maternity exists. For more details, please see the answer to question number 37.

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 Please see below the answer to subsection h.
- 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

<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.

<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.

The required proof depends on the circumstances of the case and the regulation is divided in two parts. Firstly, legal paternity is based on the presumption of paternity on the basis of marriage, and no separate acknowledgement or proof is required. Secondly, legal paternity is based on acknowledgement of paternity if the mother is not married or the paternity has been rebutted.

Establishment of paternity is regulated in the Paternity Act (700/1975). The Act can be found in Finnish and in Swedish at <http://www.finlex.fi/fi/laki/ajantasa/1975/19750700> and in English at <http://www.finlex.fi/fi/laki/kaannokset/1975/19750700> (amendments up to 379/2005 are included, unfortunately the private international law rules from year 2009 and rules on assisted fertility treatment from year 2006 have not been updated into the translation).

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?

According to Section 27 in the Population Information Act, the person who has the responsibility of forwarding information to the Population Information System is responsible for the information being reliable and up-to-date.

Registration offences are regulated in Chapter 16, Section 7 of the Criminal Code (39/1889, <http://finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>). A person who (1) in order to cause a legally relevant error in a public register kept by a public authority, provides false information to that authority, or (2) in order to gain a benefit for himself or herself or another person, or in order to cause damage to another person, takes advantage of an error caused in the manner referred to in paragraph (1), shall be sentenced for a registration offence to a fine or to imprisonment for at most three years. An attempt is punishable.

According to the Criminal Code, Chapter 16, Section 5, a person who in order to mislead a public authority provides a false name or otherwise provides false or misleading information on his or her identity, or for this purpose uses another person's identity card, passport, driver's license or other such certificate, shall be sentenced for giving false identifying information to a fine or to imprisonment for at most six months.

Criminal Code Chapter 33 regulates forgery crimes. According to Section 1 a person who prepares a false document or other item or falsifies such a document or item in order for it to be used as misleading evidence or uses a false or falsified item as misleading evidence shall be sentenced for forgery to a fine or imprisonment for at most two years. An attempt is punishable.

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<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.

According to the Paternity Act, Section 44, if a mother has deliberately given a false statement to the child welfare supervisor in the investigation of paternity, a mother has without lawful excuse concealed something that to her knowledge would have been of benefit for the investigation, and the statement or concealment has been conducive to a false establishment of paternity, she shall be sentenced for giving a false statement for the investigation of paternity, to a fine, unless a more severe penalty for the act has been provided elsewhere in the law.

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 There is no legislation about legal maternity, but the established legal practice is that the legal mother is the woman who gave birth to the child.

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

According to the Paternity Act, Section 2, the husband is the father of a child born during marriage. If the marriage is dissolved before the birth of a child due to the death of the husband, he is the father of the child if the date of birth of the child after the dissolution is such that the child could have been conceived during the marriage. However, if the mother has entered into a new marriage before the birth of the child, the latter husband is the father of the child.

According to the Paternity Act, Section 3, a man who was not married to the mother of the child at the time of the birth of the child can acknowledge his paternity. Voluntary acknowledgement is explained in more detail in answer to question number 11.

<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*.

If the mother is not married or the paternity has been rebutted, the child welfare supervisor will initiate an investigation of the paternity. The investigation is regulated in Chapter 2 of the Paternity Act. Before the investigation is initiated, the child welfare supervisor shall invite the mother to discuss the paternity of the child. In this discussion, the child welfare supervisor shall explain to the mother the consequences of the establishment of paternity in respect to the legal and economic status of the child. In addition, the mother shall be informed of the measures which the child welfare supervisor shall undertake in order to obtain information related to the paternity. In the investigation of paternity, the child welfare supervisor shall obtain the information necessary for the establishment of paternity from the mother and from other persons who can provide information on matters pertaining to the paternity. A mother who wants the child welfare supervisor to attend to the investigation of paternity shall provide the child welfare supervisor with truthful information on all matters necessary for this investigation. In particular, the mother shall name the men with whom she had sexual intercourse at the time the child was conceived. The child welfare supervisor shall also obtain medical statements and order genetic tests to establish paternity if this is not deemed to be unnecessary. The supervisor shall order genetic tests if a man who might be the father requests it or if it is otherwise considered to be necessary. If the child welfare supervisor deems that the paternity of the child has been proved, the man is given an opportunity to acknowledge his paternity. A man who wants to acknowledge his paternity shall notify a child welfare supervisor, a population registrar or a notary public in person that he is the father of the child. The acknowledgement of paternity is regulated in Chapter 3 of the Paternity Act.

The child welfare supervisor may not initiate or continue the investigation of paternity against the will of the mother if she informs the child welfare supervisor in writing that she objects to the investigation of paternity and if the child is in her custody or care. However, the investigation of paternity shall be carried out in spite of the objections of the mother if a man who considers himself to be the father of the child acknowledges his paternity. (Section 8 of the Paternity Act).

Separate provisions of the Paternity Act apply to the investigation of paternity if the child has reached fifteen years of age (Sections 5 and 43). The investigation of paternity shall not be carried out if the child objects to the establishment of paternity.

The child welfare supervisor shall prepare a record of the investigation of paternity. The record shall show all the information that is relevant for the establishment of paternity. When necessary, the record shall also show information on matters that are relevant to a decision on maintenance. (Paternity Act, Section 14)

If the paternity of the child has not been resolved by legal presumption or by the voluntary acknowledgement by the man, an action may be brought to Court for establishment of paternity. According to Section 3 of the Paternity Act, the Court shall establish that the man is the father of the child 1) if it is shown that he had sexual intercourse with the mother at the time of conception, and it can be deemed proven that the man has conceived the child or 2) the man's sperm has been used in order to conceive the mother in other manner than through assisted fertility treatment, and it can be deemed proven that the child is born from this.

According to the Act on Genetic Testing to Establish Paternity (378/2005, <http://finlex.fi/fi/laki/ajantasa/2005/20050378>, unfortunately no English

translation is available) the Court may order a genetic test to be made if a party requests or the Court considers it necessary (Section 2). The Act includes more specific rules on persons who may be tested for this purpose.

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

It is possible to rebut the legal presumption of paternity. According to Chapter 5 in the Paternity Act an action to annul paternity may be brought by the husband, mother or child (Paternity Act, Section 35).

