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COM(2022) 695 final

2022/0402 (NLE)

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**

{SEC(2022) 432 final} - {SWD(2022) 390 final} - {SWD(2022) 391 final} -  
{SWD(2022) 392 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The Union aims to create, maintain and develop an area of freedom and justice in which the free movement of persons, access to justice and the full respect of fundamental rights are ensured.

To further this objective, Commission President von der Leyen said in her State of the Union speech in 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 for all purposes. This initiative was identified as a key action in the EU Strategy on the rights of the child<sup>1</sup> and in the EU LGBTIQ Equality Strategy<sup>2</sup>.

The **objective** of the proposal is to strengthen the **protection of the fundamental rights and other rights of children in cross-border situations**, including their right to an identity<sup>3</sup>, to non-discrimination<sup>4</sup> and to a private and family life<sup>5</sup>, and to succession and maintenance rights in another Member State, taking the best interests of the child as a primary consideration<sup>6</sup>. Consistent with this objective, the Council conclusions on the EU Strategy on the rights of the child<sup>7</sup> 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.

Additional objectives of the proposal are to provide **legal certainty** and predictability about the rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations and on the recognition of parenthood, and to **reduce the legal costs and burden** for families and the Member States’ judicial systems in connection with legal proceedings for the recognition of parenthood in another Member State.

The need to ensure the recognition of parenthood between Member States arises because citizens increasingly find themselves in cross-border situations, for example where they have family members in another Member State, travel within the Union, move to another Member State to find a job or found a family, or buy property in another Member State. However, an estimated 2 million children may currently face a situation in which the recognition of their

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<sup>1</sup> EU Strategy on the rights of the child, COM(2021) 142 final.

<sup>2</sup> Union of Equality: LGBTIQ Equality Strategy 2020-2025, COM(2020) 698 final.

<sup>3</sup> Article 8 of the UN Convention on the Rights of the Child.

<sup>4</sup> Article 2 of the UN Convention on the Rights of the Child, Article 21 of the Charter of Fundamental Rights of the European Union.

<sup>5</sup> Article 9 of the UN Convention on the Rights of the Child, Articles 7 and 24 of the Charter of Fundamental Rights of the European Union.

<sup>6</sup> Article 3 of the UN Convention on the Rights of the Child, Article 24 of the Charter of Fundamental Rights of the European Union.

<sup>7</sup> Council conclusions on the EU Strategy on the rights of the child, 9 June 2022, 10024/22.

parenthood as established in one Member State is not recognised for all purposes in another Member State.

Union law already requires Member States to recognise the parenthood of a child as established in another Member State for the purposes of the **rights that the child derives from Union law**, in particular under Union law on free movement, including Directive 2004/38/EC<sup>8</sup> on the right of the citizens of the Union and their family members to move and reside freely within the territory of the Member States<sup>9</sup>, which entails the right to equal treatment<sup>10</sup> and the prohibition of obstacles in matters such as the recognition of names<sup>11</sup>.

However, Union law does not yet require Member States to recognise the parenthood of a child as established in another Member State for **other purposes**. This non-recognition can have significant **adverse consequences for children**. It hinders their fundamental rights in cross-border situations and may result in the denial of the rights that they derive from parenthood under national law. Children can thus lose their succession or maintenance rights in another Member State, or their right to have any one of their parents act as their legal representative in another Member State on matters such as medical treatments or schooling. These difficulties may force families to embark on **legal proceedings** to have the parenthood of their children recognised in another Member State, but these legal proceedings involve time, costs and burden for both families and the judicial systems of the Member States and have uncertain results. Ultimately, although Member States are obliged to recognise parenthood as established in another Member State for the purposes of rights derived from Union law, families may be **deterred** from exercising their right to free movement for fear that the parenthood of their children will not be recognised in another Member State for all purposes.

The **reasons** for the current difficulties with the recognition of parenthood are that the Member States have different substantive rules on the establishment of parenthood in domestic situations, which are and will remain under their competence, but also different rules

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<sup>8</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 (OJ L 158, 30.4.2004).

<sup>9</sup> See, in particular, the judgment of the Court of Justice of the European Union of 14 December 2021, *V.M.A. v Stolichna obshtina*, C-490/20, ECLI:EU:C:2021:1008, in which the Court held that Member States are required to recognise parenthood for the purposes of permitting a child that has the nationality of a Member State to exercise without impediment, with each parent, the right to move and reside freely within the territory of Member States, and that this includes the right of each parent to have a document which enables them to travel with the child.

<sup>10</sup> Judgments of the Court of Justice of 31 May 1979, *Even*, C-207/78, ECLI:EU:C:1979:144 and of 8 June 1999, *Meeusen*, C-337/97, EU:ECLI:C:1999:284.

<sup>11</sup> See, for instance, judgments of the Court of Justice of 2 October 2003, *Carlos García Avello v État belge*, Case C-148/02, ECLI:EU:C:2003:539; of 14 October 2008, *Grunkin-Paul*, Case C-353/06, ECLI:EU:C:2008:559; of 8 June 2017, *Freitag*, Case C-541/15, ECLI:EU:C:2017:432. Other rights derived from Union law are, for example, rights related to scholarships, admission to education, reductions in public transportation costs for large families, reduced student fares for public transport and reduced museum entrance fees. See, for instance, judgments of the Court of Justice of 3 July 1974, *Casagrande v Landeshauptstadt München*, C-9/74, ECLI:EU:C:1974:74; of 27 September 1988, *Matteuci*, C-235/87, ECLI:EU:C:1988:460; of 30 September 1975, *Cristini v S.N.C.F.*, C-32/75, ECLI:EU:C:1975:120; and of 4 October 2012, *Commission v Austria*, C-75/11, ECLI:EU:C:2012:605.

on international jurisdiction and conflict of laws rules for the establishment of parenthood in cross-border situations and on the recognition of parenthood established in another Member State, on which the Union has competence to act. Today, however, Union instruments on family law with cross-border implications, including on parental responsibility and maintenance, on succession and on the presentation of public documents in another Member State, do not include rules on international jurisdiction or conflict of laws for the establishment of parenthood in cross-border situations or on the recognition of parenthood between Member States in their scope.

Citizens' complaints, petitions to the European Parliament and judicial proceedings show the problems that families encounter with the recognition of the parenthood of their children in cross-border situations within the Union, including where they move to another Member State or return to their Member State of origin and request the recognition of parenthood for all purposes.

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 State's 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.

Given that in international law, Union law and Member States' laws, all children have the same rights without discrimination, the proposal covers the recognition of the parenthood of a child **irrespective of how the child was conceived or born and irrespective of the type of family of the child**. The proposal thus includes the recognition of the parenthood of a child with same-sex parents and also the recognition of the parenthood of a child adopted domestically in a Member State.

However, the proposal does **not affect the competence of the Member States** to adopt substantive rules of family law such as rules on the definition of family or rules on the establishment of parenthood in domestic situations. The proposal also does not affect the Member States' rules on the recognition of marriages or registered partnerships concluded abroad.

The proposal applies **irrespective of the nationality** of children and of the nationality of their parents. However, in line with existing Union instruments on civil matters (including family law) and commercial matters, the proposal only requires the recognition or acceptance of documents establishing or proving parenthood **issued in a Member State**, while the recognition or acceptance of documents establishing or proving parenthood issued in a third State will continue to be governed by national law.

- **Consistency with policy provisions in the policy area**

Today, Member States are already obliged by existing Union law to recognise the parenthood of a child as established in another Member State for the purpose of the exercise of the rights that the child derives from Union law, in particular on free movement. The proposal does not

affect that Member States' obligation. However, in the absence of Union rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations and on the recognition of parenthood in another Member State for the purposes of the rights that a child derives from parenthood under national law, these matters are currently governed by the law of each Member State.

Existing Union instruments govern the recognition of court decisions and authentic instruments in several areas directly relevant for children in cross-border situations, such as parental responsibility<sup>12</sup>, maintenance<sup>13</sup> and succession<sup>14</sup>. However, parenthood matters are excluded from the scope of these instruments. For its part, the Regulation on public documents<sup>15</sup> addresses the authenticity of public documents in certain areas, including birth, parenthood and adoption, but it does not cover the recognition of the contents of such public documents. The adoption of common rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations and on the recognition of parenthood in another Member State would **complement** current Union legislation on family law and succession and **facilitate its application**, as the parenthood of a child is a preliminary question that must be resolved before applying existing Union rules on parental responsibility, maintenance and succession as regards the child.

As the proposal aims to protect the rights of children in cross-border situations, it is consistent with the UN Convention on the Rights of the Child, which 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 children have the right to an identity and to be cared for by their parents (Articles 7 and 8). The proposal is also consistent with the European Convention on Human Rights, which provides for the right to respect for private and family life, and with the related case law of the European Court of Human Rights, including as regards the recognition of children born out of surrogacy. Finally, it is also consistent with the objective of protecting and promoting the rights of the child set out in the **Treaty on European Union** (Article 3(3) and 3(5) TEU) and the **Charter of Fundamental Rights of the European Union** ('the Charter'). The Charter guarantees, in the application and implementation of Union law, the protection of the fundamental rights of children and their families. These rights include the right to respect for private and family life (Article 7), the right to non-discrimination (Article 21), and the right of children to maintain on a regular basis a personal relationship and direct contact with both parents if it is according to their best

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<sup>12</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ L 178, 2.7.2019, p. 1).

<sup>13</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, p. 1).

<sup>14</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, p. 107).

<sup>15</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, p. 1).

interests (Article 24). Based on the UN Convention on the Rights of the Child, Article 24(2) of the Charter also provides 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.

- **Consistency with other Union policies**

The proposal draws on several policy initiatives. These include the 2010 ‘European Council Stockholm programme – An open and secure Europe serving and protecting citizens’<sup>16</sup>, the Commission Action Plan Implementing the Stockholm Programme<sup>17</sup>, and the 2010 Green Paper entitled ‘Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records’<sup>18</sup>. Moreover, in 2017, the European Parliament requested the Commission to submit a legislative proposal on the cross-border recognition of adoption orders<sup>19</sup>.

In 2020, the Commission announced measures<sup>20</sup> to ensure that the parenthood established in a Member State would be recognised in all other Member States. This initiative was included in the 2021 EU Strategy on the rights of the child<sup>21</sup> as a key action to support equality and the rights of children and also in the 2020 EU LGBTIQ Equality Strategy<sup>22</sup>. The European Parliament welcomed the Commission’s initiative in its 2022 Resolution on the protection of the rights of the child in civil, administrative and family law proceedings<sup>23</sup>.

The Council conclusions on the EU Strategy on the rights of the child<sup>24</sup> 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. This necessarily entails the establishment of a legal framework with uniform rules on international jurisdiction and applicable law for the recognition of parenthood between Member States enabling children to enjoy their rights in the Union without discrimination.

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<sup>16</sup> OJ C 115 of 4.5.2010, p. 1.

<sup>17</sup> COM(2010) 171 final.

<sup>18</sup> COM(2010) 747 final.

<sup>19</sup> European Parliament resolution of 2 February 2017 with recommendations to the Commission on cross-border aspects of adoptions (2015/2086(INL)).

<sup>20</sup> State of the Union Address by Commission President von der Leyen at the European Parliament Plenary, 20 September 2020. The President said that “If you are parent in one country, you are parent in every country”.

<sup>21</sup> EU Strategy on the rights of the child, COM(2021) 142 final.

<sup>22</sup> Union of Equality: LGBTIQ Equality Strategy 2020-2025, COM(2020) 698 final.

<sup>23</sup> European Parliament resolution of 5 April 2022 on the protection of the rights of the child in civil, administrative and family law proceedings (2021/2060(INI)). The initiative was also welcomed in the European Parliament resolution of 14 September 2021 on LGBTIQ rights in the EU (2021/2679(RSP)).

<sup>24</sup> Council conclusions on the EU Strategy on the rights of the child, 9 June 2022, 10024/22.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Under the Union Treaties, substantive law on family matters, including the legal status of persons, falls within the competence of Member States, which means that the substantive rules for the establishment of the parenthood of a person are laid down in national law. However, the Union can adopt measures concerning family law with cross-border implications pursuant to Article 81(3) TFEU, such as measures to facilitate that, once parenthood has been established in a Member State, it is recognised in other Member States. These measures can include the adoption of common rules on international jurisdiction, applicable law and procedures for the recognition of parenthood in another Member State. These measures will not lead to the harmonisation of the Member States' substantive law on the definition of family or on the establishment of parenthood in domestic situations.

Like other Union instruments on family law, the proposal aims to facilitate the recognition of court decisions and authentic instruments on parenthood through the adoption of common rules on international jurisdiction and applicable law. The proposal aims to require the recognition of parenthood established in another Member State for the purposes, in particular, of the rights derived from parenthood under national law. Article 81(3) TFEU is therefore the appropriate legal basis.

By reason of Protocol No 22 to the TFEU, legal measures adopted in the area of justice do not bind or apply in Denmark. By reason of Protocol No 21 to the TFEU, Ireland is also not bound by such measures. However, once a proposal has been presented in this area, Ireland can notify its wish to take part in the adoption and application of the measure and, once the measure has been adopted, it can notify its wish to accept that measure.

- **Subsidiarity**

Whereas it is for the Member States to lay down rules on the definition of family and on the establishment of parenthood, the competence to adopt measures concerning family law and the rights of the child with cross-border implications is shared between the Union and the Member States<sup>25</sup>. Problems with the recognition in a Member State of the parenthood established in another Member State for the purposes of rights derived from either national or Union law have a Union dimension as recognition requires the involvement of two Member States. The consequences of the non-recognition of parenthood also have a Union dimension, as families may be deterred from exercising their right to free movement for fear that the parenthood of their child will not be recognised in another Member State for all purposes.

Problems with the recognition of parenthood result in particular from the different Member States' substantive rules for the establishment of parenthood and the different Member States' rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations. Member States acting individually could not satisfactorily remove the problems with the recognition of parenthood as Member States' rules and procedures would need to be the same or at least compatible in order for parenthood to be recognised between Member States. Action at Union level is needed to ensure that a Member State whose courts or other competent authorities establish parenthood in cross-border situations is regarded as

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<sup>25</sup> Article 4(2)(j) TFEU.

having jurisdiction to do so, and that the courts and other competent authorities of all Member States will apply the same law to establish parenthood in cross-border situations. In this way conflicting parenthoods for the same person will be avoided within the Union and each Member State will recognise the parenthood established in another Member State.

