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Delegations will find attached document SWD(2022) 390 final.

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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

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) 391 final} - {SWD(2022) 392 final}

Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?

1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?

The objective of the legislative proposal ('Regulation') is to facilitate the recognition of parenthood between Member States and, thereby, protect the rights, including the fundamental rights, of children in matters concerning their parenthood in cross-border situations. The proposal also aims to provide legal certainty and predictability about the establishment of parenthood in cross-border situations and the recognition of parenthood and to reduce legal costs and burden for families and Member States' judicial systems and public authorities (such as civil or population registrars, notaries and public administrations) in connection with the establishment of parenthood in cross-border situations and proceedings concerning the recognition of parenthood in another Member State.

These objectives are to be achieved through the harmonisation of Member States' rules on *private international law*, that is, the rules on international jurisdiction and on applicable law for the establishment of parenthood in cross-border situations, and the rules on the recognition in a Member State of the parenthood established in another Member State. The legal basis of the proposal is Article 81(3) of the Treaty on the Functioning of the European Union ('TFEU'), which entitles the Union to adopt measures on family law with cross-border implications.

1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?

Under Article 81(3) TFEU, the Union has a shared competence with Member States to adopt measures on family law with cross-border implications, including rules on jurisdiction, applicable law and the recognition of judgments between Member States.

This shared competence is to be distinguished from the Member States' exclusive competence to adopt measures of *substantive* family law, such as rules on the definition of family or on the conditions and procedures to establish the parenthood of a person. The proposal respects the Member States' competence by proposing rules only on the establishment of parenthood in cross-border situations and on the recognition of parenthood.

2. Subsidiarity Principle: Why should the EU act?

2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[1]:

- Has there been a wide consultation before proposing the act?
- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?

Yes. First, in conformity with Article 2 of Protocol No. 2, the Commission conducted extensive consultations in the preparation of the proposal. The consultations were organised in 2021 and 2022 and covered all Member States with the exception of Denmark[2]. They targeted a wide range of key stakeholders representing Union and third-country citizens, public authorities, academics, research institutions, legal professionals, NGOs and other relevant interest groups.

The consultations consisted of: (i) public feedback to the inception impact assessment (April to May 2021); (ii) an open public consultation (May to August 2021); (iii) a meeting with stakeholders and representatives of the civil society (December 2021); and (iv) a meeting with experts from Member

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN

[2] Denmark does not take part in the measures adopted under Article 81(3) TFEU. See Protocol No 22 on the Position of Denmark, annexed to the Treaties.

States' authorities (January 2022). In addition, the Commission held several meetings with the members of its expert group on the recognition of parenthood, which advised it on the legislative proposal. The Commission also received feedback from complaints and petitions from citizens and other stakeholders.

Besides the consultation activities conducted by the Commission, further consultations were undertaken by an external contractor that prepared a study to be used in the preparation of the impact assessment. The contractor used the following consultation tools: (i) an online survey targeting civil registrars in the Union; (ii) written questionnaires for national ministries and the judiciary, and (iii) targeted interviews with the judiciary and NGOs.

The feedback received in the consultation activities informed the preparation of the proposal and the impact assessment accompanying it. A detailed summary of the outcome of the consultations conducted by the Commission is included in the impact assessment.

Second, in preparing the proposal, the Commission assessed the subsidiarity of the measures to be adopted at Union level both in the explanatory memorandum of the proposal and in the impact assessment (Section 3 of the impact assessment). The problems to be addressed by the proposal were quantified on the basis of the number of cross-border families in the Union and, in particular, on the number of families that currently face most problems with the recognition of parenthood (Section 2 of the impact assessment). The estimated costs that cross-border families and Member States' public authorities incur as a result of the current problems were also quantified.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

Yes. Both the explanatory memorandum and the impact assessment accompanying the proposal (in its Section 3) include justifications regarding the compliance of the proposal with the subsidiarity principle. The explanatory memorandum states that:

The competence to adopt measures concerning family law with cross-border implications is shared between the Union and the Member States[3]*. Problems with the recognition in one Member State of the parenthood established in another Member State for the purposes of rights derived from national law have a Union dimension as recognition requires the involvement of two Member States. The consequences of the non-recognition of parenthood also have a Union dimension, as families may be deterred from exercising their right to free movement for fear that the parenthood of their child will not be recognised in another Member State for all purposes.*
Problems with the recognition of parenthood are caused by diverging Member State substantive rules on the establishment of parenthood in domestic situations and conflict of laws rules on the establishment of parenthood in cross-border situations. Member States acting individually could not satisfactorily remove the problems with the recognition of parenthood as Member States' rules and procedures would need to be the same or at least compatible in order for parenthood to be recognised between Member States. Action at Union level is needed to ensure that a Member State whose courts or other competent authorities establish parenthood is regarded as having jurisdiction to do so, and that the courts and other competent authorities of all Member States will apply the same law to establish parenthood in cross-border situations. In this way conflicting parenthoods for the same person will be avoided within the Union and each Member State will recognise the parenthood established in another Member State.
Therefore, the objectives of this proposal, by reasons of its scope and effects, would be best achieved at Union level in accordance with the principle of subsidiarity.

[3] Article 4(2)(j) TFEU.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

No. For the summary of the necessity for Union action, see the explanation in 2.2. above.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

Yes. The problems with the recognition in one Member State of the parenthood established in another Member State have a cross-border dimension by their nature, as recognition requires the involvement of at least two Member States.

The impact assessment estimates that there are currently around 4.5 million mobile parents and their children who may require the recognition of parenthood in another Member State. It is also estimated that some 103 000 people may currently face problems with the recognition of parenthood. These problems may have significant adverse consequences on the fundamental rights and other rights of children as well as economic and social impacts. The non-recognition of parenthood also has a Union dimension as families may be deterred from exercising their right to free movement for fear that the parenthood of their children will not be recognised in another Member State for all purposes.

The consultations undertaken to prepare the impact assessment indicated that the current problems with the recognition of parenthood will continue and even increase without Union intervention. The increased incidence of the problem is expected to be caused in particular by (i) a greater diversity of family composition; (ii) progress in reproductive technologies and an increased use of these technologies; and (iii) increased mobility within the Union.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[4] or significantly damage the interests of other Member States?

The absence of action at Union level would conflict with core objectives of the Treaty. This is because the non-recognition of a child's parenthood has adverse consequences on the child's fundamental rights, in particular the right to an identity, to non-discrimination and to respect for private and family life. It may also result in the denial in another Member State of rights that children derive from parenthood under national law, such as their succession or maintenance rights, or their right to have one of their parents act as their legal representative in another Member State on matters such as medical treatments, schooling, or the management of their property.

As the objective of the proposal is to protect the rights of children in cross-border situations and has the best interests of the child as its primary consideration, the proposal is consistent with the objective of protecting and promoting the rights of the child set out in the Treaty on European Union (Article 3(3) and 3(5) TEU) and the Charter of Fundamental Rights of the European Union. The Charter guarantees, in the application and implementation of Union law, the protection of the fundamental rights of children and their families. These rights include the right to respect for private and family life (Article 7), the right to non-discrimination (Article 21), and the right of children to maintain a regular and direct relationship with both parents if it is in their best interests (Article 24). Based on the UN Convention on the Rights of the Child, Article 24(2) of the Charter also provides that, in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Action at Union level to address the non-recognition of parenthood and its adverse consequences on the fundamental rights of children is intended to ensure the protection of such fundamental rights in cross-border situations and thus of one of the core objectives of the Treaties.

