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# DRAFT REPORT

with recommendations to the Commission on cross-border aspects of adoptions  
(2015/2086(INL))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

(Initiative – Rule 46 of the Rules of Procedure)

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### with recommendations to the Commission on cross-border aspects of adoptions (2015/2086(INL))

*The European Parliament,*

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Articles 67(4) and 81(3) of the Treaty on the Functioning of the European Union,
- having regard to Article 21 of the UN Convention on the Rights of the Child,
- having regard to the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption,
- having regard to Rules 46 and 52 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Petitions (A8-0000/2016),

#### *Common minimum standards for adoptions*

- A. whereas in the area of adoption, the basic principle must always be that any decision should be taken in the interest of the child;
- B. whereas the purpose of adoption is not to give adults the right to a child, but to give the child a loving and caring environment to grow up and develop in;
- C. whereas the relevant authorities should never consider that the economic circumstances of the biological parents justify, in themselves, the withdrawal of parental authority and giving a child up for adoption;
- D. whereas adoption proceedings should never commence before any decision withdrawing parental authority from the biological parents is final, and the latter have been given the opportunity to exhaust all legal remedies against that decision;
- E. whereas compliance with Article 21 of the UN Convention on the Rights of the Child, which all Member States have ratified, is of the utmost importance;
- F. whereas more work should be done in order to prevent prospective parents interested in adoption from being exploited by unscrupulous intermediary organisations;

#### *Intercountry adoptions under the 1993 Hague Convention*

- G. whereas the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, which all Member States have ratified, provides a system of administrative cooperation and recognition for intercountry adoptions, i.e. adoptions where the adopters and the child or children do not have their

habitual residence in the same country;

- H. whereas the Hague Convention stipulates that recognition of intercountry adoptions is automatic in all signatory states, without the need for any specific procedure for recognition to be effective;
- I. whereas, under the Hague Convention, recognition may be refused only if the adoption is manifestly contrary to the public policy of the state concerned;

***Civil justice cooperation in the field of adoption***

- J. whereas judicial training in the widest sense is key to mutual trust in all areas of law, including that of adoption;
- K. whereas citizens do not have access to comprehensive information on the legal and procedural aspects of domestic adoption in Member States,
- L. whereas cooperation within the European Network of Ombudspersons for Children was established in 1997, and Europe's ombudsmen on children's matters should be encouraged to cooperate more closely in that forum;
- M. whereas more needs to be done to prevent the cross-border trafficking of children for the purpose of adoption;

***Cross-border recognition of domestic adoption orders***

- N. whereas all Member States have national provisions which govern the recognition of adoption orders, but legal procedures differ significantly across the EU;
- O. whereas the European Union does not have competence to take decisions affecting the substantive law on adoptions of the Member States;
- P. whereas there is currently no European provision for the recognition – whether automatic or otherwise – of domestic adoption orders, i.e. concerning adoptions which are carried out within a single Member State;
- Q. whereas the absence of such provisions causes significant problems for European families who move to another Member State after adopting a child, as the adoption may not be recognised, meaning that the parents may have trouble legally exercising their parental authority;
- R. whereas currently, when moving to another Member State, parents may be obliged to go through specific national recognition procedures, or even re-adopt the child, creating significant legal uncertainty;
- S. whereas the current situation can cause problems and prevent families from fully exercising free movement;
- T. whereas the Brussels II Regulation does not address the question of the recognition of adoption orders, as it exclusively covers parental responsibility;

- U. whereas it is therefore of the utmost importance to adopt legislation providing for the automatic recognition in a Member State of a domestic adoption order granted in another Member State,

\* \* \*

### ***Common minimum standards for adoptions***

1. Calls on the authorities of the Member States to take all decisions in adoption matters with the best interests of the child in mind, and taking into account the specific circumstances of the case;
2. Stresses that children who have been put up for adoption should not be seen as the property of a state, but as individuals;
3. Underlines that each adoption case is different and must be assessed on its individual merits;
4. Considers that in the context of adoption proceedings, the child should always be given the opportunity to be heard and express his or her view on the adoption process; considers, therefore, that whenever possible the child's consent to the adoption should be sought;
5. Considers that no decision on adoption should be taken before the biological parents have been heard and, where applicable, exhausted all legal remedies concerning their parental authority;
6. Points out that the relevant authorities should always first consider the possibility of placing the child within its biological family, even when members of that family live in another country, before giving the child up for adoption by strangers; considers that the habitual residence of family members who wish to take over responsibility for a child should not be considered as a deciding factor;
7. Stresses that where a child being considered for adoption is the citizen of another Member State, the consular authorities of that Member State and the child's family residing in that Member State should be informed and consulted prior to any decision being taken;