The Court shall due to the action establish that the husband is not the father of the child if it is shown that the mother had sexual intercourse with someone other than the husband or if sperm of someone other than the husband was used in order to achieve pregnancy, and it can be deemed proven that the child was conceived at that time or if it can be deemed proven by other reasons, e.g. inheritable characteristics, that the husband is not the father of the child. If the child was conceived before the marriage or during separation, the Court shall establish that the husband is not the father, unless it can be proven to be probable that the spouses had sexual intercourse with one another or that the man's sperm has been used in the assisted fertility treatment at the time of the conception. Legal paternity of the husband can, however, not be rebutted if the child is born as a result of an assisted fertility treatment to which the husband gave his consent. (Paternity Act, Section 34)

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
- 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

- 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)?

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<sup>9</sup> See note 6 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) There are no restrictions relating to the man acknowledging the paternity, and any man can claim to be the father of the child.

2) According to the Paternity Act, Section 15, a man who wants to acknowledge his paternity shall notify a child welfare supervisor, a population registrar or a notary public in person that he is the father of the child. Before the acknowledgement is made, the official receiving the acknowledgement shall inform the man of its significance and legal effects. Paternity may not be acknowledged before the birth or after the death of the child. A dated and duly signed document shall be drafted on the acknowledgement and consents thereto. The document shall be signed by the man acknowledging his paternity and by the official receiving the acknowledgement. If the acknowledgement is subject to the consent of the child, mother or husband (see 3), the document shall be signed also by them and the recipient of the consent (Section 19). After a man has acknowledged his paternity, the child welfare supervisor responsible for the investigation of paternity shall without delay send the documents on the acknowledgement and the record of the investigation of paternity for approval to the Local Register Office of the district in which the child welfare supervisor is operating (Section 20). The decision on the approval of the acknowledgement is made by the Local Register Office.

3) If the child is legally competent (has reached the age of eighteen years and the competence has not been restricted by a Court), the acknowledgement shall be subject to his/her approval (Section 16). The acknowledgement shall also be subject to the approval of the child if he/she has reached the age of fifteen years and has the right to file and to carry out a lawsuit in matters pertaining to his/her person (Section 16). If the acknowledgement concerns a child born during marriage the acknowledgement shall be subject to the approval of the mother and the husband (Section 16 a).

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:

Acknowledgement can be given before a notary public in the foreign service of Finland according to the provisions of the Foreign Service Act (204/2000, <http://finlex.fi/fi/laki/ajantasa/2000/20000204> only in Finnish and Swedish). The statement of acknowledgement may be made also in a foreign State in accordance with the form and proceedings stipulated by the law of said State.

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:  
According to the Act on Registered Partnerships (950/2001, <http://finlex.fi/en/laki/kaannokset/2001/en20010950.pdf>) the provisions of the Paternity Act on the establishment of paternity on the basis of marriage do not apply in a registered partnership. However, according to Section 9 (revised in 2009) the right of a spouse to adopt the other spouse's child applies in a registered partnership too.
- d)  Other:

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

<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-

## 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
- This question is regulated by the Act on Assisted Fertility Treatments (1237/2006, <http://finlex.fi/en/laki/kaannokset/2006/en20061237>, "the Fertility Act"). According to Section 3, subject to the provisions of this Act, the gametes and embryos of the person receiving treatment as well as gametes and embryos donated in accordance with this Act may be used in assisted fertility treatment. Imported gametes and embryos may be used in assisted fertility treatment when the requirements laid down in this Act in respect of donor, donation and donated gametes and embryos are met. According to Section 4 the following may not be used in assisted fertility treatment: 1) genetically manipulated gametes and embryos, 2) cloned embryos, and 3) gametes and embryos which have been used in research. According to Section 5 the characteristics and health of the child to be born as a result of assisted fertility treatment may be influenced under certain conditions only. According to Section 8 assisted fertility treatment may not be provided if: 1) the written consent of the person receiving the treatment has not been obtained, 2) either party of the couple receiving treatment is married to a third person, 3) pregnancy would pose a substantial risk to the health of the woman or the child due to the age or health of the woman, 4) a person consenting to the provision of assisted fertility treatment has withdrawn consent or died, 5) it is apparent that the child's balanced development cannot be guaranteed, or 6) there is reason to presume that the child will be given up for adoption.
- 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
- This is regulated by the Fertility Act. Please see link to the Act above in question number 16.
- 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.):
- Please see above answer to question number 16.
- b)  Who may perform ART services:
- According to Section 24 in the Fertility Act the storage of gametes and embryos and the provision of assisted fertility treatment are subject to a licence from the National Supervisory Authority for Welfare and Health. A licence may be granted to a healthcare unit or a specialised physician in possession of the specialised expertise and personnel required for the activities as well as appropriate facilities and equipment for the activities and submitting a report on the appropriate organisation of the counselling services

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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.

referred to in Section 9. A licence may also be granted to apply only to a specific method of storage or treatment.