Therefore, the objectives of this proposal, by reasons of its scope and effects, would be best achieved at Union level in accordance with the principle of subsidiarity.

- **Proportionality**

The objective of this proposal is to facilitate the recognition of parenthood between Member States by providing for the recognition of (i) court decisions and (ii) authentic instruments establishing parenthood with binding legal effect, and the acceptance of authentic instruments which have no binding legal effect in the Member State of origin but which have evidentiary effects in that Member State. To that effect, the proposal harmonises the Member States' rules on international jurisdiction for the establishment of parenthood in cross-border situations and the Member States' conflict of laws rules designating the law applicable to the establishment of parenthood in cross-border situations.

The proposal does not go beyond what is necessary to achieve its objectives: it does not interfere with substantive national law on the definition of family; it does not affect national law on the recognition of marriages or registered partnerships concluded abroad; the rules on jurisdiction and applicable law apply only to the establishment of parenthood in cross-border situations; it requires Member States to recognise parenthood only where it has been established in a Member State and not when it has been established in a third State; it does not affect the competence of the authorities of the Member States to deal with parenthood matters; and the European Certificate of Parenthood is optional for children (or their legal representatives) and will not replace equivalent national documents providing evidence of parenthood.

The proposal therefore respects the principle of proportionality.

- **Choice of the instrument**

The adoption of uniform rules on international jurisdiction and applicable law for the establishment of parenthood in cross-border situations can only be achieved through a Regulation as only a Regulation ensures a fully consistent interpretation and application of the rules. In line with previous Union instruments on private international law, the preferred legal instrument is therefore a Regulation.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

In preparing the proposal, the Commission conducted extensive consultations in 2021 and 2022 covering all Member States (with the exception of Denmark<sup>26</sup>). The consultations targeted a wide range of stakeholders representing citizens, public authorities, academics,

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<sup>26</sup> In accordance with Protocol No 22 on the Position of Denmark annexed to the Treaties, Denmark does not take part in measures adopted under Article 81 TFEU.



legal professionals, NGOs and other relevant interest groups. The consultations consisted of (i) public feedback to the inception impact assessment; (ii) an open public consultation; (iii) a meeting with stakeholders and representatives of the civil society; and (iv) a meeting with experts of the Member States' authorities.

In addition to the Commission consultation activities, consultations were conducted by an external contractor. These consisted of (i) online surveys addressed to Member States' civil registrars; (ii) written questionnaires to Member States' ministries and the judiciary; and (iii) interviews with the Member States' judiciary and NGOs.

Overall, stakeholders representing children's rights, rainbow families, legal practitioners and civil registrars favoured that the Union should address the current problems with the recognition of parenthood by adopting binding legislation. In contrast, organisations representing traditional families and those advocating against surrogacy were generally critical of a legislative proposal. The views of the public varied.

The feedback received informed the preparation of the proposal and of the accompanying impact assessment. A detailed summary of the outcome of the consultations conducted by the Commission is included in the impact assessment.

- **Collection and use of expertise**

Besides the above-mentioned stakeholder consultations, the Commission also collected and used expertise from other sources.

In the preparation of the proposal, the Commission sought the expertise of the Expert Group on the recognition of parenthood between Member States, which it set up in 2021. The Commission also participated in experts' meetings on the Parentage / Surrogacy Project of the Hague Conference on Private International Law and consulted academic literature, reports and studies.

For the preparation of the impact assessment, the Commission relied on a study carried out by an external contractor. The external contractor also produced country reports on, among others, the Member States' substantive law and private international law on parenthood. The contractor's study used different tools to analyse the existing problems with the recognition of parenthood, the impacts of this proposal and the policy options considered. These tools included the use of empirical data gathered in different ways (interviews, questionnaires, national reports), as well as statistics and desk research. Where quantitative data were not available, qualitative estimates were used. The study by the external contractor concluded that the most suitable option for the Union to achieve its policy objectives would be the adoption of a legislative instrument on the recognition of parenthood between Member States, including the creation of a European Certificate of Parenthood.

- **Impact assessment**

Based on the Commission's Better Regulation Guidelines<sup>27</sup> and the conclusions of the inception impact assessment, the Commission prepared an impact assessment of the proposal. In the impact assessment, the following policy options were considered: (i) the baseline

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<sup>27</sup> SWD(2021) 305 final.

scenario; (ii) a Commission recommendation addressed to Member States; (iii) legislative measures consisting of a regulation on the recognition of parenthood between Member States; and (iv) legislative measures consisting of a regulation on the recognition of parenthood between Member States including the creation of an optional European Certificate of Parenthood. All of these policy options, including the baseline scenario, would be accompanied by certain non-legislative measures to raise awareness, promote good practices and improve cooperation between Member State authorities dealing with parenthood matters.

The impact assessment examined each of these options as regards their expected impacts and their effectiveness, efficiency and coherence with the Union's legal and policy framework. Based on this assessment, the option consisting of a proposal for a regulation on the recognition of parenthood between Member States including the creation of an optional European Certificate of Parenthood was the chosen policy option.

The impact assessment concludes that the chosen option would significantly facilitate the recognition of parenthood for *all* of the estimated 2 million children of cross-border families and not only for those who currently face most problems with the recognition of parenthood. In particular, the European Certificate of Parenthood, specifically designed for use in another Member State, would reduce the administrative burden of the recognition procedures and translation costs for all families.

The chosen policy option would also be the most effective in addressing the problems with the recognition of parenthood, as the positive legal, social and psychological impacts would be most significant. The chosen option would have a clear positive impact on the protection of the *fundamental rights of children*, such as their right to an identity, to non-discrimination and to a private and family life. It would also be the most effective in protecting the *rights that children derive from parenthood under national law*, such as their right to maintenance and succession in another Member State. It would finally also have a positive *social and psychological impact*, as it would lead to children in cross-border situations being treated as local children.

Through the adoption of uniform Union rules on international jurisdiction and applicable law and the recognition of parenthood without any specific procedure being required, the chosen option would do away with the costs and burden linked to the administrative procedures and legal proceedings that children and their families must currently bear to have parenthood recognised in another Member State. It has been estimated that the average costs per case of recognition procedures would decrease by 71% under the chosen option, and by 90% for the families that currently face the most serious problems with the recognition of parenthood.

The chosen option would in turn lead to significant savings in terms of costs, time and burden for the public authorities of the Member States. It is estimated that, under the chosen option, the costs for recognition procedures borne by public authorities would decrease by 54%.

- **Fundamental rights**

As explained above, the current problems with the recognition of parenthood lead to situations that infringe the fundamental rights and other rights of children in cross-border situations. Depriving children of their legal status and of the parenthood established in another Member State is contrary to the fundamental rights of children to an identity, to non-discrimination and to respect for a private and family life, as well as against their best interests. By facilitating the recognition of parenthood between Member States, the proposal

aims to protect the fundamental rights of children in cross-border situations and to ensure the continuity of parenthood status within the Union.

#### **4. BUDGETARY IMPLICATIONS**

Member States may incur one-off costs to adjust to the new rules of the Regulation, in particular costs arising from the need to train judges, civil registrars and other competent authorities on the new rules. Minor recurrent costs may be expected for the continuous training of those authorities. None of these costs is expected to be significant and would be in any event outweighed by the efficiency gains and cost savings brought about by the Regulation.

The provisions in the proposal on digital communication through the European electronic access point in the context of the decentralised IT system established by Regulation (EU) XX/YYYY [the Digitalisation Regulation] would have an impact on the Union budget which can be covered through redeployment within the Justice Programme. This impact would be small because the decentralised IT system would not need to be specifically established for the application of the proposal but would be developed for many Union instruments on judicial cooperation in civil and commercial matters under [the Digitalisation Regulation].

Member States would also incur some costs to install and maintain the decentralised IT system's access points located on their territory and to adjust their national IT systems to make them interoperable with the access points. However, as noted, the bulk of these financial investments would have already been made in the context of the digitalisation of other Union instruments on judicial cooperation in civil and commercial matters. In addition, Member States would be able to apply for grants to finance these costs under the relevant Union financial programmes, in particular the cohesion policy funds and the Justice Programme.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

A Regulation is directly applicable in all Member States and does not therefore have to be implemented into national law.

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

- **Explanation of the provisions of the proposal**

The proposal consists of nine Chapters: (i) subject matter, scope and definitions; (ii) jurisdiction on parenthood matters in cross-border situations; (iii) applicable law to the establishment of parenthood in cross-border situations; (iv) recognition of court decisions and authentic instruments with binding legal effect issued in another Member State; (v) acceptance of authentic instruments with no binding legal effect issued in another Member State; (vi) the European Certificate of Parenthood; (vii) digital communication; (viii) delegated acts; and (ix) general and final provisions.

## Chapter I - Subject matter, scope and definitions

**Article 1** sets out the subject matter of the proposal. The proposal intends to achieve its objective of facilitating the recognition in a Member State of the parenthood established in another Member State through the adoption of uniform rules on (i) international jurisdiction for the establishment of parenthood in a Member State in cross-border situations; (ii) the law applicable to the establishment of parenthood in a Member State in cross-border situations; (iii) the recognition of court decisions as well as of authentic instruments establishing parenthood with binding legal effect; (iv) the acceptance of authentic instruments with no binding legal effect in the Member State of origin but with evidentiary effects in that Member State; and (v) the creation of an optional European Certificate of Parenthood enabling a child or a legal representative to provide evidence of parenthood in another Member State.

Parenthood is typically established by operation of law or by an act of a competent authority, such as a court decision, a decision by an administrative authority or a notarial deed, after which the parenthood is typically registered in the civil or population register of the Member State. However, citizens most often request the recognition of parenthood in another Member State on the basis of an authentic instrument which does not establish parenthood with binding legal effect but which has evidentiary effects of the parenthood previously established in that Member State by other means (by operation of law or by an act of a competent authority). Such authentic instruments can be, for example, an extract from the civil register or a birth or parenthood certificate. The uniform rules in the proposal on the law applicable to the establishment of parenthood in cross-border situations are intended to facilitate the acceptance of authentic instruments with no binding legal effect but with evidentiary effects in the Member State of origin of either the parenthood previously established in that Member State (for example, a birth certificate) or of facts other than the establishment of parenthood (for example, an acknowledgment of paternity or the giving of consent to the establishment of parenthood).

**Article 2** on the relationship of the proposal with other provisions of Union law clarifies that the proposal should not affect the rights that a child derives from Union law, in particular the rights under Union law on free movement, including Directive 2004/38/EC<sup>28</sup>. The proposal does not intend to provide for any additional conditions or requirements on the recognition of parenthood for the exercise of rights derived from Union law, or to affect the implementation of such rules. Union law on free movement will therefore continue to apply unaffected. In particular, the recognition of parenthood for the exercise of the rights derived from Union law can only be refused on grounds allowed under Union law on free movement as interpreted by the Court of Justice. Also, on the basis of current Union law 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 the child derives from Union law. In addition, for the purposes of the exercise of rights derived from

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<sup>28</sup> Rights derived from Union law include the right of Union citizens and their family members to move and reside freely within the Union, including rights related to scholarships, admission to education, reductions in public transportation costs for large families, reduced student fares for public transport and reduced museum entrance fees, as well as the right to the recognition of name.

Union law, proof of parenthood can be presented by any means<sup>29</sup>. A Member State is not therefore entitled to require a person to present either the attestation provided for in the proposal accompanying a court decision or an authentic instrument on parenthood, or the European Certificate of Parenthood created by the proposal, where the person seeks the recognition of parenthood for the purposes of the rights that a child derives from Union law on free movement. This should not, however, prevent a person from choosing to present in such cases also the relevant attestation or the European Certificate of Parenthood.

Article 2 also clarifies that the proposal will not affect the application of the Regulation on Public Documents<sup>30</sup>, which already simplifies the circulation of public documents (such as judgments, notarial acts and administrative certificates) in certain areas, including birth, parenthood and adoption, as to their authenticity.

**Article 3** determines the scope of the proposal. The rules on jurisdiction and applicable law apply where parenthood is to be established in a Member State in cross-border situations. The rules on the recognition of parenthood apply where the parenthood to be recognised has been established in a Member State, so the proposal does not cover the recognition or, as the case may be acceptance, of court decisions and authentic instruments establishing or proving parenthood drawn up or registered in a third State. In these cases, recognition or acceptance remain subject to the national law of each Member State. However, the proposal applies to the recognition of the parenthood of all children, regardless of their nationality and the nationality of their parents, provided their parenthood has been established in a Member State and not in a third State.

Matters that may have a link with the parenthood of a child but are governed by other Union or international instruments or by national law are excluded from the scope of the proposal, such as matters concerning parental responsibility, maintenance, succession, intercountry adoption, the existence, validity or recognition of the marriage or registered partnership of the child's parents and the effects of registering or not registering the parenthood of the child in a Member State's relevant register. However, by resolving the parenthood of the child as a preliminary question, the proposal would facilitate the application of existing Union instruments on parental responsibility, maintenance and succession as regards the child. The proposal also does not deal with the rights and obligations derived from parenthood under national law, for example the nationality and the name of the child.

**Article 4** defines, for the purposes of the proposal, the terms 'parenthood', 'child', 'establishment of parenthood', 'court' and 'court decision', 'authentic instrument', 'Member State of origin', 'decentralised IT system' and 'European electronic access point'.

- **Child** is defined broadly and includes a person of any age whose parenthood is to be established, recognised or proved. As the parenthood status is relevant throughout a person's life, the proposal applies to children of any age, that is, both minors and adults. However, the best interests of the child and the right to be heard must be

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<sup>29</sup> See, to this effect, 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.

<sup>30</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, p. 1).

understood as referring to the child as defined in the UN Convention on the Rights of the Child, that is, as a person under the age of 18 years, unless the age of majority is attained earlier under the law applicable to the child.