[4] https://europa.eu/european-union/about-eu/eu-in-brief_en.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
Under the Treaties, substantive law on family matters, including the legal status of persons, falls within the competence of Member States, which means that the establishment of the parenthood of a person in a purely national situation is currently governed by national law. However, the Union can adopt measures concerning family law with cross-border implications pursuant to Article 81(3) TFEU, such as measures to facilitate that, once parenthood has been established in a Member State, it is recognised in all other Member States. These measures can include the adoption of common rules on jurisdiction, applicable law and procedures for the recognition of parenthood. These measures will not lead to the harmonisation of the definition of family or of the substantive rules on the establishment of parenthood in the Member States. The main reasons for the current difficulties with the recognition of parenthood between Member States are that the Member States have diverging substantive law rules on the establishment of parenthood in domestic situations; diverging rules determining the law applicable to the establishment of parenthood in cross-border situations; and diverging rules on the recognition in a Member State of the parenthood established in another Member State. Member States acting individually could not satisfactorily remove the problems with the recognition of parenthood as Member States' rules and procedures would need to be the same or at least compatible in order for parenthood to be recognised between Member States. Action at Union level is needed to ensure that a Member State whose courts or other competent authorities establish parenthood is regarded as having jurisdiction to do so, and that the courts and other competent authorities of all Member States will apply the same law to establish parenthood in cross-border situations. In this way conflicting parenthoods for the same child would be avoided within the Union and each Member State would recognise the parenthood established in another Member State.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The current problems with the recognition of parenthood between Member States stem from (i) the differences in Member States' laws on the establishment of parenthood (both substantive rules and applicable law rules); (ii) differences in Member States' rules on the recognition of parenthood; and (iii) the absence of Union legislation guaranteeing the recognition of parenthood between Member States for all purposes. Problems with the recognition of parenthood may arise more frequently or be more serious depending on the Member States' laws on the definition of family and on the criteria applied by each Member State to recognise or refuse parenthood established abroad. These difficulties may lead families to start litigation to have the parenthood of their children recognised in some Member States more than in others, but this litigation has uncertain results and involves time, costs and burden for both families and the judicial systems of the Member States. Ultimately, families are often deterred from exercising their right to free movement for fear that the parenthood of their children will not be recognised for all purposes if they move to another Member State or return to their Member State of origin, which means that the problems with the recognition of parenthood affect all Member States and thus have a Union-wide scope.
(e) Is the problem widespread across the EU or limited to a few Member States?
See Section 2.3 (d).
(f) Are Member States overstretched in achieving the objectives of the planned measure?
No. As regards legislation, the proposal would not affect the jurisdiction rules or the substantive law

rules currently applied by each Member State to establish parenthood in domestic situations. In the proposal, the rules on international jurisdiction and applicable law to establish parenthood in cross-border situations are based on connecting factors (namely, habitual residence, nationality and State of birth) already used by several Member States in their national rules on international jurisdiction and applicable law. As regards the rules on the recognition of parenthood in the proposal, these are based on the rules already included in all other Union instruments on private international law, which have been applied for many years and with which Member State judges and other authorities are already familiar.

As regards costs, the proposal would only generate: (i) one-off adjustment costs, (ii) minor recurrent adjustment costs and (iii) marginal enforcement costs. The one-off adjustment costs would include, for instance, costs arising from the need to train judges and other authorities on the new rules to establish parenthood in cross-border situations or IT-related costs. Minor recurrent adjustment costs would also be incurred (for example, costs for the upkeep of IT systems, for the issuance of European Certificates of Parenthood to citizens, or the continuous training of Member State authorities applying the Regulation). Finally, the enforcement costs *(i.e.* costs for collecting information for the review of the regulation) associated with activities such as monitoring of the application of the Regulation would be marginal. In any event, the majority of national ministries consulted in preparing the impact assessment considered that the costs resulting from the introduction of the new rules would be compensated, in the medium or long term, by the decrease of the current costs for the recognition of parenthood.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

Member States were consulted in the preparation of the proposal. Experts of all Member States were invited to a meeting in January 2022 to discuss the planned contents of the proposal. In addition, some Member States replied to the Commission's open public consultation and/or to the questionnaire by the external contractor designed to collect information about current problems and views on the best way to address them.

A majority of Member States considered that, without any intervention at Union level, the existing problems with the recognition of parenthood would continue to exist and possibly increase. Most Member States agreed that the rights of children and their best interests had to be a primary consideration of any Union initiative on the recognition of parenthood. Non-legislative measures such as cooperation and exchanges between Member States' authorities on the recognition of parenthood, possibly in the context of the European Judicial Network, or an exchange of best practices between Member States, were supported by a majority of Member States, either to complement Union legislation on the recognition of parenthood or as the only measure that should be adopted at Union level. The Member States' preliminary views on the desirability of Union legislation on the recognition of parenthood were divided. Most Member States cautiously supported legislation in view of the increasing number of cross-border families that face problems with the recognition of parenthood and the need to protect children's fundamental rights. Other Member States were more sceptical about adopting legislation, arguing that problems with the recognition of parenthood in the Union are not significant or that their legislation or practice address the situation sufficiently.

