Council of the European Union

Brussels, 9 December 2022
(OR. en)

15837/22
ADD 3

Interinstitutional File:
2022/0402(CNS)

JUSTCIV 167
FREMP 261
JAI 1654
IA 219

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 391 final
Subject:	COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood

Delegations will find attached document SWD(2022) 391 final.

Encl.: SWD(2022) 391 final

EUROPEAN
COMMISSION

Brussels, 7.12.2022
SWD(2022) 391 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a Council Regulation

on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood

{COM(2022) 695 final} - {SEC(2022) 432 final} - {SWD(2022) 390 final} - {SWD(2022) 392 final}

Table of contents

Glossary

Throughout the report, wherever a term is marked by *, **reader is invited to consult this Glossary** for an explanation of the relevant term.

Term or acronym	*Meaning or definition*
Adoption	A process whereby a person or persons take(s) on the parenthood of another, usually a child, from that person's biological or legal parent(s). The legal effects of parenthood established by adoption are in principle the same as those of biological parenthood.
- Domestic adoption	Adoption of a child or an adult habitually resident in one country by (a) prospective parent(s) habitually resident in that same country. Domestic adoption is solely governed by the national adoption laws of the country that grants it.
- Intercountry adoption	Adoption of a child or an adult habitually resident in one country by (a) prospective parent(s) habitually resident in another country. It typically implies a change of the habitual residence of the child in question. With respect to intercountry adoptions, it should be noted that all EU Member States are party to the HCCH 1993 Intercountry Adoption Convention*.
- Simple adoption	In some jurisdictions, simple adoption is an adoption that does not have the effect of terminating a pre-existing legal child-parent relationship between a child and its biological parent(s), while it establishes parenthood of (an) adopter(s) to the child.
AG	Advocate General of the CJEU.
Applicable law rules	Provisions designating, on the basis of certain criteria (known as connecting factors), the law applicable to a situation in which the laws of different jurisdictions may apply.
ART, Assisted Reproductive Technologies	In this report, any method used to achieve conception involving artificial or partially artificial means and which is undertaken by a medical/health clinic or institution. Two most common ART methods are artificial insemination and in-vitro fertilisation.
Authentic instrument	For the purposes of this report, a document on parenthood formally drawn up or registered as an authentic instrument in any Member State and the authenticity of which: (a) relates to the signature and the content of the instrument; and (b) has been established by a public authority or other authority empowered for that purpose. Authentic instruments can establish parenthood (such as a notarial act on adoption) or provide evidence of parenthood (such as a birth certificate).
Birth certificate	A document certifying the live birth of a child and typically also recording other information, such as the parenthood of the child, date and place of birth and other vital statistics relating to the child.
Brussels IIb Regulation	Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, *OJ L 178, 2.7.2019, p. 1–115*. Subject to certain transitional provisions, it will repeal the Brussels IIa Regulation as of August 2022 (Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L 338, 23.12.2003, p. 1 29).
Charter	Charter of Fundamental Rights of the European Union, *OJ C 326, 26.10.2012*.
Child	In this report, "child" means a person of any age whose parenthood is to be established

	or recognised, *i.e.*, depending on the context: a) any person regardless of their age in relation to which parenthood is considered[1]; or b) a person under the age of 18 years old in relation to which parenthood is considered.
CJEU	Court of Justice of the European Union.
CoE	Council of Europe.
COM	European Commission.
COM Expert Group	Expert Group on the recognition of parenthood between Member States set up by DG JUST in 2021 to receive expert advice on the preparation of an initiative on the recognition of parenthood between Member States. For more information about the Expert Group, see the Register of Commission Expert Groups and Other Similar Entities.
Compliance costs	In this report, direct costs related to a possible EU intervention. These costs include in particular adjustment costs, *i.e.* investments and expenses that public authorities have to bear to adjust their activity to the provisions included in the EU policy intervention (in particular training costs for public authorities and lawyers)[2].
Costs for recognition procedures	Direct costs related to administrative and court procedures for the recognition of parenthood, incurred under the baseline and all policy options, by: - cross-border families (e.g. translation costs, administrative and court fees for recognition procedures, fees for evidence and DNA tests, costs for legal representation etc.); - Member States' public authorities (e.g. staff-related costs, costs for translations and interpreters etc.)[3].
Country reports	Country Reports were compiled by an external contractor* in collaboration with Spark Legal Network in the context of the *Study by an external contractor**. The reports were based on a questionnaire completed by 26 national legal experts.
Cross-border family	A family with children in which one or more members are of different nationalities or live in a country other than their country of origin.
Digitalisation proposal	The Commission's proposal for a regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation. COM (2021) 759.
DG JUST	Directorate-General for Justice and Consumers of the European Commission.
ECHR	European Convention of Human Rights (Council of Europe). The ECHR and related case law binds Member States. In addition, the Court of Justice of the EU applies the ECtHR case law indirectly, as a part of the general principles of the EU law.
ECtHR	European Court of Human Rights.
ECP	European Certificate of Parenthood.
EJN-civil	European Judicial Network (in civil and commercial matters): network of judicial authorities and other national authorities (ministries of justice, notaries, enforcement officials) involved in the application of the EU instruments in civil and commercial

[1] Since questions concerning parenthood may arise for the duration of a person's lifetime (e.g. where an inheritance issue emerges) and the recognition of parenthood can continue to take place after a person has reached majority, all **actions considered in this report would apply to persons regardless of their age** (*i.e.,* regardless whether the child is below or above 18 years of age).

[2] For details regarding costs and methodology for their calculation, see Annex 4. See also the typology of costs in Better Regulation Toolbox (November 2021).

[3] *Ibid.*

	matters and set up to facilitate judicial and legal cooperation between Member States in cross-border civil and commercial matters. EJN-civil meets several times a year to discuss the application of these EU instruments or other matters related to civil and commercial justice in the EU.
e-Justice Portal	European e-Justice Portal: EU portal that provides information to the public in all EU languages on EU law and national justice systems in civil, family and commercial matters.
EAVA report on the recognition of adoptions	European Parliament (2016). *Cross-border recognition of adoptions – European Added Value Assessment*. It presents estimates on the possible added value of taking legislative action at EU level related to cross-border recognition of adoptions. It identifies costs borne by EU citizens as a result of the absence of an EU regulation on automatic recognition of adoption decisions. It forms a basis for the European Parliament resolution of 2 February 2017 with recommendations to the Commission on cross border aspects of adoptions (2015/2086(INL)).
Enforcement costs	Costs associated with activities linked to the implementation of the Parenthood initiative (such as monitoring and litigation)[4].
EUR/€	Euro.
EU	European Union.
EU-26	All Member States of the European Union with the exception of Denmark[5].
External contractor	ICF Consulting SA. The external contractor prepared a study that supported the preparation of this report.
Family	For the purposes of this report, a group of one or more parents and their children. *NB:* Substantive family law falls within the competence of Member States. Accordingly, no EU instrument in the area of judicial cooperation in civil matters contains a definition of "family"[6].
- Rainbow family	For the purposes of this report, a family that consists of parents of the same gender bringing up a child, or an LGBTIQ+ parented family.
Free movement, free movement right	Right to move and reside freely within the territory of the Member States as provided for in Articles 21, 45, 49 and 56 TFEU, Directive 2004/38/EC and relevant case law of the CJEU.
FTE	Full-Time Equivalent.
Ground for refusal, refusal ground	A reason that can be invoked to refuse the recognition of a judgment or an authentic instrument.
Hague Conference on Private International Law, HCCH	Intergovernmental organisation with its seat in The Hague, which is working for the progressive unification, by means of international conventions, of the rules of private international law. The HCCH has currently 91 members: 90 states and the EU.
Hassle costs	For the purposes of this report, costs for families resulting from delays and unnecessary

[4] For details regarding costs and methodology for their calculation, see Annex 4. See also the typology of costs in Better Regulation Toolbox (November 2021).

[5] In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the TFEU, Denmark does not take part in any measures adopted under Title V TFEU (thus including Article 81 TFEU). As a result, Denmark would not take part in any EU initiative on the recognition of parenthood between Member States. **Since the Parenthood initiative* would not apply in Denmark, this Member State is excluded from this impact assessment report.**

[6] The Free Movement Directive (Directive 2004/38/EC) defines "family members" in its Article 2(2) for the purposes of the right to free movement.

	waiting times related to the procedures for the recognition of parenthood of a child[7].
HCCH 1993 Intercountry Adoption Convention	Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. It governs adoption where the adoptive parents and the child have their habitual residence in different States. It lays down substantive safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child's fundamental rights. Under the Convention, every adoption which is certified to be made in accordance with the procedures set out in the Convention is recognised "by operation of law" in all other Contracting Parties (Art. 23). All EU Member States are party thereto.
HCCH Parentage / Surrogacy Project	A project undertaken by the HCCH* to study and address the issues encountered in relation to the legal parentage of children and international surrogacy arrangements. In the context of this project, meetings of an Experts' Group have been organised since 2016 to explore the feasibility of advancing work in this area. The work of the Experts' Group focuses on developing (i) a general PIL* instrument on legal parentage; and (ii) a separate protocol on legal parentage established as a result of international surrogacy arrangements. A report of the Expert Group on the feasibility of work in this area is due in 2023.
IA	Impact Assessment.
ICCS/CIEC	International Commission on Civil Status/Commission International de l'État Civil. Intergovernmental organisation based in Strasbourg whose aim is to facilitate international co-operation in civil-status matters and to further the exchange of information between civil registrars. To this end, it has adopted conventions and recommendations.
Intending parent(s)	A person or persons who request(s) a surrogate mother to carry and give birth to a child for them[8].
IVF	In Vitro Fertilisation.
ISA	International Surrogacy Arrangement.
ISSG	Inter-Services Steering Group.
Jurisdiction	The power conferred upon a court or tribunal to hear a specific case; international jurisdiction is the competence of the courts of a particular country to hear a case.
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer.
Limping parenthood	Situation in which a child has, from a legal viewpoint, different parents in different States as a result of the fact that two States answer the question "who is a parent of this child" in a different manner. It includes situations where the legal parenthood by one parent, as established in one State, is not recognised in another State.
Lower bound, upper bound	In this report, lower and upper bounds represent the smallest and biggest value between which the exact value can be found. They are mostly used when quantifying costs (since the costs usually differ Member State to Member State and case by case).
Maintenance Regulation	Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, *OJ L 7, 10.1.2009*.

[7] For details regarding costs and methodology for their calculation, see Annex 4. See also the typology of costs in Better Regulation Toolbox (November 2021).
[8] Definition taken from: International Social Service (2021). *Principles for the protection of the rights of the child born through surrogacy (Verona principles)*, p.7.

Maintenance rights	In this report, maintenance rights are all rights to receive maintenance or alimony arising to a child from its family relationship or affinity. Notably, the Maintenance Regulation does not define the term "maintenance rights".
Member State, MS	Member State of the European Union. *NB:* In this report, this normally excludes Denmark (see fn. 5).
Member State of (non-)recognition	Member State where the recognition of parenthood is sought.
National certificate of parenthood	A national authentic instrument on parenthood, for instance, a certificate of birth, a certificate of parenthood or a notarial act establishing or providing evidence of parenthood.
NGO	Non-governmental organisation.
OIOO / One in, one out	One in, one out. The one in, one out approach requires offsetting new burdens resulting from a Commission proposal by reducing existing burdens in the same policy area[9].
OIOO costs savings	Costs saved by families under the Policy Option 3 that can qualify as cost savings under the *one in, one out approach*. These cost savings concern only savings on administrative costs, such as costs for translations, supporting documentation and evidence, and thus do not include the savings on administrative fees and court fees and costs for legal representation. For details, see Annex 4: Costs reduction estimates under the 'One in, one out' approach.
OPC	Open Public Consultation conducted from the Commission's "Have your say" portal between 19 May 2021 and 25 August 2021 to gather data and the views of stakeholders with regard to a possible initiative on the recognition of parenthood. See the Summary Report here: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12878-Recognition-of-parenthood-/public-consultation_en and in Annex 9.
Parentage	A child-parent relationship that indicates the descent from parents or ancestors and which is closely linked to bio-genetic affinity.
Parenthood	A parent-child relationship established in law. It includes the legal status of being the child of a particular parent or parents. This civil status is particularly relevant to a person's identity, and other rights and obligations derived from it. For the purposes of this report, parenthood is to be understood as legal parenthood (*see below*). It may or may not correspond to the social or biological parenthood. Even though the term "parenthood" does not fully bring out the child-centred perspective of the initiative, it was chosen for this report as it corresponds to the terminology used in other EU family-law legislative instruments.
- Biological parenthood	Bio-genetic affinity between a child and its father and mother whose DNA the child carries.
- Social parenthood	It relates to the actual act of taking care of a child as a parent.
- Legal parenthood	The child-parent relationship established in law. It may be attributed on a number of grounds besides bio-genetic affinity.
Parenthood initiative	For the purposes of this report, it refers to any of the possible policy options that the Commission may undertake to facilitate the recognition of parenthood between Member

[9] See Tool #59, Better Regulation Toolbox (November 2021).

	States.
Parenthood regulation, Regulation	For the purposes of this report, it refers to the legislative policy option, *i.e.* legislation on the recognition of parenthood between Member States. (See Section 5 of this report).
PIL, Private International Law	A branch of law governing which rules are to be applied in cases with an international dimension and dealing with the resolution of conflicts between the jurisdictions and applicable laws of different States. In this report, it refers to applicable law rules, jurisdiction and, where relevant, rules on the recognition of parenthood.
PO	Policy Option.
Public authorities	For the purposes of this report, it is to be understood broadly as any authorities competent, under national law, to establish, record or register the parenthood of a child and/or to recognise parenthood established abroad. Public authorities thus include administrative authorities (civil registrars and municipalities), courts, notaries, or consulates.
Recognition	For the purposes of this report, recognition of parenthood should be understood broadly as any legal technique that makes a parenthood status that has been acquired abroad, *i.e.* formed/conferred in accordance with the laws of another State, valid also as regards the recognising State. Recognition does not have to involve any formal procedure for recognition and can be automatic. In particular, recognition and acceptance of authentic instruments is not differentiated in this report and 'recognition' should thus refer to both legal concepts.
Recommendation	A non-binding act that can be adopted by the European Commission and that does not have legal consequences but provides guidance to Member States on a certain matter. In this report, "Recommendation" also refers to Policy Option 1, *i.e.* Commission Recommendation addressed to the Member States.
Reference period	Period for which the impacts are assessed, *i.e*. years 2022-2032.
Registered partnership	A legal family format that is constituted in a procedure that results in a registration in a public register. In the Regulation (EU) No 2016/1104 also defined as: *The regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation.*
Regulation on Public Documents	Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union, *OJ L 200, 26.7.2016, p. 1-136.*
Rights derived from EU law	In its *V.M.A. case,* the CJEU held that Member States are required to recognise parenthood for the purposes of permitting a child that has the nationality of a Member State to exercise without impediment, with each of its two parents, the right to move and reside freely within the territory of the Member States as guaranteed in Article 21(1) TFEU and, in that context, rights which the child derives from EU law (paras. 49 and 57 of the *V.M.A*. case). For other rights derived from EU law, see fn. 33. These rights can be exercised irrespective of recognition in the law of the host Member State. The only condition is that there be a "child" of an EU citizen, within the meaning of Article 2(2)(c) of Directive 2004/38/EC, as established in a Member State.
RSB	Regulatory Scrutiny Board.
SDGs	United Nations' Sustainable Development Goals. The 17 SDGs are at the heart of the 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015.

Study by an external contractor, Study	ICF (2022). *Study to support the preparation of an impact assessment on a possible Union legislative initiative on the recognition of parenthood between Member States – Final report.* The Study was commissioned by DG JUST to gather information for this impact assessment.
Succession Regulation	Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, *OJ L 201, 27.7.2012, p. 107–134.*
Summary Report	Report summarising the results of the Open Public Consultation*, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12878-Recognition-of-parenthood-/public-consultation_en and in Annex 9.
Surrogacy, surrogacy arrangement[10]	An agreement: i) between a prospective surrogate mother and (an) intending parent(s); ii) made before a child is conceived; iii) which provides that, following the child's birth, the parties plan for the intending parent(s) to be the child's legal parent(s), and for the surrogate mother to surrender the child into their care[11].
- Altruistic surrogacy	A surrogacy arrangement where there is no payment to the surrogate mother or, if there is payment, it is only for reasonable expenses associated with the surrogacy[12].
- Commercial surrogacy	Commercial (or for profit) surrogacy exists where the surrogate mother agrees to provide gestational services and/or to legally and physically transfer the child, in exchange for remuneration or other consideration. One indication of commercial surrogacy is the involvement of for-profit intermediaries[13].
Surrogate	A woman who agrees to carry and give birth to a child for (an) intending parent(s).
TEU	Treaty on European Union.
TFEU	Treaty on the Functioning of the European Union.
Third country / third countries	Country/ies which are not members of the EU.
UN	United Nations.
UNCRC	United Nations Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 *(United Nations Treaty Series, vol. 1577, p.3).*

CJEU case law cited in this report	
Casagrande	Judgment of the Court of 3 July 1974, *Casagrande v Landeshauptstadt München*, C-9/74, ECLI:EU:C:1974:74.
Cristini	Judgment of the Court of 30 September 1975, *Cristini v S.N.C.F,* C-32/75, ECLI:EU:C:1975:120.
Coman	Judgment of the Court of 5 June 2018, *Coman and Others,* C-673/16, ECLI:EU:C:2018:385.
Commission v Austria	Judgment of the Court of 16 June 2022, *Commission v Austria*, C-328/20, ECLI:EU:C:2022:468.
Even	Judgment of the Court of 31 May 1979, *Even*, C-207/78, ECLI:EU:C:1979:144.
Freitag	Judgment of the Court (Second Chamber) of 8 June 2017, *Freitag*, C-541/15,

[10] **Nothing in this report should be purported to support or oppose surrogacy**. Considerations as to whether surrogacy in any form should be permitted or prohibited fall outside the scope of the report and the report should not be used as a basis for condoning or encouraging surrogacy.
[11] Definition taken from: International Social Service (2021). *Principles for the protection of the rights of the child born through surrogacy (Verona principles)*, p.7.
[12] *Ibid. Principles for the protection of the rights of the child born through surrogacy (Verona principles)*, p.7.
[13] *Ibid.* Verona principles, p.7.

	ECLI:EU:C:2017:432.
Garcia Avello	Judgment of the Court of 2 October 2003, *Garcia Avello*, C-148/02, ECLI:EU:C:2003:539.
Grunkin and Paul	Judgment of the Court of 14 October 2008, *Grunkin and Paul*, C-353/06, ECLI: EU:C:2008:559.
K.S.	Order of 24 June 2022, *Rzecznik Praw Obywatelskich,* C-2/21, ECLI:EU:C:2022:502.
Matteucci	Judgment of the Court of 27 September 1988, *Matteucci v Communauté française de Belgique*, C-235/87, ECLI:EU:C:1988:460.
Meeusen	Judgment of the Court of 8 June 1999, *Meeusen*, C-337/97, ECLI:EU:C:1999:284.
V.M.A.	Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon "Pancharevo"*, C-490/20, ECLI:EU:C:2021:1008.
V.M.A. Opinion	Opinion of Advocate General Kokott delivered on 15 April 2021 in case *V.M.A. v Stolichna obshtina, rayon "Pancharevo"*, C-490/20, ECLI:EU:C:2021:296.

ECtHR case law cited in this report	
A.D.- K. v. PL	*ECtHR,* pending, *A.D.- K. & Others v. Poland*, No. 30806/15.
Advisory Opinion	ECtHR, 10 April 2019, *Advisory Opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother,* No. P16-2018-001.
Labassee v. FR	ECtHR, 26 June 2014, *Labassee v. France*, No. 65941/1.
Marckx v. BE	ECtHR, 13 June 1979, *Marckx v. Belgium*, No. 6833/74.
Mennesson v. FR	ECtHR, 26 June 2014, *Mennesson v. France*, No. 65192/11.
Negrepontis-Giannisis v. EL	ECtHR, 3 May 2011, *Negrepontis-Giannisis v. Greece*, No. 56759/08.
Paradiso and Campanelli v. IT	ECtHR, 24 January 2017, *Paradiso and Campanelli v. Italy*, No. 25358/12.
S.-H. v. PL	ECtHR, *S.-H. v. Poland*, No. 56846/15 and 56849/15 (inadmissible).
Schlittner-Hay v. PL	ECtHR, pending, *Schlittner-Hay v. Poland*, No. 56846/15 and 56849/15.
Valdís Fjölnisdóttir v. Iceland	ECtHR, 18 May 2021, *Valdís Fjölnisdóttir and Others v. Iceland*, No. 71552/17.
Wagner v. LU	ECtHR, 28 June 2007, *Wagner & J.M.W.L. v. Luxembourg*, No. 79240/01.

1. 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

"If you are parent in one country, you are parent in every country."

… said Commission President von der Leyen in her State of the Union speech in 2020[14]. With this statement, she referred to the need to ensure that parenthood established in one Member State be recognized in all other Member States.

Parenthood (or filiation) is a civil status that forms a constituent element of a child's identity. Parenthood of a child, understood here as the child-parent relationship established in law, provides the legal proof of an existing family relationship between children and their parents. Numerous rights and obligations vis-à-vis the child's parents, public authorities and others flow directly from parenthood or are related to it, for example parental responsibility, maintenance, succession, or nationality of the child (where in national law nationality is based on *ius sanguinis*[15]). The preservation of the parent-child link in cross-border situations is thus essential for protecting the fundamental rights of children and their families (including the right for respect of private and family life, right to non-discrimination and rights of the child, such as the protection of the best interests of children and the right to maintain on a regular basis a personal relationship and direct contact with their parents)[16].

However, as national approaches with respect to the determination of parenthood and civil status vary among Member States, each Member State determines a child's parenthood differently and, in addition, may not recognize parenthood legally established in another Member State for all purposes. As a result, some families may encounter problems in cross-border context and children end up in precarious situations where they lose, from a legal viewpoint, one parent (sometimes both) in other Member States. (The reasons for the non-recognition of parenthood and consequences thereof are detailed in Section 2.)

The "Parenthood initiative"* introduced below would thus be taken in this context and with the aim to protect children and their fundamental rights in cross-border situations and to ensure continuity of parenthood across borders in the EU. It is based on the premise that no children should be disadvantaged or suffer harm because of the circumstances of their conception or birth. This initiative would not affect the rights that a child derives from Union law, in particular the rights that a child enjoys under Union law on free movement, including Directive 2004/38/EC.

2.1. 1.1 Legal context

National legal context

As families are increasingly mobile[17], Member States frequently have to deal with situations where parenthood has an international element, for instance children or their

[14] State of the Union Address by President von der Leyen at the Parliament Plenary, 16 September 2020.
[15] For explanation, see fn. 72.
[16] As to these rights guaranteed in the Charter, ECHR and UNCRC, see Section 1.
[17] Based on the Eurostat data, it is expected that 3.2% of families are currently mobile and that this number should increase to 5% by 2032. See Annex 4. Although it is not excluded that parenthood recognition may be

parents have foreign nationality, the birth happened abroad or parenthood was established based on the national law of another State. In situations like these, Member States apply their private international law (PIL)* rules and rules on the recognition of parenthood. The Member States' PIL rules* and approaches to the recognition of parenthood established abroad differ, which complicates the recognition of parenthood between Member States. (It must be noted though that children of EU citizens enjoy certain rights derived from EU law, in particular the *acquis* on EU citizenship and free movement, irrespective of whether their parenthood has been formally recognised in a Member State[18]).

In addition, considerable differences exist in the national family law of Member States with respect to family concepts. Family matters are culturally sensitive issues that may touch on the national identity of Member States and are influenced by different legal traditions and societal backgrounds. Under the EU Treaties, substantive law on family matters and the legal status of persons (including parenthood) falls within the competence of Member States. Therefore, in a comparable factual situation, Member States may establish, under their national law, parenthood differently[19] and by using differing procedures[20].

Currently, various public authorities are involved in establishing and subsequent registering of parenthood at national level[21]. Once parenthood has been established in one Member State (for example, by operation of law after birth), parenthood is generally recorded in a civil or population register. An administrative document containing the information on parenthood - most frequently a birth certificate - is typically provided as the evidence of parenthood. Birth certificates serve as a proof that the birth of a child has been registered and often include information about and evidence of the child's family ties and other information, such as the place of birth. Birth certificates are often required in a variety of administrative and professional procedures or procedures to establish a child's nationality. Besides birth certificates, other documents may be issued recording the parenthood of a child[22]. The parenthood of a child may also be established by a *court decision*, for instance in cases of domestic adoptions or where parenthood has been disputed. Even where parenthood is established by a court decision, a birth certificate is usually subsequently issued. The difference between court decisions and authentic instruments and whether they establish parenthood or only provide evidence thereof, is also relevant where these documents are brought for recognition in another Member State[23].

---

needed in other cross-border cases, in the overwhelming majority of cases the need to have parenthood recognised arises where a child and its family move to another MS or return to their MS of origin.

[18] For details, see fn. 33.

[19] For example, based on different legal presumptions of parenthood, rules related to the acknowledgment of parenthood, conditions for the adoption of a child, rules governing the access to Assisted Reproduction Technologies ("ART") etc.

[20] Different formal requirements on the acknowledgment or contestation of parenthood, procedures concerning registration of parenthood in national population registers etc.

[21] For instance civil registrars, notaries, consulates, courts.

[22] For instance extracts from civil status registries, or parenthood certificates.

[23] This distinction will also be relevant for designing the Parenthood regulation*, as it will have to be decided whether the legislation would only cover the recognition of parenthood recorded in court decisions or also in authentic instruments (As to this choice, see Annex 5).

International legal context

Problems with the recognition of parenthood are not specific to the EU. As the movement of families takes on a global dimension, the need to ensure that the parenthood of a child is recognised in cross-border settings is also acknowledged at international level.

For example, the Hague Conference on Private International Law (HCCH) is currently undertaking work on the PIL issues surrounding the parenthood of children (**HCCH Parentage/Surrogacy Project***). This work could eventually lead in the long term to the adoption of an international convention on legal parentage and of a separate optional protocol on legal parentage established as a result of international surrogacy arrangements (ISAs). However, as expounded below (Section 3), this work at the international level does not in principle eliminate the need for an action concerning recognition of parenthood at EU level.

Other international instruments related to children[24] either do not deal with cross-border aspects of parenthood, their scope as regards parenthood matters is limited, or only a few Member States are parties to such instruments. With respect to intercountry adoptions in particular, the **HCCH 1993 Intercountry Adoption Convention** exists and seeks to ensure that intercountry adoptions are made in the best interests of children and with respect for their fundamental rights[25]. Moreover, in the past some Member States concluded with other Member States or with third countries **bilateral and multilateral agreements** related to parenthood matters, but their scope is also limited or the agreements only cover a few Member States[26].

All Members States are obliged to protect the rights of children and their best interests anchored in the **United Nations Convention on the Rights of the Child** ("UNCRC") and other international instruments, such as the **European Convention on Human Rights** ("ECHR") (see Article 8 ECHR and Articles 2, 3(1), 7(1) and 8(1) UNCRC[27]). The

---

[24] The Council of Europe's European Convention on the Adoption of Children (Revised) of 27 November 2008; the Internal Social Service's 2021 Principles for the protection of the rights of the child born through surrogacy (Verona principles); or conventions on civil status prepared under the aegis of ICCS, for instance the Convention No 16 on the issue of multilingual extracts from civil status records or the HCCH's 1996 Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

[25] The HCCH 1993 Intercountry Adoption Convention ensures that the adoption order is recognised in both countries involved in the intercountry adoption and, in principle, other Contracting States. All Member States are party to this Convention.

[26] See for instance *the 1962 Convention on the establishment of maternal descent of children born out of wedlock* (parties: DE, EL, ES, LU, NL, Switzerland and Turkey) and *the 1979 Act on recognition of Nordic judgments and acknowledgements of paternity* (parties: DK, FI, SE, Iceland, Norway), *the 1963 Convention on mutual relations in civil matters and on documents* (parties: AT, PL).

[27] For instance, Article 7 of the UNCRC stipulates 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*"; and Article 8(1) specifically provides that: "*States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference".* The UNCRC also establishes, in

European Court of Human Rights has been seized a number of times with complaints concerning the recognition of parenthood, mostly claiming a violation of Article 8 of the ECHR, the right to respect for private and family life (including the right to identity). Article 8 ECHR does not merely compel States to abstain from arbitrary interference with the exercise of the right to family life; it also imposes positive obligations on them, such as when States determine in their domestic legal system the regime applicable to certain family ties, they "must act in a manner calculated to allow those concerned to lead a normal family life"[28]. Based on these human rights considerations, States' margin of appreciation in cases of parenthood recognition is limited, in particular under the ECtHR case law on the recognition of parenthood of children after foreign adoptions[29] or born through surrogacy arrangements abroad[30].

However, despite the existence of several international legal instruments concerning children's rights and civil status, there are currently no international instruments ensuring the recognition of parenthood between countries.

Legal context at the EU level

Whilst substantive family law on parenthood falls within the competence of Member States, the EU can adopt measures concerning family law with cross-border implications pursuant to Article 81(3) TFEU. These measures can include the adoption of common rules of jurisdiction, applicable law and procedures for the recognition of judgments and authentic instruments* (such as birth certificates) issued in other Member States. Currently, there is no EU legislation on the recognition of parenthood. As a result, not only the establishment of parenthood is currently governed by the national law of each Member State but so are also all cross-border aspects of parenthood (PIL rules*, such as law applicable to parenthood, jurisdiction rules and rules for recognition of parenthood).

The existing EU law instruments, which are of direct relevance for children in cross-border situations (**the Brussels IIb Regulation, the Maintenance Regulation and the Succession Regulation**), cover the recognition of judgments and authentic instruments in several areas of family law (for instance maintenance or parental responsibility) and also on succession; however, they do not deal with parenthood as such[31]. Since parenthood is left out of the scope of these instruments, in situations where a ("incidental") question related to the determination of parenthood arises in the context of proceedings covered by existing EU instruments, national law on parenthood with cross-border elements is applied. Therefore, EU legislation on parenthood with cross-border implications would not only help with the recognition of parenthood in the EU but would also complete the current body of EU legislation on family matters with cross-border implications. In addition to the

---

its Article 2(1), that the rights of all children shall be ensured without discrimination of any kind, irrespective of the child's or his or her parent's […] birth or other status, and, in its Article 3(1) provides that the best interests of the child shall be a primary consideration in all actions concerning children.

[28] See ECtHR, *Marckx v. BE*.

[29] ECtHR, *Wagner & J.M.W.L. v. LU; Negrepontis-Giannisis v. EL*; *A.D.- K. & Others v. PL*.

[30] ECtHR, *Mennesson v. FR; Labassee v. FR*; *Paradiso and Campanelli v. IT; Advisory Opinion; Valdís Fjölnisdóttir v. Iceland*; *Schlittner-Hay v. PL*; or *S.-H. v. PL*.

[31] In fact, the Brussels IIb, Maintenance and Succession Regulations explicitly exclude the status of persons from their scope and/or state that they should not imply the recognition of the family relationship or of parenthood: respectively Art. 4(a), Art. 22, and Art. 1(2)(a).

above civil-law instruments, the **Regulation on Public Documents** addresses the authenticity of public documents in certain areas, including parenthood, but does not cover the recognition of the contents or effects of such public documents[32].

The protection and promotion of the rights of the child is a core objective of the European Union (Article 3(3) and 3(5) TEU). It is enshrined in the Charter of Fundamental Rights of the European Union ("Charter"), which guarantees, in the implementation of EU law, the protection of the fundamental rights of families and children. These rights include, regardless of the age of the child, the right to respect for private and family life (Article 7 of the Charter) and to non-discrimination (Article 21 of the Charter). The Charter also protects the rights of children (Article 24) and recognises that children have the right to maintain a regular and direct relationship with both parents, if it is according to their best interests. The best interests of the child, as laid down in Article 24(2) of the Charter, is one of the main principles of the EU legal order and was recognised by the CJEU in several cases. The close links between these rights were recently confirmed by the CJEU in the *V.M.A.* case, where the CJEU held that it would be contrary to children's rights for children to be deprived of the relationship with their parents when exercising their free movement rights.

Box 1: *V.M.A.*, C-490/20, 14 December 2021

The case concerned a child born in Spain to a British mother and a Bulgarian mother (V.M.A.) living in Spain. Spain issued a birth certificate mentioning both mothers as the child's parents. Since a birth certificate issued by the Bulgarian authorities was necessary to obtain a Bulgarian identity document or passport, V.M.A. applied for the issuance of a birth certificate for their child in Bulgaria. Without an identity document or a passport, the child would not be able to exercise its free movement rights. The Bulgarian authorities refused to issue a birth certificate, *inter alia* on the ground that the registration of a birth certificate with two female parents was contrary to Bulgarian public policy. The mothers challenged such a refusal. The court seised asked the CJEU whether EU law obliges a Member State to issue a birth certificate, a passport or an identity document, to its own citizens born in another Member State and whose birth certificate issued by the host Member State mentions two mothers.

In its ruling, the CJEU stated that EU law requires all Member States to recognise parenthood for free movement purposes, *i.e.* to enable the child to exercise, with each of her parents, her right of free movement. While EU law does not require the Member State of nationality of the child to issue a new birth certificate for the child, it **does require it to issue a passport or an identity document enabling the child to exercise free movement rights with both parents.** The parents must also be issued with a document that enables each of them to travel alone with the child.

The CJEU held in *V.M.A.* that Member States are obliged to recognise parenthood for the purposes of ***rights that the child derives from EU law***, including the right of the child to exercise free movement with each of its parents[33]. The notion of "*rights derived from EU*

[32] In addition, see below fn. 33 on the CJEU case law in relation to citizenship and free movement.

[33] *V.M.A.,* para. 57. **The rights derived from EU law include the child's right to exercise, with each of its parents, the right of free movement and the right of parents to have a document which enables them to travel with the child**. In addition, they also include the right to equal treatment with citizens of the host Member State as provided for in Art. 24 of Directive 2004/38/EC and in Art. 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union. EU citizens in free movement and their family members who fall within the scope of these provisions have a right to equal treatment with nationals of their host Member State within the scope of the Treaty, which includes social and tax advantages (*Cf.* judgments *Commission v Austria,* C-328/20; *Meeusen*, C-337/97; and *Even*, C-207/78). For example, admission to education (C-9/74, *Casagrande*),

law", explained in fn. 33, is used in this impact assessment to delineate situations already covered by the CJEU's case law. In *V.M.A.*, the CJEU took an important step to ensure that the free movement of children with their families is not hindered. However, the judgment also demonstrates the limits of EU law as it currently stands since it does not oblige Member States to **recognise parenthood of a child for other purposes**, namely for rights that are not derived from EU law[34]. Therefore, while the CJEU judgments on free movement of persons, and partly on EU citizenship, imply obligations irrespective of formal recognition of parenthood in the host Member State for some purposes[35], Member States still apply their national law to recognise parenthood for other purposes. These other purposes include the **legal status of persons and the rights derived from parenthood under Member States' law, for example succession and maintenance rights**. Measures are thus still needed to facilitate the recognition of parenthood for these other purposes.

