

## INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

<b>TITLE OF THE INITIATIVE</b>	Regulation on the recognition of parenthood between Member States
<b>LEAD DG (RESPONSIBLE UNIT)</b>	DG JUST A1
<b>LIKELY TYPE OF INITIATIVE</b>	Legislative proposal
<b>INDICATIVE PLANNING</b>	Q2 2022
<b>ADDITIONAL INFORMATION</b>	

**The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception Impact Assessment, including its timing, are subject to change.**

### A. Context, Problem definition and Subsidiarity Check

#### **Context**

Commission President von der Leyen said in her State of the European Union speech in September 2020 that “If you are parent in one country, you are parent in every country”. With this statement the Commission President referred to the need to ensure that the parenthood established in a Member State is recognised in all other Member States.

The legal context on the recognition of parenthood is as follows:

- i) At international level there is currently no instrument on the recognition of parenthood. The Hague Conference on Private International Law (HCCH) set up, in 2015, an Experts' Group to explore the possibility of adopting a convention on legal parentage and a separate optional protocol on legal parentage established as a result of international surrogacy arrangements. The Experts' Group must submit its final report in 2023.
- ii) At Union level, a Green Paper of 2010<sup>1</sup> discussed the appropriateness of adopting measures on the recognition of civil status records, including on parenthood, issued in another Member State but, to date, no measures have been adopted.
- iii) At national level, currently each Member State applies its own law for the recognition of civil status records on parenthood issued in another Member State as well as on the recognition of judgments on parenthood given in another Member State. Several Member States apply their national conflict rules to recognise public documents on parenthood but their conflict rules diverge as to which law should apply to that recognition (for example, the law of nationality or the law of habitual residence).

Under the Union Treaties, substantive law on family matters and the legal status of persons falls within the competence of Member States, which means that the establishment of the parenthood of a person is governed by national law. Member States' substantive rules on the establishment of parenthood differ.

Whilst substantive law on parenthood is within the remit of Member States' law, the Union can adopt measures concerning family law with cross-border implications pursuant to Article 81(3) TFEU. These measures can include the adoption of common conflict rules and the adoption of common procedures for the recognition of judgments issued in other Member States. No such harmonising measures as regards parenthood have been adopted to

<sup>1</sup> [Green Paper: Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records, COM/2010/0747](https://ec.europa.eu/justice/policies/civil/status-records/docs/green-paper-2010-0747_en.pdf)

date.

Families are increasingly mobile as they move and travel between Member States. Yet, given the differences in Member States' substantive and conflict rules on parenthood, and the fact that there are no Union conflict rules on parenthood or Union rules on the recognition of judgments on parenthood between Member States, families may face difficulties in having the parenthood of their children recognised when crossing borders within the Union.

The Commission has been made aware through citizens' complaints, petitions to the European Parliament and judicial proceedings that families may encounter difficulties in having the parenthood of their children recognised when crossing borders within the Union. Thus the Commission intends to consider measures, including a legislative proposal, to facilitate the recognition of parenthood between Member States.

### **Problem the initiative aims to tackle**

The drivers (or causes) of the problem that the intended measures aim to address are twofold: (a) the differences in Member States' substantive rules and conflict rules on the establishment of parenthood and on the recognition of judgments on parenthood, and (b) the absence of Union conflict rules on parenthood and the absence of Union rules on the recognition of judgments on parenthood.

(a) As regards Member States' substantive rules, national rules on the establishment of parenthood differ, for example, according to the marital or registered partnership status of the parents or depending on whether the parent is a biological parent, has adopted the child or is a parent by operation of law. Member States' conflict rules may differ because they may designate different laws (for example, the law of the nationality of the child or the law of the country where the child has their habitual residence) to establish the parenthood of a child in cross-border situations.