Besides the consultations of Member States, the Commission and the external contractor received feedback from legal practitioners dealing with parenthood matters in the Union, including Member States' civil registrars and municipalities, notaries and judges. These legal practitioners were generally of the view that Union legislation facilitating the recognition of parenthood between Member States would be useful as it would address existing problems. The views on the incidence of the problems with the recognition of parenthood varied among practitioners, those coming from regions or municipalities with more cross-border families considering that problems arise more frequently.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

Yes. As explained, the objective of the proposal is to facilitate the recognition of parenthood between Member States and to protect the fundamental rights and other rights of children in matters concerning their parenthood in cross-border situations. In addition, the proposal aims to provide legal certainty and predictability for the establishment of parenthood in cross-border situations, for the recognition of parenthood in another Member State and to reduce legal costs and burden for families and the Member States' authorities (such as civil or population registrars, courts and notaries) in connection with proceedings for the recognition of parenthood.

These objectives would be best achieved through the adoption of common rules on international jurisdiction, on the law applicable to the establishment of parenthood in cross-border situations and on the recognition of parenthood. The adoption and uniform application of these rules throughout the Union cannot be achieved by Member States acting individually but can be achieved by Union legislation, in line with other Union regulations on family law with cross-border implications[5]. Therefore, for reasons of scope and effects, the objectives of the proposal would be best achieved at Union level in accordance with the principle of subsidiarity.

(a) Are there clear benefits from EU level action?

Yes. The adoption of uniform rules facilitating the recognition of parenthood between Member States can be best achieved at Union level. In addition, the uniform rules would be supported by a uniform interpretation by the Court of Justice and therefore their consistent application under the control of the Court.

The current problems with the recognition of parenthood for all purposes in another Member State may interfere with the fundamental rights of children, in particular their right to an identity, to non-discrimination and to respect for private and family life. The rights of children derived from the national law of another Member State may also be denied, such as their right to maintenance or succession, or the right to have either of their parents act as their legal representative in another Member State in matters such as school enrolment, the opening of a bank account or consent to medical treatment. Currently, the non-recognition of parenthood may prompt families to start litigation to have the parenthood of their child recognised in another Member State. However, these proceedings involve significant costs, time and burden for families and have uncertain results. In addition, the non-recognition of parenthood has a negative impact on the emotional and social well-being of children and their families. Ultimately, children and their families may be deterred from exercising their right to free movement for fear that the parenthood of the child will not be recognised in another Member State for all purposes. The adoption of Union legislation facilitating the recognition of parenthood in all Member States would do away with such adverse consequences on the rights of children and on their families.

The impact of the adoption of the proposal would therefore be positive, in particular on the protection of the fundamental rights of children (such as their right to an identity, to non-discrimination and to a private and family life) and of the rights of children derived from parenthood under national law (such as succession and maintenance rights). The adoption of the proposal would improve legal certainty and predictability for the establishment of parenthood in cross-border situations, avoiding conflicting decisions on parenthood in different Member States. The adoption of the proposal would also have a positive social impact, leading to children in cross-border families being treated as local children.

[5] For example, Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1); Council Regulation (EU) 2019/1111 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).

Through the adoption of Union uniform rules, the proposal would reduce costs, time and burden for both families and Member States' courts and authorities in connection with administrative procedures and litigation to have parenthood recognised in another Member State.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

The current problems with the recognition of parenthood have a significant adverse impact on the fundamental rights and other rights of children in cross-border situations. In view of this, the quantitative size of the problem in terms of the absolute number of children and families affected by the non-recognition of parenthood 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 Union to take action to address the problem. In addition, while the adoption of the proposal would reduce the costs related to the recognition of parenthood for both families and Member States' authorities, these quantitative impacts are considered only secondary as compared to the positive impact that the proposal would have on the protection of the fundamental rights of children.

Even considering the above, the adoption of the proposal would result in cost reductions for both cross-border families and Member States' authorities. These cost reductions were quantified, based on a number of assumptions, in the impact assessment.

- The costs for cross-border families, especially for those that are most affected by the non-recognition of parenthood in another Member State, would be drastically reduced. It is estimated that the average costs per case of recognition procedures currently borne by cross-border families would decrease by 71% under the proposal as compared to the current situation, and by 90% for the families that are most affected by problems with the recognition of parenthood.

- For the same reason, the proposal would lead to significant savings of costs, time and burden for the authorities of the Member States. It is estimated that the costs for recognition procedures currently borne by Member States' authorities would decrease by 54% as compared to the current situation.

