



Study to support the preparation of an impact assessment on a possible Union legislative initiative on the recognition of parenthood between Member States

Final report

Written by ICF S.A.
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assessment on a possible
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Authors: Sophie Morel, Hadewich van Alst, Beatrice Marinoiu, Valentina Cilli, Madlen Nikolova, Eline Wildoer.

Review and editing: Petra van Nierop and Grainne Murphy.

With the invaluable input from the following national experts: Marianne Roth (Austria), Sarah Den Haese (Belgium), Velina Todorova (Bulgaria), Achilles Emilianides (Cyprus), Lenka Valkova (Czechia), Thomas Pfeiffer (Germany), Anna Plevri (Greece), Tanel Kerikmae (Estonia), Johanna Jacobsson (Finland), Christine Bidaud (France), Mirella Župan (Croatia), Orsolya Szeibert (Hungary), Brian Tobin (Ireland), Maria Caterina Baruffi and Laura Carpaneto (Italy), Valentinas Mikelėnas (Lithuania), Gilles Cuniberti (Luxembourg), Līga Stikāne (Latvia), Ruth Farrugia (Malta), Ian Sumner (the Netherlands), Anna Wysocka-Bar and Marcin Sokołowski (Poland), Paula Sofia Couceiro de Almeida Távora Vítor and Geraldo Maciel Rocha Mendes Ribeiro (Portugal), Beatrice Marinoiu (Romania), Jane Stoll (Sweden), Suzana Kraljić (Slovenia), Lilla Garayova and Róbert Dobrovodský (Slovakia).

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List of abbreviations

ART	Assisted reproductive technologies
BRG	Better Regulation Guidelines
CFR	Charter of Fundamental Rights of the European Union
CIEC	International Commission on Civil Status
CJEU	Court of Justice of the European Union
DG JUST	Directorate-General for Justice and Consumers
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECP	European Certificate of Parenthood
EJN	European Judicial Network
EJTN	European Judicial Training Network
EU	European Union
FRA	European Union Agency for Fundamental Rights
HCCH	Hague Conference on Private International Law
IA	Impact assessment
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
ISA	International Surrogacy Arrangement
ISS	International Social Service
IVF	In-vitro fertilisation
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
NELFA	Network of European LGBTIQ Families Associations
NGO	Non-governmental organisation
OPC	Open public consultation
PIL	Private international law
PO	Policy option
SCM	Standard Cost Model
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNCRC	United Nations Convention on the Rights of the Child
UN	United Nations
UNICEF	United Nations Children's Fund

Member State abbreviations

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czechia
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	the Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia

Other

UK	United Kingdom
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Glossary

Assisted reproductive technologies (ART) - any method used to achieve conception involving artificial or partially artificial means and undertaken by a medical/health clinic or institution. Two most common ART methods are artificial insemination and in-vitro fertilisation.

Authentic instruments (or authentic acts) – concept based on the civil law concept of preventive justice. Authentic instruments have been defined by the European Court of Justice¹ as an instrument which has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates, in the required form. Its authenticity must relate not only to the signatures, but also to the content of the instrument.

Biological parenthood - refers to the bio-genetic affinity between the father and mother whose DNA a child carries.

Child – depending on the context, 'child' may mean:

- a) any person regardless of their age whose parenthood is considered²;
- b) a minor, or else every human being below the age of 18 years, unless majority is attained earlier under the law applicable to the child.

Cohabitation - an arrangement where two people are not married but live together. This arrangement is sometimes recognised by the law for the purpose of creating certain legal effects.

Conflict rules - legal provisions dealing with the resolution of conflict of laws and the determination of the law applicable to cases in which the laws of different jurisdictions are asserted.

Domestic adoption - adoption of a child or adult habitually resident in one country by (a) prospective parent(s) habitually resident in that same country.

Family (in the context of this study) – a group of one or more parents and their children

- 'Family' for purposes of the right to free movement: can be formed by spouses, partners with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State (if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State), the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner and the dependent direct relatives in the ascending line and those of the spouse or partner (Directive 2004/38/EC)³.

Intercountry adoption – adoption of a child or adult habitually resident in one country by (a) prospective parent(s) habitually resident in another country.

Intended parent(s) - the person(s) who will eventually become the legal parent(s) of the child.

Parentage – relationship that indicates the descent from parents or ancestors and which is more closely linked to the biological side of parenthood.

¹ European Court of Justice (ECJ), Judgment of 17 June 1999 - C-260/97, Unibank, ECR 1999, p. I-3715.

² Recognition of parenthood may be relevant for the duration of a person's lifetime and can continue to take place after a person has reached majority.

³ 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.

Parenthood - the civil status governing the legal family relationship between a child and another person⁴. For the purpose of this study, parenthood is understood as reflecting only the legal ties/links of parenthood and not necessarily the social and biological sides:

- **Biological parenthood** - refers to the bio-genetic affinity between the father and mother whose DNA a child carries.
- **Social parenthood** - refers to the act of taking care of the child.
- **Legal parenthood** - refers to the legal parent-children relationship. It has its foundations in biological or social parenthood, or both (see Section 3.1).

Private international law (PIL) (or Conflict of Laws rules) - a branch of law governing the rules to be applied in cases with an international dimension and dealing with the resolution of conflicts between the jurisdictions and applicable laws of different states.

Rainbow family - a family with parents of the same sex bringing up a child, or an LGBTIQ-parented family.

Registered partnership - a legal family format that is constituted in a procedure that results in registration in a public register

- in Regulation (EU) No 2016/1104, also defined as: the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation.

Surrogacy - a form of third-party reproductive practice in which the intending parent(s) and the surrogate agree that the surrogate will become pregnant, gestate, and give birth to a child. Surrogacy arrangements generally include an expectation or agreement that the surrogate will legally and physically transfer the child to the intending parent(s) without retaining parenthood or parental responsibility⁵.

- **Altruistic surrogacy** – according to the United Nations (UN), in theory, an ‘altruistic’ surrogacy is understood as a gratuitous act, often between family members or friends with pre-existing relationships, and often without the involvement of intermediaries. Hence, altruistic surrogacy is not an exchange of payment for services and/or transfer of a child based on a contractual relationship⁶.
- **Commercial surrogacy** – where the surrogate agrees to provide gestational services and/or to legally and physically transfer the child in exchange for remuneration or other consideration⁷.

Surrogate - the woman who has agreed to carry the pregnancy for another person/couple⁸.

⁴ European Parliament, Legislative train schedule – Regulation on the recognition of parenthood between Member States.

⁵ UN, *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, A/HRC/37/60, 2018, p. 3.

⁶ *Ibid.*, p. 16.

⁷ *Ibid.*, p. 11.

⁸ *Ibid.*

1 Introduction to the study

This Final Report has been prepared by ICF for the Study to support the preparation of an impact assessment on a possible European Union (EU) legislative initiative on the recognition of parenthood between Member States (the Study). It was commissioned by the Directorate-General for Justice and Consumers (DG JUST) of the European Commission and was launched in September 2021.

1.1 Objectives and scope of the study

The general objective of this assignment is to provide DG JUST with evidence and analysis to enable it to carry out an impact assessment for a possible legislative initiative to facilitate the recognition of parenthood between Member States. More specifically, it seeks to identify and analyse existing problems stemming from the absence of harmonised rules on the recognition of parenthood between Member States and assess, based on the results of legal, statistical, and empirical analysis, the impact of all policy options (POs) envisaged. The scope of the study is summarised in Table 1.

Table 1. Study scope

Scope	Elements covered
Material scope	Families: recognition of parenthood and related rights of children and parents, except for succession-related aspects. Authorities/organisations involved in the process of granting and recognising civil status documents related to parenthood, e.g. civil registrars, notaries, local administrations, ministries, diplomatic services, courts and judicial services.
Geographical scope	All EU Member States except Denmark ⁹ .
Temporal scope	<ul style="list-style-type: none">• 2012-2021 for collection and analysis of evidence on current problems (literature review, analysis of Member States' legal frameworks, consultation at EU and national level);• 2022-2032 for identification and analysis of the possible POs and their expected impacts.
Legal scope	EU level: EU law relevant to the establishment and recognition of parenthood; Relevant Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECHR) case-law on parenthood and its possible implications for the legal systems in place for the recognition of parenthood in the Member States; EU law related to the right to free movement. National level: National legislation and policy regulating the establishment and recognition of parenthood and related national case-law.

The findings should be used by the Commission to prepare an impact assessment for a possible legislative initiative to facilitate the recognition of parenthood between Member States. That impact assessment will subsequently be presented in the form of a Staff Working Document. This report includes evidence (e.g. contributions from all stakeholders, practical insights from the judiciary and national administrations, a set of collected and consolidated data defining problems identified) and a comprehensive

⁹ Denmark has opted out from Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU) (area of freedom, security and justice) under Protocol No 22 annexed to the Treaties and does not take part in this policy area. Accordingly, the legislative initiative that forms the object of this study will have no influence on the situation of Denmark and the country is excluded from the impact assessment analysis.

analysis of the preferred PO and its impacts, intended to enable DG JUST to take an evidence-based approach in its impact assessment.

1.2 Structure of the report

The report is structured as follows:

- **Section 1** introduces the study, its objectives and scope, the methodological approach, its main limitations, and mitigation measures adopted;
- **Section 2** provides an overview of the key and wider contexts for this study, covering civil status and identity matters, the concepts of 'parenthood' and 'family', and the recent influence of Brexit and the COVID-19 pandemic;
- **Section 3** details the problems identified, by analysing their size, scope, drivers, and consequences, as well as their (likely) future evolution, with a specific focus on different typologies of families;
- **Section 4** presents the rationale for EU action;
- **Section 5** covers the objectives of potential EU action (including the intervention logic), a description of the POs retained and the expected impacts of those POs. It includes an analysis of the preferred PO, its monitoring and evaluation.

The report is accompanied by several annexes:

- Annex 1: List of literature reviewed;
- Annex 2: Detailed overview of stakeholders consulted;
- Annex 3: Stakeholder consultation synopsis report;
- Annex 4: In-depth analysis of the legal frameworks in place at EU and Member States level;
- Annex 5: Comparative approach to POs;
- Annex 6: Costing methodology.

1.3 Analytical and methodological approach

The work for this study was structured around six main tasks. This section summarises the work under the key evidence-gathering and analysis activities.

Desk research – literature review

The study included an extensive review of relevant documentation and literature. It covered a broad range of documents from a variety of international, EU and Member State sources, including legal and policy documents, statistical data, studies and academic papers, position papers and other publications from relevant stakeholders, etc. A list of the documentation reviewed is included in Annex 1.

Establishing the baseline and key problems in the field

To prepare the work for the development and assessment of the POs, the study team first explored the literature available and assessed the key problems related to the establishment and recognition of parenthood, as well as their scale and likely evolution.

The baseline and problem definition were established and regularly updated on the basis of the evidence obtained from the various data-gathering tasks (e.g. legal analysis at Member State level, stakeholder consultation, additional reading).

Legal analysis of existing rules and practices

The study team undertook a parallel in-depth analysis of the legal and policy rules governing the establishment and recognition of parenthood at Member State level. It

prepared detailed questionnaires that were filled in by 26 legal experts (one per Member State, except Denmark) specialised in private international law (PIL) and/or family law and often exposed to issues related to cross-border recognition of parental rights. These national reports were examined by the study team in review sessions, with clarifications requested where necessary. Those clarifications throughout the research allowed for a precise and coherent legal analysis.

The legal analysis at international and European level provided an overview of the existing instruments that are in some way related to parenthood issues. Following the presentation of the Interim Report, the analysis also examined the legal feasibility, proportionality, and consistency of potential POs with those other instruments. The results of this legal analysis are summarised in Annex 4.

Consultations with EU and national-level stakeholders

The consultation exercise engaged key stakeholders at EU, international and national level. In addition, an open public consultation (OPC) was launched by the European Commission. The targeted consultation consisted of three activities (an online survey, some written questionnaires, and several live interviews):

- The **OPC** targeted all stakeholders. The summary report was drafted and published at Inception phase and can be found online¹⁰.
- One **online survey** was disseminated among civil registrars in Member States. The consultation is now closed, all data have been aggregated and analysed, and are summarised in the Synopsis Report (Annex 3).
- An **email questionnaire or semi-structured interview** was proposed to relevant ministries, professionals of the judiciary (who will implement the retained POs) and non-governmental organisations (NGOs). The consultation exercise with ministries is now closed and feedback has been thoroughly examined and summarised in the Synopsis Report (Annex 3).

A comprehensive overview of the stakeholders consulted as part of this activity is provided in Annex 2.

Further assessment of the problems and their magnitude

In order to understand and quantify the magnitude of the main problems identified in intra-EU cross-border recognition of parenthood, the different parenthood scenarios were defined more precisely, based on the information gathered in the literature review and the consultations. Adoptions, assisted reproductive technologies (ART) and surrogacy were analysed in more detail for each family typology (e.g. heterosexual couples, same-sex couples, single parents). This more detailed quantification was used as a basis for delineating and understanding the likely impacts of the POs on these different family typologies (see Sections 5.1.4 and 5.3).

Description of the POs envisaged and assessment of their impacts

The objectives of the POs were formulated in close cooperation with DG JUST, with the retained POs further described (Section 5.2). Informed by the evidence gathered throughout the study, this task consisted of the development and preliminary assessment of policy measures that could potentially address the problems identified.

The preliminary assessment followed a multi-step process that aimed to explore the legal and political feasibility of the options and their expected effectiveness in achieving the objectives of the initiative.

¹⁰ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12878-Cross-border-family-situations-recognition-of-parenthood/public-consultation_en

The foreseen impacts were then analysed based on a series of assessment criteria, notably effectiveness (impacts on fundamental rights, social impacts), efficiency, and coherence. The findings for each PO individually are summarised in Section 6.

The costing methodology is explained in Annex 6 (including the methodology and sources used to estimate the costs referred to in this Final Report).

POs 2a and 2b are compared in Annex 5. The preferred option is presented in Section 6.2 and the monitoring and evaluation in Section 7.

1.4 Limitations to date and mitigation measures

The study was carried out in close cooperation with DG JUST. Many stakeholders were approached, with most showing significant interest and willingness to participate and share their views. In general, all EU jurisdictions were represented and had the opportunity to share information on their national situation.

The main difficulty was the limited availability of data, especially disaggregated data, on the extent of the problems related to the recognition of parenthood in the specific cases of adoption, ART and surrogacy. This is largely because these scenarios are legally complex, are authorised to little or no extent in the Member States (depending on the scenario), and data are scarce and not always reliable. These scenarios – and the associated data – have to be analysed from a threefold angle as they apply to three different types of families (heterosexual parents, same-sex parents and single parents). The most accurate study possible would have necessitated obtaining data on each of these scenarios and for each family type, but those data are not available, or are not official. It was only possible to obtain estimates, which form the basis of the following analysis.

Stakeholder input was limited between early December and mid-January. In order to compensate for the lack of feedback during the holidays, maximum flexibility was given to the stakeholders (deadlines were extended, participants could choose the mode (written/live interview) and language (national language/English) of consultation). National experts contacted their court contacts, but few courts participated.

A minor difficulty related to the quality of the national research, which necessitated an additional round of review and clarification to ensure the correctness and accuracy of the data reported. This ensured the solidity and consistency of the legal comparative report (Annex 4) and also allowed for precise analysis of the potential impacts.

2 Key concepts and the wider context

2.1 Civil status and identity

Civil status has a significant meaning in an individual's life and civil registration serves as proof of existence. It is also a prerequisite for exercising many other rights.

Over the years, **children's right to be registered at birth and to have a name** has been enshrined in nearly every major human rights instrument. Article 7 of the UN Convention on the Rights of the Child (UNCRC) stipulates that 'the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents'¹¹. As all Member States are parties to the UNCRC – which

¹¹ United Nations Convention on the Rights of the Child (UNCRC), 1989.

also forms part of the general principles of EU law – the CJEU applies its principles to ensure protection of children’s rights.

Birth certificates typically serve as proof that the child has had their birth registered and often include information and evidence on the child's family ties and their place of birth. These represent essential aspects of legal identity and can be crucial when establishing the child’s nationality.

The protection and promotion of the rights of the child is a core objective of the EU¹². It is enshrined in Article 24 of the Charter of Fundamental Rights of the European Union (CFR), which guarantees the protection of children’s rights in implementing Union law. **The best interest of the child**, as laid down in Article 24(2) of the CFR and Article 3 of the UNCRC, is considered one of the most important principles of the EU legal order and has been recognised as such by the CJEU in numerous cases. Children are also protected under the rights to respect for private and family life, which are guaranteed by Article 7 of the CFR, having the same meaning and the same scope as those guaranteed in Article 8 of the European Convention on Human Rights (ECHR).

The identity of a child is inextricably linked to their family life. It provides the legal proof of their family relationships before the authorities and others, and must therefore be respected as an essential part of the right to respect for private and family life. Given the importance of the child’s status for their identity and for the exercise of rights derived from parenthood, the preservation of the child-parent link in cross-border situations could be considered an essential part of the child’s best interests. The close links between all of these rights were recently confirmed by the CJEU in Case C-490/20, which highlighted the need to apply the right to respect for family life (Article 7 CFR) in conjunction with the obligation to take into consideration the best interests of the child (Article 24(2) CFR). It therefore runs contrary to these rights for a child to be deprived of the relationship with their parents when exercising their right to move and reside freely within the territory of the Member States¹³.

However, approaches to the determination of parenthood and civil status vary between countries and situations may arise in which each country determines child’s parenthood differently. In particular, this may stem from differences in the level of integration of new family patterns into the national context.

2.2 The concept of parenthood

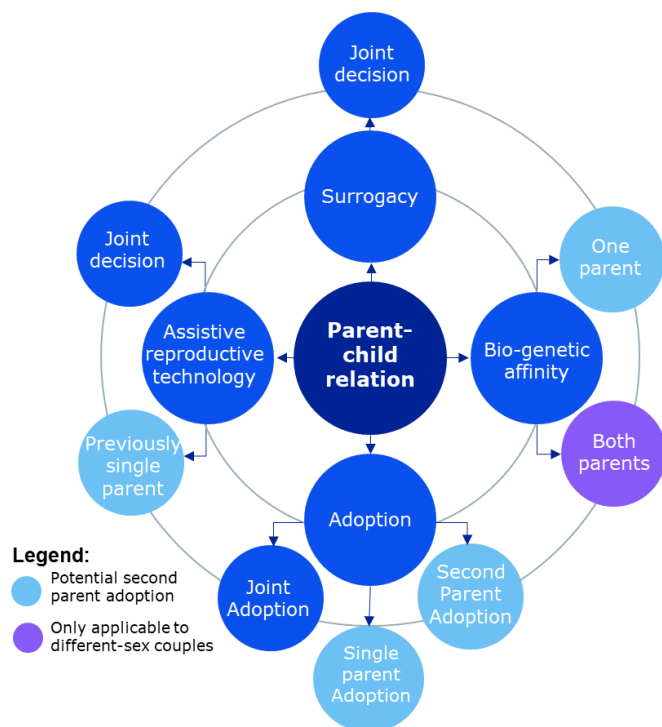
The term **parenthood** is generally preferred to the term parentage to define the parent-child relationship. This is primarily because parentage is more commonly used to refer to a relationship based on bio-genetic affinity¹⁴, which fails to reflect today’s wide variety of legally recognised parent-child bonds. These bonds are related to several scenarios (see Figure 1).

¹² Article 3(3) Treaty on European Union (TEU): ‘The Union shall promote protection of the rights of the child.’

¹³ CJEU, Case C-490/20, Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*.

¹⁴ European Parliament, A comparative study on the regime of surrogacy in EU Member States, 2013, available at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET\(2013\)474403](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET(2013)474403)

Figure 1. Variety of parent-child relationships



Definitions:

- **bio-genetic affinity**, a parent who has conceived (biological mother) or sired (biological father) rather than adopted a child and whose genes are therefore transmitted to the child. This does not include child-parent relationships established through ART.

- **adoption**, conferring permanent parenthood between adopter and adoptee, and binding the parties to the adoption as well as to the rest of the world.

- **surrogacy**, third-party reproductive arrangement whereby a surrogate carries and delivers a child for another couple or person.

- **assisted reproductive technology (ART)**, any method used to achieve conception involving artificial or partially artificial means and which is undertaken by a medical/health clinic or institution. Two most common ART methods are artificial insemination and invitro fertilisation, sometimes including donation of biological material of a third person. ART is also sometimes referred to as 'medically assisted insemination'.

Source: ICF Elaboration

The multitude of options behind the notion of parenthood today means that there are broadly three types of parenthood¹⁵:

- **Biological parenthood** – direct bio-genetic affinity;
- **Social parenthood** – actually taking care of a child;
- **Legal parenthood** – legal recognition of the parent-child relationship, with its foundations in biological or social parenthood, or both.

For the purposes of this study, **parenthood is understood as legal parenthood.**

2.3 Changing family patterns

Trends show that the **type of family formation** and **child-parent relationship** constituting a family have evolved considerably over time¹⁶. For existing **types of family formation**, the past decade has seen an increase in the number of unmarried couples – registered partnerships¹⁷ or simply co-habiting¹⁸ – who have chosen to

¹⁵ De Groot, D.A.J.G, *Special Report – EU Law and the Mutual Recognition of Parenthood between Member States: The Case of V.M.A. vs Stolichna Obsthina*, European University Institute, 2021, available at: <https://cadmus.eui.eu/handle/1814/69731>

¹⁶ Since 1964, the crude marriage rate (long considered to mark the formation of a family unit) in the EU has declined by close to 50 % in relative terms (from 8.0 per 1 000 persons in 1964 to 4.3 in 2019) (Eurostat, Marriage and divorce statistics, 2021, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Marriage_and_divorce_statistics#A_rise_in_births_outside_marriage).

¹⁷ A legal family format that is constituted in a procedure that results in registration in a public register. It is not contingent on partners having lived together a minimum set time nor is it dissolved when their living arrangements change (Waldijk et al., 2016, in Waldijk et al., *More and More Together: Legal Family Format for Same-Sex and Different-Sex Couples in European countries*, Families and Societies Working Paper, 2017).

¹⁸ The partners must have been living together for a substantial period of time (six months or more) and the formalisation is only valid for as long as the partners live together (Waldijk et al., *More and More Together: Legal Family Format for Same-Sex and Different-Sex Couples in European countries*, Families and Societies Working Paper, 2017).

become parents. The increase in the number of divorces (since 1964 the crude divorce rate has more than doubled¹⁹) has led to the emergence and development of step-families, i.e. families comprising step-parents. The second element constituting a family is the **parent-child relationship**. Statistics show that live births outside marriage have been steadily increasing since the 1960s²⁰, in nine Member States²¹ outnumbering births within marriage²². There is a wide range of family models in the EU, including single-parent families, families with unmarried parents, and rainbow families.

The development of **new methods of conception**, such as ART (i.e. artificial insemination or in-vitro fertilisation (IVF), cryopreservation of sperm or embryos, embryo transfer, fertility medication, hormone treatments), or the phenomenon of surrogacy, likewise affect traditional notions of family and may represent a regulatory challenge for national legislators.

Aspects pertaining to national family law are strongly influenced by the legal tradition of a country and are often politically sensitive issues. **National substantive rules** concerning parenthood of a child differ across the EU, thus the existing legal framework is characterised by a patchwork of rules on the establishment and recognition of parenthood, as well as conflict of law rules that diverge between Member States, reflecting deeper differences in family law²³.

2.4 The concept of family

The ECHR has taken significant steps towards an interpretation of the concept of 'family' that acknowledges modern patterns of family life for the purposes of Article 8 of the ECHR. The Court applies what is commonly referred to as the 'reality test' whereby *de facto* family relationships are taken into account when considering whether or not 'family life' exists. It acknowledges the existence of family relationships when the reality of ties between family members, as well as evidence of close personal links such as relationship of emotional dependency, is proven. This contrasts with the CJEU's stricter approach where the existence of a formal legal or biological link between family members is more relevant in order to confer the protection and entitlement of the free movement provisions²⁴. The CJEU has also strived to acknowledge the reality of modern family models into its case-law and has adopted some judgments that interpret the issue of 'dependence' and 'primary carer' in a way that is favourable for family members. Similarly, in the *Coman*²⁵ judgment, for the purpose of free movement, the CJEU considered that the definition of 'spouses' includes same-sex spouses, even when the host EU country does not recognise same-sex marriage²⁶.

However, as substantive family law is not an EU competence, there is no definition of family in EU legislation. Nevertheless, the concept of 'family members' is specified in

¹⁹ Waaldijk et al., *More and More Together: Legal Family Format for Same-Sex and Different-Sex Couples in European countries*, Families and Societies Working Paper, 2017.

²⁰ Live births outside marriage, selected years, 1960-2019 (share of total live births %), available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Live_births_outside_marriage,_selected_years,_1960-2019_\(share_of_total_live_births,_%25\)_May_2021.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Live_births_outside_marriage,_selected_years,_1960-2019_(share_of_total_live_births,_%25)_May_2021.png)

²¹ FR, BG, SI, PT, SE, DK, EE, BE, NL.

²² Eurostat, Marriage and divorce statistics, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Marriage_and_divorce_statistics#A_rise_in_births_outside_marriage.

²³ Matrix Insight, *Study for an impact assessment on European initiatives on mutual recognition of the effects of civil status records*, 2014, p. 28.

²⁴ Stalford, H., 'Concepts of Family under EU law – lessons from the ECHR', *International Journal of Law, Policy and the Family*, Vol. 16, 2002, pp. 410-434.

²⁵ CJEU, Case C-673/16, Judgment of the Court (Grand Chamber) of 5 June 2018, *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*.

²⁶ Milios, G., 'Defining "family members" of EU citizens and the circumstances under which they can rely on EU law', *Yearbook of European Law*, Vol. 39, 2020, pp. 293-319.

the context of free movement of people. Article 2(2) of **Directive 2004/38/EC** defines family members²⁷: spouse; partner with whom the Union citizen has contracted a registered partnership, but only if this is recognised by the host Member State as equivalent to marriage; direct descendants under 21 years of age or who are dependants, as well as those of the spouse or partner; dependent direct relatives in the ascending line, as well as those of the spouse²⁸.

The issues with the definition of family members for the purposes of this Directive (Articles 2(2) and 3(2)) are twofold:

- It places a significant burden of proof on EU citizens wishing to move to secure the recognition of their couple and/or their parent-child relationship. For instance, recognition of a union as being equivalent to marriage is not harmonised across the EU and most Member States have not defined exactly how cohabiting couples can prove the 'equivalence' of their relationship²⁹. This can be particularly problematic for same-sex couples, which are not recognised equally across the EU.
- Article 3(2) does not mandate that persons falling within its scope should be automatically accepted on the territory of the host Member State nor does it secure a family link between them; it only allows free movement for those considered family members and requires Member States to justify their decision in the event of a refusal.