(b) As to Union legislation, the Union has adopted a number of instruments on family law and succession which include common conflict rules and common rules on the recognition of judgments. The stated objective of these instruments is creating, maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. Among these instruments are some which are of direct relevance for children in cross-border situations, namely (i) the Brussels IIa Regulation<sup>2</sup>, which provides, amongst others, for common conflict rules and rules on the recognition of judgments on children's custody and visiting rights to children, (ii) the Maintenance Regulation<sup>3</sup>, which provides, amongst others, for common conflict rules and rules on the recognition of judgments on maintenance obligations arising from parentage; and (iii) the Succession Regulation<sup>4</sup>, which provides, amongst others, for common conflict rules and rules on the recognition of judgments on succession. None of these instruments, however, includes parenthood in their scope, which may be regarded as a preliminary issue for the recognition of judgments given in another Member State on children's custody and visiting rights, maintenance obligations in favour of children and children's inheritance rights.

The Union has also adopted the Regulation on Public Documents<sup>5</sup>, which is aimed to facilitate the free movement of persons by simplifying the circulation of public documents (such as judgments, notarial acts and administrative certificates) in certain areas, including parenthood. This Regulation, however, only deals with the acceptance of the authenticity of those public documents and does not govern the recognition of the legal effects of the contents of such documents.

The problem that results from the above-mentioned drivers is that families that travel within the Union or take up residence in another Member State may see the parenthood of their children not recognised. This may happen, for example, where the parenthood of a child is established by operation of law or where a child is adopted domestically by two parents, by the partner of the biological parent or by one single parent. Citizens have reported to the Commission and the European Parliament difficulties to travel or move within the Union with their children as a result of the existence of different Member States' rules on the establishment and recognition of parenthood.

<sup>2</sup> [Council Regulation \(EC\) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation \(EC\) No 1347/2000, OJ L 338, 23.12.2003.](#)

<sup>3</sup> [Council Regulation \(EC\) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10.1.2009.](#)

<sup>4</sup> [Regulation \(EU\) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012.](#)

<sup>5</sup> [Regulation \(EU\) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation \(EU\) No 1024/2012, OJ L 200, 26.7.2016.](#)

The non-recognition of parenthood can have significant adverse consequences for a child. The non-recognition of an established parenthood can lead to a parent losing parental rights to act as the legal representative of the child in matters such as enrolling the child in school, opening a bank account on behalf of the child, giving consent for medical treatment of the child, obtaining documentation necessary to travel alone with the child or authorising the child to travel alone, obtaining documentation necessary for the child to prove a Member State's nationality and therefore Union citizenship through a passport or an identity card; to the child losing their entitlements to maintenance rights, succession rights, custody or visiting rights by one of their parents or rights associated with having a sibling legal relationship (for example, the right to be enrolled in the same school); or to the child not benefiting from family allowances granted to parents or from parental leave rights. This may lead parents to start litigation to have their parenthood over the child recognised in another Member State, with the significant time, costs and burden that this represents.

Ultimately, the consequence of the lack of recognition of the parenthood of a child in another Member State may be the obstruction of the right to free movement of a child with their parent(s) or the deterrence of parents from exercising their right to free movement with their child for fear that an established parenthood will not be recognised if travelling within the Union or taking up residence in another Member State.

Given that, with increased mobility, the number of children born to families with a cross-border element are also likely to increase, the problem as defined is expected to grow in importance.

As noted, the link between family and succession law in cross-border situations and the right to free movement has been confirmed by the Union legislator in the above-mentioned instruments on parental responsibility, maintenance and succession. The Court of Justice of the EU has not, to date, ruled on the recognition of parenthood. However, two cases (C-490/20 *V.M.A.* and C-2/21 *K.S.*) are now pending before the Court concerning the non-recognition of parenthood, the adverse effects of such non-recognition on the rights of the child and the right to free movement. For its part, Directive 2004/38 on free movement<sup>6</sup> governs the right to free movement as regards the right of exit and entry, and the right of residence and of permanent residence, of Union citizens and their families.

#### **Basis for EU intervention (legal basis and subsidiarity check)**

The legislative initiative would be taken in the context of Title V TFEU, Chapter 3 on judicial cooperation in civil matters and, in particular, pursuant to Article 81(3) on measures concerning family law with cross-border implications. The proposal would lay down common conflict rules on parenthood and common rules on the recognition of judgments on parenthood.