Simultaneously, the CJEU noted that such obligation does not undermine national identity of Member States or pose a threat to their public policy[36].

Another case, *K.S.*[37], factually and legally similar to *V.M.A.*, was brought before the CJEU in 2021. The recurring nature of these existing problems with parenthood recognition is also shown by the ECtHR case law[38], by petitions addressed to the European Parliament and by citizen letters addressed to the Commission[39]. Also the Open Public Consultation ("OPC") demonstrates that improvements are still possible in the implementation of the legal obligations concerning the protection of children's rights stemming from the CJEU and ECtHR case law. As these binding obligations do not need to be implemented in national statutory law and often are not, the application of the CJEU and ECtHR case law in individual cases is often left to national courts, which results in practical difficulties as the case law requires a certain outcome without specifying how recognition should be achieved. As a result, while national authorities, in particular courts must follow the obligations laid down in the case law, they struggle to come to a decision that balances the best interests of the child and the policy goals of their Member State. The reasoning applied by national courts to strike such balance in their decisions is therefore highly

---

scholarships (C-235/87, *Matteucci*) and reductions of public transportation costs for large families (C 32/75, *Cristini*) have already been recognised by the CJEU as a part of the rights derived from EU law. The CJEU has also decided on recognition of surnames in a number of cases (for example, C-148/02, *Garcia Avello* and C-41/15 *Freitag*).

[34] See fn. 33.

[35] *Ibid.*

[36] *V.M.A.*, paras 56, 57. The recognition of the child-parent relationship does not undermine national identity or pose a threat to the public policy of that Member State since it does not require the Member State concerned to provide, in its national law, for the parenthood of persons of the same sex, or to recognise, for purposes other than the exercise of the rights which the child derives from EU law, the child-parent relationship.

[37] Case C-2/21, *Rzecznik Praw Obywatelskich*.

[38] See the ECtHR case law, fn. 29, 30.

[39] See for instance petition No 0513/2016, petition No 0657/2020, petition No 0712/2020, petition No 0911/2020, petition No 1038/2020, petition No 1056/2020, petition No 1179/2020, petition No 0214/2021, etc. *Cf.* also the Study requested by the PETI committee of the European Parliament. Tryfonidou A., Wintemute, R. (2021). *Obstacles to the Free Movement of Rainbow Families in the EU*. These petitions and letters addressed to the institutions are only a tip of the iceberg as regards problems with the recognition of parenthood across the EU, as arguably not all families would resort to using them.

unpredictable[40], which negatively affects legal certainty for cross-border families and often requires that families have to appeal before national courts against an initial refusal of parenthood recognition[41].

2.2. 1.2 Political and policy context

At EU level, the recognition of civil status has been on the Commission's agenda for some years. Already a *2010 Green Paper*[42] discussed whether it would be appropriate to adopt measures on the recognition of civil status records, including parenthood, issued in another Member State.

More recently, following the Commission President's announcement in her 2020 *State of the Union speech* of the Commission's intention to propose measures to improve the recognition of parenthood among Member States, this commitment was confirmed in the *EU Strategy on the rights of the child*[43] and the *LGBTIQ Equality Strategy 2020-2025*[44]. The President's political pledge for an initiative on the recognition of parenthood between Member States was also included in the **2022 Commission Work Programme** under the policy ambition of *A New Push for European Democracy*[45].

The Commission's commitment to adopt a proposal on the mutual recognition of parenthood was welcomed by the European Parliament in its resolutions *of 14 September 2021*[46] and *of 5 April 2022*[47]. This is consistent with the long-term support by Parliament for an action in this area: *e.g*. in 2017, the Parliament adopted a *resolution on cross-border aspects of adoption,* highlighting a "clear need for European legislation to provide for the automatic cross-border recognition of domestic adoption orders"[48]. Preliminary views on the Parenthood initiative* were exchanged between Member States at the Justice and Home Affairs Council on 4 February 2022 and at a dedicated technical meeting organised by the Commission as part of its consultation strategy on the initiative[49].

---

[40] Gössl S., Melcher M. et al. (2022). *Recognition of a status acquired abroad in the EU – a challenge for national laws*. Cuadernos de Derecho Transnacional. Vol 14, No.1, 1012-1043.
[41] In contrast, a legislative text would provide much greater legal certainty as to the conditions and procedure under which the recognition of parenthood can be expected.
[42] European Commission (2010). *Green Paper - Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records*, COM/2010/0747. Respondents to the 2011 public consultation on the Green Paper (over 20 public authorities, 50 civil society groups and 11 000 EU citizens) generally viewed the recognition of parenthood as problematic and favoured introducing EU rules that would grant automatic recognition of parenthood.
[43] European Commission (2021). *EU Strategy on the rights of the child*, p.18.
[44] European Commission (2020). *LGBTIQ Equality Strategy 2020-2025*, p. 17.
[45] See Annex 1 of the Commission work programme 2022. COM(2021)645 final.
[46] European Parliament resolution of 14 September 2021 on LGBTIQ rights in the EU (2021/2679(RSP)).
[47] European Parliament's own initiative report - Protection of the rights of the child in civil, administrative and family law proceedings (2021/2060(INI)), adopted on 5 April 2022 by a vast majority of the Members of the Parliament.
[48] European Parliament, Resolution of 2 February 2017 with recommendations to the Commission on cross-border aspects of adoptions, 2015/2086(INL), para. 23.
[49] As to the consultations organised in the context of this impact assessment, see Annex 2.

2. 2. PROBLEM DEFINITION

Families are increasingly mobile as they move and travel between Member States[50]. Yet, given the differences in Member States' laws, families may face difficulties in having the parenthood of their children recognised when crossing borders within the EU. Through citizens' complaints, petitions to the European Parliament[51] and judicial proceedings[52], the attention of the Commission has been drawn to the precarious situation that families face in these circumstances. Non-recognition in a Member State of the parenthood established in another Member State (where recognition is required for children to benefit from *rights* other than those *derived from EU law*[53]) can have significant adverse consequences for children and their families when moving to another Member State or returning to their Member State of origin. Non-recognition of parenthood may have a negative impact not only on children's rights, such as right to an identity, status and nationality but may also have derived legal, economic and psychological consequences for children and their families.

The CJEU partially addressed the recognition of parenthood between Member States in the *V.M.A.* case (see *Box 1*). However, as this CJEU case law only obliges parenthood to be recognised for some purposes, families will continue to face difficulties in cross-border situations for other purposes, such as civil status and rights derived from that status (succession, maintenance rights, parental representation rights etc.). Therefore, where a reference is made in this report to **the problem of the non-recognition of parenthood between Member States,** this refers to **non-recognition for purposes other than the *rights derived from EU law**, including the recognition of civil status and the rights derived from that status under national law, such as maintenance or succession rights, parental representation rights etc.

The drivers (or causes) of the problem with recognition of parenthood are threefold: (i) differences in Member States' laws on the establishment of parenthood (substantive rules and applicable law rules); (ii) differences in Member States' rules on the recognition of parenthood established in another Member State[54]; and (iii) the lack of any EU or international rules on the recognition of parenthood that would have a wide material scope and apply to all Member States. These problem drivers together lead to situations in which families may face situations where their parenthood legally established in one Member State is not recognised in another Member State.

The main issue to be addressed is thus the **non-recognition of parenthood in the EU**[55].

The need for the recognition of parenthood may arise in the presence of a cross-border element in the family, in particular where children and their family previously resident in one Member State move or intend to move to another Member State, or return to their

[50] See fn. 17.
[51] See fn. 39.
[52] See for instance the preliminary references to the CJEU in *V.M.A.* and *K.S.,* or the ECtHR case law on the recognition of parenthood (fn. 29, 30).
[53] See fn. 33.
[54] For purposes other than the *rights derived from EU law**. See fn. 33.
[55] *Ibid.*

Member State of origin, or simply travel[56] within the EU. In addition, recognition of parenthood may be necessary in situations where a family resident in one Member State applies for documentation in the Member State of the nationality of the child[57].

In the majority of Member States, if formal recognition of parenthood is needed, it is entrusted to administrative authorities, such as civil registrars[58]. Most Member States reported that the process and costs for the recognition of parenthood before the administrative authorities are not burdensome as such[59]. However, should recognition be refused for any reason, the family may need to seek legal remedies, meaning that they need to appeal against the decision of the administrative authority before another administrative authority or directly before the national courts of the Member State where recognition is sought. In some cases, they may have to go through several court instances, even before constitutional courts, involve human rights defenders or finally file a complaint with the ECtHR. All these legal procedures require legal counselling and are burdensome, costly and lengthy[60]. In the meantime, the rights of children are suspended and the outcome of the proceedings is uncertain.

These lengthy, costly, and burdensome procedures following the initial non-recognition of parenthood may result in situations where either:

- the parenthood of a child established abroad is eventually recognised; or
- the parenthood of a child is eventually not recognised, despite the effort, costs, and burden of the litigation process.

Given the unpredictable outcome of these lengthy, costly, and burdensome court proceedings, families may decide that they cannot afford initiating them in the first place and the parenthood of the child will thus remain not recognised[61].

Because many rights and obligations are derived from the parenthood status, the recognition of parenthood in cross-border situations, particularly where a family moves to another Member State or returns to its Member State of origin, ensures that the child enjoys the same rights under the national law of that Member State as other children

---

[56] While recognition of parenthood is mostly needed in cases where family moves to another Member State, the need for recognition of parenthood may in some instances also arise when a family is travelling to another MS. For example, *V.M.A.* dealt, *inter alia*, with the need to ensure that the child be able to travel with each of her parents individually. Other example may arise in situations of medical emergencies abroad where medical decisions concerning the child need to be made. Another case was described by a respondent to the OPC: "*Every time we travel to Greece, we have to think that if something happens to me, the children will be considered orphans"*. Moreover, as recalled by another OPC respondent, the recognition of family ties was also important during the COVID-19 pandemic when people were prohibited from crossing borders save for limited exceptions, such as reunification with family members.

[57] Illustrative examples of the problems experienced by families with the recognition of parenthood are given in Annex 7.

[58] On the other hand, e.g. in CZ, it is the courts that are competent to recognise parenthood established abroad. Information based on *Country reports**.

[59] See the table in Annex 6.

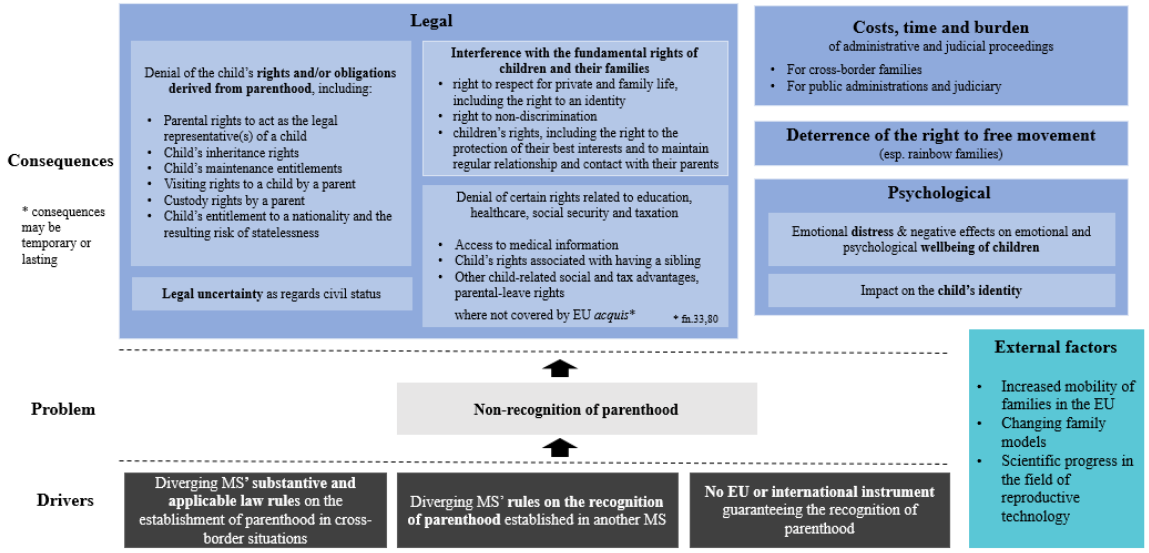
[60] More details about the costs borne by cross-border families in cases of non-recognition of parenthood are below and in Annex 4.

[61] There may be several reasons for not pursuing a legal battle over the child's status, for instance reasons related to a lack of information or of legal advice, to a lack of financial resources, or to a wish to avoid the psychological burden of such proceedings on the child and family.

residing in that Member State[62]. Families aware of the parenthood recognition problems are faced with legal uncertainty and may fear that the parenthood of their child and rights derived from it might not be recognised in some Member States. As a result, they may be **deterred from moving or travelling** to these Member States, thereby possibly foregoing personal and professional opportunities. This **deterrent effect on the right to free movement**, although its size cannot be quantified exactly, is borne out by the OPC results[63].

The problem tree depicted below in *Figure 1* shows how the problem of non-recognition of parenthood arises from the three key problem drivers (further developed in Section 2.3 below) and leads to various consequences (detailed in Section 2.2 below).

Figure 1: Problem Tree



2.3. 2.1 What is the problem?

The problem addressed in this report is the **non-recognition in a Member State of parenthood established in another Member State**. It may result in one of two outcomes: (i) after initial non-recognition of parenthood, parenthood is eventually recognised but only after lengthy, costly and burdensome procedures; and (ii) parenthood is not recognised in the end (possibly despite lengthy, costly and burdensome procedures). This second outcome is more serious, since it entails that the child is placed in the undesirable state of a limping parenthood[64] in another Member State for an indeterminate period. Under both

[62] In this report, the recognition of parenthood refers only to the recognition of the child-parent status, not of the legal effects derived from such status. The rights and obligations flowing from parenthood are determined by the national law of each Member State. These rights usually include (but are not limited to) the child's right to inheritance from each parent, the child's right to maintenance from a parent, or rights related to legal representation of the child. For more details, see the Section 2.2 on the consequences of the problem.

[63] See below, the Section 6.2.1.1 Impact on the exercise of the right to free movement.

[64] In situations of non-recognition of parenthood, it is usually the parenthood of the non-biological parent that is not recognised. Children thus on paper lose at least one legal parent. In rare cases, the parenthood of both parents can be put in question, e.g. in some cases where a child was born through a surrogacy arrangement, especially where none of the intending parents is genetically connected to the child. See for instance ECtHR, *Paradiso and Campanelli v. IT*; or ECtHR, *Valdís Fjölnisdóttir v. Iceland.*

scenarios, families face **legal uncertainty** as to whether or not their child's parenthood will be recognised in another Member State.

2.4. 2.2 What are the consequences of the problem?

Non-recognition in a Member State of the parenthood established in another Member State can have significant adverse consequences for children and their families. These consequences may be temporary (until the parenthood is recognised at a later stage, e.g. subsequent to a court decision) or lasting.

- *Interference with children's (fundamental) rights*

Where authorities in one Member State refuse to recognise parenthood established in another Member State, the child's rights derived from parenthood may be denied. Non-recognition of parenthood can lead to either of the parents losing parental rights to **act as the legal representative of the child** in matters such as enrolment in school, various administrative procedures, opening of a bank account on behalf of the child, giving consent to medical treatment or authorising the child to travel alone[65]. As a result of the non-recognition of parenthood, the child may lose **maintenance entitlements**, **succession rights**, or the **custody and visiting rights** by the parent(s) whose parenthood has not been recognised. The OPC confirms the existence of such consequences resulting from the non-recognition of parenthood[66].

Non-recognition of a child's parenthood also has negative consequences on the **child's fundamental rights**, in particular the rights to **respect for private and family life**, and to **non-discrimination**[67]. Given that, under the Charter, the ECHR and the UNCRC, children have a right to have a relationship with each of the persons with whom they have an effective family life[68], it is contrary to the fundamental rights guaranteed under Articles 7 and 24 of the Charter to deprive them of the relationship with one of their parents because their parenthood was established in another Member State[69]. Indeed, as a general rule, the best interests of children entail maintaining family unity[70], as well as their right to maintain on a regular basis a personal relationship and direct contact with both their parents, unless that is contrary to their interests. In addition, severing the parenthood links of children with their parents in cross-border situations may also have a negative impact on the **child's**

---

[65] 59% of the OPC respondents indicated that where parenthood was not recognised, the parental rights to act as the legal representative(s) of a child were denied to parents.

[66] Indeed, in cases known to the OPC respondents where parenthood was not recognised, the child or parents were reportedly denied the following rights:

(i) the right to act as (a) legal representative(s) of a child (59% of respondents);
(ii) child's inheritance rights (29% of respondents);
(iii) custody rights (24% of respondents) and visitation rights to a child by a parent (17% of respondents);
(iv) maintenance obligations (14% of respondents).

[67] Including discrimination by association on the basis of the sexual orientation of the child's parents.

[68] See above the ECtHR case law or Articles 7(1) and 8(1) UNCRC.

[69] See paras. 59-65 of the *V.M.A.*

[70] See *V.M.A. Opinion*, para. 112, referring to Art. 24(2) and (3) of the Charter and other sources, including EU secondary law. The *V.M.A. Opinion* further states in its para. 126: "*Moreover, the right to respect for family life is characterised, in essence, by the possibility of living together in conditions broadly comparable to those of other families. In other words, what is important in order to respect the essence of that right is to guarantee an effective family life.*"

right to an identity[71], including on its nationality (when in national law nationality is based on *ius sanguinis*)[72] and – in spite of the clear CJEU case law - a surname[73].[74]

- *Repercussions on the nationality of children and statelessness*

The attribution of nationality falls within the competence of the Member States. Where parenthood of children is not recognised, they may face hurdles in obtaining the **nationality** of the parent whose parenthood has not been recognised[75]. This may prevent the child from having access to the nationality of a Member State and thus, among others, to EU citizenship and rights attached to it. In some cases, the impossibility to determine the child's nationality can render children born in the EU (temporarily) **stateless** or place them at risk of statelessness[76]. While cases of statelessness are rare[77], the impact of statelessness can be severe.

- *Denial of rights related to education, healthcare, social security and taxation*

Where authorities in one Member State refuse to recognise parenthood established in another Member State, this may also have consequences for the child under the national law of the Member State in which recognition is sought. Where a family lacks necessary documents as a result of parenthood non-recognition, a parent may be refused **access to medical information** about the child or even the **right to be present in a hospital** where a

---

[71] Indeed, as the ECtHR recalled in *Mennesson v. FR*, para. 96: *the respect for private life requires that everyone be able to establish the details of their identity as human beings, which includes their parenthood*.

[72] The rules governing the attribution of nationality remain a Member States' competence. In many MS, a child acquires nationality based on the nationality of the child's parent (descent-based, *ius sanguinis*). Hence, the conditions for acquiring nationality in these countries turn on the question of the parenthood of the child. Based on the *Study by an external contractor**, parenthood is a prerequisite for being granted nationality in at least 17 MS. In contrast, this problem does not arise in *ius soli* countries, where nationality is granted by birth in their territory.

[73] With respect to surname, MS are obliged, irrespective of any recognition of parenthood, to recognise a surname as it was legally acquired in another MS (see e.g. the CJEU case law C-148/02 *Garcia Avello*, and C-353/06 *Grunkin-Paul*). In addition, the CJEU clarified in *V.M.A.,* para. 44, that the identity document or passport to be issued by the requested state should state the surname of the child as it appears on the birth certificate drawn up by the state of birth and residence. In practice, 36% of OPC respondents indicated practical problems, *i.e.* that in the cases where parenthood was not recognised, nor was the child's surname.

[74] The right to a name and nationality is protected under Art. 7 UNCRC.

[75] As to the OPC, 52% of respondents indicated that in the cases where parenthood was not recognised, a child was denied the issuance of documentation by the MS of nationality necessary to obtain documentation proving nationality of the child.

[76] As happened for instance in the *K.S.* The situation of stateless children raised concerns also where surrogacy is involved and the state of origin of the intending parents prohibits or does not recognise surrogacy. *Cf.* Verona Principles, *Principle 13 Prevention of statelessness*, p. 22.

[77] Cases where children are rendered stateless as a result of the non-recognition of parenthood should not occur when the MS comply with the *UN 1961 Convention on the Reduction of Statelessness.* Most MS are parties to this Convention (with the exception of EE, EL, FR, SI, and PL). However, according to the European Network on Statelessness in the OPC, this is not always the case: "*the risk of statelessness is heightened because, contrary to international norms, few MS have a full safeguard in law to ensure that children born in their territory who would otherwise be stateless can acquire the nationality of that MS. Even where such a safeguard is in place, the child must demonstrate that they are unable to acquire any other nationality. This poses a challenge for the child to provide evidence that they are effectively prevented from acquiring another nationality, particularly when the authorities of another MS do not explicitly refuse to acknowledge that the child is a national of that country, but still hinder access to birth registration certificates or identity documents.*" (August 2021).

child is hospitalised. The child may also lose the **rights associated with having** a legal relationship with **a sibling** (for example, the right to be enrolled in the same school). In addition, the OPC results[78] show that where parenthood was not recognised, some families faced problems with the access to family- or child- related social or tax advantages[79]. Nevertheless, the EU *acquis* grants equal treatment to EU citizens in free movement and their family members with respect to these advantages[80].

- *Impact on exercising the right to free movement*

While the consultation activities showed that the right to free movement of families in the EU is one of the most commonly compromised rights in the cases of non-recognition of parenthood[81], a positive trend can be expected following the recent *V.M.A.* judgment. In this and other cases concerning free movement, the CJEU specified several rights that EU citizens must be allowed to exercise, irrespective of any recognition of the underlying status[82]. While the CJEU case law provides for an obligation to respect these rights, it leaves the means to implement those obligations to Member States. Therefore, resorting to a national court to ensure that these rights under EU law are respected may still be necessary even with respect to the *rights derived from EU law*[83].

More importantly, the lack of parenthood recognition (for purposes other than the exercise of the *rights derived from EU law**) may **deter families with children from exercising their right to free movement** within the EU. Failure to recognise parenthood by a Member State and to grant children and their families rights derived from such status can create a serious obstacle to family life in that country. These circumstances can no doubt deter a family from moving to that Member State and thus deter the exercise of the right to free movement. As families are dissuaded from moving or returning to Member States where their child-parent link may not be preserved[84], the number of requests for parenthood recognition and thus the number of cases that reach the courts in the EU are

---

[78] In cases known to the OPC respondents where parenthood was not recognised, the child or parents were reportedly denied:
(i) social advantages (35% of respondents);
(ii) tax advantages (24% of respondents);
(iii) rights associated with having a sibling legal relationship (13% of respondents).

[79] These may include financial advantages or for instance parental leave rights or access to housing for families with children.

[80] See fn. 33. However, the recognition of such rights would not extend for example to third-country nationals who are not family members of EU citizens exercising free movement rights.

[81] 42% of respondents to the OPC indicated that the non-recognition of parenthood by the MS of the child's nationality had a negative impact on the right of issuance of passport or identity card for the child and 44% replied that the right of a parent to travel alone with a child or to authorise a child to travel alone was impaired as a result of a non-recognition.

[82] See *V.M.A.* and fn. 33.

[83] Where the relevant CJEU case law is not clearly reflected in legislation at the national level, it may happen that public authorities requested to grant the rights derived from free movement may not sufficiently take it into account, especially given its complexity and case-specific nature. As announced in the 2020 EU Citizenship Report and the LGBTIQ Equality Strategy 2020-2025, the Commission will review the 2009 Free Movement Guidelines to improve legal certainty for EU citizens exercising their free movement rights, and to ensure a more effective and uniform application of the free movement legislation across the EU.

[84] Out of 185 respondents who replied to this question in the OPC, 79% stated that the possible non-recognition of parenthood has dissuaded the family from travelling within the EU or from moving to another MS.

considerably lower than the actual scale of the problems with the recognition of parenthood[85]. It can thus be reasonably assumed that for every case concerning non-recognition of parenthood that reaches a court, there is a multiplicity of similar cases where court action is not brought.

All the above problem consequences mostly affect, but are not limited to, children and families when they return or take up residence in a Member State that does not recognise their legal relationship and that simultaneously requires formal recognition of parenthood before granting some or all of the rights under national law – as illustrated in Figure 2.

Figure 2: Number of Member States where formal recognition of parenthood established in another MS is a prerequisite for obtaining certain rights (Source: Study by an external contractor)*

- *Psychological effects*

The psychological importance of parenthood status being recognised from a legal viewpoint should not be underestimated. Non-recognition of a family relationship can cause **serious inconvenience** for the family at administrative, professional and private levels and pose serious obstacles in daily life. The uncertainty about the status may in particular give rise to doubts as to the person's identity or the accuracy of his or her declarations. Such "limping parenthood"* resulting from non-recognition of parenthood can also have a **psychological dimension**, as children and their families faced with parenthood recognition problems are likely to experience **emotional distress**. **Legal uncertainty** concerning parenthood may also have a negative impact on the emotional and psychological wellbeing of children and of other member of their families.

- *Costs, time and burden of the recognition procedures*

The costs and length of a procedure for recognising parenthood vary significantly. All estimates in this section rely on the methodology described in Annex 4 and are based on several assumptions detailed Figure 8. The initial recognition procedure typically takes place before administrative authorities of a Member State and lasts in most cases (80%) up to 6 months[86]. The costs of such administrative proceedings borne by families vary greatly

[85] As ascertained from the consultations with NGOs representing rainbow families undertaken in the context of this IA, one of the main reasons as to why the numbers of parenthood recognition cases that reach the courts in the EU are considerably lower than the real scale of the problem is the fact that families are deterred from moving, despite possible professional and personal advantages, to MS where they would experience problems with the recognition of their family status. Other reasons for avoiding litigation on the recognition of parenthood are e.g. the inherent costs and impact of the litigation on the family.

[86] As an exception, there also seems to be MS, where even the initial phase of the recognition of parenthood happens before courts (e.g. CZ).

and may include: i) administrative fees[87]; ii) other administrative costs, such as those for translation of documents, postal costs and costs for further supporting documents and evidence; and iii) costs for legal representation. The average overall *costs for recognition procedures**, including fees and other administrative costs, was estimated at EUR 280 to EUR 475 per case on average in non-problematic cases where parenthood is recognised without further difficulty. However, the procedure for recognising parenthood before civil registries may only be the first step in the whole recognition procedure.

In problematic cases where recognition is initially refused, **non-recognition of parenthood may lead a family to appeal the decision** on the matter (whether before administrative authorities or before courts). This may result in a long legal battle before several administrative or judicial instances with uncertain results. These additional proceedings involve further considerable time, costs and burden for citizens. The length of such **court proceedings** seems to vary, ranging from a few (2-4) months in the easiest cases to up to 1-3 years, with outliers of up to 5 years[88]. During these periods, the rights of the children affected are in a legal limbo. In cases in which parenthood recognition is initially refused and additional procedures are required, the overall ***costs for recognition procedures** **and ***hassle costs** **borne by families increase drastically.** The major *costs for recognition procedures** lie with legal representation, which is necessary in complex cases, sometimes not only at the judicial stage but already at the administrative stage of a recognition procedure[89]. The additional costs may include, in particular: i) court fees[90]; ii) other costs, such as those for translations and evidence (e.g. DNA tests and expert opinions). The overall *costs for recognition procedures** in problematic cases (both at the administrative and judicial stage) amount on average to between EUR 2 916 and EUR 8 795 per case, as quantified in Annex 4 based on several assumptions[91]. These costs for recognition procedures are thus on average **almost 16 times higher than for non-problematic cases** (with an average difference of **EUR 5 478)**. Moreover, in some outlier cases described in the OPC, the overall costs for recognition procedures reportedly reached even EUR 25 000. Where a preliminary question is referred to the CJEU or the case is taken to the ECtHR, additional costs of EUR 4 000 to 8 000 are reported. Were problems with parenthood recognition smoothened out, most of these costs would not materialise. Therefore, the costs savings would be considerable for families that are currently affected by the problems.

Moreover, the procedures for the recognition of parenthood also generate ***costs for recognition procedures**** that are borne by **public authorities** dealing with such parenthood recognition procedures. These costs result first and foremost from the time and effort spent by the personnel of civil registry authorities and courts to consider and process

---

[87] Overall, about half of MS collects administrative fees of variable amounts for the recognition of parenthood (most are between EUR 20 and 50, and never above EUR 150). For the breakdown of fees for administrative and judicial proceedings per MS, see Annex 6.

[88] The estimate stems from the consultation with 22 civil registrars from 12 MS (online survey), a comparative legal analysis and the Summary Report of the OPC, p. 16, 17.

[89] The average costs for legal representation are difficult to generalise as they vary case-by-case and country to country. For the purposes of the report and based on the consultations, the costs for legal advice in problematic cases were estimated to be on average EUR 500 to EUR 1 000 for legal advice in administrative proceedings and EUR 2 000 to EUR 8 000 for legal advice in court proceedings.

[90] Most Member States have court fees of variable amounts but rarely above EUR 250.

[91] See the detailed list of assumptions used in the report in Figure 8.

the cases. The costs for recognition procedures where parenthood is not recognised are on average 24 times higher than those for non-problematic cases.

In addition to the burden placed on families and public authorities by the lengthy, costly and burdensome proceedings required for the recognition of parenthood, the families whose family status are not recognised also face further transactional costs and litigation costs in relation to rights, duties and entitlements derived from the parenthood status of the child (such as costs related to maintenance or inheritance disputes).

2.5. 2.3 What are the problem drivers?

The problem stems from (i) diverging Member States' laws on the establishment of parenthood in cross-border situations (substantive rules and applicable law rules), and (ii) diverging Member States' rules on the recognition of parenthood established in another Member State[92]. In addition, (iii) the fact that there are no legal instruments at EU or international level guaranteeing the recognition of parenthood that would have a wide material scope and apply to all Member States is the last problem driver.

As explained in Section 1, the national substantive law for the establishment of parenthood differs between Member States. Currently, there is a patchwork of inconsistent substantive family legislations in the various Member States. Each national law may therefore answer the question "*who is the parent of this child?*" differently. While this reflects the diversity of cultural and social values of the Member States and is in line with the division of competences between the EU and the Member States, it may raise problems when the reality of a family is linked to more than one Member State.

In situations with a cross-border element, Member States typically establish parenthood by determining the law applicable to the situation by reference to the connecting factor set out in their PIL rules*. Member States' PIL rules* may differ because they may designate different laws (for example, the law of the nationality of the child or the law of the country where the child has its habitual residence) to establish the parenthood of a child in cross-border situations. Moreover, in a few Member States[93], the courts would not apply foreign law to the establishment of parenthood in cross-border situations but directly their national substantive law, therefore refusing the application of a foreign law.

Where parenthood is established in one Member State, a family may request another Member State to recognise the legal situation as such, usually by presenting a foreign birth certificate[94]. When it comes to the recognition of parenthood established abroad, Member States usually have different internal rules and procedures for recognition of parenthood according to whether the recognition of parenthood is sought on the basis of a judgment or of an authentic instrument* (such as a birth certificate). Some Member States recognise parenthood automatically, just subject to certain safeguards (such as public policy refusal ground)[95]. Other Member States determine parenthood *de novo* based on their national

[92] For purposes other than the *rights derived from EU law**. See fn. 33.
[93] CY, IE and generally also other countries whose legal systems are based on common law.
[94] Based on consultations with public registries, in vast majority of cases (about 99%), families use foreign birth certificates as a basis for the request for a parenthood recognition. This applies even in situations where parenthood has been initially established by a court decision.
[95] In the EU, NL applies this approach.

rules and thus accept the parenthood determined abroad only if it corresponds with the result achieved under their national rules[96]. Some Member States apply an *applicable law test*[97], others apply a *jurisdiction test*[98] and others apply both tests, and where parenthood established abroad has not been established in line with these tests, the recognition may be refused. The replies of national experts in the context of consultations undertaken to inform this impact assessment confirm that this variety of tests used for the recognition of parenthood may render the procedure unpredictable for families.

In addition to these tests, all national laws include, as an additional safeguard, the possibility to refuse recognition on the ground of *public policy*, that is where the recognition of the foreign status would conflict with essential principles of their domestic law[99]. While, in some Member States, recognition may be refused where specific circumstances of an individual case raise a public policy objection (such as procedural irregularities in those particular proceedings), other Member States apply it more generally, for example to systematically refuse the recognition of same-gender parenthood. The often unforeseeable use by public authorities and courts of the public policy exception also creates uncertainty for the parties involved. Sometimes children and their families have to go up to the CJEU or the ECtHR (and back to the national systems) to achieve clarity on whether their status will be maintained after crossing a border. In addition to public policy, other refusal grounds may exist under Member States' national law. With respect to the recognition of judgments, Member States law provides for both the refusal ground of public policy and other grounds for refusal[100]. In general, some Member States also apply special proceedings to the registration of a status established abroad which do not necessarily lead to the recognition of the underlying status.

Therefore, the **divergent substantive and PIL rules on the establishment of parenthood, and the divergent rules for the recognition of parenthood established abroad are the main drivers** causing the current problems with the recognition of parenthood. The harmonisation of the jurisdiction rules and the applicable law rules for the establishment of parenthood in cross-border situations, and of the rules for the recognition of parenthood established in another Member State, would facilitate the recognition of the parenthood established in another Member State even if the Member States' substantive rules on the establishment of parenthood and on the definition of family remained divergent.

---

[96] In some MS, this may mean always applying the national substantive law on the establishment of parenthood. See fn. 93.

[97] This means that the public authorities of the MS of recognition apply the law that is applicable according to their national PIL rules and if the result achieved under their PIL rules does not coincide with the result shown in the document brought for recognition, they may refuse the recognition of parenthood.

[98] This means that the public authorities of the MS of recognition examine whether the authority that established parenthood or issued the document recording parenthood had competence to do so according to the jurisdictional rules of their Member State. If it did not, the recognition may be refused.

[99] This means that where there is a genuine and sufficiently serious threat to a fundamental interest of society in the particular case where recognition of parenthood is requested, Member State may refuse such recognition which is an affront to their public policy. See for instance *V.M.A.*, para. 44.

[100] All national laws also provide for a refusal where there is another judgment on parenthood conflicting with the one presented for recognition. Other refusal grounds present in national laws of MS include for example that the court lacked jurisdiction or that the principle of fair trial was not respected.

In addition to problem drivers, there are also ***external (or contextual) factors*** that themselves do not cause the problem with the recognition of parenthood but can, however, influence it. These include: (i) changing family models[101]; (ii) scientific progress in the field of reproductive technology[102]; and (iii) increased mobility of families in the EU.

2.6. 2.4 Who is affected by the problem?

The main parties affected by the problem are cross-border families with children as well as public authorities (public administrations and the judiciary).

- ***Children and their families***

The problems of non-recognition affect children and their rights in cross-border situations. However, children's families are likewise affected – whether their parents or other relatives. It is estimated that there are 1 235 000 mobile couples with children in the EU, meaning an estimated number of **4 452 135 mobile parents and their children** (see Annex 4[103]). The prevalence, intensity, and effects of the problem with the recognition of parenthood may differ on a case-by-case basis and depending on the family structure.