2.5 Continued increase in the mobility of EU citizens

In recent years, an unprecedented number of EU citizens have taken the opportunity to move across Member State borders. Today there are an estimated **17 million mobile EU citizens within the Union**, i.e. citizens who have moved to live, work or study in another Member State³⁰. According to Eurostat, in 2019 alone, **3 % of the 447 million persons living in the 27 EU Member States (EU-27) were mobile EU citizens**, a number that has been steadily increasing since 2009. Eurostat data show that the spread and characteristics of mobile EU citizens vary significantly, making them a very heterogeneous group.

In 2020, 36.2 million people who were living in the EU-27 had foreign citizenship or were stateless. Of these, 13.3 million were other EU-27 citizens (excluding citizens of the reporting country), 22.8 million were non-EU citizens, and 61 000 were stateless. Of the 36.2 million foreign citizens living in the EU in 2020, 9.4 million were children aged 0-19 years old³¹.

In 2020, the total foreign-born population in the EU-27 was 54.4 million. In most Member States, at least one-fifth of the foreign-born population (20.5 %) was

²⁷ European Parliament, *A comparative study on the regime of surrogacy in EU Member States*, 2013, available at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET\(2013\)474403](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET(2013)474403)

²⁸ Directive 2003/86/EC also sets common rules for the exercise of the right to family reunification by third-country nationals residing in EU Member States. In this context, most Member States grant the right to family reunification to the sponsor's spouse (including same-sex couples) and to minor children, while a few Member States have also opted to extend eligibility beyond the nuclear family (European Commission, *Report on the implementation of Directive 2003/86/EC on family reunification*, 2019, available at https://ec.europa.eu/migrant-integration/library-document/report-implementation-directive-200386ec-family-reunification_en).

²⁹ Your Europe webpage, available at: https://europa.eu/youreurope/citizens/family/couple/de-facto-unions/index_en.htm

³⁰ European Commission, *Report on the 2019 elections to the European Parliament*, 2020, p. 3, available at: https://ec.europa.eu/info/sites/info/files/com_2020_252_en_0.pdf

³¹ Eurostat, ICF calculations based on population on 1 January by age group, sex and citizenship dataset. Data from CY and MT are missing.

composed of children (0-14 years) and young people (15-29 years)³², i.e. there were around 11 million foreign-born children and young people living in the EU-27.

For children migrating from non-EU countries, Eurostat data show that in 2020, 210 958 first residence permits for family reasons were issued in the EU to non-EU children aged less than 15 years. Of those children, 61 % were under five years old³³.

According to Eurostat's **statistics on families**, in 2019, 29 % of all households in the EU-27 had children. However, couples with children are becoming less common in many parts of the world, including the EU, representing less than 20 % of the total number of households in the EU-27 (19.7 %). Single adults with children accounted for 4 % and other types of households with children for 5 %³⁴.

³² Eurostat, Being young in Europe today - family and society - Statistics Explained, 2020, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Being_young_in_Europe_today_-_family_and_society

³³ Eurostat, Children in migration - residence permits for family reasons - Statistics Explained, 2021, available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php?oldid=548727>

³⁴ Eurostat, Being young in Europe today - family and society - Statistics Explained, 2020, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Being_young_in_Europe_today_-_family_and_society

3 What are the problems and why are these problems?

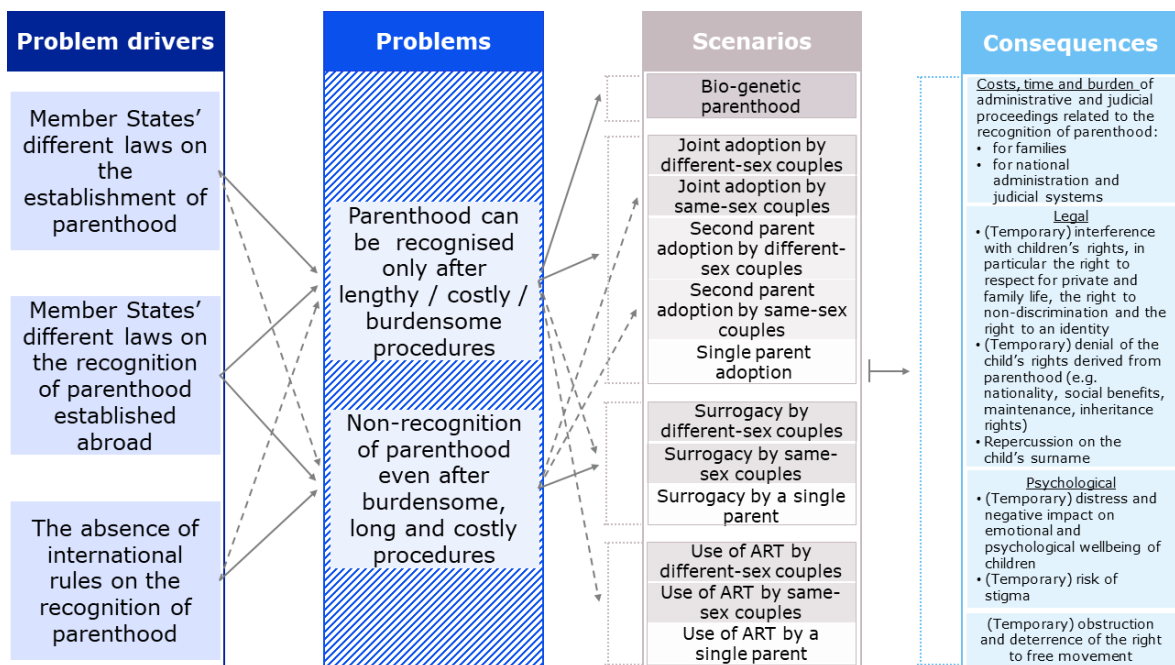
This section describes three problem drivers (sub-section 3.1) that create two central problems:

- Parenthood can be recognised only after lengthy/costly/burdensome procedures;
- Non-recognition of parenthood even after burdensome, long and costly procedures (sub-section 3.2).

Some types of parent-child relationships may be more affected by one problem than another. For example, the second problem might occur more often for same-sex couples (whether a child joined the family through adoption, surrogacy or the use of ART), although different-sex couples may experience this problem too (e.g. in the case of surrogacy). Each problem plays out in various (non-exhaustive) scenarios (sub-section 3.3), with a range of consequences (sub-section 3.4).

Figure 2 provides an overview of these linkages.

Figure 2. Problem tree



Note: scenarios are non-exhaustive. Some consequences are 'temporary' in the event parenthood is eventually recognised after a long/costly/burdensome procedure.

Source: ICF elaboration

3.1 Problem drivers

This sub-section describes three problem drivers that are the cause of the two problems discussed in this report, namely:

- Different national legislation on substantive family law and on the establishment of parenthood;
- Member States' different laws on the recognition of parenthood established abroad and on conflict rules;
- The absence of international rules on the recognition of parenthood.

3.1.1 Different national legislation on substantive family law and on the establishment of parenthood

Both the recognition of parenthood after long, burdensome and costly procedures and the non-recognition of parenthood even in these circumstances tend to be caused by **conflicts between different national family laws** governing the establishment of parenthood and its related effects, which occur in cross-border cases.

Substantive family law falls within the exclusive competence of Member States and the establishment of parenthood is thus governed by their national law.

Shared competence (between Member States and the Union) exists in the area of freedom, security and justice, where the Treaties task the Union to develop judicial cooperation in civil (including family) matters with a cross-border implication. This includes rules on applicable law, jurisdiction or recognition of judgments and authentic instruments. The existing EU legislative instruments, while including PIL rules in certain legal areas related to parenthood (e.g. parental responsibility, maintenance or succession), do not cover parenthood. In the absence of any Union rules on the establishment of parenthood with cross-border implications and on the recognition of parenthood established in another Member State, these matters are governed by the national law of each Member State.

The national substantive family law landscape is complex. Family matters are closely connected to national culture and identity, which explains the perception that Member States should retain the freedom to decide the circumstances that are against its public policy. National culture and identity might also have an impact on the definition of the 'interest of the child' in each Member State (see the diverse national conditions to be met for families' eligibility for adoption and Section 5.2). In addition, families are more and more mobile and there are more diverse ways of family formation, sometimes necessitating cross-border movement due to legal obstacles in Member States (see Section 3.3.4 and 3.3.3). For instance, surrogacy is banned (expressly or implicitly) in at least 12 Member States, yet allowed in others. New technologies used to treat infertility, as well as the increased mobility of EU citizens, are not always reflected in national legislation, creating difficulties for families and national authorities.

Currently, a patchwork of substantive family legislation across the EU reflects the diversity of cultural and social values of the Member States. National legislation recognises that people can live together in a variety of compositions, such as adoptive families, foster families, families with same-sex parents, single-parent or lone-parent families, and reconstituted families (comprising a couple with (a) child(ren) from previous relationships and any children that a couple may have together). Nevertheless, the main focus should always be on the children living in such family units and their best interests.

3.1.2 Member States' different laws on the recognition of parenthood established abroad and on conflict rules

When the problem of non-recognition of civil status documents, particularly birth certificates of children, occurs, problems generally arise because of **Member States' different legal traditions** and **public order clauses**, which result in the unwillingness of authorities to recognise the underlying facts of the birth certificate. These underlying facts determining the establishment and registration of parenthood are usually linked to the way the child was conceived (e.g. naturally or with the help of ART), the child's parents' relationship (e.g. married, unmarried, in a registered partnership) and the place of birth and governing legislation surrounding these aspects. Non-recognition solutions can be the outcome of legal or administrative procedures families use to have their parenthood recognised, but they can also be found at the start of a burdensome, long and costly procedures, especially when families are looking to remedy causes and change the result. For example, parenthood

established through legal presumptions that do not correspond to the biological relationships are generally overturned through court decisions, meaning that families must go to court to correct such situations.

The main reasons for not recognising decisions taken by other national authorities relate to 'unknown institutions' (i.e. legal institutions that exist in certain countries but are not known or legally recognised in others) and public policy refusal grounds. Simple adoption or same-sex parenthood are examples of institutions unknown to certain legal systems.

Most Member States do not recognise unknown institutions or legal documents that establish certain results that would be incompatible with the principle of their national law³⁵. Accordingly, when families present civil status documents reflecting legal concepts that are not allowed in the Member State in which they seek recognition, there is a high probability of a non-recognition decision. Similar issues arose in the European Court of Human Rights (ECtHR) case *A.D.-K. and others v. Poland*, where the Polish authorities rejected the recording of a birth certificate in Poland because a document indicating two women as the child's parents would have been in breach of the fundamental rules of the Polish legal order.

The responses to the PC confirmed that the primary reason for not recognising parenthood established in another Member State is that the recognition of parenthood is contrary to the national law of the Member State where recognition is sought (72 %, 184 responses).

Conflict rules are an important source of divergent national approaches to the recognition of parenthood established in cross-border situations. Each Member State determines the applicable law in a cross-border situation, subject to the connecting factor set out in its conflict-of-law rules. In other words, Member States' conflict rules may differ because they may designate different laws (e.g. the law of the nationality of the child or the law of the country where the child has their habitual residence) to establish the parenthood of a child in cross-border situations³⁶.

Research shows that when parenthood with a cross-border element is contested in court, the national courts in the majority of Member States³⁷ will apply their national conflict rules first and then determine the applicable law. In several Member States³⁸, the courts directly apply their national substantive law on the establishment of parenthood to these situations, denying the application of a foreign law³⁹.

When conflict rules are applied, some situations are seen differently by Member States from a legal point of view. The comparative legal analysis shows that a majority of Member States share the same approach to the recognition of judgments. All Member States except Malta provide other refusal grounds in addition to public policy and prior conflicting judgments. These refusal grounds concern lack of jurisdiction and failing to respect the principle of fair trial⁴⁰. In case of conflicting judgments, most of the Member States refuse the recognition⁴¹.

For recognition of authentic documents, the comparative legal analysis reveals that all Member States analysed provide for public policy as a refusal ground. Notably, in

³⁵ According to the comparative legal analysis, some Member States (e.g. FR, LU) have adopted mechanisms that allow for the adaptation of unknown institutions to the closest ones they have in their national law. A somewhat related example of this type of unknown institution is an institution from the Muslim law, called 'kafala'. Although it does not have an equivalent in French law, the French authorities will recognise the effects of the relationship created by assimilating it not to parenthood but to a delegation of parental authority.

³⁶ Comparative legal analysis.

³⁷ 17 Member States: AT, BE, BG, CZ, DE, ES, FI, FR, HR, HU, IT, LT, LU, LV, NL, PL, PT.

³⁸ CY, IE and generally other countries whose legal systems are based on common law.

³⁹ Comparative legal analysis.

⁴⁰ Comparative legal analysis.

⁴¹ Comparative legal analysis.

Austria, the authorities can also refuse the recognition of an administrative document, based on the best interest of the child. Nevertheless, in most Member States analysed (21), a refusal to recognise the foreign administrative document can be appealed.

The most common administrative document attesting parenthood is the birth certificate of a child, thus it is also the document whose recognition is most frequently refused. 40 % of respondents to the PC identified birth certificates as the object of non-recognition decisions, followed by judicial decisions establishing parenthood (22 %).

The majority of Member States expressly prohibit the establishment of parenthood by extra-judicial agreements on parenthood concluded in another Member State. For recognition of extra-judicial agreements on parenthood concluded in another Member State, 12 Member States (BE, CZ, EE, ES, FI, IE, LT, LU, LV, MT, NL, PL) apply the same rules as for the recognition of foreign judgments and administrative documents, while five Member States (AT, BE, BG, HU, IT) expressly prohibit the recognition of parenthood by extra-judicial agreements. The comparative legal analysis also shows that only four Member States (CY, CZ, LV, NL) allow establishing parenthood by an extra-judicial document (that is not an authentic instrument)⁴².

3.1.3 The absence of international rules on the recognition of parenthood

The lack of EU harmonised legislation on the recognition of parenthood and the considerable difference between Member States in relation to national legislation on the establishment and recognition of parenthood and on conflict rules is a common driver of the two problems described here. This has significant implications for certain family law topics, such as adoption, surrogacy and the legal recognition of certain family formats. One international convention on the recognition of adoptions is particularly relevant, namely the International Convention governing inter-country adoptions (**Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry Adoption - the Hague Convention**), to which all EU Member States are party (see Section 3.3.2). Despite efforts at international level, there are no other international rules on the recognition of parenthood.

Several external (or contextual) factors, while not the direct cause of the problem of non-recognition of parenthood, have nevertheless influenced it. These include: (i) changing family models; (ii) scientific progress in ART; and (iii) increased mobility of families in the EU.

3.2 The problems

This second sub-section describes the two problems generated by the problem drivers, (which can also be seen as leading to a single more global problem, that of non-recognition of parenthood), namely:

- Recognition of parenthood only after burdensome, long, and costly procedures;
- Non-recognition of parenthood even after burdensome, long, and costly procedures.

Research showed that parenthood is not always recognised even after a burdensome, long, and costly procedure. While the second problem is connected to the first, it also constitutes a standalone problem.

⁴² Comparative legal analysis.

3.2.1 Problem 1: recognition of parenthood only after burdensome, long, and costly procedures

Research showed that the procedure for recognition of parenthood could be lengthy, and, in the meantime, the rights and obligations of children and parents are suspended. This is because, from a procedural perspective, recognition by one Member State of parenthood established in another Member State is the 'gate' to access certain legal effects deriving from parenthood.

Respondents to the PC (28 %) indicated that the main problem is an often excessively lengthy recognition procedure before administrative authorities⁴³. The **length of administrative proceedings** for recognition of parenthood is usually less than six months (9 of 11 responses to the online survey)⁴⁴, and in some (limited) cases, up to 12 months⁴⁵.

However, recognition of parenthood before civil registrars may be only the first step in the whole recognition procedure. When automatic recognition is not applicable in a Member State, national **courts are generally granted the competence to complete the parenthood recognition** procedure, or recognition can take place through a procedure (e.g. registration of a deed in the civil registry)⁴⁶. **Judicial procedures are more lengthy and costly than administrative procedures**. In addition, the **non-recognition of parenthood by civil registrars may lead to the family starting court proceedings** on the matter. The length of **court proceedings** seems to vary between 1-2 months up to 36 months⁴⁷, during which time the legal effects derived from the recognition of parenthood are not implemented. For example, in Germany, in certain cases where civil registrars cannot decide on the recognition of civil status documents because of their complexity (e.g. when the content of civil status documents are contrary to public order), the general practice is that they will resort to courts to decide on the matter⁴⁸. By contrast, in some Member States, parenthood is not recognised by administrative authorities and recognition is entrusted directly to the courts⁴⁹.

Given that Member States have different approaches to establishing and recognising parenthood and that instruments adopted by the EU in cross-border aspects of family law do not include any rules on the establishment or recognition of parenthood (see sub-section **3.1.2.**), EU citizens may also face burdensome and long administrative procedures (and lack of cooperation) in dealing with different civil registration systems when moving across the EU. National authorities may also be involved. Although Article 7 UNCRC states that all Member State parties to the Convention are obliged to register a child immediately after birth and to ensure their right to a name and to acquire a nationality, registrars and other national governmental authorities (e.g. in some Member States, consulates have identical duties to civil registries) do not communicate information on civil status acts and changes to foreign citizens.

The observed **costs** of the procedure to recognise parenthood vary greatly, depending on the type of procedure and the Member States in question, ranging from free-of-charge to hundreds of euro (see Table 2)⁵⁰. The costs include administrative costs (e.g. fee to request a birth certificate), translation costs for administrative documents

⁴³ Factual summary of the OPC on the initiative on the recognition of parenthood between Member States, p. 15.

⁴⁴ Preliminary responses to the online survey for civil registrars (Q.31).

⁴⁵ Information from the online survey for civil registrars.

⁴⁶ As indicated in the Comparative legal analysis (Annex 2)

⁴⁷ Comparative legal analysis; Factual summary of the OPC on the initiative on the recognition of parenthood between Member States, pp. 16-17.

⁴⁸ Preliminary responses to the online survey for civil registrars (Q.24.1).

⁴⁹ For example, CZ. Comparative legal analysis.

⁵⁰ Comparative legal analysis; Factual summary of the OPC on the initiative on the recognition of parenthood between Member States, pp. 17-18.

and legal representation costs, and other costs linked to judicial proceedings (e.g. expert opinions on DNA tests)⁵¹.

The research to date demonstrates that recognition of parenthood often occurs after a **burdensome and complex procedure** for national authorities and families. The responses received from national experts show that a variety of tests are applicable for the recognition of parenthood, making the procedure unpredictable for families. Differences in substantive law may constitute an obstacle to recognition of the content of a civil status document even when the differences are found in administrative rules. This can be the case if the records contained in a civil status document differ from the records contained in a similar document from another Member State. For example, the French authorities may refuse recognition of the content of an Italian birth certificate because it lacks the child's surname.

⁵¹ Comparative legal analysis.

Table 2. Average costs of recognition procedures

Member State	Average cost of recognition procedure before administrative body	Average cost of recognition procedure before the court
AT	Free of charge	In non-contentious proceedings, the basic principle of the 'obligation to reimburse costs' (<i>Kostenersatz</i>) applies, although the law itself provides for exceptions for various matters. Expert opinions on DNA testing are associated with costs
BE	Free of charge	EUR 165 fee to initiate judicial proceedings
BG	Free of charge	EUR 25 collected for the application for recognition of a judgment and an authentic document of foreign courts and other authorities
CY	Usually low in uncontested cases as it involves submission of a written request. Cost depends on whether the recognition is requested in conjunction with other procedures	Uncontested proceedings usually cost EUR 500-1 000. Contested proceedings costs depend on a number of factors
CZ	N/A (no recognition procedure)	Free of charge In case of proposal for the recognition of foreign decisions in matters of determination of parenthood, CZK 2 000
DE	Approx. EUR 10 (there is no formal recognition procedure and the cost differs between German states)	
EE	EUR 10	EUR 10 for a family law petition
EL	Free of charge	
ES	No data available	No data available
FI	No data available	No data available
FR	Free of charge	No data available
HR	No data available	EUR 33 (first instance proceeding)
HU	Free of charge	The rate of duty is 1 %, or not less than HUF 5 000 and not more than HUF 350 000
IE	No data available	
IT	No data available	No data available
LT	EUR 6-25	
LV	Free of charge	State duty of EUR 30
MT	EUR 9.95 for full copy birth certificate, EUR 2.25 for abridged version	No data available
NL	Depends on hourly rate of lawyer – around EUR 150-250 per hour	No data available
PL	EUR 50	PLN 100 – claim to administrative court for cases concerning civil status and citizenship; similar amount is due for an appeal to Supreme Administrative Court PLN 300 – proceeding concerning recognition of a foreign judgment, as well as filing an appeal and appeal in cassation
PT	Free of charge if Portuguese, 180 EUR, if not	Average cost of court fees – EUR 306 per part, as the value of the case is EUR 30 000.01. For forensic examinations, between EUR 204 and EUR 714 per sample obtained from the interested parties. Less expensive if the Public Prosecutor's Office intervenes as the child's representative, as it is exempt from costs
RO	No information	The taxes for initiating court proceedings in matters related to family law are fairly standard and very affordable (around EUR 12). There is an option to be exempt from paying legal fees in certain circumstances, as the state can provide financial help. However, when parenthood is contested in court, given that DNA evidence is almost always needed, the costs will likely include the DNA evidence costs, which are fairly substantial
SE	No information	No information
SI	No cost	The costs of the proceedings shall be decided by the court in accordance with the rules that would apply if the case were decided by a court or other body of the Republic of Slovenia (Article 110 PILPA). Following the regulation in the Slovenian Court Fees Act, the fee is EUR 45
SK	No information	No information

Source: ICF comparative legal analysis

3.2.2 Problem 2: non-recognition of parenthood even after burdensome, long, and costly procedures

The differences in national approaches to the recognition of parenthood may result in non-recognition of parenthood.

One of the reasons for non-recognition may be differences in Member States' PIL. Findings from the comparative legal analysis show that in six Member States⁵² the recognition of parenthood is subject to an applicable law test. This means that national authorities apply their own PIL rules on applicable law and may refuse the recognition of the administrative document if the results achieved under their own PIL rules do not match those of the administrative document. Similarly, in seven Member States⁵³, recognition is subject to a jurisdiction test, meaning that the national authorities may refuse the recognition of the administrative document if the results achieved under their own PIL rules on international jurisdiction do not match those on the administrative document. This can sometimes make it almost impossible for families to relocate to such Member States, with significant impacts on their family life and freedom of movement.

In cases where authorities in one Member State refuse to recognise parenthood as established in another Member State, this can obstruct the process of establishing family ties, obtaining identity documents, and verifying the child's nationality.

These kinds of obstacles can affect families exercising their freedom of movement. Firstly, when families are only travelling between Member States, it is unlikely that they will request the formal recognition of their civil status documents, unless they have a link with that Member State (i.e. at least one of the family members has citizenship of that Member State) and a real need to prove such relationship in front of public authorities. This can be the case for the purpose of obtaining new identity documents or accessing certain social or family rights granted by the law of that Member State.

Secondly, when families move and reside in a Member State, the formal recognition of their family relationships and civil status documents might be required in order to access certain public services or to obtain social benefits such as family allowances, tax deductions or enrolling in public schools. In these situations, if families are aware of certain legal obstacles (e.g. potential refusal grounds/complexity/cost or long procedures), they might even be deterred from requesting formal recognition, thus renouncing the associated rights or social benefits.

Thirdly, although difficult to identify and quantify, certain families could decide not to move to a certain Member State if they expect to encounter difficulties in the recognition of their parenthood. This might be the case for rainbow families, which may tend to move to Member States that have LGBTIQ-friendly legislation.

3.3 Magnitude of the problems

Having laid out the general issues at hand, it is important to consider who is affected, and to what extent, in order to assess the magnitude of the problems.

Problem 1 affects multiple types of parent-child relationships (or scenarios), whether established through adoption, surrogacy or the use of ART, or concerning different-sex couples, same-sex couples, or single parents. Problem 1 also affects bio-genetic parenthood. Problem 2 generally affects parent-child relationships of same-sex

⁵² BE, DE, ES, FI, IE, PT.

⁵³ AT, BG, CZ, ES, FI, MT, PT.

couples, whether established through surrogacy or adoption (joint or second parent)^{54,55}.

The fragmented public policy approach to same-sex couples means that, in practice, they are likely to find their notion of family challenged when they move across state lines within the EU. The first issue is the recognition (and acceptance) of the relationship between same-sex partners, as not all Member States recognise some form of legal partnership between same-sex partners. While the recognition of the relationship between parents falls outside of the scope of this report, the existence of the relationship between the putative parents of the child could be relevant as an incidental question to determine whether a legal presumption of parenthood applies⁵⁶. The second issue for same-sex couples is the recognition of parenthood, as same-sex couples face a significant number of challenges in the recognition of their parenthood, and therefore family, across the EU due to fundamental differences in national laws. A couple legally recognised in one Member State, together with their right to be co-parents of a child by way of joint or second-parent adoption, may see the right to parenthood taken away from one or both parents if they move to a Member State whose national law does not recognise their relationship in the same way.

The following sub-sections provide preliminary findings and figures on the parent-child relationships (scenarios) in relation to the two problems at hand. As there are no official data on these cases at either EU level or from national sources, the quantification requires some estimations and assumptions.

3.3.1 Bio-genetic parenthood

Application of legal presumptions

Research has identified that national **differences in the legal presumptions applied when parenthood is first established** are an important source of legal issues when it comes to the recognition of parenthood between one Member State and another. Non-recognition solutions or additional administrative or court procedures are likely to appear, especially in the case of Member States that apply a certain control mechanism to verify the content of foreign civil status documents or that require court decisions when they are requested to recognise such documents.

The most common legal presumption is that birth within marriage gives rise to parenthood, which exists in all Member States. Other common legal presumptions giving rise to parenthood are applied in relation to births within a certain period before divorce/death (13 Member States) and in relation to births within a certain period after remarriage (five Member States). At the same time, in 16 Member States⁵⁷, a paternity acknowledgement is followed by registration of this information in the relevant civil register (or equivalent). The different application of these legal presumptions, as well as the possibility for parents to simply acknowledge their parenthood in front of registering authorities, means that there may be situations where the recognition of parenthood across borders could reveal different legal solutions to a family situation.

An example of relevant case-law in Romania (Case 987/2017 *Judecatoria Vaslui*⁵⁸) showed that the recognition/transcribing of a foreign birth certificate is refused when the parenthood established in the foreign birth certificate conflicts with the results obtained according to Romanian law. In this particular case, the Italian authorities

⁵⁴ European Parliament, *Obstacles to the free movement of rainbow families in the EU*, 2021.

