



2022/0402(CNS)

28.9.2023

OPINION

of the Committee on Women's Rights and Gender Equality

for the Committee on Committee on Legal Affairs

on the proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood (COM(2022)695 final – C9-0002/2023 – 2022/0402(CNS))

Rapporteur for opinion: Robert Biedroń

PA_Legam

SHORT JUSTIFICATION

On 8 December 2022, the Commission submitted to the Council a 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 (2022/0402 (CNS)). The Council decided on 9 January 2023 to consult the European Parliament on this proposal (COM(2022) 695 final).

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, to non-discrimination and to a private and family life, and to succession and maintenance rights in another Member State, taking the best interests of the child as a primary consideration.

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.

Having in mind the aforementioned objectives, as well as the numerous obstacles and the existing gaps in Union law, the European Parliament's Committee on Women's Rights and Gender Equality must ensure that this recognition and gender equality are adequately incorporated within the upcoming Regulation.

This Regulation should ensure that children enjoy their rights and maintain their legal status in cross-border situations irrespective of their family situation and without discrimination, in particular, against women and same-sex couples, or contrary to the best interest of the child. The non-recognition by a Member State of parenthood established in another Member State particularly affects rainbow families (LGBTIQ+ families) as well as other types of families that do not fit the nuclear family model.

It is also necessary to emphasize that EU member states need 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 all the member states as guaranteed in Article 21(1) Treaty on the Functioning of the European Union (TFEU), the application of which is key to ensuring gender equality.

Under the Commission's proposal the list of grounds for refusal of recognition of parenthood is exhaustive, mentioning, *inter alia*, grounds of public policy (*ordre public*); in this regard, this shall be applied by the courts and other competent authorities of the Member States in full respect, fulfilment and protection of the fundamental rights and principles laid down in the Charter, in particular, Article 21 thereof on the right to non-discrimination. Therefore,

competent authorities should not be able to apply the public policy exception to discriminate against women and same-sex couples and, it has to always be in line with and promote the best interest of the child.

Achieving a gender equal Europe and eliminating structural inequality requires a strong commitment not only from the EU institutions, policymakers and NGOs, but also Members States.

AMENDMENTS

The Committee on Women's Rights and Gender Equality calls on the Committee on Legal Affairs, as the committee responsible, to take the following into account:

Amendment 1 **Proposal for a regulation** **Recital 4 a (new)**

Text proposed by the Commission

Amendment

(4a) Public policy within the meaning of the Regulation must be interpreted restrictively in accordance with the case law of the CJEU. In its judgment C-490/20, the CJEU reiterated its view that "the concept of 'public policy', if it is to justify a derogation from a fundamental freedom, must be interpreted restrictively, so that its scope cannot be determined unilaterally by each Member State without control by the Union institutions."

Amendment 2

Proposal for a regulation **Recital 11**

Text proposed by the Commission

Amendment

(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

(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.

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. ***To allow families to fall outside the system on which society is built, is to discriminate against children and their families: their rights to security and dignity must be upheld. To deny some families the right to exist is to deny them of the dignity of the individual and is contrary to our European values and the promotion of gender equality. The non-recognition by a Member State of parenthood established in another Member State particularly affects rainbow families (LGBTIQ+ families) as well as other types of families that do not fit the nuclear family model. This is especially the case where there is no biological link between the parents and the child. This Regulation should ensure that children enjoy their rights and maintain their legal status in cross-border situations irrespective of their family situation and without discrimination.***

Amendment 3

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) Under Article 21 TFEU and

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Amendment

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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 means⁵². 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.

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. ***The refusal can never go against the best interest of the child and the best interest of the child has to be always adhered to. Under no circumstances can the best interest of the child be used as an excuse for refusal on the basis of the gender of the parents.*** In addition, for the purposes of exercising such rights, proof of parenthood can be presented by any means⁵². 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.

⁵² 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.

⁵² 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.

Amendment 4

Proposal for a regulation Recital 36

Text proposed by the Commission

(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.