In cases of opposite-gender parents, problems with the recognition of parenthood would typically not result in the non-recognition of parenthood. The difficulties would be caused by administrative hurdles and costs, such as the need to provide specific documentation, expenses relating to translation, legal representation, DNA tests or the delays and costs for recognition procedures themselves. The main focus of this report will not be on these administrative difficulties but on the instances in which parenthood was not recognised.

Non-recognition of parenthood affects mostly: (i) children of same-gender parents, whether or not in cases of surrogacy, and (ii) children of opposite-gender parents, especially (but not only) in cases of surrogacy. The problem materializes mostly vis-à-vis Member States where these ways of family formation are not legally accepted in their national law[104].

- *Rainbow families*

It is estimated that there are around **100 000 mobile LGBTIQ parents and their children** in the EU[105]. The parenthood of children to same-gender couples can be legally established in some 13 Member States in EU-26 – for example through joint adoption, step-parent

[101] There is already a growing range of family models in the EU, including for instance single-parent families, families with unmarried parents, reconstituted families and families comprising step-parents, and rainbow families. In addition, the mean age when couples tend to have children is growing, which could lead to higher infertility rates. See Eurostat (2021). *Women in the EU are having their first child later*, and as to the growing infertility rates, see: Hague Conference on Private International Law (2012). *A Preliminary Report on the Issues Arising from International Surrogacy Arrangements*, p. 6.

[102] For instance advances in assisted reproduction techniques ("ART"*), such as artificial insemination or in vitro fertilization, cryopreservation of sperm or embryos, embryo transfer, fertility treatments.

[103] The methodology to calculate this estimate is explained in Annex 4. The figures refer both to EU nationals and non-EU nationals and cover only couples with children and their children. They cover mobile families which represent the overwhelming majority of cases where parenthood recognition is needed and thus a good conservative basis for the following estimates (conservative since other cross-border situations not requiring mobility, although not frequent, would have to be added).

[104] For the general overview of the legal situations in MS, see the *Study of an external contractor**.

[105] See the methodology for the estimates in Annex 4 of this report.

adoption, or automatic co-parent establishment[106]. Other Member States do not provide for the establishment of parenthood of children to same-gender couples in their national law.

Problems arise in cross-border situations where the parenthood of a child to same-gender parents legally established in one Member State in any of the above ways is not recognised in other Member States[107]. The refusal of recognition usually happens in Member States whose domestic law explicitly reserves the rights related to adoption and parenting to opposite-gender couples (or single parents). The refusal to recognise the parenthood of a child in a rainbow family in those Member States is thus mostly based on **public policy and/or constitutional identity grounds**. As a result, the children born to rainbow families may be effectively deprived of the legal relationship with one (or both) of their parent(s)[108]. Ultimately, as explained above, many rainbow families may be deterred from moving or returning to Member States where their family relationship would not be preserved in some important respects. It has been found, based on the consultations in the context of this impact assessment, that most rainbow families in fact avoid, despite possibly foregoing personal or professional opportunities, situations where the recognition of parenthood would be necessary. This **deterrent effect** may thus affect a large number of rainbow families[109].

- *Families with opposite-gender parents*

Children of opposite-gender parents may also encounter instances of non-recognition of parenthood, albeit less frequently. Given for instance the **differences** in: (i) **legal presumptions** of parenthood in the Member States' substantive laws, or (ii) the assessment of any possible **incidental questions**, such as the validity of the marriage or registered partnership of the parents, each Member State may determine parenthood differently in cross-border cases. Therefore, problems with the recognition of parenthood stemming from the differences in national (PIL) laws may happen to families in relation to all Member States. These recognition problems can usually be solved in court and/or through genetic (DNA) testing of children. While these cases may involve initial non-recognition of parenthood, they would typically end with a recognition, but possibly after a lengthy, costly, and burdensome process.

Box 2: **Example of a problem scenario for opposite-gender parents** (from Annex 7):

A child is born to a married woman, a national of Member State B, who is habitually resident with her husband (also a national of Member State B) in Member State A. The husband is aware that the child is not genetically his. Substantive family law of Member State A uses a common legal presumption that husband of the child's mother is the father of the child and thus attributes paternity to him. The couple divorces several years later in the Member State A. To avoid maintenance obligations, the husband disproves his

[106] AT, BE, DE, ES, FI, FR, IE, LU, MT, NL, PT, SE, and SI. See ILGA Europe (2021). *Rainbow Europe (rainbow-europe.org)*. Section *Family*.

[107] For a detail account of cases where rainbow families experience problems with the recognition of parenthood, see Study requested by the PETI committee of the European Parliament: Tryfonidou A., Wintemute, R. (2021). *Obstacles to the Free Movement of Rainbow Families in the EU* and document by NELFA entitled "*Freedom of Movement in the European Union: Obstacles, cases, lawsuits*" (2020).

[108] In fact, in such situations, parenthood of one parent, the biological one, is usually recognised and the child loses, from the legal viewpoint, the other legal parent.

[109] Since it is impossible to measure the number of families effectively deterred under the *status quo* from travelling and moving to another MS, it was assumed for the purposes of the quantification of the problems that all rainbow families could be potentially affected by this deterrent effect.

paternity to the child during the divorce proceedings. However, according to the law of Member State A, a parent can only contest their legally established parenthood within two years after he became aware of the facts which indicate that the child may not be biologically his. Given the time bar on contesting parenthood in the national law of Member State A, the husband cannot contest his paternity and remains the legal parent of the child.

Following the divorce, mother of the child moves with the child to Member State B. Her former husband brings proceedings in that Member State for the non-recognition of his paternity to the child. There is no time bar on challenging paternity under the national law of Member State B and, with the help of DNA testing proving that the child is not genetically his, he is successful with his non-recognition action.

As a result, the child has two legal parents from the perspective of Member State A and only one parent, the mother, from the perspective of Member State B.

For further examples of problem scenarios, see Annex 7.

The results of the OPC, as well as case law[110], point to another group of families affected by difficulties with the recognition of parenthood: families with **children born as a result of surrogacy arrangements**. Surrogacy is a sensitive issue that raises ethical questions. Several EU Member States prohibit surrogacy in their national law. Other EU Member States do not regulate surrogacy – neither prohibiting it, nor allowing it. Where families resort to surrogacy abroad to avoid the restrictions on surrogacy practices in their home Member State or for other reasons, they may face problems with having the parenthood of their child recognised upon return. Despite the existence of the ECtHR case law on the matter[111], it appears that such problems do persist and may be even growing in number given the global increase of the surrogacy phenomenon[112]. The legal complications related to the recognition of parenthood established through surrogacy arrangements may include difficulties with getting the documentation for the child, a need for emergency travel documents, genetic (DNA) testing to prove the genetic parenthood of the genetic parent(s), or adoption by an intending parent. The number of surrogacy arrangements in EU Member States is rather low as compared to global surrogacy trends[113]. However, statistics relating to surrogacy are not available, as there are generally no formal reporting mechanisms[114]. Consequently, the number of families encountering problems with the recognition of the parenthood of a child born out of surrogacy in another Member State is difficult to assess.

- ***Public administrations and the judiciary***

In addition to children and their families, the public administrations and the judiciary of Member States are affected by the current problems, especially by the burden and costs

[110] See the ECtHR case law in fn. 29, 30.

[111] The ECtHR case law in principle concluded that the child's right to respect for private life within the meaning of Art. 8 of the ECHR requires that domestic law recognises the genetically-related intended parent (a father) of a child born through surrogacy abroad, while it has to provide a possibility of establishment of a legal child-parent relationship with the intended parent (mother) who became legal parent in accordance to a law of another state. Adoption may also serve as a means of establishing that relationship. See the ECtHR, *Advisory Opinion*.

[112] See Hague Conference on Private International Law (2012). *A Preliminary Report on the Issues Arising from International Surrogacy Arrangements*, p. 6-8.

[113] Indeed, all but one example given in the OPC and accounting for problems concerning the recognition of parenthood of children born out of surrogacy related to such arrangements undertaken in third countries.

[114] The data is not collected neither at national, nor at European level. Any estimates may be further complicated by the fact that birth certificates often do not record the fact that a child was born through a surrogacy arrangement. Annex 4 refers in greater detail to data available to the Commission concerning surrogacy arrangements undertaken in the EU.

generated as a result of the persisting difficulties with the recognition of parenthood and the legal uncertainty[115].

2.7. 2.5 The scale of the problem

The scale of the problem can be defined by the **number of mobile parents and their children** affected by the non-recognition of parenthood. This number amounts to estimated **103 000 people**, the vast majority of which corresponds to same-gender parents and their children. This figure should be taken with caution as it is quantified based on several estimates (as to which, see Annex 1 and Annex 4)[116]. Notably, the number of persons affected by the problems with the parenthood recognition would be higher than the estimate made, if the methodology also considered single parents with children[117] and families that have more than two children.

Nevertheless, the quantitative size of the problem in terms of the absolute number of children and their families affected should not be considered as the prime or only indicator of the seriousness of the problem, or as the basis to assess the need for the EU to take action to address the problem. This is because, where the parenthood of a child is not recognised, severe violations of the child's fundamental rights take place. Under international law, EU law and Member States' law, all children without distinction are granted the same rights. Situations in which the children's fundamental rights are not respected in cross-border situations pose a grave problem in the EU, which has set itself the objective of creating, maintaining and developing an area of justice in which the free movement of persons is ensured.

2.8. 2.6 How likely is the problem to persist?

The definitions of parenthood and family have undergone rapid developments in the recent decades and these developments will continue. Member States are reacting and several are planning to revise or are revising their substantive and PIL rules* on parenthood[118]. These

---

[115] As revealed by the replies of public authorities to the OPC, mostly affected seem to be those from larger cities.

[116] As further detailed in Annex 4, since relevant data that would allow exact quantification of the problem is not collected, the estimate had to rely on several assumptions, for instance: (i) the number of mobile rainbow families in the EU and the assumption that all may in principle be affected by the deterrent effect resulting from the possible parenthood non-recognition; (ii) the number of mobile opposite-gender parents and their children affected by the problems - whether due to the fact that parents had a recourse to surrogacy or due to other issues resulting from the differences in Member States substantive and PIL rules. Moreover, (iii) the methodology only considered couples with children. Should also single parents with children in relation to which parenthood is not recognised be considered, the number of affected people would grow further. Finally, (iv) the Eurostat data used as a basis for quantifying the number of children in cross-border families only included information about 'families with more than 2 children', without a detailed breakdown of the actual number of children. Therefore, it was assumed that these families have exactly two children. If the actual number of children in these families could be determined, the number of affected children would further increase.

[117] For an example of a problem affecting a single parent and his child, see e.g. judgment of the Polish Supreme Administrative Court of 10.9.2020, No. II OSK 1390/18.

[118] According to the *Country reports**, about half of the MS are (considering) amending their law in the area of parenthood. These changes mostly concern laws regarding surrogacy and its cross-border aspects as well as the recognition of parenthood established abroad in general.

changes may increase or decrease the parenthood recognition problems depending on whether the national approaches to parenthood matters would be more or less convergent as a result of these changes. In any case, these changes to national law would not tackle the parenthood recognition problems.

The consultations undertaken in the context of this impact assessment confirmed that the problems would indeed continue or increase[119]. The increased incidence of the problem in the future is also caused by the *external factors*, such as the greater diversity of families[120], (likely) leading to a greater divergence of national family laws; future advances of reproductive technology[121]; or growing mobility of persons in the EU. The mobility of persons in the EU was influenced by the COVID-19 pandemic in the short term; however, as the situation will normalise after the pandemic, the mobility of families in the EU will continue growing (estimated 5% of citizens will be mobile in 2032). It is projected that the number of **mobile couples with children** will increase in the future and reach **1 936 558** in EU-26 in 2032, a 57% rise over 2020 estimates[122]. This will further increase the need for the recognition of parenthood abroad. The number of cross-border families experiencing problems with parenthood recognition in another Member State is also likely to increase, depending on the development of the other factors influencing the scale of the problem.

With the possible exception of the *HCCH Parentage / Surrogacy Project**, there are currently no international policy initiatives aimed to address all aspects of the recognition of parenthood (for details about the Project and why it does not eliminate the need for an action concerning recognition of parenthood at EU level, see Section 3 below). The problem could also be partially mitigated by future legislative changes at national level aimed to address the problems of parenthood recognition, and by strategic litigation efforts before national courts, the ECtHR and the CJEU, which could bring about more guidance and impose further obligations on Member States regarding the continuity of parenthood across borders. The guidance and obligations might be, however, implemented to diverging extents in the Member States.

Overall, in the reference period of 2022-2032, cross-border families in the EU would continue facing the risk that their parenthood would not be recognised (for purposes such as civil status and rights derived from it).

---

[119] All 13 national ministries that replied to the questionnaire from an external contractor* indicated that problems with the recognition of parenthood established abroad would continue in the future, seven of them further noting that the problems were likely to increase. The pressure that these persisting problems and related disputes will likely put on the countries' judicial system was also highlighted. The perception that the problems will continue or increase was also shared by the majority of the civil registrars (57%) that replied to the questionnaire circulated by the external contractor*.

[120] See fn. 101.

[121] See fn. 102.

[122] See the methodology detailed in Annex 4 of this report. Using the current child birth rates, this would translate into approximately **3.1 mil. children** of the mobile couples in EU-26 **by 2032**.

3. 3. WHY SHOULD THE EU ACT?

2.9. 3.1 Legal basis

The aim of the legislative initiative would be to facilitate the recognition of parenthood between Member States. As in other EU instruments concerning family law, this would be done through the harmonisation of the Member States' rules on private international law, that is, the rules on international jurisdiction, applicable law and the recognition of parenthood. Indeed, while the competence on substantive family law (such as the rules on the definition of family or on establishing someone's parenthood) lies with the Member States, pursuant to Article 81(3) TFEU the EU has competence to adopt measures on family law with cross-border implications, including the harmonisation of the Member States' PIL rules*. In this area, the EU has a shared competence with Member States. Measures pursuant to Article 81(3) TFEU must be adopted through a special legislative procedure whereby the Council acts unanimously after consulting the European Parliament.

The measures adopted by the EU under Article 81(3) TFEU to facilitate the recognition of parenthood between Member States will not change the substantive rules of the Member States on the definition of family or on the establishment of parenthood and will thus respect the Member States' exclusive competence in substantive family law.

2.10. 3.2 Necessity and added value of EU action

- *Possible action by Member States*

The problem of non-recognition of parenthood and its consequences have an EU dimension. The problem with the recognition in one Member State of the parenthood established in another Member State is cross-border by its very nature, since (non-)recognition requires, by definition, the involvement at least of two states. Furthermore, problem consequences may deter children and their families from exercising their right of free movement. Since the problem described in Section 2 stems from the fragmentation of national rules regarding cross-border aspects of parenthood, any uncoordinated action at the level of Member States that would not have a harmonising effect on these rules and would not be capable of effectively and comprehensively tackling the problem. The cross-border nature of the problem means that it cannot be solved by means of national measures.

The aim of the proposal is to facilitate recognition through the adoption of harmonised rules on jurisdiction and applicable law. Member States cannot by themselves harmonise the currently diverging Member State rules on these matters. Only EU intervention can effectively facilitate the recognition of parenthood between Member States, ensure mutual trust between them and legal certainty and predictability in matters of parenthood in the EU, while reducing costs and burden of the recognition procedures for cross-border families and public authorities. Therefore, the objectives of the Parenthood initiative, by reasons of its scope and effects, would be best achieved at EU level in accordance with the **principle of subsidiarity**.

- *Possible action at international level*

A separate question also arises as to why the problem should be tackled at the EU level as opposed to finding a global international solution.

As indicated, the HCCH is currently working on the *HCCH Parentage/Surrogacy Project**. An expert group is currently examining the feasibility of an international convention on the recognition of legal parentage and an additional protocol concerning ISAs*. A global approach ensuring the recognition of decisions on parenthood would be an efficient means for ensuring the best interests of children worldwide. However, the Project, while having started more than 10 years ago, is still in its preparatory phase as the HCCH members are still to decide on its feasibility. Given the marked differences between the rules on parenthood among countries in the world, it may take considerable time before a consensus on an international instrument can be reached by all HCCH members and even longer before such an instrument is widely ratified.

Since EU Member States share a similar socio-cultural framework and a higher mutual trust than with third countries, any instrument concerning the recognition of parenthood can garner consensus more easily among EU Member States than among all HCCH members. This is supported by the recent CJEU ruling in *V.M.A.,* which already requires that Member States recognise parenthood established in another Member State for some purposes[123], and by the ECtHR case law concerning the protection of private and family life in the context of the recognition of parenthood.

4. 4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

The following objectives reflect the problem identified in Section 2 and set out goals which the policy options aim to achieve.

2.11. 4.1 Overall objective

The overarching objective of the EU action is to ***create, maintain and develop an area of freedom, security and justice in which the free movement of persons is ensured***.

To achieve this overall objective enshrined in the EU Treaties[124], further objectives have been identified.

2.12. 4.2 General objective

The general objective of the initiative is to ***facilitate the recognition of parenthood between Member States*** ("General policy objective").

2.13. 4.3 Specific objectives

To achieve the general objective, it is essential to remove or significantly reduce the obstacles to the recognition of parenthood between Member States. Thus, three specific objectives have been set, which correspond to the identified consequences of the problem:

- Ensure ***respect for the fundamental rights of children in matters concerning parenthood recognition*** ("Specific policy objective 1");
- Ensure ***legal certainty***, ***predictability,*** and ***continuity of parenthood*** ("Specific policy objective 2");

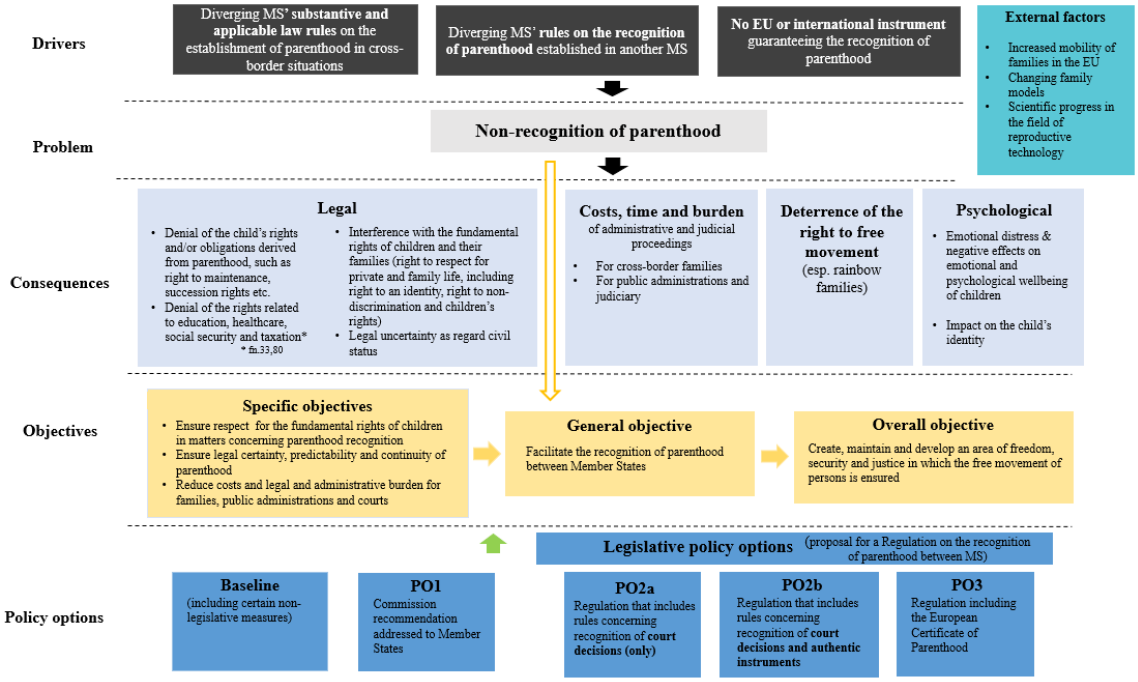
[123] See fn. 33.
[124] See Art. 3(2) of TEU providing that the EU should create an area of freedom, security and justice and Art. 67 to 89 TFEU titled Area of Freedom, Security and Justice.

- Reduce ***costs*** and ***legal and administrative burden*** for families, public administrations and courts ("Specific policy objective 3").

All three specific objectives are mutually compatible and attaining any one of them also contributes to achieving the others. These objectives should be achieved within the reference period (2022-2032) or, depending on the date of adoption of the Parenthood initiative, in a reasonable time after that adoption.

Since the EU action primarily aims at safeguarding the fundamental rights of children in cross-border situations, the first specific objective (*Ensure respect for the fundamental rights of children in matters concerning parenthood recognition*) is the main driving force behind the Parenthood initiative.

Figure 3: Intervention logic



5. 5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

The following policy options will be considered:

- **Option 0**: Baseline scenario
- **Option 1**: Commission recommendation addressed to Member States
- **Option 2**: Legislative measure: proposal for a Regulation on the recognition of parenthood between Member States
    - **Sub-option 2.a**: proposal for a Regulation on the recognition of parenthood between Member States including only rules on the recognition of **court decisions**
    - **Sub-option 2.b**: proposal for a Regulation on the recognition of parenthood between Member States including rules on the recognition of both **court decisions and authentic instruments***

      (The choice between both sub-options is detailed in Annex 5).

- **Option 3**: Legislative measure: proposal for a Regulation on the recognition of parenthood between Member States (policy option 2), including in addition a **European Certificate of Parenthood**.

The policy options would not affect the rights that a child derives from Union law, in particular the rights that a child enjoys under Union law on free movement, including Directive 2004/38/EC. Under the baseline and all policy options, CJEU and ECtHR case law would also continue to further evolve in the future. Under the baseline and all policy options, Member States could also make changes to their national law regarding parenthood and participate in international initiatives, for instance in the context of the *HCCH Parentage/Surrogacy Project**.

All policy options, including the baseline option, would also include certain **"non-legislative measures"**, e.g. to raise awareness, promote good practices and improve cooperation among public authorities dealing with parenthood issues. Introducing non-legislative measures was also supported by a majority of stakeholders and authorities consulted[125]. These non-legislative measures would be, for instance:

- organising thematic meeting(s) on the topic of the recognition of parenthood in the framework of the **EJN-civil***. Such thematic meeting(s) could be aimed at exchanging information, pursuing the joint analysis of existing problems and possible solutions thereto and developing practical solutions and good practices. This can be done under all policy options, including the baseline. In addition, should legislation on the recognition of parenthood be adopted by the EU (under one of the legislative policy options), EJN-civil would be tasked with facilitating the practical application of the legislation (as is the case for other EU legislation on civil law with cross border aspects); or
- including a section in the **e-Justice Portal** describing the national law of Member States concerning the establishment (and recognition) of parenthood in order to provide clear information to the public and to legal practitioners about the applicable rules and procedures.

2.14. 5.1 What is the baseline from which options are assessed?

Under the baseline scenario (Policy option 0), the European Union would make no policy change to address the existing problems with the recognition of parenthood between Member States during the reference period (2022-2032). The Commission could nevertheless undertake some **non-legislative measures** (*see above*), since exchanging on the topic in the context of EJN-civil* requires no change of the current policy[126]. All international and EU instruments in the family-law area will continue to exist and the case law of the CJEU and the ECtHR will continue to oblige Member States to recognise parenthood for some purposes but not for others. Further case law may emerge in the

[125] A vast majority of all stakeholders and public authorities consulted agreed that promoting cooperation between public authorities would be beneficial to improving understanding of the problems and would help to find common solutions with a view to avoiding limping parenthood*. Their views however differed as to whether these non-legislative actions should be the only measure taken at EU level or whether they should accompany a legislation.

[126] While EJN-civil* meetings can help to raise awareness about the problems and possibly mitigate some of their consequences, they will not tackle the problem of non-recognition as such.

future, as families will need to resort to litigation to protect the rights of their children and prevent situations of limping parenthood*[127].

Expected impact of the baseline scenario

A majority of respondents to the OPC (54%) stated that the current *status quo* is a serious problem. This proportion was even higher among respondents being aware of cases in which parenthood was not recognised (91% of these respondents considered the *status quo* to be a serious problem)[128]. Without any action at the EU level, the problem of non-recognition of parenthood in the EU would persist and is even expected to grow between now and 2032, given the anticipated increase in the mobility of families and the influence of social, scientific and demographic changes on national family law. As a result, the consequences of the problem would keep affecting negatively the rights and psycho-social wellbeing of children and their families. Indeed, the **negative impact on the rights of children and their family members** (including the fundamental rights of children and civil-law rights such as the right to maintenance or succession etc.), **psychological impact** and **impact on exercising free movement rights** are expected to continue and even increase. The persisting difficulties with the recognition of parenthood would also continue to cause **delays**[129] in the procedures and generate **costs for recognition procedures* and hassle costs*** for all the persons involved. The costs for recognition procedures were estimated based on methodology detailed in Annex 4. They are based on several assumptions (detailed in Figure 8) and should thus be taken with caution.

Figure 4: Estimated costs for recognition procedures (EUR million)*

Estimated costs for	Lower bound*	Upper bound*
- cross-border families	668	1 299
- public authorities	603	686
Total	1 271	1 985

2.15. 5.2 Description of the policy options

Several policy options can be envisaged. The aim of any EU action, whether legislative or soft law, would be to meet the policy objectives, in particular to facilitate the recognition of parenthood between Member States and to ensure the protection of children's rights in cross-border situations.

The Parenthood initiative would focus on the recognition of parenthood of both **children and adults**[130]. All possible measures envisaged under the Parenthood initiative would have the **protection of the children's rights** and their best interests as their primary consideration. The scope of all policy options should be broad enough to cover **all children affected by the problems with the recognition of parenthood**, regardless of

[127] E.g. the interpretation of the right to lead a normal family life could be further developed by the CJEU.
[128] In contrast, 24% of OPC respondents stated the *status quo* does not constitute a problem. See the Summary Report of the OPC in Annex 9.
[129] The length of recognition procedures would remain constant, administrative proceedings would be mostly concluded within 6 months and court proceedings, wherever they would be necessary, would range from a few (2-4) months in the easiest cases to up to 1-3 years, with outliers of up to 5 years.
[130] See the definition of the term "child" in the Glossary.

their type of family. This should ensure that **all children are treated equally and all enjoy equally the same rights under a possible EU measure**. Nonetheless, as the protection of children in the context of intercountry adoptions* is already sufficiently governed by the *HCCH 1993 Intercountry Adoption Convention* among all Member States, intercountry adoptions could be left out of scope of a possible EU action[131]. By contrast, the Parenthood initiative would cover the recognition of parenthood, as established by **domestic adoption*** (including both full and simple adoptions*), since the recognition of parenthood established through domestic adoptions is not yet regulated in any international or EU instrument[132].

The policy options, especially the legislative ones, would lay down rules applicable to the recognition of court decisions given and authentic instruments drawn up after the date of application of the instrument. In addition, the *temporal scope* could be extended, subject to certain conditions, to the recognition of parenthood established before the date of application of the new instrument[133].

Moreover, all policy options will **only** concern the recognition of parenthood **between Member States** *(territorial scope)*, that is, they would not harmonise the rules governing the recognition of court decisions or authentic instruments on parenthood issued in a third country. The recognition of such documents would thus continue to be subject to Member States' national law. The Parenthood initiative would in principle apply to all Member States, **except Denmark**[134]. In addition, Ireland would only be covered by the legislative policy options if it decides to opt in[135]. The Parenthood initiative **would not be based on the nationality of the people** but on whether the court decision or authentic instrument on parenthood has been issued by the authorities of a Member State[136]. It would thus apply both to EU citizens and also non-EU citizens.

Since the recognition of parenthood would only concern the recognition of the child-parent status, the policy options **will not deal with the legal effects** derived from that status under the Member States' national law (for example parental responsibility, inheritance rights, nationality etc.). These rights and obligations will continue to be determined by the

---

[131] The possible exclusion of intercountry adoptions from the scope of the policy options would also be in line with the proportionality principle and the objective not to unintentionally undermine the HCCH 1993 Intercountry Adoption Convention. The HCCH Parentage/Surrogacy Project* also took that approach in the preparation of a draft Convention on legal parentage. See e.g. HCCH. *Prel.Doc. No 2a of July 2021*.

[132] The desirability and added value of an EU legislation in the area of domestic adoptions was endorsed by the European Parliament through its Resolution of 2 February 2017 with recommendations to the Commission on cross border aspects of adoptions, 2015/2086(INL). Notably, the accompanying *EAVA report on the recognition of adoptions** notes: "*As legislation currently stands, within the EU, there is no legal protection or guarantee that domestic adoptions lawfully carried out in one EU Member State will be recognised in another*.", and eventually concludes that **the cost resulting from lack of EU rules on the recognition of adoption decisions** is estimated to amount to approximately **EUR 1.65 million per annum**.

[133] For instance, it was discussed in the COM Expert Group that the scope of the Regulation could be extended to apply to documents relating to situations predating the date of application of the instrument subject to certain conditions, e.g. compliance with provisions equivalent to the rules on jurisdiction and applicable law laid down in the Regulation.

[134] See the explanation of Denmark's opt-out in fn. 5.

[135] In accordance with Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaties, IE would only be covered if it decides to opt in.

[136] *I.e.* a possible legislative initiative would cover for instance a birth certificate issued by BE authorities for a Canadian child who is born in BE and seeks recognition of its BE birth certificate in FR.

national substantive and PIL rules of each Member State, subject to their obligations under EU law and case law, but following parenthood recognition, such rights will become equally applicable as for citizens who had their parenthood established domestically. The legal effects of a recognised parenthood should nevertheless coincide with those that other children in that Member State derive from their parenthood status.

- ***Option 1*: Commission recommendation addressed to the Member States ("PO1")**

In line with Article 292 TFEU, the Commission can adopt a Commission recommendation addressed to the Member States ("Recommendation").

Under this option, the Commission would suggest to Member States, in the form of a Recommendation, uniform rules on the establishment of parenthood in cross-border situations and on the recognition of parenthood. The recommended measures would be similar to those that could be adopted in the form of a binding legislation under the Policy Option 2 and would include: (i) jurisdiction rules; (ii) applicable law rules; and (iii) rules on the recognition of parenthood. However, the difference between the legislative option and this soft law option is that the latter is not binding and directly applicable. Under PO1, Member States would need to amend their national law so as to adopt the uniform rules proposed in the Recommendation, but they would not be legally required to do so as recommendations are not binding.

Unless the Recommendation were effectively implemented **by all Member States** within a reasonable timeframe, the heterogeneity of the rules concerning parenthood with cross-border element would persist and continue to cause problems in the future. If **some but not all Member States** implemented the Recommendation, this could result in partial increased coherence between national rules on the PIL aspects of parenthood and mitigate slightly the incidence of problems. However, it would be decisive how many and which Member States take up the Recommendation[137]. Even in a very optimistic scenario where the Recommendation were implemented by 50% of Member States, the positive impact of the Parenthood initiative would be unevenly realised across the EU, and the situations of limping parenthood* and deterrence of families from exercising their right to free movement would continue in the EU. The problem with the recognition of parenthood would thus not be solved. In fact, it is highly unlikely that the positive scenario of a 50% uptake would actually materialise as Member States have limited incentives to change their existing national law in line with a Recommendation. This conclusion is based, among others, on past experience with Recommendations to Member States in the area of civil justice[138] and on the limited interest shown by Member States in this policy option during the consultations. Finally, the lack of certainty that all Member States will implement the

[137] It would be decisive, for the assessment of whether PO1 meets the policy objectives, whether the MS in which mobile families most frequently experience problems would take up the Recommendation.

[138] The Commission issued a recommendation concerning insolvency (*Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency (2014/135/EU), OJ L 74, 14.3.2014).* The limited reception by MS of the recommended measures led to the adoption of a binding instrument several years later (Directive (EU) 2019/1023). The tendency of MS to voluntarily enter into legal obligations concerning parenthood matters is expected to be at least limited, as evidenced e.g. by the few ratifications of the Council of Europe's European Convention on the Adoption of Children (Revised) of 27 November 2008 (8 MS).

Recommendation may lead some Member States to decide not to invest in implementing a voluntary instrument which does not guarantee reciprocity between Member States.

Only a few stakeholders or Member States representatives favoured this policy option[139]. In addition, this PO would not be entirely compatible with the existing political context at EU level. In 2017, the European Parliament requested the Commission to submit a legislative proposal on the cross-border recognition of adoption orders[140] and in 2022, it welcomed that the Commission announced to put forward a legislative proposal on the recognition of parenthood between Member States[141].

Given the uncertainty that Member States would implement the Recommendation in their national law, it is unclear whether the Recommendation would address effectively the present problems of parenthood recognition between Member States and whether it would meet the objectives of the initiative. Based on the above considerations, **this policy option was discarded.**

- ***Option 2:*** **Legislative measure (proposal for a Regulation on the recognition of parenthood between Member States) ("PO2")**

The competence of the EU to adopt measures concerning family law with cross-border implications is based on Article 81(3) TFEU. Under this policy option, the Commission would propose a **regulation on the recognition of parenthood between Member States** ("Regulation", "Parenthood regulation"). The Parenthood regulation would not affect the *rights derived from EU law**, in particular the rights that a child enjoys under EU law on free movement, including Directive 2004/38/EC[142].

Such Regulation would ensure legal certainty, predictability, and the continuity of parenthood in cross-border situations, ensuring the respect of children's rights and the best interests of the child. It would appeal, as a policy objective, to the need to protect children's rights in cross-border situations regardless of how they were conceived or born and of the children's type of family. In order to do away with the divergences in national PIL rules that currently cause problems with parenthood recognition and in line with existing EU instruments on private international law, the legislation would take the form of a regulation rather than of a directive[143].

It is particularly relevant for shaping this legislative policy option to assess whether the Regulation should include only the recognition of court decisions on parenthood (Policy

---

[139] Ten out of 19 ministries that shared their views on this subject with the external contractor were of the view that soft law measures would not resolve the current problems linked to the recognition of parenthood and, according to additional five, the problems would not be resolved entirely.

[140] See the *European Parliament resolution of 2 February 2017 with recommendations to the Commission on cross-border aspects of adoptions* (2015/2086(INL)) and the *EAVA report on the recognition of adoptions**.

[141] European Parliament. *Own-initiative report on Protection of the rights of the child in civil, administrative and family law proceedings.* 2021/2060 (INI) adopted on 5 April 2022 by a vast majority of the MEPs.

[142] Like all policy options, the Parenthood regulation would not affect the *rights derived from EU law**, in particular the rights that a child enjoys under Union law on free movement, including Directive 2004/38/EC. See fn. 33.

[143] In contrast with the leeway left by a directive to Member States to achieve its binding results, the uniformity of the rules needed to facilitate the recognition of parenthood can only be achieved through a regulation. Only a regulation ensures a fully consistent interpretation and application of the rules.

Option 2a) or also the recognition of parenthood recorded in authentic instruments (such as a birth certificate or a notarial deed on domestic adoption)* (Policy Option 2b). In order to determine the most suitable scope of the Regulation, these **sub-options were assessed separately** in Annex 5 of this report and the chosen sub-option became PO2. Given that parenthood is in the vast majority of cases established by operation of law (that is, by birth and by a legal presumption of parenthood by the spouse or partner of the mother) and then proven by means of a birth certificate, and that parenthood is established by a court decision only rarely (typically in case of dispute), it was concluded that PO2 would be a regulation on the recognition of parenthood between Member States including the recognition of **both court decisions and authentic instruments**[144].