### ***Intercountry adoptions under the 1993 Hague Convention***

8. Notes the successes of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, and encourages all countries to sign, ratify or accede to it;
9. Notes, nevertheless, that problems often occur concerning the issuance of adoption certificates; calls, therefore, on the authorities of the Member States to ensure that the procedures and safeguards established by the Hague Convention are always followed in order to ensure that recognition is automatic;

10. Points out that further efforts could be made in order to facilitate the operation of the Hague Convention, as some Member States require additional administrative procedures or charge disproportionate fees in connection with the recognition of adoptions, for example in order to establish or amend civil status records or to obtain nationality, although this is contrary to the provisions of the convention;
11. Calls on Member States to respect the procedures concerning the counselling and consent requirements set out in Article 4 of the Hague Convention;

#### ***Civil justice cooperation in the field of adoption***

12. Calls on the Member States to intensify their cooperation in the field of adoption, including both legal and social aspects;
13. Calls on the Commission to establish a European network of judges and authorities specialised in adoption in order to facilitate the exchange of information and good practice, which is particularly useful when adoption involves a foreign element;
14. Calls on the Commission to publish on the European e-Justice Portal relevant legal and procedural information on adoption law and practice in the Member States;
15. Takes note of the activities of the European Network of Ombudspersons for Children and considers that this cooperation should be further developed and strengthened;
16. Stresses the need to cooperate closely to prevent the cross-border trafficking of children for adoption purposes;

#### ***Cross-border recognition of domestic adoption orders***

17. States that there is a clear need for legislation to provide for the automatic cross-border recognition of domestic adoption orders;
18. Requests the Commission to submit, by 31 July 2017, on the basis of Articles 67 and 81 of the Treaty on the Functioning of the European Union, a proposal for an act on the cross-border recognition of adoption orders, following the recommendations set out in the Annex hereto;
19. Confirms that the recommendations annexed to this motion for a resolution respect fundamental rights and the principles of subsidiarity and proportionality;
20. Considers that the requested proposal does not have negative financial implications, as the automatic recognition of adoption orders will reduce costs;
21. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council, and to the Parliaments and Governments of the Member States.

**ANNEX TO THE MOTION FOR A RESOLUTION:  
DETAILED RECOMMENDATIONS FOR A REGULATION OF THE COUNCIL ON  
THE CROSS-BORDER RECOGNITION OF ADOPTION ORDERS**

**A. PRINCIPLES AND AIMS OF THE PROPOSAL REQUESTED**

1. On the basis of the right to free movement which EU citizens benefit from under the Treaties, an ever increasing, albeit small, number of families decide each year to move to another Member State of the Union. This has a number of consequences for the civil justice policy of the Union, as provision must be made for the recognition and legal resolution of the personal and family law situation of mobile individuals. For example, a regulation has been adopted concerning the succession of such persons, and regulations are in preparation for the recognition of certain aspects of matrimonial property regimes and the property effects of registered partnerships.
2. The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption is in effect in all Member States. It concerns the procedure for adoptions across borders, and mandates the automatic recognition of such adoptions. However, that convention does not cover the situation of a family with a child adopted under a purely national procedure which then moves to another Member State. This can lead to significant legal difficulties if the legal relationship between the parent(s) and the adopted child is not automatically recognised. Additional administrative or judicial procedures may be required, and in extreme cases recognition may be refused altogether.
3. It is therefore necessary, in order to protect the fundamental rights and freedoms of such Union citizens, to adopt a regulation providing for the automatic cross-border recognition of adoption orders. The proper legal basis for such a proposal is Article 67(4) TFEU, which concerns the mutual recognition of judgments and decisions, and Article 81(3) TFEU, which concerns measures in the field of family law. The regulation is to be adopted by the Council after consulting the European Parliament.
4. The proposed regulation provides for the automatic recognition of adoption orders made in a Member State under any procedure other than under the framework of the 1993 Hague Convention. As European families may also have connections with or have lived in a third country in the past, the regulation also provides that, once one Member State has recognised an adoption order made in a third country under its relevant national procedural rules, that adoption order shall be recognised in all other Member States.
5. However, in order to avoid forum shopping or the application of inappropriate national laws, that automatic recognition is subject, firstly, to the condition that recognition must not be manifestly contrary to the public order of the recognising Member State and, secondly, that the Member State which took the adoption decision had jurisdiction under Article 4. Only the Member State of the habitual residence of the parent or parents or of the child can have that jurisdiction. However, where the adoption decision was taken in a third country, jurisdiction for the initial recognition within the Union of that adoption can also lie with the Member State of nationality of

the parents or child. This is in order to ensure access to justice for European families resident overseas.