Amendment

(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, ***as laid out in Article 12 of the United Nations Convention of the Rights of the Child.***

Amendment 5

Proposal for a regulation Recital 42

Text proposed by the Commission

(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

Amendment

(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.

international protection such as refugee children and children internationally displaced ***and victims of trafficking in human beings*** because of disturbances occurring in their State of habitual residence.

Amendment 6

Proposal for a regulation Recital 49

Text proposed by the Commission

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

Amendment

(49) ***In accordance with Article 12 of the UN Convention on the Rights of the Child and Article 24(1) of the Charter, all children have the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. As such,*** proceedings on the establishment of parenthood under this Regulation should, as a basic principle, provide children below the age of 18 years who are subject to those proceedings and who are capable of forming their own views, in accordance with the case law of the Court of Justice, with a genuine and effective opportunity to express their views and, when assessing the best interests of the child, due weight should be given to those views. This Regulation should, however, leave the question of who will hear the child and how the child will be heard to be determined by the national law and procedure of the Member States. In addition, while remaining a right of the child, hearing the child should not constitute an absolute obligation although it should be assessed taking into account the best interests of the child.

Amendment 7

Proposal for a regulation
Recital 56

Text proposed by the Commission

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

Amendment

(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 ***or contrary to the best interest of the child. Underlines that EU member states need 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 all the member states as guaranteed in Article 21(1) Treaty on the Functioning of the European Union (TFEU), the application of which is key to ensuring gender equality. In particular, competent authorities should not be able to apply the public policy exception to discriminate against women and same-sex couples.***

Amendment 8

Proposal for a regulation
Recital 60 a (new)

Text proposed by the Commission

Amendment

(60a) In order to prevent fragmentation of legal regimes for cross border families, Commission in cooperation with Member States shall draft a model international agreement, which would be based on the

rules and principles of this regulation and would be used by Member State to enter into bilateral relations with third countries where mutual recognition of parenthood would be applied.

Amendment 9

Proposal for a regulation Recital 75

Text proposed by the Commission

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

Amendment

(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, ***in particular against women and same-sex couples, or contrary to the best interest of the child.***

Amendment 10

Proposal for a regulation Recital 99 a (new)

Text proposed by the Commission

Amendment

(99a) Underlines that the lack of parental recognition can ensure harmful ramifications for children within families in all their diversity, such as depriving

them of their rightful succession, or their right to have any one of their parents act as their legal representative in matters such as medical treatments, childcare and education.

Amendment 11

Proposal for a regulation Recital 99 b (new)

Text proposed by the Commission

Amendment

(99b) Underscores how some types of families often face a burden in establishing filiation through court systems and the legal costs that such a process entails. Whereas having legal certainty on recognition will reduce serious concerns and problems that some families face when traveling or moving in the EU.

Amendment 12

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

Amendment

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.

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.

These rules shall apply without prejudice to the nature or type of family or to cases of adoption, established in a Member State, by one or both parents.

Amendment 13

Proposal for a regulation

Article 4 – paragraph 1 – point 1

Text proposed by the Commission

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

Amendment

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

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

Justification

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

Amendment 14

Proposal for a regulation

Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. These rules shall apply without prejudice to the nature or type of family or to cases of adoption, established in a Member State, by one or both parents.

Amendment 15

Proposal for a regulation

Article 22 – paragraph 2

Text proposed by the Commission

Amendment

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

2. Paragraph 1 shall be applied by the **independent** courts and other competent authorities of the Member States in **full respect, fulfillment and protection** of the fundamental rights and principles laid

21 thereof on the right to non-discrimination.

down in the Charter, in particular Article 21 thereof on the right to non-discrimination, ***and can under no circumstances be used as an excuse for discrimination based on gender of parents. The refusal can never go against the best interest of the child and the best interest of the child has to be always adhered to.***

Amendment 16

Proposal for a regulation

Article 31 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 17

Proposal for a regulation

Article 39 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked, ***always*** taking into account ***and protecting*** the child's interests; ***Under no circumstances can the best interest of the child be used as an excuse for refusal on the basis of the gender of the parents.***

