













Procedure file

Basic information		
CNS - Consultation procedure Regulation	2022/0402(CNS)	Awaiting final decision
Jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and creation of a European Certificate of Parenthood		
Subject		
4.10.03 Child protection, children's rights		
7.40.02 Judicial cooperation in civil and commercial matters		

Key players				
European Parliament	Committee responsible	Rapporteur	Appointed	
	 Legal Affairs		28/02/2023	
		 LEITÃO-MARQUES Maria-Manuel		
		Shadow rapporteur		
		 MANDERS Antonius		
		 KARLESKIND Pierre		
		 LAGODINSKY Sergey		
		 BASSO Alessandra		
		 BUXADÉ VILLALBA Jorge		
		 AUBRY Manon		
	Committee for opinion	Rapporteur for opinion	Appointed	
	 Civil Liberties, Justice and Home Affairs		05/06/2023	
		 BJÖRK Malin		
	 Women's Rights and Gender Equality		19/09/2023	
		 BIEDROŃ Robert		
Council of the European Union	Commission DG	Commissioner		
European Commission	Justice and Consumers	REYNDERS Didier		

Key events			
07/12/2022	Legislative proposal published	COM(2022)0695	Summary
16/01/2023	Committee referral announced in Parliament		
07/11/2023	Vote in committee		
21/11/2023	Committee report tabled for plenary, 1st reading/single reading	A9-0368/2023	Summary
13/12/2023	Debate in Parliament		
14/12/2023	Results of vote in Parliament		
14/12/2023	Decision by Parliament	T9-0481/2023	Summary

Technical information	
Procedure reference	2022/0402(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 081-p3-a1
Stage reached in procedure	Awaiting final decision
Committee dossier	JURI/9/10886

Documentation gateway					
Legislative proposal		COM(2022)0695	07/12/2022	EC	Summary
Document attached to the procedure		SEC(2022)0432	08/12/2022	EC	
Document attached to the procedure		SWD(2022)0390	08/12/2022	EC	
Document attached to the procedure		SWD(2022)0391	08/12/2022	EC	
Document attached to the procedure		SWD(2022)0392	08/12/2022	EC	
Document attached to the procedure		N9-0014/2023	26/01/2023	EDPS	
Committee draft report		PE749.919	15/06/2023	EP	
Amendments tabled in committee		PE751.872	19/07/2023	EP	
Amendments tabled in committee		PE751.871	19/07/2023	EP	
Amendments tabled in committee		PE751.834	20/07/2023	EP	
Committee opinion	FEMM	PE749.263	19/09/2023	EP	
Committee opinion	LIBE	PE750.249	10/10/2023	EP	
Committee report tabled for plenary, 1st reading/single reading		A9-0368/2023	21/11/2023	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T9-0481/2023	14/12/2023	EP	Summary

Commission response to text adopted in plenary		SP(2024)56	22/03/2024	EC
--	--	----------------------------	------------	----

Additional information				
Research document	Briefing		25/10/2023	

Jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and creation of a European Certificate of Parenthood

PURPOSE: to lay down new rules for the recognition of parenthood between Member States.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: while the EU has competence to adopt measures on family law with cross-border implications such as rules on international jurisdiction, applicable law and the recognition of parenthood between Member States, to date the Union has not adopted provisions in those areas as regards parenthood. The Member States provisions currently applicable in these areas differ. As a result of the absence of Union provisions on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations and on the recognition of parenthood between Member States, families may encounter difficulties in having the parenthood of their children recognised for all purposes within the Union, including when they move to another Member State or return to their Member State of origin.

The non-recognition in a Member State of the parenthood established in another Member State can have serious adverse consequences on children's fundamental rights and on the rights that they derive from national law. Therefore, it is necessary and appropriate for this Regulation to bring together common rules on jurisdiction, applicable law, recognition or, as the case may be, acceptance of court decisions and authentic instruments on parenthood as well as rules on the creation of a European Certificate of Parenthood in a Union legal instrument which is binding and directly applicable.