To ensure the circulation of authentic documents, it would be imperative that all public authorities follow the same applicable law rules for the establishment of parenthood with cross-border implications, it would thus become necessary to harmonise applicable law rules on the matter.

The regulation would thus harmonise the PIL aspects of parenthood, that is: (i) jurisdiction rules; (ii) applicable law rules; and (iii) rules on the recognition of parenthood. These common rules would ensure that, once parenthood is established in compliance with the Regulation, it would be recognised throughout the EU. A Member State should thus recognise the parenthood established in another Member State (i) where such parenthood was established in accordance with the applicable law designated by the instrument; and (ii) if relevant, where the decision was given by a court which had jurisdiction based on the rules of the Regulation.

Suitable **connecting factors** designating the law applicable to parenthood would be chosen, for instance, the law of the State of the habitual residence of the person giving birth or the law of nationality of a parent. The choice of applicable law would be excluded. The uniform connecting factors, especially if based on habitual residence, would also not increase the instances of *forum shopping* or contribute to the circumvention of national rules on the establishment of parenthood. Courts and public authorities would have to respect these rules on applicable law when establishing parenthood in cross-border situations and when issuing national certificates of parenthood or the ECP.

Appropriate **grounds for the refusal of recognition** would also be included. For example, if recognition is manifestly contrary to the public policy of the Member State where recognition is invoked[145], or the decision was given in default of appearance and the

[144] In a nutshell, while the recognition of court decisions is a standard technique in the EU PIL legislation, the inclusion of rules on the recognition or acceptance of foreign authentic instruments is less common. On the other hand, the practical importance of authentic instruments is high in matters of parenthood, as families mostly produce authentic instruments (a birth certificate in the vast majority of cases) rather than court decisions when requesting the recognition of parenthood in another Member State (about 99% of cases). In conclusion, to ensure that the Regulation does not exclude the vast majority (99%) of cases where families request the recognition of parenthood on the basis of authentic instruments, the scope of PO2 should include the recognition of both court decisions and authentic instruments on parenthood. For more arguments concerning the choice between the sub-options, see Annex 5.

[145] Public policy is a standard refusal ground included in the EU's family-law instruments. It may cater for exceptional circumstances justifying refusal of parenthood recognition, such as cases involving child trafficking or violations of fundamental rights or cases in which there has been no fair trial due to a breach of fundamental procedural rights.

defendant was not served with the documents instituting the proceedings, or the decision on recognition is irreconcilable with a decision between the same parties in the Member State where recognition is invoked. The principle of mutual recognition would be the default principle. Such possible legislation would not undermine the national identity of Member States as it would not require Member States to change their substantive family law on parenthood, including on the definition of family. Measures adopted pursuant to Article 81(3) TFEU must be adopted by unanimity in Council, which will ensure that all national sensitivities have to be taken into account.

In the consultation activities undertaken in the context of this impact assessment, the opinions as to the desirability of legislative measures varied. For instance, 60% of the OPC respondents fully agreed to the Commission proposing a legislation on parenthood; however, the second highest number of respondents (33%) fully disagreed, mostly stating that the recognition of parenthood should be regulated only by Member States. A similar diversity of views was observed in other consultation activities (see Annex 2). It emerged from OPC and other consultations that those who were aware of the existing parenthood recognition problems also generally supported a legislation at EU level[146].

- ***Option 3:*** **Legislative measure (Regulation on the recognition of parenthood between Member States, including a European Certificate of Parenthood) ("PO3")**

Option 3 is the same as Option 2 defined above, but includes in addition a **European Certificate of Parenthood** ("ECP").

Box 3: **European Certificate of Parenthood**

The ECP would be a certificate of parenthood issued by national authorities pursuant to the conditions and procedures laid down in the possible instrument on the recognition of parenthood.

The ECP would be an *optional* certificate as the national authorities would only be required to issue it if a person asks for it and a person would not be required to use it. Both national certificates of parenthood and the ECP would circulate within the EU under the conditions and procedures laid down in the Regulation. The ECP *would not therefore replace the national certificates of parenthood* issued pursuant to national law. Instead, citizens would be able to choose between requesting a national certificate of parenthood or an ECP[147].

Parenthood would continue to be established in accordance with the national substantive law designated by the applicable law rules of the Regulation, and the ECP would only provide evidence of the parenthood established under that applicable law. The ECP would thus only have *evidentiary* (and not constitutive) effects.

The ECP would have some **advantages** over a national certificate of parenthood. The contents of the ECP and the effects that the ECP would produce in another Member State would be laid down in the legislative instrument. In contrast, the contents and the effects of a national certificate of parenthood would continue to be laid down in national law and would therefore vary from one Member State to

[146] For example, 89% of those OPC respondents who indicated that they were aware of parenthood recognition problems fully agreed with a possible EU legislation and only 8% of those respondents fully disagreed. In contrast, 64% of respondents who indicated that they were not aware of any parenthood recognition problems fully disagreed with a possible EU legislation and 26% of those respondents fully agreed. A similar tendency was also observed at the meeting with stakeholders (see Annex 2).

[147] As detailed in Annexes 1 and 4, when calculating the cost savings introduced by the ECP, a proxy was used that 70% of cross-border families would request an ECP. This is in line with the generally positive response to a possible ECP received in consultations.

another. The ECP would thus provide for greater *legal predictability* as its contents and effects would be *uniform* throughout the EU. The ECP would be a valid document to record parenthood in the *civil or population register* of a Member State without the need to first transpose its contents into a national document. In addition, the ECP would exist in all EU languages, which would do away with *translation requirements* and related costs for citizens.

Including the ECP in the scope of the possible legislation was supported by stakeholders consulted in the context of this impact assessment. For instance, 85% of those OPC respondents who generally supported EU legislation on the recognition of parenthood between Member States also favoured the idea of introducing an ECP, and 62% deemed it a priority[148]. The COM Expert Group also agreed that introducing the ECP would have added value as it would have several advantages over national certificates on parenthood.

A similar idea of introducing a "European Civil Status Certificate" to facilitate cross-border formalities was floated already in the *2010 Green Paper*[149]. A "European Certificate of Adoption" was suggested in the *Parliament's resolution on cross-border aspects of adoptions*[150].

2.16. 5.3 Discarded policy options – Policy Option 1

Based on the explanation above, in particular the uncertainty concerning the uptake of the Commission recommendation to Member States and the related likelihood that this policy option would not meet the objectives of the initiative, **Policy Option 1 was discarded**.

6. 6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

This section assesses the impact of each policy option (such as economic and social impact, impact on fundamental rights, impact on digitalisation). It also assesses the extent to which each policy option is likely to achieve the policy objectives.

2.17. 6.1 Achievement of policy objectives by the Policy Options 2 and 3

It should first be examined whether the policy options are "fit for purpose", that is, whether they achieve the General Policy Objective of *facilitating the recognition of parenthood between Member States* as well as the Specific Objectives 1, 2 and 3[151].

The Parenthood regulation that forms the basis of Policy Option 2 (PO2) and Policy Option 3 (PO3) would tackle the problem drivers as it would provide uniform rules on

---

[148] In addition, 57% of consulted civil registries viewed the ECP as useful and 29% found including it in the Parenthood regulation as a priority. Likewise, 73% or 16 ministries responded that the ECP would facilitate the recognition of parenthood between MS.

[149] See European Commission (2010). *Green Paper - Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records*, COM/2010/0747, p. 10,11.

[150] European Parliament resolution of 2 February 2017 with recommendations to the Commission on cross-border aspects of adoptions (2015/2086(INL)).

[151] These are: *to ensure respect for fundamental rights of children and other family members in matters concerning parenthood recognition* (Specific Policy Objective 1), *to ensure legal certainty, predictability and continuity of parenthood* (Specific Policy Objective 2), and *to reduce costs and legal and administrative burden for families and public administrations and courts* (Specific Policy Objective 3).

applicable law, jurisdiction on and recognition of parenthood with cross-border implications. Since parenthood would be established in accordance with harmonised applicable law rules, each national authority would apply the same national law and thus reach the same result as to the parenthood of a child. At the same time, the recognition rules in the Regulation would be simplified.

This system would facilitate the cross-border portability of the child's parenthood and ensure harmony of decisions of public authorities in the EU. POs 2 and 3 would thus significantly contribute to *facilitating recognition of parenthood between Member States* and would thereby *reduce legal uncertainty and unpredictability* concerning the preservation of parenthood in another Member State. This positive effect would materialise for all cross-border families that strive to have the parenthood of their children recognised in another Member State[152]. Moreover, these options would also safeguard the *fundamental rights of children* and other family members in cross-border situations, in particular of those that currently experience the most serious problems with the recognition of parenthood. **Both PO2 and PO3 would thus achieve the Specific Policy Objectives 1 and 2, while the PO3 would be more effective than PO2 in achieving the General Policy Objective.**

In addition, they would contribute to reducing the costs and legal and administrative burden for families and public authorities (**Specific Policy Objective 3**)[153]. In the absence of diverging rules on the law applicable to the establishment of parenthood in cross-border situations, families would no longer need to rely on expensive legal advice or resort to litigation. This would in turn translate in a lower caseload and lower costs for national judiciaries.

2.18. 6.2 Impact of legislative Policy Options 2 and 3

This section assesses the impact of the two legislative options (PO2 and PO3). The impact of PO1 is not assessed as this policy option was discarded. Since PO2 is a basis for PO3, the assessment of PO3 will focus on the differences in impacts between the POs.

The assessment covers the impact on all EU Member States, except Denmark[154]. As explained above (*Section 5.2*), the policy options only concern the recognition of parenthood between Member States, they would thus not impact the recognition of parenthood in third countries or of parenthood established in third countries. The reference period for the assessment of the impacts is 2022-2032. While the biggest difference with the current *status quo* would be felt by the children and families that currently experience the problems with the recognition of parenthood, **all families stand to benefit from policy options 2 and 3** as the harmonisation the jurisdiction and applicable law rules on parenthood and simplified recognition rules would result in increased legal certainty, simplification and costs savings. The main impact is expected with respect to Member

[152] However, as explained in Section 5, all policy option would only concern the recognition in a Member State of parenthood established in another Member State, not in third countries or in Denmark.
[153] 59% out of 22 consulted ministries expect positive effect of PO2 on families in reducing costs and burden inherent to recognition procedures (of which 8 expect mildly positive effect and 5 very positive effect), 55% expect positive effect on public authorities (of which 8 expect a mildly positive impact and 4 a very positive impact).
[154] See fn. 5.

States which currently have a more restrictive regime for recognising parenthood established abroad.

The following main impacts will be assessed: (1) **legal impacts** (impact on **fundamental rights** and **children's rights**, including impact on exercising free movement rights, and impact on the legal environment); (2) **social impact** (including the impact on emotional and psychological wellbeing of children and their families, their economic welfare and equality); and (3) impact regarding **administrative burden and simplification**. In addition, **macro-economic impact** (4), and other minor impacts will also be briefly explained. **No relevant environmental impact** is expected. All the impacts described below are intended ones[155].

2.19. 6.2.1 Legal impacts

Legal impacts can be divided into two categories: (i) legal impact on children and their families; and (ii) impact on the legal environment.

2.20. 6.2.1.1 Legal impact on children and their families

By providing uniform jurisdiction and applicable law rules and thereby facilitating the recognition of parenthood in the EU, the PO2 and PO3 ensure that the negative effects on children's rights described in Section 2 do not materialise. In addition, the policy options would simplify the current legal patchwork of incoherent national PIL rules and thereby increase legal certainty. The policy options would thus have a clear positive impact on the protection of children's rights in cross-border situations.

Impact on fundamental rights

Above all, the Parenthood regulation would contribute to preventing the **violation of children's fundamental rights**. It is contrary to the children's best interests and their rights anchored in the Charter, UNCRC, ECHR, and other instruments to be deprived of civil status and of the genuine family life in cases where parenthood was validly established in another State. In addition, fundamental rights of other family members may likewise be at stake in situations of limping parenthood*. By streamlining the recognition of parenthood in the EU, PO2 and 3 stand to effectively enhance the parenthood status continuity across borders within the EU and to protect the fundamental rights that are undermined under the current *status quo*. More precisely, PO2 and 3 would significantly uphold the respect of **fundamental rights of children**, such as **the right to personal and family life**[156], and **non-discrimination**[157] and **rights of the child**, such as the best interests of the child[158] and the right to maintain on a regular basis a personal relationship and direct contact with both parents (unless that is contrary to his or her interests) in cases involving the recognition of parenthood status in the EU. In addition, as the non-recognition of

[155] Any possible unintended effects could be mitigated as the legislation could provide for a public policy refusal ground which may be used in individually justified cases, including for example in cases involving child trafficking, fraud, or breach of fundamental rights of the parties involved.
[156] As enshrined in Art. 7 of the Charter, Art. 8 ECHR, including the right to an identity.
[157] As enshrined in Art. 21 of the Charter, Art. 2 UNCRC and Art. 14 ECHR.
[158] As enshrined in Art. 24 of the Charter, and Art. 3 UNCRC.

parenthood leads to unequal treatment between families, remedying this situation would indirectly help to **promote equality** in the EU[159].

Moreover, besides remedying the existing breaches of fundamental rights and principles, **the proposal** for the Regulation itself **would be based on the protection of fundamental rights, including non-discrimination and the best interests of the children** as its primary considerations. This includes, most notably, that the proposal would be based on the principle of strict equality of the rights of children, irrespective of the circumstances of their conception, birth and type of family. Indeed, it is considered vital that the circumstances of the child's family formation should not justify the violation of the child's rights or their discrimination. The proposal would thus have a broad scope not to leave children in vulnerable situations.

Finally, as regards children's *right to know their origins* (including the collection and preservation of, and access to, this information), in the absence of the EU's competence to regulate matters of substantive family law, it remains the obligation of Member States to ensure the protection of children's right to know their origins in compliance with their international commitments[160].

Both PO2 and PO3 will have the above-described positive impact on fundamental rights. PO3 would likely promote equality and inclusiveness to a greater extent since the uniform ECP could prevent many situations of discrimination resulting from the current gendered birth certificates[161].

Impact on children's rights and parental obligations derived from parenthood

In addition to the fundamental rights of children, the streamlined recognition of parenthood under POs 2 and 3 would also have a positive impact on other **children's rights derived from parenthood and the parental obligations owed to children**. Under both policy options, children would no longer experience problems with the recognition of their parenthood status and would thus not be deprived of the legal effects derived from such status. This includes in particular all **civil-law rights and obligations**, such as parental rights to act as the legal representative(s) of a child (in matters such as giving consent for medical treatment of the child, enrolling the child in school, opening a bank account on behalf of the child), child's maintenance entitlements and inheritance rights, visiting rights and custody rights by a parent. The Parenthood regulation would also increase **legal**

---

[159] This will particularly affect the existing inequalities on the grounds of the sexual orientation of parents, since same-gender couples with children face disproportionally more problems under the *status quo* than opposite-gender couples with children.

[160] The *right to know one's origins* amounts to the right to know one's parentage, *i.e.,* one's biological family and ascendance, and one's conditions of birth. The right to know one's origins is recognised as an important legal and ethical issue closely relating to the child's best interests and fundamental rights (Art. 7 and 8 UNCRC, Art. 8 ECHR), which may however also clash with the interests and rights of the other parties (such as the right to privacy and protection of personal data) and public interest. In particular, the ECtHR has recognised the right to obtain information in order to discover one's origins and the identity of one's parents as an integral part of identity protected under the right to private and family life and that Article 8 ECHR requires States to strike a faire balance between the competing rights and interests at stake.

[161] In the ECP, the parents of the child would be indicated in a gender-neutral way. This was highlighted as particularly important by some respondents to the OPC (e.g. the reply of *Transgender Europe*, August 2021).

certainty of families concerning the parenthood status continuity in cross-border situations.

Impact on the exercise of the right to free movement

Similarly, as the non-recognition of a child's parenthood may deter families from exercising their right to free movement (See Section 2.2), both PO2 and 3 will have a **positive impact on the right to free movement**[162]. Indeed, by laying down uniform PIL rules for the establishment and recognition of parenthood in cross-border situations, the legislative policy options would provide legal certainty to families that the status and civil-law rights of their children would be protected throughout the EU. While it is not possible to quantify this impact, it will be one of the main impact of the Parenthood regulation.

Impact on legal environment

As the Parenthood regulation would align the existing disparate PIL rules on the establishment and recognition of parenthood with cross-border elements, it would ensure that parenthood would be established throughout the EU based on the same applicable law and by authorities having international jurisdiction based on previously agreed uniform rules. This would contribute to the **harmony of decisions** (by avoiding conflicting decisions given by courts in different Member States) and avoid situations of limping parenthood*. Besides that, it will also simplify the patchwork of rules and increase **legal certainty** for all children and families involved, and **for public authorities**[163]. Families would no longer need to seek professional legal assistance so frequently or engage in litigation to achieve the recognition of parenthood. Ultimately, the Parenthood regulation would "build bridges" between legal systems and increase **mutual trust among Member States** in matters of parenthood.

2.21. 6.2.2 Social impact

Through the uniform rules in the Regulation, the PO2 and PO3 would decrease the incidence of limping parenthood*. The legislation is thus expected to alleviate the negative impact on the welfare of children in relation to which parenthood is not recognised and on their families. The PO2 and 3 would contribute to the general wellbeing of children, both long-term and short-term and both from the psychological and economic dimensions. As regards the psychological dimension, in the absence of problems with the recognition, the **emotional distress would be alleviated**. As regards the economic dimension, even though the Regulation would only address the recognition of parenthood as a civil status and would not regulate the rights derived from it (as the legal effects of parenthood would remain subject to national law), it may nevertheless have an **indirect positive impact on other rights** for which the recognition of the parenthood status is relevant. These may include, for example, **social security rights** (family allowances, other social advantages),

[162] 68% of the OPC respondents indicated that a Parenthood regulation would have a positive impact on facilitating the exercise of the right of children to travel and move within the EU with their families. 11% indicated that it would have negative effect and 12% that it would have no effect.

[163] 67% of the OPC respondents believed that a Parenthood regulation would have a positive impact on the legal certainty for families as regards the parenthood of their children in another MS and 65% believed that it would have a positive impact on legal certainty for public authorities and simplification of their procedures.

child-related tax advantages, receiving **parental leave rights**, **access to housing**, **rights related to education and healthcare where such rights are not derived from EU law**. This may ultimately lead not only to an **improved wellbeing** and reduction of poverty of the affected families, but also to the **promotion of socio-economic equality**. The legislation will thus combat social exclusion and discrimination and promote social justice and protection.

These impacts are highly individual, depend on the family situation and differ in each jurisdiction. Therefore, the approach was taken in this report not to quantify the social impacts[164]. However, they may be significant for those families that currently do experience problems with the recognition of parenthood and may translate into considerable financial costs and losses.

2.22. 6.2.3 Impact on costs and administrative burden

The Parenthood regulation under PO2 and PO3 would significantly simplify the current system of diverse (and often contradictory) national PIL rules concerning the establishment and recognition of parenthood with a cross-border element. Due to this **simplification** and increased consistency and clarity, cross-border families and Member States' public authorities (administrative authorities and judiciary) will experience considerable **cost savings under both policy options**.

Figure 5: Estimated costs and costs savings for recognition procedures under PO2 and PO3*[165]

Estimated costs of PO2 for	**Costs and costs savings** (EUR million)	
	Lower bound*	**Upper bound***
Cross-border families with children	543	932
(w.r.t. baseline)	*- 125*	*- 367*
Public administrations and judiciary	465	483
(w.r.t. baseline)	*- 137*	*- 203*
Total	1 008	1 416
(w.r.t. baseline)	*- 263*	*-570*
Estimated costs of PO3 for		
Cross-border families with children	197	365
(w.r.t. baseline)	*- 471*	*- 934*
Public administrations and judiciary	296	305
(w.r.t. baseline)	*-307*	*- 381*
Total	493	670
(w.r.t. baseline)	*- 778*	*- 1 315*

[164] In contrast, the Parliament's *EAVA report on the recognition of adoptions** estimated the **emotional costs** at **EUR 10 000 per case** for situations where litigation is needed for the recognition of parenthood.

[165] The methodology for the calculation of costs and costs savings for recognition procedures is detailed in Annex 4. Notably, in the absence of data, several assumptions had to be used to enable this quantification. This includes the assumption that under PO3, the ECP would be requested by 70% of cross-border families or the assumption about the proportion of cross-border families currently experiencing problems with the recognition of parenthood which would bring their case to a court. See Figure 8 for more details on the assumptions used.

2.23. 6.2.3.1 Costs borne by cross-border families

First, the *costs for recognition procedures** borne by families that currently experience problems with the recognition of parenthood would decrease substantially since:

- the cases of non-recognition of parenthood would be less common and severe and therefore less families would need to launch court proceedings to ensure the continuity of the parenthood status of their child across borders (this resulting in further significant costs savings on court fees, other documents, translations and legal representation before the court)[166];
- there would be a lesser need for legal advice throughout the recognition procedure[167];
- less documentation would have to be produced and translated by the families requesting the recognition of parenthood[168].

Notably, **the average costs for recognition procedures*** borne by families that currently experience problems with the recognition of parenthood **would decrease** from estimated EUR 5 856 per case by approximately **83% under PO2** (to EUR 981 per case on average) and **90% under PO3** (to EUR 578 per case on average).

Second, besides the families that are currently affected by the problems with the recognition of parenthood, **all other families would also save on the *costs for recognition procedures**** , although to a lesser extent than those families currently affected by problems since their initial costs are not so high[169]. In particular the ECP (under the PO3) would substantially facilitate the recognition process **not only for families that currently experience problems but for all 4 452 135 cross-border parents and their children in the EU**, reducing their costs for recognition procedures more than three times as compared to the baseline.

Taken together, the *costs for recognition procedures** borne by cross-border families would be significantly reduced under both PO2 and PO3 (see the Figure 5 above). Families thus undoubtedly stand to benefit from the policy options. In addition, POs 2 and 3 can lead to other **indirect cost savings** for families that currently experience recognition problems, as they would reduce (or eliminate) the transactional costs and/or the likelihood

---

[166] It is estimated that under PO2 only 15% of those families that currently experience parenthood recognition problems would need to bring their case to a court (as compared to 80% of these families under the baseline scenario). Under the PO3, this proportion would further decrease to 10%.

[167] Major costs currently lie with legal counselling (amounting to approx. EUR 500 to EUR 1 000 per case at the administrative stage and EUR 2 000 to EUR 8 000 per case at the judicial stage under the baseline scenario) for those families that currently experience problems with the recognition of parenthood in another Member State. It is estimated that 60% of these families have to bear the above costs at the administrative stage and 100% at the judicial stage. In contrast, these families would save costs under PO2 and PO3 since:

- the legal advice and representation costing on average EUR 500 to EUR 1 000 per case would only be needed in 10% of administrative proceedings under PO2 and 5% under PO3; and
- the legal advice and representation would still be needed in all court proceedings but would cost on average only EUR 2 000 to EUR 5 000 per case under PO2 and EUR 1 200 to EUR 3 800 per case under PO3.

[168] This is in particular pertinent for PO3. As the ECP would exist in all languages, it would do away with the need for translations, notarisation and/or additional documents recording parenthood. The costs for these formalities can amount to several hundred euros per case under the baseline scenario.

[169] In fact, their *costs for recognition procedures** are on average 16 times lower (EUR 280 to EUR 475 per case – lower and upper bound*) under the baseline than those of families currently experiencing problems with the recognition of parenthood (on average EUR 2 916 to EUR 8 795 per case – lower and upper bound*).

of civil litigation in relation to rights, duties and entitlements derived from the parenthood status of the child, such as costs related to maintenance or inheritance disputes[170]. All families also stand to benefit from the overall reduction of **hassle costs*** related to the recognition procedures[171].

Cross-border families are not expected to incur compliance costs under PO2 and 3.

2.24. 6.2.3.2 Costs borne by public authorities

As an effect of the clearer legal framework and the lower incidence of court litigation, POs 2 and 3 are estimated to generate a reduction in the time and effort needed by public authorities in EU-26 to process the cases concerning recognition of parenthood[172] (see the Figure 5 above). It is estimated that this would translate into the **reduction of costs for recognition procedures*** borne by public authorities of about 26% under PO2 (as compared to the baseline) and of 53% under PO3[173].

As regards **compliance costs for public authorities** under PO2 and PO3, the Parenthood regulation may generate *one-off adjustment costs*[174].

- For instance, financial costs for Member States could arise for the **introduction of the new rules** concerning applicable law and jurisdiction in matters concerning parenthood with cross border implications. However, the Regulation would not oblige Member States to create any new bodies, to change the functioning of their public registers, internal procedures or the forms of national certificates of parenthood they issue.
- As is the case with any legislation, costs would also arise for the **familiarization with a new legal framework and training** of judges, civil registrars and legal professionals. PO3, as compared to PO2, is expected to generate additional small training costs for public authorities as regards the use of the ECP.
- The full realisation of the benefits from the ECP may also require some accompanying measures such as **communication campaigns**; these costs however have not been quantified.
- Finally, Member States would incur moderate additional IT-related costs as the Parenthood regulation would introduce the possibility of **digital communication between individuals and Member States' authorities** in relation to the procedures under the Parenthood regulation[175].

In addition, minor recurrent *adjustment costs* (such as those for the issuance of ECPs, regular training of staff about the new rules, upkeep of IT system) can be expected. These

[170] These indirect costs could not be calculated as they largely differ case by case.
[171] Hassle costs are costs resulting from delays, unnecessary waiting times, costs for travel, etc.
[172] Indeed, 56% respondents anticipated a very positive impact of a Parenthood regulation on improving the legal certainty for public authorities and a further 9% (or 34) indicated a mildly positive impact.
[173] This corresponds to the average costs per case between EUR 235 and EUR 246 under PO2 and between 149 and EUR 154 under PO3.
[174] One-off costs were anticipated by a majority of ministries consulted in the preparation of this report.
[175] See Annex 4.

are expected by more than half of the consulted ministries and are generally anticipated to be moderate[176]. It is also possible that some Member States would decide to request a fee for issuing the ECP (like for a national birth certificates) to recoup some of the costs related to the introduction and issuance of the ECP[177]. However, the Regulation would include a provision the fee collected for issuing the ECP should not be higher than the fee collected for issuing of similar national certificates recording parenthood.

The **enforcement costs*** associated with activities such as monitoring of the **application of the Regulation would be marginal.**

Overall, the compliance and enforcement costs for public authorities associated with PO2 and 3 would not be significant and **would be offset** by the efficiency gains generated by these policy options[178].

2.25. 6.2.4 Other economic impacts

The economic benefits of the PO2 and PO3 would be mostly at the level of the individual families that are currently affected by problems with the recognition of parenthood and partially at the level of public authorities. The families currently affected by the problem would benefit from the costs saved for the recognition procedures themselves (*as estimated above*) but also from the reduction of other indirect economic impacts and costs and the social opportunity costs, such as those for travelling to take part in the legal procedures and the related loss of productivity. The families may also obtain some other indirect economic benefits as a result of the parenthood status recognition (for example, social and tax-related benefits for families, *as estimated above*). This may lead to an overall improved welfare.

Nevertheless, despite the substantial positive (microeconomic) impact on individual families, **the overall macroeconomic benefits of the PO2 and PO3 will be rather limited** due to the limited share of cross-border families impacted by the problem.

2.26. 6.2.5 Other impacts

2.27. 6.2.5.1 Impact on digitalisation of justice and data protection

PO2 and 3 are both in line with the "digital by default" principle and the EU policy on digitalisation of justice[179]. In particular, the Regulation would provide for specific provisions on digitalisation of those procedures that are introduced by this Regulation and include the possibility of digital communication between individuals and Member States' competent authorities. For instance, the ECP (under the PO3) and the procedure for its issuance would be digital-ready. As a result, individuals would be able (but not obliged) to

[176] Based on the consultation of ministries conducted in the preparation of this report.
[177] In addition, based on the experience with similar forms provided for in other EU instruments, Member States either charge no fee or charge only a very small fee.
[178] A great majority of ministries consulted in the preparation of this report perceived that the adjustment costs resulting from the introduction of the Parenthood regulation would be compensated by the positive impact on the cross-border recognition of parenthood in the medium or long term.
[179] See the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Digitalisation of justice in the European Union A toolbox of opportunities, COM/2020/710 final.

communicate through electronic means with national authorities competent to establish or recognise parenthood under the Regulation.

Moreover, the introduction of the new EU rules concerning the Parenthood recognition could also be a stimulus for the digitalisation of these processes at the Member States' level, both by using less paper-based documents and moving to a fully electronic population registers[180]. The digitalisation of the procedure would further result in a higher security of the procedure and increased transparency as to the validity of the documents submitted when seeking recognition.

In addition, where the Regulation would provide a legal basis for the processing of personal data of natural persons (e.g. children or their parents with regard to the issuance and the use of the ECP), the protection of such data would be ensured in line with the General Data Protection Regulation[181]. The Member States' authorities and the European Commission would act as data controllers responsible for the lawfulness of the processing. The Regulation would observe the principles applicable to the processing of personal data, including data minimisation[182] and purpose limitation.

2.28. 6.2.5.2 Impact on the national identity of Member States

In the consultation activities undertaken in the context of the impact assessment, especially in the feedback to the IIA, some respondents voiced their concern that the Parenthood initiative would negatively affect the prerogative of Member States in the area of family law[183]. The reasons given were a claimed lack of EU competence, the sensitive nature of this area and a possible interference of the Parenthood initiative with the constitutional and legal orders of Member States which do not regulate certain family formations (such as rainbow families) in their national law[184].

---

[180] For the moment, based on the information from civil registrars, only some MS authorities have the capacity to issue and sign electronic documents and to send and receive documents issued and signed electronically in another MS. Many authorities still require that documents recording parenthood are presented in paper form.

[181] Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. In the context of digitalisation, see also the Regulation (EU) 2018/1725 that concerns data protection obligations for the EU institutions when they process personal data.

[182] The Regulation should not require the processing of special category of personal data. In particular, the voluntary ECP (under PO3) would not include information about the sex or sexual orientation of the child's parents.

[183] See the summary of IIA feedback in Annex 2. During the consultations, two MS specifically highlighted that constitutional identities and traditions need to be respected. *Cf.* also a petition submitted to the Commission President in November 2021 "Petition of 21 NGOs in defense of natural parenthood" which opined, for instance, that *the Member States in which the national law does not allow for homosexual couples to adopt children will find themselves under procedural pressure to accept such adoptions which are contrary to their national legal systems and be forced to ignore their own legal principles.*

[184] As to why family law touches on national identity, see the explanation by AG Kokott in para. 77 of her *V.M.A. Opinion*: "*[…] family law is a particularly sensitive legal area which is characterised by a plurality of concepts and values at the level of the Member States and the societies within them. Family law – whether based on traditional or more 'modern' values – is the expression of a State's self-image on both the political and social levels. It may be based on religious ideas or mark the renunciation of those ideas by the State concerned. To that end, however, it is in any event an expression of the national identity inherent in fundamental political and constitutional structures."*

The EU is based on the principle of respect for the social, historical and cultural diversity of the Member States, which is particularly manifested in the area of family law. It is thus for the Member States to define under their national law the concept of family and the rights and obligations derived from parenthood[185]. The measures adopted under Article 81(3) TFEU on family law with cross-border implications would thus not affect the competence of Member States to legislate in the family law area. To protect the rights of the children and their best interests in cross-border situations[186], the Parenthood regulation would only propose rules to facilitate that, once parenthood has been established in one Member State under the applicable law designated by the Regulation, it is recognised in other Member States. These changes would not entail a harmonisation of the concept of family or harmonisation as to who can be considered a parent under the substantive national law of the Member State of recognition. In conclusion, the recognition of the child-parent relationship established abroad does not undermine the national identity or pose a threat to the public policy (as already pronounced by the CJEU in the context of free movement[187])[188]. The Parenthood regulation thus heeds the principle that the EU is to respect the national identities of its Member States as laid down in Article 4(2) TEU.

2.29. 6.2.5.3 Impact on Sustainable Development Goals (SDGs)

The POs 2 and 3 would have a minor positive impact on SDG No.10 – *Reduced inequalities* and on SDG No. 16 – *Peace, justice and strong institutions*. For details on how the policy options would contribute to progress on these goals, see Annex 3.

7. 7. HOW DO THE OPTIONS COMPARE?

Based on the detailed assessment of the policy options above, the table below provides an overview of the rating of each policy option. In multi-criteria decision analysis, the score was given to each policy option from -1 (negative impact) to 2 (very positive impact), (0 being the baseline), based on **three criteria**[189].

---

[185] For a summary of existing national substantive and PIL rules on parenthood matters and national rules on the recognition of parenthood established abroad, see the *Comparative analysis of EU Member States' legal frameworks* in Annex 4 of the *Study by an external contractor**.

[186] As for the explanation why it is in the best interests of children to have the legal relationship to their parents recognised and not to end up with a limping parenthood* or parentless in cross-border situations, see Sections 1 and 2. See also the reasoning in *Mennesson v. FR*, para. 99: "*[…] the effects of the non-recognition of the parent-child relationship do not affect only the intending parents who made the choice of the method of procreation [and had a recourse to it abroad as it is prohibited in the territory of their state]: they also affect the children themselves, whose right to respect for private life, which implies that everyone can establish the substance of their identity, including their parentage, is found significantly affected. A serious question therefore arises as to the compatibility of this situation with the best interests of the children, respect for which must guide any decision concerning them*". [citation was shortened]

[187] *Cf. V.M.A. case*, para. 56 (fn. 36); *V.M.A. Opinion*, para. 150; and, similarly, *Coman,* paras. 45,46.

[188] The CJEU has also already established the principle that the concept of "public policy" as a justification for a derogation from a fundamental freedom must be interpreted strictly: *V.M.A*, para. 55 with a reference to earlier case law.

[189] In the matrix, all assessment criteria were given the same weight. As an alternative, a greater weight could be given to the criterion of how effective the policy option is in achieving the policy objectives (the *effectiveness*). However, the result of the analysis would remain the same, PO3 staying the preferred option.

The first criterion, ***effectiveness*** was defined as the extent to which the policy options achieve the policy objectives of the Parenthood initiative. Moreover, effectiveness also covers the impact on fundamental rights, social and psychological impact and impact on the exercise of the right to free movement of children and their families. ***Efficiency*** was defined as the extent to which the benefits of the policy option exceed its costs and includes the indicators such as compliance costs, and economic impact (excluding compliance costs and costs for recognition procedures, which are discussed separately). Finally, the last criterion of ***coherence*** assesses to which extent the policy options are aligned with other EU instruments, law and policies.

As regards **effectiveness and efficiency** of the policy options, **the previous section includes a detailed explanation and assessment** of these two criteria. As regards ***coherence***, all policy options would be coherent with EU law (including the Charter and the CJEU case law) and the EU policies.

