



**2022/0402(CNS)**

15.6.2023

**\***

## **DRAFT REPORT**

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  
COM(2022)0695 – C9-0002/2023 – 2022/0402(CNS))

Committee on Legal Affairs

Rapporteur: Maria-Manuel Leitão-Marques

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	32



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

### **on the proposal for 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 (COM(2022)0695 – C9-0002/2023 – 2022/0402(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2022)0695),
- having regard to Article 81(3) of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0002/2023),
- having regard to its resolution of 2 February 2017 with recommendations to the Commission on cross-border aspects of adoption<sup>1</sup>,
- having regard to its resolution of 5 April 2022 on protection of the rights of the child in civil, administrative and family law proceedings<sup>2</sup>,
- having regard to the study on ‘Cross-border legal recognition of parenthood in the EU’<sup>3</sup> prepared for the Committee on Petition by the Policy Department C,
- having regard to the compilation of briefing papers delivered by experts during the public hearing on ‘Recognition of parenthood in EU’ organised by the Committee on Legal Affairs<sup>4</sup>,
- having regard to the number of petitions submitted by Union citizens for examination to the Committee on Petitions relating to the need for a legal framework on cross-border recognition of parenthood between Member States<sup>5</sup>;
- having regard to the Opinion 2/2023 of the European Data Protection Supervisor on the Proposal for a Council regulation on jurisdiction, applicable law, recognition of

---

<sup>1</sup> OJ C 252, 18.7.2018, p. 14.

<sup>2</sup> OJ C 434, 15.11.2022, p. 11.

<sup>3</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/746632/IPOL\\_STU\(2023\)746632\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/746632/IPOL_STU(2023)746632_EN.pdf)

<sup>4</sup> Available online here <https://www.europarl.europa.eu/committees/en/hearing-on-recognition-of-parenthood-in-product-details/20220607CHE10283>

<sup>5</sup> Petitions: 0513/2016 by Eleni Maravelia (Greek) on the non-recognition of LGBT families in the European Union; 0657/2020 by Catalina Pallàs Picó (Spanish), on behalf of the Association of LGBTI Families of Catalonia, on the right of free movement for LGBTI families in the EU; 0712/2020 by R.A.P. (Spanish) on the fundamental rights of rainbow families and free movement within the EU; 1038/2020 by Björn Sieverding (German), on behalf of the Network of European LGBTIQ\* Families Associations, signed by one other person, on the mutual recognition of legal guardians in LGBTIQ families in the EU; 1179/2020 by Dan Sobovitz (Hungarian) bearing 2 signatures, on the protection of the right of rainbow families to free movement within the EU; 0214/2021 by C.P. (Greek) on the protection of LGBT families’ rights on the free movement within the EU;

decisions and acceptance of authentic instruments in the matters of parenthood and on the creation of a European Certificate of Parenthood<sup>6</sup>,

- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate and the Italian Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rule 82 of its Rules of Procedure,
  - having regard to the opinions of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women’s Rights and Gender Equality,
  - having regard to the report of the Committee on Legal Affairs (A9-0000/2023),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a regulation

#### Recital 8

##### *Text proposed by the Commission*

(8) While the Union 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.

##### *Amendment*

(8) While the Union 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, ***thus creating legal***

---

<sup>6</sup> [https://edps.europa.eu/system/files/2023-01/2022-1301\\_d0225\\_opinion\\_en.pdf](https://edps.europa.eu/system/files/2023-01/2022-1301_d0225_opinion_en.pdf)

*uncertainty concerning children exercising their rights in cross-border situations which could in turn lead to discrimination.*

Or. en

## **Amendment 2**

### **Proposal for a regulation Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

*(11a) The non-recognition by a Member State of parenthood established in another Member State particularly affects rainbow 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 should ensure that children enjoy their rights and maintain their legal status in cross-border situations irrespective of their family situation and without discrimination.*

Or. en

## **Amendment 3**

### **Proposal for a regulation Recital 14**

*Text proposed by the Commission*

*Amendment*

(14) Under Article 21 TFEU and secondary legislation relating thereto as interpreted by the Court of Justice, the respect of a Member State's national identity under Article 4(2) TEU and a Member State's public policy cannot serve as justification to refuse to recognise a parent-child relationship between children and their same-sex parents for the purposes