- **Parenthood**, also referred to as filiation, means the parent-child relationship established in law, including the legal status of being the child of a particular parent or parents. For the purposes of the proposal, parenthood may be biological, genetic, by adoption or by operation of law. As noted, the proposal covers the parenthood established in a Member State of both minors and adults, including a deceased child and a child not yet born, whether to a single parent, a de facto couple, a married couple or a couple in a registered partnership. It covers the recognition of the parenthood of a child irrespective of how the child was conceived or born - thus including children conceived with assisted reproductive technology - and irrespective of the child's type of family - thus including children with two same-sex parents, children with one single parent, and children adopted domestically in a Member State by one or two parents.
- **Establishment of parenthood** means the determination in law of the relationship between a child and each parent, including the establishment of parenthood following a claim contesting a parenthood already established. Where relevant, this term may also include the extinction or termination of parenthood. The proposal does not apply to the establishment of parenthood in domestic situations with no cross-border elements, such as a domestic adoption in a Member State, although it does apply to the recognition of the parenthood established in such domestic situations in a Member State.
- **Authentic instruments** are defined broadly, as in other Union regulations on civil justice. Authentic instruments under the proposal thus include (i) documents establishing parenthood with binding legal effect, such as notarial deeds (for example, in adoption or where the child is not yet born), or administrative decisions (for example, after an acknowledgment of paternity), as well as (ii) documents which do not establish parenthood with binding legal effect but which provide evidence of the parenthood established by other means (for example, an extract from a population or civil status register, a birth certificate or a parenthood certificate) or evidence of other facts (for example, a notarial act or an administrative document recording an acknowledgment of paternity or the giving of consent to the use of assisted reproductive technology).

**Article 5** clarifies that the proposal will not affect the question of which authorities within each Member State are competent to deal with parenthood matters (for example, courts, administrative authorities, notaries, registrars and/or other authorities).

## **Chapter II - Jurisdiction**

In order to facilitate the recognition or, as the case may be, acceptance of court decisions and authentic instruments on parenthood, the proposal lays down uniform jurisdiction rules on the establishment of parenthood with a cross-border element. The rules on jurisdiction also avoid parallel proceedings in different Member States with possible conflicting decisions. Given that, in most Member States, rights concerning parenthood cannot be settled or waived, the proposal does not provide for party autonomy as regards jurisdiction (such as a choice of court or transfer of jurisdiction).

The proposal provides for alternative grounds of jurisdiction to facilitate access to justice in a Member State. In order to ensure that children can access a court that is in their vicinity, jurisdiction grounds are based on their proximity to the child. Jurisdiction can thus lie alternatively with the Member State of habitual residence of the child, of the nationality of the child, of the habitual residence of the respondent (for example, the person in respect of whom the child claims parenthood), of the habitual residence of any one of the parents, of the nationality of any one of the parents or of the birth of the child. In line with the existing case law of the Court of Justice on the matter, habitual residence is established on the basis of all the circumstances specific to each individual case.

Where jurisdiction cannot be established based on one of the general alternative jurisdiction grounds, the courts of the Member State where the child is present should have jurisdiction. This jurisdiction ground may in particular apply to refugee children and children internationally displaced. Where no court of a Member State has jurisdiction pursuant to the proposal, residual jurisdiction should be determined, in each Member State, by the laws of that Member State. Finally, in order to remedy situations of denial of justice, this proposal also provides for a *forum necessitatis* allowing a court of a Member State with which a case has a sufficient connection to rule on a parenthood matter which is closely connected with a third State. This can be done on an exceptional basis, such as where proceedings prove impossible in that third State, for example because of civil war, or where the child or another interested party cannot reasonably be expected to bring proceedings in that third State.

The proposal also recalls the right of children below the age of 18 years who are capable of forming their views to be provided with an opportunity to express these views in proceedings concerning parenthood to which the children are subject.

### **Chapter III - Applicable law**

The proposal should provide for legal certainty and predictability by proposing common rules on the law applicable to the establishment of parenthood in cross-border situations. Such common rules aim to avoid conflicting decisions on parenthood depending on which Member State's courts or other competent authorities establish parenthood. They also aim to facilitate, in particular, the acceptance of authentic instruments which do not establish parenthood with binding legal effect in the Member State of origin but which have evidentiary effects in that Member State.

The law designated as applicable by the proposal has a universal character, that is, it applies whether it is the law of a Member State or the law of a third State. 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 at the time of birth. However, to ensure that the applicable law can be determined in all circumstances, where the habitual residence of the person giving birth at the time of birth cannot be established (for example, in the case of a refugee or an internationally displaced mother), the law of the State of birth of the child should apply.

In order to address the most frequent problems with the recognition of parenthood occurring today, by way of exception to the above-mentioned rule, where that rule results in the establishment of parenthood as regards only one parent (typically the genetic parent in a same-sex couple), the authorities of a Member State with jurisdiction on matters of parenthood under the proposal may apply one of two subsidiary alternative rules, either the law of the nationality of any one of the parents or the law of the State of birth of the child, to establish the parenthood as regards the second parent (typically the non-genetic parent in a

same-sex couple). This possibility may be used by authorities with jurisdiction that consider the establishment of parenthood first in time but also by authorities with jurisdiction in a situation where the authorities of another Member State have already established parenthood as regards only one parent. Where a court decision or an authentic instrument establishing parenthood with binding legal effect as regards each of the parents in accordance with one of the applicable laws designated by the proposal has been given, drawn up or registered by a court or another competent authority of a Member State with jurisdiction under the proposal, each of such documents establishing parenthood as regards each of the parents should be recognised in all other Member States in accordance with the rules on recognition laid down in the proposal. In addition, the child (or a legal representative) may request and use a European Certificate of Parenthood to provide evidence of the parenthood as regards both parents in another Member State.

Considerations of public interest should allow courts and other competent authorities establishing parenthood in cross-border situations to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (*ordre public*) of their Member State. However, such authorities should not be able to apply this 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. This exception should not therefore apply to refuse the application of a provision of another State providing for the possibility of parenthood as regards two parents in a same-sex couple merely on the grounds that the parents are of the same sex.

#### **Chapter IV - Recognition**

This Chapter provides for rules on the recognition of court decisions and authentic instruments establishing parenthood with binding legal effect issued in another Member State.

The recognition in a Member State of court decisions given in another Member State, and of authentic instruments establishing parenthood with binding legal effect in the Member State of origin, should be based on the principle of mutual trust in one another's justice system. This trust should be further enhanced through the adoption of uniform rules on international jurisdiction and on the law applicable to the establishment of parenthood in cross-border situations. Court decisions and authentic instruments establishing parenthood with binding legal effect issued in a Member State should be recognised in another Member State without any special procedure being required, including to update the civil status records of the child. This is without prejudice to the possibility that an interested party may start court proceedings to obtain a decision finding that there are no grounds for the refusal of the recognition of parenthood or proceedings for the non-recognition of parenthood.

A party who wishes to invoke a court decision or an authentic instrument establishing parenthood with binding legal effect in another Member State should produce a copy of the court decision or authentic instrument and the relevant attestation. Attestations are aimed to facilitate the readability of the documents that they accompany and thus their recognition. As regards authentic instruments establishing parenthood with binding legal effect, the attestation also serves to prove that the Member State whose authority issued the authentic instrument had jurisdiction to establish parenthood under the proposal.

The authorities of the Member State where parenthood is invoked are not entitled to require the presentation of an attestation accompanying a court decision or an authentic instrument



establishing parenthood with binding legal effect or a European Certificate of Parenthood where parenthood is invoked for the purposes of rights derived from Union law, including the right to free movement. This should not, however, prevent a person from choosing to present in such cases also the relevant attestation or a European Certificate of Parenthood.

Under the proposal, the list of grounds for refusal of the recognition of parenthood is exhaustive in line with its underlying aim to facilitate the recognition of parenthood. When assessing a possible refusal of the recognition of parenthood on grounds of public policy, Member State authorities must take into account the child's interests, in particular the protection of the rights of the child, including the preservation of genuine family links between the child and the parents. The ground for the refusal of recognition based on public policy (*ordre public*) is to be used exceptionally and in the light of the circumstances of each particular case, that is, not in an abstract manner to set aside the recognition of the parenthood of a child where, for example, same-sex parents are involved. In a given case, such recognition would have to be manifestly incompatible with the public policy of the Member State where recognition is sought because, for example, the fundamental rights of a person have been infringed in the conception, birth or adoption of the child or in the establishment of the parenthood of the child. The courts or other competent authorities should not be able to refuse to recognise a court decision or an authentic instrument issued in another Member State where doing so would be contrary to the Charter and, in particular, Article 21 thereof, which prohibits discrimination, including of children. Member State authorities could not thus refuse on public policy grounds the recognition of a court decision or an authentic instrument establishing parenthood through adoption by a single man, or establishing parenthood as regards two parents in a same-sex couple merely on the ground that the parents are of the same sex.

The proposal will not affect the limitations imposed by the case law of the Court of Justice on the use of public policy to refuse the recognition of parenthood where, under Union law on free movement, Member States are obliged to recognise a document establishing a parent-child relationship issued by the authorities of another Member State for the purposes of the exercise of rights derived from Union law. In particular, the recognition of a parent-child relationship for the purposes of the exercise of the rights that the child derives from Union law cannot be refused by invoking public policy on the ground that the parents are of the same sex.

#### **Chapter V - Authentic instruments with no binding legal effect**

The proposal also provides for the acceptance of authentic instruments which do not establish parenthood with binding legal effect in the Member State of origin but which have evidentiary effects in that Member State. The evidentiary effects can refer to the prior establishment of parenthood by other means or to other facts. Depending on the national law, such an authentic instrument can be, for example, a birth certificate, a parenthood certificate, an extract on birth from the register, or a notarial or administrative document recording an acknowledgment of paternity or the consent of a mother or of a child to the establishment of parenthood.

Such authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. A person wishing to use such an authentic instrument in another Member State may ask the authority that has formally drawn up or registered the authentic instrument in the Member State of origin to issue an attestation describing the evidentiary effects of the instrument.

The acceptance of authentic instruments with no binding legal effect but with evidentiary effects may only be refused on public policy (*ordre public*) grounds with the same limitations applicable to that refusal ground when applied to court decisions and authentic instruments with binding legal effect, including as regards compliance with the Charter.

## **Chapter VI - European Certificate of Parenthood**

The proposal provides for the creation of an optional European Certificate of Parenthood ('the Certificate'). This uniform certificate is designed specifically to facilitate the recognition of parenthood within the Union as it would be issued 'for use in another Member State'. The Certificate must be issued in the Member State in which parenthood was established in accordance with the applicable law and whose courts had jurisdiction under the proposal. Once issued, the Certificate can also be used in the Member State where it was issued.

The Certificate is an optional certificate as Member State authorities would only be required to issue it if the child or a legal representative asks for it. Therefore, persons entitled to apply for a Certificate would be under no obligation to do so and would be free to present other documents, such as a court decision or an authentic instrument accompanied by the relevant attestation, when requesting the recognition of parenthood in another Member State. However, no authority or person presented with a copy of the Certificate issued in another Member State would be entitled to request that a court decision or an authentic instrument be presented instead of the Certificate.

National certificates of birth or parenthood are, typically, authentic instruments that have evidentiary effects of parenthood. National certificates are issued under a different procedure, in a different format and in a different language in each Member State, and have different contents and effects depending on the Member State of issuance. Under the proposal, they can circulate accompanied by an optional attestation describing their evidentiary effects, and their evidentiary effects must be accepted unless they are contrary to the public policy of the Member State in which they are presented.

In contrast, a 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.

## **Chapter VII - Delegated acts**

If there is a need to amend the standard forms of the attestations accompanying a court decision or an authentic instrument or the European Certificate of Parenthood annexed to this proposal, the Commission would have the power to adopt delegated acts after the required consultations with the Member States' experts have taken place.

## **Chapter VIII - Digitalisation**

This Chapter contains provisions concerning the electronic communication between natural persons (or their legal representatives) and Member State courts or other competent authorities through a decentralised IT system and the European electronic access point established on the European e-Justice Portal. Member State courts or other competent authorities would be allowed to communicate with a natural person through the European electronic access point if the natural person has given prior express consent to the use of this means of communication.

## **Chapter IX - General and final provisions**

This Chapter contains, in particular, provisions on the relationship of the proposal with existing international conventions, provisions on data protection and transitional provisions on the use of court decisions and authentic instruments issued before the date of application of the Regulation.

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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Union has set itself the objective of creating, maintaining and developing an area of freedom, security and justice in full respect of fundamental rights in which the free movement of persons and access to justice are ensured. For the gradual establishment of such an area, the Union is to adopt measures aimed at ensuring the mutual recognition between Member States of judgments and decisions in extrajudicial cases in civil matters and the compatibility of the rules applicable in the Member States concerning conflict of laws and jurisdiction in civil matters.
- (2) This Regulation concerns the recognition in a Member State of the parenthood of a child as established in another Member State. It aims to protect the fundamental rights and other rights of children in matters concerning their parenthood in cross-border situations, including their right to an identity<sup>1</sup>, to non-discrimination<sup>2</sup> and to a private and family life<sup>3</sup>, taking the best interests of the child as a primary consideration<sup>4</sup>. This Regulation also aims to provide legal certainty and predictability and to reduce litigation costs and burden for families, national courts and other competent authorities in connection with proceedings for the recognition of parenthood in another Member

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<sup>1</sup> Article 8 of the UN Convention on the Rights of the Child.

<sup>2</sup> Article 2 of the UN Convention on the Rights of the Child, Article 21 of the Charter of Fundamental Rights of the European Union.

<sup>3</sup> Article 9 of the UN Convention on the Rights of the Child, Articles 7 and 24 of the Charter of Fundamental Rights of the European Union.

<sup>4</sup> Article 3 of the UN Convention on the Rights of the Child, Article 24 of the Charter of Fundamental Rights of the European Union.

State. To attain these aims, this Regulation should require Member States to recognise for all purposes the parenthood of a child as established in another Member State.

- (3) Articles 21, 45, 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) confer on Union citizens the right to move and reside freely within the territory of the Member States. They comprise the right of Union citizens not to face any obstacles and the right to equal treatment with nationals in the exercise of free movement, including as regards certain social advantages, defined as any advantage which will likely facilitate mobility<sup>5</sup>. This right also applies to family members of Union citizens as defined by Directive 2004/38/EC of the European Parliament and of the Council<sup>6</sup> in matters related to scholarships, admission to education, reductions in public transportation costs for large families, reduced student fares for public transport and reduced museum entrance fees<sup>7</sup>. The protection afforded by the Treaty provisions on free movement also includes the right to have a name lawfully attributed in a Member State recognised in other Member States<sup>8</sup>.
- (4) The Court of Justice of the European Union ('the Court of Justice') has ruled that a Member State is required to recognise a parent-child relationship for the purposes of permitting a child to exercise without impediment, with each parent, the right to move and reside freely within the territory of the Member States as guaranteed in Article 21(1) TFEU, and to exercise all the rights that the child derives from Union law<sup>9</sup>. The case-law of the Court of Justice does not, however, require Member States to recognise, for purposes other than the exercise of the rights that the child derives from Union law, the parent-child relationship between the child and the persons mentioned on the birth certificate drawn up by the authorities of another Member State as being the child's parents.
- (5) Under the Treaties, the competence to adopt substantive rules on family law, such as rules on the definition of family and rules on the establishment of the parenthood of a child, lies with the Member States. However, pursuant to Article 81(3) TFEU, the Union can adopt measures concerning family law with cross-border implications, in particular rules on international jurisdiction, on applicable law and on the recognition of parenthood.