Figure 6: Comparison of options

	Policy options	
	PO2	PO3
Effectiveness		
Specific obj. 1 To ensure respect for the fundamental rights of children in matters concerning parenthood recognition	+1	+1
Specific obj. 2 To ensure legal certainty, predictability, and continuity of parenthood	+1	+2
Specific obj. 3 To reduce costs for recognition procedures* and legal and administrative burden for families and public authorities[190] - *Total reduction of costs for recognition procedures* (both for cross-border families and public authorities)*	+1 *(estimated cost savings of EUR 416 mil.)*	+2 *(estimated cost savings of EUR 1 047 mil.)*
Social and psychological impact	+1	+1
Impact on free movement rights of families	+2	+2
Efficiency		
Impact on costs and administrative burden – costs savings for cross-border families and public authorities ➔ *see above Obj.3 under "Effectiveness"*	/	/
Compliance costs for families	/	/
Compliance costs for public authorities	- 0.5	- 1
Other economic impacts[191]	+ 0.5	+ 0.5
Coherence		
Coherence with EU legal and policy framework	2	2

[190] *NB:* **This also includes the impact on simplification and/or administrative burden on families and public authorities** (the reductions of costs for recognition procedures* explained in the Section 6.2.3). While these cost savings are relevant for both the effectiveness and efficiency criteria, they will only be considered under effectiveness to avoid double counting.

[191] See the explanation of *Other economic impacts* in Section 6.2.4. In particular, this indicator excludes costs for recognition procedures, compliance costs and social impact which are discussed separately.

8. 8. PREFERRED OPTION

Based on the above analysis, Policy Option 3, whereby the EU would adopt a **Regulation on the recognition of parenthood between Member States** harmonising rules on jurisdiction, applicable law and recognition and including a **European Certificate of Parenthood**, is the preferred option.

This policy option would tackle the existing problems with the recognition of parenthood in the EU by harmonising both the PIL rules* on the establishment of parenthood with a cross-border element and the rules on the recognition of parenthood in the EU. The Regulation would ensure that all children can benefit from the streamlined procedure for the recognition of parenthood regardless of the circumstances of their conception, birth or type of family. The Regulation would thus significantly simplify the current patchwork of often inconsistent national rules in the matter and would provide legal certainty to cross-border families. The Regulation would include rules on the recognition of parenthood as recorded both in court decisions and in authentic instruments, and introduce a European Certificate of Parenthood as an option to provide evidence of parenthood in another Member State. Especially through the introduction of the ECP that would do away with much paperwork, the Parenthood regulation could be **a game changer not only for families that currently experience problems with the recognition of parenthood but potentially for all cross-border families** (estimated 4 452 135 mobile parents and their children)[192]. However, it is especially all those children and their families who are currently affected by the problems with the recognition of parenthood that are poised to benefit the most from the Parenthood regulation (estimated 103 000 mobile parents and their children).

Since the children's fundamental rights may be jeopardised under the current situation and it is a priority to remedy this situation, the decisive focus should not be on the precise quantitative dimension of the problem or other quantitative considerations but on the protection of children's fundamental rights in cross-border situations. The preferred PO3 achieves this general objective best in that it facilitates the recognition of parenthood between Member States, guarantees the respect for the fundamental rights of children in matters concerning parenthood recognition and ensures legal certainty, predictability, and continuity of parenthood. In addition, through the provision of an ECP that would have direct access to the national civil and population registers and do away with the current translation requirements, the PO3 is the most efficient option in reducing costs for recognition procedures and legal and administrative burden for both cross-border families and public administrations and judicial authorities. As a result, the **costs for recognition procedures* for all children and their families** in the EU are estimated to be about 71% lower under PO3 than under the *status quo* and this percentage grows to 90% for families currently experiencing the problems with parenthood recognition. As the Parenthood Regulation would reduce administrative burden on families and create no new one, it

[192] For further explanation of how different types of families may be affected by the problem, see the Section 2.4: *Who is affected by the problem?* and Annex 4.

would represent a 'one out' initiative (For details, see the OIOO* methodology in Annex 3 and Annex 4)[193].

In terms of the **other expected impacts**, the preferred policy option would have in particular:

- A positive impact on the protection of fundamental rights of children and their families, including the exercise of the free movement rights;
- One-off adjustment costs for public authorities to adapt to the new rules provided in the Regulation and negligible recurring administrative costs[194];
- Positive social and psychological impact on children and their families.

While it is not possible to put a price tag on the added value of the Parenthood regulation, the quantifiable benefits, in particular those for children, are demonstrable and real. Besides the benefits for cross-border families and public authorities that the preferred policy option would bring about, rules on parenthood with cross-border implications are the missing piece of puzzle in the existing EU legislation on family matters and the Parenthood regulation would thus complement the existing EU *acquis*.

The EU action would comply with the principles of **subsidiarity**, as detailed in Section 3. The PO3 would also fully respect the principle of **proportionality.** In that regard, the content and form of the Regulation would not go beyond what is necessary to achieve the recognition of parenthood between Member States and to protect children's rights and best interests. There are no milder means that would achieve the policy objectives as effectively as the ones proposed under PO3[195]. The substantive scope of the Regulation would also be limited to what is necessary. For instance, the Regulation would only apply to the recognition of parenthood status and would leave out the recognition of the relationship between parents. The Regulation would not affect the rights that a child derives from EU law, in particular the rights that a child enjoys under EU law on free movement, including Directive 2004/38/EC[196]. The ECP that would be introduced by the Regulation would be an optional certificate that would not replace the national certificates of parenthood. The Regulation would also treat matters concerning parenthood as cultural-sensitive issues that may touch on national identity of Member States and would thus not provide for any rules going beyond the PIL aspects of parenthood[197].

---

[193] Total cost savings for cross-border families on costs related to 'one in, one out' approach amount to approximately EUR 545 mil. under the PO3 as compared to the baseline. These cost savings concern all families that are currently cross-border and are one-off and aggregate, not annual. They represent a saving of EUR 275 per a child in a cross-border family.

[194] The overall costs for public authorities would be offset by the expected cost savings due to the facilitation of the parenthood recognition procedures. Also public authorities are poised to benefit from PO3.

[195] Therefore, the Regulation would propose rules concerning (i) applicable law, (ii) jurisdiction and (iii) recognition of parenthood between Member States.

[196] See fn. 33.

[197] For instance, it would not change the methods of the establishment of parenthood and the rules on who the parent is under the substantive national laws, or authorise new family formations. It would also not harmonise the form and content of national certificates of parenthood, or legal effects that derive from parenthood under national laws (such as the acquisition of nationality by descent, residence rights, other entitlements, parental responsibility). It would also not define the national authorities before which the recognition of parenthood should be sought.

9. 9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

A robust system for monitoring and evaluation of the application of the Parenthood regulation would be implemented to ensure that the legislation is efficient in addressing the current problems and achieving its main objectives, as well as to assess what its actual impacts would be. To do so, continuous monitoring and regular evaluation by the Commission would take place after the Regulation comes into application.

In particular, the Commission would:

- discuss the application of the Regulation and exchange best practices with Member States in the framework of the EJN-civil*;
- continue monitoring latest trends and national law related to parenthood; and
- prepare evaluation reports as necessary on the application of the Regulation.

First, as a rule, the application of the EU legislation in the area of civil justice is monitored through regular meetings of **EJN-civil*** and the Parenthood regulation would not be an exception. Thematic meetings of EJN-civil where the EJN contact points from Member States discuss the practical aspects of the application of the Parenthood regulation would be essential for assessing how the Regulation is applied in practice and what its impact is. EJN-civil would also help to address any potential practical problems that would arise with the application of the Regulation[198].

Second, to keep the Regulation up-to-date and fit for purpose, the Commission would continue monitoring the **latest trends** in the Member States concerning the establishment of parenthood[199].

Finally, a full evaluation of the application of the Regulation would be carried out by the Commission seven years after the Regulation enters into force with a view to assess the evolution of the impacts of the Regulation[200]. The evaluation would be done on the basis of input collected from the authorities of the Member States, external experts, and relevant stakeholders and literature, as necessary. As is the case for other EU legislation on family law with cross-border aspects, a legal requirement on Member States to provide specific information relevant for the evaluation of the operation and application of the Parenthood regulation will be included in the Regulation[201]. In addition, the evaluation would be based on case law and, if available, on the findings from academic literature on the topic.

Figure 15 in Annex 8 provides suggested indicators for the evaluation of the functioning of the Regulation[202].

---

[198] The regular exchanges of knowledge and best practices in the context of EJN-civil* would also enhance mutual trust between MS and could have an approximation effect of national substantive family law.
[199] Whether resulting from the new scientific developments or changing societal trends.
[200] This period of time will allow the Commission to collect a critical mass of information about the practical application of the Regulation.
[201] As to which, see e.g. Art. 101(2) of the Brussels IIb Regulation.
[202] In particular, the monitoring and evaluation of the Parenthood regulation could benefit from the results of the monitoring of the implementation of the other related EU initiatives, such as the *EU Strategy on the rights of the child* and the *LGBTIQ Equality Strategy 2020-2025.* As the Parenthood regulation would not apply to Denmark (see fn. 5), Denmark could be used, wherever appropriate, as a reference point (a "control group") to compare the effects of the Parenthood regulation. This would allow to factor in any external drivers affecting the effects of the Regulation.

ANNEX 1: PROCEDURAL INFORMATION

10. 1. LEAD DG, DECIDE PLANNING/CWP REFERENCES

Lead DG: DG JUSTICE AND CONSUMERS ("DG JUST")

Decide Planning: PLAN/2021/10134 – Recognition of parenthood

11. 2. ORGANISATION AND TIMING

A Commission inter-services steering group (ISSG) was established in February 2021 for preparing the Parenthood initiative. It was chaired by Directorate-General Justice and Consumers (DG JUST). The following DGs and services participated at the inter-service group: Legal Service (SJ), Secretariat-General (SG) and DG JUST (several relevant units). The ISSG met three times in the period from March 2021 to November 2021 and approved the Inception Impact Assessment on 30 March 2021.

Given the fact that the Parenthood initiative was included in the Commission work programme 2022, the previous ISSG was replaced in November 2021, in line with the Commission working methods, with a new ISSG chaired by the Secretariat-General. The new ISSG had the same members. The new ISSG discussed and validated the Impact Assessment report at its meeting on 2 May 2022.

12. 3. CONSULTATION OF THE RSB

Before the finalisation of the Impact Assessment report, DG JUST received advice from the members of the Regulatory Scrutiny Board ("RSB") at an upstream meeting organised on 7 January 2022.

The Impact Assessment report was then examined by the Regulatory Scrutiny Board and received a **positive opinion on 8 June 2022**. In its opinion, the Board also provided suggestions as to possible improvements of the report. The table below shows how this report takes into account the main comments of the RSB.

Figure 7: Opinion of the Regulatory Scrutiny Board

(1) The description of the problem should more directly address the core issues. The different types of parenthood issues likely to be affected by the problem should be more clearly identified from the outset. The report should be open about the lack of available data on the scale of the problem and where assumptions are made, these should be clearly explained. In view of the uncertainty of the estimates, the report should consider to present estimates in ranges. As background to the problem description, an annex should provide an overview of the legal situations in Member States.	The report details the size of the problem in its Section 2.5 - The scale of the problem. A table which elaborates on the assumptions used when preparing the report was added to Annex 1 below (*Figure 8 – Main assumptions used in the report*). References to this table were included in the report. The report works with ranges thoroughly (lower and upper bounds), especially with respect to *costs for recognition procedures**. As regards the legal situations in Member States, the impact assessment report now specifically refers (fn. 104 and 209) to the detailed overview of the legal situations in the EU

	included in the *Study of an external contractor**.
(2) The report should present the cost and cost saving estimates in more succinct ways, clearly setting out assumptions made. In particular, it should clarify how the costs and cost savings for affected families were calculated. The time horizon of estimates should be also clarified. The report should also better distinguish between the overall estimates and the specific ones required for the one in, one out (OIOO) approach. The OIOO estimates should be revised to make sure that only costs and cost savings considered within the scope of OIOO are included.	A table which elaborates on the assumptions which were used when preparing the report was added below (*Figure 8 – Main assumptions used in the report*). References to this table were included throughout the report. It was clarified that the costs for recognition procedures are one-off and aggregate, as they relate to the overall number of cross-border families in 2020 that may require recognition of parenthood in another Member State at one point. Costs savings that qualify as savings under the *one in, one out approach* were quantified separately and are now presented in Annex 3. A section was added to Annex 4 explaining the calculation of OIOO cost savings.
(3) The issue of potentially abusive practices (such as 'forum shopping') and other unintended consequences of opportunistic uses of parenthood certifications should be assessed more thoroughly and presented more transparently. First, the report should provide an assessment of the degree of forum shopping (and similar practices) occurring under the baseline. Secondly, the options should spell out more concretely how unintended forum shopping will be prevented. This should include how requirements of 'habitual residence' will be required for national birth certificates and for the European Parenthood Certificate and how this will interplay with Member States' prerogative in family and civil law.	Instances where families seize more favourable jurisdiction to establish their family relations cannot and will not be prevented altogether under any policy option or baseline. However, forum shopping practices would be reduced under the Regulation as compared to the current situation. This is, among others, because all Member States would use the harmonised applicable law rules designated by the Regulation to establish parenthood to a child. Moreover, the applicable law would be based on habitual residence as connecting factors. Choice of law would not be allowed. This was further explained in Section 5.2 (p. 31). In addition, the application of EU civil-law instruments is continuously followed through the regular meetings of the EJN-civil* with a view to monitor and resolve any unintended effects of the legislation.
(4) The report should better present the simplification potential of the initiative given the significant cost savings identified and since the principle of mutual recognition of parenthood is already accepted jurisprudence in EU law. The subsidiarity section should better explain how the initiative respects Member States' competence in substantive family law.	The report is now clearer in its Sections 6 and 9 concerning the simplification that the Regulation would bring into the current system of (often incoherent) national rules. The subsidiarity section (Section 3) has also been revised to clarify that the Regulation would not affect substantive family law rules and would respect Member States' exclusive competence on the matter and subsidiarity.

13. 4. EVIDENCE, SOURCES AND QUALITY

In the preparation of this impact assessment, DG JUST consulted a wide range of experts and stakeholders and used several different methods to gather evidence.

- In particular, a **Study by an external contractor*** was commissioned to support the preparation of the impact assessment. The Study also included extensive overview of the law and practice concerning, among others, the national substantive law and PIL rules related to parenthood (Country reports*).

- Moreover, evidence used in this impact assessment was gathered based on a Commission's consultation strategy, which included: (i) public **feedback to the**

inception impact assessment; (ii) an **open public consultation**; (iii) a **meeting with stakeholders**[203]; and (iv) and a **meeting with Member States representatives**. *The results of these consultation activities are presented in Annex 2 of this report*. In addition, DG JUST also considered, in the preparation of this report, the information and opinions provided by the public and stakeholders through **letters** addressed to the Commission and **petitions**.

- The external contractor employed the following stakeholder consultation tools specifically designed for the purposes of the study: (i) **online survey targeting civil registrars in the EU**; (ii) written questionnaires targeting national ministries and judiciary and (iii) **targeted semi-structured interviews** with judiciary and key stakeholders and NGOs[204].

- DG JUST also received expertise through a collaboration with a **COM Expert Group on the recognition of parenthood between Member States**[205]. In 2021 and early 2022, the Commission held seven meetings with the experts, which helped to inform the development of policy options, especially the legislative ones.

- DG JUST also participated in meetings of an Experts' Group on the HCCH Parentage / Surrogacy Project.

- Finally, DG JUST also gained further insight into the subject of this report with the help of **available resources**, such as existing literature, reports and studies.

Assumptions used in the report and its robustness

In general, the report was based on solid theoretical understanding gained in particular through desk research, collaboration with participants of the expert groups and research and data collection by the external contractor. Moreover, many stakeholders have shown great interest and willingness to share their views through the consultation activities described above. The report thus draws on that thorough feedback. All EU jurisdictions, except of Denmark, were represented in the consultations.

In contrast, the **main difficulty in the preparation of the report was the limited availability of data** on the subject matter, especially disaggregated data. For instance, the numbers of cross-border families affected by the existing problems had to be estimated based on several assumptions. The estimations were complicated by the fact that certain data is not collected at EU level either at all (such as the data concerning surrogacy arrangements) or not systematically given the sensitivity of the subject matter and data protection considerations (information concerning sexual orientation of persons[206] and consequently data concerning rainbow families). Representative data thus cannot be obtained. Moreover, the fact that most of the processes leading to the recognition of parenthood take place before local administrative authorities of Member States further

[203] Among others, organisations representing children and their interests were also consulted.
[204] For the summary of the consultations conducted by the contractor, see Annex 3 of the *Study by an external contractor**.
[205] For more information, see the Register of Commission Expert Groups and Other Similar Entities.
[206] As a rule, this data is collected only voluntarily and based on self-identification.

complicated the collection of data. Indeed, while many Member States record statistical data concerning judicial proceedings, this is usually not done for administrative proceedings. It follows that data regarding the current number of cases as well as other relevant statistics is not readily available.

A lack of data was especially significant in relation to the existing problems related to the recognition of parenthood, in particular:

- the number of children and families affected by the problems related to the cross-border recognition of parenthood (in each family constellation or scenario[207] and both before Member States' administrative authorities and courts); the evolution of the number in the next decade;
- the current costs borne by cross-border families, public administrations, and the judiciary needed to process the requests for cross-border recognition of parenthood; breakdown of these costs; the evolution of the costs in the next decade;
- Member-State specific data that would allow credible assessment of the distribution of problems and impacts of the policy options in each Member State individually.
    - First, problems with non-recognition of parenthood may stem from the existing discrepancies between Member States' applicable law rules on the establishment of parenthood in cross-border situations[208]. The problem of the parenthood non-recognition may thus arise between all Member States.
    - Besides the first point, difficulties may further materialize where certain ways of family formation are not legally accepted in national law of a Member State. However, in individual cases, it is Member States' public authorities (administrative or judicial authorities) that apply national law (or bilateral and multilateral agreements). They often do so in a way to comply with the obligations stemming from international law and to protect the best interests of children. Therefore, while national laws concerning parenthood could be an indication of Member States, which are more restrictive in recognising parenthood from other countries[209], the differences between the letter of the law and the application of these laws make any such conclusions imprecise.
    - Making any definitive conclusions about the distribution of problems among Member States would also be complicated by the fact that parenthood recognition cases often take place before administrative authorities that often do not keep centralised records of the cases.

The work with data related to the problem definition was also complicated by the fact that the existing problems with the recognition of parenthood are diverse in their nature and often involve complex legal considerations.

These limitations as to the availability of accurate data were not surprising as they were also reported in other reports in the field[210].

---

[207] For instance, number of domestic adoptions or domestic surrogacy cases.
[208] See e.g. examples 1 and 2 in Annex 7.
[209] For an overview of the legal situation in Member States, see the *Study of an external contractor**.
[210] For instance, the EAVA report on the recognition of adoptions* notes on p.26, Annex I: "*In an ideal world the writers would have wished to have included in this report real life stories of practical implications of the current legal framework. We would have liked to have been able to have regard to data from quantitative surveys of the incidence, outcome, and cost of recognition in all EU MSs, but this data does not currently exist and was outside of the scope of our report because:*
- *the financial cost of bringing recognition proceedings will vary from firm to firm and in country to country, and will depend on a number of factors, including but not limited to, the legal process of the MS concerned. […]*."

Assumptions used in the report

Given the existing data limitations, following assumptions and estimates have been used to inform the conclusions of the report:

Figure 8: Main assumptions used in the report

	Assumptions / Estimates	Explanation of the assumptions / estimates
The number of cross-border families with children in EU-26	About 3.2% of families with children are mobile in EU-26, this proportion is likely to grow to 5% in the coming years.	The overwhelming majority of cases where parenthood recognition is sought is where a family or a child have moved between Member States. The report thus works with data and estimates concerning mobile families. However, should the other cross-border situations not requiring mobility be added to the number of mobile families, the estimates for people affected by the problems with parenthood recognition would slightly increase. The percentage of families that are mobile was based on the number of mobile citizens in the EU-26 in 2020[211]. The assumption was used that families have the same behaviour with respect to mobility as the rest of the population. In 2020, the mobility of persons in the EU was influenced by the COVID-19 pandemic. Once the situation normalises after the pandemic, the percentage of mobile families in the EU will increase back to 5%.
	Only mobile couples with children were considered, not single parents with children.	In most cases, problems with parenthood recognition arise in relation to a couple where the parenthood of one (or rarely both) parents is not recognised. However, the recognition of parenthood of a single parent can also be refused in some cases[212]. Since there is no data about the prevalence of the recognition problem among single parents, this problem scenario was not included in the overall quantification. Should also single parents with children be considered, the number of people affected by the problems with parenthood recognition would grow further.
	Families that have two and more children were calculated as having two children.	The Eurostat's data on family composition in the EU does not give information about the exact number of children in families that have 'two and more children'[213]. Therefore, all families with 'two and more children' were calculated as having exactly two children. This means that in reality the number of children in cross-border families is slightly higher than the figure used.
The number of cross-border families affected by the problems with parenthood recognition	All cross-border families will need to have their parenthood recognised in another Member State at least once over the lifetime of each child. All these cross-border families will thus start recognition procedures – mostly before Member States' administrative authorities, in some cases also before courts.	While data is not available on the number of parenthood recognition cases in each Member States per year, it is assumed that all cross-border families would need to request the recognition of parenthood in another Member State at least once – whether that is e.g. in the Member State of their residence or Member State of nationality. If only some cross-border families requested the recognition of parenthood abroad, the actual number of parenthood recognition cases would be lower than the one estimated. In contrast, should those families need recognition of parenthood in more than one Member State, the number of cases would increase. The estimate of the number of cases thus relies on the assumption that each child in cross-border families will need parenthood

[211] Eurostat – Statistics explained. *Migration and migrant population statistics*. The figure also corresponds to: European Commission (2020). *Annual Report on Intra-EU Labour Mobility 2020*, p. 13.
[212] For an example of a problem affecting a single parent and his child, see e.g. judgment of the Polish Supreme Administrative Court of 10.9.2020, No. II OSK 1390/18.
[213] Eurostat. *Household composition statistics.*

		recognition once in its lifetime. The exact year when those children needed (or will need) the recognition of parenthood cannot be determined. The overall number of parenthood recognition cases in the EU thus cannot be broken down per year. Finally, it was estimated that out of those families whose parenthood is not recognised at the administrative stage of the recognition process, about 80% appeal against that decision. (The remainder of families may choose not to pursue a legal battle for various reasons, including related to a lack of information or of legal advice, to a lack of financial resources, or to a wish to avoid the psychological burden of such proceedings on the child and family.)
	It was estimated that about 6% of cross-border families are rainbow families. Same-gender couples are 38.89% as likely to have at least one child as opposite-gender couples. While it cannot be estimated how many of these rainbow families face or will face parenthood recognition problems in another Member State, all these families are in principle affected by the problem and its deterrent effect on free movement.	In the absence of EU population data on the matter, the estimate of the percentage of rainbow families was extrapolated from a U.S. census and other studies and estimates. Likewise, the number of children in rainbow families was estimated based on information from the U.S. census[214]. This information was compared with the population data collected through EU-SILC as received from Eurostat. It is not feasible to measure the actual number of families that are deterred from moving to (a) certain Member State(s) for fear that the parenthood of their child will not be recognised (as explained in the *Section on the Problem Definition*). However, it should not be necessary, as the deterrent effect may potentially affect all rainbow families and not only those that move to such Member States since their freedom to consider moving within the EU is affected in any event. It can be assumed that as long as there are Member States where parenthood of a rainbow family validly established in one Member State is not recognised, such a "deterrent effect" is present. The report thus works with the assumption that the problem with the recognition of parenthood affects all rainbow families even if some may not experience the problem first-hand.
	About 0.05% to 0.1% of children of mobile opposite-gender parents are affected by the problems with the recognition of parenthood.	Children of mobile opposite-gender parents may be affected by parenthood recognition problems due to the existing discrepancies among the PIL rules of Member States that may each establish parenthood to a single child differently. In addition, among children born to mobile opposite-gender parents, children born through surrogacy are some of those most frequently affected by parenthood recognition problems. Comprehensive data on surrogacy in the EU are not available[215]. In the absence of data, a conservative estimate was made that about 0.05% to 0.1% of all children of mobile opposite-gender parents are affected by the problems with the recognition of parenthood.
	Problems with parenthood recognition were not broken down despite the differences between Member States.	For simplicity and data availability reasons, the assumption was made that it is equally difficult to have parenthood recognised throughout the EU. The report did not differentiate among Member States. As explained above, problems with parenthood recognition may arise in relation to any Member State given the differences in national PIL rules. In addition, data about the parenthood recognition cases (as collected from petitions, letters and through the consultation activities undertaken in the context of this impact assessment) is

[214] For details, see Annex 4.
[215] The limited data that could be collected are presented in Annex 4, section 1.3.2.

		not representative enough to make a well-informed assessment in which Member States parenthood recognition problems arise more frequently. National laws concerning parenthood with cross-border aspects could be an indication of such Member States; however, the differences between the letter and the application of national laws make any conclusions skewed. The estimates were thus made for the EU as a whole without differentiating on a country basis.
Costs for parenthood recognition procedures **- baseline**	*Costs for parenthood recognition procedures** were calculated using the number of cross-border families that experience problems with parenthood recognition.	The number of cross-border families that experience problems with parenthood recognition was estimated based on the assumptions set out above. This number however includes also those families that are affected by the problems indirectly, through the deterrence effect on free movement[216]. For these families, the costs for recognition procedures* and hassle costs* do not arise. The estimated costs for recognition procedures borne by cross-border families and by public authorities would thus be lower if it was possible to measure the number of affected families accurately.
	*Costs for parenthood recognition procedures** for families differ largely Member State to Member State and family to family. Several assumptions had to be made in that regard.	As detailed in Annex 4, the costs were broken down into several categories, including administrative and court fees, costs for legal representation and other costs, such as those for evidence, translations etc. The legal representation makes up a significant proportion of the overall costs borne by families. The assumptions as to the size and prevalence of these costs were consulted with the notaries and public registrars in the context of the consultation activities conducted by the European Commission or the external contractor*.
	While certainly non-negligible, *hassle costs*, *i.e.* costs for families that result from delays and unnecessary waiting times were not quantified.	Since the time needed for recognition procedures differs largely case-by-case, the hassle costs were not quantified. Therefore, besides *costs for recognition procedures** quantified above, hassle costs would also add to the overall costs borne by families, if quantified.
	*Costs for parenthood recognition procedures** for public authorities differ largely Member State to Member State and case by to case. Several assumptions had to be made in that regard.	As detailed in Annex 4, the costs for recognition procedures borne by public authorities were based on the assumed labour costs of administrative and court authorities and the assumed number of FTE days that these authorities spend on a case.
Costs for parenthood recognition procedures **- policy options**	It was estimated that the European Certificate of Parenthood would be used by 70% of cross-border families.	While consultations suggest a high demand for ECP among cross-border families (close to 100% of the cases), a rather conservative estimate was applied when calculating the cost savings introduced by the ECP, *i.e.* that 70% of cross-border families would request an ECP.

An extensive effort was made to address the data limitations and to provide a solid basis for this report. The data and evidence were obtained from multiple sources and through various tools[217]. Estimates were made based on the extrapolation of the available data and refined taking into account the insights gained through consultations and from other

[216] As explained above, this cannot be credibly established in the absence of relevant data.
[217] This also included a request to Eurostat for a breakdown of the population data collected through EU-SILC.

sources. The estimates were further validated based on discussions with experts. To factor in the ranges in costs volumes and other uncertainties, the report worked with ranges (with lower and upper bounds) to better reflect the reality.

The **data limitations and assumptions did not have an impact on the selection of the preferred option** as the preferred policy option was chosen based on multi-criteria analysis, with a particular focus on the effectiveness of the initiative in achieving its objectives, rather than on quantitative criteria.

ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT)

The Commission conducted a consultation strategy to gather information from key stakeholders and Member State authorities on the prevalence of the current problems with the recognition of parenthood and their views on the possible EU-level solutions to address these problems.

14. 1. CONSULTATION STRATEGY

The Commission used multiple channels to target a wide range of stakeholders and a variety of tools to interpret the results[218]. Input was received from a wide range of key stakeholders representing EU and non-EU citizens, public authorities, academics, research institutions, legal professionals, NGOs and other relevant interest groups.

The Commission's consultation strategy included **four main consultation activities**, each of them having a different running period, recipient and/or object. The consultation activities included (i) an Open Public Consultation ("OPC"); (ii) the evaluation of the feedback given to the Commission's Inception Impact Assessment; (iii) meeting with stakeholders with a particular interest in the parenthood initiative; and (iv) a meeting with national experts from the Member States. Moreover, further consultations were undertaken in the context of the external study supporting the impact assessment[219].

15. 2. MAIN STAKEHOLDER FEEDBACK PER CONSULTATION ACTIVITY

a) Open Public Consultation

OPC published on the Commission's 'Have your say' portal from 19 May to 25 August 2021 resulted in 390 replies from: the public (352 individual respondents), public authorities (29 respondents), non-governmental organisations (19 respondents), academics or research institutions (5 respondents), business organisations (3 respondents), trade union (1 respondent) and other organisations (7 respondents)[220].

---

[218] Although the consultation activities organised in the context of the Parenthood initiative gathered significant interest and response rate, the results are still not statistically representative. For instance, one third of the replies to the Open Public Consultation came only from citizens of Slovakia.

[219] This includes online survey targeting civil registrars, and questionnaire and interviews targeting public authorities, judicial representatives, NGOs and legal professionals working on topics concerning cross-border aspects of parenthood.

[220] For a detailed summary of the results of the OPC, please see the Summary Report available at Cross-border family situations - recognition of parenthood (europa.eu).

The questionnaire was organised around four main pillars. The first concerned the *current situation and problems relating to the non-recognition of parenthood* in the absence of any EU level action. Most respondents were aware of instances where parenthood established in a Member State was not recognised in another Member State while a minority were not. The majority of respondents stated that the current *status quo* is a serious problem[221], whereas, the second highest share of respondents stated that it is not.

Some respondents noted that the non-recognition of parenthood leads to the denial of rights of the child and/or obligations derived from parenthood. Among the most commonly mentioned consequences of the non-recognition of parenthood were the denial of parental rights to act as the legal representative(s) of the child, problems with the issuance of documentation necessary for a child to obtain nationality, and a negative impact on the social advantages or on the child's inheritance were also reported. Ultimately, as a result of the non-recognition of parenthood, families were reportedly dissuaded from travelling with their child within the EU or from moving to another Member State.

The second block of questions concerned the *procedural hurdles in the procedures for the recognition of parenthood*. The majority of respondents that replied to these questions indicated that the main problem was that the recognition procedures before administrative authorities was excessively lengthy, mostly stating that the length of the administrative procedure was 12 to 24 months. The average estimated costs for recognition procedures before administrative authorities varied significantly from recognition being free of charge in some Member States to reaching 12.000 EUR in some cases[222]. Respondents also reported that some cases required bringing a case to court. 27% indicated that the estimated length of court proceedings for the recognition of parenthood was more than two years. The costs for such proceedings ranged between 0 and 25.000 EUR.

The third pillar was dedicated to the reactions on the *possible EU initiative to facilitate cross-border recognition*. The majority of respondents, essentially EU-citizens and public authorities, agreed to the Commission proposing a legislative initiative on the recognition of parenthood between Member States. However, a considerable minority (33% of respondents, most of which were Slovak citizens) disagreed, mostly stating that the recognition of parenthood should be a matter regulated only by Member States.

Regardless of their views on the possible adoption of EU legislation on the recognition of parenthood, most of the respondents considered that the EU should play a role in promoting cooperation on the matter between public authorities (such as by organising judicial training or thematic meetings in the framework of the EJN-civil, by issuing guidance on parenthood recognition to Member States or by raising citizens' awareness

---

[221] Of those respondents who indicated that they were aware of instances where parenthood was not recognized, 91% specified that the lack of EU harmonised rules on the recognition of parenthood in the EU poses a serious problem or somewhat serious problem.

[222] The respondents were asked to include, wherever applicable, also the costs for legal advice.

about the existing problems). Nevertheless, a minority (30% of respondents) indicated that the EU should play no role in such matters.

As regards questions concerning the details of the possible EU legislative initiative (for instance the applicable law), the views showed no particular convergence. Finally, 41% of the respondents considered that an introduction of a possible European Certificate of Parenthood ("ECP") would be useful and its inclusion in the legislative instrument should be a priority. On the other hand, 37% of the respondents (almost all of them being Slovak citizens) indicated that they would not support an ECP, as the currently available national documentation is sufficient.

The fourth and final pillar examined the *impact of the possible EU legislation on the recognition of parenthood between Member States*. A majority of respondents indicated that such legislation would have a very positive impact on children's fundamental rights and welfare (including emotional and psychological wellbeing) and in facilitating the exercise of the right of children to travel and move within the EU with their families. Legal certainty, for both families and public authorities, would also be ensured as a result of the introduction of the legislation according to the majority of the respondents. Finally, according to the majority of the respondents, the legislation would decrease the costs, time and burden for families as well as for national judicial systems.

b) Feedback on the Inception Impact Assessment

In addition to the OPC, the Commission also collected feedback to the Inception Impact Assessment ("IIA"), which was published in April 2021 with a double objective: (i) to inform citizens and stakeholders about the Commission's plans to adopt an initiative on parenthood recognition in cross-border situations and (ii) to allow them express their views on the Commission's understanding of the problem and possible solutions.

The feedback to the IIA consisted of 760 responses from a wide range of stakeholders composed of EU and non-EU citizens (725 respondents), academic and research institutions (3 respondents), business associations (2 respondents), non-governmental organisations (27 respondents) and other organisations (32 respondents). The majority of respondents came from Central Europe. At least one e-mail and one online **campaigns** encouraging the public to criticise the initiative in the context of IIA feedback were detected.

The overall tendency of the received feedback was rather negative. A majority of respondents, mostly from Hungary, the Czech Republic, Slovakia, Poland and Germany disagreed with the Commission's intention to adopt a legislative measure on the recognition of parenthood between Member States. The reason for such disagreement was most often the opinion that the EU does not have *a competence to adopt such a legislation* or should not do so given *the sensitivity of the area*. Some of those respondents also opined that the initiative, if adopted, would interfere with substantive family law, which is a national competence of Member States. According to some of those respondents,

parenthood should only be recognised in cases where the family is composed of opposite-gender parents.

In contrast, other respondents to the IIA highlighted that an initiative on the recognition of parenthood between Member States would be crucial to ensuring children's rights and fundamental rights. The contributions supporting the parenthood initiative came mainly from Luxembourg, Belgium, Spain, Croatia, Finland and France. Some of these respondents considered that the parenthood initiative would be important in guaranteeing *non-discrimination* and facilitating *free movement* in the EU. Other respondents pointed out that this initiative is crucial for the *protection of child's fundamental rights*. The most frequently mentioned consequences of non-recognition of parenthood were those related to the acquisition of nationality, to the exercise of parental rights and rights derived from parenthood, to social security, health care, travelling and free movement.

