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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 392 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE 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) 392 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE 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) 391 final}

A. Need for action

What is the problem and what are its causes and consequences?

President von der Leyen said in her State of the Union speech in September 2020 that 'If you are parent in one country, you are parent in every country.' With this statement the President referred to the need to ensure that parenthood established in one Member State is recognised in all other Member States.

The Commission has been made aware through citizens' complaints, petitions to the European Parliament and judicial proceedings that families may encounter difficulties in having the parenthood of their children recognised in cross-border situations within the EU.

The causes of the **problems with the recognition of parenthood** are: (i) the diverging Member States' rules on the establishment of parenthood in domestic situations (substantive rules) and in cross-border situations (applicable law rules); (ii) the diverging Member States' rules on the recognition of parenthood established abroad; and (iii) the absence of rules on the recognition of parenthood in existing EU legal instruments and at international level.

The case law of the Court of Justice of the EU (CJEU) requires Member States to recognise the parenthood established in another Member State for the purposes of rights derived from EU law, in particular the rights that a child enjoys under EU law on free movement, including Directive 2004/38/EC. However, under the case law of the CJEU, Member States are currently not obliged to recognise the parenthood of a child for other purposes[1]. The non-recognition of parenthood for other purposes can have significant adverse consequences for children in cross-border situations.

Such non-recognition interferes with the fundamental rights of children, in particular the right to an identity, the right to non-discrimination and the right to respect for a private and family life. The rights that children derive from parenthood under national law may also be denied. For instance, children may lose, as regards one of their parents, their right to maintenance, succession or custody, or the right to have either of their parents act as their legal representative in another Member State in matters such as schooling, medical treatments, the opening of a bank account or the management of their property.

The non-recognition of parenthood sometimes prompts 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 and have uncertain results[2]. In addition, the non-recognition of parenthood has a negative effect on the well-being of children and their families. Ultimately, the lack of recognition of parenthood may deter children and their families 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.

What should be achieved?

The **general objective** of the EU action would be to facilitate the recognition of parenthood between Member States through the adoption of common rules at EU level. These common rules would aim to achieve the following **specific objectives**:

- ensuring the respect of the fundamental rights of children in matters concerning the recognition of parenthood;
- ensuring legal certainty, predictability and the continuity of parenthood within the EU;
- reducing the costs and legal and administrative burden for families as well as for Member States' public administrations and courts in connection with procedures for the recognition of parenthood.

[1] This includes the recognition of parenthood for purposes governed by national law, such as the legal status of persons, succession and maintenance rights.

[2] The *costs for recognition procedures* borne by cross-border families that face problems with the recognition of parenthood are on average 16 times higher than the costs borne by families in non-problematic cases. The length of recognition procedures also varies significantly depending on the complexity of the case, ranging from several weeks and months to several years.

B. Solutions

What are the various options to achieve the objectives?

The proposal would be based on Article 81(3) of the Treaty on the Functioning of the European Union on the adoption of measures concerning family law with cross-border implications.

The following policy options have been considered:

- **Option 0**: Baseline scenario
- **Option 1**: Recommendation addressed to Member States
- **Option 2**: Legislative measure: proposal for a regulation on the recognition of parenthood between Member States
- **Option 3**: Legislative measure: proposal for a regulation on the recognition of parenthood between Member States (the same as policy option 2), including the creation of an optional European Certificate of Parenthood.

All options would cover the recognition of parenthood of both children and adults.

All options, including the baseline scenario, would be accompanied by non-legislative measures to raise awareness, promote good practices and improve cooperation among public authorities dealing with parenthood matters.

What is the preferred policy option?

The preferred policy option is Option 3, that is, a proposal for a regulation on the recognition of parenthood between Member States, including the creation of an optional European Certificate of Parenthood.

The proposal would include:

(i) common rules on international jurisdiction on parenthood matters;
(ii) common rules on the law applicable to the establishment of parenthood in cross-border situations;
(iii) common rules for the recognition in a Member State of court decisions and authentic instruments on parenthood matters issued in another Member State; and
(iv) the creation of an optional European Certificate of Parenthood.

This option would significantly facilitate the recognition of parenthood in another Member State for all the estimated nearly two million children in cross-border situations and not only for those who currently face the most serious problems with the recognition of their parenthood. The optional European Certificate of Parenthood would be specifically designed for use in another Member State, thereby reducing the administrative burden for all families in cross-border situations.

The proposal would concern the recognition of court decisions and authentic instruments on parenthood issued in a Member State. The recognition of court decisions and authentic instruments on parenthood issued in a non-EU country would remain subject to national law. The proposal would not affect the recognition of parenthood for the purposes of the rights that children derive from EU law, including on free movement law. The proposal would have the best interests of children as its primary consideration and would apply to the recognition of the parenthood of all children irrespective of the circumstances of their conception or birth and of their type of family.

C. Impact of the preferred option

What are the benefits of the preferred option?

The adoption of common rules would facilitate the recognition of parenthood and would have a positive impact on the protection of children's rights in cross-border situations. Policy option 3 would be the most effective in addressing the problem of non-recognition and therefore in achieving the policy objectives of the initiative.

The preferred option would mainly have a **legal impact**. It would ensure the continuity of the parenthood of children in cross-border situations for all purposes and would have a clear positive impact on the protection of the fundamental rights of children, including their right to an identity, to non-discrimination and to a private and family life, as well as on the rights that children derive from parenthood under national law, such as their right to maintenance, succession or custody as regards any of their parents. By providing legal certainty about the

recognition of parenthood in another Member State for all purposes, the preferred option would have a positive impact on the exercise of the right to free movement by children and their families.

The preferred option would have a positive **social impact** as it would lead to children in cross-border situations being treated in the same way as local children. It would also have a positive **psychological impact** on children and their families as the instances of non-recognition of parenthood would decrease.

Through the adoption of common EU rules, the preferred option would **simplify procedures** and this would result in significant savings in terms of costs, time and burden for both families in cross-border situations and Member State authorities and courts.

- Under the preferred policy option, the costs for recognition procedures and the number of court proceedings seeking the recognition of parenthood would be significantly reduced. It is estimated that the average costs for recognition procedures borne by families would decrease by 71%, and by 90% for those families that currently face the most serious problems with the recognition of parenthood[3].
- For the same reason, the preferred option would lead to significant savings in terms of costs, time and burden for Member State authorities and courts. It is estimated that the costs for recognition procedures borne by public authorities would decrease by 54%.

The macroeconomic and environmental impacts of the preferred option would not be significant.

What are the costs of the preferred option?

The preferred option would not generate any costs for children or families in cross-border situations.

The costs that the preferred option would generate for Member States would be moderate and largely outweighed by the efficiency gains brought about by the preferred option.

What is the value added of the action at EU level (*subsidiarity*) and would the action be *proportionate*?

The problem of non-recognition results mainly from the divergence in Member States' rules in matters of parenthood with cross-border implications. This problem cannot be solved by Member States acting on their own. The objectives of the initiative would therefore be better achieved at EU level in accordance with the principle of subsidiarity.

The initiative would respect the principle of proportionality as it would not interfere with the Member States' competence for the adoption of substantive family law, including the definition of family and the establishment of parenthood in domestic situations, or the Member States' rules on the recognition of marriages or registered partnerships concluded abroad.

[3] From an estimated average of EUR 5 856 to EUR 578 per case for the families that currently face the most serious problems with parenthood recognition.