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<sup>5</sup> Judgments of the Court of Justice of 31 May 1979, *Even*, C-207/78, ECLI:EU:C:1979:144 and of 8 June 1999, *Meeusen*, C-337/97, EU:ECLI:C:1999:284.

<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 (OJ L 158, 30.4.2004).

<sup>7</sup> For instance, judgments of the Court of Justice of 3 July 1974, *Casagrande v Landeshauptstadt München*, C-9/74, ECLI:EU:C:1974:74; of 27 September 1988, *Matteuci*, C-235/87, ECLI:EU:C:1988:460; of 30 September 1975, *Cristini v S.N.C.F.*, C-32/75, ECLI:EU:C:1975:120; and of 4 October 2012, *Commission v Austria*, C-75/11, ECLI:EU:C:2012:605.

<sup>8</sup> For instance, judgments of the Court of Justice of 2 October 2003, *Carlos García Avello v État belge*, Case C-148/02, ECLI:EU:C:2003:539; of 14 October 2008, *Grunkin-Paul*, Case C-353/06, ECLI:EU:C:2008:559; of 8 June 2017, *Freitag*, Case C-541/15, ECLI:EU:C:2017:432.

<sup>9</sup> Judgment of the Court of Justice of 14 December 2021, *V.M.A. v Stolichna obshtina*, C 490/20, ECLI:EU:C:2021:1008.

- (6) In conformity with the Union’s competence to adopt measures on family law with cross-border implications, the 2010 ‘European Council Stockholm programme – An open and secure Europe serving and protecting citizens’<sup>10</sup> invited the Commission to consider the problems encountered with regard to civil status documents and the access to registers of such documents and, in the light of its findings, to submit appropriate proposals and consider whether the mutual recognition of the effects of civil status documents could be appropriate, at least in certain areas. The Commission Action Plan Implementing the Stockholm Programme<sup>11</sup> envisaged a legislative proposal for dispensing with the formalities for the legalisation of documents between Member States and a legislative proposal on the mutual recognition of the effects of certain civil status documents, including as regards birth, parenthood and adoption.
- (7) In 2010 the Commission published a Green Paper entitled ‘Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records’ by which it launched a broad consultation on matters relating to the free movement of public documents and the recognition of the effects of civil status records. Among others, it considered the possibility of introducing a European civil status certificate that would facilitate the cross-border recognition of civil status in the Union. The consultation aimed to gather contributions from interested parties and the general public with a view to developing Union policy in these areas and the relevant legislative proposals. In 2016, the Union legislator adopted Regulation (EU) 2016/1191 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union<sup>12</sup>, including documents on birth, parenthood and adoption.
- (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.
- (9) At Union level, a number of Union instruments deal with certain rights of children in cross-border situations, in particular Council Regulation (EC) No 4/2009<sup>13</sup>, Regulation (EU) No 650/2012 of the European Parliament and of the Council<sup>14</sup> and Council Regulation (EU) 2019/1111<sup>15</sup>. However, these Regulations do not include provisions

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<sup>10</sup> OJ C 115 of 4.5.2010, p. 1.

<sup>11</sup> COM(2010) 171 final.

<sup>12</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, p. 1).

<sup>13</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, p. 1).

<sup>14</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, p. 107).

<sup>15</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ L 178, 2.7.2019, p. 1).

on the establishment or the recognition of parenthood. For its part, Regulation (EU) 2016/1191 of the European Parliament and of the Council<sup>16</sup> includes public documents on birth, parenthood and adoption in its scope, but this Regulation deals with the authenticity and the language of such documents and not with the recognition of their contents or effects in another Member State.

- (10) 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.
- (11) Children derive a number of rights from parenthood, including the right to an identity, a name, nationality (where governed by *ius sanguinis*), custody and access rights by their parents, maintenance rights, succession rights and the right to be legally represented by their parents. 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. This may prompt families to start litigation to have the parenthood of their child recognised in another Member State, although those proceedings have uncertain results and involve significant time and costs for both families and the Member States' judicial systems. Ultimately, families may be deterred from exercising their right to free movement for fear that the parenthood of their child will not be recognised in another Member State for the purposes of rights derived from national law.
- (12) In 2020 the Commission announced measures<sup>17</sup> to ensure that the parenthood established in a Member State would be recognised in all other Member States. This initiative was included in the 2020 EU LGBTIQ Equality Strategy<sup>18</sup> and the 2021 EU Strategy on the rights of the child<sup>19</sup> as a key action to support equality and the rights of children. The European Parliament welcomed the Commission's initiative in its 2021 Resolution on LGBTIQ rights in the EU<sup>20</sup> and in its 2022 Resolution on the protection of the rights of the child in civil, administrative and family law proceedings<sup>21</sup>.
- (13) This Regulation should 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, including Directive 2004/38/EC. For instance, Member States must already today recognise a parent-child relationship for the purposes of permitting children to exercise, with each of their two parents, the right to move and reside freely within the territory of the Member States without impediment, and to exercise all the rights that the child derives

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<sup>16</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, p. 1).

<sup>17</sup> State of the Union Address by Commission President von der Leyen at the European Parliament Plenary, 20 September 2020.

<sup>18</sup> Union of Equality: LGBTIQ Equality Strategy 2020-2025, COM(2020) 698 final.

<sup>19</sup> EU Strategy on the rights of the child, COM(2021) 142 final.

<sup>20</sup> European Parliament resolution of 14 September 2021 on LGBTIQ rights in the EU (2021/2679(RSP)).

<sup>21</sup> European Parliament resolution of 5 April 2022 on the protection of the rights of the child in civil, administrative and family law proceedings (2021/2060(INI)).

- from Union law. This Regulation does not provide for any additional conditions or requirements for the exercise of such rights.
- (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>22</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.
- (15) This Regulation should not affect Regulation (EU) 2016/1191 of the European Parliament and of the Council<sup>23</sup> in respect of public documents on birth, parenthood and adoption, in particular as regards the presentation by citizens of certified copies and the use by Member State authorities of the Internal Market Information System ('IMI') if they have a reasonable doubt as to the authenticity of a public document on birth, parenthood or adoption or their certified copy presented to them.
- (16) Article 2 of the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child') requires States Parties to respect and ensure the rights of children without discrimination of any kind, and to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the circumstances of the child's parents. Under Article 3 of the said Convention, in all actions by, amongst others, courts and administrative authorities, the best interests of the child must be a primary consideration.
- (17) Any reference to the 'best interests of the child' in this Regulation should apply to children within the meaning of Article 1 of the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child'), that is, children below the age of 18 years unless under the law applicable to the child, majority is attained earlier. Any reference to the 'best interests of the child'

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<sup>22</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.

<sup>23</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, p. 1).



- in this Regulation should also be interpreted in the light of Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter') and of Articles 3 and 12 of the UN Convention on the Rights of the Child as implemented by national law. Any reference to the 'child's interests' in this Regulation should be understood as referring to the best interests of the child and to the interests of children whichever their age.
- (18) Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 ('European Convention of Human Rights') lays down the right to respect for private and family life, while Article 1 of Protocol No. 12 to the said Convention provides that the enjoyment of any right set forth by law must be secured without discrimination on any ground, including birth. The European Court of Human Rights has interpreted Article 8 of the Convention as requiring all States within its jurisdiction to recognise the legal parent-child relationship established abroad between a child born out of surrogacy and the biological intended parent, and to provide for a mechanism for the recognition in law of the parent-child relationship with the non-biological intended parent (for example through the adoption of the child)<sup>24</sup>.
- (19) The Court of Justice has confirmed that the essential characteristics of Union law have given rise to a structured network of principles, rules and mutually interdependent legal relations linking the Union and its Member States, and its Member States with each other. This legal structure is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised.
- (20) Pursuant to Article 2 of the Treaty on European Union ('TEU'), equality and non-discrimination are amongst the values on which the Union is founded and which are common to the Member States. Article 21 of the Charter prohibits discrimination on grounds of, amongst others, birth. Article 3 TEU and Article 24 of the Charter provide for the protection of the rights of the child, and Article 7 of the Charter provides for everyone's right to respect for their private and family life.
- (21) In conformity with the provisions of international conventions and Union law, this Regulation should ensure that children enjoy their rights and maintain their legal status in cross-border situations without discrimination. To that effect, and in the light of the case law of the Court of Justice, including on mutual trust between Member States, and of the European Court on Human Rights, this Regulation should cover the recognition in a Member State of the parenthood established in another Member State irrespective of how the child was conceived or born and irrespective of the child's type of family, and including domestic adoption. Therefore, subject to the application of the rules on applicable law of this Regulation, this Regulation should cover the recognition in a Member State of the parenthood established in another Member State of a child with same-sex parents. This Regulation should also cover the recognition in a Member State of the parenthood of a child adopted domestically in another Member State under the rules governing domestic adoption in that Member State.

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<sup>24</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).

- (22) To achieve its aims, 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.
- (23) This Regulation covers 'civil matters', which includes civil court proceedings and the resulting decisions on parenthood, and authentic instruments on parenthood. The term 'civil matters' should be interpreted autonomously, in accordance with the established case law of the Court of Justice. It should be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of this Regulation and, second, to the general principles that stem from the corpus of the national legal systems. The term 'civil matters' should therefore be interpreted as capable of extending also to measures that, from the point of view of the legal system of a Member State, might fall under public law.
- (24) For the purposes of this Regulation, parenthood, also referred to as filiation, may be biologic, genetic, by adoption or by operation of law. Also for the purposes of this Regulation, parenthood should mean the parent-child relationship established in law, and should cover the legal status of being the child of a particular parent or parents. This Regulation should cover the parenthood established in a Member State of both minors and adults, including a deceased child and a child not yet born, whether to a single parent, a de facto couple, a married couple or a couple in a relationship which, under the law applicable to such relationship, has comparable effects, such as a registered partnership. This Regulation should apply regardless of the nationality of the child whose parenthood is to be established, and regardless of the nationality of the parents of the child. The term 'parent' in this Regulation should be understood, as applicable, as referring to the legal parent, the intended parent, the person who claims to be a parent or the person in respect of whom the child claims parenthood.
- (25) This Regulation should not apply to the establishment of parenthood in a Member State in a domestic situation with no cross-border elements. This Regulation should not therefore include provisions on jurisdiction or applicable law for the establishment of parenthood in domestic cases, such as the parenthood of a child further to a domestic adoption in a Member State. However, in order to safeguard children's rights without discrimination in cross-border situations as laid down in the Charter, in application of the principle of mutual trust between Member States as confirmed by the Court of Justice, the provisions of this Regulation on the recognition or, as the case may be, acceptance of court decisions and authentic instruments on parenthood should also apply to the recognition of parenthood established in a Member State in domestic situations, such as the parenthood established in a Member State further to a domestic adoption in that Member State. The provisions of this Regulation concerning the relevant attestation and the European Certificate of Parenthood should therefore also apply as regards the parenthood established in a Member State in domestic situations, such as further to a domestic adoption in a Member State.
- (26) For the purposes of this Regulation, a domestic adoption in a Member State is that in which the child and the adoptive parent or parents have their habitual residence in the same Member State and where the adoption creates a permanent parent-child relationship. In order to take account of the different legal traditions of the Member States, this Regulation should cover domestic adoption in a Member State where the adoption results in the termination of the legal relationship between the child and the family of origin (full adoption) as well as domestic adoption in a Member State which

does not result in the termination of the legal relationship between the child and the family of origin (simple adoption).

- (27) Intercountry adoption, where the child and the adoptive parent or parents have their habitual residence in different States, is governed by the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, to which all Member States are party. This Regulation should not apply to intercountry adoption, irrespective of whether it involves two Member States or a Member State and a third State, and irrespective of whether or not an intercountry adoption is covered by the Hague Convention.
- (28) While the establishment and the recognition of parenthood in conformity with this Regulation is relevant for other areas of civil law, the scope of this Regulation should be limited to jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments concerning parenthood. For reasons of clarity, other areas of civil law which could be seen as having a link with parenthood should be explicitly excluded from the scope of this Regulation.
- (29) In particular, the rules on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments set out in this Regulation should not apply to maintenance rights, governed by Council Regulation (EC) No 4/2009<sup>25</sup>; succession rights, governed by Regulation (EU) No 650/2012 of the European Parliament and of the Council<sup>26</sup>; or parental responsibility matters, governed by Council Regulation (EU) 2019/1111<sup>27</sup>. However, as the question of the parenthood of a child must be resolved as a preliminary question before resolving matters of parental responsibility, maintenance or succession as regards the child, this Regulation should facilitate the application of the above-mentioned Union instruments on family law and succession.
- (30) This Regulation should not apply to preliminary questions such as the existence, validity or recognition of a marriage or a relationship deemed by the law applicable to it as having comparable effects, which should continue to be governed by the national law of the Member States, including their rules of private international law and, where relevant, by the case law of the Court of Justice on free movement.
- (31) The requirements for the recording of parenthood in a register should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept that should determine under what legal conditions and how the recording must be carried out, and which authorities are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In order to avoid duplication of documents, the national registration authorities should accept the documents drawn up in another Member State by the competent authorities whose circulation is provided

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<sup>25</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, p. 1).

<sup>26</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, p. 107).

<sup>27</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ L 178, 2.7.2019, p. 1).

for by this Regulation. In particular, the European Certificate of Parenthood issued under this Regulation should constitute a valid document for the recording of parenthood in a register of a Member State. As the procedure for the issuance of the European Certificate of Parenthood and its contents and effects should be uniform in all Member States as set out in this Regulation, and the European Certificate of Parenthood should be issued in conformity with the rules on jurisdiction and applicable law laid down in this Regulation, the authorities involved in the registration should not require that the European Certificate of Parenthood be first transposed into a national document on parenthood. This should not preclude the authorities involved in the registration from confirming the conditions necessary to establish the authenticity of the European Certificate of Parenthood or from asking the person applying for registration to provide such additional information as required under the law of the Member State in which the register is kept, provided that information is not already included in the European Certificate of Parenthood. The competent authority may indicate to the person applying for registration how the missing information can be provided. The effects of recording the parenthood in a register (for example, depending on the national law, whether registration establishes parenthood or only provides evidence of the parenthood already established) should also be excluded from the scope of this Regulation and be determined by the law of the Member State in which the register is kept.