⁵⁵ ECtHR, *Factsheet on gestational surrogacy*, 2021, available at https://www.echr.coe.int/Documents/FS_Surrogacy_ENG.pdf

⁵⁶ For instance, where it is presumed under the national law of a Member State that the parent of a child is a spouse of the woman giving birth to the child, the question concerning the existence of the marriage between a same-sex or different-sex couple would be relevant.

⁵⁷ AT, BE, BG, DE, ES, FR, HR, HU, IE, IT, LV, NL, PL, PT, RO, SE, SK.

⁵⁸ <http://www.rolii.ro/hotarari/5959a1aae49009900e00002c>

recorded the biological father who recognised the child (mother and biological father were not married). However, the mother was married in Romania and by applying the legal presumption of paternity, the Romanian authorities considered the father should have been her husband. Given that the legal presumption of paternity is of public order, the birth certificate could not be transcribed by mentioning a father who is someone other than the mother's husband, unless paternity was successfully contested through the courts according to Romanian laws, or if the Italian birth certificate was changed and another recognition request submitted. This shows that whenever differences exist between the results obtained through the application of different laws and different legal presumptions and the reality of a family's relationships, the affected families will most likely be required to go lengthy and burdensome legal procedures to rectify their civil status.

Time limits for the establishment of parenthood

When parenthood is established, there are certain time limits in relation to the act of registration of children for the purpose of obtaining a birth certificate. The legal analysis found nine Member States⁵⁹ imposing time limits for the establishment of parenthood. In Germany, the time limits relate to the age at which the child will be heard in court proceedings, and in Sweden, the time limit concerns the consent of the mother for the confirmation of paternity requested by the father. When authorities in these countries are asked to recognise foreign birth certificates, the same time limits can be applied, transforming the administrative process into a judicial one. Such situations are expected to be less common in practice, but are closely linked to procedures involving the recognition of authentic instruments (the most common means of establishing and proving parenthood). If families find themselves outside these time limits, they will likely be required to go to court to facilitate the recognition process according to national laws.

Different rules on surnames and spelling differences

Although to a lesser extent, **different-sex couples (whether married or not) or single people that share a bio-genetic parenthood with their children** can encounter certain legal problems when they need to have their parenthood recognised abroad. These kinds of problems generally emerge in the case of families that share multiple nationalities, or whose civil status documents are issued by different countries. **Differences in substantive law surrounding certain elements of birth certificates, such as names and surnames or parents mentioned, may impede recognition of the certificate's content** and are another likely cause for burdensome, long and costly procedures to recognise parenthood.

This can be the case if the **records contained in a birth certificate differ from the records contained in another civil status document of another Member State**. For the purposes of recognition, the authority of the recognising Member State may require certain information that is not provided on the foreign certificate. Depending on the national authority, the resolution may be straightforward, it may require the citizen to obtain additional information or to fix certain discrepancies, or there may be no solution⁶⁰. For example, national research in Romania revealed several cases in which families went to court because the formal transcription of foreign birth certificates in the Romanian civil registry was refused due to discrepancies between the parents' Romanian identity documents and the spelling of their names on their child's foreign birth certificate. The solution provided by the courts was consistent with the provisions of the national legislation, which requires that the family seek the re-

⁵⁹ BG, EL, FR, HR, HU, PL, PT, SE, SK.

⁶⁰ European Parliament, *Life in cross-border situations in the EU – a comparative study on civil status*, 2013.

issuing of the foreign document in accordance with the Romanian documents before a new transcription request can be accepted.

Particular problems can arise with dual citizenship, where national PIL tends to apply the exclusivity of domestic nationality. The CJEU issued a landmark judgment in the *Garcia Avello*⁶¹ child personal name case, where a dispute arose because children were registered in Belgian birth registry by their father's surname, and in the Spanish Embassy by the Spanish model of surname (i.e. consisting of the surname of the father and the mother). In *Grunkin Paul*⁶², the German authorities refused to recognise the compound surname (Grunkin-Paul) of a child of German citizens, as determined and registered in Denmark. According to German PIL, the name of a person was subject to the law of their nationality (in this case German law), and according to German law, parents who do not share a married name can only choose either the father's or the mother's surname as the child's surname. The CJEU stated that, as in the *Garcia Avello* case, serious inconveniences may be caused due to the discrepancy in surnames and that 'none of the grounds put forward in support of the connecting factor of nationality for determination of a person's surname, however legitimate those grounds may be in themselves, warrants having such importance attached to it as to justify [...] a refusal by the competent authorities of a Member State to recognise the surname of a child as already determined and registered in another Member State in which that child was born and has been resident since birth'⁶³. However, in *Runevič-Vardyn and Wardyn*, where the position of the CJEU was more restrictive, the Court decided that Article 21 of the Treaty on the Functioning of the European Union (TFEU) must be interpreted as 'not precluding the competent authorities of a Member State from refusing, pursuant to national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language'⁶⁴.

Overall, the judgments accepted that EU citizens have a right to bear a name of their preference in all Member States and its recognition should not be rejected, as this would represent a restriction on free movement⁶⁵. The problems with the recognition of name should therefore be prevented by the case-law. Although the interpretations of the CJEU in the above cases clarified certain boundaries in how Member States approach the issue of surnames and other mentions within civil status documents, without common rules on the recognition of parenthood, the different approaches of national authorities can create undue delays and burdensome and costly procedures for families exercising their freedom of movement.

3.3.2 Adoption

Inter-country adoptions are generally governed by the Hague Convention (see Section 3.1.3), to which all Member States are a party. By contrast, domestic adoptions are governed solely by the national adoption laws of the country that grants the adoption⁶⁶. Certain inter-country adoptions still remain outside the scope of the Convention, such as adoptions by unmarried couples or registered partners or

⁶¹ CJEU, C-148/02, *Carlos Garcia Avello v. Belgian State*, 2 October 2003.

⁶² CJEU, Case C-353/06, *Stefan Grunkin*, 14 October 2008.

⁶³ CJEU, Case C-353/06, Para 31, Judgment of the Court of 14 October 2008.

⁶⁴ CJEU, Case C-391/09, *Malgożata Runevič-Vardyn and Łukasz Paweł Wardyn v Vilnius miesto savivaldybės administracija and Others*.

⁶⁵ Mohay, A. and Toth, N., *What's in a name? Equal treatment, Union citizens and national rules on names and titles*, 2016.

⁶⁶ European Parliamentary Research Service (EPRS), *Cross-border recognition of adoptions – European added value assessment accompanying the European Parliament's legislative own-initiative report*, 2016, p. 12, available at:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2016/581384/EPRS_STU\(2016\)581384_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/581384/EPRS_STU(2016)581384_EN.pdf)

adoption where one or both of the countries involved are not contracting parties to the Convention.

Domestic adoptions can have an international element when: the child or one/both adopters are foreign nationals; adopters and adoptee all reside in the same country, but the adoption order is issued by another Member State; the child and one/both adopters leave the Member State where they were all habitually resident after the adoption takes place and resettle in another Member State. With such different adoption configurations and no EU legislation to harmonise the recognition of adoption orders, some families may face significant uncertainty when moving to another Member State. For instance, automatic recognition of an adoption order made in another Member State is not applied everywhere⁶⁷, and even where it is applied, may not necessarily lead to the same rights⁶⁸.

The emergence of different types of family formation – including single parents, unmarried couples and same-sex couples – increases the likelihood that a Member State will be required to recognise an adoption order in favour of adopters who would not qualify for adoption under national law. This negatively affects different-sex and same-sex parents and their children, who face additional significant practical hurdles in countries that do not recognise the parents' relationship (which may be seen as contrary to public policy). The existence of various types of adoptions that may not have equivalents in the national law of all Member States may cause problems related to the possible adaptation of the concept for the purposes of its recognition (e.g. simple adoption, adoption of an adult).

Joint adoption

Different-sex couples

Joint adoptions by different-sex couples, and specifically by married couples, are allowed in all Member States. In general, an estimated 16 240 of domestic adoptions (56.5 %) take place each year in the EU, with 11 630 intercountry adoptions from non-EU countries (40.5 %)⁶⁹. By contrast, inter-country adoptions from other EU countries account for an estimated 825 EU adoptions each year (2.9 %). Data from 2016 show that Germany, Poland and Italy had the highest total numbers in terms of adoptions, whereas when taking the standardised rate, the top three countries were Bulgaria, Denmark and Cyprus⁷⁰. Figure 3 presents the average number of domestic adoptions per Member State, per year.

⁶⁷ BE, ES, PT, for instance, do not automatically recognise such adoption orders (Waldijk et al., 2017).

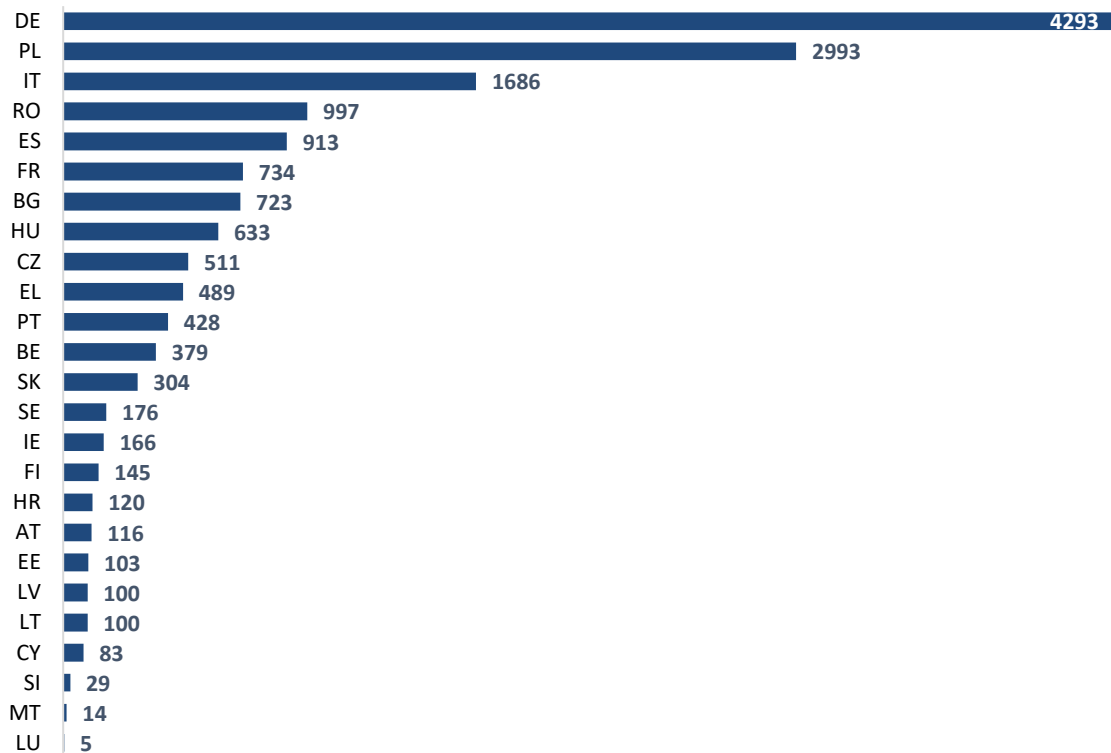
⁶⁸ FR does not automatically grant nationality to the adopted child/children (Waldijk et al., 2017).

⁶⁹ EPRS, *Briefing on adoption of children in the European Union*, 2016, available at:

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/583860/EPRS_BRI\(2016\)583860_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/583860/EPRS_BRI(2016)583860_EN.pdf)

⁷⁰ Ibid.

Figure 3. Average number of domestic adoptions, per Member State, per year



Source: EPRS (2016).

Although married different-sex couples have the right to adopt children in all EU Member States, certain conditions have been implemented by 23 countries⁷¹. For instance, in 14 Member States⁷², a minimum age requirement applies for people who wish to adopt, ranging from the applicant being at least 21 years old to at least 30 years old. In addition, 17 Member States⁷³ have introduced requirements regarding the minimum age difference between the adopter and the adoptee, ranging from a minimum of 15 years age difference to 21 years. Finally, some countries⁷⁴ introduced requirements regarding the minimum time a couple should have been married, ranging from at least two years of marriage prior to adoption to at least five years of marriage.

Joint adoptions by different-sex non-married couples that are in a registered partnership are legally allowed by eight Member States⁷⁵.

Same-sex couples

⁷¹ AT, BE, BG, CY, CZ, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SE, SI, SK.

⁷² AT (at least 25 years), BE (at least 25 years), BG (at least 25 years), EL (at least 30 years), ES (at least 25 years), FI (at least 25 years), FR (at least 28 years), HR (at least 21 years), HU (at least 25 years), IE (at least 21 years), LU (at least 25 years), MT (at least 28 years), PT (at least 30 years), SE (at least 25 years).

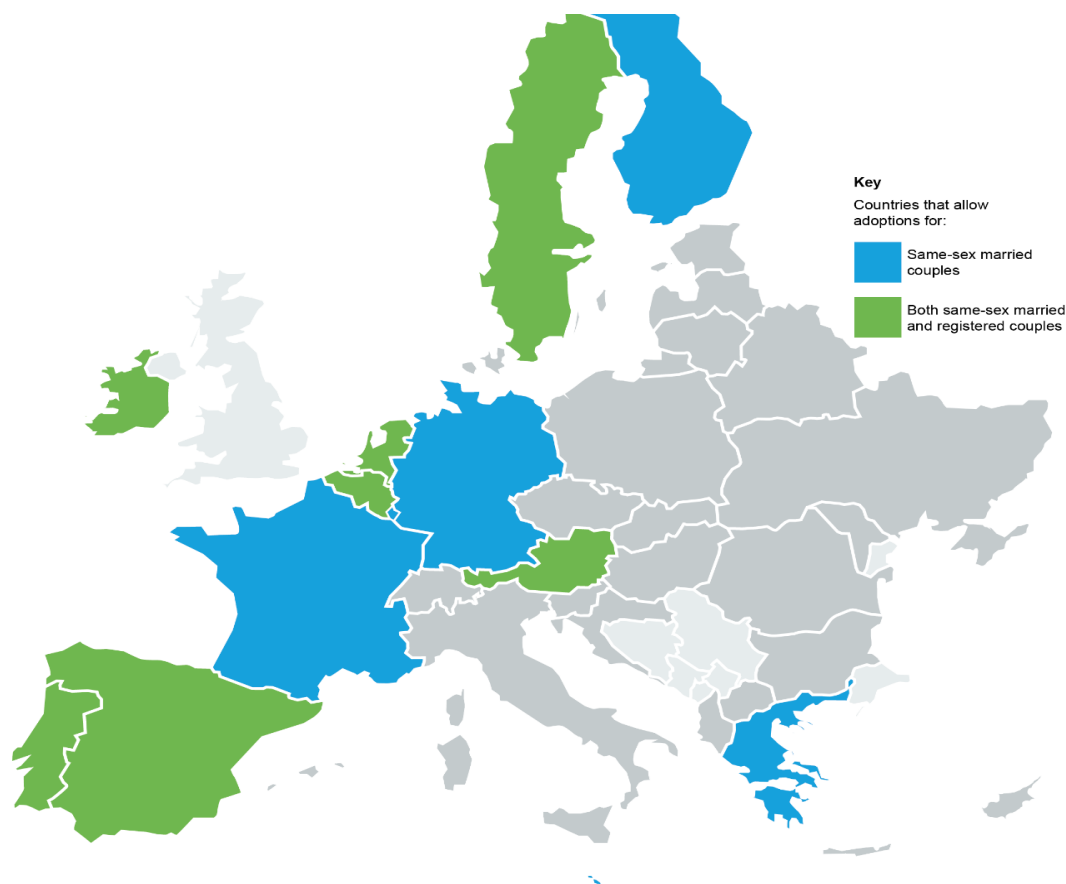
⁷³ ICF comparative legal analysis – BE (at least 15 years), BG (at least 15 years), CZ (at least 16 years), EL (at least 15 years), ES (at least 16 years), FI (at least 18 years), HR (at least 18 years), HU (at least 16 years), IT (at least 18 years), LT (at least 18 years), LU (at least 15 years), MT (at least 21 years), NL (at least 18 years), PL (at least 18 years), RO (at least 18 years), SI (at least 18 years), SK (not specified).

⁷⁴ ICF comparative legal analysis – FR (couples married for at least two years), IT (couples married for at least three years), NL (couples should have lived together for at least three years), PL (couples married for at least five years), PT (couples married for at least four years).

⁷⁵ ICF comparative legal analysis – AT, BE, EE, ES, HR, MT, NL, PT.

Adoption is currently allowed for same-sex married couples in 13 Member States⁷⁶ (Figure 4), while for same-sex couples in a registered partnership, adoption is possible in only eight Member States⁷⁷.

Figure 4. Member States where adoption is legally allowed for same-sex partners



Source: ICF Elaboration

In countries where adoption is allowed for same-sex couples, the number of same-sex families with adopted children is quite low, but these families are likely to encounter problems when moving abroad. This is due to the fact that in 15 Member States⁷⁸, the parenthood of same-sex couples that are married or in a registered partnership would not be recognised. In the Netherlands, same-sex partners are only able to adopt from abroad since 2009. At the same time, adoption from abroad is subject to local conditions. The United States (US) is a key destination (either from Member States that allow same-sex couples to adopt or that will let one partner adopt). However, the number of successful cases is very low, with national sources suggesting that in 2020 only 12 children were adopted from the US⁷⁹. In France, same-sex couples are allowed to marry and to adopt since 2013. Since that date, an estimated 150 couples or single parents have adopted a child born abroad or in France⁸⁰.

Second-parent adoption

⁷⁶ AT, BE, DE, ES, FI, FR, IE, LU, MT, NL, PT, SE, SI (Comparative legal analysis).

⁷⁷ AT, BE, ES, IE, MT, NL, PT, SE (Comparative legal analysis).

⁷⁸ AT, BG, CY, EL, ES, HR, HU, IT, LT, LU, LV, MT, PL, RO, SK.

⁷⁹ See <https://adoptie.nl/adoptie/cijfers/> for more statistics.

⁸⁰ See <https://www.apgl.fr/homoparentalites/item/614-chiffres-adoption-france> for more statistics.

In some Member States, about half of the adoptions are second-parent adoptions. In Germany in 2020, 489 second-parent adoptions took place, and this accounted for 51 % of all adoptions⁸¹. In France in 2018, 12 500 people were adopted, 60 % of whom concerned second-parent adoption⁸². Based on the data available⁸³, second-parent adoption for same-sex couples may constitute the majority of scenarios in which second-parent adoption occurs in some Member States. For instance, in the Netherlands in 2011, there were 435 second-parent adoptions, 351 of which concerned same-sex couples⁸⁴. In France in 2018, 17 % of second-parent adoptions concerned different-sex couples, with 98 % of second parents being men⁸⁵. The remaining adoptions (83 %) constituted second-parent adoptions for same-sex couples. Nevertheless, in other Member States, second-parent adoption for same-sex couples constitutes a minority. In Flanders (Belgium) in 2019, about 8 % of second-parent adoptions concerned same-sex couples, falling to about 5 % in 2020⁸⁶.

Different-sex couples

Second-parent adoption is legally allowed for different-sex married couples in all Member States. For unmarried different-sex couples, close to half (12) of Member States do not allow second-parent adoption and the Netherlands is the only Member State to use alternatives to establish parenthood. In Bulgaria, Cyprus, Czechia, Greece, Finland, Hungary, Lithuania⁸⁷, Luxemburg, Latvia, the Netherlands, Poland, and Slovakia, second-parent adoption is not allowed for registered partners. In some Member States such as but not limited to, Bulgaria, Czechia, Hungary, Lithuania, Latvia, Poland, Romania, Slovenia and Slovakia, registered partnerships do not exist in their legal system for different-sex couples. In France, a recent reform allowed second-parent adoption for registered partners⁸⁸. A legal barrier to recognition of parenthood might be present in the 12 Member States that do not allow second-parent adoption.

Same-sex couples

- For same-sex couples, second-parent adoption is allowed in more than half of the Member States, with marriage being a condition *sine qua non* in two countries. In more than half (16) of the Member States⁸⁹, second-parent adoption is allowed for same-sex married couples. Fewer than half (14) of Member States⁹⁰ allow second-parent adoption for same-sex registered couples. Consequently, in many other Member States⁹¹, second-parent adoption is not allowed for same-sex couples, which may constitute a legal barrier to recognition of parenthood.

Single-parent adoption

⁸¹ Statistisches Bundesamt, *Immer mehr Adoptionen von Säuglingen und Kleinkindern*, 2021, available at: https://www.destatis.de/DE/Presse/Pressemitteilungen/2021/07/PD21_316_22.html

⁸² French Ministry of Justice, *L'adoption de l'enfant du conjoint en 2018 (second parent adoption in 2018)*, available at: https://www.justice.gouv.fr/art_pix/stat_Infostat_175.pdf

⁸³ Data are not always disaggregated by sexual orientation of the parents.

⁸⁴ Centraal Bureau voor de Statistiek, *Partneradopties (second parent adoptions)*, available at: <https://www.cbs.nl/nl-nl/cijfers/detail/81550NED>

⁸⁵ Ministry of Justice, *L'adoption de l'enfant du conjoint en 2018 (second parent adoption in 2018)*, available at: https://www.justice.gouv.fr/art_pix/stat_Infostat_175.pdf

⁸⁶ Flemish Centre for Adoption, *Number of requests for adoption*, data received from the government – available upon request, 2021.

⁸⁷ A reform is anticipated and may different-sex registered couples to adopt.

⁸⁸ Law No 2022-219 of the 2nd of February 2022 amending adoption, accessible online at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045197698>

⁸⁹ AT, Be, DE, EE, EL, ES, FI, FR, IE, It, LU, MT, NL, PT, SE, SI.

⁹⁰ AT, BE, DE, EE, ES, FR, IE, IT, LU, MT, NL, PT, SE, SI.

⁹¹ BG, CY, CZ, HR, HU, LT, LV, PL, RO, SK.

Adoption by single parents is possible in all Member States except in HU and PL, but rare in CY and LT⁹².

3.3.3 Surrogacy

Desk research, and particularly case-law⁹³, points to another group of families affected by difficulties in parenthood recognition procedures: those who decide to start a family through surrogacy. These are usually surrogacy arrangements occurring outside the EU (internationally) rather than in another Member State, placing it outside the scope of this study. The problems of recognition of parenthood affecting birth through surrogacy usually occur at the very beginning, at the moment of establishing parenthood. **The problem that these families face is therefore more often related to the establishment of parenthood than to the recognition of parenthood across EU borders.**

While certain factors indicate an increase in recourse to surrogacy, precise statistics relating to surrogacy are hard to find, as countries where surrogacy is legally prohibited do not have formal reporting mechanisms. In addition, the statistics reported do not necessarily record the surrogacy arrangements but often only the IVF procedure, making it difficult to assess the number of families encountering difficulties linked to the recognition of parenthood established through surrogacy.

Recent reports have documented a rise in the practice of surrogacy, including cross-border arrangements⁹⁴. According to Global Market Insights, the global surrogacy market size surpassed USD 4 billion in 2020 and will record a growth of over 32.6 % to 2027. The European surrogacy market held over 42 % of revenue share in 2020, as several countries permit surrogacy procedures⁹⁵. The factors signalling a rise in the practice of surrogacy across borders are increasingly frequent media stories about surrogacy arrangements, increased online presence of agencies and clinics that openly seek to facilitate surrogacy arrangements, or the recent surge in reported case-law relating to surrogacy across a number of jurisdictions⁹⁶. People experiencing infertility are highly motivated to expand their family and, given the accessibility of the technology, legal prohibitions are an ineffective deterrent that have simply led to a rise in 'fertility tourism', whereby prospective parents travel abroad to hire their surrogate and then bring the child back to the prohibitive state⁹⁷.

Several different national regimes can be distinguished, based on how surrogacy is defined and allowed or prohibited by national legislation. Firstly, and based on research conducted with the help of national experts involved in this study in early 2022, the vast majority (83 %) of Member States do not have a clear framework in place concerning surrogacy. Secondly, some 46 % of Member States - at the time of the preparation of this report - **expressly ban it**.

⁹² Comparative legal analysis.

⁹³ Examples of cases at EU level: *Menesson v. France* (2014), application no. 65192/11; *Schlittner-Hay v. Poland* (2019), application no. 56846/15 and 56949/15. Examples of cases at national level: Austrian Constitutional Court, Judgment of 14.12.2011, B 13/1; judgment of the Polish Supreme Administrative Court of 10 September 2020, signature: II OSK 1390/18; Italian Constitutional Court, 28th January 2021, no. 33; Belgian Court of Appeal Ghent 4 February 2021, No. 2019/FE/17; Belgian Court of Appeal Brussels 10 August 2018, No. 2017/FQ/4; Belgian Court of Appeal Ghent 20 April 2017, No. 2014/EV/87 (Belgium); Judgment No. 2832 of 3.12.2018 of the Sofia Appealed Court (Bulgaria); Supreme Court of Cassation on case No. 1285/2019 (Bulgaria); Greek Court of first instance of Thessaloniki No 7013/2013; Greek Court of first instance of Athens No 1101/2019; Portuguese Constitutional Tribunal 465/2019; Portuguese Constitutional Tribunal 225/2018; Case 5200/2017, Court of Sector 1 of Bucharest (Romania); Case 10984/2015, Court of Sector 4 of Bucharest (Romania).

⁹⁴ Hague Conference on Private International Law, *A preliminary report on the issues arising from international surrogacy arrangements*, 2012, pp. 6-8.

⁹⁵ See: <https://www.gminsights.com/industry-analysis/surrogacy-market>

⁹⁶ European Parliament, *A comparative study on the regime of surrogacy in EU Member States*, 2013.

⁹⁷ Armstrong, A., *Surrogacy: time for a self-sufficiency approach*, 2020, available at: <https://euideas.eui.eu/2020/07/15/surrogacy-time-for-a-self-sufficiency-approach/>

In addition, in several Member States, the ban is implied by provisions allowing only altruistic surrogacy or by severely restricting the legal effects of such agreement. Combining these criteria, overall, only the law of Cyprus and Greece specifically allows for surrogate motherhood after specific conditions (such as a permission by the Member State' authority) have been complied with.

Based on their approach to recognising parenthood established through surrogacy abroad, parenthood will be recognised in several Member States⁹⁸. In the remainder, that recognition will depend on several elements, such as the application of PIL rules (NL), or the application of national legal presumptions (RO)⁹⁹.