(14) Under Article 21 TFEU and secondary legislation relating thereto as interpreted by the Court of Justice, the respect of a Member State's national identity under Article 4(2) TEU and a Member State's public policy cannot serve as justification to refuse to recognise a parent-child relationship between children and their same-sex parents for the purposes

of exercising the rights that a child derives from Union law. In addition, for the purposes of exercising such rights, proof of parenthood can be presented by any means<sup>52</sup>. Therefore, a Member State is not entitled to require that a person presents either the attestations provided for in this Regulation accompanying a court decision or an authentic instrument on parenthood, or the European Certificate of Parenthood created by this Regulation, where the person invokes, in the context of the exercise of the right to free movement, rights that a child derives from Union law. This should not, however, prevent a person from choosing to present in such cases also the relevant attestation or the European Certificate of Parenthood provided for in this Regulation. To ensure that Union citizens and their family members are informed that the rights that a child derives from Union law are not affected by this Regulation, the forms of the attestations and of the European Certificate of Parenthood annexed to this Regulation should include a statement specifying that the relevant attestation or the European Certificate of Parenthood do not affect the rights that a child derives from Union law, in particular the rights that a child enjoys under Union law on free movement, and that, for the exercise of such rights, proof of the parent-child relationship can be presented by any means.

---

<sup>52</sup> Judgments of the Court of Justice of 25 July 2002, C-459/99, MRAX, ECLI:EU:C:2002:461, paragraphs 61 and 62, and of 17 February 2005, C-215/03, Oulane, ECLI:EU:C:2005:95, paragraphs 23 to 26.

of exercising the rights that a child derives from Union law. ***To that end, Member States should ensure that this Regulation is implemented correctly and that public policy is not used to circumvent the obligations laid down in this Regulation.*** In addition, for the purposes of exercising such rights, proof of parenthood can be presented by any means<sup>52</sup>. Therefore, a Member State is not entitled to require that a person presents either the attestations provided for in this Regulation accompanying a court decision or an authentic instrument on parenthood, or the European Certificate of Parenthood created by this Regulation, where the person invokes, in the context of the exercise of the right to free movement, rights that a child derives from Union law. This should not, however, prevent a person from choosing to present in such cases also the relevant attestation or the European Certificate of Parenthood provided for in this Regulation. To ensure that Union citizens and their family members are informed that the rights that a child derives from Union law are not affected by this Regulation, the forms of the attestations and of the European Certificate of Parenthood annexed to this Regulation should include a statement specifying that the relevant attestation or the European Certificate of Parenthood do not affect the rights that a child derives from Union law, in particular the rights that a child enjoys under Union law on free movement, and that, for the exercise of such rights, proof of the parent-child relationship can be presented by any means.

---

<sup>52</sup> Judgments of the Court of Justice of 25 July 2002, C-459/99, MRAX, ECLI:EU:C:2002:461, paragraphs 61 and 62, and of 17 February 2005, C-215/03, Oulane, ECLI:EU:C:2005:95, paragraphs 23 to 26.

Or. en

#### **Amendment 4**

##### **Proposal for a regulation Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(14a) It is important that Member States, supported by the Commission and the European Judicial Training Network, organise training for judges and relevant state authorities to ensure the proper implementation of this Regulation.***

Or. en

#### **Amendment 5**

##### **Proposal for a regulation Recital 44 a (new)**

*Text proposed by the Commission*

*Amendment*

***(44a) In order to facilitate the establishment of filiation between a child and parent or parents in a cross-border situation and to facilitate recognition of court decisions and authentic instruments relating to filiation, and in order to contribute to the implementation of this Regulation, Member States should, in full respect of their national court structure, consider concentrating jurisdiction for such proceedings in as limited a number of courts as possible.***

Or. en

#### **Amendment 6**

##### **Proposal for a regulation Recital 49**

*Text proposed by the Commission*

(49) Proceedings ***on the establishment of parenthood*** under this Regulation ***should***, as a basic principle, ***provide children below the age of 18 years who are*** subject to ***those*** proceedings and who ***are*** capable of forming their own views, ***in accordance with the case law of the Court of Justice***, with a genuine and effective opportunity to express their views and, when assessing the best interests of the child, due weight should be given to those views. This Regulation should, however, leave the question of who will hear the child and how the child will be heard to be determined by the national law and procedure of the Member States. In addition, while remaining a right of the child, hearing the child should not constitute an absolute obligation although it should be assessed taking into account the best interests of the child.

