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From:	Commission Services
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Subject:	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 - Presentation on authentic instruments

Delegations will find in the Annex a presentation from the Commission services on authentic instruments.

Authentic instruments

Council Working Party meeting - 18 March 2025

Commission services



Introduction

- Proposal provides for the **circulation** of:
 - **court decisions**
 - **2 types of authentic instruments** that cover **all situations** concerning parenthood matters:
 - 1) authentic instruments with binding legal effect
 - 2) authentic instruments with evidentiary effects
- **Terminology** in the Proposal **in line with acquis**: **Brussels IIb Regulation** (authentic instruments with binding legal effect), **Succession Regulation** and **Property Regimes Regulations** (authentic instruments with evidentiary effects)
- In the **acquis** and in the Proposal, a **difference** between **court decisions** and **authentic instruments with binding legal effect** is necessary because:
 - only courts issue **decisions** and other competent authorities issue **authentic instruments** (all the acquis)
 - only courts are **bound** by jurisdiction rules (**direct** jurisdiction rules) (all the acquis); other competent authorities **assume** jurisdiction and they are subject to an indirect jurisdiction control (**indirect** jurisdiction rules) (Brussels IIb Regulation, Proposal)



Court decisions

- **Definition of court:**
 - **strict definition:** only courts - “authority exercising “judicial functions” (Succession Regulation, Property Regimes Regulations, Proposal)
 - **broad definition:** courts and other competent authorities - “any authority in any Member State with jurisdiction” (Brussels IIb Regulation)
- **Jurisdiction rules** are the **same** under **both definitions of court:**
 - only courts issue **decisions** (all the acquis)
 - other competent authorities issue **authentic instruments** with binding legal effect or with evidentiary effects (all the acquis)
 - only courts are **bound** by jurisdiction rules (**direct** jurisdiction rules) (all the acquis)
 - other competent authorities **assume** jurisdiction and are subject to an indirect jurisdiction control (**indirect** jurisdiction rules) (Brussels IIb Regulation, Proposal)
- **Circulation rules** are the **same** under **both definitions of court:** court decisions and authentic instruments with binding legal effect are **recognised** because in both cases there is a **jurisdiction control** (direct for courts and indirect for other competent authorities)
- Court decisions must be accompanied by a **mandatory attestation** and are recognised subject to certain **refusal grounds**



Authentic instruments with binding legal effect

- constitutive authentic instruments that **change the status** of a child through the **establishment of parenthood**
- issued by **competent authorities**: e.g. notaries, administrative authorities (ministry of justice, tax authorities, population authorities), registrars
- must be accompanied by a **mandatory attestation**
- are **recognised provided** the issuing authority assumes/has jurisdiction: **indirect jurisdiction rules**, which allow for a jurisdiction control
- subject to certain **refusal grounds**
- **example in the acquis: Brussels IIb Regulation**: constitutive authentic instruments that change the status of a person through divorce or legal separation



Authentic instruments with evidentiary effects

- non-constitutive authentic instruments that **do not change the status of a child** but **prove a fact** (e.g. birth) **or an act** (e.g. giving consent, acknowledging paternity) relevant for parenthood matters
- issued by **competent authorities**: e.g. notaries, administrative authorities (ministry of justice, tax authorities, population authorities), registrars
- may be accompanied by a **non-mandatory attestation**
- are **accepted (not recognised)** because they are not subject to a jurisdiction control
- have, in the MS of acceptance, the **effects of the MS of origin**
- subject only to **public policy** as they do not change the status of a child
- **example in the acquis: Succession Regulation and Property Regimes Regulations**



Recap

- **Types of authentic instruments** included in each regulation **depend on the needs** that arise in a given area:
 - **Brussels IIb Regulation**: authentic instruments with **binding legal effect** (for divorce and legal separation granted or registered by other competent authorities), recognised subject to an indirect jurisdiction control
 - **Succession Regulation and Property Regimes Regulations**: authentic instruments with **evidentiary effects** (for e.g. national certificates of succession and matrimonial property agreements issued by notaries), only accepted as they are not subject to a jurisdiction control
- **Proposal** must cover the **two kinds** of authentic instruments because, in the area of parenthood:
 - parenthood is **established** not only by decisions given by courts subject to a direct jurisdiction control, but also by authentic instruments issued by **other competent authorities** (notaries, administrative authorities, registrars) which are **recognised** subject to an indirect jurisdiction control, and
 - parenthood as well as other facts and legal acts are **proved** by means of authentic instruments issued by **other competent authorities** (notaries, administrative authorities, registrars) that do not establish parenthood (e.g. birth certificate) but which are relevant for parenthood matters (e.g. giving of consent, acknowledgment of paternity), and which are only **accepted** as they are not subject to a jurisdiction control



Conclusion: Option A

- In line with the acquis and the needs that arise in the area of parenthood, **Option A proposes** to:
 - **maintain the two types** of authentic instruments **without any exclusion of authentic instrument from the scope**
 - **clarify definition** of establishment of parenthood
 - **introduce definitions** of ‘authentic instrument establishing parenthood with binding legal effect’ and ‘authentic instrument not establishing parenthood with binding legal effect’
 - **adapt language** of the proposal in accordance with the new definitions of the types of authentic instruments
 - **maintain the difference** between ‘**decisions**’ and ‘**authentic instruments with binding legal effect**’ (see slides 1 and 2)
- The Proposal and Option A are **in accordance with the acquis**:
 - **departing from the acquis** as regards the legal treatment of decisions and authentic instruments with binding legal effect would lead to **serious discrepancies** between the Proposal on the one hand and existing instruments on the other hand
 - **departing from the terminology** used in the acquis (e.g. by extending the term ‘decision’ to determinations made by authorities other than courts) would raise serious interpretation questions
 - the overall result would be a **fragmentation** of the acquis that does not appear justified