Among the countries that do not expressly ban surrogacy, several figures have emerged. These figures are unlikely to provide a complete picture, as surrogacy may not always be captured by official statistics. According to figures obtained from the Irish Department of Foreign Affairs, 137 emergency travel certificates were issued to children born abroad as a result of surrogacy arrangements between 2015 and 2019¹⁰⁰. This statistic reflects only the number of families that opted for surrogacy abroad, rather than within the country, even though Ireland allows for surrogacy to occur on its territory under certain circumstances. In the Netherlands, between 1997 and 2004, 35 couples received IVF treatment at the VU University (VUmc), which was the only centre to carry out 'advanced technological surrogacy' until 2019, and led to the birth of 16 children. The VUmc reportedly receives about 20 requests per year and 10 are put on track for treatment per year¹⁰¹. In Greece, data compiled from 256 court decisions issued between 2003-2017 granting gestational surrogacy shows an average of 18 such court decisions per year, with an increasing trend observed to 2016¹⁰².

Among countries where surrogacy is banned, the emerging figures seem to show that surrogacy is used in practice, despite the regulatory obstacles. In France, where surrogate motherhood (*Gestation pour autrui - GPA*) is prohibited, an estimated 500-700 children are born to surrogate mothers each year¹⁰³.

Using available data, the number of children born from surrogacy in the EU can be estimated at about 3 600 per year¹⁰⁴. Given the scarcity of data on surrogacy, this figure needs to be read cautiously.

Research undertaken for this study suggests that it can be more burdensome and problematic for national authorities when recognition of parenthood is challenged in their Member State, having been established in another Member State. Most Member States (16) will not recognise surrogacy agreements concluded abroad. When surrogacy agreements were concluded in another country, despite being expressly banning within their jurisdiction, only five Member States appear to at least recognise the surrogacy carried out abroad¹⁰⁵. Consequently, administrative procedures or litigation in respect of the rights and obligations derived from parenthood could lead to different outcomes, resulting in legal uncertainty, inconsistencies and administrative burden for authorities.

⁹⁸ AT, BE, BG, EE, ES, FR, HU, PL, PT, SI.

⁹⁹ Comparative legal analysis.

¹⁰⁰ National Report for Ireland, 2021, p. 24.

¹⁰¹ See <https://fiom.nl/kenniscollectie/draagmoederschap/cijfers-feiten>

¹⁰² Ravdas, P., *Surrogate Motherhood in Greece: Statistical Data Derived from Court Decisions*, 2017, available at: <https://ejournals.epublishing.ekt.gr/index.php/bioethica/article/view/19723/17249>

¹⁰³ See <https://www.vie-publique.fr/eclairage/18636-gestation-pour-autrui-queles-sont-les-evolutions-du-droit>

¹⁰⁴ Sources: Eurostat population statistics (number of live births in 2020); Präg, P. and Mills, M.C., *National Report for Ireland*, 2021; Ravdas, P., *Surrogate Motherhood in Greece: Statistical Data Derived from Court Decisions*, 2017; <https://fiom.nl/kenniscollectie/draagmoederschap/cijfers-feiten> and <https://www.vie-publique.fr/eclairage/18636-gestation-pour-autrui-queles-sont-les-evolutions-du-droit>

¹⁰⁵ AT, DE, EE, FR, HR.

Single parent

Surrogacy restrictions in the EU restrict the alternatives for single parents looking to conceive through surrogacy. For ART treatments in general, the most notable trend is a clear bias towards heterosexual couples at the expense of single people and lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) couples¹⁰⁶. Even in the countries where surrogacy is possible, some require both partners to provide gametes when surrogates are used, meaning that single people are generally unable to access surrogacy. In Greece, women with a medical diagnosis that can prove their inability to conceive can access surrogacy. Single men can also access surrogacy, but not if they are in men-only couples. Therefore, no genetic link is required between the intended parents and the child. The genetic material can come from the prospective father, if there is one, or a donor. Greek law accepts the case of full social parenting, as the surrogate-born child may be genetically unrelated to their parent(s)¹⁰⁷. In Cyprus, by contrast, altruistic surrogacy is possible for single parents, but the material must be provided by the intended parent, who must be a single person with a medical condition that impedes procreation¹⁰⁸.

3.3.4 ART

While desk research (particularly national legal research, see Annex 4) suggests some potential difficulties in the establishment of parenthood for families crossing borders, there was no conclusive evidence of problems in cross-border recognition of parenthood for children born from ART. As in the case of surrogate motherhood agreements, the problems surrounding the recognition of parenthood for EU children born via ART **generally arise at the time of establishing parenthood, rather than at the time of having it recognised in another Member State.**

Available statistics on births from ART and the EU population yield an estimated figure of about 150 000 children born from ART in 2020¹⁰⁹. Several Member States (e.g. Belgium and Spain)¹¹⁰ show higher percentages of births from ART compared to other countries. Based on comprehensive international research¹¹¹, the numbers of children born through ART in 2017 vary dramatically across the EU, but are significantly higher in more permissive Member States (with respect to same-sex couples) and lower in less permissive Member States. In Spain, 7.9 % of children are born through ART, in Sweden 4.5 %, Belgium 4.8 %, and in Estonia 5.3 %. Remarkably 1.1 % of children born in Malta are conceived through ART¹¹². By contrast, in France, 2.7 % of children are born through ART, in Italy 2.8 %, in Lithuania 0.4 %, in Poland 1.4 %, in Portugal 2.8 % and in Romania 0.6 %. In Slovenia (5.3 %) and Czechia (5.4 %), the number of children born through ART is quite high.

¹⁰⁶ See <https://fertilityeurope.eu/european-atlas-of-fertility-treatment-policies/>

¹⁰⁷ Horsey, K. and Neofytou, K., 'The fertility treatment time forgot: What should be done about surrogacy in the UK?' In: Horsey, K. (Ed.), *Revisiting the Regulation of Human Fertilisation and Embryology*, Routledge, Abingdon, 2015, pp. 117–135.

¹⁰⁸ European Judicial Training Network (EJTN), *Gestational surrogacy: a European overview and the Spanish case. A feasible proposal?*, Themis Competition, 2020, available at: <https://www.ejtn.eu/PageFiles/18747/TH-2020-03%20ES.pdf>

¹⁰⁹ Sources: Eurostat population statistics (number of live births in 2020); European Society of Human Reproduction and Embryology (ESHRE data); Wyns, C., De Geyter, C., Calhaz-Jorge, C., Kupka, M.S., Motrenko, T., Smeenk, J., Bergh, C., Tandler-Schneider, A., Rugescu, I.A., Vidakovic, S. and Goossens, V., 'ART in Europe 2017: results generated from European registries by ESHRE', *Human Reproduction Open*, Vol.00, No 0, 2021, pp. 1–17, available at: <https://academic.oup.com/hropen/article/2021/3/hoab026/6342525?login=true>

¹¹⁰ In Spain in 2017, 126 000 treatment cycles were reported, the highest among the Member States.

¹¹¹ Wyns, C., De Geyter, C., Calhaz-Jorge, C., Kupka, M.S., Motrenko, T., Smeenk, J., Bergh, C., Tandler-Schneider, A., Rugescu, I.A., Vidakovic, S. and Goossens, V., 'ART in Europe 2017: results generated from European registries by ESHRE', *Human Reproduction Open*, Vol.00, No 0, 2021, pp. 1–17, available at: <https://academic.oup.com/view-large/283927583>

¹¹² Data not available for DE, FI, IE, NL.

The research shows that in addition to mobile citizens, some families move across borders to establish their families. The need to travel across borders to establish a family can be due to restrictive national regulations limiting ART in some Member States to a civil status (e.g. civil union or registered partnership) or/and a medical condition (see Figure 6). There is no EU harmonised legislation on ART, and consequently, different regulations in Member States for the treatment of infertility do not prevent patients in need travelling abroad for treatment, even if their cross-border reproductive care violates domestic legislation¹¹³.

Based on the data collected, it is difficult to estimate the exact share of ART births in cross-border circumstances. Nevertheless, there have been reports of ART births in cross-border cases, among others to circumvent national legislation¹¹⁴. According to one source¹¹⁵, the main study on patients receiving cross-border reproductive care in Europe in 2008-2009 suggested that at least 11 000-14 000 patients and 24 000-30 000 treatment cycles of cross-border reproductive care existed in six European countries (of which, 5 Member States: BE, CZ, DK, ES, SI and Switzerland), compared to 532 000 and 537 000 ART cycles in all of Europe in 2008 and 2009, respectively. Of all the women surveyed from other countries receiving treatment in 44 fertility clinics the same six countries, 'the main countries of origin of the women seeking care were Italy (32 %), Germany (15 %), the Netherlands (12 %), and France (9 %)'¹¹⁶. Geographical and cultural proximity mattered when deciding on a treatment country.

The reasons¹¹⁷ for cross-border reproductive care were diverse:

- Legal restrictions (in country of origin) (e.g. 57-80 % of patients from Germany, France, Italy, Sweden and Norway; 32 % from the Netherlands; 9 % from the United Kingdom (UK));
- Better quality treatment (e.g. average 43 % from six surveyed countries, 53 % from the Netherlands);
- Access difficulties (e.g. average 7 % from six surveyed countries, 34 % from UK);
- Failure of previous treatment (in country of origin).

Respondents also justified choosing cross-border ART treatment over national treatment because (i) access to a technique was not legally available in their Member State, (ii) to seek a higher quality treatment, or (iii) for another, unspecified reason.

Legal limitations might drive cross-border mobility for the use of ART¹¹⁸ (and potentially complicate the establishment and recognition of parenthood). **In general, married couples are allowed to use ART**¹¹⁹. 13 out of 25 Member States¹²⁰ indicated that some ART techniques are legally banned (either explicitly or implicitly). Member States may establish an age limit for the use of ART techniques: in Austria, in the case of egg donation, the intended mother must not be older than 45 years; in Belgium, the collection of gametes and the request for implantation or insemination is allowed up to the age of 45 (for women); and in Czechia, artificial insemination can be performed on a woman if she is not older than 49 years¹²¹. **ART is banned for same-**

¹¹³ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare.

¹¹⁴ Judiciary – interviews – PL (17 February 2022).

¹¹⁵ Kreyenfeld, M. and Konietzka, D., *Childlessness in Europe: contexts, causes, and consequences*, 2017, available at: https://library.oapen.org/bitstream/handle/20.500.12657/29707/2017_Book_ChildlessnessInEuropeContexts.pdf?sequence=1#page=289.

¹¹⁶ *Ibid.*, p. 303.

¹¹⁷ *Ibid.*, p. 303.

¹¹⁸ *Ibid.*

¹¹⁹ AT, DE, EL, HR, HU, IT, LT, MT, PL, PT, RO, SE, SI, SK; BG, CY, ES, FI, LV remarked on the ban of some ART techniques, but only in relation to cloning, research etc.

¹²⁰ Comparative legal analysis.

¹²¹ Comparative legal analysis.

sex couples in 11 Member States: Cyprus, Czechia, Greece, Croatia, Hungary, Italy, Lithuania, Poland, Romania, Slovenia and Slovakia¹²². In Austria, Bulgaria, Estonia, Spain, Finland, France, Ireland, Latvia, and Portugal, ART is banned for male same-sex couples¹²³. In Luxemburg, ART is not regulated by law¹²⁴, but specific rules are still applicable and ART takes place for same-sex couples. In the vast majority

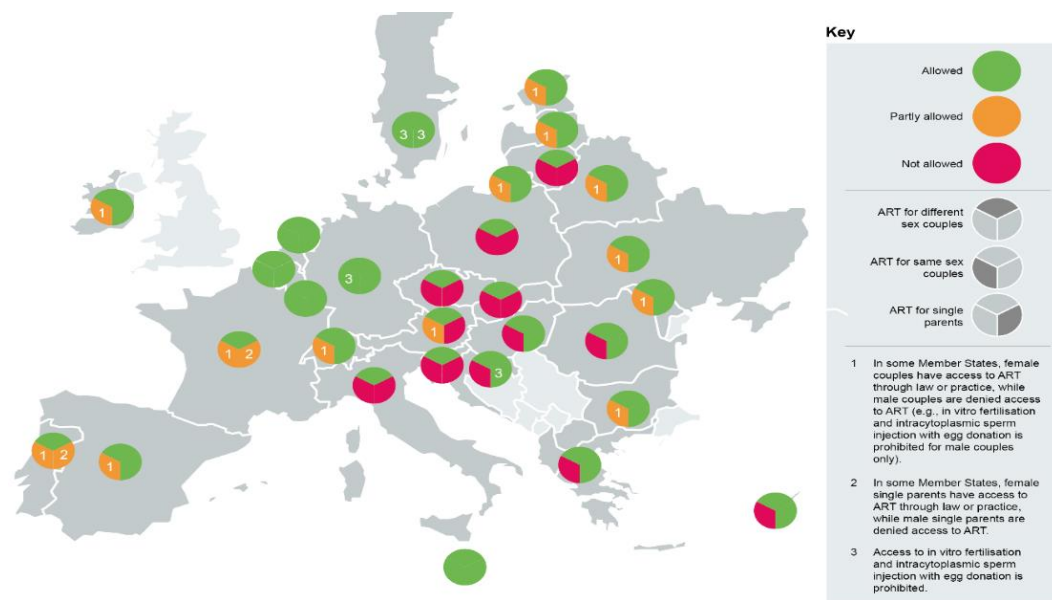
¹²² Comparative legal analysis.

¹²³ Comparative legal analysis.

¹²⁴ Reforms are expected; see the opinion of the Luxembourgish Consultative Council for Human Rights, available at: https://ccdh.public.lu/dam-assets/dossiers_thématiques/bioéthique/avis/2021/Bioethique-filiation-Avis-PL6568A-20210301.pdf

(17) of Member States, ART is allowed for single parents¹²⁵, but in Sweden and Croatia, access to IVF and intracytoplasmic sperm injection with egg donation is prohibited. In Portugal and France, ART is banned for male single parents. Similarly, in Austria, Czechia, Italy, Lithuania, Poland, Slovenia and Slovakia, ART is not allowed for single parents (see Figure 6).

Figure 5. Legislation on ART for single parents and same-sex couples in the EU



Source: ICF elaboration, based on national legal research and the European Atlas of Fertility Treatment Policies¹²⁶.

The study concludes that further research is necessary to understand the difficulties in establishing parenthood for children born from ART in a cross-border setting. This matter falls outside of the scope of this study, and, as there is no conclusive evidence of problems arising in recognition of parenthood between Member States, no scenarios were developed.

3.4 Problem consequences

The problems identified affect families crossing borders to travel or relocate in the EU, including those with international family elements (e.g. families with multiple nationalities, surrogacy performed abroad)¹²⁸. The particular impact on children is described in detail. Other parties affected are national authorities, which may encounter a higher administrative burden, additional

- The groups of children disproportionately affected by the problems identified are: children born to unmarried parents, children of rainbow families, and children born through surrogacy (OPC).
- Very few Member States (CY, IE, LV, PL, PT) define specific actions to be taken to guarantee the rights of the child in such situations, although courts can take certain measures in the best interest of the child, on a case-by-case basis (AT, DE, FR)¹²⁷.

¹²⁵ BE, BG, CY, DE, EE, EL, ES, FI, HR, HU, IE, LU, LV, MT, NL, RO, RO, SE.

¹²⁶ Drafted by the European Parliamentary Forum for Sexual & Reproductive Rights and Fertility Europe, available at: https://fertilityeurope.eu/wp-content/uploads/2021/12/FERTIL-Atlas_EN-2021-v10.pdf

¹²⁷ Comparative legal analysis. Unknown institutions and public policy.

¹²⁸ See https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice/family-law/overview-family-matters_en

resources, and complexities because of the non-harmonised legislation.

This report describes the different types of consequences (see Figure 2), their link to the problem(s), and the groups affected.

3.4.1 Costs, time and burden of administrative and judicial proceedings related to the recognition of parenthood

Key problem(s)

- Problem 1;
- Parenthood may not be recognised even after a long, costly and burdensome procedure (problem 2).

Groups affected

- **Families;**
- **National authorities (national administration and judicial systems).**

Various national authorities are involved in the administrative procedures applicable to cross-border situations. Parenthood is established by various authorities (e.g. civil registrars, notaries, consulates, courts) depending on national rules and contexts (e.g. birth, adoption). When automatic recognition is not applicable in a Member State, national courts are generally granted the competence to complete the parenthood recognition procedure, or recognition can take place through an administrative procedure (e.g. the registration of a deed in the civil registry)

When families move abroad or share different nationalities, they may face hurdles in obtaining the documentation necessary for the child to prove a Member State's nationality or to receive identity and travel documents from that Member State. These kinds of problems may prompt them to start litigation to have the parenthood of their child recognised. Apart from the negative effects on families, these proceedings also involve **additional time, human resources and burden for the national authorities involved**, typically civil registrars¹²⁹. A substantial majority of civil registrars¹³⁰ noted that **a court** is also competent to recognise parenthood, particularly in contentious cases. Only a minority of respondents pointed¹³¹ to a population register, municipality, embassies/consulates, notary, or tax authorities.

Without any common rules on parenthood recognition cases with a cross-border element, **there is little legal certainty across all Member States**. The comparative legal analysis shows a variety of administrative procedures and conflict rules enacted at national level. National legal systems have their own views on conflicts of laws, often with different connecting factors. Even if the national conflict rules appoint the same legal system or different legal systems with the same rules, it is still possible that the parenthood established by effect of a foreign law may not be recognised if the result of the foreign law's application is deemed to violate the public policy of the Member State involved¹³². The lack of common rules also **affects the principle of mutual recognition and mutual trust among EU Member States**, which is a pillar of the European area of justice.

¹²⁹ All respondents to the online survey (survey of civil registrars, 100 %, 14 responses out of 14) indicated that a civil register is competent in their Member State to deal with the recognition of a foreign document on parenthood established in another Member State.

¹³⁰ Survey of civil registrars, 79 % (11 responses out of 14).

¹³¹ Survey of civil registrars, 43 % (6 responses out of 14), 21 % (3 responses out of 14), 21 % (3 responses out of 14), 14 % (2 responses out of 14) and 14 % (2 responses out of 14), respectively.

¹³² Saarloos, K.J., *European private international law on legal parentage? Thoughts on a European instrument implementing the principle of mutual recognition in legal parentage*, 2010.

The different approaches taken by national authorities **lead to an unjustified difference of treatment of recognition cases concerning families with a foreign component, which is often characterised by an increased level of complexity.** Although not all cases of cross-border recognition of parenthood are complex and require court proceedings, many are difficult to solve and likely to **require more time, efforts and resources from national administrations/judiciary.** For example, for children born from surrogacy (especially when involving same-sex households), the number of cases reaching international courts are a clear indication of their complexity¹³³. Cases of joint adoption by same-sex households, while still rare, are also likely to be contentious in Member States where adoptions by same-sex couples are not allowed. Similar considerations apply to adoptions by single individuals. Finally, recognition of parenthood of children in same-sex households (whether married or legally registered partnerships) can also be contentious in Member States that do not legally recognise these forms of couples (see Section 3.2.1).

In these situations, when recognition is denied, families are likely to go to court to contest the decision. Even where recognition is possible, it is likely to require longer procedures, legal representation, and additional supporting documentation due to differences in legal procedures (e.g. differences in national forms and civil status documents need to be reconciled). According to a substantial majority of civil registrars¹³⁴, there is a control mechanism (a validity test or competence test) applied in their Member State before recognising a foreign document on parenthood established in another Member State.

The complexity of these types of recognition cases and the lack of guidance or common rules are similarly reflected in the creation of **inconsistent case-law** at national and EU level. For example, in Bulgaria, the consistency of case-law is hindered by the fact that case-law is developed by both civil and administrative courts and by a certain ambiguity surrounding the competent court if recognition has been denied by the civil registrar. Estonia and Italy also reported issues surrounding the lack of a uniform approach by the courts and variation in administrative practices, often resulting in **the need to involve the national high courts or supreme courts.** Greece reported that a Special Civil Registrar is the competent authority for the civil status of Greeks who were or still are domiciled abroad, but the authority is seriously understaffed, causing delays¹³⁵.

3.4.2 (Temporary) interference with children's rights, in particular the right to respect for private and family life, the right to non-discrimination and the right to an identity

Key problem(s)

- Problem 1;
- Problem 2.

Groups affected

- Children

Both the non-recognition of parenthood and eventual recognition preceded by burdensome, long, and costly procedures interfere with children's rights, in particular **the right to respect for private and family life, the right to non-discrimination, and the right to an identity**, which are enshrined in human rights legal instruments (e.g. UNCRC, ECHR, CFR).

¹³³ ECtHR, Factsheet on gestational surrogacy, 2021; ECtHR, Factsheet on children's rights, 2021.

¹³⁴ Survey of civil registrars, 79 % (11 responses out of 14).

¹³⁵ Comparative legal analysis.

Right to respect for private and family life

The persistence of administrative and legal obstacles in the recognition of parenthood across Member States go against the **fundamental rights guaranteed to the child** under Article 7 of the CFR ('Respect for private and family life') and Article 24 of the CFR ('The rights of the child'). The right to private and family life is also enshrined in Article 8 of the ECHR. When parenthood is not recognised or when recognition is lengthy and burdensome, children are deprived of the relationship with their parents when exercising their right to move and reside freely within the territory of the Member States or when their exercise of that right is made impossible or excessively difficult in practice.

Under both EU and CoE law, judicial and administrative authorities should take into account the child's best interests in any decision related to the child's right to respect for their family life¹³⁶.

Right to non-discrimination

The prohibition of discrimination is enshrined in Article 21 of the CFR and Article 14 of the ECHR and upheld by Member States through their constitutional provisions and national legislation. In the context of parenthood recognition, **non-discrimination** implies that Member States must ensure that the recognition of civil status documents establishing parenthood is not undermined by discrimination of any kind, including based on the child's – or the **parent's** race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, birth or other status. When the children of same-sex couples are denied rights that are granted to children whose parents are different sexes, this may amount to discrimination on the ground of sexual orientation by association.

A number of cases are pending before the ECtHR, regarding the issuance of birth certificates that include two parents of the same sex (e.g. *R.F. and others v. Germany*¹³⁷; *S.W. and others v. Austria*¹³⁸) or regarding the cross-border recognition of such birth certificates (e.g. *A.D.-K. v. Poland*¹³⁹). In all of these cases, the applicants complained of discrimination contrary to Article 14 of the CFR, taken in conjunction with Article 8 of the ECHR. The non-discrimination principle is also enshrined in Article 21 of the CFR. Similarly, the failure of the host EU Member State to recognise the legal links between the child in a rainbow family and both of their parents – as these have been legally established elsewhere – can amount to an unjustified breach of the prohibition of discrimination on the ground of sexual orientation laid down under Article 21 of the CFR.

In the V.M.A judgment, the CJEU clarified that the term 'direct descendant' within the meaning of Article 2(2)(c) of Directive 2004/38/EC must be interpreted as including all children of Union citizens, including their joint children with another person of the same sex. The Court also clarified that the child should enjoy the rights guaranteed in the CFR and the UNCRC without discrimination based on the fact that their parents are of the same sex.

Right to an identity

¹³⁶ European Union Agency for Fundamental Rights (FRA), *Handbook on European law relating to the rights of the child*, 2015.

¹³⁷ Application no. 46808/16 *R.F. and others against Germany* lodged on 2 August 2016, [R.F. AND OTHERS v. GERMANY \(coe.int\)](#).

¹³⁸ Application no. 1928/19 *S.W. and others against Austria* lodged on 3 January 2019 [S.W. AND OTHERS v. AUSTRIA \(coe.int\)](#).

¹³⁹ Application no. 30806/15 *A.D.-K. and Others against Poland* lodged on 16 June 2015 [A.D.-K. AND OTHERS v. POLAND \(coe.int\)](#)

Article 7 of the UNCRC is closely linked to Article 8, on the right of a child to an identity. Name and nationality are seen as elements of a child's identity. The UNCRC Committee highlighted that Member States are obliged not to discriminate or otherwise violate the identity of persons through the registration procedure. The registration certificates must accurately protect and preserve the elements of the identity of a child. The UNCRC Committee took a very firm position that non-recognition leads to the lack of enjoyment of human rights and that, therefore, remaining problems in this area have to be diligently solved¹⁴⁰. All Member States are parties to the UNCRC and it forms part of the general principles of EU law, thus the CJEU applies its principles to ensure protection of children's rights in cross-border situations. Public authorities' refusals to register or transcribe a foreign birth certificate of a child could amount to violations of UNCRC provisions.

Certain issues related to the recognition of birth certificates arise due to differences in how Member States regulate the establishment of names and surnames for their citizens (see Section 3.3.1). Under EU law, the right to a name is addressed from the perspective of the freedom of movement. The CJEU holds that freedom of movement precludes an EU Member State from refusing to recognise a child's surname as registered in another Member State of which the child is a national or where the child was born and had resided¹⁴¹. Refusal of birth registration of children may raise an issue under Article 8 of the ECHR. For example, in *Guillot v. France*, the ECtHR found that the name as 'a means of identifying persons within their families and the community' falls within the scope of the right to respect for private and family life¹⁴². The parents' choice of their child's first name and family name is therefore part of their private life.

The best interest of the child

The **best interest of the child** is enshrined within Article 24 of the CFR and Article 3 of the UNCRC. National courts can invoke the best interest of the child to take certain measures to protect children affected by legal proceedings in relation to the recognition of parenthood. However, the principle is applied subjectively by courts depending on the circumstances of a case and thus does not ensure a coherent and consistent approach across a given country nor across the EU.

The legal analysis found that there are no clear rules on the application of the 'best interest of the child' principle. However, some of the negative impact of a non-recognition solution can be remedied by applying the principle. For example, in Austria, the authorities are obliged to follow the best interest of the child principle in every decision they make, which means that the best interest of the child must take priority when assessing the possibility of public policy violation. In France, the child can continue to live with their parents despite the non-recognition decision. Similarly in Germany, upon the non-recognition decision, the authorities will evaluate whether living with the non-recognised parents is in the best interest of the child or if another solution would better secure the child's best interest¹⁴³.

¹⁴⁰ Ziemele, I., A Commentary on the United Nations Convention on the Rights of the Child – Article 7, citing UNCRC Committee, Concluding Observations: Paraguay (UN Doc. CRC/C/15/Add.27, 1994), para. 10 and UNCRC Committee, Concluding Observations: China (UN Doc. CRC/C/15/Add.56, 1996), para. 16, 2007.

¹⁴¹ CJEU, C-148/02, *Carlos Garcia Avello v Belgian State*, 2 October 2003; CJEU, C-353/06, *Stefan Grunkin and Dorothee Regina Paul* [GC], 14 October 2008.

¹⁴² ECtHR, *Guillot v. France*, No. 22500/93, 24 October 1993, para. 21.

¹⁴³ Comparative legal analysis (see Annex 4).