*Amendment*

(49) ***In accordance with Article 12 of the UN Convention on the Rights of the Child and Article 24(1) of the Charter, all children have the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. A child should be provided with the opportunity to be heard in any judicial or administrative proceedings affecting that child. Thus, during*** proceedings under this Regulation, as a basic ***principle and where applicable, a child who is*** subject to ***such*** proceedings and who ***is*** capable of forming their own views, ***should be provided*** with a genuine and effective opportunity to express their views and, when assessing the best interests of the child, due weight should be given to those views. This Regulation should, however, leave the question of who will hear the child and how the child will be heard to be determined by the national law and procedure of the Member States. In addition, while remaining a right of the child, hearing the child should not constitute an absolute obligation although it should be assessed taking into account the best interests of the child.

Or. en

**Amendment 7**

**Proposal for a regulation**  
**Recital 56**

*Text proposed by the Commission*

(56) ***Considerations of public interest should allow courts and other competent authorities establishing parenthood in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a***

*Amendment*

***deleted***

*given case, applying such provisions would be manifestly incompatible with the public policy (ordre public) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public policy exception in order to set aside the law of another State when doing so would be contrary to the Charter and, in particular, Article 21 thereof, which prohibits discrimination.*

Or. en

#### *Justification*

*The Rapporteur does not consider that enough safeguards are in place in order to assure that Member States will not abuse this public policy exemption. Therefore, she proposes to delete all references to it.*

### **Amendment 8**

#### **Proposal for a regulation**

##### **Recital 66**

#### *Text proposed by the Commission*

(66) *Although the obligation to provide children below the age of 18 years with the opportunity to express their views under this Regulation should not apply to authentic instruments with binding legal effect, the right of children to express their views should however be taken into consideration pursuant to Article 24 of the Charter and in the light of Article 12 of the UN Convention on the Rights of the Child as implemented by national law and procedure. The fact that children were not given the opportunity to express their views should not automatically be a ground for refusal of recognition of authentic instruments with binding legal effect.*

#### *Amendment*

(66) The right of **a child** to express their views should be taken into consideration pursuant to Article 24 of the Charter and in the light of Article 12 of the UN Convention on the Rights of the Child as implemented by national law and procedure **also in respect of authentic instruments with binding legal effect.** **However,** the fact that **a child who is below the age of 18 years is** not given the opportunity to express their views should not automatically be a ground for refusal of recognition of authentic instruments with binding legal effect.

Or. en

## Amendment 9

### Proposal for a regulation Recital 75

*Text proposed by the Commission*

***(75) Considerations of public interest should allow Member State courts or other competent authorities to refuse, in exceptional circumstances, to recognise or, as the case may be, accept a court decision or authentic instrument on the parenthood established in another Member State where, in a given case, such recognition or acceptance would be manifestly incompatible with the public policy (ordre public) of the Member State concerned. However, the courts or other competent authorities should not be able to refuse to recognise or, as the case may be, accept a court decision or an authentic instrument issued in another Member State when doing so would be contrary to the Charter and, in particular, Article 21 thereof, which prohibits discrimination.***

*Amendment*

***deleted***

Or. en

## Amendment 10

### Proposal for a regulation Recital 81

*Text proposed by the Commission*

(81) The court or other competent authority should issue the European Certificate of Parenthood ***upon*** request. The original of the European Certificate of Parenthood should remain with the issuing authority, which should issue one or more certified copies of the European Certificate of Parenthood to the applicant or a legal representative. Given the stability of parenthood status in the vast majority of cases, the validity of the copies of the

*Amendment*

(81) The court or other competent authority should issue the European Certificate of Parenthood ***at the request of the child ('applicant') or, where applicable, a legal representative of the child.*** The original of the European Certificate of Parenthood should remain with the issuing authority, which should issue one or more certified copies of the European Certificate of Parenthood to the applicant or a legal representative. Given

European Certificate of Parenthood should not be limited in time, without prejudice to the possibility to rectify, modify, suspend or withdraw the European Certificate of Parenthood as necessary. This Regulation should provide for redress against decisions of the issuing authority, including decisions to refuse to issue a European Certificate of Parenthood. Where the European Certificate of Parenthood is rectified, modified, suspended or withdrawn, the issuing authority should inform the persons to whom certified copies have been issued so as to avoid a wrongful use of such copies.

the stability of parenthood status in the vast majority of cases, the validity of the copies of the European Certificate of Parenthood should not be limited in time, without prejudice to the possibility to rectify, modify, suspend or withdraw the European Certificate of Parenthood as necessary. This Regulation should provide for redress against decisions of the issuing authority, including decisions to refuse to issue a European Certificate of Parenthood. Where the European Certificate of Parenthood is rectified, modified, suspended or withdrawn, the issuing authority should inform the persons to whom certified copies have been issued so as to avoid a wrongful use of such copies.