- c)  The regulation of medical or other institutions which perform ART services (e.g., the licensing of clinics or hospitals): Please see above.
- d)  Which ART services may be performed:  
The Fertility Act applies, according to Section 1, to the provision of assisted fertility treatment in which a human gamete or an embryo is placed in a woman for the purpose of creating a pregnancy. It also applies to the donation and storage of gametes and embryos for use in assisted fertility treatment. For purposes of this Act, the inserting in a woman of the untreated and unstored sperm of man without the professional involvement of a person entitled to practise as a physician or of another outsider against compensation shall not be considered assisted fertility treatment.
- e)  Whether egg donation is permitted and, if so, under which conditions: For restrictions, see answer to question number 16. According to Section 13 of the Fertility Act gametes may be donated by persons over the age of 18 who pass a physical examination ensuring that: 1) the donation of gametes does not pose a health hazard to them, and 2) they do not have any serious inherited disease or any communicable disease that may cause a serious illness to the woman receiving assisted fertility treatment or to the child who may be born as a result of assisted fertility treatment.
- f)  Whether sperm donation is permitted and, if so, under which conditions: Please see point e) above.
- g)  The costs of ART (including the amount paid to any gamete donors):  
According to Section 21 no remuneration may be given or promised for the donation of gametes. However, the donor may be paid a reasonable sum in compensation of expenses, loss of income and other inconvenience arising from the donation as provided for in greater detail in the Decree of the Ministry of Social Affairs and Health. Any agreement concerning other remuneration or payment relating to donation shall be null and void.
- h)  The anonymity of gamete donors:  
According to Section 14, instead of identification data, donors shall be referred to by code only (donor code). The service provider collecting the donation shall enter the donor code on the archived copy of the donor consent referred to in Section 17(2) and on the container in which the donated gametes are stored. If the donor has given consent to confirmation of paternity, this shall be indicated in the donor code. In Section 15 it is regulated that the information describing the colour of the donor's skin, eyes and hair as well as the donor's height and ethnic origin may be collected and recorded in connection with the physical examination on the donor. No other besides the above and the information relating to the consent of the donor regulated in the Section 17 may be collected. According to Section 29 the documents referred to herein are patient documents as referred to in the Act on the Status and Rights of Patients. The donor code noted on the consent to treatment and the information obtainable from the donation register on the basis of the donor code may only be disclosed to persons with the right to obtain information as provided in Section 23.
- i)  The right of the child to know his / her genetic or birth origins:  
According to Section 23 a person who may have been born from a donated gamete or embryo shall, upon attaining the age of eighteen (18), be entitled to obtain from the service provider a copy of the consent to treatment and the donor code noted thereon and, by providing the donation register with the code, to learn the identity of the donor. In the event that assisted fertility treatment as referred to in Section 16(2) has been provided and the donor of the sperm has given his consent that he may be confirmed as the father of the child born as a result of such treatment, the mother and the child are entitled to learn from the service provider the donor code and, by providing the donation register with the code, the identity of the donor.

- j)  The legal parentage of any child born as a result of ART (see also **Questions 19 to 22** below)
- k)  Other: please explain The provisions on legal parentage of a child born as a result of ART are found in the Paternity Act (especially Section 3 a).

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 is based on the established legal practice and a general principle in the field of family law.

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: The husband is considered as the legal father irrespective of his consent due to the legal presumption (Paternity Act, Section 3 a). However, the husband's consent is required for fertility treatment as without consent the presumption can be rebutted (Section 34).
- 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

The Section 16 in the Fertility Act regulates, that a sperm donor may give his consent that he may be confirmed as the father of a child to be born as a result of such treatment. Section 3 a in the Paternity Act further regulates that when the mother is provided assisted fertility treatment, the legal paternity of a man, who together with the mother gave his consent to the treatment, shall be established if it can be deemed to be proven that the child is born as a result of the said treatment.

Please explain whether the above position results from legislation, rules, case law or other source(s) of law: This is regulated both by the Paternity Act and Fertility Act.

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

Please see above the answer to question number 20 d.

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:

According to the Fertility Act (Section 2), same-sex couples do not have access to fertility treatment as a couple. However, as the Act allows the treatment of single women, female couples have, in practice, access to treatment. Legal parentage of the female partner is then arranged via intra-family adoption procedures.

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

In 2011 altogether 14460 assisted fertility treatments were started in Finland. A little more than 9300 of these treatments were in vitro or micro fertilizations and a little less than 5000 insemination treatments. Altogether 3149 pregnancies followed these treatments and 2536 children were born (which is 4,2 % of all children born annually in Finland). Since year 2006 the numbers have been approximately the same. Please find further information and the report in Finnish with statistics also in English at: [https://www.julkari.fi/bitstream/handle/10024/104483/Tr13\\_13.pdf?sequence=1](https://www.julkari.fi/bitstream/handle/10024/104483/Tr13_13.pdf?sequence=1).

According to preliminar numbers for year 2012, the amount of assisted fertility treatments was notably less in 2012 than in previous years. (Please find further information at: [http://www.thl.fi/en\\_US/web/en/statistics/topics/reproductive\\_health/assisted\\_fertility\\_treatments](http://www.thl.fi/en_US/web/en/statistics/topics/reproductive_health/assisted_fertility_treatments))

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 Fertility Act came into force in 2007. According to the Act, Section 8, assisted fertility treatment may not be provided if there is reason to presume that the child will be given up for adoption. The purpose of this regulation was to prevent surrogacy arrangements based on assisted fertility treatments. The person who intentionally provides assisted fertility treatment in violation of Section 8 shall be sanctioned to a fine (Section 35).

Furthermore, according to the Adoption Act (22/2012, available only in Finnish and Swedish at: <http://finlex.fi/fi/laki/ajantasa/2012/20120022>) Section 5, adoption shall not be granted if any remuneration for the adoption has been given or promised or if someone other than the adopter has, with a view to the adoption being granted, made or undertaken to make remunerative payments for the maintenance of the child. According to the Criminal Code (39/1889, <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>), Chapter 25 Section 3 b, a person who breaches the prohibition to grant remuneration for the adoption shall be sentenced for getting an illegal adoption consent to a fine or to imprisonment at most one year. An attempt is punishable.

However, it is worth mentioning, that so called traditional surrogacy arrangements, where no assisted fertility treatment is given, are not expressly prohibited in Finland in default of specific legislation on the matter. Therefore

there is no statistics on the amount or procedures on traditional surrogacy arrangements either.

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:
- 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

<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.

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

- 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 Finland the legal status of the child born (as a result of any arrangement) will be determined by the general laws concerning legal parentage. The legislation is thus not intended to be used for surrogacy purposes.

The legal mother is according to the legal practice the woman giving birth to the child. Paternity questions are regulated in the Paternity Act, and the legal paternity is determined according to the general rules on paternity. Therefore, if the woman giving birth to the child is married at the time of birth, her husband is the child's presumed father by operation of law. For more details, please see answers to questions number 4, 9 and 11.

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 There are no special rules for transfer of parentage with regard to surrogacy arrangements but general rules on transfer of parentage apply. If the gametes of the intended father have been used in the assisted fertility treatment, the man can acknowledge the child and become the child's legal father. A spouse may then adopt the child of the other spouse if the conditions provided by the Adoption Act are met. Please see the answer to question number 40, point a) for more details on nationality requirements.

- 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

Surrogacy arrangements have been prohibited in Finland since 1 September 2007. Prior to this date, non-commercial surrogacy arrangements were allowed by default as there was no legislation on the issue. The legal parentage of the intending parents was arranged via adoption. The Population Information System includes details on adoption measures without reference to surrogacy arrangements.