3.4.3 (Temporary) denial of the child's rights derived from parenthood (e.g. nationality, social benefits, maintenance, inheritance rights); repercussions for the child's surname

Key problem(s)

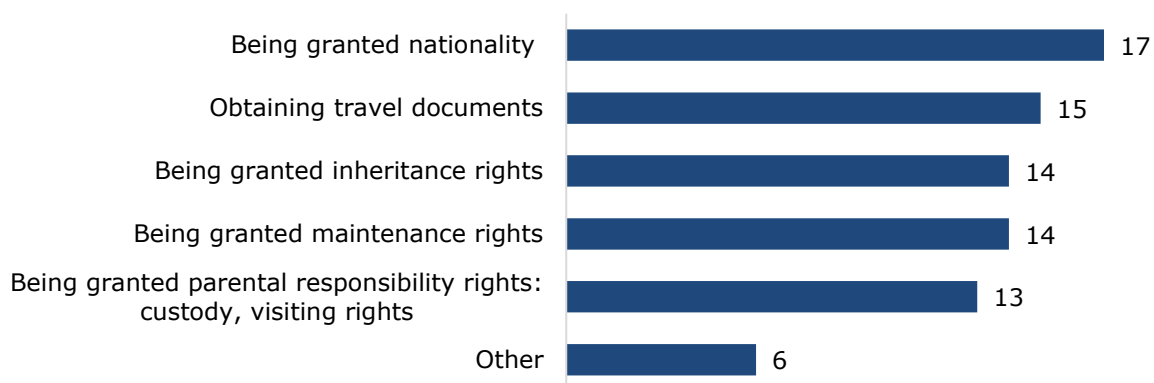
- Problem 1 (temporarily, in case of resolution);
- Problem 2.

Groups affected

- Children;
- Families.

For families travelling or residing abroad, the formal recognition of parenthood may be a prerequisite to being granted important rights such as **nationality**, which is vital in cross-border situations. The preliminary findings of the comparative legal analysis show that the recognition of parenthood is a prerequisite for being granted nationality in 17 Member States¹⁴⁴.

Figure 6. Recognition of parenthood established in another Member State as a prerequisite



Source: ICF comparative legal analysis based on national reports.

The findings are confirmed by the results of the OPC, with a majority of respondents stating that the parental rights to act as the legal representative(s) of a child (59 %, 146 responses) and the issuance of documentation by the Member State of nationality necessary for a child to obtain documentation proving nationality (52 %, 128 responses) were the main rights denied to the child or parents when parenthood was not recognised.

Although nationality is a Member State competence, Case 135/08 *Rottman* concluded that that competence must be exercised with due regard to EU law in situations covered by EU law¹⁴⁵. This recognises that when a Member State refuses to recognise parenthood established elsewhere, the consequences are extremely negative, as families and children, in particular, can be deprived of some essential rights. Specifying the individuals within a family is essential in order to know which

¹⁴⁴ AT, BE, BG, CY, CZ, ES, FR, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT.

¹⁴⁵ CJEU, C-135/08, *Janko Rottman v Freistaat Bayern*, Judgment of the Court (Grand Chamber) of 2 March 2010, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62008CJ0135>; <https://www.statelessness.eu/issues/ensuring-nationality-rights>

individuals have a relationship with the person who is entitled to benefits and are to be considered members of the family¹⁴⁶.

Denial of nationality may also result in statelessness. Statelessness is a legal anomaly that affects over half a million people in Europe and occurs when a person cannot acquire the nationality or citizenship of any country¹⁴⁷. Causes include problems with recognition of civil status, birth registration and access to birth certificates, particularly when there is a cross-border element in the family. A refusal from authorities of a Member State to recognise parenthood established in another Member State can lead to difficulties in establishing family ties, acquiring identity documents, and demonstrating a child's nationality, which can leave children born in Europe stateless or at risk of statelessness¹⁴⁸. These situations are quite rare in practice and should be resolved when national authorities and courts apply the best interest of the child, or when Member States act according to the provisions of the UN Convention on the Reduction of Statelessness¹⁴⁹ to which most are parties¹⁵⁰. Although organisations such as the Network of LGBTIQ* Families Associations (NELFA) have reported instances of children at risk of statelessness due to the non-recognition of parenthood¹⁵¹, only two relevant cases were pending before the CJEU in 2021¹⁵², with one decided at the end of 2021 (see box below).

C-490/20 V.M.A v. Stolichna obshtina, rayon 'Pancharevo'¹⁵³

Facts of the case: V.M.A, a Bulgarian national and K.D.K., a UK national, are two women who married in Gibraltar in 2018 and resided in Spain since 2015. In December 2019, V.M.A. and K.D.K. had a daughter, who was born and resides with both parents in Spain. The daughter's birth certificate, issued by the Spanish authorities, refers to V.M.A. as 'mother A' and to K.D.K. as 'mother' of the child. In 2020, V.M.A. applied to the Sofia municipality for a birth certificate for her daughter to be issued to her, the certificate being necessary for the issuing of a Bulgarian identity document. The Sofia municipality refused V.M.A.'s application for a birth certificate, citing the lack of information concerning the identity of the child's biological mother and the fact that a reference to two female parents on a birth certificate was contrary to the public policy of Bulgaria, which does not permit parenthood of two persons of the same sex.

CJEU decision: The Court argued that since the child has Bulgarian nationality according to Bulgarian law, the Bulgarian authorities are required, based on Article 21 of the TFEU and Directive 2004/38/EC, to issue to her a Bulgarian identity card or passport stating her surname as it appears on the birth certificate drawn up by the Spanish authorities, regardless of whether or not a new birth certificate is drawn up. Such a document must enable a child to exercise the right of free movement with each of the child's two mothers, whose status as parents of that child has been established by the host Member State during a stay in accordance with Directive 2004/38/EC. As the Spanish authorities have lawfully established that there is a parent-child relationship,

¹⁴⁶ European Commission, *Analytical legal report 2019 - The application of the social security coordination rules on modern forms of family*, 2020.

¹⁴⁷ European Network on Statelessness, *Ensuring nationality rights*, n.d., available at: <https://www.statelessness.eu/issues/ensuring-nationality-rights>

¹⁴⁸ OPC, contribution of the European Network on Statelessness.

¹⁴⁹ United Nations, *Convention on the Reduction of Statelessness*, 1961.

¹⁵⁰ With the exception of EE, EL, FR, PL, SI (see <https://www.refworld.org/docid/54576a754.html>).

¹⁵¹ See <https://www.statelessness.eu/updates/blog/even-where-countries-europe-recognise-marriage-equality-children-born-same-sex>

¹⁵² See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12878-Cross-border-family-situations-recognition-of-parenthood/F2324522_en

¹⁵³ CJEU, Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon 'Pancharevo'*, available at:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=251201&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1>

biological or legal, between the child and her two parents, attested in the birth certificate issued in respect of the child, the mothers must, pursuant to Article 21 of the TFEU and Directive 2004/38/EC, be recognised by all Member States as having the right, as parents of a Union citizen who is a minor and of whom they are the primary carers, to accompany that child when she is exercising her right of free movement.

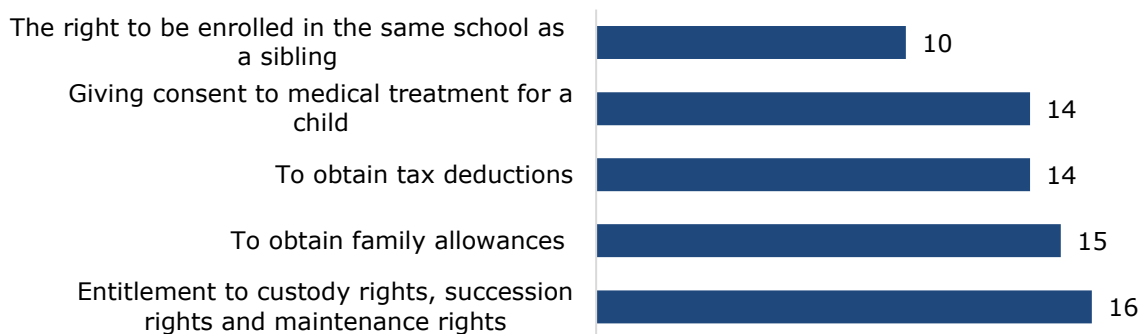
What was achieved: The CJEU held that Member States are obliged to recognise parenthood for the purposes of **rights that the child derives from EU law**, including the right of the child to exercise free movement with each of their parents¹⁵⁴. In *V.M.A.*, the CJEU took an important step to ensure that the free movement of children with their families is not hindered. However, the judgment also demonstrates the limits of EU law as it currently stands, as it does not oblige Member States to **recognise parenthood of a child for other purposes**, namely for rights that are not derived from EU law. Therefore, while the CJEU judgment on free movement of persons, and partly on EU citizenship, imply obligations irrespective of formal recognition of parenthood in the host Member State for some purposes, Member States still apply their national law to recognise parenthood for other purposes. These other purposes include the **legal status of persons and the rights derived from parenthood under Member States' law, for example succession and maintenance rights**.

The vast majority of Member States consider the formal recognition of parenthood established in another Member State to be necessary to entitle their citizens to certain **important rights related to education, healthcare and social security**. For example, findings from the legal research show that the formal recognition of parenthood is required in most Member States in order for the family to obtain tax deductions, to obtain family allowances, to enroll children in the same school when they are siblings, to give consent to medical treatment, or in relation to custody rights, succession rights and maintenance (see Annex 4, section A.4.2). Although recent CJEU case-law should facilitate the situation in the future, to date only legally recognised parents could exercise administrative privileges such as enrolling their child in school, consenting to medical care, opening a bank account for the child, travelling alone with the child, or guaranteeing health insurance for the child¹⁵⁵. Social security rights may also be denied to a child, which can have important negative effects on their welfare. In the case *C-02/21 Rzecznik Praw Obywatelskich*, the transcription of a child's Spanish birth certificate into the Polish civil status registry was challenged as it stipulated two women as mothers of the child. This, affected the issuance of a national number which was necessary for the child to be covered by the national social security system or to enter kindergarten. Some social rights are expressly recognised in the context of free movement, in particular for family members of mobile workers. These rights include equal treatment for admission to education (C-9/74) and to scholarships awarded under an agreement of the host Member State in an area outside the scope of the TFEU (C-235/87), and reduced public transportation costs for large families (C-32/75).

¹⁵⁴ *V.M.A.*, para. 57. **The rights derived from EU law include the child's right to exercise, with each of their parents, the right of free movement and the right of parents to have a document which enables them to travel with the child.** Some other rights derived from EU law have been recognised by the CJEU, such as admission to education (C-9/74, *Casagrande*), scholarships (C-235/87, *Matteucci*) and reductions of public transportation costs for large families (C 32/75, *Cristini*). The CJEU has also decided on surnames in a number of cases (e.g. C-148/02, *Garcia Avello*; C-41/15 *Freitag*).

¹⁵⁵ Tryfonidou, A., 'EU free movement law and the children of rainbow families: children of a lesser god?', *Yearbook of European Law*, Vol. 38, No 1, 2019, pp.220-266

Figure 7. Situations where parenthood established in another Member State must be formally recognised



Source: Comparative legal analysis based on national reports.

With regard to some less traditional forms of family, one of the most sensitive fields of social security is maternity and paternity benefits. In Spain, when the biological mother is married to another woman, the spouse may be recognised and registered as a parent in the civil registry and will be able to claim the equivalent of a paternity leave entitlement¹⁵⁶. However, this is not the situation in all Member States, as countries that do not recognise certain forms of family in general will likely not apply the same approach for the purposes of granting social benefits.

Recent studies have shown that Member States follow different approaches in their social security legislation, with certain key concepts sometimes interlinked with family law. German and Maltese social security legislation explicitly requests that the family relationship corresponds to the principles of national family law. In Sweden, where social security benefits partly depend on registration in the population register, two women registered as parents in another country could not both register as parents in Sweden under national law, thus their full social security rights were denied¹⁵⁷.

The EU legal framework ensures that if an EU citizen moves to another Member State to live and work, they and their family members will be entitled to healthcare in that State. According to Regulation (EC) No 883/2004 on the coordination of social security systems, a mobile citizen will be entitled to equal treatment, will have the same rights and obligations as insured nationals, and can affiliate under the same conditions as nationals. Member States generally do not adopt measures specifically aimed at facilitating access to their healthcare for mobile EU citizens and there might be situations in practice where this could lead to additional legal hurdles for mobile families and their children¹⁵⁸.

3.4.4 Psychological

Key problem(s)

- Problem 1;
- Problem 2.

Groups affected

- Children;

¹⁵⁶ European Commission, *Analytical legal report 2019 - The application of the social security coordination rules on modern forms of family*, 2020.

¹⁵⁷ European Commission, *Analytical legal report 2019 - The application of the social security coordination rules on modern forms of family*, 2020.

¹⁵⁸ European Commission, *Analytical legal report 2016 - Access to healthcare in cross-border situations*, 2016, p. 13.

- Families.

The long procedures before recognition of parenthood, as well as the eventual non-recognition of family ties between a child and their parents (taken as a whole or individually), can have significant psychological and social effects on families in general, and on children's development in particular.

Children (and their families) go through long legal procedures that unquestionably cause them distress and have a negative impact on their emotional and psychological well-being. In many cases reported in Romania, the documents proving parental ties need be obtained from the administration of the country of origin following a non-recognition solution by the authorities of the Member State where families choose to move. This entails additional burden for the family, as well as unwanted costs and trips to resolve the situation, which can have a toll on the mental health of a child. At times, the only option is to resort to factual proof by a genetic paternity/maternity test and to court proceedings, again subjecting children to stressful situations¹⁵⁹. Refusals to recognise foreign birth certificates stemming from international surrogacy arrangements (ISAs) imply that children born in such circumstances are denied the right to their State of residence's nationality, which has several 'domino effects' that are detrimental to the child. In the *Mennesson* and *Labassée* cases, this refusal gave the child inferior status in French inheritance law, as well as creating practical difficulties in respect of social security and schooling. Another negative scenario is evident in *Paradiso and Campanelli*, which implied the child's removal from their family environment, following Italy's refusal to recognise the child's birth certificate¹⁶⁰.

Issues surrounding the recognition of parenthood could have longer-term impacts on children. Procedures for recognition of parenthood may be burdensome, lengthy, and costly, with the rights and obligations of children and parents suspended for their duration. Given that parents may be involved in these long and costly procedures and may encounter difficulties exercising their parental responsibility (e.g. lacking full access to social security benefits), such situations create the possibility of children being placed at increased risk of poverty, dropping out of school and growing up with absent parents. Cases involving undocumented children show that 'long-term deprivation of a child from their primary caregiver [...] is likely to cause cognitive, emotional and social damage' (see section 5.1.4)¹⁶¹. Other fields of studies have shown that children with absent parents may face stigma¹⁶². In the context of the current study, children may, for example, be unable to explain the absence of a parent to peers. Cases involving undocumented children in long procedures (e.g. residence procedures) have shown that the potential denial of a request worsens mental health of both children and adults¹⁶³. Children may even 'give up', enter an unresponsive state, or develop a fear of the government workers involved.

3.4.5 (Temporary) obstruction and deterrence of the right to free movement

Key problem(s) at play

- Problem 1 (temporarily, in case of resolution);
- Problem 2.

¹⁵⁹ RO country report.

¹⁶⁰ European Parliament, *Regulating international surrogacy arrangements - state of play*, Policy briefing, 2016.

¹⁶¹ PICUM, *Navigating irregularity: the impact of growing up undocumented in Europe*, 2021, available at: <https://picum.org/the-impact-of-growing-up-undocumented-in-europe/>. The worst-case-scenario example applies to when a parent is detained.

¹⁶² See Gabel, S., 'Behavioural problems in sons of incarcerated or otherwise absent fathers: the issue of separation', *Family Process*, Vol. 31, No 3, 1992, pp. 303-314.

¹⁶³ PICUM, *Navigating irregularity: the impact of growing up undocumented in Europe*, 2021.

Groups affected

- Children;
- Families.

Freedom of movement is at the core of the European values on which the Union is built, and the EU acquis has evolved over the years to facilitate cross-border travel and work of EU citizens. The principle of the free movement of EU citizens is granted by Articles 20 and 21 of the TFEU and is one of the leading principles in the discussion on the unification and harmonisation of family law in Europe¹⁶⁴.

EU citizens move freely within the EU for various reasons (work, study, retirement, etc.) and may establish family relationships in Member States other than their own. However, various types of civil registration systems overlap, and a lack of cooperation between authorities, as well as a lack of harmonised rules, create legal and procedural obstacles that could hamper the exercise of freedom of movement rights. These include problems with the non-recognition of parenthood for all purposes¹⁶⁵.

Some examples of CJEU case-law have shown that whether or not national laws allow for certain legal institutions to be recognised should not interfere with the exercise of a citizen's right to free movement¹⁶⁶. In *Coman v Inspectoratul General pentru Imigrări*, the Court reaffirmed the sovereignty of Member States to devise their own family law but recognised for the first time that same-sex marriages must be treated the same as different-sex marriages, particularly when it comes to residence rights of EU citizens who have exercised their right of free movement. More specifically, in the case of parenthood, in *V.M.A v. Stolichna obshtina, rayon 'Pancharevo'*, the CJEU stated that 'in the case of a child, being a minor, who is a Union citizen and whose birth certificate, issued by the competent authorities of the host Member State, designates as that child's parents two persons of the same sex, the Member State of which that child is a national is obliged (i) to issue to that child an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and (ii) to recognise, as is any other Member State, the document from the host Member State that permits that child to exercise, with each of those two persons, the child's right to move and reside freely within the territory of the Member States.'

For the purposes of the free movement rights that the child enjoys under Union law, including Directive 2004/38/EC, Member States must recognise parenthood based on the existing EU acquis.

However, with respect to the recognition of parenthood for other purposes, Member States still apply their national law. These other purposes include the legal status of persons and the rights derived from parenthood under national law, for example succession and maintenance rights. Measures are thus still needed to facilitate the recognition of parenthood for these purposes in order to avoid situations where some families choose not to move from one Member State to another, or move only to Member States where they have a higher degree of certainty in respect of their civil status recognition. Therefore, the non-recognition of parenthood for all purposes, affects the right to free movement in the Union.

¹⁶⁴ European Parliament, *A comparative study on the regime of surrogacy in EU Member States*, 2013, p. 152.

¹⁶⁵ For the recognition of parenthood for the purposes of the rights derived from EU law, in particular on free movement, see box on V.M.A. case above.

¹⁶⁶ CJEU, C-673/16, *Relu Adrian Coman and Others v. Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* [GC], 5 June 2018.

3.5 Future evolution

Half of the ministry representatives¹⁶⁷ believe that the practical problems their Member State experiences in connection with the recognition of parenthood established abroad are likely to continue or to increase. This viewpoint was also reflected by more than half of respondents to the civil registrars' survey¹⁶⁸. More specifically, each problem is also expected to develop, as discussed below.

Research at national level similarly suggests that in the vast majority of Member States, the problems are expected to continue or increase, for a number of reasons:

- The increasing trend observed in the case of ART carried out abroad, especially within the Member States that have restrictive national provisions on surrogacy (12 Member States¹⁶⁹);
- A surge in the mobility of citizens (either immigration or emigration), increasing the number of situations where civil status documents are used across borders (five Member States¹⁷⁰);
- Restrictive national legislation affecting LGBTIQ people in particular (six Member States¹⁷¹).

Desk research confirmed the increasing number of mobile citizens (see Section 2.4) and it may therefore be assumed that the problems will persist and the number of affected people will increase without EU intervention. It is possible that the problems will begin to affect more individuals in the EU, as people tend to have children later and ART becomes increasingly necessary. In 2019, the mean age of women in the EU was 29.4 years in 2019, and it is gradually increasing to various degrees in different Member States (e.g. the most important increase of the mean year was one year, recorded in Estonia, and the smallest increase was 0.1 year in Slovakia)¹⁷².

Evidence suggests there are no other international policy initiatives that will address the problem holistically and for all affected people, with the possible exception of the project undertaken by the Hague Conference on Private International Law (HCCH) for a possible convention on legal parentage and a separate optional protocol on legal parentage established because of ISAs. The initial report of the Expert Group on the feasibility of further work in the area is due in 2023.

The European Parliament targeted adoptions in its latest 2017 resolution recommending European legislation to provide for the automatic cross-border recognition of domestic adoption orders¹⁷³. This resolution did not lead to a legal instrument.

At national level, several legislative proposals show Member States' concern about the need to regulate some of the issues:

- Austria – legal terminological amendments concerning parenthood are envisaged due to the opening of marriage to same-sex couples; a legislative action against the commercialisation of surrogacy is planned;

¹⁶⁷ Consultations with national ministries (13 out of 26 ministries).

¹⁶⁸ Survey of civil registrars (57 %, 8 responses out of 14 to Q.30: Do you expect that problems with the recognition of foreign documents on parenthood established in another EU Member State will continue or even increase?)

¹⁶⁹ AT, BG, CZ, DE, ES, FI, LT, NL, PL, RO, SE, SI.

¹⁷⁰ BE, FI, IT, PT, RO.

¹⁷¹ BG, CZ, LT, LV, PL, RO.

¹⁷² Eurostat, *Women in the EU are having their first child later, 2021*, available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20210224-1>

¹⁷³ Resolution of 2 February 2017 with recommendations to the Commission on cross-border aspects of adoptions, 2015/2086(INL), paragraph 23.

- Italy – a proposal for an amendment to existing legislation concerning the punishment for the offence of surrogacy committed abroad by an Italian citizen; a proposal for a national law regarding provisions combating reproductive tourism;
- Sweden – a government investigation resulted in the report, 'New rules regarding foreign parenthood and adoption in certain situations – the investigation on increased possibilities to make foreign parenthood applicable in Sweden (SOU 2021:56), which was published in June 2021 and is expected to result in several legislative changes;
- the Netherlands – an ongoing discussion on the topic of surrogacy and its recognition that may lead to a legislative changes in the future;
- Slovenia – a bill is seeking to amend existing legislation to address cases of birth registrations from abroad, especially from countries that allow surrogacy (e.g. Ukraine)¹⁷⁴.

Assuming that the current framework remains unchanged, citizens will continue to face the risk that their parenthood would not be recognised when crossing borders and will remain subject to constraints to their free movement right, or even be dissuaded from exercising those rights altogether.

National authorities are likely to continue to refuse to recognise civil status effects as long as the absence of minimum standards makes it difficult for them to evaluate the procedures that their counterparts in other Member States apply when establishing civil status events. The problem may increase in the coming years as the mobility of people grows¹⁷⁵ and more countries introduce new legal institutions, such as adoption by same-sex couples¹⁷⁶.

4 Why should the EU act?

Overcoming issues in the cross-border recognition of parenthood requires the EU to take action to ensure that Member States similarly and consistently recognise familial links established in other countries. Although **substantive family law falls within the exclusive competence of Member States**, shared competence exists in the area of freedom, security and justice, where the **Union is tasked by the Treaties to develop judicial cooperation in civil (including family) matters with cross-border implications**.

The EU could take legislative measures in the context of Title V TFEU, Chapter 3, on judicial cooperation in civil matters. In particular, a legislative initiative could be adopted **pursuant to Article 81(3) of the TFEU**, on measures concerning family law with cross-border implications. Such an initiative **could include the adoption of harmonised conflict rules and the adoption of common procedures** for the recognition of judgments issued in other Member States. Action at EU level could also be taken in the form of **non-regulatory instruments** (e.g. recommendation) or **combinations of instruments** to facilitate judicial cooperation on cross-border family matters.

Given the **intrinsic link between Member States' cultures and family law**, any measures concerning family law with cross-border implications can only be adopted in

¹⁷⁴ Resolution of 2 February 2017, with recommendations to the Commission on cross-border aspects of adoptions, 2015/2086(INL), paragraph 23.

¹⁷⁵ Eurostat: 'Who are the most mobile EU citizens.3F', available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_citizens_living_in_another_Member_State_-_statistical_overview#Who_are_the_most_mobile_EU_citizens.3F

¹⁷⁶ Matrix Insight, Study for an impact assessment on european initiatives on mutual recognition of the effects of civil status records, 2014, p. 11.

accordance with a **special legislative procedure** requiring the **unanimous agreement of the Council** after consulting the European Parliament.

The Union has already adopted several instruments on cross-border issues of family law that include common conflict rules and common rules on the recognition of judgments. Among these are the Brussels IIa Regulation and the Maintenance Regulation.

Considering **Article 3 of the TFEU**, any aspects related to family law would not be the subject of an area where the Union has exclusive competence, but, rather, a shared competence. Any EU action envisaged is thus bound to respect the **principles of subsidiarity and proportionality**.

Proportionality is about **matching the policy intervention** to the size and nature of the **identified problem and its EU dimension** in particular (i.e. limiting the action to what is necessary to achieve the objective both in terms of content and the right choice of policy instruments to achieve the desired policy objective). Subsidiarity means that the **Union should only act if**, and in so far as, the **objective of the action cannot be achieved sufficiently by the Member States** (at national, regional, and local level). From this perspective, the objectives of the initiative, by reasons of its scope and effects, would be better achieved at Union level, in accordance with the principle of subsidiarity. The proposal would also respect the principle of proportionality regardless of choice of instrument (whether non-binding or legislative) as it would not go beyond what is necessary to achieve the recognition of parenthood between Member States, as it would have a targeted scope focused on parenthood.

The **existing EU legislative instruments only address the legal effects deriving from parenthood**, such as parental responsibility, maintenance, or succession rights, while the existence and nature of the legal parent-child status is outside their scope. The establishment of parenthood and recognition of parenthood in other Member States is currently governed by national law of each Member State.

Member States' conflict of laws rules may diverge if they designate different laws to establish the parenthood of a child in cross-border situations. **Action at the national level would thus be insufficient** to resolve this kind of problem.

These differences result in significant problems for families that travel within the Union or take up residence in another Member State, as the parenthood of their children may not be recognised. Consequently, the **problem has a Union dimension**, as it may hinder or deter the free movement of persons across Member States. The problem could be effectively solved at EU or international level by laying down common conflict rules and common provisions on the recognition of judgments on parenthood.

An **EU initiative** in this area would **better address the current problems at EU level**, although the HCCH, as an international organisation, could also adopt rules with a global reach. Pursuant to a mandate from its members, the Permanent Bureau of the HCCH is studying the PIL issues encountered in relation to the legal parentage of children, as well as in relation to ISAs. However, the project is in its preparatory phase and may take some time before any binding instrument could be prepared, agreed by members, and widely ratified. An **EU intervention could more easily achieve a consensus among Member States over a legal instrument at EU level**. Among the main arguments supporting this are the **high level of mutual trust** between Member States, a **shared sociocultural framework**, and a higher level of comparability between the substantive family laws of Member States. Under ECtHR case-law, Member States are already obliged, in cases concerning the recognition of parenthood, to enable the continuation of private and family life that has already been established.