Many contributions from both citizens and organisations touched upon *surrogacy*. Mixed opinions were expressed. Some participants argued that no distinction or discrimination should be made between children based on the way in which they were born, whereas others expressed their disagreement to recognising parenthood in cases of surrogacy mostly referring to human dignity and the violation of women's fundamental rights as a result of surrogacy.

c) Meeting with stakeholders

As a part of the Commission's consultation strategy, an informal meeting with stakeholders was organised on 14 December 2021. It gathered participants from around 25 umbrella organisations representing a variety of interests, such as organisations representing children, rainbow families and families composed of opposite-gender parents, religions, legal practitioners and registrars, and participants from the European Parliament and from international organisations, such as the Council of Europe, the ICCS and the International Social Service. The discussion focused on two main blocks: (i) *existing problems with the recognition of parenthood in the EU* and (ii) *possible solutions* to those existing problems.

Regarding the first part of the meeting, the participants were encouraged to elaborate on the problems existing with the recognition of parenthood between Member States. Most participants agreed that problems with the recognition of parenthood exist; however, they were of different views regarding the scale of the problem. In particular, participants representing children, legal professionals and rainbow families considered the existing problems and its consequences as particularly serious.

In the second part of the meeting, possible solutions to tackle the non-recognition of parenthood between Member States were addressed. It was discussed whether and how children's rights can be protected in cross-border situations involving the recognition of parenthood in the absence of any EU-level action.

As regards the possible EU-level measures to tackle the problems with the non-recognition of parenthood, no convergence could be found. The participants from the European Parliament and representatives of lawyers and registrars were of the view that EU legislation is needed to facilitate the recognition of parenthood. In their view, the legislative measure would ensure legal certainty and clarity for families and public authorities and reduce costs and length of recognition procedures. Participants representing children and rainbow families welcomed the EU action in this area, highlighting that they considered crucial to solve the adverse consequences caused by the non-recognition of parenthood.

On the other side of the spectrum, stakeholders representing mostly heterosexual families were sceptical towards any initiative and in particular the legislative policy option. Reasons given for such disagreement were the claimed interference of an EU initiative with national family law systems, the sensitive nature of this area, as well as the concerns related to surrogacy arrangements. Some participants questioned whether a "one-size-fits-all" legislation was needed, given recent CJEU case law, as well as other instruments at international and EU level on child-related matters.

It was generally acknowledged that non-legislative measures, such a greater cooperation between public authorities could be desirable regardless of the possible adoption of a legislation on the recognition of parenthood; however, many participants believed that these measures would not solve most of the problems with recognition of parenthood.

d) Meeting with Member States

On 25 January 2022, the Commission organised a meeting with experts from Member States' public authorities to provide information about the parenthood initiative and to exchange initial views thereon. Almost 100 participants from 26 Member States attended the meeting, representing various public authorities and ministries. 11 Member States took the floor during the meeting.

In a similar way to the meeting with stakeholders, the Commission structured the meeting along the following blocks: (i) *existing problems with the recognition of parenthood in the EU* and (ii) *possible solutions* to those existing problems.

In the first block, Member States explained, from their national point of view, how they deal with the recognition of parenthood and whether they had encountered any problems with the recognition. Several Member States noted that formal recognition of parenthood is mostly needed in procedures for granting a nationality to a child that was born to (a) national(s) of that Member State abroad. Several intervening Member States reported that they were not aware of particular problems related to parenthood recognition in their jurisdiction. However, a number of Member States mentioned that they were aware of problems that their citizens encountered abroad. Some mentioned that parenthood would not be recognised under certain circumstances in their jurisdiction. The main problems

with the recognition were seen in cases involving rainbow families and/or in relation to surrogacy arrangements.

During the second part, Member States expressed their initial positions regarding the possible solutions to the existing problems with the recognition of parenthood between Member States. Most agreed that children and their rights and best interests need to be in the focus of any initiative at the EU-level. Non-legislative measures, such as more cooperation and exchanges between authorities, were also supported by most Member States – whether to complement a legislation or as the only measure undertaken. In contrast, the views on the desirability of an EU legislation on the recognition of parenthood between Member States were divided. The following two trends were identified:

First, a majority of Member States that intervened in the meeting supported legislation. Most took the view that any legislation should cover both court decisions and authentic instruments (such as birth certificates). Some advocated the adoption of the ECP. According to those Member States, a legislative instrument at EU level would be desirable especially in view of the increasing number of cross-border families that may experience problems with the recognition of parenthood.

In contrast, some Member States adopted a sceptical position towards legislation. They were either of the opinion that problems with the recognition of parenthood in the EU are not significant or that their national law addresses them sufficiently. One Member State stated that EU legislation would be contrary to its Constitution.

More than half of participating Member States did not express their views concerning the parenthood initiative during this meeting[223]. **All views expressed** in the meeting **were preliminary and served solely to inform the preparation of the initiative**.

[223] However, the Commission received views of most Member States through other means, whether through the OPC, through replies to a questionnaire circulated by an external contractor, or in the context of an informal exchange at the Justice and Home Affairs Council on 4 February 2022.

ANNEX 3: WHO IS AFFECTED AND HOW?

16. 1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

17. 1.1 CROSS-BORDER FAMILIES AND THEIR CHILDREN IN THE EU

The problems with the recognition of parenthood affect children and their families in cross-border situations. The 103 000 mobile parents and their children that are affected by the problem of non-recognition may face precarious situations in Member States which are refusing to recognise their civil status. As a result, children and their families may be deprived of rights related to parenthood status (such as the child's succession or maintenance rights), fundamental rights, or social and economic advantages derived from parenthood. They may also be deterred from pursuing personal and professional advantages on the internal market and moving freely within the EU for the fear that their status would not be recognised in some Member States. They may have to bear large costs for recognition procedures that are on average 16 times higher than those in non-problematic cases.

Under the preferred policy option, the problems with parenthood recognition would be significantly mitigated through the adoption of uniform rules on the establishment of parenthood with cross-border implications and on the recognition of parenthood between Member States. The preferred option would thereby significantly reduce the incidence of problems and their negative consequences.

In addition, through the introduction of the European Certificate of Parenthood, all families stand to benefit, not only those that currently experience problems with parenthood recognition. The ECP would do away with most current costs, thus reducing the costs for recognition procedures by almost 70% for all cross-border families.

18. 1.2 MEMBER STATES' PUBLIC AUTHORITIES (PUBLIC ADMINISTRATIONS AND JUDICIARY)

The Member States' public authorities currently bear increased costs related to the parenthood recognition procedures. The current recognition procedures are much longer and more burdensome than they would have been should there be no problems with parenthood recognition. This situation results in an increased demand on the staff of public administrations and courts, increased workload and thus more costs for public authorities.

Under the preferred policy option, the procedures for the recognition of parenthood and other PIL rules* would be harmonised at EU level. As a result, the problems with the recognition of parenthood would be mitigated and costs reduced. In addition, the

uniform rules introduced in the Regulation would increase mutual trust between Member States in matters of parenthood and legal certainty for public authorities.

Moderate compliance costs borne by public authorities, consisting of adjustment costs for the familiarization with the new rules, training costs, information campaign, digitalisation of the procedures etc., are expected to adjust the current processes to the Parenthood regulation. These costs would however be offset by the cost reductions resulting from the streamlined parenthood recognition procedures.

19. 2. SUMMARY OF COSTS AND BENEFITS

Figure 9: Overview of Benefits (total for all provisions) – Preferred Option

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount (one-off)***	***Comments***
Direct benefits		
The recognition of parenthood between the Member States is facilitated	Not quantifiable	Beneficiaries: cross-border families and their children and public authorities of Member States
Increased protection of fundamental rights of children and their families	Not quantifiable	Beneficiaries: cross-border families and their children in the EU
Improved access to justice, increased legal certainty, predictability and continuity of parenthood	Not quantifiable	Beneficiaries: cross-border families and their children
Reduced costs for recognition procedures* for families seeking the recognition of parenthood in the EU	Total cost reductions for cross-border families amount to approximately EUR 703 mil. under the PO3 as compared to the baseline.	Beneficiaries: cross-border families and their children The current average costs for recognition procedures* are EUR 337 to EUR 656 per case (lower and upper bounds*) for both families that do and do not currently experience problems with the recognition of parenthood. Under PO3, it is expected that the average costs for recognition procedures borne by families would decrease by 71% to EUR 99 to EUR 184 per case (lower and upper bounds*). While the overall macroeconomic savings are considerable, the difference is even more marked in relation to the families currently affected by the problem with the non-recognition of parenthood. The costs for recognition procedures to be borne by these families would be approximately 10 times smaller under PO3 than under the baseline.
Reduced costs for recognition procedures for public authorities of Member States	Total cost reductions for public authorities amount to approximately EUR 344 mil. under the PO3 as compared to the baseline.	Beneficiaries: public authorities of Member States The current average costs borne by public authorities for recognition procedures are EUR 304 to EUR 346 per case (lower and upper bounds*). Under PO3, it is expected that the average costs for recognition procedures borne by public authorities would decrease by 53% to EUR 149 to EUR 154 per case (lower and upper bounds*).

Decreased length and burden of proceedings for the recognition of parenthood in the EU	Not quantified due to a significant variance in available data	Beneficiaries: cross-border families and their children in the EU and public authorities of Member States The current average length of the parenthood recognition procedures varies greatly - between a few months or even weeks in the easiest cases up to several years (1 to 3 years, some outlier cases even 5 years) in the problematic ones. Delays in the procedure create a significant burden on families and public authorities. Under the PO3, the time needed to achieve parenthood recognition would decrease radically and for all families, including those that currently do not experience parenthood recognition problems. In some cases, formal recognition of parenthood may not even be needed, because the ECP could be used in other MS directly, as evidence of parenthood.
Indirect benefits		
Promotion of equality and non-discrimination in the EU	Not quantifiable	As rainbow families (approximately 100 000 mobile LGBTIQ parents and their children) are disproportionally affected by the current problems, they stand to particularly benefit from the Regulation. Consequently, the Regulation would indirectly reduce current inequalities. Beneficiaries: all rainbow families
Increased wellbeing of children	Not quantifiable[224]	Beneficiaries: children of cross-border families The existing problem with the recognition of parenthood may cause emotional distress and have a negative effect on the (psychological) wellbeing of children in the EU. The Regulation stands to tackle the existing problems, thereby improving the wellbeing of children.
Positive impact on the right to free movement	Not quantifiable	Beneficiaries: cross-border families and their children PO3 would reassure mobile families that their civil-law rights would be protected throughout the EU and that they could thus take a full advantage of their right to free movement. The deterrent effect on the right to free movement stemming from the fear that parenthood status would not be recognised abroad would be diminished.

Figure 10: Overview of costs and cost savings related to OIOO – Preferred Option

Administrative costs and cost savings related to the 'one in, one out' approach*		
Reduced costs for	Total cost savings for cross-border families on	Beneficiaries: estimated 1 981 735 children

[224] Notably, the European Parliamentary Research Service estimated in 2016 the **emotional costs** of resolving disputes on recognition of parenthood and / or of legal uncertainty at **EUR 10 000 per case**. See European Added Value Assessment by the European Parliamentary Research Service. As noted in the report, this estimate is very moderate and does not include costs of problematic situations that do not end up under litigation. While this estimate related only to disputes on the recognition of parenthood after domestic adoptions, it can be expected that the cases that disputes concerning parenthood established by other means than domestic adoption would result in similar emotional costs.

recognition procedures for cross-border families	costs related to 'one in, one out' approach amount to approximately EUR 545 mil. under the PO3 as compared to the baseline. These cost savings concern all families that are currently cross-border and are one-off and aggregate, not annual. They represent a saving of EUR 275 per a child in a cross-border family.	of cross-border families and their families.
Cost savings resulting from the simplification of the regulatory environment in the EU and from the reduction of hassle and time needed for the parenthood procedures	Not quantified.	Beneficiaries: cross-border families and their children and legal practitioners.

- **Application of the 'one in, one out' approach**

In line with the Better Regulation Toolbox, it needs to be considered whether the preferred policy option would have significant cost implications for businesses and citizens and if so, how these costs would be offset (the "one in, one out" or "OIOO" approach).

One of the specific objectives of the Parenthood regulation is to **mitigate or do away with the costs for recognition procedures** currently borne by children and their families as a result of the existing problems with the recognition of parenthood. In addition, the Regulation introduces no new compliance requirements that would affect families in the EU[225]. Thus, as the Parenthood regulation would not introduce any new burden on families (or on businesses for the fact) and would reduce the existing one, the Regulation would be **a "one out" initiative**. The methodology to quantify the *OIOO costs savings** is detailed in Annex 4.

Figure 11: Overview of costs imposed or caused directly or indirectly by the preferred option (the Parenthood Regulation)

		Cross-border families		Administrations	
		One-off	Recurrent	One-off	Recurrent
Parenthood regulation	Direct adjustment costs	-	-	Minor adjustment costs borne by MS for: - the adjustment to new rules in a Regulation and to the issuance of ECP; - training of staff as regards the new rules - information campaigns addressed to the public and legal practitioners	Minor adjustment costs borne by MS related to training for staff about the Regulation and related new developments and digitalisation of the procedures

[225] No administrative costs or adjustment costs for individuals or businesses. For instance, the Parenthood regulation would not introduce any fees for the provision of ECPs (however, Member States would have the discretion to do so). In addition, the ECP would only be optional in that it would only be issued at a request and would not replace national authentic instruments.

	Direct administrative costs	-	-	-	-
	Direct regulatory fees and charges	-	-	-	-
	Direct enforcement costs	-	-	-	Negligible costs (related to monitoring of the application of the Regulation and judicial cooperation)
	Indirect costs	-	-	Those introduced voluntarily by MS in relation to the Regulation, such as changes in national law, digitalisation of the parenthood establishment and recognition procedures etc.	
Total	Direct adjustment costs	-	-		
	Indirect adjustment costs	-	-		
	Administrative costs (for offsetting)	-	-		

20. 3. RELEVANT SUSTAINABLE DEVELOPMENT GOALS

Figure 12: Overview of relevant SDGs

III. Overview of relevant Sustainable Development Goals – Preferred Option		
Relevant SDG	**Expected progress towards the Goal**	**Comments**
SDG No. 10 – Reduced inequalities	The Parenthood regulation would mitigate the existing problem with the recognition of parenthood between Member States. As rainbow families are disproportionally affected by the current problems, they stand to particularly benefit from the Regulation. Consequently, the Regulation would indirectly reduce current inequalities and discrimination based on sexual orientation and thereby contribute to the SDG.	Particularly relevant would be the following UN targets: - 10.2 *(By 2030, empower and promote the social, economic, and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status)* and - 10.3 (*To ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard*).
SDG No. 16 – Peace, justice and strong institutions	The Parenthood regulation could indirectly contribute to the indicators concerning the birth registration of children under 5 years old, even	Particularly relevant would be the following UN targets: - 16.3 *(Promote the rule of law at the*

	though the results of all EU Member States as regards this target are already remarkably high[226]. In addition, by streamlining the process for the recognition of parenthood, the Regulation would improve the equal access to justice and promote non-discriminatory laws and policies.	*national and international levels and ensure equal access to justice for all)* and - 16.9 (*By 2030, provide legal identity for all, including birth registration)* and - 16b (*Promote and enforce non-discriminatory laws and policies for sustainable development)*.

[226] See the *SDG indicator 16.9.1 - Birth registration* at the SDG tracker where the EU countries achieve 100% complete birth registration rates. Source: UNICEF.

ANNEX 4: ANALYTICAL METHODS

Methodology used in the impact assessment

1. Estimate of the number of persons that may be affected by the problem with the recognition of parenthood

The definition of the problem required quantifying the number of cases where recognition in one Member State of parenthood established in another Member State may be needed, in other words, the number of cross-border families with children. Out of this estimate, the number of cross-border families with children that are likely to experience problems with the recognition of parenthood was calculated.

The quantification worked with several assumptions and estimates. All data used were as of 2020[227] (except for the rate of same-gender couples, which have children, which is of 2019).

1.1 The number of cross-border families with children in the EU

For the purposes of this report, the **cross-border families were defined** as a *family with children consisting of one or more "mobile persons", i.e. of: (i) EU citizens who have their habitual residence in a Member State which is not their Member State of origin, and/or (ii) non-EU citizens who have their habitual residence in a Member State and move to another Member State*. It follows that "cross-border families" include not only EU citizens but also non-EU citizens. This is because a possible legislative initiative would not be based on the nationality of the people in relation to which parenthood is to be recognised but on whether the court decision or authentic instrument on parenthood has been issued by the authorities of a Member State[228].

The number cross-border families with children in the EU was quantified based on the figures on **mobile population in the EU** (including both EU citizens and non-EU citizens, without the population of Denmark[229]). For the purposes of this quantification, the

[227] The data used for the calculations reflected the population statistics after Brexit. For the purposes of the Parenthood initiative, the United Kingdom was considered, as of its withdrawal from the EU, as a third country and British nationals living in the EU were considered as any other third-country nationals, despite the fact that certain parts of EU law continued to apply to and in the UK and for the benefit of UK nationals until 31 December 2020.

[228] *I.e.* the possible legislative initiative would cover for instance a birth certificate issued by Belgian authorities for a Canadian child who is born in Belgium and seeks recognition of its Belgian birth certificate in France.

[229] As Denmark would not take part in the adoption and application of the Parenthood initiative, Denmark is not considered for the purposes of this impact assessment. Therefore, wherever relevant, the population of Denmark of 5.8 mil. (*i.e.* 1.3% of the EU population) was detracted from the overall EU population figures.

assumption was made that *non-EU citizens* with their habitual residence in the EU are as mobile as EU *citizens* with their habitual residence in the EU.

Relevant data:

The EU mobile population was calculated based on the statistics provided by Eurostat for the overall EU population in 2020 (447.3 mil. *inhabitants*[230]), the number of *non-EU citizens* living in the EU in 2020 (23 mil. citizens[231]) and the number of EU mobile *citizens* in 2020 (13.5 mil. citizens[232]),

Calculation:

To get the proportion of EU mobile population, the number of EU citizens in the EU was calculated by detracting the number of non-EU citizens living in the EU in 2020 (23 million people) from the overall EU population, *i.e.* 424 million.

Based on the Eurostat data, 13.5 million EU citizens (from the 424 million) are mobile. This represents 3.2% of EU citizens. This proportion is also in line with the latest EU Labour Mobility Report[233].

It is expected that non-EU citizens with their habitual residence in the EU are as mobile as EU citizens with their habitual residence in the EU, therefore, their mobility rate would also be **3.2%.**

Subsequently, the number of **mobile couples with children in the EU-26 in 2020** was calculated. The figures only cover opposite-gender and same-gender mobile couples with children and exclude single parents with children. For the purposes of the quantification, the assumption was used that families have the same behaviour with respect to mobility as the rest of the population.

Relevant data:

According to Eurostat, there were 39 million couples with children in the EU-27 in 2020[234] (both EU and non-EU citizens) and **38.6 million couples with children in the EU-26** (without Denmark[235]) in 2020.

---

[230] Eurostat (2020). *EU population in 2020: almost 448 million*.
[231] Eurostat – Statistics explained. *Migration and migrant population statistics*, Chapter *Migrant population: 23 million non-EU citizens living in the EU on 1 January 2020*.
[232] Eurostat – Statistics explained. *Migration and migrant population statistics*, Chapter *Migrant population: 23 million non-EU citizens living in the EU on 1 January 2020*, which states that "there were 13.5 million persons living in one of the EU Member States on 1 January 2020 with the citizenship of another EU Member State".
[233] European Commission (2020). *Annual Report on Intra-EU Labour Mobility 2020*, p. 13. While the report estimated the proportion of EU-27 movers of working age at 3.7%, this impact assessment calculated slightly lower percentage of 3.2% for the overall population including economically inactive people.

Calculation:

38.6 million couples with children in EU-26 in 2020 * 3.2% of mobile families = **1 235 200 mobile couples with children in EU-26 in 2020**.

1.2 The number of persons affected by the problem of non-recognition of parenthood in the EU

According to Eurostat, 29% of all households in the EU have children and about 20% were composed of couples with children[236]. There is no holistic statistical breakdown in terms of family composition of the families in the EU based on either the sexual orientation of parents[237] or on the type of family formation (surrogacy, adoptions etc.). Representative data thus cannot be obtained and several estimates had to be made.

1.2.1 LGBTIQ parents and their children (rainbow families)

For the purposes of this impact assessment, it was estimates that LGBTIQ people represent **6% of the EU population**[238]. The proportion of LGBTIQ people differs per Member State; however, as data sources are either not available or could be heavily skewed due to the limited number of respondents and/or the voluntary nature of this type of information, the report will work with the average assumed above. The assumptions were systematically contrasted with the available data[239] to ensure the robustness of the calculations.

It was further assumed that LGBTIQ people with habitual residence in the EU are as mobile as heterosexual people with habitual residence in the EU and are in a couple in the same proportion as heterosexual people. These assumptions are intended to be non-biased.

---

[234] Eurostat. *Household composition statistics*, figure 3. Interestingly, couples with children are becoming less common in many parts of the world, including the EU, as they represented, in 2019, less than 20 % of the total number of households in the EU-27 (19.7 %). See: Eurostat (2020). *Being young in Europe today - family and society.*

[235] 444 100 couples with children in Denmark in 2020. See Eurostat data browser.

[236] See Eurostat (2019). *Being young in Europe today - family and society.*

[237] As a rule, information about sexual orientation is collected only voluntarily and based on self-identification. Reliable statistics are thus not available. It follows that data on the number of rainbow families are also not available.

[238] This estimate was made as an approximate average of the following sources:

- 10% is the traditional estimate based on the Kinsey's studies of the 1950s ("10% of males were more or less exclusively homosexual"). The estimate of 10% of LGBTIQ people would seem to be too high and the Kinsey Institute itself has reviewed its older figures and its 2010-2011 figures range from 1 to 8%;
- The Guardian (2015). *Is 10% of the population really gay?;*
- UCLA (2011). *How Many People are Lesbian, Gay, Bisexual, and Transgender?:* "An estimated 3.5% of adults in the United States identify as lesbian, gay, or bisexual and an estimated 0.3% of adults are transgender";
- UK Office for National Statistics (2019). *Sexual orientation, UK: 2019*. "An estimated 2.7% of the UK population aged 16 years and over identified as lesbian, gay or bisexual (LGB)";
- Gallup (2021). *LGBT Identification Rises to 5.6% in Latest U.S. Estimate*.

[239] For instance, the breakdown of the population data collected through EU-SILC was received from Eurostat (distribution variables: RB240: partners in the same household and RB090: partners of same sex).

As regards rainbow families with children, the U.S. Census, while not directly applicable, provides a point of comparison[240]:

- "14.7% of same-gender couples had children, 54.7% of same-gender couples only had one child";
- "Fifteen percent (14.7%) of the 1.1 million same-sex couples in the United States in 2019 had at least one child under 18 in their household, compared with 37.8% of opposite-gender couples.";
- "Same-sex couples also tended to have smaller families. Among couples with children, 54.7% of same-gender couples only had one child, compared with 39.2% of opposite-gender couples."

- *The number of LGBTIQ couples with children in EU-26 in 2020*

The following calculation was done:

1 235 200 mobile couples with children in EU-26 in 2020 * 6% LGBTIQ people in the EU = 74 112 LGBTIQ mobile couples with children.

This number was adjusted in line with the rate calculated based on the information from the U.S. census (14.7% of the same-gender couples in the US in 2019 had at least one child under 18 years old in their household, while 37.8% of opposite-gender couples in the US in 2019 had at least one child under 18 years old in their household. This means that same-gender couples are 38.89% as likely to have at least one child as opposite-gender couples.).

74 112 LGBTIQ mobile couples with children * 38.89% adjusted rate = **28 822 LGBTIQ mobile couples with children**.

- *The number of children of LGBTIQ mobile parents in the EU-26 in 2020*

The number of children in rainbow families was estimated based on the above census statistics:

Rainbow families with one child:

- 54.7% of same-gender couples with exactly one child * 28 822 LGBTIQ mobile couples with children = 15 766 children of LGBTIQ mobile couples with exactly one child.

Rainbow families with more children:

- The source does not give information on LGBTIQ couples with more than one child so for this calculation it is assumed that all LGBTIQ couples with more than one child have exactly two children. This means that in reality the number of

[240] United States Census Bureau (2020) – analysis of Current Population Survey (CPS). Equivalent information for the EU is not available from the reasons explained above.

children affected is slightly higher than what is calculated here, but it is not possible to tell accurately by how much.

- 100% - 54.7% of LGBTIQ couples with exactly one child among LGBTIQ couples with children = 45.3% of LGBTIQ couples with more than one child among LGBTIQ couples with children.

- 45.3% of LGBTIQ couples with more than one child among LGBTIQ couples with children * 28 822 LGBTIQ mobile couples with children * 2 children = 26 113 children of LGBTIQ mobile couples with exactly two children.

15 766 children of LGBTIQ mobile couples with exactly one child + 26 113 children of LGBTIQ mobile couples with exactly two children = **41 879 children of LGBTIQ mobile couples with children.**

- *The number of mobile LGBTIQ couples with children and their children in the EU-26 in 2020*

28 822 LGBTIQ mobile couples with children * 2 parents in each couple = 57 644 parents in LGBTIQ mobile couples with children.

57 644 parents in LGBTIQ mobile couples + 41 879 of their children = **99 523 mobile LGBTIQ parents and their children.**

1.2.2 Opposite-gender families

There was 1 235 200 mobile couples with children in EU-26 in 2020. The opposite-gender couples with children are calculated by deducting the number of same-gender couples with children (28 822 LGBTIQ mobile couples with children) from the overall number.

1 235 200 mobile couples with children - 28 822 LGBTIQ mobile couples with children = **1 206 378 mobile opposite-gender couples with children**

The number of mobile opposite-gender parents and their children in EU-26 in 2020 would then be calculated based on the same methodology as above.

1 206 378 mobile opposite-gender couples with children * 39.2% of opposite-gender couples with exactly one child among opposite-gender couples with children = 472 900 children of mobile opposite-gender couples with exactly one child.

100% - 39.2% of opposite-gender couples with exactly one child among opposite-gender couples with children = 60.8% of opposite-gender couples with more than one child among opposite-gender couples with children.

1 206 378 mobile opposite-gender couples with children * 60.8% of opposite-gender couples with more than one child among opposite-gender couples with children * 2 children = 1 466 956 children of mobile opposite-gender couples with exactly two children.

472 900 children of mobile opposite-gender couples with exactly one child + 1 466 956 children of mobile opposite-gender couples with exactly two children = **1 939 856 children of opposite-gender mobile couples**.

1 206 378 mobile opposite-gender couples with children * 2 parents per couple = 2 412 756 mobile opposite-gender parents.

2 412 756 mobile opposite-gender parents + 1 939 856 children of these parents = **4 352 612 mobile opposite-gender parents and their children**.

1.3 The number of persons affected by the problems with the recognition of parenthood

For the purposes of this impact assessment, it was calculated that there are **4 452 135** (4 352 612 opposite-gender parents and their children + 99 523 LGBTIQ parents and their children) **mobile parents and their children in the EU-26** ("cross-border families")[241]. Based on the explanation in Section 2.3, the problem affects mostly mobile same-gender couples with children in the Member State where same-gender parenthood is not accepted and mobile opposite-gender couples with children, which had a recourse to surrogacy.

1.3.1 Mobile rainbow families

It was calculated for the purposes of this impact assessment that there are 99 523 mobile LGBTIQ parents and their children (due to a heavy use of various assumptions and estimates, this number however has to be taken very carefully).

The question arises as to what proportion of these people is actually affected by the non-recognition of parenthood in practice. It should be noted that each situation of the non-recognition of parenthood is individual in its nature and no data exist on the proportion of problematic cases. In addition, one can only look at the laws of Member States as data as to how authorities apply their problematic laws in each particular case is not available. It follows that no reliable estimates can be made of the actual number of the affected LGBTIQ people and their children.

However, as explained in the Section on the Problem definition, the (anticipated) non-recognition of the parenthood of a child may deter a family from moving freely in the EU. In can be assumed that as long as there are Member States where parenthood of a rainbow family validly established in one Member State is not recognised, such a "deterrent effect" is present. As this deterrent effect may potentially concern all rainbow families, the estimated figure of **99 523 persons (mobile LGBTIQ parents and their children) that may be affected by the problem of non-recognition** is considered reasonable.

1.3.2 Mobile opposite-gender parents and their children

Given the lack of official statistical sources and the paucity of information on the scale of the parenthood recognition problems that affect opposite-gender parents and their children, it was decided to use a range representing the likely number of these people rather than

[241] Notably, this figure only covers couples with children and their children, not single parents with their children.

attempting at a calculation. This quantification includes both families composed of opposite-gender couple and their children born out of surrogacy arrangements and those that are currently affected by the problems with parenthood recognition for other reasons.

Children born through surrogacy to mobile opposite-gender couples

The OPC revealed that, besides rainbow families, some of the most serious cases of non-recognition of parenthood happen to families who had a recourse to surrogacy. Several EU Member States prohibit surrogacy in their national law. Where opposite-gender or rainbow families resort to surrogacy abroad, they may face problems with having the parenthood of their child recognised upon the return to their home Member State. As mobile LGBTIQ couples that had a recourse to surrogacy are covered in the calculation above, **this section only relates to opposite-gender couples with a recourse to surrogacy**[242].

A global rise in the practice of surrogacy including cross-border arrangements has been observed[243]. However, it follows from the available information and from the consultations conducted in the context of this impact assessment that the recognition in a Member State of the parenthood of children born out of surrogacy most **often concerns international surrogacy arrangements implemented outside the EU rather than in another Member State**[244]. The distinction between international surrogacy arrangements implemented in a third country and in a Member State is key as the Parenthood initiative would only concern the recognition of parenthood established in another Member State.

Based on available information, **only four Member States** (Cyprus, Greece, Portugal and, to some extent, the Netherlands[245]) out of EU-26 have adopted rules governing in their national law altruistic (non-commercial) surrogacy (the legislation in Portugal would however appear to be currently suspended further to a decision of the Portuguese Constitutional Court[246]). Some other EU Member States do not regulate surrogacy –

---

[242] As several countries limit the access of same-gender couples to surrogacy, the surrogacy arrangements by opposite-gender couples are expected to be more numerous.

[243] The factors that signal a rise in the practice of surrogacy across borders are the increasingly frequent stories in the media about surrogacy arrangements, a growing presence online of agencies and clinics that openly seek to facilitate surrogacy arrangements or the recent surge in reported case law relating to surrogacy across a number of jurisdictions. See for instance cases: judgment of the Austrian Constitutional Court of 14.12.2011, No. B 13/1; judgments of the Belgian Court of appeal Ghent of 20.4.2017 (No. 2014/EV/87) and of 4.2.2021 (No. 2019/FE/17); judgment of the Court of Sector 4 Bucharest, No. 10984/2015; judgment of the Court of Sector 1 of Bucharest, No. 5200/2017; judgment of the Italian Constitutional Court of 28.1.2021, No. 33. See also European Parliament (2013). *A comparative study on the regime of surrogacy in EU Member States*; Hague Conference on Private International Law (2012). *A Preliminary Report on the Issues Arising from International Surrogacy Arrangements*, p. 6-8.

[244] Indeed, all but one example given in the replies to the OPC and accounting for problems concerning the recognition of parenthood of children born out of surrogacy related to such arrangements undertaken in third countries.

[245] Even though the Dutch civil code does not include a specific text on surrogacy, based on information from Government.nl, surrogacy is permitted in the Netherlands under certain conditions. However, in line with the Dutch Criminal Code, it is illegal to advertise or promote of surrogacy, including to publically announce, for instance on social media that someone is looking for a surrogate. Arguably, this can make it difficult for intending parents to find a surrogate.

[246] As to Portugal, *cf.* the judgments of the Portuguese Constitutional Court repealing the Portuguese legislation concerning surrogacy: judgments of the Portuguese Constitutional Tribunal, No. 465/2019 and No. 225/2018.

neither specifically prohibiting it, nor specifically allowing it[247]. However, even the four Member States that allow surrogacy restrict it by conditions and eligibility criteria. For instance, in Cyprus and Greece, surrogacy is only allowed with a prior authorization from a court and/or a specialised board and there are requirements concerning the residence of the surrogate or the intending parents in these Member States. Among the countries that do not expressly ban surrogacy, several figures have emerged as to the incidence of the surrogacy arrangements[248].[249]

Overall, the number of opposite-gender couples that had a recourse to surrogacy is difficult to assess. Statistics relating to surrogacy are not available, as there are generally no formal reporting mechanisms[250]. The data is collected neither at national nor at European level. Calculating estimates is also complicated as birth certificates do not indicate how the child was conceived or born. The available figures are thus not likely to provide a complete picture. In any case, the vast majority of surrogacy arrangements that EU cross-border families undergo are in third countries and the number of surrogate children born to opposite-gender couples in the EU every year is thus limited. Even less of these surrogacy arrangements performed in the EU are cross-border cases that would require the recognition of parenthood abroad. Furthermore, only in some of these cases parenthood would not be recognised (as it is often not discernible from a birth certificate that the child in question was born through surrogacy).

Mobile opposite-gender couples and their children affected by parenthood recognition problems

Besides the parenthood recognition problems concerning children born out of surrogacy, these problems are also experienced by other opposite-gender couples and their children, due to, among others, the differences in national substantive and PIL laws* of Member States. The examples 1, 2 and 6 in Annex 7 illustrate cases where different Member States' PIL rules resulted in situations where each Member State attributed parenthood to different person(s) creating situations of limping parenthood*.

The number of these mobile opposite-gender couples and their children affected by the problems with the recognition of parenthood cannot be calculated or estimated due to the lack of official statistical sources. In addition, the court cases known and citizen letters addressed to the Commission giving account of the problems with the recognition of parenthood, are most likely only a tip of the iceberg.

Total figure – mobile opposite-gender parents and their children affected by the parenthood recognition problems

---

[247] However, substantive law of all these countries considers the mother who gave birth to a child as the legal mother of that child (*"mater semper certa est"* principle), not the intending mother.

[248] In Greece, where a prior court authorization is needed before the surrogacy can be effectuated, data compiled from 256 of those court decisions issued between 2003-2017 shows that there were on average 18 such pre-arrangement court decisions granting surrogacy per year, with an increasing trend observed towards the year 2016. See: Ravdas P. (2017*). Surrogate Motherhood in Greece: Statistical Data Derived from Court Decisions*, Bioethics 3 (2).

[249] In the Netherlands reportedly only one clinic carried out surrogacy arrangements between 1997 and 2019. According to the website of this clinic, all the IVF treatment at that clinic led to the birth of 16 children between 1997 and 2004. Information available at: https://fiom.nl/kenniscollectie/draagmoederschap/cijfers-feiten.

[250] The data is not collected neither at national nor at EU level.

To obtain the number of mobile opposite-gender couples and their children affected by the non-recognition of parenthood in EU-26 (concerning both families that had a recourse to surrogacy and other opposite-gender families that experience problems with the recognition of parenthood for other reasons), the following ranges have been estimated:

- if, for example, we assume that 0.05% of opposite-gender parents and their children have problems: 4 352 612 mobile opposite-gender parents and their children * 0.05% = 2 176 people.