According to the Adoption Act, Section 93, the visibility of information concerning a child's birth is restricted if the child is adopted. An adoptee, his/her custodian and the descendants of the adoptee have the right of access to documents drafted in connection with adoption counselling or inter-country adoption service and relating to the adoptee, and the previous parents. Please find more information in answer to question number 37. The same applies to children born through assisted fertility treatments according the Fertility Act Sections 23 and 29.

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

Before the Fertility Act came into force in 2007, there were approximately 10 children born through surrogacy arrangements in Finland. Surrogacy treatment was given to approximately 20 couples.

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  
The Courts will determine cases concerning establishment and annulment of paternity in cases where there is a dispute amongst the parties involved (Chapters 4 and 5 in the Paternity Act).  
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

Chapter 5 regulates the annulment of paternity. An action to annul paternity may be brought by the husband, mother or child (Section 35). The husband shall not have the right to bring an action if, after having been informed that another man had had sexual intercourse with the mother at the time the child was conceived, he has in writing after the birth of the child stated that the child is his (Section 35). If the husband has died without losing his right to bring action, his surviving spouse and anyone who is the nearest heir of the husband in addition to or after the child shall have the right to bring action within one year from the death of the husband or within such longer period that the husband would have had for bringing the action. If the husband did not live permanently with the child, his spouse or heir will, however, not have lost their right to bring action until one year has elapsed from the date on which a claim is lodged against them on the grounds that the husband was the father of the child (Section 36). An action to annul acknowledged paternity may be brought by the man who has acknowledged his paternity, by the mother or by the child (Section 42). An action to annul paternity may not be brought if the child has died or if both the husband and the mother have died (Section 37).

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:

According to the Paternity Act Chapter 5, the husband and the mother shall bring an action to annul paternity within two years from the birth of the child. If the husband or mother has had a lawful excuse or he or she shows another weighty reason why the action was not brought earlier, action may be brought even after the period has elapsed (Section 35). An action to annul acknowledged paternity may be brought by the man who has acknowledged his paternity, by the mother or by the child. The man and the mother shall bring action within two years from the date on which the paternity was established on the basis of acknowledgement (Section 42). An action to annul paternity may not be brought if the child has died or if both the husband and the mother have died (Section 37). Otherwise there is no limited period for the child's action for annulment.

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  
 There is no legislation on this matter.

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

Sections 4 and 34 in the Paternity Act regulate that the paternity of the husband may be annulled through acknowledgement of an other man. This option requires consent by the husband, mother and the child, if the child has reached the age of fifteen years. The paternity of the husband is annulled when a man other than the husband has acknowledged his paternity, and the Local Register Office has approved the acknowledgement after ensuring that the required consents have been given.

The Court may upon an action establish that the husband or a man who has acknowledged his paternity is not the father. The provisions of Chapter 5 shall apply to the annulment of paternity. According to the Section 34 in Chapter 5, the Court shall, on the basis of an action, establish that the husband is not the father of the child born during marriage if it is shown that someone other than the husband had sexual intercourse with the mother and, in view of all the circumstances, it may be deemed proven that the child was conceived at that time or if, on the basis of the hereditary characteristics of the child or of other special circumstances, it can otherwise be deemed proven that the man is not the father of the child. If the child was conceived before marriage or when the spouses were separated due to a breakdown of the relations between the spouses, the Court shall establish that the husband is not the father of the child unless it can be proven to be probable that the spouses had sexual intercourse with one another at the time the child was conceived. The provisions of section 34(1) shall, where appropriate, apply to an action for the annulment of an acknowledged paternity too.

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

Please see answers to questions number 1 and 2. Information about a child's birth is recorded to The Population Information System. A particular birth certificate is given only when requested. Everybody has, however, right to get an extract from The Population Register which includes information about the person's birth. The personal information in The Population Information System includes information about family relations between a child and his or her parents: whether the child is born during marriage or not, if the paternity has been confirmed, if the child is born during engagement, if the child is adopted or put up for adoption or the adoption is revoked (the Population Information Act, Section 13). Information concerning a confirmed adoption includes the first day and the possible end day of the adoption (the Population Information Decree, Section 9). The information recorded in the System is deemed to be publicly reliable if not proven otherwise (the Act, Section 18).

According to Section 20 of the Act, all information entered into the Population Information System remains there permanently unless otherwise regulated. There is no exception clause for the child's parentage. Therefore, the data on the child's former parents can be accessed from the Population Information System even after the child's legal parentage has been successfully challenged. However, there are specific restrictions on the handover of information in respect of adoption in the Population Information Act.

Information recorded in the Population Information System about adoption and who is the biological parent of the child can be handed out only 1) to the adopted child when he/she is adult, 2) to the adopted child and the adoptive parents together if the adopted child is 15 years old, 3) to the adoptive parents if the adopted child is under 15 years old and the matter concerns directly the child's health or security, 4) to an authority who's right to access the information is based on law or a task based on law and the task concerns the rights or duties of forementioned persons, 5) in order to compile an official statistics, 6) for historical or scientific research and 7) in a specific matter to other person/company/community who necessarily needs the information in order to investigate the adopted child's individualization or personal or family status. (the Population Information Act, Section 38)

#### **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:  
Legal maternity is not regulated by law. Establishment of paternity is regulated in the Paternity Act.
- 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 Please see below.
- e)  Other: please specify

According to Chapter 2 of the Nationality Act (359/2003, <http://www.finlex.fi/fi/laki/kaannokset/2003/en20030359.pdf>, unfortunately all the latest amendments are not included in the translation) a child acquires Finnish citizenship by birth if 1) the mother is a Finnish citizen, 2) the father is a Finnish citizen, and a) is married to the child's mother, or b) the child is born in Finland and the man's paternity of the child is established, 3) the father is deceased, but was a Finnish citizen at the time of his death, and a) was married to the child's mother, or b) the child is born in Finland and the man's paternity of the child is established, or 4) the child is born in Finland and does not acquire the citizenship of any foreign State at birth, and does not even have a secondary right to acquire the citizenship of any other foreign State. A child who is born in Finland acquires Finnish citizenship through the place of birth if his or her parents have refugee status in Finland or if they have otherwise been provided protection against the authorities of their State of nationality. An additional requirement is that the child does not acquire either parent's citizenship except through registration of the child's birth with the authority of the parent's State of nationality, or through another procedure requiring the assistance of the authorities of this State. If the protection referred to above was given to only one of the parents, it is also required that the child does not acquire the other parent's citizenship by birth nor has even a secondary right through birth to acquire it (Section 9).

