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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
Subject:	REGULATORY SCRUTINY BOARD OPINION Recognition of parenthood between Member States

Delegations will find attached document SEC(2022) 432.

Encl.: SEC(2022) 432

EUROPEAN COMMISSION

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REGULATORY SCRUTINY BOARD OPINION

Recognition of parenthood between Member States

{COM(2022) 695}

{SWD(2022) 390-392}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: **Impact assessment / Recognition of parenthood between Member States**

Overall opinion: POSITIVE

(A) Policy context

There is no EU legislation on the recognition of parenthood at the moment. Approaches to parenthood and civil status vary considerably across Member States. As a result, some families encounter problems in cross-border situations, where children may end up in legally ambiguous situations.

The aim of this initiative is to facilitate the recognition of parenthood between the Member States through adoption of harmonised rules at EU level and protect children and their fundamental rights in cross-border situations.

(B) Summary of findings

The Board notes the useful explanations provided in advance of the meeting and the commitment to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

(1) The report is not sufficiently clear on the scale of the problem nor on the assumptions underpinning the quantitative estimates and their robustness. The cost savings in scope of the one in, one out approach are not clearly presented.

(2) The report is not sufficiently clear on the risk of abusive practices and other unintended consequences. It does not sufficiently explain how this will be mitigated whilst respecting Member States' prerogatives in family and civil law.

(C) What to improve

(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

This opinion concerns a draft impact assessment which may differ from the final version.

overview of the legal situations in Member States.

(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.

(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.

(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 Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must take these recommendations into account before launching the interservice consultation.

Full title	Proposal for a Council Regulation on the recognition of parenthood between Member States
Reference number	PLAN/2021/1013
Submitted to RSB on	11 May 2022
Date of RSB meeting	8 June 2022

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

1. SUMMARY OF COSTS AND BENEFITS

Figure 7: Overview of Benefits (total for all provisions) – Preferred Option

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***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 Union
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 1.7 bn and EUR 2.1 bn (lower and upper bound) under the PO3 as compared to the baseline.	Beneficiaries: cross-border families and their children The current average costs for the recognition procedures* are EUR 341 to EUR 668 per case (lower and upper bound) 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 the recognition procedures borne by families would decrease by 72% to EUR 100 to EUR 185 per case (lower and upper bound). 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 the 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 0.7 bn and EUR 0.9 bn (lower and upper bound) under the PO3 as compared to the baseline.	Beneficiaries: public authorities of Member States The current average costs borne by public authorities for the recognition procedures are EUR 310 to EUR 355 per case (lower and upper bound). Under PO3, it is expected that the average costs for the recognition procedures borne by public authorities would decrease by 54% to EUR 150 to EUR 155 per case (lower and upper bound).
Decreased length and burden of proceedings for the	Not quantified due to a significant variance	Beneficiaries: cross-border families and their children in the Union and public authorities of Member States

recognition of parenthood in the EU	in available data	The current average length of the parenthood recognition procedure 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[1]	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 Union 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 8: 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 the recognition procedures for cross-border families	Total cost reductions for cross-border families amount to approximately EUR 1.07 bn and EUR 2.14 bn (lower and upper bound) under the PO3 as compared to the baseline.	Beneficiaries: cross-border families and their children.

[1] Notably, the EPRS (European Parliamentary Research Service) estimated in 2016 the **emotional costs** of resolving disputes on recognition of parenthood and / or of legal uncertainty at **10 000 EUR 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.

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.

Figure 9: 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
	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 procedure etc.	
Total	Direct adjustment costs	-	-		
	Indirect adjustment costs	-	-		
	Administrative costs (for offsetting)	-	-		