6. Specific procedures are required for deciding on any objections to recognition in specific cases. These provisions are similar to those encountered in other Union acts in the area of civil justice.
7. A European Certificate of Adoption should be created in order to speed up any administrative query over automatic recognition. The model for the certificate is to be adopted as a Commission delegated act.
8. The proposal only concerns the individual parent-child relationship. It does not oblige the Member States to recognise any particular legal relationship between parents of an adopted child, as the national laws relating to couples differ considerably.
9. Finally, the proposal contains the usual final and transitional provisions encountered in civil justice instruments. The automatic recognition of adoptions only applies to adoption decisions taken from the date of application of the regulation, and, as from that date also, to any earlier adoption orders if the child is still under age.
10. The present proposal complies with the principles of subsidiarity and proportionality, as the Member States cannot act alone to set up a legal framework for the cross-border recognition of adoption orders, and the proposal goes no further than absolutely necessary to ensure the stability of the legal situation of adopted children. It does not affect the family law of the Member States.

## **B. TEXT OF THE PROPOSAL REQUESTED**

Regulation of the Council on the cross-border recognition of adoption orders

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 67(4) and 81(3) thereof,

Having regard to the European Parliament's request to the European Commission,

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,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:



- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. For the gradual establishment of such an area, it is necessary that the Union adopt measures relating to judicial cooperation in civil matters having cross-border implications, including in the area of family law.
- (2) Pursuant to Articles 67 and 81 of the Treaty on the Functioning of the European Union, those measures are to include measures aimed at ensuring the mutual recognition of decisions in judicial and extrajudicial cases.
- (3) In order to attain the objective of free movement for families which have adopted a child, it is necessary and appropriate that the rules governing jurisdiction and the recognition of adoption orders be governed by a legal instrument of the Union which is binding and directly applicable.
- (4) This Regulation should create a clear, comprehensive legal framework in the area of the cross-border recognition of adoption orders, provide families with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where an adoption order legally made in one Member State is not recognised in another.
- (5) This Regulation should cover the recognition of adoption orders made or recognised in a Member State. However, it should not cover the recognition of intercountry adoptions performed in accordance with the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, as that convention already provides for the automatic recognition of such adoptions. This Regulation should therefore apply only to domestic adoptions, and to international adoptions not performed under that convention.
- (6) There must be a connection between an adoption and the territory of the Member State which made the adoption order, or recognised it. Accordingly, recognition should be subject to compliance with common rules of jurisdiction.
- (7) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the adopting parents' habitual residence, or the habitual residence of one of those parents or of the child. Jurisdiction should be limited to this ground, save in situations involving third countries, where the Member State of nationality may be a connecting factor.
- (8) As adoption generally concerns minors, it is not appropriate to give parents or the child any flexibility in choosing the authorities which will decide on the adoption.
- (9) Mutual trust in the administration of justice in the Union justifies the principle that adoption orders made in, or recognised by, a Member State should be recognised in all other Member States without the need for any special procedure. As a result, an adoption order made by a Member State should be treated as if it had been made in the Member State addressed.
- (10) The automatic recognition in the Member State addressed of an adoption order made

in another Member State should not jeopardise respect for the rights of the defence. Therefore, any interested party should be able to apply for refusal of the recognition of an adoption order if he or she considers one of the grounds for refusal of recognition to be present.

- (11) This Regulation should not affect the substantive family law, including the law on adoption, of the Member States. Furthermore, any recognition of an adoption order under this Regulation should not imply the recognition of any legal relationship between adopting parents.
- (12) Any procedural questions not addressed by this Regulation should be dealt with in accordance with national law.
- (13) Where an adoption order implies a legal relationship which is not known in the law of the Member State addressed, that legal relationship, including any ensuing right or obligation, should, to the extent possible, be adapted to one which, under the law of that Member State, has equivalent effects attached to it and pursues similar aims. How, and by whom, the adaptation is to be carried out should be determined by each Member State.
- (14) In order to facilitate the automatic recognition provided for by this regulation, a model for the transmission of adoption orders, the European Certificate of Adoption, should be drawn up. For that purpose, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of the establishment and amendment of that model certificate. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (15) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (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 that objective.
- (16) In accordance with Articles 1 and 2 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, [the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application].
- (17) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark will not participate in the adoption of this Regulation and is not therefore bound by it or required to apply it,

HAVE ADOPTED THIS REGULATION:

## **Article 1**

### **Scope**

1. This Regulation shall apply to the recognition of adoption orders.
2. This Regulation does not apply to or affect:
  - (a) the laws of the Member States on the entitlement to adopt or on other family law matters;
  - (b) intercountry adoptions under the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.
3. Nothing in this regulation requires a Member State to:
  - (a) recognise the existence of any legal relationship between parents of an adopted child;
  - (b) make adoption orders in circumstances in which the relevant national law does not so allow.