- (32) This Regulation should not cover the recognition of court decisions on parenthood given in a third State or the recognition or, as the case may be, acceptance of authentic instruments on parenthood drawn up or registered in a third State. The recognition or acceptance of such documents should remain subject to the national law of each Member State.
- (33) The establishment of parenthood should mean the legal determination of the legal relationship between a child and each parent, and should be understood to include the establishment of parenthood following a claim contesting a parenthood established previously. Where relevant, this Regulation should also apply to the extinction or termination of parenthood.
- (34) Notwithstanding the differences in national laws, parenthood is typically established by operation of law or by an act of a competent authority. Examples of the establishment of parenthood by operation of law include parenthood by birth as regards the person giving birth, and parenthood by legal presumption as regards the spouse or the registered partner of the person giving birth. Examples of the establishment of parenthood by an act of a competent authority include the establishment of parenthood by a court decision (such as in adoption, or in proceedings where parenthood is contested, or in proceedings where parenthood is claimed, for example by proving a possession of state), by a notarial deed (for example, in adoption or where the child is not yet born), by an administrative decision (for example, after an acknowledgment of paternity) or by registration. Parenthood is typically registered in the civil, personal or population register. Evidence of parenthood can be provided by the document establishing the parenthood (such as the court decision, the notarial deed or the administrative decision establishing parenthood). However, evidence of parenthood is most often provided by the registration of the parenthood in the register itself, by an extract from the relevant register or by a certificate containing the information registered in the relevant register (such as a birth certificate or a parenthood certificate).

- (35) The smooth and correct functioning of a Union area of justice with respect for the Member States' different legal systems and traditions is fundamental for the Union. In that regard, mutual trust in one another's justice systems should be further enhanced.
- (36) In order to facilitate the recognition of court decisions and authentic instruments on parenthood matters, this Regulation should lay down uniform jurisdiction rules for the establishment of parenthood with a cross-border element. This Regulation should also clarify the right of children below the age of 18 years to be provided with an opportunity to express their views in proceedings to which they are subject.
- (37) This Regulation should not affect the question of which authorities within each Member State are competent to deal with parenthood matters (for example, courts, administrative authorities, notaries, registrars or other authorities).
- (38) This Regulation should respect the different systems for dealing with parenthood matters in the Member States. As regards 'authentic instruments', Member States often empower authorities, such as notaries, administrative authorities or registrars to draw up authentic instruments establishing parenthood with binding legal effect in the Member State in which they have been drawn up or registered ('authentic instruments with binding legal effect'), or to draw up authentic instruments which have no binding legal effect in the Member State in which they have been drawn up or registered but which have evidentiary effects in that Member State ('authentic instruments with no binding legal effect'). The term 'empowerment' in this Regulation is to be interpreted autonomously in accordance with the definition of 'authentic instrument' used horizontally in Union instruments and in the light of the objectives of this Regulation.
- (39) To safeguard the child's interests, jurisdiction should be determined according to the criterion of proximity. Consequently, where possible jurisdiction should lie with the Member State of the habitual residence of the child. However, in order to facilitate the child's access to justice in a Member State, alternative jurisdiction should also be granted to the Member State of the nationality of the child, to the Member State of the habitual residence of the respondent (for example, the person in respect of whom the child claims parenthood), to the Member State of the habitual residence of any of the parents, to the Member State of the nationality of any of the parents or to the Member State of the child's birth.
- (40) In accordance with the case law of the Court of Justice, the child's place of habitual residence must be established on the basis of all the circumstances specific to each individual case. In addition to the physical presence of the child in the territory of a Member State, other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that it reflects some degree of integration of the child into a social and family environment, which is the place which, in practice, is the centre of that child's life. Such factors include the duration, regularity, conditions and reasons for the child's stay on the territory of the Member State concerned and the child's nationality, with the relevant factors varying according to the age of the child concerned. They also include the place and conditions of the child's attendance at school, and the family and social relationships of the child in the Member State. The intention of the parents to settle with the child in a given Member State may also be taken into account where that intention is manifested by tangible steps, such as the purchase or lease of a residence in the Member State concerned. By contrast, the nationality of the person giving birth or the previous residence of this person in the Member State of the court seised is not relevant, whereas the fact that the

child was born in that Member State and holds the nationality of that Member State is insufficient.

- (41) Where this Regulation refers to nationality as a connecting factor for the purposes of jurisdiction or applicable law, the question of how to consider a child or a parent having multiple nationalities is a preliminary question which falls outside the scope of this Regulation and should be left to national law, including, where applicable, international conventions, in full observance of the general principles of the Union. For the purposes of this Regulation, a child or a parent possessing multiple nationalities may choose the court or the law of any of the Member States whose nationality he or she possesses at the time of seising the court or at the time the parenthood is established.
- (42) Where jurisdiction cannot be established based on the general alternative jurisdiction grounds, the courts of the Member State where the child is present should have jurisdiction. This presence rule should, in particular, allow the courts of a Member State to exercise jurisdiction in respect of third-country national children, including applicants for or beneficiaries of international protection such as refugee children and children internationally displaced because of disturbances occurring in their State of habitual residence.
- (43) Where no court of a Member State has jurisdiction pursuant to this Regulation, jurisdiction should be determined, in each Member State, by the laws of that Member State, including the international instruments in force in that Member State.
- (44) In order to remedy situations of denial of justice, this Regulation should provide a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to rule on a parenthood matter which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when the child or another interested party cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on *forum necessitatis* should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.
- (45) In the interests of procedural economy and procedural efficiency, if the outcome of proceedings before a court of a Member State not having jurisdiction under this Regulation depends on the determination of an incidental question falling within the scope of this Regulation, the courts of that Member State should not be prevented by this Regulation from determining that question. Therefore, if the object of the proceedings is, for instance, a succession dispute in which the parent-child relationship between the deceased and the child must be established for the purposes of those proceedings, the Member State having jurisdiction for the succession dispute should be allowed to determine that question for the pending proceedings, regardless of whether it has jurisdiction for parenthood matters under this Regulation. Any such determination should be made in accordance with the applicable law designated by this Regulation and should only produce effects in the proceedings for which it was made.
- (46) In the interests of the harmonious functioning of justice, the giving of irreconcilable court decisions in different Member States should be avoided. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters.

- (47) One such procedural rule is the *lis pendens* rule, which should come into play if the same case on parenthood is brought before different courts in different Member States. That rule should determine which court should proceed to deal with the case on parenthood.
- (48) This Regulation should define at what time a court is deemed to be seised for the purposes of this Regulation. In the light of the two different systems existing in the Member States, which either require the document instituting the proceedings to be served upon the respondent first, or to be lodged with the court first, it should be sufficient for the first step under national law to have been taken, provided that the applicant has not subsequently failed to take any steps that he or she was required to take under national law in order to have the second step effected.
- (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.
- (50) This Regulation should provide legal certainty and predictability by providing common rules on the law applicable to the establishment of parenthood in cross-border situations. Such common rules aim to avoid conflicting decisions depending on which Member State's courts or other competent authorities establish parenthood and to facilitate, in particular, the acceptance of authentic instruments which have no binding legal effect in the Member State of origin but which have evidentiary effects in that Member State.
- (51) As a rule, the law applicable to the establishment of parenthood in cross-border situations should be the law of the State of the habitual residence of the person giving birth at the time of birth. This connecting factor should ensure that the applicable law can be determined in the vast majority of cases, including as regards a new-born, whose habitual residence may be difficult to establish. The time of birth should be interpreted strictly, referring to the most frequent situation in which parenthood is established upon birth by operation of law and registered in the relevant register within a few days following birth. That law should apply both to situations in which the person giving birth has the habitual residence in the State of birth (as would be the typical situation) and also to situations in which the person giving birth has the habitual residence in a State other than the State of birth (for example, when birth occurs while travelling). The law of the State of the habitual residence of the person giving birth at the time of birth should apply, by analogy, where the parenthood of the child needs to be established before the child is born. To ensure that the applicable law can be determined in all circumstances, the law of the State of birth of the child should apply in the rare cases where the habitual residence of the person giving birth at the time of birth cannot be established (for example, in the case of a refugee or an internationally displaced mother).
- (52) By way of exception, where the law applicable as a rule results in the establishment of parenthood as regards only one parent (for example, only the genetic parent in a same-

- sex couple), either of two subsidiary laws, namely the law of the State of nationality of either parent or the law of the State of birth of the child, may be applied to establish parenthood as regards the second parent (for example, the non-genetic parent in a same-sex couple). Given that, in those cases, both the parenthood as regards one parent and the parenthood as regards the other parent would be established in accordance with one of the laws designated as applicable by this Regulation, the parenthood as regards each parent, including where established by the authorities of different Member States, should be recognised in all other Member States under the rules of this Regulation where the parenthood as regards each parent has been established by the authorities of a Member State whose courts have jurisdiction under this Regulation.
- (53) Any of the laws designated as applicable by this Regulation should apply even if it is not the law of a Member State.
- (54) To ensure legal certainty and the continuity of parenthood, where parenthood has been established in a Member State in accordance with one of the laws designated as applicable by this Regulation, the change of applicable law as a result of a change of the habitual residence of the person who gave birth or of the nationality of either parent should not affect the parenthood already established.
- (55) An interested party may do a unilateral act intended to have legal effect on a parenthood established or to be established, for example, an acknowledgment of paternity or the giving of consent by a spouse to the use of assisted reproductive technology. Such an act should be formally valid if it satisfies the formal requirements of the law designated as applicable by this Regulation, or the law of the State in which the person doing the act has the habitual residence, or the law of the State in which the act was done.
- (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 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.
- (57) Since there are States in which two or more systems of law or sets of rules concerning the matters governed by this Regulation may coexist, a provision should govern the extent to which this Regulation applies in the different territorial units of those States.
- (58) This Regulation should provide for the recognition of court decisions and authentic instruments establishing parenthood with binding legal effect issued in another Member State.
- (59) Depending on the national law, an authentic instrument establishing parenthood with binding legal effect in the Member State of origin can be, for example, a notarial deed of adoption or an administrative decision establishing parenthood following an acknowledgment of paternity. This Regulation should also provide for the acceptance of authentic instruments which have no binding legal effect in the Member State of origin but which have evidentiary effects in that Member State. Depending on the national law, such an authentic instrument can be, for example, a birth certificate or a parenthood certificate providing evidence of the parenthood established in the Member



- State of origin (whether the parenthood has been established by operation of law or by an act of a competent authority, such as a court decision, a notarial deed, an administrative decision or registration).
- (60) Mutual trust in the administration of justice in the Union justifies the principle that court decisions establishing parenthood in a Member State should be recognised in all Member States without the need for any recognition procedure. In particular, when presented with a court decision given in another Member State establishing parenthood that can no longer be challenged in the Member State of origin, the competent authorities of the requested Member State should recognise the court decision by operation of law without any special procedure being required and update the records on parenthood in the relevant register accordingly.
- (61) It should be left to national law whether the grounds for refusal may be raised by a party or *ex officio*. This should not preclude any interested party who wishes to raise the recognition of a court decision on parenthood given in another Member State as the principal issue in a dispute from applying to a court for a court decision stating that there are no grounds for a refusal of the recognition of that court decision. It should be for the national law of the Member State where such application is made to determine who can be considered as an interested party entitled to make such application.
- (62) The recognition in a Member State of court decisions on parenthood matters given in another Member State should be based on the principle of mutual trust. Therefore, the grounds for non-recognition should be kept to the minimum in the light of the underlying aim of this Regulation, which is to facilitate the recognition of parenthood and to protect effectively children's rights and the best interests of the child in cross-border situations.
- (63) The recognition of a court decision should be refused only if one or more of the grounds for refusal of recognition provided for in this Regulation are present. The list of grounds for refusal of recognition in this Regulation is exhaustive. It should not be possible to invoke, as grounds for refusal, grounds which are not listed in this Regulation such as, for example, a violation of the *lis pendens* rule. A later court decision should always supersede an earlier court decision to the extent that they are irreconcilable.
- (64) As regards the opportunity given to children below the age of 18 years to express their views, it should be for the court of origin to decide about the appropriate method for hearing the child. Therefore, it should not be possible to refuse recognition of a court decision on the sole ground that the court of origin used a different method to hear the child than a court in the Member State of recognition would use.
- (65) Authentic instruments with binding legal effect in the Member State of origin should be treated as equivalent to 'court decisions' for the purposes of the rules on recognition of this Regulation.
- (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.

- (67) The recognition in a Member State under this Regulation of a court decision establishing parenthood given in another Member State, or of an authentic instrument establishing parenthood with binding legal effect drawn up or registered in another Member State, should not imply the recognition of the possible marriage or registered partnership of the parents of the child whose parenthood has been or is to be established.
- (68) In order to take into account the different systems of dealing with parenthood in the Member States, this Regulation should guarantee the acceptance in all Member States of authentic instruments which have no binding legal effect in the Member State of origin but which have evidentiary effects in that Member State. Such authentic instruments can have evidentiary effects as regards parenthood already established or as regards other facts. Depending on the national law, authentic instruments providing evidence of parenthood already established can be, for example, a birth certificate, a parenthood certificate or an extract from the civil register on birth. Authentic instruments providing evidence of other facts can be, for example, a notarial or administrative document recording an acknowledgment of paternity, a notarial or administrative document recording the consent of a mother or of a child to the establishment of parenthood, a notarial or administrative document recording the consent of a spouse to the use of assisted reproductive technology, or a notarial or administrative document recording a possession of state.
- (69) Authentic instruments which have no binding legal effect in the Member State of origin but which have evidentiary effects in that Member State should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of such an authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which such an authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.
- (70) The ‘authenticity’ of an authentic instrument which has no binding legal effect in the Member State of origin but which has evidentiary effects in that Member State should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument. A party wishing to challenge the authenticity of such an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.
- (71) The term ‘legal act’ (for example, an acknowledgment of paternity or the giving of consent) or ‘legal relationship’ (for example, the parenthood of a child) recorded in an authentic instrument which has no binding legal effect in the Member State of origin but which has evidentiary effects in that Member State should be interpreted as referring to the contents as to substance recorded in the authentic instrument. A party wishing to challenge a legal act or a legal relationship recorded in the authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the establishment of parenthood designated by this Regulation.