- if, for example, we assume that 0.1% of mobile opposite-gender parents and their children have problems: 4 352 612 mobile parents and their children * 0.1% = 4 353 people.

1.3.3 Final figure: affected parents and children in EU-26

With the above estimated rates, the total parents (heterosexual and LGBT) and their children that may be affected by the current problems with the recognition of parenthood was estimated at **99 523 plus 2 176**, or at **99 523 plus 4 353**.

The overall conclusion would thus be that **the total number of mobile parents and their children in EU-26 that may be affected by the current problems with the recognition of parenthood is about 103 000, almost all of which are LGBTIQ parents and their children.**

It should be highlighted that this number was based on several estimates and has to be thus taken cautiously. The number of affected families may differ in particular based on how the proportion of rainbow families in the EU population is estimated or on the proportion of opposite-gender parents and their children affected by the parenthood recognition problems. The estimates worked with the hypothesis that all rainbow families may be potentially affected by the parenthood recognition problems, since they may be deterred from moving and travelling freely within the EU for the fear that their child-parent relationship would not be recognised abroad. In addition, in some cases, Member State courts may be able to somewhat mitigate the effect of recognition-unfriendly laws and guarantee (some of) the rights to a child. However, this differs on a case-by-case basis.

In addition, the number of persons affected by the problems with the parenthood recognition would be higher than the estimate made, should the above calculation include also **single parents with children and families that have more than two children**.

2. Ten-year projections (reference period 2022-2032)

In the absence of a legislative action, the problems relate to parenthood recognition will continue and further increase in the reference period of 2022 to 2032. In line with the population projections by Eurostat, the EU-26 population is estimated to slightly increase

by 2032[251]. The mobility of families in the EU is expected to return to 5% as in the 2007-2015 period before Brexit and the COVID-19 pandemic[252]. It is thus estimated that there will be about **1 936 558 mobile couples with children in EU-26 in 2032**, representing a 57% increase as compared to 2020. Using the current child birth rates, this would translate into **3 106 979 children of the mobile couples in EU-26 by 2032**.

Some of the parameters affecting the number of these families that would face, in the absence of a legislative action, the parenthood recognition problems are:

- a greater diversity of families and a growing divergence of national family laws;
- future advances of reproductive technology and ART*; and
- a growing mean age when individuals tend to have children[253], higher infertility rates[254] and corresponding developments.

Given the above unknown variables, the number of persons affected by the parenthood recognition problems by 2032 cannot be credibly quantified. Predictions nevertheless reveal that the number is about to increase.

3. Costs/Cost savings related to the recognition of parenthood

This section presents the methodology for the assessment of the costs/cost savings for families and public authorities under the *status quo* and all policy options. It focuses primarily on "***costs for recognition procedures***" (*i.e.* costs borne by cross-border families for the recognition of parenthood or costs borne by public authorities of Member States for these procedures). It also considers *hassle costs* borne by families and *direct compliance and enforcement costs* resulting from the policy options[255].

Figure 13: Costs related to the recognition of parenthood and costs of policy options

	Nature of the costs	Borne by
Costs for recognition procedures	Direct costs related to administrative and court procedures for the recognition of parenthood, incurred under the baseline and all policy options, by: - cross-border families (e.g. translation costs, administrative and court fees for recognition procedures, fees for evidence and DNA tests, costs for legal representation etc.); - Member States' public authorities (e.g. staff-related costs, costs for translations and interpreters etc.).	cross-border families and public authorities
Hassle costs	Costs resulting from delays, unnecessary waiting times etc.	cross-border families

[251] Eurostat, EUROPOP2019 - Population projections at national level (2019-2100), Population on 1st January by age, sex and type of projection. The EU-26 population is thus expected to be about 44.3 mil. persons by 2032.
[252] The pandemic has temporarily affected the mobility of EU citizens but the level of mobility as well as its increasing trend is expected to return. Eurostat (2021). *EU citizens living in another Member State - statistical overview*.
[253] Eurostat (2021). *Women in the EU are having their first child later*.
[254] As to the growing infertility rates, see: Hague Conference on Private International Law (2012). *A Preliminary Report on the Issues Arising from International Surrogacy Arrangements*, p. 6.
[255] Better Regulation Guidelines, Tool #56.

Compliance costs	Direct costs related to a possible EU intervention. These costs include in particular adjustment costs, *i.e.* investments and expenses that public authorities have to bear to adjust their activity to the provisions included in the EU policy intervention (in particular training costs for public administrations and lawyers, digitalisation of the procedures).	public authorities only
Enforcement costs	Costs associated with activities linked to the implementation of the Parenthood initiative (such as monitoring and judicial cooperation).	public authorities only

Monetary results are expressed in current prices.

20.1 Baseline costs

*Costs for recognition procedures** borne by cross-border families and by administrative and judicial authorities were quantified using a tailored Standard Cost Model approach[256]. The analysis identified the key steps undertaken for the recognition of parenthood under the different scenarios and the related costs currently borne by cross-border families (including fees, legal representation costs, translation costs and other costs) and by public authorities (including staff costs). The average fees imposed by Member States for the administrative and court procedures were quantified using data on the current fees (presented in Annex 6).

It should be noted that the calculation of costs works with proxies and significantly simplifies the reality to be able to quantify the costs for families and public authorities. As Member States have different procedures for the recognition of parenthood and the situation of each cross-border family is individual, the figures below should be taken with caution.

In addition to *costs for recognition procedures**, both public authorities and cross-border families also currently face *hassle costs* resulting from delays and time needed to complete recognition procedures. These will not be monetised.

Costs for cross-border families

The *costs for recognition procedures* were estimated based on the number of children in cross-border families (1 981 735 children) for **two scenarios**:

- **(1)** non-problematic cases where there is no refusal of the recognition of parenthood (1 938 735[257] children of mobile families, *scenario 1*);
- **(2)** problematic cases where the recognition of parenthood is refused (43 000[258] children of mobile families*, scenario 2*).

[256] Better Regulation Guidelines, Tool #57.
[257] 1 939 856 children of mobile opposite-gender parents in EU-26 without 0.05% to 0.1% of children of mobile opposite-gender parents affected by the problems with the recognition of parenthood.
[258] 41 879 children of mobile rainbow families plus children of mobile opposite-gender parents affected by the problem with the recognition of parenthood (0.05% – 0.1% from 1 939 856 children).

While the **second scenario** (families affected by parenthood recognition problems) **is important for this impact assessment report, the first scenario** (families not affected by parenthood recognition problems) **serves as a reference point.**

Arguably, not all families would in practice apply for a formal recognition of parenthood. However, all cross-border families may in principle need to have their parenthood formally recognised abroad at some point, they were thus all included in the calculation below.

In the case of quantification of costs for recognition procedures borne by cross-border families, the quantification and monetisation of costs followed the following formula:

*Total costs for cross-border families = (Fees + Other costs, incl. translation costs and costs for evidence + costs for transposition and notarisation + costs for legal representation) * Number of cases processed*

The quantification of costs and the percentage of cases where they are applicable presented below is based on the Study by an external contractor* and validated with the help of the contractor's Country reports*, consultations and research. For administrative and court fees applicable to recognition procedures in various Member States, see Annex 6.

In scenario 1, the cross-border families have the following costs for recognition procedures at the administrative stage:

- Administrative fees between EUR 20 and EUR 50 per case (lower bound and upper bound respectively*), applicable in 50% of the cases[259];
- Other administrative costs, such as translation of documents, postal costs, further supporting documentation, etc., quantified between EUR 150 and EUR 250 per case (lower bound and upper bound respectively*), applicable in 100% of cases;
- Transposition and notarisation of documents from the Member State of origin, quantified between EUR 300 and EUR 500 per case (lower bound and upper bound respectively*), applicable in 40% of cases[260];

In scenario 2, the cross-border families would have both costs for recognition procedures at the administrative stage and, as the recognition of parenthood is refused and the family challenges that decision in court, also costs at the judicial stage. In scenario 2, the families would have the following costs for recognition procedures at the **administrative stage**:

- Administrative fee between EUR 20 and EUR 50 per case (lower bound and upper bound respectively*), applicable in 50% of the cases[261];
- Other administrative costs, such as translation of documents, postal costs, further supporting documentation, etc., quantified between EUR 150 and EUR 250 (lower bound and upper bound respectively*), applicable in 100% of cases;

[259] See Annex 6.
[260] Based on the information collected by the external contractor via a survey to civil registries, it is estimated that about 40% of administrative procedures for the recognition of parenthood require further documentation and/or transposition of foreign documents.
[261] See Annex 6.

- Transposition and notarisation of documents from the Member State of origin, quantified between EUR 300 and EUR 500 per case (lower bound and upper bound respectively*), applicable in 40% of cases;

- Legal representation, costs quantified between EUR 500 and EUR 1 000 per case (lower bound and upper bound respectively*), applicable in 60% of cases.

They would also have the following costs for recognition procedures at the **judicial stage** (80%)[262]:

- Court fees, estimated between EUR 200 and EUR 250 per case (lower bound and upper bound respectively*), applicable in 100% of the cases[263];

- Other costs, including translations (quantified between EUR 500 and EUR 1 000 per case) and proofs such as DNA tests (quantified between EUR 400 and EUR 750 per case), applicable in 80% of cases);

- Legal representation, between EUR 2 000 and EUR 8 000 per case (lower bound and upper bound respectively*), applicable in 100% of cases.

Once court proceedings are concluded, a court judgment may in most cases be further reported in civil and population registers, requiring additional, albeit simple, administrative procedure.

Overall, the estimates indicate that domestic litigation from the first to the third instance can vary between EUR 5 000 and EUR 10 000 per case in legal fees and representation, to which translation expenses must be added. As a general consideration, the **major costs** for families **lie with legal representation**, which is necessary in complicated cases. Most other reported costs (e.g., translation costs, postal costs, court fees, notarisation) are rather low. Where a preliminary question is referred to the CJEU or the case taken to ECtHR, it costs additional EUR 4 000 to EUR 8 000. These expenses are however not counted as they affect a minority of families.

Based on the methodology above, it was calculated that the overall costs for recognition procedures for all cross-border families (with 1 981 735 children) are EUR 668 233 800 to EUR 1 299 084 125 (lower and upper bound*), on average EUR 337 to EUR 656 per case (lower and upper bound*). Notably, the average costs for recognition procedures for cross-border families experiencing problems with the recognition of parenthood (scenario 2[264]) are almost **16 times higher than in non-problematic cases** (scenario 1[265]). This difference **amounts to 5 478 EUR per case on average**.

In addition, the *hassle costs** borne by cross-border families for going through the administrative and court procedures (red tape, unnecessary waiting time) and costs for travel and productivity loss need to be considered. As regards **time needed for the parenthood recognition**, there is a very large variance in the length of proceedings. The vast majority of administrative procedures (about 80%) is concluded within 6 months –

[262] **No all cross-border families bring their case to a court, given the costs and impact on the emotional wellbeing of the family. Therefore, an 80% proxy was used.**
[263] See Annex 6.
[264] Between EUR 2 916 and EUR 8 795 per case.
[265] Between EUR 280 and EUR 475 per case.

this relating to the scenario 1 where families do not experience parenthood recognition problems. On the other hand, especially where court proceedings are brought, the time needed to conclude the case may grow radically. The length of court proceedings ranges from a few months (2-4 months) in the easiest cases up to 1-3 years, with outliers up to 5 years. Such variance in the length of the proceedings depends on many factors, including the complexity of the proceedings, the costs and functioning on the legal system in each Member State, the likelihood to appeal the court decision etc. The results of the OPC, even though not representative, illustrate well this variance in the length of the proceedings:

- As regards the administrative proceedings, 13% of the OPC respondents who provided estimates of the length of recognition procedures before administrative authorities indicated that the estimated length of recognition procedures was less than 6 months, 28% respondents indicated 6 to 12 months, 54% respondents indicated 12 to 24 months and 6% more than 24 months.

- As regards the court proceedings, 22% of these respondents reported an estimated length of recognition procedures before courts of less than one year, 33% reported one to two years and 45% reported more than two years.

Costs for public authorities

Under the baseline scenario, the public authorities incur costs for **time needed** to carry out the administrative procedures and/or carry out the court proceedings for the recognition of parenthood under the different scenarios and the **related staff costs and other costs** (e.g. translations and interpreters).

These costs for recognition procedures are borne both by administrative authorities and judiciary. As above, in the absence of data as to the number of cases where a formal recognition of parenthood is needed in another Member State, a proxy was used that all cross-border families with children may need to have parenthood of their children recognised abroad at some point.

The quantification of *costs for recognition procedures* borne by administrative authorities and judiciary includes an estimation of the number of days (FTE) necessary to process a case of recognition of parenthood and is monetised using labour costs estimated as described below.

Box 4 : **Labour costs - estimate**

The labour costs were estimated using the average estimated salary costs of relevant staff across EU-26. Blended EU daily labour costs were then derived from:

- Average remuneration of civil servants in public administrations in the EU-26, provided by Eurostat[266];
- Applying an assumption of 20 working days per month;
- Applying an uplift of 100% to cover non-salary employer costs (pensions, benefits) and overheads[267].

[266] Eurostat, *Remuneration of civil servants – key indicators (Art. 65), Average remuneration of national civil servants in central public administration.*

Daily labour cost are thus: relevant staff monthly salary/20 x 2 = **EUR 216/day**.

As the **labour costs for judges and court staff** are higher than those of administrative authorities, a **25% top-up** was added to the FTE days for courts, *i.e.* **EUR 270/day.**

The quantification of costs for public authorities (both in the baseline and in each PO) followed the following formula:

*Total costs for public authorities = Number of days per FTE * number of FTEs * daily wages * Number of cases processed*

While data about the total length of recognition procedures is available from the consultation activities, the length certainly does not reflect the time actually worked on each of the cases by public authorities. Should that be the case, the costs for public authorities to process a single request for the recognition of parenthood would be extremely high (the procedure before administrative authorities takes on average several months and court proceedings take even longer). In the absence of granular data about the working days spent by public authorities on each case, the number of days (Full-Time Equivalent, or FTE) had to be estimated.

As to the administrative proceedings, it was quantified that administrative authorities need on average **one FTE day** to process non-problematic cases (**scenario 1**) and **4 to 8 FTE days** to process cases under **scenario 2** where the recognition of parenthood is initially refused. Administrative fees were treated as transfers.

As to the *costs for recognition procedures* for the judiciary, it was estimated that court proceedings are more complex and take on average **15 to 20 FTE** days to conclude. It is also considered that the court decisions, once finalised, are usually reported back to the civil registries, with **additional one FTE day for** administrative authorities.

As a result, the following baseline costs for public authorities were calculated: The average costs per case is between **EUR 304 and EUR 346** per case, this including both unproblematic and problematic cases (scenario 1 and 2) and the overall costs borne for these cases by administrative and judicial authorities of EU-26 Member States are **EUR 602 669 160** to **EUR 686 261 160.**

Nevertheless, the costs for recognition procedures borne by public authorities differ significantly, depending on whether the cases are problematic or not. In non-problematic cases, the average costs per case was calculated, based on the above methodology, at EUR 216. In comparison, in problematic cases involving non-recognition of parenthood,

[267] The uplift factor is not specified in Better Regulation Guidance (no guidance on unit time cost build-up, allowing for overheads, is provided) but has been accepted when used by the external contractor in previous impact assessment support studies.

the calculated costs vary between EUR 4 277 and EUR 6 221 per case on average, representing **24 times higher demand on public resources**.

20.2 Costs of policy options

The different policy options would affect the current costs linked to the problem of non-recognition of parenthood and possibly generate minor new costs.

The quantification of the costs for each of the POs followed the same basic principles described above. Regarding *costs for recognition procedures* and *hassle costs*, the assessment includes the cost savings brought about by the simplification effect that the POs would have on the current procedures for the recognition of parenthood abroad.

In addition, it will also be assessed what compliance costs the policy options would generate when implemented, including *adjustment costs and enforcement costs* for public authorities. No compliance costs are expected for cross-border families or any other private parties.

20.2.1 Costs of the policy option 1 (discarded option)

Given the several uncertainty elements characterising this PO (e.g. the voluntary nature of the measure and the share of cross-border families residing in the participating Member States), the costs of the policy option 1 could not calculated.

20.2.2 Costs of the policy option 2

PO2 envisages the adoption of a legislative measure on the recognition in other Member States of both court decisions and authentic instruments on parenthood. The PO2 would introduce a simplification and partial harmonisation of the PIL rules used in the administrative and judicial procedures dealing with parenthood recognition. By this overall simplification of the legal framework, the PO2 would reduce costs, length and administrative burden of recognition of parenthood procedures both for national authorities and for most cross-border families.

- *PO2: Costs reduction for cross-border families*

The simplification effects will have a particularly positive impact on the families currently experiencing the non-recognition of parenthood (scenario 2) but would also be **relevant for all other cross-border families** (scenario 1). Therefore, **for scenario 1**, a conservative **5% reduction** in *costs for recognition procedures* was applied to reflect the effect of the overall simplification of the administrative procedures for the cross-border recognition of parenthood. This limited 5% reduction was drawn from the fact that the Regulation would provide a uniform standard, available in all EU official languages, for the recognition of parenthood throughout the EU and would thus slightly reduce the need to invest time and resources in getting familiar with specific national rules on the recognition of parenthood and the legal uncertainty as to their content.

For scenario 2, it is expected that the costs reduction for cross-border families would be generated both at the level of administrative procedures and court procedures. At the level of **administrative procedures,** there would be lesser need for legal support to navigate the recognition process and potentially fewer documents would have to be produced. Administrative fees (when applied) and translation costs are expected to remain unchanged. The following parameters were changed:

- Transposition and notarisation of documents from the Member State of origin, quantified between EUR 300 and EUR 500 (lower bound and upper bound respectively*), applicable in 10% of cases (compared to 40% in the baseline scenario).

- Legal representation, costs quantified between EUR 500 and EUR 1 000 (lower and upper bound respectively*), applicable in 10% of cases (compared to 60% in the baseline scenario).

Concerning the costs for **court proceedings** in scenario 2, it was considered that the PO2 would reduce the instances of the non-recognition of parenthood and would thus lower the need to recourse to litigation to have parenthood recognised abroad. The share of court proceedings would thus be lower (quantified at 15% compared to 80% in the baseline scenario). In addition, where court proceeding would take place, the following parameters would change as compared to the baseline scenario:

- Lower additional expenses for cross-border families (between EUR 500 and EUR 1 000 per case, applicable to 80% of cases);

- Lower legal representation costs, due to simpler procedures and a lower share of parenthood cases requiring an appeal:

    - between EUR 2 000 and EUR 5 000 per case (lower bound and upper bound respectively*), applicable in 100% of cases.

Based on the methodology above, it was calculated that the average costs for recognition procedures borne by families for the recognition of parenthood would be on average between EUR 275 to EUR 470. In cases where families currently experience problems with the recognition of parenthood **(scenario 2), the costs for recognition procedures would decrease approximately six times** to EUR 630 and EUR 1 333 per case (lower and upper bound*) on average.

The PO2 would also slightly facilitate the recognition of parenthood for the cross-border families in scenario 1, resulting in 5% saving and thus average costs for recognition procedures between EUR 266 and EUR 451 per case. Notably, the difference between costs for recognition procedures in scenario 1 and 2 would thus be much smaller than under the baseline.

The *hassle costs** and **time needed to achieve parenthood recognition would decrease under PO2**, as the Parenthood regulation, by introducing uniform EU rules on the recognition of parenthood between Member States, would reduce the length and administrative burden. This simplification of the parenthood recognition procedures and the reduction of their length would be particularly felt by all families affected by the parenthood recognition problems (and by public authorities).

- *PO2: Costs reductions for public authorities*

It was considered that the simpler and clearer legislative framework for the recognition of parenthood introduced by this PO would impact positively the time and effort necessary for processing the requests for the recognition of parenthood. Indeed, 56% (or 204 responses out of 367) of OPC respondents anticipated a very positive impact of a future Parenthood regulation on improving the legal certainty for public authorities and a further 9% (or 34) indicated a mildly positive impact.

As to the administrative proceedings, it would take on average **one FTE day** to process non-problematic cases (**scenario 1**) and **3 to 4 FTE days** (as compared to 4 to 8 under the baseline) to process cases under **scenario 2** where the recognition of parenthood is initially refused. The share of requests for recognition of parenthood requiring court decisions would be lower under the PO2 (quantified overall at 15 % compared to 80% in the baseline scenario). As to the costs for the judiciary, it was estimated that it would take on average **10 to 15 FTE** days to conclude a case. The additional one FTE day for the final registration of the court decision by the administrative authorities would be also relevant here.

Consequently, the average costs for recognition procedures borne by public authorities for a case under PO2 would be between **EUR 235** and **EUR 244** per case, this including both unproblematic and problematic cases (scenario 1 and 2). The overall costs for recognition procedures borne by administrative and judicial authorities of EU-26 Member States would be from EUR 465 438 960 to EUR 483 434 460. This represents **average costs reductions of EUR 170 028 450**, *i.e.* **26% costs reductions as compared to the baseline.**

- *PO2: Compliance costs related to the Parenthood regulation*

There would be limited *compliance costs* related to the introduction of the Parenthood regulation. They would affect only public authorities as **no compliance costs are expected for cross-border families**.

The compliance costs borne by public authorities would consist of *one-off and recurrent adjustment costs.*

  - *One-off adjustment costs*

First, as regards the former, financial costs for Member States could arise for the **introduction of the new rules** concerning applicable law and jurisdiction in matters concerning parenthood with cross-border implications. The Parenthood regulation would not require Member States to create any new public authorities or bodies. It would also not oblige them to change the functioning of their public registers, internal procedures, or the forms of national certificates of parenthood they currently issue. Moreover, costs may also be needed for the **familiarization with the new legal framework and trainings** for judges and civil registrars. It is reasonable to assume that these compliance costs would be comparable to those for other EU's PIL regulations.

Information campaigns at both EU a national level to inform the general public, families and legal professionals about the existence of the Regulation and the rules contained therein could be envisaged but, given the technical nature of the Regulation, they would most likely be limited in their scale and thus not particularly costly. Legal professionals regularly need to absorb and learn the consequences of new laws, so the costs related to the familiarization with the new legal framework would be limited and one-off as the Regulation and related practice would rapidly become the norm.

Additional adjustment costs can be expected for **digitalisation**. In line with the "digital by default" principle and the EU's policies for the digitalisation of justice, the Regulation would provide for specific provisions on digitalisation of those procedures that are introduced by the Parenthood regulation and would include the possibility of digital

communication between individuals and Member States' authorities. As a result, individuals would be able (but not obliged) to communicate through electronic means with national authorities competent to establish or recognise parenthood under the Regulation. In contrast, as the Regulation would not include specific provisions on the communication between national competent authorities of different Member States, it would also not include an obligation that any such communication should be through digital means.

The proposal for a regulation on the digitalisation of judicial cooperation ('digitalisation proposal')[268] already envisages the creation of a decentralised IT system and of an European electronic access point that aims to effectively digitalise procedures in various areas of cross-border judicial cooperation in civil and family matters[269]. This IT infrastructure developed for other legal acts in civil matters could be readily expanded to include also the Parenthood regulation. In particular, the existing reference implementation software[270] developed by the Commission for the use by Member States and used for other legislations could be adapted for the purposes of the Parenthood regulation and (some) authorities already connected to the decentralised IT system could also deal with matters related to the Parenthood regulation. Whether any other new authorities would have to be additionally connected to the decentralised IT system (including the European access point) would depend on Member States, as the Parenthood regulation would leave it to them to decide, in line with their internal organisation. The costs for these possible new IT deployments were however assessed as one-off and moderate[271], in particular given the cost savings arising from possible economies of scale as elaborate above. In any case, these costs would be a fraction of the overall costs for setting up the whole decentralised IT system under the digitalisation proposal[272].

- *Recurrent costs*

In addition to one-off adjustment costs, minor *recurrent costs* could be expected as a result of the Parenthood regulation. These would include the costs for regular training of national authorities' staff concerning the Regulation and negligible enforcement costs* associated with activities such as monitoring of the application of the Regulation and judicial cooperation could also be expected.

Furthermore, each Member State would have to bear the costs for the operation and maintenance of its access points that enable digital communication. These costs would

[268] See the Commission's proposal for a regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, COM (2021) 759.
[269] Including in matters of parental responsibility under the Brussels IIb Regulation or in succession and maintenance matters under the Succession and Maintenance Regulations respectively.
[270] An user interface software developed by the European Commission to be used by each Member State for communication with the public as regards the matters related to the Parenthood regulation. Reference implementation system could be used by each Member State as an alternative to the national back-end systems that may already exist in some Member States.
[271] See Commission Staff Working Document Impact Assessment Report accompanying the *digitalisation proposal**. SWD/2021/392 final.
[272] As assessed in the Impact assessment accompanying the digitalisation proposal, SWD(2021) 392 final, Annex 7 and Table 13, p. 151. If it was not for the uncertainties related to the extent to which solutions existing under the digitalisation proposal could be used for the Parenthood regulation, the methodology of that impact assessment could be used to produce an estimate of the costs for digitalising the procedures under the Parenthood regulation.

however be shared with other legislations operating under the same decentralised IT system and is thus not expected to be significant.

Overall, **all the costs that the public authorities would have to bear as a result of the Regulation are not expected to be significant**, especially in the long-term[273].

20.2.3 Costs of the policy option 3

The PO3 would introduce a European Certificate of Parenthood (ECP) to the provisions already included in the PO2. As the ECP would have a direct access to the population registers, in most cases it would do away with the need to produce translations and/or additional documents recording parenthood or other evidence of parenthood. The procedural efficiency generated by this PO would further simplify the procedures for the recognition of parenthood, so that legal support would only rarely be needed.

The magnitude of such benefits would depend on the share of cross-border families that would request the ECP, which would remain a voluntary instrument. While the consultations suggest a high demand for an ECP among cross-border families (close to 100% of the cases), a rather conservative estimate was applied, *i.e.* that 70% of cross-border families would request an ECP.

Therefore, under the PO3, it was considered that **70% of cross-border would request the ECP. For the remaining 30% of cross-border families, the same parameters as under PO2 apply**.

- *PO3: Costs reduction for cross-border families*

Where the ECP is issued and used, further costs reductions are expected for **all cross-border families** as compared to PO2. Therefore, the following parameters were changed regarding administrative proceedings to calculate costs for recognition procedures (the remaining parameters described for the baseline costs remain unchanged):

- Legal representation, costs quantified between EUR 500 and EUR 1 000 per case (lower bound and upper bound respectively*), applicable in 5% of cases in scenario 2 (compared to 60% in the baseline for scenario 2).
- No costs for translation nor for transposition and notarisation of documents from another Member State.

Concerning the families' costs for recognition procedures for court proceedings, the following parameters were changed compared to the baseline scenario:

- Lower share of requests for the recognition of parenthood requiring court decisions in scenario 2 (quantified at 10% compared to 80% in the baseline scenario).

[273] For instance, if the same methodology was used to estimate the compliance costs as in previous impact assessment on the Succession Regulation (COM(2009)154 final), these costs would be less than 0.5% of the current costs for recognition procedures, *i.e.* less than EUR 3 mil. This figure should however be taken cautiously.

- Lower fees for legal representation, due to simpler procedures and a lower share of parenthood cases rejected by the second Member State and thus requiring an appeal:

    - between EUR 1 200 and EUR 3 800 per case (lower bound and upper bound respectively*) applicable in 100% of cases.

Even if the assumption is applied that only 70% of all cross-border families would get an ECP, the overall *costs for recognition procedures* under the PO3 **are significantly reduced** as compared to PO2 and especially as compared to the baseline:

- Under the PO3, the cross-border families **in scenario 1** would spend on average EUR 94 to EUR 170 per case for the recognition of parenthood (as compared to EUR 280 to EUR 475 per case under the baseline scenario). **This means that their costs for recognition procedures would be reduced approximately 3 times as compared to the baseline.**
- Most notably, under the PO3, the cross-border families in scenario 2 currently experiencing problems with the recognition of their parenthood in another Member State would experience drastic cost savings as compared to the baseline. Under scenario 2, the cross-border families would spend on average EUR 347 to EUR 809 per case (lower and upper bound respectively*) for the cross-border recognition of parenthood. **This means that their costs for recognition procedures would be reduced approximately 10 times as compared to the baseline (by 90%).**
- Overall, under PO3, cross-border families would spend on average EUR 100 to EUR 184 per case (lower and upper bound*) on a case of parenthood recognition. This represents **72% reduction in costs for recognition procedures as compared to the baseline**.

It is possible that public authorities will apply fees for issuing the ECP which would then somewhat reduce the costs savings. However, as the Regulation would not include an obligation on Member States in this regard, no quantification of these fees is made. In any case, given the large reduction of costs that the ECP would generate, the impact of ECP-related fees on cross-border is expected to be minor.

The *hassle costs** and **time needed to achieve parenthood recognition would decrease even further under PO3** as compared to PO2, since the ECP would significantly automatize the whole process of parenthood recognition. In some cases, formal recognition of parenthood may not even be needed, because the ECP could be used abroad directly, as evidence of parenthood. While the changes introduced by PO2 would make the most notable positive difference to the situation of families currently affected by the parenthood recognition problems, PO3 would significantly streamline and shorten the parenthood recognition process for all families.

- *PO3: Costs reductions for public authorities*

It was considered that 70% of cross-border families would apply for an ECP and 30% would not. Overall, for both cases, it would take on average **half FTE day** to process non-problematic cases (**scenario 1**) and **1 to 2 FTE days** (as compared to 4 to 8 under the baseline) to process cases under **scenario 2** where the recognition of parenthood is initially refused. The share of requests for the recognition of parenthood requiring court decisions would be even lower than under the PO2 (quantified overall at 10 % compared to 80% under the baseline and 15% under PO2). As for the costs for the judiciary, it was estimated that it would take on average **7 to 12 FTE** days to conclude a case. The additional one FTE

day for the final registration of the court decision by the administrative authorities would be also relevant here.

Consequently, the average costs for recognition procedures borne by public authorities for a case under PO3 would be between **EUR 149** and **EUR 154** per case (lower and upper bound*), this including both unproblematic and problematic cases (scenario 1 and 2). The overall costs for recognition procedures borne by administrative and judicial authorities of EU-26 Member States would be from EUR 295 789 914 to EUR 305 252 064. This represents **average costs reductions of EUR 343 944 171**, *i.e.* **53% costs reductions as compared to the baseline.**

- *PO3: Compliance costs for the implementation of the ECP*

As compared to PO2, the introduction of the ECP would generate **additional costs for public authorities**. There would be **no additional costs for cross-border families** (However, Member States would not be prevented by the Regulation from introducing a fee for the issuance of ECP). It would be for each Member State to determine in its internal legislation which authorities are to have competence to issue the ECP, whether they be administrative authorities, courts or other authorities.

There would be no need for changes to the national systems as the ECP would not replace national certificates of parenthood. In addition, the ECP would be significantly shorter and user friendlier than the European Certificate of Succession. As is the case for other EU civil-law legislation, the forms related to the Parenthood regulation, such as the ECP form, would be available at **the e-Justice Portal**.

As for the adjustments needed to ensure that families can **communicate with national authorities of Member States digitally** in matters related to the application of the Parenthood regulation, the costs will be comparable to PO2.

The introduction of the ECP under the PO3 may require **training for the administrative and judicial authorities** and the full realisation of the ECP's benefits may also require some accompanying measures such as **information campaigns** at the national level and EU level. These are however expected to be low and could be covered by the same information and training streams as the ones already considered under PO2.

Overall, all these costs will be compensated by the reductions of *costs for recognition procedures* borne by public authorities.

4. Costs reduction estimates under the 'One in, one out' approach

In line with the Better Regulation Toolbox[274], it needs to be considered whether the preferred policy option would have significant cost implications for businesses and citizens (the "one in, one out" or "OIOO" approach). The costs considered under OIOO are 'adjustment costs'[275] and 'administrative costs'[276].

[274] Tool #59, Better Regulation Toolbox (November 2021).
[275] **Adjustment costs** refer costs relating to adjusting to the substantive legal requirements of proposals. For a detailed definition, see Better Regulation Toolbox (November 2021).

OIOO does not concern cost implications borne by Member States and public authorities[277], only those borne by businesses and citizens. Businesses would not be affected by the Parenthood initiative.

With regard to citizens, the Parenthood initiative would not introduce any new compliance requirements that would affect families in the EU[278] (*i.e.* no adjustment costs for children and their families). The parenthood initiative would also not create any other additional costs for children and their families. On the contrary, the initiative would mitigate the costs currently borne by them (see the estimation of *costs for recognition procedures* and *hassle cos*ts in the section above). Not all these costs reductions qualify as costs savings under the OIOO approach.

To estimate the families' savings that do qualify as costs savings under the OIOO approach ("*OIOO costs savings**"), only the following costs were used:

- Other administrative costs, such as for translation of documents, postal costs, further supporting documentation, evidence (such as DNA tests), etc.
- Costs for transposition and notarization of documents from the Member State of origin.

To quantify the costs relevant for OIOO, the same methodology as described above for the quantification of the *costs for recognition procedure** was used; however, administrative fees, court fees and costs of legal representation were left out of the calculation. The overall *OIOO costs savings* were calculated as the difference between OIOO costs under the baseline scenario and those under the policy option 3.

---

[276] **Administrative costs** are costs that result from administrative activities performed to comply with administrative obligations included in legal rules. They concern costs for providing information, such as notification of activities, submission of reports, information labelling and certification of products or processes. For a detailed definition, see Better Regulation Toolbox (November 2021).

[277] See Tool #59, Better Regulation Toolbox (November 2021), fn. 850.

[278] No administrative costs or adjustment costs for individuals or businesses. For instance, the Parenthood regulation would not introduce any fees for the provision of ECPs. In addition, the ECP would only be optional in that it would only be issued at a request and would not replace national authentic instruments.

ANNEX 5: POLICY OPTIONS 2A AND 2B

The legislative policy option 2 envisages the adoption of a **regulation on the recognition of parenthood between Member States**.

The parenthood of a child can be established by **a court decision** or **an authentic instrument** and can be proved by an authentic instrument[279].[280] A family may in principle use either a court decision or an authentic instrument to seek recognition of parenthood in another Member State.

Therefore, to determine **the scope of the Parenthood regulation**, it should be decided whether the legislative policy option should cover:

- only court decisions **(Policy Option 2a),** or
- both court decisions and authentic instruments **(Policy Option 2b)**.

The Experts' Group working on the *HCCH Parentage / Surrogacy Project** considered that the scope of a possible international HCCH instrument on the recognition of legal parentage should be determined bearing in mind the differences in the legal systems of the various States as to the recognition of court decisions and other public documents, and that this distinction might influence the feasibility of such an instrument[281]. Experts agreed that the HCCH instrument should apply to court decisions on legal parentage and that the recognition of legal parentage recorded in a foreign public document should be further discussed[282].