Or. en

## Amendment 11

### Proposal for a regulation

#### Recital 83

##### *Text proposed by the Commission*

(83) The European electronic access point should allow ***natural persons*** or their legal representatives to launch a request for a European Certificate of Parenthood and to receive and send that Certificate electronically. It should also allow them to communicate electronically with Member State courts or other competent authorities in proceedings ***for a decision that there are no grounds for the refusal of recognition of a court decision or an authentic instrument on parenthood, or proceedings for the refusal of recognition of a court decision or an authentic instrument on parenthood.*** Member State courts or other competent authorities should communicate with citizens through the European electronic access point only where the citizen has given prior express consent to the use of this means of

##### *Amendment*

(83) The European electronic access point should allow ***applicants*** or their legal representatives to launch a request for a European Certificate of Parenthood and to receive and send that Certificate electronically. It should also allow them to communicate electronically with Member State courts or other competent authorities in proceedings ***covered by this Regulation.*** Member State courts or other competent authorities should communicate with citizens through the European electronic access point only where the citizen has given prior express consent to the use of this means of communication.

communication.

Or. en

## Amendment 12

### Proposal for a regulation

#### Article 4 – paragraph 1 – point 1

*Text proposed by the Commission*

1. ‘parenthood’ means the **parent-child** relationship established in law. It includes the legal status of being the child of a particular parent or parents;

*Amendment*

1. ‘parenthood’ means the **child-parent** relationship established in law. It includes the legal status of being the child of a particular parent or parents;

***(This amendment, "parent-child" to "child-parent", applies throughout the text. Adopting it will necessitate corresponding changes throughout.)***

Or. en

#### *Justification*

*The Regulation aims at safeguarding the rights of the child derived from the fact that the child has a parent and the parenthood is established in law. This amendment aims at better reflecting this child-centered approach.*

## Amendment 13

### Proposal for a regulation

#### Article 4 – paragraph 1 – point 9 a (new)

*Text proposed by the Commission*

*Amendment*

***9a. “videoconferencing” means using audiovisual transmission technology tools enabling persons in a cross-border judicial procedure to participate remotely.***

Or. en

## Amendment 14

### Proposal for a regulation Article 5 – paragraph 1

*Text proposed by the Commission*

This Regulation shall not affect the competence of the authorities of the Member States to deal with parenthood matters.

*Amendment*

This Regulation shall not affect the competence of the authorities of the Member States to deal with parenthood matters *in solely domestic cases*.

Or. en

## Amendment 15

### Proposal for a regulation Article 15 – title

*Text proposed by the Commission*

Right of *children* to express their views

*Amendment*

Right of *the child* to express their views

Or. en

## Amendment 16

### Proposal for a regulation Article 15 – paragraph 1

*Text proposed by the Commission*

1. When exercising their jurisdiction under this Regulation, the courts of the Member States shall, in accordance with national law and procedure, provide *children* below the age of 18 years *whose parenthood is to be established* and who *are* capable of forming their own views, with a genuine and effective opportunity to express their views, either directly or through a representative or an appropriate body.

*Amendment*

1. When exercising their jurisdiction under this Regulation, the courts of the Member States shall in accordance with national law and procedure, provide *a child* below the age of 18 years and who *is* capable of forming their own views, with a genuine and effective opportunity to express their views, either directly or through a representative or an appropriate body *in proceedings covered by this Regulation*.

Or. en

## Amendment 17

### Proposal for a regulation Article 15 – paragraph 2

*Text proposed by the Commission*

2. Where the court, in accordance with national law and procedure, gives **children** below the age of 18 years an opportunity to express their views in accordance with this Article, the court shall give due weight to the views of the **children** in accordance with their age and maturity.