While the proposal would respect the Member States' competence as regards substantive family law, including on the definition of family and the establishment of parenthood, the problem has a Union dimension as it hinders or deters the free movement of persons. The problem cannot be solved by the Member States acting on their own. Given that the proposal would lay down common conflict rules and common provisions on the recognition of judgments on parenthood, the objectives of the initiative, by reasons of its scope and effects, would be better achieved at Union level in accordance with the principle of subsidiarity. The proposal would respect the principle of proportionality as it would not go beyond what is necessary to achieve the recognition of parenthood between Member States, or to facilitate the free movement of children with their families as it would have a targeted scope focused on parenthood.

## **B. Objectives and Policy options**

The specific objective of the proposal would be to facilitate the recognition of parenthood by laying down common conflict rules on parenthood as well as common rules on the recognition of judgments on parenthood. This will enable children to maintain all their rights in cross-border situations and will drastically reduce the cost, time and burden of lengthy litigation for the recognition of parenthood in another Member State. The proposal will have the best interests of the child and the rights of the child as its primary consideration.

The general objective of the proposal would be to create, maintain and develop an area of freedom, security and justice in which the free movement of persons is ensured, in particular for children with their parents when the family travels within the Union or takes up residence in another Member State.

Under a baseline scenario, no action would be taken at Union level. The problem as defined in Section A would thus remain. Some citizens, in order to overcome the difficulties stemming from the lack of recognition of

<sup>6</sup> [Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation \(EEC\) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC \(Text with EEA relevance\), OJ L 158, 30.4.2004.](#)

parenthood in another Member State, could bring a case before national courts hoping that the Court of Justice of the EU would clarify the interpretation of Union law as applied to the facts of their case. However, it is uncertain whether or when a national court would request a preliminary ruling and, if so, whether a preliminary ruling would provide a horizontal clarification of Union law that could apply across all cases where parenthood is not recognised. As not all families facing difficulties with the non-recognition of the parenthood of their child have the means to engage in strategic litigation, some of them may simply forsake the exercise of their right to free movement with their child. The impact on the baseline scenario of the Court's preliminary rulings in the two above-mentioned pending cases, which deal with the issuance of a birth certificate including parenthood as established in another Member State but not recognised under national law, will also be assessed.

When considering action at Union level the Commission will examine the following options:

i) the adoption of soft law measures: the Commission will examine whether the problem as defined could be effectively resolved by national authorities under Union guidance in the form of, for example, recommendations. These recommendations would aim to ensure a minimum consistency in national authorities' approach to recognition so as to provide practical solutions to citizens where possible;

ii) the adoption of legislative measures in the form of a proposal for a regulation: the proposal would address the recognition of parenthood where families with children travel within the Union, move to another Member State or return to their Member State of origin. The proposal would cover biological parenthood, parenthood by operation of law and domestic adoption. The recognition of intercountry adoption is already covered by the 1993 Hague Convention on Intercountry Adoption<sup>7</sup>, to which all Member States are parties. Within this policy option, the Commission will examine in particular the following issues: whether the proposal should cover only the recognition of public documents (such as a birth certificate) through the adoption of common conflict rules or also the recognition of court decisions through the adoption of common rules on the recognition of judgments on parenthood; the connecting factors on which conflict rules should be based (for example, nationality and/or habitual residence); possible legal safeguards; and the possibility of introducing an optional European certificate of parenthood.

### **C. Preliminary Assessment of Expected Impacts**

#### **Likely economic impacts**

By introducing Union rules on the recognition of parenthood between Member States, citizens would no longer need to invest in national litigation and possible requests for a preliminary ruling from the Court of Justice of the EU. This would save citizens the legal costs, time and burden of lengthy judicial proceedings on recognition. First estimates indicate that domestic litigation from the first to the third instance can vary between Euro 5,000 and 10,000 in legal fees, plus an additional estimated Euro 4,000 to 8,000 to make a request for a preliminary ruling, to which travel and translation expenses must be added. To the costs of litigation for citizens, the costs for national justice systems must be added. The adoption of legislative measures on recognition at Union level would drastically reduce all these costs.