Background on the rationale of the sub-options

Under the national law of the Member States, parenthood may be established, *inter alia,* by a court decision. However, this happens rarely[283]. Parenthood is usually established by operation of law (for example, by birth and by a presumption of parenthood of the spouse

---

[279] In the context of the recognition of parenthood, authentic instruments can be administrative documents (for example, a birth certificate or an administrative decision establishing parenthood following an acknowledgment of paternity), and notarial acts (for instance, a notarial act of adoption or an acknowledgment of paternity).

[280] Other methods of the establishment of parenthood may exist in the national law of MS (such as extra-judicial agreements on parenthood); however, since these are of low practical relevance, they will not be specifically addressed in the context of this impact assessment.

[281] See for instance HCCH Permanent Bureau, Preliminary Document No 2B of February 2019, Report of the Experts' Group on the Parentage / Surrogacy Project (meeting of 29 January – 1 February 2019), para. 31 that states: "*The possibility remains open at this stage of making further provisions in relation to legal parentage when there is no judicial decision. The feasibility of providing for such matters should be the subject of further discussion.*"

[282] HCCH Permanent Bureau, Preliminary Document No 2 November 2019. Report of the Experts' Group on the Parentage / Surrogacy Project (meeting from 29 October to 1 November 2019), p.3.

[283] Parenthood of a child may be established by a court decision for instance in cases of domestic adoption or where parenthood has been disputed.

or partner of the mother). Therefore, only a small number of children have a court decision establishing their parenthood. In contrast, almost all children have a birth certificate or a similar authentic instrument issued by a competent authority. Even where parenthood is established by court decision, a birth certificate is usually issued for a child thereafter.

Consequently, 99% of children and their families seek the recognition of parenthood on the basis of an authentic instrument, typically a birth certificate, rather than a court decision[284]. Therefore, the practical importance of including the recognition of authentic instruments in any instrument on the recognition of parenthood is high.

The recognition of parenthood established abroad is mostly entrusted to the administrative authorities of Member States (for example, civil registries); however, in some Member States, recognition procedures are vested with courts[285]. Where parenthood is recognised in a Member State, whether on the basis of a court decision or an authentic instrument, some Member States register the information about the status of the child in their national population or civil registers. Some Member States issue a new birth certificate, that is, they transcribe the foreign document into a domestic one[286], in particular where the parenthood of a national of that Member State is concerned. It may thus happen that children have birth certificates from various countries (for instance from the country where they were born and from the country of their nationality).

- **Court decisions on parenthood and their recognition**

Many EU instruments in the area of civil justice deal with the recognition of judgments. Court decisions usually establish parenthood[287]. In contrast, authentic instruments sometimes establish parenthood (for example, a notarial deed of adoption) and sometimes only provide evidence of the parenthood established by other means (for example, by operation of law). Court decisions and authentic instruments that establish parenthood typically involve a thorough assessment of the legal and factual situation at hand, are based on evidence[288] and are issued after having heard all relevant parties.

- **Authentic instruments on parenthood and their recognition**

In line with the definition of authentic instrument in existing EU instruments, an authentic instrument in the area of parenthood is a document on parenthood formally drawn up or registered as an authentic instrument in any Member State and the authenticity of which:

(a) relates to the signature and the content of the instrument; and
(b) has been established by a public authority or other authority empowered for that purpose.

---

[284] Based on the results of the consultations of civil registrars undertaken in the context of this impact assessment.
[285] The competent authority may also depend on whether the parenthood is recorded in a foreign authentic instrument or in a foreign court decision.
[286] Such transcription was at the core of the *V.M.A.* and *K.S.* cases before the CJEU.
[287] This may or may not mean that the decision is final and can(not) be changed if new facts appear, depending on the national law applied by the court.
[288] For instance, the judicial determination of parenthood is usually based on oral or documentary evidence or medical evidence, including blood and genetic (DNA) testing.

There are two main types of documents on parenthood that can qualify as authentic instruments: administrative documents (such as a birth certificate, an administrative document recording an acknowledgement of paternity or an administrative decision establishing parenthood) and notarial acts (such as a notarial deed of adoption or a notarial act recording an acknowledgement of paternity). Authentic instruments are often issued by administrative authorities (such as civil registrars) or notaries of the Member States.

Depending on the national law of the issuing Member State, authentic instruments on parenthood may have, in the Member State in which they are drawn up, constitutive effects or only evidentiary effects. Authentic instruments on parenthood have *constitutive effects* if they establish parenthood. This may be the case for example of a notarial deed on adoption. Sometimes authentic instruments on parenthood do not have constitutive effects but have only *evidentiary effects*[289], that is, they provide evidence of the parenthood established through other means (for example, by operation of law or by court decision). The most characteristic example of such authentic instruments would be a birth certificate, which typically provides evidence of the factual circumstances of the birth of a child.

Whether a document on parenthood has constitutive effects or only evidentiary effects is not relevant for the purposes of the definition of authentic instrument. It is, however, relevant as regards the recognition of the effects of the authentic instrument.

The practice of Member States as regards the effects to be given to an authentic instrument issued in another Member State varies. Some Member States apply a public policy test to decide whether they can accept the effects of the foreign authentic instrument; other Member States also check the competence of the issuing authority under the law of the country of issuance or under their own law; other Member States apply also an applicable law test, that is, they check whether the parenthood of the child as recorded in the foreign authentic instrument would be the same as the parenthood resulting from the application of the law designated as applicable by their own applicable law rules; finally, some Member States apply their own law (*lex fori*) to determine parenthood anew and they rely on the foreign birth certificate only as evidence of the facts recorded therein.

The choice of the preferred sub-option

There are several compelling reasons for including authentic instruments in the scope of the Regulation.

- Most importantly, only a fraction of children have their parenthood established by a court decision and, even where that is the case, children or their families mostly present an authentic instrument when they seek the recognition of parenthood abroad (typically, a birth certificate containing the information registered in the civil or population register). Thus, should authentic instruments be excluded from the scope of the Regulation, a vast majority of children would not be able to benefit from the uniform EU rules on recognition of parenthood. Given that the objective

[289] The evidentiary effects may also differ in Member States' law.

of the Parenthood initiative is to facilitate the recognition of parenthood and to ensure that children's rights are protected in cross-border situations, it would go against the rationale of the initiative to exclude from the scope the documents that children or their families use in most cases when seeking recognition in another Member State.

- Moreover, should the Regulation cover only court decisions, cross-border families might have the incentive to obtain a court decision on parenthood only to facilitate its recognition in another Member State, which could create a 'rush to court' and thus place an unnecessary burden and unnecessary costs on both cross-border families and national authorities.

- The desirability of including authentic instruments in the scope of the Regulation was confirmed by the Commission's consultation activities[290]. The recognition of authentic instruments on parenthood would be facilitated by the introduction in the Regulation of harmonised applicable law rules.

Based on the above analysis, it can be concluded that the legislative policy option should include not only the recognition of parenthood established in a court decision but also the recognition of parenthood established or proved by an authentic instrument.

It follows that the **preferred sub-option** under the Policy Option 2 should be the sub-option 2b: *Regulation including rules on the recognition of parenthood as established in court decisions and also as established or proved by an authentic instrument* **(Policy Option 2b).**

This conclusion on the scope of the Regulation is also relevant for Policy Option 3 which has the same scope as Option 2 but also includes the ECP.

[290] For instance, the highest percentage of respondents (42%) indicated that in the case the EU should legislate on the cross-border recognition of parenthood, the legislative instrument should include rules on the parenthood recorded in judicial decisions and authentic instruments (birth certificates).

ANNEX 6: FEES FOR RECOGNITION PROCEDURES

The table illustrates the existing **regulatory fees** for the recognition of parenthood before administrative and judicial authorities. These quantifications were used to estimate the current *costs for recognition procedures** in Member States. However, as explained and quantified in Annex 4, on top of the regulatory fees for initiating the recognition procedures, the *costs for recognition procedures* include also other expenses, such as legal representation, translation costs or other costs (such as for DNA tests etc.).

This table was drawn up by an external contractor* in its Study* on the basis of research, consultations and Country reports*. The Commission cannot be held responsible for any incorrect or partially incorrect information contained therein.

Figure 14: Average fees for recognition procedures (prepared by external contractor)*

MS	Avg. fees for recognition procedure before administrative authorities	Avg. fees for recognition procedure before judicial authorities
AT	Free of charge.	In non-contentious proceedings, the basic principle of the 'obligation to reimburse costs' (Kostenersatz) applies, although the law itself provides for exceptions, for various matters.
BE	Free of charge.	165 EUR fee to initiate judicial proceedings.
BG	Free of charge.	A fee of 25 EUR collected for the application for recognition of a judgment or an authentic instrument.
CY	Usually low in uncontested cases as it involves a submission of a written request. Cost dependent on whether the recognition would be requested in conjunction with other procedures.	Uncontested proceedings usually cost 500 - 1 000 EUR. Costs for contested proceedings are dependent on a number of factors.
CZ	N/A (no parenthood recognition procedure before administrative authorities).	Free of charge. In case of proposal for the recognition of foreign decisions in matters of determination of parenthood, CZK 2 000.
DE	Approx. 10 EUR (however there is no formal recognition procedure, and the cost differs between the several German States).	No data available.
EE	10 EUR.	10 EUR for making a family law petition.
EL	Free of charge.	No data available.
ES	No data available.	No data available.
FI	No data available.	No data available.
FR	Free of charge.	No data available.
HR	No data available.	33 EUR (first instance proceeding).
HU	Free of charge.	The rate of duty is 1%, or not less than 5 000 HUF and not more than 350 000 HUF.
IE	No data available.	No data available.
IT	No data available.	No data available.
LT	6-25 EUR.	No data available.
LV	Free of charge.	Fee of 30 EUR.
MT	9.95 EUR for full copy of birth certificate, 2.25 EUR for abridged version.	No data available.
NL	No data available.	No data available.
PL	50 EUR	100 PLN – claim to administrative court for cases concerning civil status and citizenship; similar amount is due with respect to an appeal to Supreme Administrative Court. 300 PLN – proceeding concerning recognition of a foreign judgment as well as filing an appeal and appeal in cassation.
PT	Free of charge if Portuguese citizen, 180 EUR, if not.	Average cost of court fees – 306 EUR per part if the value of the case is 30 000. For forensic examinations, between 204 to 714 EUR per sample obtained from the interested parties. Less expensive if the Public Prosecutor's Office intervenes as the child's representative, as it is exempt from costs.
RO	No data available.	The taxes for initiating court proceedings in this type of matters related to family law would be fairly standard and very affordable (around 12 EUR). Moreover, there is always a possibility to be exempted from paying legal fees in certain conditions according to the law as the state could provide financial help. However, when parenthood is contested in court, given that DNA evidence would need to be provided almost always, the costs will most likely include the DNA evidence costs which are fairly expensive.
SE	No data available.	No data available.
SI	Free of charge.	Following the regulation in the Slovenian Court Fees Act, the fee is 45 EUR.

SK	No data available.	No information.

ANNEX 7: EXAMPLES OF PROBLEMS AND THEIR IMPACT

This annex illustrates (1) examples of some of the problems that EU families may encounter with the recognition of parenthood in another Member State and (2) the impact that the non-recognition of parenthood may have on cross-border families in the EU (based on the feedback received by the Commission to the IIA and in response to the OPC).

1. Examples of the problems with the recognition of parenthood in the EU

The examples that follow show how the different national laws of the Member States on the establishment of parenthood in cross-border situations may lead to problems with the recognition in one Member State of the parenthood established in another Member State.

These examples are not exhaustive. *Further case examples illustrating cross-border problems with the recognition of parenthood were developed e.g. by the HCCH*[291].

- **Example No 1** [292]**: different legal presumptions of parenthood following a divorce**

A woman was married to a man at the time when she conceived a child with another man. The spouses divorced and the woman married the biological father of the child. The woman and her new husband now live together with the child in Member State A, where the child was born in the course of the woman's new marriage.

The national law of some Member States presumes the husband of the woman at the time when the child was conceived to be the father of the child.
In contrast, under the national law of other Member States, after the mother's divorce:

- there is a legal presumption that the mother's new husband is the father of the child, or
- the new husband can recognise the child as his without recourse to a court.

As a result of the differing legal presumptions of paternity in the national laws of the Member States, each national law may attribute the paternity of a child to a different man.

In this case, the authorities of Member State A considered the mother's current husband, who is the biological father of the child, as the father of the child. In the birth certificate issued in Member State A, the child has the last name of the mother's current husband.

---

[291] See the 2016 Background Note for the Meeting of the Experts' Group on the Parentage / Surrogacy Project, Annex 1, including nine further examples of the existing problems with the non-recognition of parenthood.

[292] Example 1 is based on a complaint from a citizen received by the Commission in September 2021. A similar problem is described in the judgment of the German Federal Court of Justice (Bundesgerichtshof) of 20 June 2018 (ECLI:DE:BGH:2018:200618BXIIZB369.17.0).

However, as the child was conceived before the mother was divorced from her previous husband, the authorities of Member State B, which is the mother's country of origin, consider that her former husband is the child's father. The authorities of Member State B did not recognise the birth certificate issued in Member State A and obliged the child to have the family name of the former husband[293]. The mother complained that she does not have the financial means to start court proceedings in Member State B and pay for a DNA paternity test proving the paternity of her current husband.

- **Example No 2 [294]: relationship between the parents as a preliminary question, acknowledgment of parenthood**

A child was born in Member State A to nationals of Member State B and C who were in an opposite-gender registered partnership. Under the law of Member State A, the paternity is based on the presumption that the father of a child is the person with whom the mother was in a registered partnership at the time when the child was born. Under the law of Member State A, in such a case an acknowledgement of the child by its father is not necessary.

However, when the mother applied to the authorities of Member State B for the recognition of parenthood, the recognition was refused because the authorities of Member State B did not recognise the registered partnership between the couple and, as a result, the legal presumption that the father of the child was the registered partner of the mother was not accepted as a basis for the establishment of parenthood[295].

Since the presumption of parenthood was not applicable in Member State B, the acknowledgement of the paternity by the father was necessary to establish his paternity. In the absence of such a previous acknowledgement, the authorities of Member State B refused to recognise the birth certificate and consequently the parenthood of the child.

- **Example No 3 [296]: co-motherhood**

A married couple of two women, both nationals of Member State A, had a child through reciprocal IVF[297] in Member State B, their Member State of residence. In the birth certificate issued by the authorities of Member State B the two women are designated as mothers of the child. However, the birth certificate issued in Member State B did not entitle the child to receiving the nationality of Member State B as none of the child's parents were nationals of that Member State.

The spouses asked the authorities of Member State A, their Member State of nationality, to register the birth of their child and issue documentation for the child. The authorities of Member State A first rejected the mothers' application for documentation and

[293] The CJEU case law concerning surnames is relevant in this situation (see in particular fn. 73).
[294] Example 2 is based on a problem described by a respondent to the OPC in May 2021.
[295] There are no uniform EU rules on the recognition of registered partnerships, each MS thus regulates these rules in their national (PIL) law.
[296] Example 3 is based on a reply of an EU citizen to the Open Public Consultation from June 2021.
[297] A reciprocal in vitro fertilization is a fertility treatment for same-gender couples that allows both partners to have a physiological connection to their baby. In reciprocal IVF, the eggs of one partner are retrieved and inseminated with donor sperm. The resulting embryo(s) would then be transferred to the second partner's uterus to carry the pregnancy and give birth to the baby.

nationality for the child, since the national law of Member State A does not provide for two women to be indicated as parents.

The parents reported that given the refusal of the authorities of Member State A to recognise the parenthood of the child, the child had no identity documents and was temporarily deprived of the nationality of Member State A and consequently left temporarily stateless. The family sought legal representation and, eventually, the authorities of Member State A registered one of the mothers (the birth mother) in their register as the only parent of the child. The family reported that the child's surname[298] was changed in the birth certificate of Member State A by eliminating the surname of the second mother, the child thus having a different identity in different Member States.

The family also reported a fear to travel or move to Member State A or other Member States as their child could be taken away if found with the non-recognised parent. Should the family relocate to Member State A, further problems would arise. The parents reported that the non-recognised parent may not be allowed to represent the child in administrative and other matters, including in hospitals, schools and public services in Member State A, and she would not be able to cover the child under her insurance or take advantage of taxation benefits in Member State A. Should one of the parents die, the child would either not inherit from the non-recognised parent as her direct descendant in Member State A or it would be parentless from the legal viewpoint of Member State A in case of death of the recognised parent. The parents also feared that the non-recognised parent could be accused of abducting the child in Member State A.

In conclusion, should the family move to Member State A or other Member States that do not recognise the parenthood of both parents of the child, the family would be effectively prevented from continuing the family life they led in Member State B. That would deter the family from moving to those Member States.

- **Example No 4** [299]: **surrogacy in another Member State**

A woman is married to a man, both are nationals of Member State A, living in Member State B. She cannot carry a child to term naturally, and the couple has recourse to a surrogacy arrangement in Member State B, where surrogacy is regulated.

Under the law of Member State B, if all legal conditions and safeguards are met, surrogacy agreements are legal and the intended parents are considered as the legal parents of the child by operation of law. Under the law of Member State B, the woman is thus considered as the legal mother of the child and her husband as the legal father.

However, under the law of Member State A, surrogacy is not permitted, and the surrogate is regarded as the mother of the child by operation of law.

Upon the birth of the child, the spouses would like to return with their child to their Member State of origin, Member State A, and apply for a birth certificate and for the

[298] The CJEU case law concerning surnames is relevant in this situation (see in particular fn. 73).
[299] Example 4 is inspired by the existing cases concerning the recognition of the parenthood of children born as a result of a surrogacy arrangement heard by the European Court of Human Rights. See ECtHR Press Unit (2021). Factsheet – Gestational surrogacy.

citizenship of Member State A for the child. They are worried about what steps they will have to undergo to be considered as the legal parents in their Member State of origin, including a possible need to have to adopt their child, and how long their child will be without nationality documents. In general, they are concerned that the administrative and judicial authorities of their Member State of origin will refuse to recognise and register the parenthood of their child.

- **Example No 5** [300]**: joint domestic adoption by a same-gender couple**

Two married women, nationals of Member State A and B with an habitual residence in a Member State A, apply jointly for the adoption of a child in accordance with the national law of Member State A. They are found suitable to adopt a child and a court of Member State A, after hearing all the parties and assessing the best interests of the child, issues an adoption order. The child is also habitually resident in Member State A.

According to the law of Member State A, both mothers are the legal parents of the child. However, Member State B, of which one of the mothers is national, would not recognise the adoption and their parenthood because they are a same-gender couple. Under the law of Member State B, the child's birth parents would still be treated as its legal parents. As a consequence, the child is not entitled to claim nationality of Member State B[301]. In addition, if the family relocated to Member State B, the child would not be able to enjoy the rights derived from parenthood in that Member State, such as the right to inherit from both of its parents or to be represented by both of its parents in matters such as authorising medical treatment and making arrangements for its education.

In contrast, if the family decided to relocate to Member State C, which recognises the domestic adoption order from Member State A automatically, the family would not experience any such problems. If the family decided to relocate to Member State D, it would have to file, according to the requirements of that Member State, an application to the public authorities of that Member State for the recognition of the domestic adoption or for some form of registration of the adoption[302].

- **Example No 6**: **differences between time periods when parenthood can be challenged**

A child is born to a married woman, a national of Member State B, who is habitually resident with her husband (also a national of Member State B) in Member State A. The husband is aware that the child is not genetically his. Substantive family law of Member State A uses a common legal presumption that husband of the child's mother is the father of the child and thus attributes paternity to the child to him. The couple divorces several years later in the Member State A. To avoid maintenance obligations, the husband disproves his paternity to the child during the divorce proceedings. However, according to the law of Member State A, a parent can only contest their legally established

---

[300] A similar scenario can also arise in a situation of step-parent adoption if the child was a biological child of one of the women and the other one adopted it.

[301] Assuming that the law of Member State B grants the nationality of that Member State to children of its nationals (based on the usual *ius sanguinis* rules).

[302] This may involve, in some Member States, the need to apply for the recognition of a foreign adoption order to a court, a procedure that can cause unnecessary burden and/or costs.

parenthood within two years after they became aware of the facts which indicate that the child may not be biologically theirs. Given the time bar on contesting parenthood in the national law of Member State A, the husband cannot contest his paternity and remains the legal parent of the child.

Following the divorce, mother of the child moves with the child to Member State B. Her former husband brings proceedings in that Member State for the non-recognition of his paternity to the child. There is no time bar on challenging paternity under the national law of Member State B and, with the help of DNA testing proving that the child is not genetically his, he is successful with his non-recognition action.

As a result, the child has two legal parents from the perspective of Member State A and only one parent, the mother, from the perspective of Member State B.

2. Reported consequences of the existing problems on families

The following account of the consequences of the non-recognition of parenthood is a selection from the replies received by the Commission from the public and academia and represents solely the experience of the respondents.

- **Denial of the child's rights and/or obligations derived from parenthood, interference with the child's right to respect for private and family life, the right to non-discrimination and the right to an identity, repercussions on the child's surname**

  - *"My first daughter was born in Spain in January 2014. Her birth certificate has two mothers. Her birth certificate was not accepted in the UK, since under UK law her British mom was not recognised because we were not married at the time of birth. Greece also refused to register the birth and issue a passport. After almost 10 months and because my daughter was diagnosed with cancer, the Greek Consulate in Barcelona decided to help us and register the birth partially, only one mother and changing her surname. That was the only way to have a passport. If my daughter hadn't been seriously ill, we will still be without a passport. My daughter is now 7 years old, she is healthy but in Greece she still has only one parent and her surname is not the same as in Spain. […]*

    So in my family the two sisters are sisters in Spain but not in the UK. My children lose one parent every time we go to Greece, and in the UK my oldest loses one parent and her sister too. This situation is stopping us of planning to go and live to Greece or the UK, since we know that our children will lose basic rights. Every time we travel to Greece, we have to think that if something happens to me, the children will be considered orphans or that one of their parent will not have any parental rights over them."

    (Reply to the Commission's open public consultation, May 2021)[303]

  - *"I am married with a Spanish citizen and have a common son born by our friend. For this reason, our son has a Spanish birth certificate with both names, and our friend is*

[303] While this OPC reply refers both to EU Member States and to the United Kingdom, it should be noted that any problems with parenthood recognition in the UK would not be affected by the Parenthood initiative as the initiative would not apply to third countries.

not mentioned at all on the birth certificate. As we lived in Belgium, we had considerable problems with the Belgian authorities, who refused to recognise the birth certificate and was therefore listed for two and a half years as an 'unconnected person' living under our roof. Whenever we return to my home country, Croatia, I am afraid that we will have problems at the border because Croatia is not very open to LGBTI people. I also did not apply for a Croatian passport for my son, as I anticipate huge problems. […] The worst thing is not that I and my spouse are discriminated against, but that my son has been discriminated against, because of the way in which he was born. He did not choose this. A big issue here is children's rights, which many of those who are against LGBTI families do not understand. These children, including my son, have parents, have family relationships and it is in their best interest to be with their parents. It is in their best interest to live like all other EU citizens. We really need this regulation, because this is the right path. We cannot have second-class citizens in Europe.

(Feedback to the Commission's Inception Impact Assessment, April 2021)

- *"[The non-recognition of parenthood] has as a result that my daughter cannot inherit any of my fortune in Greece as her legal right. I am not allowed to travel with the child on my own, or even have basic rights as a parent for example in hospitals, schools, public services and in the case of the first mother's death, I will not be able to legally have my daughter and she will be given to social services as I am not her legal mother in Greece, in case this happens to Greece. Also I am not able to relocate with the child to Greece and have her covered under my insurance or take advantage of any taxation benefits. The worst is that the child has a different name in the UK and a different name in Greece which will cause even more issues in the future, in healthcare, education, etc."*

  (Reply to the Commission's open public consultation, June 2021)

- **Denial of rights related to education, social security, taxation and healthcare**

  - *Children born abroad in same-sex couples, although unquestionably Polish citizens, face refusals to issue Polish identity cards, passports and registration in the public register, in particular PESEL (the system for assigning a special number to all citizens, which is of great practical importance). Without ID card and PESEL number, children's right to public and/or private health care and other social services is at risk.*

    The right of a minor child to health care, education (registration in an appropriate educational institution), safety and social welfare is at risk when recognition of the parenthood of a non-biological parent is refused. This may include situations such as loss of life, absence or illness of a biological parent

    (Reply to the Commission's open public consultation, the Office of the Polish Commissioner for Human Rights, August 2021)

  - *"Our daughter, as a kid with same-sex parents will be heavily discriminated and she won't be having access to basic rights, such as social security, health and care, traveling etc. The problem is bigger if I die or become extremely ill and cannot take care of our daughter."*

    (Feedback to the Commission's Inception Impact Assessment, May 2021)

- **Impact on emotional and psychological wellbeing of children and families**

- *"In practical terms, [the non-recognition of parenthood] leads to a lack of recognition of people who are parents, hence leading to a lack of all rights with respect to parenthood. This creates unimaginable difficulties, including health issues, family breakup, stigmatisation of the parent and the child, and knock on effects on parental and child wellbeing, education and all other aspects of parenthood, notably access to the child. This state discrimination makes cross border travel particularly complex […]."*

  (Reply to the Commission's open public consultation, July 2021)

- *"I personally had to get married in a rush in Belgium (my same-sex spouse is Belgian and we reside in Belgium) to ensure that my spouse would be in our children's Spanish birth certificate (I am of Spanish nationality). If we had not been married and had our Belgian marriage recognised by Spanish authorities before our children's birth in Spain, I was informed that Spain would not recognise my spouse in the birth certificates (we had twins) and then probably Belgium would not either. It was very stressful and expensive, as well as emotionally very difficult to face this sort of difficulty."*

  (Reply to the Commission's open public consultation, July 2021)

- **Deterrence of the right to free movement**

  - *"It is not right that I am unable to live where I would like, under the pretext of non-recognition of a parental relationship."*

    (Reply to the Commission's open public consultation, June 2021)

  - *"While we have not tried to recognize the parenthood in my home country Slovakia, we are certain that this would not be possible and if we decide to move there we would put our children at risk as we would not be recognized as a family. This way we can only live in a limited number of countries (and I guess always request recognition of parenthood), separated from the grandparents that are deprived from their grandchildren. I was informed of cases when during the pandemic restrictions, people were prevented from crossing the regions unless for family reunification. Some same-sex couples with children were put in a difficult situation, when for example one partner had to take care the grandparents that lived in another region and they were not allowed to travel back to their families. Therefore non recognition of partnership also deprives children of their rights."*

    (Reply to the Commission's open public consultation, July 2021)

  - *Where refusal to recognise legal ties between parents and their children results in a child being rendered stateless, this impacts the rights of the child in various ways. Without personal or national identification documents, the child cannot leave its birth country (e.g, to visit relatives in other MS), and cannot enrol in kindergarten, school, or university.*

    There is a recent case from Greece concerning recognition of adoption certificates of twins born via IVF in Germany, where the parents, Greek nationals, reside and got married. The non-biological mother adopted the twins shortly after their birth to formalise the kinship. All family members (mothers and children) have both Greek and German citizenship. As the family is looking to move to Greece, the non recognition of the family unit is an obstacle for their freedom of movement and enjoyment of rights as EU citizens. The family is currently appealing the rejection of recognition of the

German judicial decision, establishing kinship of the non-biological mother with the children, in Greek courts.

(Reply by ILGA-Europe to the Commission's open public consultation, August 2021)

- *"[The non-recognition of parenthood] prevents us from travelling back to Greece and any other EU states as we are afraid that anyone can at any point take the child away. In an even worse scenario, the second mother can easily be accused in Greece for kidnapping and the child to be taken by social services as she is not recognised as the legal parent of the child."*

(Reply to the Commission's open public consultation, June 2021)

- *It is simply unacceptable that our children can be stripped of one of their legal parents when moving from one EU Member State to another, or that some children can be left effectively 'stateless' based on the way they were conceived. My two children have recently gone from having 2 legal parents (mothers) in Belgium, to having one legal parent in Ireland due to the non-recognition of my wife (their biological mother). The impacts of this are potentially far-reaching and damaging. What will happen if I die and my wife is left with no legal tie to the children in Ireland? What if the children are sick and I cannot be with them and a hospital refuses access to them to my wife? There are so many questions like these that are simply unfair and are surely against the principle of Free Movement in the EU.*

(Feedback to the Commission's Inception Impact Assessment, April 2021)

- **Problems with obtaining identity and travel documents reflecting parenthood of a child, interference with the child's entitlement to a nationality and risk of statelessness of the child**

  - *"In many EU countries, same-sex couples married abroad and their children are denied access to civil registration in their country of nationality. Such cases have occurred across several countries in Europe (including Poland, Bulgaria, and Ireland). […] The risk of statelessness in these cases is heightened because, contrary to international norms and good practice, few Member States have a full safeguard in law to ensure that children born in their territory who would otherwise be stateless can acquire the nationality of that Member State. Even where such a safeguard is in place, the child must demonstrate that they are unable to acquire any other nationality. This poses a challenge for the child to provide evidence that they are effectively prevented from acquiring another nationality, particularly when the authorities of another Member State do not explicitly refuse to acknowledge that the child is a national of that country, but still hinders access to birth registration certificates or identity documents."*

(Feedback to the Commission's Inception Impact Assessment, May 2021)

  - *"The jurisprudence of Polish courts and consequently also legal literature indicate that there are practical problems, which arise in case of children born to same-sex couples and/or through surrogacy arrangements. The jurisprudence reveals that practical problems might include refusal of transcription, refusal of confirmation of Polish citizenship, obstacles in obtaining the national identification number (PESEL), which in turn is needed in order to apply for identification documents, including a passport."*

(Country Report* - Poland, October 2021)

- **Costs, time, and burden of administrative and judicial proceedings related to the recognition of parenthood**
    - 30% of respondents who provided estimates of the length of the recognition procedure before the administrative authorities indicated that the estimated length of the recognition procedure was 12 months to 24 months. In addition, 15% specified that the estimated length was 6 months to 12 months. The average estimated costs for the recognition procedure before the administrative authorities varied significantly between the numbers reported by respondents, with the recognition being free of charge in some Member States to reaching 12.000 EUR in others.

      27% (or 27 responses) of respondents indicated that in the case where the parenthood was recognised but the recognition required bringing a case to court, the length of the recognition proceedings before the court was more than 2 years. In addition, 21% (or 21 responses) specified that the procedure was between 1 and 2 years. In the cases where the parenthood was recognised but the recognition required bringing a case to court, the average estimated costs for the recognition proceedings before the court varied significantly, with some respondents reporting that there were no court fees in some Member States, while others indicating the costs were more than 25.000 EUR.
      (*Summary Report of the OPC*, October 2021[304])

    - *"In the case above-mentioned, I (as biological mother from France) still have to declare the child with the French authorities. When I asked for legal advice about the procedure (requiring first to declare the child with just my last name, then to go through a procedure of adoption of the spouse's child, then to request a change of last name so the child would bear the two names of her two mothers, just like in Belgium), the specialised lawyer gave me a quote for 1.500 euros."*
      (Reply to the Commission's open public consultation, July 2021)

- **Legal uncertainty for families**
    - *"In complicated cases [concerning the recognition of parenthood], it is extremely difficult for a person to know precisely in advance the legal framework and what a court or public authority might decide."*
      (Country report* - Cyprus, October 2021)

    - *"It is difficult to take certain steps for the child, as long as the documents are not recognised. This requires recourse to lawyers and court decisions that differ from one judge to another: While the law is the same for all, their interpretation differs according to the judges and case law fluctuates over time."*
      (Feedback to the Commission's Inception Impact Assessment, May 2021)

[304] For details see questions 12 to 15, p. 16-18. However, please note that the statistics should have only illustrative value. The Summary report provides an overview of the responses to the OPC and cannot be considered as a representative of the experience and views of the EU population as a whole. Moreover, the above statistics do not sufficiently factor in the differences in the length and costs of recognition procedures in individual Member States.

ANNEX 8: POTENTIAL EVALUATION INDICATORS

Figure 15: Examples of potential evaluation indicators

Assessment criterion	Examples of potential indicators

To facilitate the recognition of parenthood between Member States
 	
To ensure respect for the fundamental rights of children in matters concerning parenthood recognition
 	
To ensure legal certainty, predictability and continuity of parenthood
	• The number of cross-border families in the EU;
	• The number of cross-border families that benefited from the streamlined procedure for the recognition of parenthood under the Regulation:
	  • The number of proceedings for cross-border recognition (per Member State);
	  • The number of ECPs issued and related fees (if applied) and of proceedings where it was used[305];
	  • The perception of the Regulation by civil society, NGOs and public authorities of Member States [306];
	
	• The number of cross-border families that continue experiencing problems with the recognition in one Member State of parenthood established in another Member State:
	  • The number of petitions and citizen letters complaining about the problems with the recognition of parenthood received by the EU institutions;
	  • The number of cases concerning the non-recognition of parenthood brought before national courts, the CJEU and the ECtHR;
	  • The perception of the Regulation by civil society, NGOs and public authorities of Member States;
	
	• The practical application of the Regulation:
	  • Case law concerning the Regulation, possible preliminary ruling requests to the CJEU concerning the interpretation of the Regulation;
	  • The cases where public policy objection was raised by a recognising Member State;
	  • The extent to which the children's rights and fundamental rights of children and their families were considered in the proceedings for the recognition of parenthood;
	  • The perception of the Regulation by civil society, NGOs and public authorities of Member States;
	  • The views of the Regulation in academic literature and in reports by individuals, organisations and international organisations;
	  • The share of requests of recognition of parenthood using national authentic instruments and using ECP;
	  • The incidence of conflicting judgments and conflicting documents on parenthood after the Regulation became applicable.

To reduce costs and legal and administrative burden for families, public administrations	• Costs and administrative burden on families before and after the Regulation became applicable • The number of instances where families had to resort to (i) a legal assistance and (ii) court proceedings to have parenthood recognised in another Member State after the Regulation became applicable;

[305] If possible, the factors determining whether cross-border families take up the ECP or use national certificates of parenthood could be studied.

[306] The perception by these stakeholders could be assessed for instance through targeted interviews, questionnaires or through publically available publications.

and courts	• The difference between the costs and the length of recognition procedures before and after the Regulation became applicable[307]; • The difference in costs for the recognition of parenthood on the basis of ECP as compared to national authentic instruments and court decisions; • Qualitative evidence concerning the types of documents needed for the proceedings, as well as the associated costs. • Costs and burden for public authorities before and after the Regulation became applicable; their level of satisfaction with the Regulation[308]; • Adjustment costs for public administrations and courts[309].

An indicator of **success of the Parenthood regulation** would be the fact that the initiative meets its objectives and thus facilitates the recognition of parenthood between Member States (thus reducing the instances where the recognition of parenthood is refused). However, as this would likely not be empirically measurable as such, a combination of the above indicators could be used instead to assess the success rate of the Regulation. In addition, the number of ECPs issued to cross-border families in the EU could also be an additional means to measure the success of the Parenthood regulation in quantitative terms.

[307] Ideally, this data should be disaggregated comparing the length and costs of the procedure in comparable cases.
[308] This data could be collected from Member States and their public authorities through targeted interviews or questionnaires.
[309] *Ibid.*