European family law rules should remove legal barriers (e.g. through mutual recognition) to provide **more legal certainty** and **enhanced cooperation** between national authorities. In order to facilitate free movement, Article 21 of the TFEU guarantees that 'every citizen of the Union shall have the right to move and reside freely within the territory of the Member States'. Although the Treaty does not make any explicit reference to the rights of the family of Union citizen, family members are included in Directive 2004/38/EC, which applies Article 21 of the TFEU. Today, Union citizens' family reunification rights when moving between Member States are also guaranteed by the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Accordingly, the aim of the initiative on the recognition of parenthood is to **harmonise Member States' rules and procedures, directly or indirectly, for the recognition of foreign judgments and civil status documents through the application of PIL** tools (i.e. rules on jurisdiction, conflict of laws and recognition of foreign judgments and authentic instruments). This is expected to make it easier for Member States to recognise judgments and documents on parenthood issued in another Member State. Such harmonisation should **reassure Member States** that **parenthood is established throughout** the whole of EU **in accordance** with appropriate **rules on jurisdiction and conflicts of laws rules that are acceptable to them.**

5 Objectives: what should be achieved?

On the basis of the problems identified (Section 3.1), the study team, in close consultation with DG JUST, formulated the overall, general and specific objectives for a possible EU action. These objectives link the problems and their drivers to the POs.

Figure 9 presents the intervention logic for a possible EU initiative supporting the recognition of parenthood across all Member States. It illustrates the links between the problems and the general and specific objectives of the envisaged POs.

The two specific problems outlined in the intervention logic summarise the key issues affecting children and their families that have emerged from the evidence informing this study. The first problem is that **parenthood can be recognised only after lengthy/costly/burdensome procedures**. The second problem, linked to the first, is that **these burdensome, long and costly procedures can still result in non-recognition of parenthood**.

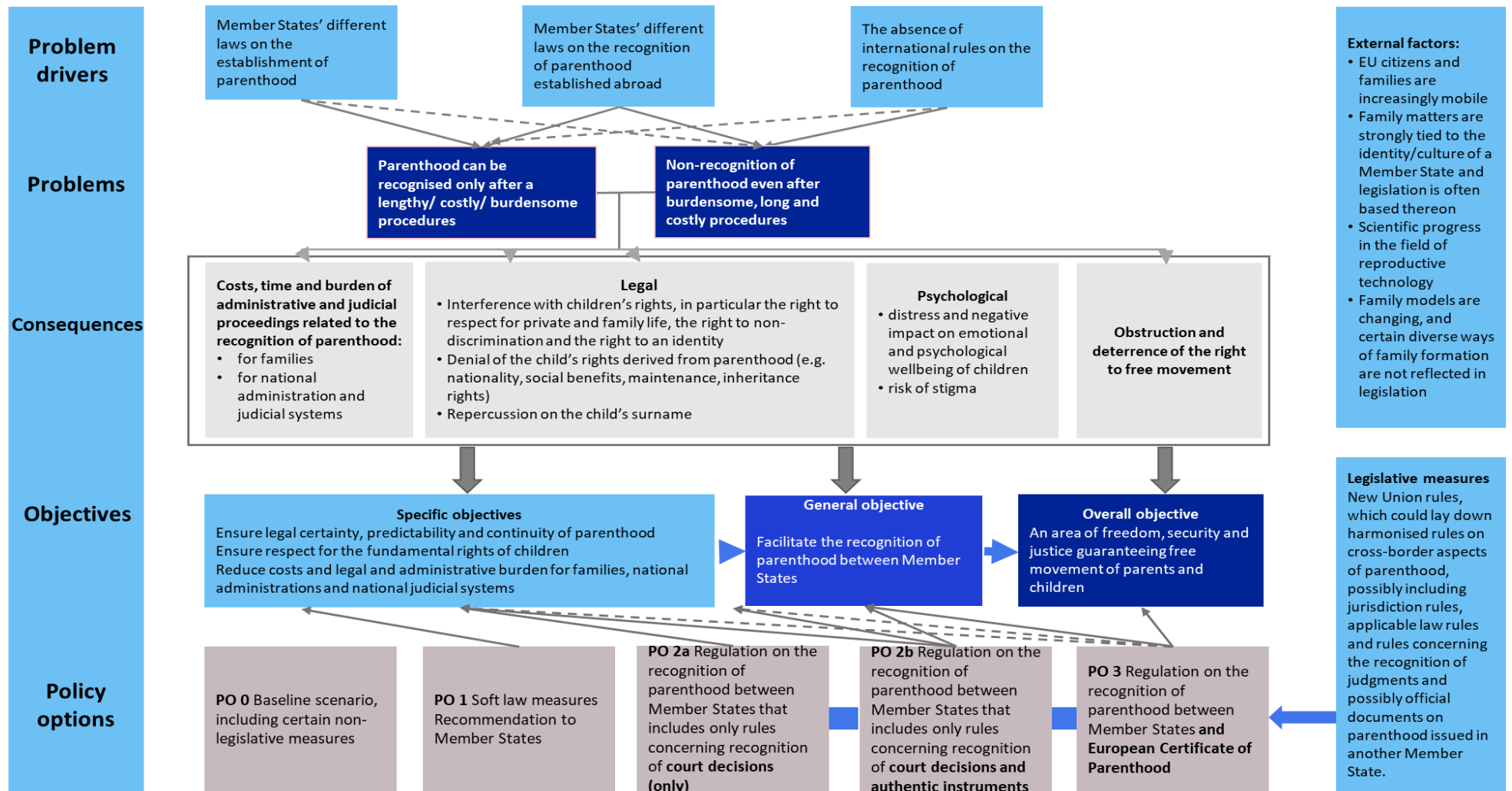
The problems that hamper the attainment of the EU's objectives can be traced back to several **regulatory drivers**, such as: a) Member States' different laws on the establishment of parenthood; b) Member States' different laws on the recognition of parenthood established abroad; and c) the absence of international rules on the recognition of parenthood. Regulatory problem drivers, **contextual factors** such as the increased mobility of EU citizens and their families, scientific progress in ART, or changing of family models, and strong ties between family matters and identity/culture of Member States are all factors in the development of these problems.

The intervention logic also presents the consequences of the problems highlighted by the evidence-gathering tasks of the study or the consequences expected if the problems remain unresolved.

These consequences are categorised as follows: i) consequences related to cost, time and burden of administrative proceedings; ii) psychological consequences; iii) legal consequences; and iv) consequences related to the obstruction and deterrence of the right to free movement.

Figure 8. Intervention logic

Study to support the preparation of an impact assessment on a possible Union legislative initiative on the recognition of parenthood between Member States



5.1 Objectives aimed at by the initiative

5.1.1 Overall objective

Based on the problem analysis and the gaps identified, and taking into account the role of the Commission within the overall EU's competence in the field of judicial cooperation in civil matters, the overall objective of the initiative is:

- To ***maintain and develop an area of freedom, security and justice*** in which the free movement of persons is ensured.

To achieve this overall objective enshrined in the EU Treaties¹⁷⁷, a more precise objective is to facilitate the recognition of parenthood.

5.1.2 General objective

The general policy objective aiming to address the two main problems analysed above is to:

- ***Facilitate the recognition of parenthood*** between Member States

In order to do this, it is essential to get to the root of the problem and eradicate the obstacles to the recognition of parenthood between Member States. Accordingly, three specific objectives have been identified, each responding to an obstacle to recognition (these three obstacles logically correspond to the consequences of the problems identified in Figures 2 and 9).

5.1.3 Specific objectives

The general objective is broken down into three specific objectives:

- Ensure ***legal certainty, predictability*** and ***continuity*** of parenthood;
- Ensure ***respect for the fundamental rights*** of children;
- Reduce ***costs*** and ***legal and administrative burden*** for families, national administrations and national judicial systems.

In line with the Treaties (i.e. the competence of the EU in the area of family law remains limited and restricted to (family law) matters with a cross-border element), any EU actions suggested would have Article 81(3) of the TFEU as their legal basis. Due care will need be taken in the POs not to impede on the competence of Member States in respect of substantive family law, including the definition of 'family' and the establishment of parenthood. All measures considered in Section 5.2 would apply to situations where parenthood has already been established in a Member State. The POs will cover parenthood concerning both minor children and adults. All methods to establish parenthood would be included, with the exception of parenthood established by means of inter-country adoptions, which is already regulated by the Hague Convention.

5.1.4 What is the baseline from which options are assessed?

Overview of existing policy and legal instruments related to parenthood and child protection

¹⁷⁷ Article 3(2) TEU, which attaches particular importance to the creation of an area of freedom, security and justice and mentions it even before that of establishing an internal market. Completed by Articles 67-89, Title V, TFEU.

The Union has already adopted a number of instruments on family law and succession that include **common conflict rules** and **common rules on the recognition of judgments, aimed at addressing cross-border issues related to certain aspects of family law**. Several other legal instruments and initiatives are also relevant to children and their family relationship. These are briefly summarised in Figure 10 and described in more detail (e.g. aim, scope, relevant provisions) in Annex 4.

Figure 9. Overview of existing legal instruments and policy documents

No.	Name of legal instrument/policy document
EU legal instruments	
1.	Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels IIa)
2.	Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (Brussels IIa recast)
3.	Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Maintenance Regulation)
4.	Regulation (EU) No 650/2012 of the European Parliament and of the Council 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 (Succession Regulation)
5.	Regulation (EU) 2016/1191 of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union (Regulation on Public Documents)
6.	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 (Free Movement Directive)
7.	EU treaties - Treaty on the Functioning of the European Union (TFEU), Charter of Fundamental Rights of the European Union (CFR), and Treaty on European Union (TEU)
International instruments	

- | | |
|-----|--|
| 8. | European Convention on Human Rights (ECHR) (Council of Europe) |
| 9. | UN Convention on the Rights of the Child (UNCRC) |
| 10. | European Convention on the Adoption of Children (Council of Europe) |
| 11. | Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (HCCH Adoption Convention) |

Policy documents

- | | |
|-----|---|
| 12. | EU LGBTIQ Equality Strategy 2020-2025 |
| 13. | 2021 EU Strategy on the Rights of the Child |
| 14. | Hague Conference on Private International Law (HCCH) - Parentage/Surrogacy Project |
| 15. | Work of the International Commission on Civil Status |
| 16. | Principles for the protection of the rights of the child born through surrogacy (Verona Principles) |

EU legal and policy context evolution in the case of no EU action

Certain aspects are approached differently at national level because **substantive family law is within Member States' competence**. For example, same-sex couples are absent from EU instruments, leaving it to Member States to decide if they are recognised as spouses, registered partners or other. The same is relevant for rules on how parenthood is established, the legal presumptions applied, international surrogacy agreements, and for certain adoptions with a cross-border element and their recognition across Member States. Nevertheless, in cross-border situations when parenthood needs to be recognised, the existing EU legal instruments fail to provide the necessary solutions that can mitigate the differences between national family laws. Consequently, families are faced with legal uncertainty, which can lead to costly legal proceedings, lack of recognition of a child's rights, and, ultimately, obstacles to freedom of movement of families. This fragmented legislative landscape highlights the **existence of a gap in the EU legislation** that could harmonise rules on cross-border cases.

Each of the **EU legal instruments** in place tackles specific legal effects that are derived from parenthood (e.g. maintenance rights, succession, parental responsibility), yet none actually address the cross-border recognition of parenthood itself. This gap is caused by the fact that these legislative instruments only address some of the legal effects deriving from marriage, parenthood and other family relationships, while the nature of the relationships is kept outside their scope¹⁷⁸. Not all existing EU instruments address the nature of parenthood, thus **maintaining the status quo would not address the current problems** with recognition across borders.

. In terms of the EU's wider policy objectives, and particularly the impacts on these, the absence of international rules on the recognition of parenthood will only perpetuate the current problems and risk affecting more people. The Commission would continue its efforts to ensure that parenthood is recognised in all Member States in line with the objectives set in the EU Strategy on the Rights of the Child and the LGBTIQ Equality Strategy 2020-2025. However, without a horizontal legislative initiative focused on parenthood, this would significantly limit the progress made on these objectives, and most of the problems identified would continue to affect children.

Maintaining the status quo through **other international instruments** is similarly unlikely to bring improvements in the near future. Firstly, the work of the HCCH Expert Group in developing an instrument on legal parentage and a separate protocol on legal parentage established as a result of ISAs could take many years before any binding instrument can be prepared, agreed and widely ratified. Meanwhile, problems for families resorting to surrogacy are expected to increase. Secondly, although the instruments developed by the International Commission on Civil Status (CIEC) encourage and promote good practices among civil registrars, not all are binding instruments and therefore applied only by certain Member States. Maintaining the status quo would therefore bring limited progress on the issues related to the cross-border recognition of civil status documents establishing parenthood and perpetuate an uneven approach across Member States.

The European Convention on the Adoption of Children does not eliminate the existing issues, as some families may face significant uncertainty when moving to another Member State. For instance, automatic recognition of an adoption order made in

¹⁷⁸ Article 1(3)(a) of the Brussels IIa Regulation, Article 22 of the Maintenance Regulation, and Article 1(2)(a) of the Succession Regulation all clearly state this.

another Member State is not applied everywhere¹⁷⁹, and where it is applied it does not necessarily confer the same rights¹⁸⁰. Non-recognition of adoptions can create obstacles for adoptees in claiming nationality of either or both of their adoptive parents, or exercising the rights deriving from their family ties. Similarly, even though the HCCH Adoption Convention improves the recognition of adoptions across borders, it does not cover all possible adoption scenarios occurring in practice and leaves a sensitive gap (e.g. domestic adoptions with an international element, adoptions by unmarried couples or in registered partnerships). **Maintaining the status quo would allow for these gaps to persist and the problems identified would pose the same risks to children's rights.**

Impact on fundamental rights in the case of no EU action

The problems identified (see Section 0) have a wide range of implications for the rights of children enshrined in EU and international human rights instruments (Table 10). Primarily, non-recognition of the parenthood of a child interferes with the child's rights, in particular the **right to respect for private and family life, the right to birth registration, the right to an identity, and the right to non-discrimination, as well as their freedom of movement.**

If the host Member State does not legally recognise the familial ties already enjoyed by the members of a family moving to its territory from another Member State, such failure could amount to violations of Article 7 of the CFR, as well as Article 8 of the ECHR, as it constitutes **a breach of the parents' and child's right to their private and family life.** The ECtHR has clarified in numerous judgments that Article 8 of the ECHR is breached where there is *de facto* family life and the host State refuses to recognise the legal status of those family ties as formally established in the country of origin. In the EU context, the failure of the host Member State to legally recognise the family ties between children and one or both parents can breach the child's right to private life and the child's and the parents' right to family life, which are protected as a general principle of EU law, as well as under Article 7 of the CFR. For example, as the practice of ISAs is developing, this is raising a number of issues of fundamental rights, including the determination/recognition of parenthood, the civil status of the child, the child's nationality, or the right to family life. For instance, the cases of *Mennesson v. France*¹⁸¹ and *Labassee v. France*¹⁸² concerned the refusal to grant legal recognition in France to parent-child relationships legally established in the US between children born as a result of surrogacy treatment and the couples who had had the treatment. In both cases, the Court held that there had been a violation of Article 8 of the ECHR concerning the children's right to respect for their private life¹⁸³. As long as national laws continue to distinguish between certain legal effects of parenthood for families moving across borders, **maintaining the status quo would not address the problems these families face, and their incidence may be expected to grow as a result of the increased mobility of EU citizens.**

The **best interest of the child** is the primary consideration of all measures envisaged under the POs assessed by this study, in accordance with Article 24 of the CFR and the UNCRC, as implemented by national laws and procedures. Although national courts can invoke the best interest of the child to take certain measures to protect children affected by legal proceedings in relation to the recognition of parenthood, this

¹⁷⁹ BE, ES, PT do not automatically recognise such adoption orders (Waldijk et al., 2017).

¹⁸⁰ France, for instance, does not automatically grant nationality to the adopted child/ren (Waldijk et al., 2017)

¹⁸¹ *Mennesson v. France* (2014), application no. 65192/11.

¹⁸² *Labassee v. France* (2014), application no. 65941/11.

¹⁸³ Registrar of the ECtHR 185, Press release, 2014, available at:

<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4804617-5854908&filename=003-4804617-5854908.pdf>

principle alone does not effectively address the issues occurring in practice. The best interest of the child is applied subjectively by courts, depending on the particular circumstances of a case, and therefore does not ensure a coherent and consistent approach between countries or across the EU. **Maintaining the status quo does not address the problems encountered strictly within administrative procedures and the issue of legal uncertainty surrounding the recognition of parenthood procedures in general.**

The prohibition on discrimination is enshrined in Article 21 of the CFR and the authorities of EU countries are bound to comply with the CFR when implementing EU law. The prohibition is also enshrined in Article 14 of the ECHR, and Member States uphold the principle of non-discrimination through their constitutional provisions and national legislation. In the context of parenthood recognition, **non-discrimination** implies that Member States must ensure that the recognition of civil status documents establishing parenthood is not undermined by discrimination of any kind, including on the basis of the child's – or the parents' – race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, birth or other status. When LGBTIQ parents cannot be legally recognised as parents, their children are left in precarious positions when they need to exercise certain rights that depend on their legal relationship to their parents (e.g. inheritance rights, maintenance rights). In the V.M.A. ruling, the CJEU seemed to acknowledge that when the children of same-sex couples are denied rights that are granted to children of different-sex parents, this amounts to discrimination on the ground of sexual orientation by association¹⁸⁴.

As long as national laws continue to distinguish between certain legal effects of parenthood within rainbow families, **maintaining the status quo would not address the risk of discrimination posed for children of these families.**

Birth registration is a fundamental right, recognised by Article 24, paragraph 2, of the International Covenant on Civil and Political Rights (ICCPR) and Article 7 of the UNCRC. It establishes the existence of a person under law, their nationality, and lays the foundation for safeguarding civil, political, economic, social and cultural rights. As such, it is a fundamental means of protecting the human rights of the individual¹⁸⁵. A large proportion of the responses to the PC (52 %) showed that in circumstances where parenthood was not recognised, the issuance of the documentation necessary for a child to prove their nationality was one of the main rights denied.

Families may face hurdles in obtaining the documentation necessary for the child to prove a Member State nationality or to receive identity and travel documents from that Member State. Ultimately, the lack of recognition of the parenthood of a child for all purposes may lead to the **obstruction or deterrence of the right to free movement of the child** with their family. Within the PC, 44 % of respondents indicated that when parenthood was not recognised, this was followed by a denial of the parental rights to travel alone with a child or to authorise a child to travel alone, 36 % indicated that non-recognition was followed by a denial of the child's right to be issued a passport or identity card, and 23 % of respondents indicated that residence rights were refused¹⁸⁶. As a result, 44 % of respondents to the PC reported that the possible non-recognition of parenthood had dissuaded families from travelling with their child or moving with their child to another Member State¹⁸⁷. The CJEU has issued several judgments, in particular the V.M.A. case in December 2021, that have brought very important and useful clarifications on the recognition of parenthood of an EU

¹⁸⁴ Tryfonidou, A., *The cross-border recognition of the parent-child relationship in rainbow families under EU law: a critical view of the ECJ's V.M.A. ruling*, 2021, available at: <https://europeanlawblog.eu/2021/12/21/the-cross-border-recognition-of-the-parent-child-relationship-in-rainbow-families-under-eu-law-a-critical-view-of-the-ecjs-v-m-a-ruling/>

¹⁸⁵ Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR), *Birth registration and the right of everyone to recognition everywhere as a person before the law*, 2014.

¹⁸⁶ OPC Summary Report, responses to Q.7.

¹⁸⁷ OPC Summary Report, responses to Q.8.

citizen child for the purposes of some rights, particularly free movement. The judgment in *V.M.A.* established that the non-recognition of the parent-child relationship in situations involving the exercise of EU free movement rights can amount to a breach of fundamental rights protected under the CFR and the UNCRC, and that Member States must recognise the parent-child relationship, including for the purpose of permitting the child to exercise their free movement rights. With this new interpretation from the Court, some of these negative consequences to the free movement of children will decrease.

Adoption cases are sensitive family matters. Domestic adoptions are not covered by the Hague Convention and are subject to national law, meaning that there is no guarantee – for the child or the adopter – that the status of adoption and the legal consequences thereof will be recognised if the family exercises the right to free movement within the EU¹⁸⁸. **Maintaining the status quo would not address the problems that families currently face when they exercise their freedom of movement, and their incidence could be expected to grow as a result of the increased mobility of EU citizens.**

Social impact evolution in case of no EU action

The non-recognition of parenthood could have a psychological dimension, as children (and their families) faced with parenthood recognition problems are likely to go through long legal procedures that could potentially cause them distress and have a negative impact on their emotional and psychological well-being.

The non-recognition of parenthood can also exert longer-term impacts on children. It is often the case that the procedures for recognition of parenthood are burdensome, lengthy, and costly, with the rights and obligations of children and parents suspended for their duration. Taking into account the challenges that parents face, such as difficulties in exercising their parental responsibility, encountering financial difficulties through fees, and being involved in lengthy procedures, there is a higher possibility of children being placed at increased risk of poverty, dropping out of school and growing up with absent parents. Separation from their parents, even temporarily, can have negative effects on children's overall well-being. Studies have found that children who do not live with both biological parents fare somewhat worse in terms of psychological well-being, health and schooling¹⁸⁹. **Maintaining the status quo would not address the problem, as EU action is required to tackle the challenges.** Without EU action, the number of children and families affected by non-recognition of parenthood or lengthy/ costly/ burdensome procedures related to parenthood recognition is expected to grow, based on extrapolations using Eurostat statistics.

5.2 What are the retained POs to achieve the objectives?

This section presents the POs retained for further in-depth assessment.

¹⁸⁸ European Parliament, *Cross-border recognition of adoptions*, 2016.

¹⁸⁹ Härkönen, J., Bernardi, F. and Boertien, D., *Family dynamics and child outcomes: an overview of research and open questions*, 2017.

Table 3. Retained POs and related measures

POs and measures	Summary of policy measures
PO 0 – Status quo (e.g. baseline scenario, including certain non-legislative measures, available under the current policy instruments)	
0.1. Promote cooperation between national authorities	<p>0.1.1. Encourage and promote good practices among judges and national authorities through European Judicial Network (EJN) meetings</p> <p>0.1.2. Organise thematic meetings with national authorities to raise awareness</p>
0.2. Promote the implementation of existing EU strategies	0.2.1. Continue efforts in line with the 2021 European Commission Strategy on the Rights of the Child and the LGBTIQ Equality Strategy 2020-2025
0.3. Clarify aspects of the existing rules on recognition of parenthood and contribute to international legislative initiatives	<p>0.3.1. CJEU to continue to clarify aspects of the existing rules and provide a harmonising influence</p> <p>0.3.2. Through the HCCH, continue to explore the possibility of adopting a convention on legal parentage and a separate optional protocol on legal parentage established as a result of ISAs</p>
PO 1 – Soft law measure – Recommendation to Member States	
1.1. Issue recommendation to encourage Member States to adopt measures on procedures for recognition of parenthood	1.1.1. Suggest non-binding measures to Member States to promote consistency in Member States’ procedures for the recognition of parenthood and thus provide practical solutions to citizens where possible
1.2. Promote cooperation between national authorities	<p><i>As under PO 0.1:</i></p> <p>1.2.1. Encourage and promote good practices among judges and national authorities through EJN meetings</p> <p>1.2.2. Organise thematic meetings with national authorities to raise awareness</p>
PO 2 – Legislative measure – Regulation on the recognition of parenthood between Member States that includes only rules concerning recognition of court decisions OR both court decisions and authentic instruments	
PO 2a. Recognition of court decisions on parenthood taken in other Member States	<p>2a.1. A regulation laying down common rules on the recognition of parenthood in court decisions between Member States with the aim of facilitating the exercise of free movement rights of children with their families, while respecting Member States’ competence in substantive family law, including on the definition of family and the establishment of parenthood</p> <p>2a.2. Certain provisions on cooperation between national competent authorities</p>

PO 2b. Recognition of authentic instruments and court decisions on parenthood issued in other Member States

2b.1. A regulation laying down common rules on the recognition of parenthood **in authentic instruments and court decisions** between Member States with the aim of facilitating the exercise of free movement rights of children with their families, while respecting Member States' competence in substantive family law, including on the definition of family and the establishment of parenthood

2b.2. Certain provisions on cooperation between national competent authorities

PO 3 – Legislative measure (best option under PO2) + European Certificate of Parenthood (ECP)

3. Preferred alternative in PO 2 **PLUS** a **European Certificate of Parenthood (ECP)**

3.1. Creation of an **ECP** issued by national authorities pursuant to EU law, i.e. in accordance with the conditions and procedures laid down in the planned instrument on the recognition of parenthood

3.2. A legislative act laying down **common rules for the preferred alternative under PO 2**, i.e. concerning either the recognition of court decisions (PO 2a) or the recognition of court decisions and authentic instruments (PO 2b)

5.2.1 PO 0 – Status quo

The status quo describes how the current conditions would evolve without EU action (see Section 5.1.4).

This PO implies the **continuation of the current situation** as per the current policy instruments. Regardless of the measures suggested, it implies the need for the European Commission to encourage/continue its efforts in ensuring that parenthood is recognised in all Member States in line with the objectives set in the 2021 European Commission Strategy on the Rights of the Child and the LGBTIQ Equality Strategy 2020-2025. While major changes are not expected, the status quo could nevertheless involve the continuation of policy measures within the existing policy framework, such as:

- **Promoting cooperation between national authorities** through an exchange of information and best practices between judges, civil registrars and notaries in order to achieve a common understanding and analysis of the problems. This could be done through the **EJN**;
- **Organising thematic meetings with national authorities and experts** to gain a deeper understanding and specialist expertise, raise awareness about the existing problems, and training on their alleviation. For instance, in January 2021, the European Commission held a meeting with Member States' national authorities to discuss existing problems with the recognition of parenthood between Member States.

Irrespective of the perceived desirability of any other policy options, the majority of the respondents to the PC agreed that the Commission takes measures to support cooperation between national authorities or organises dedicated meetings¹⁹⁰. Competent authorities in Member States could cooperate and communicate more regularly and effectively.

The EJN gathers together judges, national authorities and notaries from Member States several times a year to discuss the application of EU legislation and/or issues in the area of civil justice. The European Commission could encourage the EJN to include recognition of parenthood in its future meetings to foster specific discussions on the problems and related best practices. Awareness about the problems and possible solutions would increase, while simultaneously creating better links among the competent authorities. The national authorities responsible for registration of parenthood could also be invited to the meetings or separate meetings could be convened.

In addition to these suggested measures, and since several requests for preliminary rulings were already submitted to the CJEU (e.g. C-490/20 *V.M.A.*; C-2/21 *K.S.*, see Section 3.4.3 for more detail on the *V.M.A.* outcome), **more requests for preliminary CJEU rulings are anticipated**. If required, the CJEU could continue to shed light on cross-border recognition of parenthood and the ensuing legal effects (e.g. consenting to medical treatment for a child, nationality, obtaining travel documents, family allowances). For instance, it is expected that the interpretation of the right to lead a normal family life will be further developed by the CJEU.