An adopted alien child under 12 years of age at least one of whose adoptive parents is a Finnish citizen acquires Finnish citizenship through adoption as of the date the adoption is valid in Finland (Section 10). A child who does not acquire Finnish citizenship under section 9 or who has not acquired Finnish citizenship upon declaration acquires Finnish citizenship through the marriage of his or her parents as of the date when the marriage was contracted, if the man was a Finnish citizen at the child's birth and has been ever since, and the man's paternity of the child was established before the marriage was contracted. If, however, paternity is established after the marriage was contracted and the father is still a Finnish citizen, the child acquires Finnish citizenship only as of the date when the paternity was established. If the father has died after the marriage was contracted, the child acquires Finnish citizenship as of the date when the paternity was established if the father was a Finnish citizen at the time of his death (Section 11).

A foundling who is found in Finland is considered to be a Finnish citizen as long as he or she has not been established as a citizen of a foreign State. If the child has been established as a citizen of a foreign State only after he or she has reached the age of five, the child retains Finnish citizenship, however. A child who was born in Finland to parents with unknown citizenship is considered a Finnish citizen as long as he or she has not been established as a citizen of a foreign State. The same applies to a child who was born out of wedlock to a mother with unknown citizenship. If the child has been

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

established as a citizen of a foreign State only after he or she has reached the age of five, the child retains Finnish citizenship, however (Section 12).

Chapter 3 in the Nationality Act regulates Finnish citizenship on application. According to Section 24 a child may be granted Finnish citizenship on an application made by his or her parent or guardian if the person who has made the application is a Finnish citizen and the child lives with this person or due to an other cognet reason related to the best interest of the child. The child referred to above may be granted Finnish citizenship notwithstanding requirement for period of permanent residence and Finnish or Swedish language skills requirement if the child is under 15 years of age and permanently resident and domiciled in Finland, when the decision is made on the application. If the child has reached the age of 15 years, when the decision is made on the application, he or she may be granted Finnish citizenship notwithstanding requirement for period of permanent residence, provided that the child is and has been permanently resident and domiciled in Finland for the last four years without interruption or for a total of six years since reaching the age of seven years, with the last two years without interruption. If the child referred to above is a former Finnish citizen or a Nordic citizen, a twoyear period of residence is required for the application to be approved, however.

Chapter 4 regulates Finnish citizenship by declaration. According to Section 26 an alien who does not acquire Finnish citizenship under section 9, may acquire Finnish citizenship by declaration if his or her father was a Finnish citizen when he or she was born, and he or she was born: 1) in Finland and paternity was established only after he or she had reached the age of 18 years or married before that; or 2) outside Finland and paternity has been established. According to Section 27 if an alien child has reached the age of 12 years before adoption, he or she may acquire Finnish citizenship by declaration if at least one of the adoptive parents is a Finnish citizen and the adoption is valid in Finland.

In addition, Section 32 in Chapter 5 regulates that if the husband's paternity has been annulled or if a claim which has resulted in his paternity being annulled has been brought before the child has reached the age of five years, or if an established paternity has been annulled or a claim which has resulted in the annulment of paternity has been brought within five years of establishing paternity, a decision may be made to the effect that the child loses the Finnish citizenship which he or she has acquired on the basis of his or her father's citizenship. A decision on this is based on an overall consideration of the child's situation. In the assessment, particular account shall be taken of the child's age and ties with Finland.

## **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:

At the moment, the reform of the Paternity Act and new legislation in respect of questions related to parentage is in progress at the Ministry of Justice (please find the

web-link in Finnish and Swedish at:  
<http://oikeusministerio.fi/fi/index/valmisteilla/lakihankkeet/henkilo-perhe-ja/isyyslainuudistaminen.html>).

Also the question regarding surrogacy arrangements has been investigated at the Ministry of Justice (please find the web-link in Finnish and Swedish at: <http://oikeusministerio.fi/fi/index/valmisteilla/lakihankkeet/henkilo-perhe-ja/sijaissynnytysjarjestelyt.html>). This is due to the statement of The National Advisory Board on Social Welfare and Health Care Ethics ETENE (<http://www.etene.fi/en/materials/opinions/2011>). ETENE considered in 2011 that in certain isolated cases surrogacy treatment may be an ethically acceptable infertility treatment. Surrogacy treatments should, however, be subject to a permit, and surrogate motherhood should be based on a genuine desire to help rather than commercial gain. Allowing surrogate motherhood would involve difficult legal issues that call for detailed further study.

A statement on surrogacy arrangements was given from the Ministry of Justice in June 2013. The Minister of Justice stated that the question of surrogacy arrangements is a very complex issue and involves so many conflicting points of view that it requires further investigation and deliberation before any action can be taken. The Minister stated further that the next government (2015-2019) should decide whether there should be any further actions regarding regulation on surrogacy arrangements. However, the Minister stated that already during this government period (until 2015) more information should be available to Finnish couples considering surrogacy arrangements abroad about different aspects, risks and problems related to these arrangements.

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.

Two relevant and recent cases at Finnish Courts concerning international surrogacy arrangements are described below.

Case 1: The Helsinki District Court ruled on 28 March 2013 on an international surrogacy arrangement (Decision 13/5720, H 13/1040). Two children, twins, were born through surrogacy arrangement in Russia. The surrogate mother (woman giving birth) was an unmarried Russian citizen. The intended parents were a married couple of Finnish citizenship. The intended parents' gametes were used in the surrogacy treatment. The Russian birth certificate was recognised and the intended father's paternity was established in Finland, because according to Russian law he was the legal father of the twins. The intended mother requested that the Finnish Court would grant her adoption to the twins. The intra-family adoption was granted based on the evidence of the consent of the surrogate mother and on the best interest of the children. According to the Adoption Act a spouse may adopt the other spouse's child.