- (72) If a question relating to the legal act or legal relationship recorded in an authentic instrument which has no binding legal effect in the Member State of origin but which has evidentiary effects in that Member State is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.
- (73) Where an authentic instrument which has no binding legal effect in the Member State of origin but which has evidentiary effects in that Member State is being challenged, it should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge concerns only a specific matter relating to the legal act or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.
- (74) Should an authority, in application of this Regulation, be presented with two incompatible authentic instruments which do not establish parenthood with binding legal effect but which have evidentiary effects in their respective Member State of origin, it should assess the question of which authentic instrument, if any, should be given priority taking into account the circumstances of the particular case. Where it is not clear from those circumstances which of such authentic instruments, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation or, where the question is raised as an incidental question in the course of proceedings, by the court seised of those proceedings.
- (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.
- (76) In order for the recognition of the parenthood established in a Member State to be settled speedily, smoothly and efficiently, children or their parent(s) should be able to demonstrate easily the children's status in another Member State. To enable them to do so, this Regulation should provide for the creation of a uniform certificate, the European Certificate of Parenthood, to be issued for use in another Member State. In order to respect the principle of subsidiarity, the European Certificate of Parenthood should not take the place of internal documents which may exist for similar purposes in the Member States.
- (77) The authority that issues the European Certificate of Parenthood should have regard to the formalities required for the registration of parenthood in the Member State in which the register is kept. For that purpose, this Regulation should provide for an exchange of information on such formalities between the Member States.
- (78) The use of the European Certificate of Parenthood should not be mandatory. This means that persons entitled to apply for a European Certificate of Parenthood, namely the child or a legal representative, should be under no obligation to do so and should

- be free to present the other instruments available under this Regulation (a court decision or an authentic instrument) when requesting recognition in another Member State. However, no authority or person presented with a European Certificate of Parenthood issued in another Member State should be entitled to request that a court decision or an authentic instrument be presented instead of the European Certificate of Parenthood.
- (79) The European Certificate of Parenthood should be issued in the Member State in which parenthood was established and whose courts have jurisdiction under this Regulation. It should be for each Member State to determine in its internal legislation which authorities are to have competence to issue the European Certificate of Parenthood, whether they be courts or other authorities with competence in matters of parenthood, such as, for example, administrative authorities, notaries or registrars. The Member States should communicate to the Commission the relevant information concerning the authorities empowered under national law to issue the European Certificate of Parenthood in order for that information to be made publicly available.
- (80) Whilst the contents and the effects of national authentic instrument providing evidence of parenthood (such as a birth certificate or a parenthood certificate) vary depending on the Member State of origin, the European Certificate of Parenthood should have the same contents and produce the same effects in all Member States. It should have evidentiary effects and should be presumed to demonstrate accurately elements which have been established under the law applicable to the establishment of parenthood designated by this Regulation. The evidentiary effects of the European Certificate of Parenthood should not extend to elements which are not governed by this Regulation, such as the civil status of the parents of the child whose parenthood is concerned. Whilst the language of a national authentic instrument providing evidence of parenthood is issued in the language of the Member State of origin, the European Certificate of Parenthood form annexed to this Regulation is available in all Union languages.
- (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 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.
- (82) This Regulation should provide for a modern means of access to justice making it possible for natural persons or their legal representatives and Member State courts or other competent authorities to communicate electronically through the European electronic access point established on the European e-Justice Portal by Regulation (EU) .../...[the Digitalisation Regulation]. Consistency with [the Digitalisation Regulation] should be ensured. It is therefore appropriate for this Regulation to refer to [the Digitalisation Regulation] as necessary, including as regards the definitions of ‘decentralised IT system’ and ‘European electronic access point’. The European

electronic access point is part of a decentralised IT system. The decentralised IT system should be comprised of the back-end systems of Member States and interoperable access points, including the European electronic access point, through which they should be interconnected. The access points of the decentralised IT system should be based on the e-CODEX system established by Regulation (EU) 2022/850. The European Interoperability Framework provides the reference concept for interoperable policy implementation<sup>28</sup>.

- (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 communication.
- (84) This Regulation should not affect the application of Conventions No 16, No 33 and No 34 of the International Commission on Civil Status ('ICCS') in respect of the plurilingual extracts and certificates of birth as between Member States or between a Member State and a third State.
- (85) In order to ensure uniform conditions for the implementation of this Regulation as regards the establishment of the decentralised IT system for the purposes of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>29</sup>.
- (86) In order to ensure that the attestations provided for in Chapters IV and V and the European Certificate of Parenthood provided for in Chapter VI of this Regulation are kept up to date, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend Annexes I to V to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>30</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the Council receives all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (87) Respect for international commitments entered into by the Member States means that this Regulation should not affect the application of international conventions to which

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<sup>28</sup> COM(2022) 710 final and COM(2022) 720 final of 18 November 2022.

<sup>29</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>30</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

- one or more Member States are party at the time when this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the European e-Justice Portal on the basis of the information supplied by the Member States. Consistency with the general objectives of this Regulation requires, however, that this Regulation take precedence, as between Member States, over conventions concluded exclusively between two or more Member States in so far as such conventions concern matters governed by this Regulation.
- (88) For agreements with one or more third States concluded by a Member State before the date of its accession to the Union, Article 351 TFEU applies.
- (89) The Commission should make publicly available through the European e-Justice Portal and update the information communicated by the Member States.
- (90) This Regulation respects the fundamental rights and observes the principles recognised in the Charter. In particular, this Regulation seeks to promote the application of Article 7 on everyone's right to respect for their private and family life, Article 21 prohibiting discrimination, and Article 24 on the protection of the rights of the child.
- (91) This Regulation should be applied in compliance with Union data protection law and respecting the protection of privacy as enshrined in the Charter. Any processing of personal data under this Regulation should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>31</sup> (the General Data Protection Regulation, 'GDPR'), Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>32</sup> (the EU Data Protection Regulation, 'EUDPR') and Directive 2002/58/EC of the European Parliament and of the Council<sup>33</sup>.
- (92) In applying this Regulation, Member State courts or other competent authorities may need to process personal data for the purposes of the establishment of parenthood in cross-border situations and of the recognition of parenthood between Member States. This entails the processing of personal data for the establishment of parenthood in a cross-border situation, the issuance of the attestations accompanying court decisions or authentic instruments, the issuance of a European Certificate of Parenthood, the presentation of documents for the recognition of parenthood, the obtaining of a decision that there are no grounds for refusal of recognition of parenthood, or the application for refusal of recognition of parenthood. Personal data processed by Member State courts or other competent authorities pursuant to this Regulation are contained in the documents handled by Member State courts or other competent authorities for the above purposes. Personal data processed will in particular concern children, their parents and their legal representatives. The personal data handled by Member State courts or other competent authorities should be processed in accordance with applicable data protection legislation, in particular the GDPR. In addition, in

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<sup>31</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>32</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>33</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

- applying this Regulation, the Commission may need to process personal data in connection with the electronic communication between natural persons or their legal representatives and Member State courts or other competent authorities to request, receive and send a European Certificate of Parenthood, or in proceedings concerning the recognition or the refusal of recognition of parenthood, through the European electronic access point in the context of the decentralised IT system. The personal data handled by the Commission should be processed in accordance with the EUDPR.
- (93) This Regulation should provide the legal basis for the processing of personal data by Member State courts or other competent authorities in accordance with Article 6(1) and (3) of the GDPR and by the Commission in accordance with Article 5(1) and (2) of the EUDPR. The processing of special categories of personal data under this Regulation meets the requirements of Article 9(2) of the GDPR as data will be processed by courts acting in their judicial capacity in conformity with point (f), or the processing will be necessary for reasons of substantial public interest on the basis of this Regulation, which aims to facilitate the recognition of court decisions and authentic instruments on parenthood in another Member State to ensure the protection of the fundamental rights and other rights of children in cross-border situations within the Union, in conformity with point (g). Similarly, the processing of special categories of personal data under this Regulation meets the requirements of Article 10(2) of the EUDPR as the processing of data will be necessary for the establishment, exercise or defence of legal claims in conformity with point (f), or the processing will be necessary for reasons of substantial public interest on the basis of this Regulation, in conformity with point (g).
- (94) Personal data should be processed under this Regulation only for the specific purposes set out therein, without prejudice to further processing for archiving purposes in the public interest in accordance with Articles 5(1)(b) and 89 of the GDPR given that, once parenthood has been established in a cross-border situation or has been recognised, Member State courts or other competent authorities may need to process personal data for archiving purposes in the public interest. As this Regulation concerns the cross-border aspects of parenthood, which is a matter of civil status that may continue to be relevant for an indeterminate period of time, this Regulation should not limit the storage period of information and personal data processed.
- (95) For the purposes of the establishment of parenthood in a cross-border situation, the issuance of the attestations accompanying court decisions or authentic instruments, the issuance of a European Certificate of Parenthood, the presentation of documents for the recognition of parenthood, the obtaining of a decision that there are no grounds for refusal of recognition of parenthood, or the application for refusal of recognition of parenthood, Member State courts or other competent authorities empowered by the Member States to apply this Regulation should be regarded as controllers within the meaning of Article 4, point 7 of the GDPR. For the purposes of the technical management, development, maintenance, security and support of the European electronic access point, and of the communication between natural persons or their legal representatives and Member State courts or other competent authorities through the European electronic access point and the decentralised IT system, the Commission should be regarded as controller within the meaning of Article 3, point 8 of the EUDPR. Controllers should ensure the security, integrity, authenticity and confidentiality of the data processed for the above purposes.

- (96) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>34</sup> and delivered an opinion on [date]<sup>35</sup>.
- (97) [In accordance with Articles 1, 2 and 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.] OR
- (97a) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified[, by letter of ...,] its wish to take part in the adoption and application of this Regulation.]
- (98) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (99) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States because of the differences between national rules governing jurisdiction, applicable law and the recognition of court decisions and authentic instruments, but can rather, by reason of the direct applicability and binding nature of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

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<sup>34</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>35</sup> OJ C [number], [X.X.XXXX], p. X.



HAS ADOPTED THIS REGULATION:

## CHAPTER I

### SUBJECT MATTER, SCOPE AND DEFINITIONS

#### *Article 1*

##### **Subject matter**

This Regulation lays down common rules on jurisdiction and applicable law for the establishment of parenthood in a Member State in cross-border situations; common rules for the recognition or, as the case may be, acceptance in a Member State of court decisions on parenthood given, and authentic instruments on parenthood drawn up or registered, in another Member State; and creates a European Certificate of Parenthood.

#### *Article 2*

##### **Relationship with other provisions of Union law**

1. This Regulation shall 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, including Directive 2004/38/EC. In particular, this Regulation shall not affect the limitations relating to the use of public policy as a justification to refuse the recognition of parenthood where, under Union law on free movement, Member States are obliged to recognise a document establishing a parent-child relationship issued by the authorities of another Member State for the purposes of rights derived from Union law.
2. This Regulation shall not affect Regulation (EU) 2016/1191, in particular as regards public documents, as defined in that Regulation, on birth, parenthood and adoption.

#### *Article 3*

##### **Scope**

1. This Regulation shall apply to civil matters of parenthood in cross-border situations.
2. This Regulation shall not apply to:
  - (a) the existence, validity or recognition of a marriage or of a relationship deemed by the law applicable to such relationship to have comparable effects, such as a registered partnership;
  - (b) parental responsibility matters;
  - (c) the legal capacity of natural persons;
  - (d) emancipation;
  - (e) intercountry adoption;
  - (f) maintenance obligations;
  - (g) trusts or succession;
  - (h) nationality;

- (i) the legal requirements for the recording of parenthood in a register of a Member State, and the effects of recording or failing to record parenthood in a register of a Member State.
3. This Regulation shall not apply to the recognition of court decisions establishing parenthood given in a third State, or to the recognition or, as the case may be, acceptance of authentic instruments establishing or proving parenthood drawn up or registered in a third State.

#### *Article 4*

#### **Definitions**

For the purposes of this Regulation, the following definitions apply:

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;
2. 'child' means a person of any age whose parenthood is to be established, recognised or proved;
3. 'establishment of parenthood' means the determination in law of the relationship between a child and each parent, including the establishment of parenthood following a claim contesting a parenthood established previously;
4. 'court' means an authority in a Member State that exercises judicial functions in matters of parenthood;
5. 'court decision' means a decision of a court of a Member State, including a decree, order or judgment, concerning matters of parenthood;
6. 'authentic instrument' means a document that has been formally drawn up or registered as an authentic instrument in any Member State in matters of parenthood and the authenticity of which:
  - (a) relates to the signature and the content of the instrument; and
  - (b) has been established by a public authority or other authority empowered for that purpose by the Member State of origin;
7. 'Member State of origin' means the Member State in which the court decision on parenthood has been given, the authentic instrument on parenthood has been formally drawn up or registered, or the European Certificate of Parenthood has been issued;
8. 'decentralised IT system' means an IT system as defined in point (4) of Article 2 of [the Digitalisation Regulation];
9. 'European electronic access point' means an interoperable access point as defined in point (5) of Article 2 of [the Digitalisation Regulation].

#### *Article 5*

#### **Competence in matters of parenthood within the Member States**

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

## CHAPTER II

### JURISDICTION

#### *Article 6*

##### **General jurisdiction**

In matters relating to parenthood, jurisdiction shall lie with the courts of the Member State:

- (a) of the habitual residence of the child at the time the court is seised, or
- (b) of the nationality of the child at the time the court is seised, or
- (c) of the habitual residence of the respondent at the time the court is seised, or
- (d) of the habitual residence of either parent at the time the court is seised, or
- (e) of the nationality of either parent at the time the court is seised, or
- (f) of birth of the child.

#### *Article 7*

##### **Jurisdiction based on the presence of the child**

Where jurisdiction cannot be determined on the basis of Article 6, the courts of the Member State where the child is present shall have jurisdiction.

#### *Article 8*

##### **Residual jurisdiction**

Where no court of a Member State has jurisdiction pursuant to Articles 6 or 7, jurisdiction shall be determined, in each Member State, by the laws of that Member State.

#### *Article 9*

##### **Forum necessitatis**

Where no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an exceptional basis, rule on parenthood matters if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected.

The case must have a sufficient connection with the Member State of the court seised.

#### *Article 10*

##### **Incidental questions**

1. If the outcome of proceedings in a matter not falling within the scope of this Regulation before a court of a Member State depends on the determination of an incidental question relating to parenthood, a court in that Member State may determine that question for the purposes of those proceedings even if that Member State does not have jurisdiction under this Regulation.
2. The determination of an incidental question pursuant to paragraph 1 shall produce effects only in the proceedings for which that determination was made.