CONTENT: in order to address the problems with the recognition of parenthood for all purposes and close the existing gap in Union law, the Commission is proposing the adoption of Union rules on international jurisdiction on parenthood (determining which Member States courts are competent to deal with parenthood matters, including to establish parenthood, in cross-border situations) and applicable law (designating the national law that should apply to parenthood matters, including to the establishment of parenthood, in cross-border situations), so as to then facilitate the recognition in a Member State of the parenthood established in another Member State. The Commission is also proposing the creation of a European Certificate of Parenthood that children (or their legal representatives) can request and use to provide evidence of their parenthood in another Member State.

Objectives

The proposal has three objectives:

- (1) 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;
- (2) 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
- (3) 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.

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.

Harmonised rules

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

- designation of the jurisdiction: the proposal determines the courts of the Member States that have jurisdiction in matters related to parenthood, ensuring the best interest of the child;
- designation of the applicable law: as a rule, the law applicable to the establishment of parenthood should be the law of the State of the habitual residence of the person giving birth. Where that rule results in the establishment of parenthood as regards only one parent, alternative options ensure that parenthood can be established as regards both parents;
- rules for recognition of parenthood: the proposal provides for the recognition of court decisions and authentic instruments with binding legal effects (such as a notarial deed) establishing or providing evidence of the establishment of parenthood. As a rule, parenthood established in a Member State, should be recognised in all the other Member States, without any special procedure.

European Certificate of Parenthood

The proposal provides for the creation of an optional European Certificate of Parenthood. This Certificate 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 is issued always through the same procedure as laid down in the proposal, in a uniform standard form (included in Annex V to the proposal), and with the same contents and effects throughout the Union as laid down in the proposal. The Certificate is presumed to demonstrate accurately the elements established under the applicable law designated by the proposal and does not need to be transposed into a national document before it can have access to the relevant register in a Member State. As the Certificate form would be available in all Union languages, the need for translations would be significantly reduced.

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.

Jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and creation of a European Certificate of Parenthood

The Committee on Legal Affairs adopted, under a special legislative procedure (consultation), the report by Maria-Manuel LEITÃO-MARQUES (S&D, PT) on the proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in the matters of parenthood and on the creation of a European Certificate of Parenthood.

The committee recommended that the European Parliament approve the Commission's proposal subject to amendments.

This Regulation concerns the recognition in a Member State of the parenthood of a child as established in another Member State. All Member States are bound to act in the best interest of the child, including by safeguarding the fundamental right of every child to family life and prohibiting the discrimination of the child on the basis of their parents marital status or sexual orientation, or the way the child was conceived.

The non-recognition by a Member State of parenthood established in another Member State particularly affects rainbow families (LGBTIQ+ families) as well as other types of families that do not fit the nuclear family model. This is especially the case where there is no biological link between the parents and the child. This Regulation will ensure that children enjoy their rights and maintain their legal status in cross-border situations irrespective of their family situation and without discrimination.

Members noted that this Regulation cannot be interpreted as obliging a Member State to change their substantive family law in order to accept the practice of surrogacy. Member State competences must be respected in that regard.

Public policy

When the public policy exception has been raised by the courts or other competent authorities of the Member State, the decision of the court establishing the parenthood should stand until legal remedies at national and Union level has been exhausted and a final ruling has been delivered on the public policy exception.

Issuance of the Certificate

The issuing authority should issue the certificate without delay and no later than two weeks after receipt of an application. The Certificate should be available in both paper and electronic versions.

Certified copies of the Certificate

The issuing authority should keep the original of the Certificate and should issue one or more certified copies to the applicant or a legal representative, subject only to the condition that the applicant or, where applicable, the legal representative, submit documents to prove their identity, in accordance with the national law of the Member State issuing the Certificate.

Moreover, Members stated that electronic copies of the Certificate should be made available through the European electronic access point and through relevant existing national IT portals.

The issuing authority should inform without delay and at least within two weeks after its decision all persons to whom certified copies of the Certificate have been issued of any rectification, modification or withdrawal thereof.

Where the Certificate is rectified, modified or withdrawn, the original Certificate and all previous certified copies should lose their effects.

Use of videoconferencing or other distance communication technology

Members suggested that it should be possible to use videoconferencing or other distance communication technology for hearings. The courts of a Member State may allow on a case-by-case basis the hearing of child who is capable of forming their own views via videoconferencing or other distance communication technology. When deciding whether to hear a child through videoconferencing or other distance communication technology, the competent authority should be guided primarily by the best interests of the child.