Case 2: In June 2013 the Helsinki Court of Appeal was requested to establish legal paternity of a Finnish man who through surrogacy arrangement in India had become a genetic father of a child. According to the application, the surrogate mother (woman giving birth) and her husband gave up all their rights to the child and the intended father was according to the Indian birth certificate the legal father of the child in India. The intended parents and the newborn child were staying in India and waiting for the legal paternity to be established also in Finland in order to bring the child into their home country. The Helsinki Court of Appeal, after investigating Indian law, recognised the Indian birth certificate as a foreign decision and the intended father's legal paternity was established. The Court considered that there were no grounds for not to recognise the birth certificate and that the recognition was in the best interest of the child. The Court stated that in the light of Articles 2 and 7 of the Convention on Rights of the Child, the Indian birth certificate should not be considered to be

against the Finnish public policy. According to the Paternity Act, Section 51, a foreign decision can be unrecognised if the decision is deemed to be against the Finnish public policy. One of the judges gave a dissenting opinion and stated that the Indian birth certificate is against Finnish public policy and it should therefore not be recognised. (Decision number 2064, H 13/1327, 5 July 2013). A few days later, the Helsinki District Court considered the legal father to be the custodian of the child. The Local Register Office had registered the legal paternity but not the custodianship. In order to seek for Finnish citizenship and passport, the custodian of the child shall file the application on behalf of the child. (Decision number 13/37121, H 13/32310, 9 July 2013).

**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:

The Finnish Population Information System contains basic information on Finnish citizens and foreign citizens residing in Finland (Population Information Act, Section 7 and Section 9). The information recorded into the System includes among other things the date and place of birth. This is described in more detail in answer to question number 2. According to Section 9, information on foreign citizens is recorded into the Finnish Population Information System if the person has a place of domicile and residence in Finland. Information on other foreigners can be recorded if: 1) the person has a temporary residence in Finland and the recording is necessary in order to fulfil duties concerning working, studying or other similar, 2) the recording is based on an international agreement, or 3) the recording is essential in relation to the persons rights or duties or similar particular and justified reason.

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:

In paternity issues, rules of private international law are governed by Chapter 7 of the Paternity Act. The relevant applicable law rules are in Section 47. Finnish law is applied if the mother is habitually resident in Finland at the time of giving birth to the child or the mother does not have a habitual residence in

<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.

any state and is at the moment of the birth staying or seeking asylum in Finland. In other cases than the above, the legal parentage is determined according to the applicable law of the State where the mother is habitually resident at the time of the birth or, if the mother does not have a habitual residence, according to the law of the State where the mother is staying or seeking asylum at the time of the birth. However, if the child has, considering all the circumstances, a closer connection to some other State, paternity is determined according to the applicable law of that State. If the father-child relation has become established in some other State than the aforementioned State and the child has a closer connection to that State, paternity shall be determined according to the applicable law of that State.

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:

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

According to an Agreement on Population Registration between Denmark, Finland, Iceland, Norway and Sweden the Member States undertake to reciprocally and by request give each other population register information about the person moving from one Member State to another (Article 4). The Agreement (96/2006) can be found in Finnish at: [http://www.finlex.fi/fi/sopimukset/sopsteksti/2006/20060096/20060096\\_2](http://www.finlex.fi/fi/sopimukset/sopsteksti/2006/20060096/20060096_2).

In addition, Finland has an Agreement with Estonia on removing the validation requirement concerning population registration documents (37/2012). The Agreement can be found in Finnish at: [http://www.finlex.fi/fi/sopimukset/sopsteksti/2012/20120037/20120037\\_2](http://www.finlex.fi/fi/sopimukset/sopsteksti/2012/20120037/20120037_2).

Between Finland and Russia applies an Agreement on Legal Protection and Legal Aid (Agreement number 48/1980). According to the Agreement both Member States undertake to reciprocally and by request give each other population register information in the scope of the Agreement, meaning that the information can be given only when a matter concerning civil, family or criminal issues is pending in a Member State's authority (Article 12). The Agreement can be found in Finnish at: [http://www.finlex.fi/fi/sopimukset/sopsteksti/1980/19800048/19800048\\_2](http://www.finlex.fi/fi/sopimukset/sopsteksti/1980/19800048/19800048_2).

There are no formal agreements but this may happen in practice: please explain

No

<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) >).

- 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 Please see above answer to point a).  
 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 Please see answer to question number 42.  
 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  
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 International jurisdiction of Finnish authorities in paternity matters is regulated by Section 48 of the Paternity Act. In addition to a) - d), Finnish authorities have jurisdiction in paternity matters if the child is not habitually resident in any State but is staying or seeking asylum in Finland, the respondent or at least one of them has or had before their death habitual residence in Finland, the respondent is not habitually resident in any State but is or was before his death staying or seeking asylum in Finland, the child or the man is or was before their death a Finnish citizen and the matter can not be ruled in the State where the child or man has habitual residence and there is a specific reason to rule the matter in Finland. In addition, the Finnish authorities have jurisdiction in a matter concerning investigation and acknowledgement of paternity if the man wishes to acknowledge his paternity and he is habitually resident in Finland or is not habitually resident in any State but is staying or seeking asylum in Finland.

<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.

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
- 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 When the matter concerns the statement of acknowledgement which is given to Finnish authorities, Finnish law will be applied. If the statement of acknowledgement is given in some other State, Subsection 3 in Section 15 of the Paternity Act will be applied. According the Section 15, Subsection 3, the statement of acknowledgement may be made also in a foreign State in accordance with the form and proceedings stipulated by the law of said State.

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
- 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 There is no legislation on which law will be applied to determine the substantive validity of the acknowledgement as such. A decision on paternity given in another State is recognised without any special procedure being required if the decision is valid in that State (Paternity Act Section 51). Please see answer to question number 49 for more detailed information on when the decision will however not be recognised. Further, according to the Paternity Act, Section 50, Finnish law is applied to paternity matters, unless regulated otherwise in Section 47. Section 47 regulates the situations in which the paternity will be determined according to Finnish law by operation of law. Please see for more information on Section 47 in answer to question number 42.

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:

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) N/A
- b) N/A

## 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.

According to the Paternity Act, Section 51, a judgement or decision given in some other State shall be recognised in Finland without any special procedure being required, if the judgement or decision is valid in the State where it is given. In practice, the registration is mainly performed by the Local Register Offices in their capacity as registrars according to the Population Information Act. If requested, the Helsinki Court of Appeal can recognise a decision regarding paternity given in another State. The decision shall, however, not be recognised in the following situations: 1) if the jurisdiction of the foreign decision was not based on residence, habitual residence or nationality of any of the parties or any other connection that would have given the authority a valid reason to process the case, 2) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his/her defence, 3) the decision is incompatible with a decision given in Finland, when the proceedings leading thereto were initiated before, 4) the decision is incompatible with a decision given in a third State and enforceable in Finland or 5) the decision is contrary to Finnish public policy (*ordre public*).