*Amendment*

2. Where the court, in accordance with national law and procedure, gives **the child** below the age of 18 years an opportunity to express their views in accordance with this Article, the court shall give due weight to the views of the **child** in accordance with their age and maturity.

Or. en

## Amendment 18

### Proposal for a regulation Article 22

*Text proposed by the Commission*

*Article 22*

*Public policy (ordre public)*

1. *The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.*

2. *Paragraph 1 shall be applied by the courts and other competent authorities of the Member States in observance of the fundamental rights and principles laid down in the Charter, in particular Article 21 thereof on the right to non-discrimination.*

*Amendment*

*deleted*

Or. en

## Amendment 19

### Proposal for a regulation Article 29 – paragraph 2

*Text proposed by the Commission*

2. The attestation shall be completed and issued in the language of the court decision. The attestation **may** also be issued in another official language of the institutions of the European Union requested by the party. ***This does not create any obligation for the court issuing the attestation to provide a translation or transliteration of the translatable content of the free text fields.***

*Amendment*

2. The attestation shall be completed and issued in the language of the court decision. The attestation **shall** also be issued in another official language of the institutions of the European Union requested by the party.

Or. en

## Amendment 20

### Proposal for a regulation Article 31 – paragraph 1 – point a

*Text proposed by the Commission*

***(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked, taking into account the child's interests;***

*Amendment*

***deleted***

Or. en

## Amendment 21

### Proposal for a regulation Article 31 – paragraph 1 – point c

*Text proposed by the Commission*

(c) upon application by any person claiming that the court decision infringes his fatherhood or her motherhood over the

*Amendment*

(c) upon application by any person claiming that the court decision infringes his fatherhood or her motherhood over the

child if it was given without such person having been given an opportunity to be heard;

child if it was given without such person having been given an opportunity to be heard ***and present evidence***;

Or. en

## Amendment 22

### Proposal for a regulation Article 31 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. Point (a) of paragraph 1 shall be applied by the courts and other competent authorities of the Member States in observance of the fundamental rights and principles laid down in the Charter, in particular Article 21 thereof on the right to non-discrimination.**

***deleted***

Or. en

*Justification*

*This paragraph is no longer necessary due to the deletion of the public policy exemption throughout the text.*

## Amendment 23

### Proposal for a regulation Article 33 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Any party may challenge or appeal against a court decision on the application for refusal of recognition.

1. Any party ***with a legitimate interest*** may challenge or appeal against a court decision on the application for refusal of recognition.

Or. en

## Amendment 24

### Proposal for a regulation Article 37 – paragraph 3

*Text proposed by the Commission*

3. The attestation shall be completed in the language of the authentic instrument. It **may** also be issued in another official language of the institutions of the European Union requested by the party. ***This does not create any obligation for the competent authority issuing the attestation to provide a translation or transliteration of the translatable content of the free text fields.***

*Amendment*

3. The attestation shall be completed in the language of the authentic instrument. It **shall** also be issued in another official language of the institutions of the European Union requested by the party.

Or. en

## Amendment 25

### Proposal for a regulation Article 39 – paragraph 1 – point a

*Text proposed by the Commission*

***(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked, taking into account the child's interests;***

*Amendment*

***deleted***

Or. en

## Amendment 26

### Proposal for a regulation Article 39 – paragraph 2

*Text proposed by the Commission*

2. ***Point (a) of paragraph 1 shall be applied by the courts and other competent authorities of the Member States in***

*Amendment*

***deleted***

***observance of the fundamental rights and principles laid down in the Charter, in particular Article 21 thereof on the right to non-discrimination.***

Or. en

*Justification*

*This paragraph is no longer necessary due to the deletion of the public policy exemption throughout the text.*

**Amendment 27**

**Proposal for a regulation  
Article 39 – paragraph 3**

*Text proposed by the Commission*

3. The recognition of an authentic instrument establishing parenthood with binding legal effect may be refused if it was formally drawn up or registered without ***children*** having been given an opportunity to express their views. ***Where the children were below the age of 18 years, this provision shall apply where the children were capable of forming their views.***

*Amendment*

3. The recognition of an authentic instrument establishing parenthood with binding legal effect may ***in exceptional cases*** be refused if it was formally drawn up or registered without ***the child*** having been given an opportunity to express their views ***pursuant to Article 15.***

Or. en

**Amendment 28**

**Proposal for a regulation  
Article 40 – paragraph 1**

*Text proposed by the Commission*

The jurisdiction of the court of the Member State of origin establishing parenthood may not be reviewed. ***The test of public policy referred to in point (a) of Article 31(1) may not be applied to the rules relating to jurisdiction set out in Articles 6 to 9.***

*Amendment*

The jurisdiction of the court of the Member State of origin establishing parenthood may not be reviewed.