Training

The report stated that Member States, with the support of the Commission and the European Judicial Training Network, should organise trainings for all relevant professionals, in particular judges, lawyers, and public administration officials on the application of this Regulation.

Jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and creation of a European Certificate of Parenthood

The European Parliament adopted by 366 votes to 145, with 23 abstentions, under a special legislative procedure (consultation), a legislative resolution on the 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.

Parliament approved the Commissions proposal subject to amendments.

Recognition of parenthood established by a European country

This Regulation concerns the recognition in a Member State of the parenthood of a child as established in another Member State. All Member States are bound to act in the best interest of the child, including by safeguarding the fundamental right of every child to family life and prohibiting the discrimination of the child on the basis of their parents marital status or sexual orientation, or the way the child was conceived. Children should not lose the rights deriving from parenthood established in a Member State in a cross-border situation.

Guaranteeing children's rights regardless of their family situation

The non-recognition by a Member State of parenthood established in another Member State particularly affects rainbow families (LGBTIQ+ families) as well as other types of families that do not fit the nuclear family model. This is especially the case where there is no biological link between the parents and the child. This Regulation will ensure that children enjoy their rights and maintain their legal status in cross-border situations irrespective of their family situation and without discrimination.

Members noted that this Regulation cannot be interpreted as obliging a Member State to change their substantive family law in order to accept the practice of surrogacy. Member State competences must be respected in that regard.

Grounds for the refusal of recognition

Non-recognition will only be possible on strictly defined grounds and after individual assessment, to prevent any discrimination. Recognition of a court decision should be refused if it is manifestly contrary to public order in the Member State in which recognition is sought, having regard to the best interests of the child.

Members consider that public policy should not be used to circumvent the obligations laid down in the regulation and that the regulation should be interpreted in accordance with the case law of the Court of Justice of the European Union.

When the public policy exception has been raised by the courts or other competent authorities of the Member State, the decision of the court establishing the parenthood should stand until legal remedies at national and Union level has been exhausted and a final ruling has been delivered on the public policy exception.

European certificate of parenthood

Members approved the introduction of the European certificate of parenthood, which aims to cut red tape and make it easier to recognise parenthood in the EU. Although it does not replace national documents, it can be used in their place.

The issuing authority should issue the Certificate without delay and not later than two weeks following receipt of a request. The Certificate should be available in both paper and electronic versions.

Use of videoconferencing or other distance communication technology

Members suggested that it should be possible to use videoconferencing or other distance communication technology for hearings. The courts of a Member State may allow on a case-by-case basis the hearing of child who is capable of forming their own views via videoconferencing or other distance communication technology. When deciding whether to hear a child through videoconferencing or other distance communication technology, the competent authority should be guided primarily by the best interests of the child.

Training

Members stated that Member States, with the support of the Commission and the European Judicial Training Network, should organise trainings for all relevant professionals, in particular judges, lawyers, and public administration officials on the application of this Regulation.

The Commission should develop guidelines on the application and enforcement of this Regulation, which should be available by six months prior to the application date.

Transparency				
LEITÃO-MARQUES Maria-Manuel	Rapporteur	JURI	08/11/2023	Plataforma Portuguesa para os Direitos das Mulheres
MAXOVÁ Radka	Shadow rapporteur	JURI	15/06/2023	ECHR Judge
MAXOVÁ Radka	Shadow rapporteur	JURI	07/06/2023	NELFA
LEITÃO-MARQUES Maria-Manuel	Rapporteur	JURI	05/06/2023	ILGA Europe
MAXOVÁ Radka	Shadow rapporteur	JURI	05/06/2023	Professor, University of Reading
MAXOVÁ Radka	Shadow rapporteur	JURI	31/05/2023	Jsme fér
MAXOVÁ Radka	Shadow rapporteur	JURI	31/05/2023	COFACE
MAXOVÁ Radka	Shadow	JURI	24/05/2023	ILGA Europe

	rapporteur			
BJÖRK Malin	Shadow rapporteur for opinion	LIBE	23/05/2023	International Coalition for the Abolition of Surrogate Motherhood
BJÖRK Malin	Rapporteur for opinion	LIBE	16/05/2023	Kerstin Burman