## **Article 2**

### **Definition**

For the purposes of this Regulation, ‘adoption order’ means the judgment or decision creating or recognising a permanent, legal parent-child relationship between a child who has not yet reached the age of majority and a new parent or parents who are not biological parents of that child, howsoever that legal relationship is named in national law.

## **Article 3**

### **Automatic recognition of adoption orders**

1. An adoption order made in a Member State shall be recognised in the other Member States without any special procedure being required, provided that the Member State making the order has jurisdiction in accordance with Article 4.
2. Any interested party may, in accordance with the procedure provided for in Article 7, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 6.
3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition, that court shall have jurisdiction over that question.

## **Article 4**

### **Jurisdiction for adoption orders**

1. The authorities of a Member State may only make an adoption order if the adopting parent or parents or the adopted child are habitually resident in that Member State.
2. Where an adoption order has been made in respect of a child by the authorities of a third country, the authorities of a Member State may also make such an order, or decide on the recognition of the third country order in accordance with the procedures established by national law, if the adopting parent or parents or the adopted child are not habitually resident in that Member State, but are citizens of the same.

## **Article 5**

### **Documentation required for recognition**

A party who wishes to invoke in a Member State an adoption order made in another Member State shall produce:

- (a) a copy of the adoption order which satisfies the conditions necessary to establish its authenticity; and
- (b) the European Certificate of Adoption issued pursuant to Article 11.

## **Article 6**

### **Refusal of recognition**

On the application of any interested party, the recognition of an adoption order made in a Member State may only be refused:

- (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State addressed;
- (b) if the originating Member State did not have jurisdiction under Article 4.

## **Article 7**

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

1. On the application by any interested party, the recognition of an adoption order shall be refused where one of the grounds referred to in Article 6 is found to exist.
2. The application for refusal of recognition shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 13 as the court to which the application is to be submitted.

3. The procedure 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 addressed.
4. The applicant shall provide the court with a copy of the order and, where necessary, a translation or transliteration of it.
5. The court may dispense with the production of the documents referred to in paragraph 4 if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.
6. The party seeking the refusal of recognition of an adoption order taken in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.
7. The court shall decide on the application for refusal of recognition without delay.

## **Article 8**

### **Appeals against the decision on the application for refusal of recognition**

1. The decision on the application for refusal of recognition may be appealed against by either party.
2. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 13 as the court with which such an appeal is to be lodged.
3. The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 13.

## **Article 9**

### **Appeals in the Member State of origin of the adoption order**

The court to which an application for refusal of recognition is submitted or the court which hears an appeal lodged under Article 8(2) or (3) may stay the proceedings if an ordinary appeal has been lodged against the adoption order in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

## **Article 10**

### **No review as to substance**

Under no circumstances may an adoption order made, or judgment given, in a Member State

be reviewed as to its substance in the Member State addressed.

## **Article 11**

### **European Certificate of Adoption**

The authorities of the Member State which has made the adoption order shall, at the request of any interested party, issue a European Certificate of Adoption conforming to the model established in accordance with Article 15.

## **Article 12**

### **Adaptation of adoption order**

1. If a decision or judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests. Such adaptation shall not result in effects going beyond those provided for in the law of the Member State of origin.
2. Any party may challenge the adaptation of the measure or order before a court.

## **Article 13**

### **Information to be provided by Member States**

1. By 1 July 2018, the Member States shall communicate to the Commission their national provisions, if any, concerning:
  - (a) the courts to which the application for refusal of recognition is to be submitted pursuant to Article 7(2);
  - (b) the courts with which an appeal against the decision on the application for refusal of recognition is to be lodged pursuant to Article 8(2); and
  - (c) the courts with which any further appeal is to be lodged pursuant to Article 8(3).
2. The Commission shall make the information referred to in paragraph 1, as well as any other relevant information on adoption procedures and the recognition thereof in the Member States, publicly available through any appropriate means, in particular through the European e-Justice Portal.

## **Article 14**

### **Legalisation and similar formality**

No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.

## **Article 15**

### **Power to adopt delegated acts**

The Commission is empowered to adopt delegated acts in accordance with Article 16 concerning the establishment and amendment of the model for the European Certificate of Adoption referred to in Article 11.

