

# Jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and creation of a European Certificate of Parenthood

2022/0402(CNS) - 07/12/2022 - Legislative proposal

**PURPOSE:** to lay down new rules for the recognition of parenthood between Member States.

**PROPOSED ACT:** Council Regulation.

**ROLE OF THE EUROPEAN PARLIAMENT:** the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

**BACKGROUND:** while the EU has competence to adopt measures on family law with cross-border implications such as rules on international jurisdiction, applicable law and the recognition of parenthood between Member States, to date the Union has not adopted provisions in those areas as regards parenthood. The Member States' provisions currently applicable in these areas differ. As a result of the absence of Union provisions on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations and on the recognition of parenthood between Member States, families may encounter difficulties in having the parenthood of their children recognised for all purposes within the Union, including when they move to another Member State or return to their Member State of origin.

The non-recognition in a Member State of the parenthood established in another Member State can have serious adverse consequences on children's fundamental rights and on the rights that they derive from national law. Therefore, it is necessary and appropriate for this Regulation to bring together common rules on jurisdiction, applicable law, recognition or, as the case may be, acceptance of court decisions and authentic instruments on parenthood as well as rules on the creation of a European Certificate of Parenthood in a Union legal instrument which is binding and directly applicable.

**CONTENT:** in order to address the problems with the recognition of parenthood for all purposes and close the existing gap in Union law, the Commission is proposing the adoption of Union rules on international jurisdiction on parenthood (determining which Member State's courts are competent to deal with parenthood matters, including to establish parenthood, in cross-border situations) and applicable law (designating the national law that should apply to parenthood matters, including to the establishment of parenthood, in cross-border situations), so as to then facilitate the recognition in a Member State of the parenthood established in another Member State. The Commission is also proposing the creation of a European Certificate of Parenthood that children (or their legal representatives) can request and use to provide evidence of their parenthood in another Member State.

## *Objectives*

The proposal has three objectives:

(1) ***Strengthen the protection of the fundamental rights and other rights of children in cross-border situations***, including their right to an identity, to non-discrimination and to a private and family life, or to succession and maintenance in another Member State, taking the best interests of the child as a primary

consideration. Consistent with this objective, the Council conclusions on the EU Strategy on the rights of the child underline that children's rights are universal, that every child enjoys the same rights without discrimination of any kind and that the best interests of the child must be a primary consideration in all actions relating to children, whether taken by public authorities or by private institutions;

(2) ***Provide legal certainty and predictability*** about the rules that Member States must apply when establishing the parenthood of a child in a cross-border situation or when recognising the parenthood of a child as already established in another Member State; and

(3) ***Reduce the legal costs and burden for families and the administrative and judicial systems*** of the Member States in connection with legal proceedings initiated by families to have the parenthood of their children recognised in another Member State.

The proposal covers all children whose parenthood has been established in a Member State, and who are in a cross-border situation, irrespective of how the child was conceived or born, irrespective of the type of family of the child and irrespective of the nationality of the children and of the nationality of their parents.

### ***Harmonised rules***

The Commission is proposing the adoption of harmonised rules on the following:

- ***designation of the jurisdiction***: the proposal determines the courts of the Member States that have jurisdiction in matters related to parenthood, ensuring the best interest of the child;

- ***designation of the applicable law***: as a rule, the law applicable to the establishment of parenthood should be the law of the State of the habitual residence of the person giving birth. Where that rule results in the establishment of parenthood as regards only one parent, alternative options ensure that parenthood can be established as regards both parents;

- ***rules for recognition of parenthood***: the proposal provides for the recognition of court decisions and **authentic instruments** with binding legal effects (such as a notarial deed) establishing or providing evidence of the establishment of parenthood. As a rule, parenthood established in a Member State, should be recognised in all the other Member States, without any special procedure.

### ***European Certificate of Parenthood***

The proposal provides for the creation of an optional European Certificate of Parenthood. This Certificate can be requested and used by children (or their legal representatives) to provide evidence in all the other Member States of their parenthood established in one Member State. The Certificate would be optional for families, but Member States would be required to issue it and accept it. It would not replace equivalent national documents providing evidence of parenthood (such as a birth certificate), which can still be relied on.

The Certificate is issued always through the same procedure as laid down in the proposal, in a **uniform standard** form (included in Annex V to the proposal), and with the same contents and effects throughout the Union as laid down in the proposal. The Certificate is presumed to demonstrate accurately the elements established under the applicable law designated by the proposal and does not need to be transposed into a national document before it can have access to the relevant register in a Member State. As the Certificate form would be available in **all Union languages**, the need for translations would be significantly reduced.

Given the stability of parenthood status in most cases, the validity of the Certificate and its copies would not be **limited in time**, without prejudice to the possibility to rectify, modify, suspend or withdraw the Certificate as necessary.