Specific rules apply between the Nordic Countries. According to the Act on Acknowledgement of Nordic Paternity Decisions (352/1980, [http://www.finlex.fi/fi/sopimukset/sopsteksti/1931/19310020/19310020\\_1#id1895161](http://www.finlex.fi/fi/sopimukset/sopsteksti/1931/19310020/19310020_1#id1895161), unfortunately no English translation is available) a final judgment given in Iceland, Norway, Sweden or Denmark is valid in Finland. Paternity that is established by acknowledgement or otherwise without a court judgement is also valid in Finland if the acknowledgement is established with the contribution of authorities in Iceland, Norway, Sweden or Denmark (Section 1). The judgement or establishment is however not valid in Finland if 1) it is incompatible with a Finnish judgement and the last mentioned is given in a trial pending prior the trial where the first mentioned judgement was given or prior to the establishment, 2) if the judgement or establishment is incompatible with a Finnish establishment and the last mentioned establishment is prior to the trial or establishment, 3) a trial regarding the same matter is pending prior to the trial where the judgement was given or prior to the establishment and the first mentioned trial may lead to judgement valid in Finland or 4) the acknowledgement of the judgement or establishment is manifestly against Finnish public policy (*ordre public*) (Section 2). A matter concerning paternity has *lis pendens* effect if a trial is pending in some other Nordic Country (Section 3).

<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".

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:

According to the Paternity Act, Section 51, a foreign decision shall not be recognised if it is deemed to be against the Finnish public policy. The recent decision from Helsinki Court of Appeal considered the issue. For more details, please see answer to question number 40.

### **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.

a) The Local Register Offices.

b)-d) According to Section 15 in the Paternity Act, the statement of acknowledgement may be made also in a foreign State in accordance with the form and proceedings stipulated by the law of said State. There are no specific regulations on the question concerning recognition of acknowledgement undertaken in another State, unless there is a decision made by an authority due to the acknowledgement, in which case please see answer to question number 49.

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:

N/A.

### **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.

Please see answer to question number 49 above.

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:

Please see answer to question number 49 above.

<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.*

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:

The effect of recognition of legal parentage established abroad is that the legal parentage is acknowledged and will be recorded in The Personal Information System. Regulation on private international law in matters concerning legal parentage established abroad is in the Paternity Act.

**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  
 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  
 d)  When a putative parent disputing legal parentage is a national of your State  
 e)  Other: please specify

The same rules in the Paternity Act, Section 48, apply to contestation as apply to establishment of paternity. Therefore, for more details, please see answer to question number 47.

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 seized 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  
 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

Please see the answer to question number 42.

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:

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

<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).

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:

Please see answer to question number 39.

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.)

Please provide as much detail as possible concerning the situation which arose and the difficulties encountered: Difficulties on determining paternity have arisen in cases where children are born to *e.g.* asylum seekers who cannot provide evidence on their civil status (whether the mother is married or unmarried when giving birth).

**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>*

<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.

- **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 1

2013 1 (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

2009

2010

2011

2012 2 (twins)

2013 1 (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: Unfortunately no estimation can be provided due to the lack of unofficial information related to this specific question.

<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.

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

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:

Russia and India.

### ***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:  
There is no specific legislation about international surrogacy arrangements or incoming cases of ISA in Finland. There is therefore no procedure which intending parents need to undertake prior departure.

The following applies to cases where the gametes of the intended parents have been used in the surrogacy arrangement and the intended parents are considered as the legal parents of the child in the country where the surrogacy arrangement is carried out. Before returning to Finland, the intending parents must ensure that the child has valid documentation for travelling/entry into Finland. In order to receive a Finnish passport, at least one of the child's intending parents must be also his/her legal parent. For this purpose the foreign decision/birth certificate must be such that it can be recognised in Finland. Due to the lack of regulation on recognition on maternity, the recognition of a foreign paternity decision is therefore essential for the incoming couple.

If the decision is valid in the State where it is given, the recognition can be automatic, but Helsinki Court of Appeal can, if requested, recognize the decision and establish the paternity. If the intended mother wishes to adopt the child, the parents have to be married to each other and should in beforehand take part in adoption counselling, which is mandatory in order to adopt a child. In case the intended father is considered as the legal father, the intended mother can request adoption without a permission from the Finnish Adoption Board. However the adoption is only confirmed if it is in the best interest of the child. Adoption can not be granted if any remuneration for the adoption has been given or promised. According to Finnish law assisted fertility treatment is prohibited if the child will be given to adoption. In the recent case law surrogacy arrangements that have been carried out abroad have however not been considered to be against the Finnish public policy. The case law is, however, not yet established and the debate on this question continues.

If none of the intended parents are considered as a legal parent of the child, both of the intended parents have to adopt the child in order to be the legal parents of the child. The provisions of international adoption will then be applied (Adoption Act, Chapter 9). A permission from the Finnish Adoption Board is required for international adoption. According to Section 69, international adoption carried out

with a permission according to Chapter 6 in the Adoption Act is without confirmation valid in Finland. In other case international adoption has to be confirmed by the Helsinki Court of Appeal in order to be valid. The Aliens Act (301/2004) regulates questions related to foreigners entering Finland (<http://finlex.fi/en/laki/kaannokset/2004/en20040301.pdf>). The conditions that have to be met in order to enter Finland and the required documents are listed in the Aliens Act.

- b) Reside permanently in your State with the child:  
The right to reside permanently in Finland can be based on a Finnish citizenship and a Finnish passport and no separate permission to reside permanently is required. The case is different, if the child has arrived to Finland on some other basis than the aforementioned.
- c) Have their legal parentage recognised (or established) under the law of your State (*if* this is possible):  
Please see above answer to question a.

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

a) The estimations are based on the cases referred to in answer to question number 40. In the case number 1 recognition of foreign paternity decision was given in three weeks after the twins were born. According to the Paternity Act, the recognition can be requested to be given rapidly.

b) In urgent cases, within days.

c) In the case number 1 the recognition of the Russian birth certificate was confirmed and the paternity of the intending father was established by the Court of Appeal within less than one month after the twins were born. In the same case, the adoption of the intending mother was confirmed in two months after the application arrived to the Court, in other words eight months after the birth of the twins.