## **Article 16**

### **Procedure for the adoption of delegated acts**

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 15 shall be conferred on the Commission for an indeterminate period of time from 1 July 2018.
3. The delegation of power referred to in Article 15 may be revoked at any time by the European Parliament or 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.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

## **Article 17**

### **Transitional provisions**

This Regulation shall apply only to adoption orders made on or after 1 January 2019.

However, adoption orders made before 1 January 2019 shall also be recognised from that date where the child in question has not yet reached the age of majority on that date.

## **Article 18**

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

1. This Regulation shall not apply to adoption orders made in application of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.
2. Without prejudice to the obligations of the Member States pursuant to Article 351 of the Treaty on the Functioning of the European Union, this Regulation shall not affect the application of international conventions to which one or more Member States are party at the time when this Regulation enters into force which lay down rules relating to the recognition of adoptions.
3. 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.

## **Article 19**

### **Review clause**

1. By 31 December 2024, and every five years thereafter, 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. The report shall be accompanied, where appropriate, by proposals to adapt this Regulation.
2. To that end, Member States shall communicate to the Commission the relevant information on the application of this Regulation by their courts.

## **Article 20**

### **Entry into force and date of application**

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2019, with the exception of Articles 13, 15 and 16, which shall apply from 1 July 2018.

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

Done at Brussels, [date]

For the Council  
The President



## EXPLANATORY STATEMENT

Your rapporteur is submitting this report at a time when a number of issues surrounding adoptions in cross-border contexts have been brought to the attention of the European Parliament. Those various issues require different responses, which is why your rapporteur is proposing non-legislative solutions to some of the issues, but is suggesting the adoption of a regulation to deal with the specific issue of the cross-border recognition of domestic adoption orders.

### **I. Common minimum standards for adoptions**

Your rapporteur believes that some of the controversy concerning adoptions could be usefully addressed by drawing up common minimum standards for adoptions. However, those standards should not take the form of legislation, but should be seen more as best practice guidelines, which are particularly relevant in the case of adoptions with an international element. In particular, it must be recognised by all that any adoption order made is purely in the interest of the child, and must be considered on the case's individual merits. Some of the problems between Member States could be solved if the relevant consular authorities were kept informed of any proposed adoption decision concerning a child who has the nationality of another Member State.

### **II. Intercountry adoptions under the 1993 Hague Convention**

Your rapporteur notes with satisfaction the positive operation of the 1993 Hague Convention on Intercountry Adoption. That convention provides for the automatic recognition in all signatory states (which include all Member States of the European Union) of any adoption decision taken in accordance with the procedure provided for in the convention. However, whilst the legal framework is satisfactory, it must be noted that the procedural provisions of the convention are not always complied with, for example concerning the counselling and consent requirements for the child's biological parents. The requirement for automatic recognition is not always followed through, as problems frequently occur with the transcription of civil status records on the basis of the certificates delivered under the convention.

### **III. Civil justice cooperation in the field of adoptions**

Your rapporteur also considers that more work needs to be put into civil justice cooperation in the field of adoptions. The cross-border recognition of adoption orders, whether intercountry or domestic, would benefit from an increase in mutual trust between judicial and administrative authorities, which can be best ensured by increased training opportunities. The Commission could possibly also encourage better cooperation and easier access to justice by publishing relevant information on adoptions on the European e-Justice Portal.

### **IV. Cross-border recognition of domestic adoption orders**

In the course of the consultations and research leading up to the release of this report, your rapporteur has come to the conclusion that, for the purpose of the easier cross-border recognition of domestic adoption orders, legislative action at European level is necessary.

Currently, there is no binding international or European framework for the recognition of adoption orders made following a national procedure, as opposed to those made under the 1993 Hague Convention. Many Member States have provisions in their national law for the recognition of such foreign adoptions, but by no means all. This situation contrasts with the increased economic and social integration within the European Union, which has led to increased mobility for families across Europe. Some of those families include adopted children. In many cases, the move of such a family to another Member State does not cause legal problems. However, in some cases, it does, as the parent-child relationship may not be recognised without an additional administrative or judicial procedure. This contradicts the adopted child's right to a stable legal situation. The right to family life and to the free movement of European citizens requires a clear legal framework providing for the automatic and reciprocal recognition of domestic adoption orders across Europe. The only grounds for refusal of recognition of an adoption order arise where jurisdiction rules have not been complied with or the adoption goes against the public order of a Member State. For the detailed background to the legislative proposal, the reader is referred to the annex to the resolution above.