*Justification*

*This sentence is no longer necessary due to the deletion of the public policy exemption throughout the text.*

**Amendment 29****Proposal for a regulation  
Article 45 – paragraph 1***Text proposed by the Commission*

1. An authentic instrument which has no binding legal effect in the Member State of origin shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, ***provided that this is not manifestly contrary to public policy (ordre public) in the Member State where it is presented.***

*Amendment*

1. An authentic instrument which has no binding legal effect in the Member State of origin shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects.

**Amendment 30****Proposal for a regulation  
Article 45 – paragraph 2***Text proposed by the Commission*

2. ***The public policy (ordre public) referred to in paragraph 1 shall be applied by the courts and other competent authorities of the Member States in observance of the fundamental rights and principles laid down in the Charter, in particular Article 21 thereof on the right to non-discrimination.***

*Amendment*

*deleted*

### *Justification*

*This paragraph is no longer necessary due to the deletion of the public policy exemption throughout the text.*

#### **Amendment 31**

##### **Proposal for a regulation Article 47 – paragraph 1**

*Text proposed by the Commission*

The Certificate is for use by a child or a legal representative who, ***in another Member State***, needs to invoke the child's parenthood status.

*Amendment*

The Certificate is for use by a child or a legal representative who needs to invoke the child's parenthood status.

Or. en

#### **Amendment 32**

##### **Proposal for a regulation Article 49 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Where a Member State provides digital access to the information referred to in paragraph 3, the applicant shall be provided with access to a digital version of the form established in Annex IV, which shall be automatically completed by the competent authorities in its entirety or partially, depending on the information available. The applicant or, where applicable, the legal representative of the applicant shall be able to add any missing information to the form before submitting the application.***

Or. en

## Amendment 33

### Proposal for a regulation Article 50 – paragraph 1

*Text proposed by the Commission*

1. Upon receipt of the application, the issuing authority shall verify the information and declarations and the documents and other evidence provided by the applicant. It shall carry out the enquiries necessary for that verification of its own motion where this is provided for or authorised by its national law, or shall invite the applicant to provide any **further evidence which it deems necessary**.

*Amendment*

1. Upon receipt of the application, the issuing authority shall verify the information and declarations and the documents and other evidence provided by the applicant. It shall carry out the enquiries necessary for that verification of its own motion where this is provided for or authorised by its national law, or shall invite the applicant to provide any **information that the authority considers to be missing, in order to issue a Certificate**.

Or. en

## Amendment 34

### Proposal for a regulation Article 51 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the establishment of parenthood. It shall use the form in Annex V.

*Amendment*

The issuing authority shall issue the Certificate without delay **and not later than 15 days following receipt of a request**, in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the establishment of parenthood. It shall use the form in Annex V.

Or. en

## Amendment 35

### Proposal for a regulation Article 51 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. The Certificate shall be available in both paper and electronic versions.**

Or. en

### **Amendment 36**

#### **Proposal for a regulation Article 53 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The Certificate shall constitute a valid document for the recording of parenthood in the relevant register of a Member State, ***without prejudice to point (i) of Article 3(2).***

3. The Certificate shall constitute a valid document for the recording of parenthood in the relevant register of a Member State.

Or. en

### **Amendment 37**

#### **Proposal for a regulation Article 54 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies to the applicant or a legal representative.

1. The issuing authority shall keep the original of the Certificate and shall 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.***

Or. en

## **Amendment 38**

### **Proposal for a regulation Article 54 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Electronic copies of the Certificate shall be made available through the European electronic access point established on the European e-Justice Portal pursuant to Article 4 of Regulation (EU) ..../... [the Digitalisation Regulation] and through relevant existing national IT portals.***

Or. en

## **Amendment 39**

### **Proposal for a regulation Article 55 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Where the Certificate is rectified, modified or withdrawn, the original Certificate and all previous certified copies shall lose their effects.***

Or. en

## **Amendment 40**

### **Proposal for a regulation Article 56 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

If, as a result of a challenge as referred to in paragraph 1, it is established that the Certificate issued is not accurate, the competent court shall rectify, modify or withdraw the Certificate or ensure that it is rectified, modified or withdrawn by the

If, as a result of a challenge as referred to in paragraph 1, it is established that the Certificate issued is not accurate, the competent court shall rectify, modify or withdraw the Certificate or ensure that it is rectified, modified or withdrawn by the

issuing authority.

issuing authority *without delay*.