## *Article 11*

### **Seising of a court**

A court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he or she was required to take to have service effected on the respondent;
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he or she was required to take to have the document lodged with the court; or
- (c) if the proceedings are instituted of the court's own motion, at the time when the decision to institute the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

## *Article 12*

### **Examination as to jurisdiction**

Where a court of a Member State is seised of a case over which it has no jurisdiction as to the substance of the matter under this Regulation and over which a court of another Member State has jurisdiction as to the substance of the matter under this Regulation, it shall declare of its own motion that it has no jurisdiction.

## *Article 13*

### **Examination as to admissibility**

1. Where a respondent habitually resident in a State other than the Member State where the proceedings were instituted does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable the respondent to arrange for a defence, or that all necessary steps have been taken to this end.
2. Article 22 of Regulation (EU) 2020/1784 shall apply instead of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.
3. Where Regulation (EU) 2020/1784 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

## *Article 14*

### ***Lis pendens***

1. Where proceedings involving the same cause of action and between the same parties are brought before courts of different Member States, any court other than the court

first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. In the cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the requesting court of the date when it was seised.
3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of the court first seised.

#### *Article 15*

### **Right of children to express their views**

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.
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.

## **CHAPTER III**

### **APPLICABLE LAW**

#### *Article 16*

### **Universal application**

Any law designated as applicable by this Regulation shall be applied whether or not it is the law of a Member State.

#### *Article 17*

### **Applicable law**

1. The law applicable to the establishment of parenthood shall be the law of the State of the habitual residence of the person giving birth at the time of birth or, where the habitual residence of the person giving birth at the time of birth cannot be determined, the law of the State of birth of the child.
2. Notwithstanding paragraph 1, where the applicable law pursuant to paragraph 1 results in the establishment of parenthood as regards only one parent, the law of the State of nationality of that parent or of the second parent, or the law of the State of birth of the child, may apply to the establishment of parenthood as regards the second parent.

## *Article 18*

### **Scope of the applicable law**

The law designated by this Regulation as the law applicable to the establishment of parenthood shall govern, in particular:

- (a) the procedures to establish or contest parenthood;
- (b) the binding legal effect and/or the evidentiary effects of authentic instruments;
- (c) the standing of persons in proceedings involving the establishment or contestation of parenthood;
- (d) any time limits to establish or contest parenthood.

## *Article 19*

### **Change of applicable law**

Where parenthood has been established in a Member State pursuant to this Regulation, a subsequent change of the applicable law shall not affect the parenthood already established.

## *Article 20*

### **Formal validity**

1. A unilateral act intended to have legal effect on the establishment of parenthood shall be valid as to form where it meets the requirements of one of the following laws:
  - (a) the law applicable to the establishment of parenthood pursuant to Article 17;
  - (b) the law of the State in which the person doing the act has the habitual residence; or
  - (c) the law of the State in which the act was done.
2. An act intended to have legal effect on the establishment of parenthood may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in paragraph 1 under which that act is formally valid, provided that such mode of proof can be administered by the forum.

## *Article 21*

### **Exclusion of renvoi**

The application of the law of any State specified by this Regulation means the application of the rules of law in force in that State other than its rules of private international law.

## *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.

*Article 23*

**States with more than one legal system**

1. Where the law specified by this Regulation is that of a State which comprises several territorial units each of which has its own rules of law in respect of parenthood matters, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.
2. In the absence of such internal conflict-of-laws rules:
  - (a) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to the provision referring to the habitual residence of the person giving birth at the time of birth, be construed as referring to the law of the territorial unit in which the person giving birth has the habitual residence;
  - (b) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to the provisions referring to the State of birth of the child, be construed as referring to the law of the territorial unit where the child was born.
  - (c) A Member State which comprises several territorial units each of which has its own rules of law in respect of parenthood matters shall not be required to apply this Regulation to conflicts of laws arising between such units only.

**CHAPTER IV**

**RECOGNITION**

**SECTION 1**

*General provisions on recognition*

*Article 24*

**Recognition of a court decision**

1. A court decision on parenthood given in a Member State shall be recognised in all other Member States without any special procedure being required.
2. In particular, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a court decision on parenthood given in another Member State and against which no further appeal lies under the law of that Member State.
3. Where the recognition of a court decision is raised as an incidental question before a court of a Member State, that court may determine that issue.

*Article 25*

**Decision that there are no grounds for refusal of recognition**

1. Any interested party may, in accordance with the procedures provided for in Articles 32 to 34, apply for a decision that there are no grounds for refusal of recognition referred to in Article 31.

2. The local jurisdiction of the court communicated to the Commission pursuant to Article 71 shall be determined by the law of the Member State in which proceedings in accordance with paragraph 1 are brought.

#### *Article 26*

#### **Documents to be produced for recognition**

1. A party who wishes to invoke in a Member State a court decision given in another Member State shall produce the following:
  - (a) a copy of the court decision that satisfies the conditions necessary to establish its authenticity; and
  - (b) the appropriate attestation issued pursuant to Article 29.
2. The court or other competent authority before which a court decision given in another Member State is invoked may, where necessary, require the party invoking it to provide a translation or transliteration of the translatable content of the free text fields of the attestation referred to in point (b) of paragraph 1 of this Article.
3. The court or other competent authority before which a court decision given in another Member State is invoked may require the party to provide a translation or transliteration of the court decision in addition to a translation or transliteration of the translatable content of the free text fields of the attestation if it is unable to proceed without such a translation or transliteration.

#### *Article 27*

#### **Absence of documents**

1. If the documents specified in Article 26(1) are not produced, the court or other competent authority before which a court decision given in another Member State is invoked may specify a time for its production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with its production.
2. If the court or other competent authority before which a court decision given in another Member State is invoked so requires, a translation or transliteration of such equivalent documents shall be produced.

#### *Article 28*

#### **Stay of proceedings**

The court before which a court decision given in another Member State is invoked may stay its proceedings, in whole or in part, where:

- (a) an ordinary appeal against that court decision has been lodged in the Member State of origin; or
- (b) an application has been submitted for a decision that there are no grounds for refusal of recognition referred to in Article 25 or for a decision that the recognition is to be refused on the basis of one of those grounds.

#### *Article 29*

#### **Issuance of the attestation**



1. The court of a Member State of origin as communicated to the Commission pursuant to Article 71 shall, upon application by a party, issue an attestation for a court decision on parenthood using the form set out in Annex I.
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.
3. The attestation shall contain a statement informing Union citizens and their family members that the attestation does not affect the rights that a child derives from Union law and that, for the exercise of such rights, proof of the parent-child relationship can be presented by any means.
4. No challenge shall lie against the issuance of the attestation.

#### *Article 30*

#### **Rectification of the attestation**

1. The court of a Member State of origin as communicated to the Commission pursuant to Article 71 shall, upon application, and may, of its own motion, rectify the attestation where, due to a material error or omission, there is a discrepancy between the court decision to be recognised and the attestation.
2. The law of the Member State of origin shall apply to the procedure for rectification of the attestation.

#### *Article 31*

#### **Grounds for refusal of recognition**

1. The recognition of a court decision shall be refused:
  - (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;
  - (b) where it was given in default of appearance if the persons in default were not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable those persons to arrange for their defence unless it is determined that such persons have accepted the court decision unequivocally;
  - (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;
  - (d) if and to the extent that it is irreconcilable with a later court decision relating to parenthood given in the Member State in which recognition is invoked;
  - (e) if and to the extent that it is irreconcilable with a later court decision relating to parenthood given in another Member State provided that the later court decision fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked.
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.

3. The recognition of a court decision in matters of parenthood may be refused if it was given without children having been given an opportunity to express their views, unless this is against the interest of the child. Where children were below the age of 18 years, this provision shall apply where the children were capable of forming their views in accordance with Article 15.

## **SECTION 2**

### *Procedure for refusal of recognition*

#### *Article 32*

#### **Application for refusal of recognition**

1. The procedure for making an application for refusal of recognition shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State in which proceedings for non-recognition are brought.
2. The recognition of a court decision in matters of parenthood shall be refused if one of the grounds for refusal of recognition referred to in Article 31 is found to exist.
3. The local jurisdiction of the court communicated to the Commission pursuant to Article 71 shall be determined by the law of the Member State in which proceedings for non-recognition are brought.
4. The applicant shall provide the court with a copy of the court decision and, where applicable and possible, the appropriate attestation issued pursuant to Article 29.
5. The court may, where necessary, require the applicant to provide a translation or transliteration of the translatable content of the free text fields of the appropriate attestation issued pursuant to Article 29.
6. If the court is unable to proceed without a translation or transliteration of the court decision, it may require the applicant to provide such a translation or transliteration.
7. The court may dispense with the production of the documents referred to in paragraph 4 if:
  - (a) it already possesses them; or
  - (b) it considers it unreasonable to require the applicant to provide them.
8. The party seeking the refusal of the recognition of a court decision given in another Member State shall not be required to have a postal address in the Member State in which proceedings for non-recognition are brought. That party shall be required to have an authorised representative in the Member State in which proceedings for non-recognition are brought only if such a representative is mandatory under the law of the Member State in which proceedings for non-recognition are brought irrespective of the nationality of the parties.

#### *Article 33*

#### **Challenge or appeal**

1. Any party may challenge or appeal against a court decision on the application for refusal of recognition.
2. The challenge or appeal shall be lodged with the court communicated by the Member States to the Commission pursuant to Article 71 as the court with which such a challenge or appeal is to be lodged.

*Article 34*

**Further challenge or appeal**

A court decision given on the challenge or appeal may only be contested by a challenge or appeal where the courts with which any further challenge or appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to Article 71.

**SECTION 3**

*Authentic instruments with binding legal effect*

*Article 35*

**Scope**

This Section shall apply to authentic instruments establishing parenthood that:

- (a) have been formally drawn up or registered in a Member State assuming jurisdiction under Chapter II; and
- (b) have binding legal effect in the Member State where they have been formally drawn up or registered.

*Article 36*

**Recognition of authentic instruments**

Authentic instruments establishing parenthood with binding legal effect in the Member State of origin shall be recognised in other Member States without any special procedure being required. Sections 1 and 2 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.

*Article 37*

**Attestation**

1. The competent authority of the Member State of origin as communicated to the Commission pursuant to Article 71 shall, upon application by a party, issue an attestation for an authentic instrument establishing parenthood with binding legal effect using the form set out in Annex II.
2. The attestation may be issued only if the following conditions are met:
  - (a) the Member State which empowered the public authority or other authority to formally draw up or register the authentic instrument establishing parenthood had jurisdiction under Chapter II; and
  - (b) the authentic instrument has binding legal effect in that Member State.

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.
4. The attestation shall contain a statement informing Union citizens and their family members that the attestation does not affect the rights that a child derives from Union law and that, for the exercise of such rights, proof of the parent-child relationship can be presented by any means.
5. If the attestation is not produced, the authentic instrument shall not be recognised in another Member State.

#### *Article 38*

#### **Rectification and withdrawal of the attestation**

1. The competent authority of the Member State of origin as communicated to the Commission pursuant to Article 71 shall, upon application, and may, of its own motion, rectify the attestation where, due to a material error or omission, there is a discrepancy between the authentic instrument and the attestation.
2. The competent authority referred to in paragraph 1 of this Article shall, upon application or of its own motion, withdraw the attestation where it was wrongly granted, having regard to the requirements laid down in Article 37.
3. The procedure, including any appeal, with regard to the rectification or withdrawal of the attestation shall be governed by the law of the Member State of origin.

#### *Article 39*

#### **Grounds for refusal of recognition**

1. The recognition of an authentic instrument establishing parenthood with binding legal effect shall be refused:
  - (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;
  - (b) upon application by any person claiming that the authentic instrument infringes his fatherhood or her motherhood over the child, if the authentic instrument was formally drawn up or registered without that person having been involved;
  - (c) if and to the extent that it is irreconcilable with a later court decision relating to parenthood given, or a later authentic instrument establishing parenthood with binding legal effect drawn up or registered, in the Member State in which recognition is invoked;
  - (d) if and to the extent that it is irreconcilable with a later court decision relating to parenthood given, or a later authentic instrument establishing parenthood with binding legal effect drawn up or registered, in another Member State provided that the later court decision or authentic instrument fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked.

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.
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.

## **SECTION 4**

### ***Other provisions***

#### *Article 40*

#### **Prohibition of review of jurisdiction of the court of origin**

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.

#### *Article 41*

#### **Non-review as to substance**

Under no circumstances may a court decision given in another Member State, or an authentic instrument establishing parenthood with binding legal effect in the Member State of origin, be reviewed as to their substance.

#### *Article 42*

#### **Costs**

This Chapter shall also apply to the determination of the amount of costs and expenses of proceedings under this Regulation.

#### *Article 43*

#### **Legal aid**

1. An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the proceedings provided for in Article 25(1) and Article 32, to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State in which proceedings are brought.
2. An applicant who, in the Member State of origin, has benefited from free proceedings before an administrative authority communicated to the Commission pursuant to Article 71 shall be entitled, in any procedures provided for in Articles 25(1) and 32, to benefit from legal aid in accordance with paragraph 1 of this Article. To that end, that party shall present a statement from the competent authority in the Member State of origin to the effect that he or she fulfils the financial requirements

to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

## CHAPTER V

### AUTHENTIC INSTRUMENTS WITH NO BINDING LEGAL EFFECT

#### *Article 44*

##### **Scope**

This Chapter shall apply to authentic instruments which have no binding legal effect in the Member State of origin but which have evidentiary effects in that Member State.

#### *Article 45*

##### **Acceptance of authentic instruments**

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.
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.
3. A person wishing to use such an authentic instrument in another Member State may ask the authority that has formally drawn up or registered the authentic instrument in the Member State of origin to fill in the form in Annex III describing the evidentiary effects which the authentic instrument produces in the Member State of origin.
4. The attestation shall contain a statement informing Union citizens and their family members that the attestation does not affect the rights that a child derives from Union law and that, for the exercise of such rights, proof of the parent-child relationship can be presented by any means.
5. Any challenge relating to the authenticity of such an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that Member State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State as long as the challenge is pending before the competent court.
6. Any challenge relating to the legal acts or legal relationships recorded in such an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged as long as the challenge is pending before the competent court.
7. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships

recorded in such an authentic instrument, that court shall have jurisdiction over that question.