Given its nature, the proposal would not have a direct impact on the functioning of the internal market, but it would have a positive impact on the free movement of persons within the Union as families would not be deterred from exercising their right to free movement.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

The introduction at Union level of uniform rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations and on the recognition of parenthood established in another Member State would avoid the current situations in which different parenthoods are established in different Member States (where a child has different parents in different Member States), and would result in the recognition in a Member State of the parenthood established in another Member State. This would provide legal certainty, ensure the continuity of parenthood in cross-border situations and protect the fundamental rights and other rights of children in cross-border situations.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Yes. The proposal would not affect the Member States' exclusive competence to regulate matters of substantive family law. Member States would continue to decide how family should be defined, the substantive conditions and procedures to establish parenthood in domestic situations and the rights and

obligations derived from parenthood. The measures adopted under Article 81(3) TFEU on family law with cross-border implications would not affect the competence of Member States to legislate on such matters. To protect the fundamental rights and other rights of children in cross-border situations, the proposal only proposes uniform rules to facilitate that, once parenthood has been established in one Member State under the applicable law designated by the Regulation, that parenthood is recognised in other Member States.

In addition, when applying their national law, Member States are already bound by their obligations under international law, in particular the case law of the European Court of Human Rights interpreting the European Convention on Human Rights, including its case law on the recognition of parenthood of children adopted abroad or born through surrogacy arrangements abroad. Member States are also obliged to protect the rights of children as laid down in the United Nation's Convention on the Rights of the Child.

Finally, by harmonising the Member States' rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations and on the recognition of parenthood established in another Member State, the adoption of the proposal would ensure the continuity of parenthood status in the Union, which Member States individually cannot achieve.

In view of the above, the benefits of action at Union level outweigh the loss of competence of the Member States as regards the establishment of parenthood in cross-border situations and the recognition of the parenthood established in another Member State.

(e) Will there be improved legal clarity for those having to implement the legislation?

Yes. The aims of proposing uniform rules for the establishment of parenthood in cross-border situations and on the recognition of parenthood established in another Member State are (i) to provide legal certainty and predictability as to which national law, out of all the possible national laws that could apply in a given cross-border situation, should apply to establish parenthood in that cross-border situation to avoid that conflicting parenthoods are established in different Member States, (ii) to provide legal certainty about the fact that the parenthood of a given child (or adult) as established in one Member State will be recognised in all other Member States to ensure that the status of parenthood as established in one Member States will have continuity in other Member States. The aims of the proposal will thereby translate into the protection of the fundamental rights and other rights of children in cross-border situations and in the elimination or a significant reduction of costs and burden for families and Member States' courts and authorities as regards litigation for the recognition of parenthood in another Member State.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

Yes. Both the explanatory memorandum and the impact assessment include an appraisal of the compliance of the proposal with the principle of proportionality. As the explanatory memorandum summarises:

The objective of this proposal is to facilitate the recognition of parenthood between Member States by providing for the recognition of (i) court decisions and (ii) authentic instruments establishing parenthood with binding legal effect, and the acceptance of authentic instruments which have no binding legal effect in the Member State of origin but which have evidentiary effects in that Member State. To that effect, the proposal harmonises the Member States' rules on international jurisdiction for the establishment of parenthood and the Member States' conflict of laws rules designating the law

applicable to the establishment of parenthood in cross-border cases.
The proposal does not go beyond what is necessary to achieve its objectives: it does not interfere with national law on the definition of family; it does not affect national law on the recognition of marriage or registered partnerships; it applies only to the establishment of parenthood in cross-border situations; it requires Member States to recognise parenthood only where it has been established in a Member State and not in a third country; it will not affect the recognition of parenthood for the purposes of rights derived from Union law, in particular the right to free movement; it does not affect the competence of the authorities of the Member States to deal with parenthood matters; and the European Certificate of Parenthood is optional and will not replace equivalent national documents providing evidence of parenthood.
The proposal therefore respects the principle of proportionality.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

Yes. To achieve the objectives of the proposal (see Section 1.1) it is necessary to harmonise the Member States' rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations as well as the rules on the recognition of parenthood established in another Member State so as to facilitate the circulation of (i) court decisions, (ii) authentic instruments establishing parenthood with binding legal effect, and (iii) authentic instruments with no legal binding effect but with evidentiary effects (such as birth certificates, which are the documents most commonly used by citizens to provide evidence of the parenthood of a child). The proposal includes rules governing the circulation of all these documents to ensure the continuity of parenthood status in the Union and the protection of children's fundamental rights and other rights in cross-border situations within the Union. The rules in the proposal are thus appropriate to achieve the proposal's intended objectives.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Yes. The proposal only contains common rules to the extent necessary to ensure the recognition of the parenthood of a child between Member States. It does not interfere with national law on the definition of family; it does not affect national law on the recognition of marriage or registered partnerships; it applies only to the establishment of parenthood in cross-border situations; it requires Member States to recognise parenthood only where it has been established in a Member State and not in a third country; it will not affect the recognition of parenthood for the purposes of rights derived from Union law, in particular the right to free movement; it does not affect the competence of the authorities of the Member States to deal with parenthood matters; and the European Certificate of Parenthood is optional and will not replace equivalent national documents providing evidence of parenthood.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

