Questions & Answers: Recognition of parenthood between Member States

Brussels, 7 December 2022

EU citizens can live and work in different EU countries. They travel, move for work, buy houses, start families. However, parenthood established in an EU Member State is currently not always recognised in all the other Member States, which affects children and their rights.

EU law already requires Member States to recognise the parenthood of a child as established in another Member State for the purposes of the rights that the child has under EU law, in particular on free movement, including the right of EU citizens and their family members to move and reside freely in the EU, the right to equal treatment and the right to the recognition of name.

However, EU law does not yet require Member States to recognise the parenthood of a child established in another Member State for the purposes of the rights that a child has under national law. This means that a child can have its parenthood denied in some Member States, depriving it of rights derived from parenthood under national law, such as succession, maintenance, custody, or the responsibility of parents to act as legal representative of the child for matters such as medical treatments, schooling, etc. Families may have to start administrative or even judicial proceedings to have the parenthood recognised but those are costly, time-consuming and burdensome for both families and the administrative and judicial systems of the Member States. Even at the end of such proceedings, many families are still confronted with a refusal to recognise parenthood.

The proposal presented by the Commission today aims to close the existing loopholes, provide legal certainty for the families, and reduce the legal costs and burden and, most importantly, protect the fundamental rights of children.

What are the objectives of the Commission proposal?

The proposal has three objectives:

- to strengthen the protection of the fundamental rights and other rights of children in cross-border situations, including their right to an identity, to non-discrimination and to a private and family life, or to succession and maintenance in another Member State, taking the best interests of the child as a primary consideration. Consistent with this objective, the Council conclusions on the EU Strategy on the rights of the child underline that children’s rights are universal, that every child enjoys the same rights without discrimination of any kind and that the best interests of the child must be a primary consideration in all actions relating to children, whether taken by public authorities or by private institutions;

- to provide legal certainty and predictability about the rules that Member States must apply when establishing the parenthood of a child in a cross-border situation or when recognising the parenthood of a child as already established in another Member State; and

- to reduce the legal costs and burden for families and the administrative and judicial systems of the Member States in connection with legal proceedings initiated by families to have the parenthood of their children recognised in another Member State.

Who is covered by the proposal?

The proposal covers all children whose parenthood has been established in a Member State, and who are in a cross-border situation, irrespective of how the child was conceived or born, irrespective of the type of family of the child and irrespective of the nationality of the children and of the nationality of their parents.

The recognition or acceptance of court decisions and official documents on parenthood by a Member State, where such court decisions and official documents are issued in a non-EU country, is not covered by the proposal and will remain subject to Member State law.

How will the proposal facilitate the recognition of parenthood?

Currently, Member States face difficulties with the recognition of parenthood as they have:
different substantive law rules on the establishment of parenthood;

different rules on jurisdiction and conflict of laws for the establishment of parenthood in cross-border situations; and

different rules on the recognition of parenthood established in another Member State.

Existing EU regulations on family law, succession and public documents do not include the recognition of parenthood in their scope.

The Commission is proposing the adoption of harmonised rules on the following:

- international jurisdiction: rules determining which Member State’s courts are competent to establish parenthood in cross-border situations,

- applicable law: conflict of laws rules designating the national law that should apply to the establishment of parenthood in cross-border situations, and

- the recognition of court decisions and authentic instruments with binding legal effects (such as a notarial deed) and the acceptance of authentic instruments with evidentiary effects (such as a birth certificate) on parenthood issued in another Member State.

The Commission is also proposing the creation of a voluntary European Certificate of Parenthood that children (or their legal representatives, typically their parents) can request in the Member State that established parenthood to prove their parenthood in another Member State.

The introduction at EU level of uniform rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations aims to avoid the current situations where the application of different national rules on jurisdiction and applicable law can lead to diverging solutions in different Member States. The introduction at EU level of uniform rules on the recognition of the parenthood established in another Member State aims to facilitate the continuity of parenthood status within the whole EU.

**How will the European Certificate of Parenthood work?**

The European Certificate of Parenthood can be requested and used by children (or their legal representatives) to provide evidence in all the other Member States of their parenthood established in one Member State. The Certificate would be optional for families, but Member States would be required to issue it and accept it. It would not replace equivalent national documents providing evidence of parenthood (such as a birth certificate), which can still be relied on.

The Certificate would provide a uniform template that is designed specifically to facilitate the recognition of parenthood within the Union as it would be issued ‘for use in another Member State’. This template is provided in all the EU official languages, which would significantly reduce translation costs for families.

No authority or person presented with a copy of the Certificate issued in another Member State would be entitled to request that a court decision or an authentic instrument be presented instead of or in addition to the Certificate.

Given the stability of parenthood status in most cases, the validity of the Certificate and its copies would not be limited in time, without prejudice to the possibility to rectify, modify, suspend or withdraw the Certificate as necessary.

**How does this proposal fit with existing EU law?**

Existing EU regulations govern the recognition of court decisions and authentic instruments (documents issued by a public authority or a notary) in several areas directly relevant for children in cross-border situations, such as parental responsibility, maintenance and succession. However, parenthood matters are excluded from the scope of these private international law regulations.

The adoption of EU uniform rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations and on the recognition of parenthood in another Member State would complement current EU legislation on family law and succession and facilitate its application. The parenthood of a child is the first question that must be resolved before applying existing EU rules on parental responsibility, maintenance and succession as regards the child.

**Is family law a Member State competence or the EU's?**

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 domestic situation is governed only by national law. However, the EU 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.

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 private international law rules, the proposal takes into account the characteristics of the Member States legal systems. For example, in deciding on the applicable law, the proposal takes into account the connecting factors used most frequently by the Member States (such as habitual residence, nationality and State of birth).

The proposal does not affect the Member States' exclusive competence to regulate matters of substantive family law. Member States will continue to decide how family should be defined, the substantive conditions and procedures and the competent authorities to establish parenthood in domestic situations and the rights and obligations derived from parenthood. The measures proposed do not affect the competence of Member States to legislate on such matters.

The proposal interferes with or affects none of the following: national law on the definition of family; national law on the recognition of marriage or registered partnerships concluded abroad; the recognition of parenthood for the purposes of rights derived from EU law, in particular the right to free movement; the competence of the authorities within each Member States to deal with parenthood matters.

How will the Commission monitor the application of the Regulation?

Appropriate monitoring, evaluation and reporting obligations by the Member States are envisaged in the proposal. The practical application of the Regulation would be monitored through regular meetings of the European Judicial Network in civil and commercial matters, which brings together legal experts and legal practitioners from the Member States. In addition, a full evaluation report on the application of the Regulation would be adopted by the Commission five years after the Regulation becomes applicable. The evaluation would be done on the basis of, among others, input received from the Member States' authorities, external experts and relevant stakeholders. The Commission report would be accompanied, if necessary, by a legislative proposal.

For further information

Press release: Recognition of parenthood between Member States
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
Proposal for a Directive of the European Parliament and the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation

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