Or. en

#### **Amendment 41**

##### **Proposal for a regulation**

##### **Article 56 – paragraph 2 – subparagraph 2**

###### *Text proposed by the Commission*

If, as a result of a challenge as referred to in paragraph 1, it is established that the refusal to issue the Certificate was unjustified, the competent court shall issue the Certificate or ensure that the issuing authority re-assesses the case and makes a fresh decision.

###### *Amendment*

If, as a result of a challenge as referred to in paragraph 1, it is established that the refusal to issue the Certificate was unjustified, the competent court shall issue the Certificate or ensure that the issuing authority re-assesses the case and makes a fresh decision *without delay*.

Or. en

#### **Amendment 42**

##### **Proposal for a regulation**

##### **Article 57 – paragraph 2 – subparagraph 2 a (new)**

###### *Text proposed by the Commission*

###### *Amendment*

***The certified copies of the Certificate already issued shall have no effects during the suspension of the effect of the Certificate.***

Or. en

#### **Amendment 43**

##### **Proposal for a regulation**

##### **Article 58 – paragraph 1 – introductory part**

###### *Text proposed by the Commission*

###### *Amendment*

1. The European electronic access

1. ***It shall be possible to use the***

point established on the European e-Justice Portal pursuant to Article 4 of [the Digitalisation Regulation] **may be used** for electronic communication between **natural persons** or their legal representatives and Member State courts or other competent authorities in connection with **the following**:

European electronic access point established on the European e-Justice Portal pursuant to Article 4 of [the Digitalisation Regulation] for electronic communication between **applicants** or their legal representatives and Member State courts or other competent authorities in connection with **proceedings covered by this Regulation**.

Or. en

#### **Amendment 44**

##### **Proposal for a regulation Article 58 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) proceedings for a decision that there are no grounds for the refusal of recognition of a court decision or an authentic instrument on parenthood, or proceedings for the refusal of recognition of a court decision or an authentic instrument on parenthood;**

**deleted**

Or. en

*Justification*

*This point is no longer necessary due to the change suggested to paragraph 1 of this Article.*

#### **Amendment 45**

##### **Proposal for a regulation Article 58 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) the application for, issuance, rectification, modification, withdrawal, suspension or redress procedures of the European Certificate of Parenthood.**

**deleted**

*Justification*

*This point is no longer necessary due to the change suggested to paragraph 1 of this Article.*

**Amendment 46**

**Proposal for a regulation  
Article 58 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The European electronic access point established on the European e-Justice Portal pursuant to Article 4 of [the Digitalisation Regulation] shall be used for electronic communication between competent authorities in connection with the following:***

- (a) all proceedings and applications referred in paragraph 1;***
- (b) lis pendens***

Or. en

**Amendment 47**

**Proposal for a regulation  
Article 58 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Articles 4(3), 5(2) and (3), 6, 9(1) and 3, and 10 of [the Digitalisation Regulation] shall apply to electronic communications pursuant to ***paragraph 1***.

2. Articles 4(3), 5(2) and (3), 6, 9(1) and 3, and 10 of [the Digitalisation Regulation] shall apply to electronic communications pursuant to ***paragraphs 1 and 1a***.

Or. en

## Amendment 48

### Proposal for a regulation Article 58 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 58a*

*Use of videoconferencing or other distance communication technology*

- 1. It shall be possible to use videoconferencing or other distance communication technology for hearings related to the proceedings covered by this Regulation in accordance with Regulation (EU) ..../... [the Digitalisation Regulation].*
- 2. Pursuant to Article 15, 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 shall be guided primarily by the best interests of the child.*

Or. en

## Amendment 49

### Proposal for a regulation Article 69 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

Notwithstanding paragraph 1, Member States shall accept an authentic instrument which has no binding legal effect in the Member State of origin but which has evidentiary effects in that Member State, ***provided that this is not manifestly contrary to the public policy (ordre public) of the Member State in which***

Notwithstanding paragraph 1, Member States shall accept an authentic instrument which has no binding legal effect in the Member State of origin but which has evidentiary effects in that Member State.