## **CHAPTER VI**

### **EUROPEAN CERTIFICATE OF PARENTHOOD**

#### *Article 46*

##### **Creation of a European Certificate of Parenthood**

1. This Regulation creates a European Certificate of Parenthood ('the Certificate') which shall be issued for use in another Member State and shall produce the effects listed in Article 53.
2. The use of the Certificate shall not be mandatory.
3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 53 in the Member State whose authorities issued it in accordance with this Chapter.

#### *Article 47*

##### **Purpose of the Certificate**

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.

#### *Article 48*

##### **Competence to issue the Certificate**

1. The Certificate shall be issued in the Member State in which parenthood was established and whose courts, as defined in Article 4(4), have jurisdiction under Article 6, Article 7 or Article 9.
2. The issuing authority, as communicated to the Commission pursuant to Article 71, of the Member State referred to in paragraph 1 shall be:
  - (a) a court as defined in Article 4(4); or
  - (b) another authority which, under national law, has competence to deal with parenthood matters.

#### *Article 49*

##### **Application for a Certificate**

1. The Certificate shall be issued upon application by the child ('the applicant') or, where applicable, a legal representative.
2. For the purposes of submitting an application, the applicant may use the form established in Annex IV.
3. The application shall contain the information listed below, to the extent that such information is within the applicant's knowledge and is necessary in order to enable

the issuing authority to certify the elements which the applicant wants certified, and shall be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity, without prejudice to Article 50(2):

- (a) details concerning the applicant: surname(s) (if applicable, surname(s) at birth), given name(s), sex, date and place of birth, nationality (if known), identification number (if applicable), address;
- (b) if applicable, details concerning the legal representative of the applicant: surname(s) (if applicable, surname(s) at birth), given name(s), address and representative capacity;
- (c) details concerning each parent: surname(s) (if applicable, surname(s) at birth), given name(s), date and place of birth, nationality, identification number (if applicable), address;
- (d) the place and Member State where the parenthood of the child is registered;
- (e) the elements on which the applicant founds parenthood, appending the original or a copy of the document(s) establishing parenthood with binding legal effect or providing evidence of the parenthood;
- (f) the contact details of the Member State's court that established parenthood, of the competent authority that issued an authentic instrument establishing parenthood with binding legal effect, or of the competent authority that issued an authentic instrument with no binding legal effect in the Member State of origin but with evidentiary effects in that Member State;
- (g) a declaration stating that, to the applicant's best knowledge, no dispute is pending relating to the elements to be certified;
- (h) any other information which the applicant deems useful for the purposes of the issuance of the Certificate.

#### *Article 50*

#### **Examination of the application**

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.
2. Where the applicant has been unable to produce copies of the relevant documents which satisfy the conditions necessary to establish their authenticity, the issuing authority may decide to accept other forms of evidence.
3. Where this is provided for by its national law and subject to the conditions laid down therein, the issuing authority may require that declarations be made on oath or by a statutory declaration in lieu of an oath.
4. For the purposes of this Article, the competent authority of a Member State shall, upon request, provide the issuing authority of another Member State with information held, in particular, in the civil, personal or population registers and other registers recording facts of relevance for the parenthood of the applicant, where that



competent authority would be authorised, under national law, to provide another national authority with such information.

#### *Article 51*

##### **Issuance of the Certificate**

1. 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.

The issuing authority shall not issue the Certificate in particular if:

- (a) the elements to be certified are being challenged; or
  - (b) the Certificate would not be in conformity with a court decision covering the same elements.
2. The fee collected for issuing a Certificate shall not be higher than the fee collected for issuing a certificate under national law providing evidence of the parenthood of the applicant.

#### *Article 52*

##### **Contents of the Certificate**

The Certificate shall contain the following information, as applicable:

- (a) the name, address and contact details of the Member State's issuing authority;
- (b) if different, the name, address and contact details of the Member State's court that established parenthood, of the competent authority that issued an authentic instrument establishing parenthood with binding legal effect, or of the competent authority that issued an authentic instrument with no binding legal effect in the Member State of origin but with evidentiary effects in that Member State;
- (c) the reference number of the file;
- (d) the date and place of issue;
- (e) the place and Member State where the parenthood of the child is registered;
- (f) details concerning the applicant: surname(s) (if applicable, surname(s) at birth), given name(s), sex, date and place of birth, nationality (if known), identification number (if applicable), address;
- (g) if applicable, details concerning the legal representative of the applicant: surname(s) (if applicable, surname(s) at birth), given name(s), address and representative capacity;
- (h) details concerning each parent: surname(s) (if applicable, surname(s) at birth), given name(s), date and place of birth, nationality, identification number (if applicable), address;
- (i) the elements on the basis of which the issuing authority considers itself competent to issue the Certificate;

- (j) the law applicable to the establishment of parenthood and the elements on the basis of which that law has been determined;
- (k) a statement informing Union citizens and their family members that the Certificate does not affect the rights that a child derives from Union law and that, for the exercise of such rights, proof of the parent-child relationship can be presented by any means;
- (l) signature and/or stamp of the issuing authority.

#### *Article 53*

##### **Effects of the Certificate**

1. The Certificate shall produce its effects in all Member States without any special procedure being required.
2. The Certificate shall be presumed to demonstrate accurately elements which have been established under the law applicable to the establishment of parenthood. The person mentioned in the Certificate as the child of a particular parent or parents shall be presumed to have the status mentioned in the Certificate.
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).

#### *Article 54*

##### **Certified copies of the Certificate**

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.
2. The issuing authority shall, for the purposes of Articles 55(3) and 57(2), keep a list of persons to whom certified copies have been issued pursuant to paragraph 1.

#### *Article 55*

##### **Rectification, modification or withdrawal of the Certificate**

1. The issuing authority shall, at the request of any person demonstrating a legitimate interest or of its own motion, rectify the Certificate in the event of a clerical error.
2. The issuing authority shall, at the request of any person demonstrating a legitimate interest or, where this is possible under national law, of its own motion, modify or withdraw the Certificate where it has been established that the Certificate or individual elements thereof are not accurate.
3. The issuing authority shall inform without delay all persons to whom certified copies of the Certificate have been issued pursuant to Article 54(1) of any rectification, modification or withdrawal thereof.

#### *Article 56*

##### **Redress procedures**

1. Decisions taken by the issuing authority pursuant to Article 51 may be challenged by the applicant for a Certificate or a legal representative.

Decisions taken by the issuing authority pursuant to Article 55 and point (a) of Article 57(1) may be challenged by any person demonstrating a legitimate interest.

The challenge shall be lodged before a court in the Member State of the issuing authority in accordance with the law of that Member State.

2. 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.

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.

#### *Article 57*

#### **Suspension of the effects of the Certificate**

1. The effects of the Certificate may be suspended by:
  - (a) the issuing authority, at the request of any person demonstrating a legitimate interest, pending a modification or withdrawal of the Certificate pursuant to Article 55; or
  - (b) the court, at the request of any person entitled to challenge a decision taken by the issuing authority pursuant to Article 56, pending such a challenge.
2. The issuing authority or, as the case may be, the court shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 54(1) of any suspension of the effects of the Certificate.

During the suspension of the effects of the Certificate no further certified copies of the Certificate may be issued.

## **CHAPTER VII**

### **DIGITAL COMMUNICATION**

#### *Article 58*

#### **Communication through the European electronic access point**

1. The European electronic access 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:
  - (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;

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

#### *Article 59*

##### **Adoption of implementing acts by the Commission**

1. For the purposes of electronic communications pursuant to Article 58(1), the Commission shall adopt implementing acts setting out the following:
- (a) the technical specifications defining the methods of communication by electronic means;
  - (b) the technical specifications for communication protocols;
  - (c) the information security objectives and relevant technical measures ensuring minimum information security standards and a high level of cybersecurity for the processing and communication of information;
  - (d) the minimum availability objectives and possible related technical requirements for electronic communication through the decentralised IT system.
2. The implementing acts referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 62(2).
3. The implementing acts referred to in paragraph 1 shall be adopted by [*2 years after the entry into force of this Regulation*].

#### *Article 60*

##### **Reference implementation software**

1. The Commission shall be responsible for the creation, maintenance and development of reference implementation software which Member States may choose to apply as their back-end system instead of a national IT system. The creation, maintenance and development of the reference implementation software shall be financed from the general budget of the Union.
2. The Commission shall provide, maintain and support on a free-of-charge basis the reference implementation software.

#### *Article 61*

##### **Costs of the decentralised IT system, European electronic access point and national IT portals**

1. Each Member State shall bear the costs of the installation, operation and maintenance of the decentralised IT system's access points which are located on their territory.
2. Each Member State shall bear the costs of establishing and adjusting its national IT systems to make them interoperable with the access points, and shall bear the costs of administering, operating and maintaining those systems.

3. Member States shall not be prevented from applying for grants to support the activities referred to in paragraphs 1 and 2 under the relevant Union financial programmes.
4. The Commission shall bear all costs related to introducing support for electronic communications through the European electronic access point pursuant to Article 58(1).

#### *Article 62*

#### **Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>36</sup>.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council shall apply.

## **CHAPTER VIII**

### **DELEGATED ACTS**

#### *Article 63*

#### **Delegation of powers**

The Commission is empowered to adopt delegated acts in accordance with Article 64 concerning the amendment of Annexes I to V in order to update or make technical changes to those Annexes.

#### *Article 64*

#### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 63 shall be conferred on the Commission for an indeterminate period of time from [*date of entry into force of this Regulation*].
3. The delegation of power referred to in Article 63 may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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<sup>36</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.
6. A delegated act adopted pursuant to Article 63 shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.
7. The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.

## **CHAPTER IX**

### **GENERAL AND FINAL PROVISIONS**

#### *Article 65*

##### **Legalisation or other similar formality**

No legalisation or other similar formality shall be required in the context of this Regulation.

#### *Article 66*

##### **Relationship with existing international conventions**

1. This Regulation shall not affect the international conventions to which one or more Member States are party at the time when this Regulation is adopted and which lay down provisions on matters governed by this Regulation.
2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.
3. This Regulation shall not affect the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.
4. This Regulation shall not affect Conventions No 16, No 33 and No 34 of the International Commission on Civil Status.

#### *Article 67*

##### **List of Conventions**

1. By [*six months before the date of application of this Regulation*], Member States shall notify the Commission of the conventions referred to in Article 66(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.
2. Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the European e-Justice Portal:
  - (a) a list of the conventions referred to in paragraph 1;

- (b) the denunciations referred to in paragraph 1.

#### *Article 68*

##### **Data protection**

1. The personal data required for the application of this Regulation shall be processed by Member State courts or other competent authorities for the purposes of the establishment of parenthood in cross-border situations and of the recognition of parenthood, in connection with the establishment of parenthood pursuant to Chapter II, the issuance of attestations pursuant to Articles 29, 37 and 45, the issuance of a European Certificate of Parenthood pursuant to Article 51, the presentation of the documents for the recognition of parenthood pursuant to Article 26, the obtaining of a decision that there are no grounds for refusal of recognition of parenthood pursuant to Article 25, or the application for refusal of recognition of parenthood pursuant to Article 32.
2. Processing of personal data under this Regulation shall be limited to the extent necessary for the purposes set out in paragraph 1, without prejudice to further processing for archiving purposes in the public interest in accordance with Articles 5(1)(b) and 89 of the GDPR.
3. For the purposes of this Regulation, Member State courts or other competent authorities shall be regarded as data controllers within the meaning of Article 4, point 7 of the GDPR.
4. The personal data required for the application of this Regulation shall be processed by the Commission in connection with the electronic communication between natural persons or their legal representatives and Member State courts or other competent authorities through the European electronic access point in the context of the decentralised IT system.
5. Processing of personal data under this Regulation shall be limited to the extent necessary for the purposes set out in paragraph 4.
6. For the purposes of this Regulation, the Commission shall be regarded as controller within the meaning of Article 3, point 8 of the EUDPR.

#### *Article 69*

##### **Transitional provisions**

1. This Regulation shall apply to legal proceedings instituted and to authentic instruments formally drawn up or registered on or after [*date of application of this Regulation*].
2. Notwithstanding paragraph 1, where the parenthood was established in conformity with one of the laws designated as applicable under Chapter III in a Member State whose courts had jurisdiction under Chapter II, Member States shall recognise:
  - (a) a court decision establishing parenthood in another Member State in legal proceedings instituted prior to [*date of application of this Regulation*], and
  - (b) an authentic instrument establishing parenthood with binding legal effect in the Member State of origin which was formally drawn up or registered prior to [*date of application of this Regulation*].

Chapter IV shall apply to the court decisions and authentic instruments referred to in this paragraph.

3. 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 acceptance is sought.

Chapter V shall apply to the authentic instruments referred to in this paragraph.

#### *Article 70*

##### **Review**

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.
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:
  - (a) the number of applications for the refusal of recognition of a court decision or of an authentic instrument establishing parenthood with binding legal effect in the Member State of origin pursuant to Article 32, and the number of cases in which the refusal of recognition was granted;
  - (b) the number of appeals lodged pursuant to Articles 33 and 34, respectively;
  - (c) the number of applications challenging the contents of an authentic instrument which has no binding legal effect in the Member State of origin but which has evidentiary effects in that Member State, and the number of cases in which the challenge was successful;
  - (d) the number of European Certificates of Parenthood issued; and
  - (e) the costs incurred under Article 61(2) of this Regulation.

#### *Article 71*

##### **Information to be communicated to the Commission**

1. The Member States shall communicate to the Commission the following:
  - (a) the authorities empowered to draw up or register authentic instruments in matters of parenthood as referred to in Article 4, point (6);
  - (b) the courts and authorities competent to issue attestations as referred to in Article 29, Article 37 and Article 45, and the courts and authorities competent to rectify attestations as referred to in Article 38;
  - (c) the courts competent to deal with applications for a decision that there are no grounds for refusal of recognition in accordance with Article 25, and the courts competent to deal with applications for refusal of recognition in accordance



with Article 32 and with appeals against court decisions on such applications for refusal in accordance with Articles 33 and 34, respectively; and

- (d) the courts and authorities competent to issue the European Certificate of Parenthood pursuant to Article 51, and the courts competent to deal with the redress procedures referred to in Article 56.
2. The Member States shall communicate the information referred to in paragraph 1 to the Commission by [*6 months after the date of entry into force of this Regulation*].
3. The Member States shall communicate to the Commission any changes to the information referred to in paragraph 1.
4. The Commission shall make the information referred to in paragraph 1 publicly available through appropriate means, including through the European e-Justice Portal.

#### *Article 72*

#### **Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [the first day of the month following a period of 18 months from the date of entry into force of this *Regulation*].

However, Article 71 shall apply from [date of entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the Council*  
*The President*