#### **Likely social impacts**

The adoption of legislative measures would introduce legal certainty as to the law that would apply in all Member States to recognise parenthood in cross-border situations, and also as regards the rules on judicial cooperation that would apply to the recognition in a Member State of a judgment on parenthood given in another Member State. This legal certainty and judicial cooperation would do away with the need for citizens to engage in litigation when they face difficulties with the recognition of the parenthood of their children in a Member State to which they have travelled or where they wish to take up residence. This legal certainty and judicial cooperation are expected to facilitate significantly the right to free movement of children with their parents when travelling or moving within the Union. They are also expected to significantly increase the welfare of children.

#### **Likely environmental impacts**

Not anticipated.

#### **Likely impacts on fundamental rights**

The proposal would support the protection of the rights of the child in accordance with international and Union law, including the child's right to free movement:

- the UN Convention on the Rights of the Child, ratified by all Member States, provides that States Parties must ensure that the child is protected against all forms of discrimination or punishment on the basis of the status or activities of the child's parents (Article 2); that, in all actions concerning children, whether undertaken by courts or legislative bodies, the best interests of the child must be a primary consideration (Article 3); and that the child has

<sup>7</sup> [Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.](#)

the right to an identity and to be cared for by his or her parents (Articles 7 and 8);

- Article 8 of the European Convention on Human Rights, ratified by all Member States, provides for the right to respect for private and family life;

- Article 3(3) TEU provides for the protection of the rights of the child. Based on the European Convention on Human Rights, Article 7 of the Charter of Fundamental Rights of the EU lays down the right to respect for private and family life. Based on the UN Convention on the Rights of the Child, Article 24(2) of the Charter states that, in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Article 24(3) of the Charter specifies that every child has the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents;

- finally, both Article 21 TFEU and Article 45 of the Charter provide for the right of Union citizens to move and reside freely within the territory of the Member States.

By introducing legal certainty as regards the recognition of parenthood between Member States, the proposal would help children maintain all their rights in cross-border situations and, thereby, facilitate the exercise of their right to free movement with their parents.

#### **Likely impacts on simplification and/or administrative burden**

Doing away with administrative disputes and litigation on individual cases resulting from the absence of Union rules on the recognition of the parenthood already established in another Member State would significantly reduce administrative burden and costs for citizens, national administrations and national judicial systems.

### **D. Evidence Base, Data collection and Better Regulation Instruments**

#### **Impact assessment**

An impact assessment will be prepared to support the preparation of the proposal and to inform the Commission's decision.

#### **Evidence base and data collection**

To inform the preparation of the initiative and, in particular, the Impact assessment, evidence will be gathered through a study commissioned to an external contractor and through an open public consultation addressed to citizens and stakeholders.

In addition, an Expert Group will be set up composed of experts on private international law, the rights of the child and free movement to complement the information on the problem definition and advise the Commission on the alternative scopes of the proposal.

Further, an informal meeting with Member States' governmental experts will be held in 2021, and one workshop with stakeholders with particular interest in the topic is also envisaged in 2021.

#### **Consultation of citizens and stakeholders**

An open public consultation with a questionnaire will be launched in Q2 2021 to gather input from citizens and stakeholders. The main stakeholders identified are legal practitioners, including judges, registrars and lawyers, academics, Member State governments and organisations representing children's rights. The questionnaire will aim to gather evidence on the problem definition and the alternative policy options.

The questionnaire will run for a minimum period of 12 weeks and will be available in the 24 official Union languages. The questionnaire will be accessible via the Commission's central [public consultations page](#). A summary of all consultation activities' results will be published on the public consultation page once all consultation activities are closed.

#### **Will an Implementation plan be established?**

As the Commission will evaluate the appropriateness of soft law measures or a legislative instrument consisting of a regulation, no formal implementation plan is required. However, awareness raising actions and training to legal practitioners will be provided as appropriate.