*acceptance is sought.*

Or. en

## **Amendment 50**

### **Proposal for a regulation Article 70 – paragraph 1**

*Text proposed by the Commission*

1. By [5 years from date of application of this Regulation], the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation, including an evaluation of any practical problems encountered, supported by information supplied by the Member States. The report shall be accompanied, where necessary, by a legislative proposal.

*Amendment*

1. By [3 years from date of application of this Regulation] **and thereafter every 5 years**, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation, including an evaluation of any practical problems encountered, supported by information supplied by the Member States. The report shall be accompanied, where necessary, by a legislative proposal.

Or. en

## **Amendment 51**

### **Proposal for a regulation Article 70 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. The Member States shall provide the Commission **upon request, where available**, with information relevant for the evaluation of the operation and application of this Regulation, **in particular** on:

*Amendment*

2. The Member States shall provide the Commission with information relevant for the evaluation of the operation and application of this Regulation, **at least** on:

Or. en

## **Amendment 52**

### **Proposal for a regulation**

#### **Article 70 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) the number of applications for the establishment of parenthood submitted under this Regulation;***

Or. en

## **Amendment 53**

### **Proposal for a regulation**

#### **Article 70 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The Commission shall establish a dialogue with relevant stakeholders to contribute to the preparation of the evaluation report referred to in paragraph 1.***

Or. en

## EXPLANATORY STATEMENT

The Rapporteur considers that the Commission's proposal comes at a very timely moment. She fully agrees with its aim, which is to ensure that every child's rights are guaranteed and protected as enshrined in the UN Convention of the Rights of the Child and EU Charter. The Regulation, therefore, establishes that if you are parent in one Member State, you are parent in every Member State.

Currently, the same family in different Member States might be subject to different laws to determine the parenthood of a child.

This means that children may lose their parents, legally speaking, when they enter another Member State.

This puts them at significant risk, as they do not have guaranteed access to certain rights such those related to succession, maintenance or schooling and education.

This is an unacceptable *status quo* and is comparable to the legal status of children born outside of marriage in previous centuries, concerning the lack of recognition of their rights.

The current legal landscape particularly affects rainbow families as well as other types of families that do not fit the nuclear family model. This is especially the case where there is not a biological link between the parents and the child.

This Regulation comes to address the issue of non-recognition of parenthood status by assuring that if a child-parent relation has been established in one Member State all other Member States shall be obliged to recognise it.

The Rapporteur would like to stress that this Regulation does not change the substantive family law of Member States. The EU can harmonise rules that apply in cross-border situations where there is an international element. However, given the lack of any provisions transferring competence to the EU in the sphere of domestic family law, the latter falls within the exclusive competence of Member States. Hence, Member States remain free to decide what they consider to be a family and how parenthood should be established.

In addition, the specific case of surrogacy has been raised in various debates in the context of this proposal. As surrogacy remains a matter of domestic law, the decisions on whether and how to legislate on it are for each Member State to make.

Furthermore, the Rapporteur would like to remind that according to the case law of the European Court of Human Rights<sup>7</sup>, all States within its jurisdiction are already required to recognise the relationship between a child born out of surrogacy and the biological intended parent, established abroad. Moreover, all States need to provide for a mechanism for the recognition of the relationship between the child and the non-biological intended parent, for example through adoption. This means that the adoption of this Regulation does not change

---

<sup>7</sup> For example, *Mennesson v. France* (Application no 65192/11, Council of Europe: European Court of Human Rights, 26 June 2014) and *Advisory Opinion P16-2018-001* (Request no. P16-2018-001, Council of Europe: European Court of Human Rights, 10 April 2019).

the situation of children born out of surrogacy in the EU.

This proposal also does not apply to parenthood established in a third country. Member States will not be obliged to recognise parenthood established in a country outside the EU even if another Member States recognises it.

Taking all the above into consideration, the Rapporteur will aim to make sure that there are no loopholes in the proposal, to make recognition as easy and straightforward as possible and to strengthen the digital elements of the proposal, among other aspects.

All children should have the same rights in the EU. This proposal comes to assure that no child is discriminated because of the way they were born or the type of family they were born into.