Finally, this PO also considers the possible continuity of the HCCH's ongoing work **on the possibility of adopting a convention on legal parentage** and a separate optional protocol on legal parentage established as a result of ISAs.

In view of the relevant European strategies (e.g. those related to the rights of the child and LGBTIQ), and as national authorities are prompted to discuss and exchange

¹⁹⁰ A majority of respondents (54 %, 207 responses) indicated that the Union should play a role in promoting cooperation between national authorities to facilitate the recognition of parenthood between Member States by organising thematic meetings in the framework of the EJN.

information, it seems likely that **the status quo will trigger a slight improvement** on the current situation. The outcome of the HCCH may also lead to long-term improvements if the instruments are adopted and ratified by a sufficient number of countries, although this cannot be expected in the short term. The clarifications brought by the CJEU, finally, are also expected to bring legal clarity in the longer term.

5.2.2 PO 1 – Non-legislative measures in the form of a recommendation

This PO will examine whether the current problems relating to the recognition of parenthood between Member States could be effectively resolved through the adoption of a soft law instrument. It therefore envisages non-binding measures, in the form of a Recommendation to Member States.

The Recommendation would not concern substantive law but only PIL in respect of parenthood, in line with the division of competence between the EU and the Member States.

This Recommendation would encourage Member States to adopt national rules on the law applicable to parenthood with a cross-border element proposed by the Commission, and would also suggest measures to harmonise Member States' rules on the recognition of parenthood.

As envisioned under PO 1 (status quo), existing initiatives on cooperation and exchange between national authorities would be repeated here. The European Commission could encourage the EJM to organise thematic meetings and exchanges or simply introduce the subject matter in future discussions.

The measures included in the Recommendation would not be (directly) binding throughout the EU, but, rather, at Member States' discretion. Although not binding, the recommendation would allow for greater coherence between national procedures on the recognition of parenthood, thus providing practical solutions for the citizens concerned.

However, Member States would not be legally required to align their national laws and the recognition of parenthood established in another Member State, and the general uptake of the Recommendation is expected to be limited. This has been shown in previous recommendations to Member States in the area of civil justice.¹⁹¹

Based on past experience and the limited incentives for Member States to align their national law on the basis of the Commission's recommendation, it is expected that the Recommendation would not be followed by most Member States. This PO would therefore be unlikely to achieve the desired improvement in recognition of parenthood between Member States.

5.2.3 PO 2 Legislative measure– Regulation on the recognition of parenthood between Member States including only rules concerning recognition of court decisions OR both court decisions and authentic instruments

The second legislative option envisages the adoption of binding measures (in the form of a regulation), including two alternative sub-options:

- **PO 2a** consists of the enactment of a legislative measure on the recognition of court decisions only on parenthood in other Member States; and
- **PO 2b** envisages the adoption of a legislative measure on the recognition of court decisions **and** authentic instruments on parenthood in other Member States.

¹⁹¹ Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency (2014/135/EU).

Parenthood is enshrined and recorded in documents with evidential value (e.g. most birth certificates) and constitutive value (e.g. judgments). Prior to being recognised, parenthood is established either:

- **without any action** required from the family because the parent-child relationship is established automatically (or 'by operation of law'), in some circumstances, as per national substantive law¹⁹²; or
- **by competent authorities through a judicial procedure**, leading to a court decision establishing the parent-child relationship¹⁹³, or administrative procedure (e.g. acknowledgment of legal parenthood)¹⁹⁴.

The legislative proposal should **ideally cover conflict of law rules, rules on jurisdiction and recognition** of parenthood, especially in view of the variety of national legislation. More specifically, 79 % (11 responses)¹⁹⁵ of civil registry authorities declared that they perform a validity test¹⁹⁶, while fewer Member States (43 %, six responses)¹⁹⁷ conduct a substantive law test¹⁹⁸, and in both contexts, parenthood established abroad can be questioned in another Member State and recognition of that parenthood can be refused.

Prior to developing the legal instrument, the Commission may have to carry out a legal analysis of the suitable **connecting factors for conflict of law rules and jurisdiction rules**. Based on the preliminary analysis, the law of the child's habitual residence seems adequate as a connecting factor, as the competent authority is highly likely to apply its own law, it is the law most relevant to the child and family, and discrimination will be prevented for those who are resident in a Member State without holding that nationality of that State¹⁹⁹. Notably, most Member States have the

¹⁹² Families are not to complete actions to establish parenthood; however, in most Member States, some action is necessary to create proof of the fact/legal relationship leading to the establishment of parenthood (e.g. childbirth, registered partner or husband of the mother who gave birth to the child). For instance, motherhood is established by operation of law in AT when the birth takes place, meaning that a biological link between mother and child may occur but is not necessary, for instance when the child is a result of donated gametes and ART (section 143 of the General Civil Code, *Allgemeines Bürgerliches Gesetzbuch*).

¹⁹³ In FR, a court decision must establish parenthood for adoptions. In very specific situations and in a minority of Member States, parenthood can be established through court settlement, which leads to a judgment. In LT (based on Article 3.140(5) of the Lithuanian Civil Code, *civilinis kodeksas*), when a child is born to divorced parents, within the period of 300 days after the divorce, the child's mother, her former spouse, and the man recognising himself as the father of the child are entitled to file a joint application with a court, asking to record the man recognising himself as the father of the child on the child's birth certificate, instead of the former spouse.

¹⁹⁴ In DE, paternity can be established by way of acknowledgment of the parent-child relationship by a man (§ 1592 (2) of the German Civil Code, *Bürgerliches Gesetzbuch*), which will result in a notarial deed. In SE, paternity or parenthood (for a female partner) must be confirmed if it is not automatically established and approved by the Social Welfare Committee (*Föräldrådet*, Chapter 1, Section 4). In LU, parenthood can be established by declaration to a registrar at birth (Article 319 Civil Code), by declaration to a notary or another authority, such as a registrar (Article 334 §1 Civil Code), or by declaration in court (Article 334, §2 Civil Code), and it is established by an authentic instrument in most cases.

¹⁹⁵ Civil registrars survey, Q.19: *Which control mechanisms are applied in your Member State before recognising a foreign document on parenthood established in another Member State?*

¹⁹⁶ That is, when parenthood indicated on the foreign document is recognised if the document is valid under the law of the Member State of issuance.

¹⁹⁷ Civil registrars survey, Q.19: *Which control mechanisms are applied in your Member State before recognising a foreign document on parenthood established in another Member State?*

¹⁹⁸ That is, when the parenthood indicated in the foreign document is recognised if it is the same as the parenthood that would result from applying the substantive law of the Member State.

¹⁹⁹ The CJEU already observed that nationality is not a stable connecting factor to determine the applicable law (C-353/06 *Stefan Grunkin and Dorothee Regina Paul*, ECLI:EU:C:2008:559, paragraph 32), and an additional difficulty is that parenthood might determine the nationality of the child. As births must be recorded within a short time-span, the place of birth of a child as a connecting factor would increase efficiency as national authorities have knowledge of the law they apply, yet a place of birth may not always represent the closest tie to the child (i.e. a birth can accidentally occur abroad).

nationality of the child or both parents, and/or the habitual residence of the child or parent(s) as a connecting factor²⁰⁰.

5.2.3.1 Sub-option PO 2a – Regulation on the recognition of parenthood between Member States on rules concerning recognition of court decisions

Under **PO 2a**, the Commission would draft a **legislative proposal** in the form of a **regulation** for the recognition of parenthood between Member States, covering **only recognition of court decisions** establishing parenthood. Court decisions establish parenthood in a minority of cases: the proportion of cases of parenthood established by court decision is estimated at less than 1 % in the EU. This occurs in a variety of contentious²⁰¹ and non-contentious situations²⁰². Including court decisions only would exclude most cases of establishment of parenthood from the scope of the instrument. Nevertheless, this legislative initiative would target a variety of national competent authorities, such as administrative, and judicial bodies.

A legal analysis of **mutual recognition of parenthood** may also be required in order to determine how this may best be shaped. The Commission could consider including recognition of parenthood on the basis of the **principle of mutual trust**, and as a consequence, the **least possible grounds for non-recognition** in line with the EU acquis. Particular care could be given to assess the most favourable approach for the protection of the rights of the child²⁰³. The ministries consulted argued that the **best interests of the child should be examined from various angles**²⁰⁴ (e.g. the child's views; preservation of the family environment and of the parent-child relationship; care, protection, and safety of the child).

5.2.3.2 Sub-option PO 2b – Regulation on the recognition of parenthood between Member States on rules concerning recognition of court decisions and authentic instruments

Similarly to PO 2a, this PO would entail the Commission to draft a **legislative proposal** covering not only the **same content as under PO 2a**, but also rules on the **recognition of authentic instruments**. While court decisions establish parenthood in a minority of cases, authentic instruments usually have an evidential effect with regard to already established parenthood.

²⁰⁰ See Annex 4 – Legal comparative analysis, Section A2.1.1.3.; written questionnaires for ministries, nationality of the child as a connecting factor (59 %, 13 out of 22 responses), nationality of one or both parents as a connecting factor (50 %, 11 out of 22 responses), habitual residence of the child as a connecting factor (41 %, 9 out of 22 responses), and habitual residence of the parent(s) as a connecting factor (32 %, 7 out of 22 responses); Survey of civil registrars: the law of the nationality of the child (57 %, 8 responses out of 14), the law of the nationality of both parents (50 %, 7 responses out of 14), the law of the habitual residence of the child (43 %, 6 responses out of 14), the nationality of one of the parents (36 %, 5 responses out of 14), the law of the habitual residence of one or both of the parents (29 %, 4 responses out of 14; and 21 %, 3 responses out of 14, respectively);

²⁰¹ For example, acknowledgment of paternity and when parenthood is contested.

²⁰² For example, adoptions, surrogacy.

²⁰³ See Case C-491/10 *Zarraga v. Simone Pelz*, ECLI:EU:C:2010:828, paragraphs 46, 70 to 75. The German Court of Appeal asked the CJEU whether they could oppose the enforcement of a judgment issued by the Spanish court because the hearing of the child did not actually take place. The CJEU held that recognition and enforcement of the Spanish judgment could not be opposed because respective national legal systems are capable of providing an equivalent and effective protection of fundamental rights, in line with the principle of mutual trust. It also noted that appeal proceedings were still ongoing in Spain. The CJEU explained that the Spanish judgment ordering the return of a child who has been wrongfully removed, on the ground that the Spanish courts may have infringed EU law (Article 24 CFR), was to be assessed by the Spanish courts.

²⁰⁴ Written questionnaires for ministries: 23 %, 5 out of 22 responses.

Evidentiary effect means that the **holder of an authentic instrument can rely on a legal presumption** that the facts certified and verified by the issuing authority actually took place as the instrument indicates. According to the research for this study, an estimated 99 % of all parenthood cases are attested by authentic instruments.

The EU acquis related to family law defines authentic instruments as documents that have been formally drawn up or registered as authentic instruments in a Member State and the authenticity of which: (i) relates to the signature and the content of the authentic instrument; and (ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin²⁰⁵.

5.2.4 PO 3 Legislative option – Regulation in the form chosen under PO 2, and accompanied by a European Certificate on Parenthood (ECP)

PO 3 will include PO 2 (either PO 2a or PO 2b) and introduce a **European Certificate on Parenthood (ECP)**.

As currently envisioned, the ECP would be issued by national authorities in accordance with Union law, **in line with conditions and procedures that would be laid down in the Regulation** on the recognition of parenthood. National authorities would only be required to issue an ECP if requested by a citizen. The ECP would therefore constitute an **optional document** and **would not replace national certificates** of parenthood issued pursuant to national law. In line with Member States' competence in this area, parenthood would continue to be established in accordance with national substantive law, while the ECP would only serve as proof of parentage established in a Member State.

This initiative was strongly supported by a majority of respondents to the PC (57 %, 215 responses), as well by respondents to the online survey (civil registrars from Member States) and national ministries²⁰⁶.

To facilitate its use and circulation in the EU, and in line with similar EU certificates (e.g. European Certificate of Succession), a **uniform model certificate** could be adopted and competent national authorities appointed.

The PO may also include provisions to minimise the **risk of forgery of the ECP**.

The ECP would contain information similar to that included in national birth certificates (date and place of birth of the child, name, sex/gender of the child, name of parent(s)²⁰⁷, date of registration, date of issuance of the certificate, issuing authority). DG JUST could assess the balance needed between the interests of all parties concerned. In order to promote the protection of children and minimise any risk of misuse of the ECP, as well as for reasons of security and confidentiality, the United Nations Children's Fund (UNICEF) recommends that the information recorded in such certificates be kept to a minimum²⁰⁸. Nevertheless, all of the information necessary for a comprehensive overview of the child's identity should be compulsory, in order to guarantee the best interests of the child.

²⁰⁵ See, for instance, Article 2(1)(i) of the Succession Regulation (650/2012).

²⁰⁶ More than half of the civil registries (57 %, 8 respondents) agreed that the ECP would be useful. More than half of the ministries (73 %, 16 ministries) answered that the ECP would facilitate the recognition of parenthood between Member States.

²⁰⁷ One stakeholder (Judiciary – interviews – PL (17 February 2022) suggested that the ECP would lead to most positive impacts if the gender of the parents was not explicitly mentioned, but solely 'parent 1' and 'parent 2'.

²⁰⁸ UNICEF, *A passport to protection. A guide to birth registration programming*, 2013.

6 Impacts of the POs

6.1 Assessment of the expected impact of each PO

This section assesses the impacts of **one non-legislative option** (PO 1) and **two legislative options** (PO 2 [sub-divided into PO 2a and PO 2b] and PO 3), as described in Section 5.

The assessment is based on three evaluation criteria, covering the **effectiveness** of the POs envisioned (including their impacts on fundamental rights and social impacts), their **efficiency** and **coherence**.

Each PO is assessed individually on its own merits. However, as PO 2a or PO 2b is included in PO 3, the 'additional' effects of the added PO will be assessed, i.e. focusing on the differences in impacts between the two POs.

Where applicable, the measures comprising the POs are listed at the beginning of the assessment of each PO.

6.1.1 Baseline for analysis of the impacts of the policy options

In the absence of legislative action in this domain, the problems identified will continue to evolve based on the demographic dynamics of the EU population. The number of cases of cross-border recognition of parenthood are expected to grow in the next decade, as a result of:

Increases in EU mobility (expected to regain 2007-2015 levels, before Brexit and the COVID-19 pandemic);

Progressive ageing of the EU population²⁰⁹;

Decreases in the number of households with children²¹⁰;

Continued decreases in the number of adoptions, albeit at a lower rate than in the previous decade;

Increases in the use of ART and surrogacy by different-sex and same-sex households, and by individuals.

The combination of the demographic factors and the existing legislative framework allows for an estimation of a likely scenario in respect of the annual number of cross-border cases of recognition of parenthood in the coming decade.

Overall, it is estimated that, within a decade, there will be approximately 1.23 million mobile cross-border households with dependent children. Of these, approximately 18 500-37 000 will be same-sex households and 1.19-1.2 million different-sex households. These households may be affected by the problem of non-recognition of parenthood in cross-border contexts and thus impacted by the POs considered. Such cases will affect approximately 1.1 % of the total EU population on a yearly basis, of which 0.5-0.6 % are children. While it is expected that the number of same-sex households (and related children) will increase over time, they are likely to remain a limited share of the total. While the number of marriages and officially registered partnerships is declining in many Member States, they are likely to continue to represent the vast majority of cross-border households requesting recognition of parenthood. Cases of joint adoptions by same-sex households, while still rare, are likely to be contentious in some Member States, where adoptions by same-sex couples

²⁰⁹ Eurostat, EUROPOP2019 - Population projections at national level (2019-2100), Population on 1 January by age, sex and type of projection, available at: https://ec.europa.eu/eurostat/databrowser/view/proj_19np/default/table?lang=en

²¹⁰ Ibid.

are not allowed, and thus likely to require longer and more complex procedures. Similar considerations may apply to adoptions by single individuals. Finally, even recognition of parenthood of children in same-sex (married or in legally registered partnerships) households can be contentious in those Member States where it is not allowed. When allowed, it is possible that households will face longer procedures, requiring legal representation, more supporting documentation and fees, due to differences in legal procedures (e.g. differences in national forms to be reconciled).

The persisting difficulties in recognition of parenthood will generate costs for all actors involved, namely households, national administrations and the judiciary.

Table 4. Estimated costs for cross-border recognition of parenthood (EUR million)

Estimated costs for	Annual average		Over 10 years	
	Lower bound	Upper bound	Lower bound	Upper bound
- Households	671	1 645	5 139	12 611
- National administrations and judiciary	734	1 221	5 623	9 358
Total	1 404	2 866	10 762	21 969

Source: elaboration from multiple sources, see Annex 6 for details.

Households incur costs for recognition of parenthood both in cases of authentic instruments and court proceedings.

In the case of **authentic instruments**, the most common costs include:

- Any administrative fee: overall, about half of the Member States have administrative fees, of varying amounts (most are between EUR 20 and 50, and never above EUR 150);
- Other costs, such as translation of documents, further supporting documentation, etc.;
- Costs related to transposition of foreign documents in the Member States where the request for recognition of parenthood is requested (e.g. notary act);
- Legal representation, necessitated by the length and complexity of the procedure;

Based on these parameters, the average cost for households of procedures involving authentic instruments ranges between EUR 458 and EUR 838.

In the case of **court proceedings**, the most common costs incurred by households include:

- Any court fee: overall, most Member States have court fees, of varying amounts, rarely above EUR 250;
- Other costs, such as translations, proofs and opinions (e.g. DNA tests);
- Legal representation, which will be needed in most if not all cases (instead of a limited share as in the case of authentic instruments);

Based on these parameters, the average cost for households of procedures involving court decisions ranges between EUR 2 800 and EUR 7 500.

With some exceptions, almost all procedures for cross-border recognition of parenthood will happen through authentic instrument first, so that households will go through an administrative procedure. This also holds for parenthood initially established with a court decision, then transcribed in civil registries (e.g. adoptions). The civil registries survey suggests that an estimated 40 % of these administrative

procedures will require further documentation and/or transposition of foreign documents, which translated into higher costs and longer and more burdensome procedures. Overall, the vast majority of administrative procedures (about 80 %) are concluded within six months.

Overall, only a very small share (about 0.1 %) of the cases of cross-border recognition of parenthood involving different-sex households will be complex for national authorities to process and thus require a court decision. On the other hand, it is expected that a large share (about 80 %) of the cases of cross-border recognition of parenthood involving same-sex households will be complex to process for national authorities and thus require a court decision. While lower in numbers, court proceedings appear to be more expensive for households, as they require legal representation. Once concluded (with recognition of parenthood), court judgments will then be reported in civil registries, requiring an additional, albeit simple, administrative procedure.

Court proceedings for recognition of parenthood, ranging from two-four months in the easiest cases, up to one-three years, with outliers of up to five years²¹¹. This variance in the costs and length of the proceedings depends on many factors, including the complexity of the proceeding *per se*, the costs and functioning of the legal system in each Member State, and the likelihood of appealing the court decision.

The costs for national administrations typically include costs for procedures involving authentic instruments, such as effort of the personnel processing the case (e.g. registries) and any support needed (e.g. legal services). Based on these parameters, the average costs for national administrations for procedures involving authentic instruments ranges between EUR 427 and EUR 848. Procedures involving authentic instruments are generally quicker than court proceedings, with most concluded within six months²¹².

Costs for the judiciary involving court proceedings include the time and effort for the personnel to consider and process the case, any translation services provided, and any support service (e.g. additional opinions).

For national administrations and the judiciary, court proceedings are more complex and expensive to conclude – despite representing only about 15 % of the cases of recognition of parenthood, they amount to about 45 % of the costs of these cases for the public sector. The average costs for the court systems for procedures involving court decisions ranges between EUR 3 820 and EUR 5 150.

6.1.2 PO 1 Non-legislative option – Recommendation to Member States

This PO would involve non-legislative action to encourage Member States to harmonise their procedures for recognising parenthood, thus providing practical solutions for citizens where possible.

Key measures that would be implemented by the Commission include:

- Non-binding Recommendation to encourage Member States to adopt measures to make Member States' procedures for the recognition of parenthood consistent;
- Intensify existing initiatives to encourage cooperation between national authorities, including:
 - encouragement and promotion of good practices among judges and national authorities through EJM training;

²¹¹ Consultation with 22 civil registrars from 12 Member States (online survey).

²¹² Ibid.

- organisation of thematic meetings with national authorities to raise awareness of existing problems and training on their alleviation.

Assessment criterion	Score*	Rationale
Effectiveness in achieving objectives		
Policy objectives for PO 1		
Objective 1 Facilitate recognition of parenthood between Member States	0	<p>Overall, the expected positive impacts are likely to be negligible and unevenly realised across the EU, given the non-binding nature of this option (Recommendation to Member States).</p> <p>Not all jurisdictions will choose to follow the measures suggested by the Recommendation. At the same time, the number of mobile citizens and children born through ART or surrogacy is expected to increase, thus the number of non-recognition cases in some Member States is also likely to increase.</p> <p>Nearly half of the ministries indicated that soft law measures alone would not resolve the current problems linked to the recognition of parenthood in the coming years²¹³. By contrast, some ministries specified that future soft law measures could contribute to resolving challenges related to the recognition of parenthood²¹⁴, but half noted that the problems were unlikely to be resolved entirely²¹⁵.</p> <p>While the implementation of the Recommendation could contribute to facilitating the recognition of parenthood in the Member States abiding by it (and therefore have a positive impact on a limited number of families and authorities), the non-binding nature of this measure may be implemented by an insignificant number of Member States.</p>
Objective 2 Ensure legal certainty, predictability, and continuity of parenthood	+1	<p>The effectiveness of PO 1 in addressing this objective is expected to be limited, and its actual impact is uncertain (due to the non-binding force of the measure).</p> <p>The lack of political will in some Member States (just under half of the ministries did not believe that soft law measures would resolve the current problems), and the possibility that the measures envisioned in the Recommendation will conflict with national legislation or even constitutions and core values, may result in the concentration of positive impact in just a few jurisdictions. The possible legal barriers to recognition of parenthood identified in Section 3.3 (e.g. adoption or surrogacy banned for single parents or same-sex couples) indicate that some family types could be more exposed to non-recognition than others.</p> <p>On the basis of the above, and due to its non-binding nature, the Recommendation would have a very limited impact on these groups, as possible national legislation and constitutions could take precedence.</p> <p>A positive (albeit limited) impact could result from this PO, as the implementation of the foreseen Recommendation would help to</p>

²¹³ CZ, DK, EE, ES, HR, LV, NL, PT, RO, SK.

²¹⁴ AT, BE, BG, FI, IT, LT, MT, SE, SI.

²¹⁵ AT, FI, MT, SE, SI.

Assessment criterion	Score*	Rationale
ensure the certainty, predictability, and continuity of parenthood in the few Member States that put it into practice.		
Objective 3 Ensure respect for fundamental rights of children and other family members	+1	<p>For the same reasons, the positive impact on fundamental rights of children and other family members is expected to be low.</p> <p>While the national authorities of some Member States might abide by the Recommendation and develop practical solutions²¹⁶ that could have a positive impact on the respect of fundamental rights of children and other family members, the lack of political will in some jurisdictions, particularly where cases of non-recognition are likely to increase (e.g. cases of adoption, surrogacy and ART for same-sex couples, see Section 3.2.1) may limit the positive impacts that could arise from the implementation of the Recommendation.</p> <p>Current problems might persist or even increase should the number of children born out of surrogacy and ART increase, as expected in the baseline scenario. More specifically, the foreseen impact is low to non-existent in terms of contributing to:</p> <ul style="list-style-type: none"> i) The right to maintain – on a regular basis - a personal relationship and direct contact with both parents; ii) The right to non-discrimination of children, in accessing rights and benefits (deriving from parenthood) on an equal footing; iii) Non-discrimination on the grounds of sexual orientation of the parents, although it might have an indirect low positive impact correlated with the possible positive impact on the right to non-discrimination of the child. <p>With regard to the right of the child to have knowledge of their (genetic) identity, the absence of rules on surrogacy and ART for same-sex families would persist under this PO. The Recommendation, whether or not it is followed by national jurisdictions, would not tackle issues relating to those scenarios. As such, neutral (if the numbers of children born to rainbow families by surrogacy or ART remain the same) or negative impacts (should that number increase in the coming years) on the respect of this fundamental right of the child are to be expected under PO 1²¹⁷.</p> <p>Under PO 1, judicial practices could be approximated and the focus could be centred on the best interests of the child²¹⁸. Legal practices depend on the implementation of rules, which are usually shaped by the</p>

²¹⁶ These practical solutions were mentioned in some consultations, and some stakeholders also mentioned that national authorities apply a 'blind eye' policy to some groups of parents (e.g. different-sex couples seeking recognition of parenthood in Poland for a child born out of surrogacy in Ukraine, or PL single parents or same-sex couples seeking ART in CZ), Judiciary – interviews – PL (17 February 2022); BE (Judge of the Family Tribunal at the French-speaking Brussels' Tribunal of First Instance, 09.03.22).

²¹⁷ Stakeholders reported that this right is violated by including a non-existent parent on a birth certificate in order to ensure that two persons are registered (Judiciary – interviews – PL (17/02/2022,)). Occasionally, some stakeholders mentioned that future legislation will include safeguards to respect this fundamental right (Ministries – interviews – IE (16 December 2021)).

²¹⁸ Stakeholders reported that the concept of the 'best interest' of the child is often called on by a party in order to argue for a specific favoured outcome (including in surrogacy cases), and the judge then balances the 'best interest' of the child against national PIL (BE (Judge of the Family Tribunal at the French-speaking Brussels' Tribunal of First Instance, 09/03/22)). Another specific example relates to 'Kaffala' adoptions in Belgium, which constitute a minority of adoptions (BE (Judge of the Family Tribunal at the French-speaking Brussels' Tribunal of First Instance, 24/02/2022)).