In the case number 2 the recognition of the Indian birth certificate and the establishment of the intending father's paternity was given two and a half months after the application arrived to the Court, in other words three months after the birth of the child.

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  
This depends on whether there is a need for investigation of the foreign legislation or not.
- 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 The regulation on recognition requires that there exists a decision by an authority, such as a birth registration.
- iii.  Whether the child(ren) is / are genetically related to one or both of the intending parents: please explain Establishment of paternity in surrogacy matters requires that at least the intending father is genetically related to the child.

- iv.  The nationality of the intending parents: please explain One of the child's legal parents have to be a Finnish citizen in order to acquire a Finnish passport for the child for the purpose to return to Finland.
- 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:  
Russia and India.
- 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  
1) A document (affidavit, declaration) by which the parents give up all their rights in respect to the child to the intended parents. 2) An agreement on the consultation regarding the surrogacy arrangement. 3) A memo and a translation of the foreign legislation.

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.

Only the intending father can be recognized as a legal parent as described above. The mother must adopt the child in order to obtain legal maternity. The other option is that both intending parents adopt the child.

- 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

If none of the parents can be recognized as a legal parent of the child. This may be one possible outcome. However, currently we do not have examples of this situation so far.

- 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  
 The Courts.  
 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:  
 Please see answer to question number 40.  
 b)  The child being able to enter your State:  
 Please see answer to question number 40.  
 c)  The child being able to reside in your State:  
 d)  The child's nationality:  
 e)  The child's legal parentage:  
 Please see answer to question number 40.  
 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  
 In the decision by the Helsinki Court of Appeal in the surrogacy case number 2 (referred to in answer to question number 40) the Court discussed the problems concerning the connection between the financial payments and respect of the human dignity of the surrogate mother. The Court stated that the question on the influence of financial compensation on the free will of the surrogate mother in surrogacy arrangements on the one hand and

remuneration in adoption on the other hand are not legally comparable when the gametes of the intended parents are used in the surrogacy arrangement and the compensation is agreed before the surrogacy arrangement. In his dissenting opinion one of the judges considers that equivalence between the respect for the surrogacy mother's and child's human dignity and the conditions and quality of the treatment behind the surrogacy arrangement should be ensured before recognition of foreign paternity decisions.

- h)  The breakdown of the ISA: *e.g.*, due to either of the parties renegeing 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:

The decision of the Helsinki Court of Appeal in the case concerning surrogacy arrangement conducted in Russia (please see answer to question number 40 for more details) does not specifically refer to the costs involved in the agreement. According to the decision from Espoo District Court on the same matter, the intending parents have agreed to compensate consultation costs and in addition reasonable expenses to the surrogate mother due to the pregnancy. According to the decision, the compensations have not been paid in relation to parentage or in order to gain profit.

According to the decision of the Helsinki Court of Appeal in the case concerning surrogacy arrangement conducted in India (please see answer to question number 40 for more details), the difference to between the case number 1 and the one at hand is that in the latter case the compensation paid to the surrogate mother exceeded the limit of reasonable expenses caused of the surrogacy arrangement. No clearance on the amount of the compensation was provided to the Court.

- d)  Expenses and / or other costs paid to the surrogate mother: Please see answer to point c) above.  
 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: a, d, g, e, f, g, i.

### **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:

A statement on surrogacy arrangements was given from the Ministry of Justice in June 2013. The Minister of Justice stated that the question of surrogacy arrangements is a very complex issue and involves so many conflicting points of view that it requires further investigation and deliberation before any action can be taken. The Minister stated further that the next government (2015-2019) should decide whether there should be any further actions regarding regulation on surrogacy arrangements.

However, the Minister stated that already during this government period (until 2015) all attempts should be made in order to solve and prevent problems arising from the international surrogacy arrangements that have already been or are at the moment conducted. The first step is to provide more information to Finnish couples considering surrogacy arrangements abroad about different aspects, risks and problems related to these crossborder arrangements.

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>

**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:

<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.

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 1  
 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: Since 2007 surrogacy arrangements have been prohibited in Finland. There is only one outgoing case of ISA on the record. The case is from year 2006. The intended parents were Swedish citizens. Since the prohibition of surrogacy arrangements in 2007, there is no record of outgoing cases in Finland. Consequently no procedure exist for their assistance. We'll therefore leave questions number 73 to 84 unanswered.

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:

Sweden.

### ***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)  
 e)  The Ministry of Health (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.

- 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;

Please see answers to questions number 44 and 49.

- b) Any matters specifically related to surrogacy arrangements;

There are no international instruments in this matter binding Finland.

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:

Surrogacy arrangements have a direct relation to the respect of children's fundamental rights and interests. International arrangements bring even additional aspects in to the picture. In our view, when considering possible future global work related to international surrogacy arrangements, the main goal should be to secure the respect of fundamental rights and freedoms as well as the best interest of the children. The clarification of legal status of children born through international surrogacy arrangements, in particular in terms of their legal parentage and nationality are crucial. In addition the right of children to know their origins is important. Further, the surrogate mother's human rights and human dignity should be respected. The woman's free and informed consent should be secured, psychological impacts should be investigated, and the level of medical care provided should be taken into account. In addition, financial aspects should be contemplated in order to prevent any form of human trafficking.

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.*

International surrogacy arrangements are a global phenomenon which cannot be tackled by national safeguards only. Transnational cooperation and any international legal framework should provide for minimum standards necessary to safeguard the respect of the fundamental rights and freedoms of all parties involved. In our view, the ultimate target should be a binding international instrument. In order to reach high level of acceptance and adoptance, the instrument would necessarily have to be drafted in rather general terms. At the same time the preparation of the instrument should progress efficiently. The instrument should take into account different sensitive aspects of surrogacy arrangements. A soft law instrument could be contemplated as the first step.

It should be highlighted that we do not value any national legislation in respect of surrogacy arrangements over another. However, we consider that preference should always be given to the respect of the fundamental rights and freedoms as well as the best interest of the children.

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

### **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

### **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:

### **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

<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  
Human trafficking in its all forms should be by all possible means prevented in connection with international surrogacy arrangements.
- 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 Both proposed instruments should be classified as high priority projects in relation to other possible instruments in the Hague agenda. However, as possibly only one of the instruments can be worked upon, we classify the instrument on ISA the more urgent one.

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

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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.

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