Amendment 18

Proposal for a regulation

Article 45 – paragraph 2

Text proposed by the Commission

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

Amendment

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 ***full respect, fulfillment and protection*** of the fundamental rights and principles laid down in the Charter, in particular Article 21 thereof on the right to non-discrimination, ***and shall therefore respect the rights of women and same-sex couples. It has to always be in line with and promote the best interest of the child.***

Amendment 19

Proposal for a regulation

Article 49 – paragraph 3 – point h a (new)

Text proposed by the Commission

Amendment

(ha) the certificate shall be available in all EU official languages and braille as well as be gender inclusive.

Amendment 20

Proposal for a regulation

Article 70 – paragraph 1

Text proposed by the Commission

Amendment

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.

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

Amendment 21

Proposal for a regulation

Article 70 – paragraph 2 – point a

Text proposed by the Commission

(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;

Amendment

(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, ***as well as on what grounds an application for refusal of recognition was granted, as set out in the provisions of Article 31 of this Regulation;***

PROCEDURE – COMMITTEE ASKED FOR OPINION

| | |
|---|---|
| Title | 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 |
| References | COM(2022)0695 – C9-0002/2023 – 2022/0402(CNS) |
| Committee responsible Date announced in plenary | JURI 16.1.2023 |
| Opinion by Date announced in plenary | FEMM 16.1.2023 |
| Rapporteur for the opinion Date appointed | Robert Biedroń 19.9.2023 |
| Previous rapporteur for the opinion | Margarita de la Pisa Carrión |
| Discussed in committee | 26.6.2023 19.7.2023 |
| Date adopted | 19.9.2023 |
| Result of final vote | + : 26 - : 6 0 : 0 |
| Members present for the final vote | Isabella Adinolfi, Christine Anderson, Robert Biedroń, Vilija Blinkevičiūtė, Annika Bruna, Maria da Graça Carvalho, Margarita de la Pisa Carrión, Gwendoline Delbos-Corfield, Rosa Estaràs Ferragut, Lina Gálvez Muñoz, Livia Járóka, Arba Kokalari, Alice Kuhnke, Elżbieta Katarzyna Łukacijewska, Karen Melchior, Johan Nissinen, Maria Noichl, Carina Ohlsson, Pina Picierno, Evelyn Regner, Diana Riba i Giner, Eugenia Rodríguez Palop, María Soraya Rodríguez Ramos, Maria Veronica Rossi, Christine Schneider, Sylwia Spurek |
| Substitutes present for the final vote | Abir Al-Sahlani, Silvia Modig, Eleni Stavrou, Hilde Vautmans |
| Substitutes under Rule 209(7) present for the final vote | Laura Ballarín Cereza, Martin Hojsík |

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 26 | + |
|-----------|---|
| PPE | Isabella Adinolfi, Maria da Graça Carvalho, Rosa Estaràs Ferragut, Arba Kokalari, Elżbieta Katarzyna Łukacijewska, Christine Schneider, Eleni Stavrou |
| Renew | Abir Al-Sahlani, Martin Hojsik, Karen Melchior, María Soraya Rodríguez Ramos, Hilde Vautmans |
| S&D | Laura Ballarín Cereza, Robert Biedroń, Vilija Blinkevičiūtė, Lina Gálvez Muñoz, Maria Noichl, Carina Ohlsson, Pina Picierno, Evelyn Regner |
| The Left | Silvia Modig, Eugenia Rodríguez Palop |
| Verts/ALE | Gwendoline Delbos-Corfield, Alice Kuhnke, Diana Riba i Giner, Sylwia Spurek |

| 6 | - |
|-----|--|
| ECR | Johan Nissinen, Margarita de la Pisa Carrión |
| ID | Christine Anderson, Annika Bruna, Maria Veronica Rossi |
| NI | Livia Járóka |

| 0 | 0 |
|---|---|
| | |

Key to symbols:

+ : in favour

- : against

0 : abstention