Yes. The adoption of uniform rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations can only be achieved through a Regulation as only a Regulation ensures a fully consistent interpretation and application of the rules (in contrast with a Directive), and only a binding instrument ensures that all Member States will apply the common rules (in contrast with a Recommendation). In line with previous Union instruments on private international law, the proposal should therefore be adopted by means of a Regulation.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum

standards or use a less stringent policy instrument or approach?)
Yes. The proposal only harmonises Member States' rules on the establishment of parenthood in cross-border situations but does not interfere with national law on the definition of family and does not require the recognition of the marriage or the registered partnership of the parents. The proposal also does not affect the competence of the authorities of the Member States to deal with parenthood matters, which can vary from one Member State to another (for example, whether in a Member State only courts or also other authorities such as notaries, registrars or administrative authorities can establish parenthood). The proposal only requires Member States to recognise parenthood where it has been established in a Member State but not where it has been established in a third country. Therefore, the proposal only requires the recognition of court decisions on parenthood and the recognition or, as the case may be, acceptance of authentic instruments on parenthood issued in a Member State, but not when such decisions and authentic instruments have been issued in a third country. The proposal does not affect the existing obligation requiring Member States to recognise parenthood for the purposes of rights derived from Union law, in particular the right to free movement. The proposal creates a European Certificate of Parenthood to facilitate the recognition of parenthood in another Member State, but this certificate is optional and would not replace equivalent national documents providing evidence of parenthood and which would circulate under the proposal as a national authentic instrument. Finally, the proposal would not lead to the creation of any new bodies or agencies, whether at Union or national level.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
The costs that would be created by the proposal would be small and commensurate with the objectives to be achieved. In addition, they would be outweighed to a large extent by the benefits brought about by the proposal. As regards costs borne by Member States, the proposal would only generate: (i) one-off adjustment costs, (ii) minor recurrent adjustment costs and (iii) marginal enforcement costs. The one-off adjustment costs would include, for instance, costs arising from the need to train judges and other authorities on the new rules to establish parenthood in cross-border situations or IT-related costs. The proposal includes provisions on digital communication between citizens and Member States' authorities through the European electronic access point in the context of the decentralised IT system. This will entail some costs for the Union, but the impact on the Union budget will be small, because the necessary IT infrastructure would not be developed for the purposes of the proposal on parenthood but to cover all existing instruments on judicial cooperation in civil/commercial and criminal matters. Minor recurrent adjustment costs would also be incurred (for example, costs for the upkeep of IT systems, for the issuance of European Certificates of Parenthood to citizens, or the continuous training of Member State authorities applying the Regulation). Finally, the enforcement costs associated with activities such as monitoring of the application of the Regulation would be marginal. In any event, the majority of national ministries consulted in preparing the impact assessment considered that the costs resulting from the introduction of the new rules would be compensated, in the medium or long term, by the decrease of the current costs for the recognition of parenthood.
(e) While respecting the Union law, have special circumstances applying in individual Member

States been taken into account?
The rules in the proposal are designed to harmonise the Member States' rules on international jurisdiction, applicable law and recognition in matters concerning parenthood. However, in harmonising those rules, the proposal takes into account the characteristics of the Member States legal systems. For example, in deciding on the applicable law, the proposal has taken into account the connecting factors used most frequently by the Member States and, in deciding on the types of documents that should circulate within the Union, the proposal has taken into account the different systems of establishing parenthood in the Member States as well as the particularities of each Member State as regards the national competence of authorities dealing with parenthood. This is without prejudice to the fact that Denmark will not take part in the adoption of the Regulation as it does not take part in the measures adopted under Article 81 TFEU[6], and without prejudice to Protocol No 21, whereby Ireland can notify once the proposal is adopted whether it wishes to take part in the adoption and application of the new regulation.

[6] Protocol No 22 on the Position of Denmark, annexed to the Treaties.