Assessment criterion	Score*	Rationale
		<p>diversity of opinions on the concept of the best interest of the child²¹⁹. Consequently, there is potential for a slightly positive impact on families and children. Again, due to its non-binding nature, the impact of the foreseen recommendation would depend on the political will of Member States to comply.</p> <p>As national governments could also opt to apply the Recommendation partially, this could result in the situation improving for one group of children and/or within some Member States only.</p>
<p>Objective 4</p> <p>Reduce costs and legal and administrative burden for families, national administrations and national judicial systems</p>	+1	<p>For the same reasons, costs, length, and the burden of proceedings are foreseen to decrease to a limited extent, depending on whether Member States are willing to follow the measures laid down in the Recommendation.</p> <p>Somewhat improved legal certainty is anticipated, largely due to the approximation of practices that the Recommendation could generate. One consequence could be quicker, less burdensome, and cheaper procedures for families. In general, the major costs for families lie with legal representation, which is necessary in complicated cases²²⁰. Most other reported costs (e.g. translation costs, postal costs, court fees, notarisation) are quite low, with five Member States reporting administrative costs below EUR 250²²¹.</p> <p>For national authorities (administrations and the judiciary), faster and less cumbersome procedures that could result from the harmonisation of the rules across Member States (more or less total harmonisation, depending on the number of jurisdictions that agree to follow the Recommendation) would probably lead to a reduction in the costs of parenthood recognition procedures.</p> <p>The non-binding aspect of this PO would have a limited effect on the prevention of court cases, also restricting the positive impact on reducing the costs, burden and duration of proceedings for judicial authorities.</p>

Expected impacts

Social impacts	+1	<p>As a result of this PO, the foreseen uncertain approximation of practices and national legislation might not solve existing problems relating to recognition of parenthood.</p> <p>It is anticipated that the positive impact on children and families' well-being would be limited. In addition, it is possible that longer-term negative impacts, such as poverty, may continue because children are still denied access to certain social benefits and rights, whether on a temporary or definitive basis. The persisting negative impact might also concern more families, in view of the increase of mobile citizens and children born through ART and surrogacy.</p>
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²¹⁹ The concept of the 'best interest' of the child was argued in adoption and surrogacy cases on recognition of parenthood and ART matters. Takes noted a shift in the Dutch and Swedish societies and legislation, from permissibility of donor insemination to the restrictions that govern its practice (Takes, F., 'The child's best interest in gamete donation', *Bioethics*, Vol. 36, No 1, 2021, pp. 10-17).

²²⁰ Judiciary – interviews – PL (17 February 2022).

²²¹ Ministries – survey – BE, DE, FI, LV, MT.

Assessment criterion	Score*	Rationale
Fundamental rights (on the basis of BRG Tool #28)	+1	<p>While the impact of this PO on fundamental rights would again depend on the number of Member States following the Recommendation, it is anticipated that this PO is unlikely to solve existing problems relating to the recognition of parenthood. As such, the positive impact of this PO on fundamental rights would be limited or non-existent.</p> <p>The instances in which non-recognition of parenthood has a negative impact on the rights of the child would most likely remain. Although the recent case-law of the CJEU (via its V.M.A. judgment, see Section 3.4.3) points to future changes in the possible refusal of national authorities to issue identity documents, it is not guaranteed that all Member States or competent national authorities within those States will follow the Court's approach²²².</p> <p>The consequences of non-recognition of parenthood that are most detrimental to the rights of the child could continue, such as the non-issuance of identity papers, impossibility of attending school, non-eligibility for certain rights related to education or health, etc.</p> <p>More precisely:</p> <ul style="list-style-type: none">• The right to a family life applies to a child and the persons with whom they lead a genuine family life in the host Member State and whose parenthood was validly established by another Member State (Article 7 CFR; Article 8 ECHR). The negative impact includes discontinuity of parenthood, disrupting a genuine family life. When considering the best interest of the child (Article 24 CFR), non-recognition of parenthood has a negative impact on the child and the parents (as established in another Member State).• The ECtHR previously held that non-recognition of parenthood undermines the identity of a child²²³. Parenthood constitutes an essential part of an individual's identity, and non-recognition of parenthood negatively impacts the formation and development of a child's identity.• The right to free movement allows individuals to lead a normal family life, together with their family members, both in their host Member State and in the Member State of which they are nationals when they return to the territory of that Member State (Article 21(1) TFEU). Non-recognition of parenthood for all purposes may deter or hinder this freedom, which constitutes a negative impact on the entire family.• The right to non-discrimination for children (Article 2 UNCRIC; Article 21 CFR; Article 14 ECHR) requires that a child's

²²² The ECtHR found a breach of Article 7 CFR (paragraph 65). It also clarified that the recognition of parenthood for a family composed of a same-sex couple does not undermine the national identity or pose a threat to the public order of a Member State (paragraph 56). Consultations revealed similar alleged violations of the child's right in PL, where, in adoption cases, Polish nationality can be (and is) denied when the biological mother is not Polish, and the consultee was of the opinion that non-binding recommendations would prompt ministries to send guidelines to local authorities (Judiciary – interviews – PL (17 February 2022)), which could have a positive impact on ensuring fundamental rights of children.

²²³ *Mennesson v. France*, application no. 65192/11, paragraphs 96 to 101.

Assessment criterion	Score*	Rationale
		<p>rights are respected without discrimination, including discrimination on the basis of the sexual orientation of the child's parents. Non-recognition of parenthood may lead to unequal treatment and discrimination, thereby constituting a negative impact.</p> <p>Similarly, instances in which families are deterred from moving freely in the EU out of fear of non-recognition of parenthood for all purposes will continue.</p>
Efficiency		
Administrative and compliance costs	+0.5	<p>This PO has the potential to generate some positive effects on the administrative and compliance costs incurred by households, national administrations and judiciary in cases of recognition of parenthood.</p> <p>Increased consistency in procedures could reduce the costs for households, which would face lower expenses for producing and translating documentation, and for the legal representation necessary to navigate national systems (especially for complex procedures). Similarly, national administrations and judiciary could experience less complex and burdensome procedures, which will likely reduce the effort and time necessary to complete their tasks.</p> <p>The non-binding nature of this option would have a limited effect on preventing court cases, thereby limiting the positive impact on decreasing cost, burden and length of procedures for judicial authorities.</p> <p>Given the voluntary nature of the Recommendation, much of its impact will depend on the number of Member States that decide to adopt measures to increase consistency of national procedures for recognition of parenthood, exchange best practice, and increase coordination and awareness of existing problems. A further factor of uncertainty is the share of mobile households residing – and thus potentially impacted – in the participating Member States.</p>
Simplification	0	<p>This PO has the potential to generate some positive effects on simplifying procedures and court proceedings for households, national administrations and judiciary for cases of recognition of parenthood, such as supporting documentation needed and related translations, and the overall length of time to complete the procedures.</p> <p>Given the voluntary nature of the PO and the related uncertainty about the number of Member States participating, the scope of cases for which it will be possible to reach an agreement, and the actual relevance of such cases, it is unlikely that such impacts will be noticeable.</p>
Economic impacts	0	<p>This PO may improve the procedures for recognition of parenthood (albeit in very few cases), simplifying and improving the clarity of the legal framework. This is expected to improve well-being for children and their families undertaking national procedures, reducing the emotional distress linked to difficulties in recognition of parenthood.</p>

Assessment criterion	Score*	Rationale
		<p>The improved psychological and emotional well-being may improve public health.</p> <p>Positive impacts on social protection and social inclusion (of children and families), considered under the social impacts, can in turn can lead to longer-term more positive child development.</p> <p>These are indirect effects of the PO, and may be consider very limited, given the small share of households impacted.</p>
Coherence with other EU policies		
Coherence with other EU policy objectives	0	<p>The PO's objective (i.e. to improve cross-border harmonisation of procedures and practical solutions for citizens where possible) is aligned with the objectives and goals of other EU policies, such as EU LGBTIQ Equality Strategy 2020-2025 and the 2021 EU Strategy on the Rights of the Child.</p> <p>The PO is also complementary to EU instruments legislating the legal effects deriving from parenthood (e.g. succession rights, maintenance obligations). This PO and the EU instruments aiming to facilitate cross-border justice by facilitating recognition of parenthood would improve access to the ensuing legal effects.</p> <p>The PO is aligned with the EU acquis on free movement. However, as the existing acquis does not grant recognition of parenthood for all purposes, therefore the added-value of this PO would be limited.</p> <p>The foreseen positive impact of the PO is limited or non-existent because of a foreseeable lack of political will, Member States' possible perceived loss of control, and the expected unsatisfactory uptake of non-binding measures. This also hampers the political feasibility of the measure.</p>

6.1.3 PO 2 Legislative option – Regulation on the recognition of parenthood between Member States that includes only rules concerning recognition of court decisions OR both court decisions and authentic instruments

This PO would involve legislative action to facilitate recognition of parenthood between Member States, ensuring legal certainty, predictability, and continuity of parenthood, respecting fundamental rights of children, as well as reducing procedural costs and legal and administrative burden for families, national administrations, and national judicial systems.

Key measures which would be implemented by the EU under this PO include:

- Under **PO 2a – common rules on the recognition of parenthood in court decisions** (i.e. jurisdiction, applicable law and recognition) between Member States;
- Under **PO 2b – common rules on the recognition of parenthood in authentic instruments and court decisions** (i.e. jurisdiction, applicable law and recognition) between Member States.

Sub-options PO 2a and PO 2b are not cumulative. In view of the differences in the anticipated impacts of each, they are first evaluated separately to identify the most beneficial option. That assessment selected PO 2b, which is described here. The comparative analysis of the two options, as well as the individual analysis of option 2a, is presented in Annex 5.

Assessment criterion	Score*	Rationale
Effectiveness in achieving the objectives		
Policy objectives for PO 2b		
Objective 1 Facilitate recognition of parenthood between Member States	+2	<p>This PO would contribute significantly to facilitating recognition of parenthood between Member States because it covers both authentic instruments and court judgments, i.e. addresses all types of documents recording parenthood.</p> <p>This PO is seen as the most complete, in that it would cover most families²²⁴, thereby maximising the positive impact in terms of quantity. It appears to be the most likely to facilitate the recognition of parenthood between Member States, particularly because it would establish minimum standards for the recognition of parenthood (judgments and authentic instruments). According to Article 7 CFR and Article 8 ECHR, the right to family life applies to the child and to the persons with whom they have a genuine family life in the host Member State and whose parenthood has been validly established by another Member State. In streamlining the rules on the establishment of parenthood with cross-border implications, the Regulation - as defined under PO 2b - would unquestionably facilitate recognition of parenthood across Member States, thereby enhancing children’s right to family life as laid down in the CFR and ECHR.</p>
Objective 2 Ensure legal certainty, predictability, and continuity of parenthood	+3	<p>This PO is likely to contribute significantly to legal certainty, predictability, and continuity of parenthood. For the reasons given above, and because this option will provide common rules that would be applied uniformly throughout the Union, families moving from one Member State to another would feel reassured. Both families and the authorities in charge would have greater legal certainty and predictability.</p> <p>Concerning continuity of parenthood specifically, this option should contribute to a better/more effective application of Article 7 CFR and Article 8 ECHR, according to which children have a right to family life with the persons with whom they have a genuine family life and whose parenthood has been validly established in another jurisdiction of the EU.</p>
Objective 3 Ensure respect for fundamental	+2	<p>Under this PO, a significant positive impact on ensuring the fundamental rights of children is foreseen, including:</p> <ul style="list-style-type: none"> • The right to a family life, which applies to a child and the persons with whom they share a genuine family and

²²⁴ 1.3 million mobile households.

Assessment criterion	Score*	Rationale
rights of children and other family members		<p>whose parenthood was validly established by another Member State (Article 7 CFR; Article 8 ECHR). This right will be strengthened by the application of the Regulation anticipated by PO 2b, which is intended to facilitate the understanding and recognition of parenthood between Member States.</p> <ul style="list-style-type: none">• The right to identity, as enshrined in Article 8 ECHR, includes the right to identity and personal fulfilment. By adopting uniform rules on jurisdiction, applicable law to the establishment of parenthood in cross-border cases, and recognition of parenthood, this option should allow better access for children to their right to identity.• The right to non-discrimination for children requires that a child's rights are respected without discrimination, including discrimination based on the sexual orientation of the child's parents (Article 2 UNCRC; Article 21 CFR; Article 14 ECHR). Non-recognition of parenthood leads to unequal treatment, implying discrimination of the children in question. By providing rules on the recognition of parenthood established between Member States, regardless of the sexual orientation of the parents as long as they have been validly recognised as parents, this option will overcome situations of discrimination against these children.• The best interest of the child (Article 24 CFR) requires a thorough assessment of what is good (or not) for a child. Although the CJEU has accepted in principle that Member States have a wide margin of discretion on the establishment of parenthood in certain cases (surrogacy, adoption for same-sex couples), the fact that parenthood is a fundamental aspect of a child's identity reduces that discretion. The rules on the recognition of parenthood established between Member States ensure the protection of the best interests of the child in all cases. <p>According to international law, the best interests of the child must be the primary consideration in adoption cases.</p> <p>In addition to the rights benefiting children, this option would promote:</p> <ul style="list-style-type: none">• respect for the principle of non-discrimination against parents (potentially discriminated against because of their sexual orientation);• respect for the fundamental freedom of movement of European citizens (adults and children). <p>This option, by guaranteeing a minimum standard of recognition, for parents and families as a whole, of their family ties between Member States, will allow them to move without fear and to live their parenthood to the full.</p>
Objective 4	+2	It is foreseen that this PO would contribute to reducing the costs, length, and administrative burden of recognition of

Assessment criterion	Score*	Rationale
Reduce costs and legal and administrative burden for families, national administrations, and national judicial systems		<p>parenthood procedures, which would have a positive impact on most families and national authorities. A large majority of stakeholders confirmed this assumption, noting that new EU legislation would have a positive impact on the costs, time and burden related to administrative procedures on the recognition of parenthood for both national administrations²²⁵ and citizens²²⁶.</p> <p>Administrative and judicial procedures would be simplified and reduced, as all modes of parenthood recognition would be impacted (court judgments and authentic instruments). For instance, this option would also benefit families, who would no longer need to complete complex administrative procedures and depend on expensive legal advice in complex situations. As a corollary, fewer challenges are also expected for national judicial systems, lowering this aspect of their workload.</p> <p>Families would not need to seek a court judgment to 'secure' recognition of parenthood in another Member State.</p>
Expected impacts		
Social impacts	+2	<p>It is expected that PO 2b would address all of the problems identified and thus have a substantial positive impact on the long-term well-being of children and parents. Due to its broad scope, a significantly lower incidence of non-recognition solutions adopted by national authorities and courts is expected to continue to alleviate longer-term negative impacts on children's well-being. Shorter procedures and enhanced legal certainty will facilitate access to rights and benefits for parents and children, further preventing negative impacts such as stress, distress (e.g. children growing up with an absent parent) and poverty.</p>
Fundamental rights (on the basis of BRG Tool #28)	+3	<p>This option is considered the most appropriate to address the problems and violations suffered by children and parents when their family ties are not recognised.</p> <p>All fundamental rights, whether they concern children or parents, would be better respected through a Regulation such as the one envisaged in this PO (i.e. laying down rules on jurisdiction and applicable law in order to recognise parenthood established abroad by a court decision, as well as by an authentic instrument).</p> <p>More precisely:</p> <ul style="list-style-type: none"> • The right to family life, which applies to the child and to the persons with whom they share a real family and whose parenthood has been validly established by another Member State (Article 7 CFR; Article 8 ECHR), would in fact

²²⁵ Written questionnaires for ministries, 55 % (12 out of 22 responses, of which eight expect a mildly positive impact and four a very positive impact). In addition, 14 % (3 responses) expect no impact and 9 % (2 responses) expect a negative impact.

²²⁶ Written questionnaires for ministries, 59 % (13 out of 22 responses, of which eight expect a mildly positive impact and five a very positive impact). In addition, 18 % (4 responses) expect no impact.

Assessment Score* Rationale criterion

be respected, as the purpose of this option is to lay down minimum rules for the recognition of parenthood when it has already been recognised (irrespective of the means) in another Member State.

- The **right to identity**, as enshrined in Article 8 of the ECHR, would also be respected, as any child whose parenthood has been established in a Member State would be recognised as having the same parenthood and would therefore preserve their identity despite crossing borders.
- The **right to non-discrimination** for children requires that the rights of the child are respected without discrimination, including discrimination on the basis of the sexual orientation of the parents (Article 2 UNCRC; Article 21 CFR; Article 14 ECHR).

Again, **a child with same-sex parents**, one of whose parenthood might currently be contested and not recognised, **should be protected because their parental links with both parents recognised in one Member State cannot be called into question in another Member State**. Neither the parents nor – particularly – the child, would be discriminated against on the basis of the sexual orientation of the parents.

- The option would have a positive impact on the **right to free movement**, as the current deterrent effect dissuading families from moving freely in the Union would be minimised. By laying down rules on jurisdiction, the law applicable to the establishment of parenthood and the recognition by a Member State of parenthood established in another Member State, this option would reassure European citizens (children and parents) that their full parenthood status would continue in cross-border situations and their rights derived from parenthood would be protected across borders.

Efficiency

Administrative and compliance costs

+2

This PO is expected to have a positive impact on the costs and burden incurred by households, national administrations and judiciary. The table below provides an overview of the costs estimated for this PO, as well as the difference (i.e. savings) with respect to the baseline²²⁷.

Overview of costs for PO 2b (EUR million)

Estimated costs for	Annual costs (average)		Over 10 years	
	Lower bound	Upper bound	Lower bound	Upper bound
- Households	500	968	3 830	7 417
<i>(w.r.t. baseline)</i>	-141	-617	-1 080	-4 728

²²⁷ The detailed description of the methodology, assumptions, and calculations used for the assessment, as well as the limitations of the analysis, can be found in Annex 6.

Assessment criterion	Score*	Rationale			
- National administrations and judiciary	305	795	2 339	6 094	
(w.r.t. baseline)	-325	-564	-2 490	-4 321	
Total	805	1,763	6 170	13 511	
(w.r.t. baseline)	-466	-1,181	-3 570	-9 050	

This PO will somewhat reduce the costs related to recognition of parenthood for households (between -37 % and 40 % compared to the baseline) in cases where recognition of parenthood requires both authentic instruments and court proceedings.

The estimated costs for **households using authentic instruments** under this PO are estimated at EUR 486-908 million per year (on average), which represents a reduction of costs compared to the baseline (13-15 %). The cost reduction for households is expected to be generated by an overall simplification of the administrative procedures, and by the reduced need for legal support (and legal fees) to navigate the procedures, as well as the reduced need for additional documentation and transposition of documents (e.g. notary acts and related fees). Overall, the share of procedures with authentic instruments requiring additional documentation, transposition of documents and/or legal support will be about 30 % of the total (compared to 40 % in the baseline).

This translates into an average cost of procedures requiring authentic instruments between EUR 396 and EUR 710 (compared to EUR 458-838 in the baseline).

The savings generated by this PO will affect the overwhelming majority of cases requiring cross-border recognition of parenthood, which are processed via authentic instruments. It is also expected to limit the number of contentious procedures with authentic instruments that have recourse to court proceedings (only 15 % of the more complex cases will require a court judgment, compared to 80 % in the baseline).

It is expected to have a positive effect on the costs for households for procedures requiring court decisions. In addition to the far lower share of procedures needing court decisions to decide on recognition of parenthood, the uniform rules on the recognition of parenthood would simplify the procedures where court decisions are needed. The combined effect of lower share of cases requiring court decision and lower legal costs for households is expected to reduce the overall costs of court decisions for households, estimated at about EUR 130-60 million per year (82-85 % reduction compared to the baseline).

The definition of standards is expected to only somewhat reduce the costs that households face for court decisions. This translates to an average cost of procedures requiring court decisions of between EUR 2 630 and EUR 6 030 (EUR 2 800-7 500 in the baseline). The reduction in the average costs stems from lower

Assessment criterion	Score*	Rationale
		<p>legal fees (procedures will be more standardised and simpler over time) and fewer additional expenses (e.g. translations, experts' opinions, DNA tests). Court fees are not expected to change.</p> <p>Similarly, this PO is expected to reduce the costs for national administrations and judiciary. It should generate a reduction in the time and effort needed by national administrations to process these cases, as a result of the clearer legal framework and administrative procedures. This is likely to translate into a reduction of costs for national administrations of about 26-41 % compared to the baseline, corresponding to EUR 307-800 million annually. This translates to an average cost per procedure requiring authentic instruments of EUR 250-EUR 625 (compared to EUR 427-848 in the baseline).</p> <p>Similarly, the costs for the judiciary are expected to fall under this PO, as an effect of the lower share of cases requiring court decisions, and the simplification of procedures. Overall costs for the judiciary of recognition of parenthood requiring court decisions are estimated at EUR 12.6-38 million per year. This translates to an average cost per procedure requiring court decisions of the judiciary of approximately EUR 2 470 to EUR 3 820 (compared to EUR 3 820 to EUR 5 150 in the baseline).</p>
Simplification	+2	<p>In addition to a reduction in costs, the PO is expected to simplify court proceedings and the administrative procedures in place to process cases of recognition of parenthood. It will simplify procedures requiring authentic instruments and those needing court decisions, and benefit households, national administrations and judiciary.</p> <p>This PO is expected to reduce the number of accompanying documents necessary to support procedures and reduce the length of such procedures.</p> <p>The baseline shows that recognition procedures are generally concluded within six months (80 % of cases²²⁸). It is likely that this PO will reduce that time. Simpler and more standardised procedures are also likely to reduce the number of cases that need to reach courts.</p>
Economic impacts	+1	<p>This PO is expected to have a positive impact on the incidence of recognition of parenthood, simplifying and improving the clarity of the legal framework and administrative procedures. This is expected to improve well-being of children and their families, reducing the emotional distress linked to difficulties in recognition of parenthood. The improved psychological and emotional well-being may improve public health.</p>

²²⁸ Survey of civil registrars: 87 % (13 responses out of 15).

Assessment criterion	Score*	Rationale
		<p>Positive impacts on social protection and social inclusion (of children and families) can in turn can lead to better child development in the longer term.</p> <p>These are indirect effects of the PO, whose wider economic benefits can be considered moderately positive.</p>
Coherence with other EU policies		
Coherence with other EU policy objectives	+2	The measures under this PO are aligned and complementary to the EU instruments (policy and legislation). The synergies between the EU instruments and these measures are likely to be more significant because the measures would benefit more families by covering parenthood recorded in judgments and in authentic acts. Similarly, the positive impacts of these measures are greater and will reach more families.
Legal and political feasibility		<p>The legal feasibility is medium. Some challenges are to be anticipated, namely the different roles of courts and national authorities in the establishment and recognition of parenthood in each Member State, and as result, the higher number of processes and infrastructures that will need to be adapted.</p> <p>Due to its binding nature and broad scope, the political feasibility of finding an agreement on the legislation may be more difficult than for other POs.</p>

6.1.4 PO 3 Legislative option – PO 2 and the ECP

This option would involve the **preferred option under PO 2**, i.e. a legislative action to facilitate the recognition of parenthood between Member States, which would ensure legal certainty, predictability and continuity of parenthood and respect the fundamental rights of children, as well as reduce procedural costs and legal and administrative burden for families, national administrations and national judicial systems.

This legislative action is **PO 2b** (following its selection, see assessment detail in Annex 5), **accompanied by an ECP** that would allow families to travel and move around the EU and be recognised between Member States.

Assessment criterion	Score*	Assessment (text)
Effectiveness in achieving the objectives		
Policy objectives for PO 3		
Objective 1 Facilitate recognition of parenthood	+3	This PO is likely to have the most extensive positive impact on families and national authorities (judicial and administrative) when it comes to facilitating recognition of

Assessment criterion	Score*	Assessment (text)
between Member States		parenthood between Member States. It was broadly endorsed by most stakeholders consulted during the research ²²⁹ .
Objective 2 Ensure legal certainty, predictability, and continuity of parenthood	+3	Under this PO, the positive impact will be similar to, if not greater than, that foreseen in PO 2b. An ECP (optional and complementary to national certificates) would address many of the problems identified in Sections 3.2, 3.3 and 3.4. Not only would this PO have a positive impact on national authorities by using a certificate common to all Member States and thus recognisable, it would have an even greater effect on families , who would see it as ensuring continuity of parenthood and legal security .
Objective 3 Ensure respect for fundamental rights of children and other family members	+3	<p>The anticipated positive impact would be at least similar as PO 2b by adding an additional safeguard against potential breach of rights, through the ECP.</p> <p>In addition to having to recognise parenthood established in another Member States based on the rules set out in the Regulation (PO 2b), this option would allow families to move around the EU with a document certifying their existing family bonds. The impact is likely to be highly positive as it would cover most families.</p> <p>This PO is the most likely to fulfill objective 3 because it takes on the complete nature of the PO 2b option and would also allow families (and authorities) to obtain a certificate (i.e. double guarantee for families and time saving for authorities).</p>
Objective 4 Reduce costs and legal and administrative burden for families, national administrations and national judicial systems	+2	<p>The anticipated positive impact would be similar or greater than PO 2b. The difference relates to procedural efficiency (e.g. translation costs might not be necessary, nor legalisation/notarisation of foreign documents for the completion of recognition of parenthood procedures).</p> <p>This PO will broadly benefit all families (which bear the costs and suffer the negative consequences of long and burdensome procedures) and national authorities, through simplified procedures and lower administrative burdens. A certificate that is easily understood and read across jurisdictions should imply fewer legal challenges.</p>

²²⁹ Close to half of PC respondents (41 %, 155 responses) agreed that such certificate would be useful and that including it in the possible EU legislative instrument should be a priority for the EU. 16 % (60) of respondents indicated that an ECP would be useful. 37 % (141) of respondents indicated that they would not support an ECP, as the current national documentation is sufficient. The foreseen benefit of this PO was confirmed by more than half (73 %, 16 responses) ministries, none of which believed that the ECP would not facilitate recognition of parenthood between Member States. Some ministries (19 %, five responses) indicated that they were unsure about the impact of the PO. The harmonisation of certificates providing evidence for a parent-child relationship, even though it would be optional vis-à-vis national certificates (see section 5.2.4) is anticipated to facilitate practical matters, in addition to the other elements mentioned in POs 2a and 2b. 29 % of civil registrars (four responses) expressed that the ECP would be useful and including it in the possible EU legislative instrument should be a priority. In comparison, 57 % (eight responses) said that the ECP would be useful, and 14 % (two responses) had no opinion.

Assessment criterion **Score*** **Assessment (text)**

Indeed, the ECP is expected to have positive impacts on the costs of recognition of parenthood for national administrations and judiciary, as well as for households.

An overview of these costs and savings compared to the baseline scenario is provided below.

Overview of costs for PO 3 (EUR million)

• Estimated costs for	Annual costs (average)		Over 10 years	
	Lower bound	Upper bound	Lower bound	Upper bound
• Households	180	363	1,377	2 779
• (w.r.t. baseline)	-461	-1 116	-3 533	-8 552
• National administrations and judiciary	120	519	918	3 981
• (w.r.t. baseline)	-510	-840	-3 912	-6 435
• Total	299	882	2 294	6 760
• (w.r.t. baseline)	-971	-1 955	-7 445	14 987

- This PO will further reduce the costs related to recognition of parenthoods for households, by between 69 % and 74 % compared to the baseline. A positive effect is expected for both authentic instruments and court decisions. The magnitude of the benefits will depend on the share of households that will request an ECP, which will remain a voluntary instrument. The estimates presented consider a high request for the ECP (70 % of cases).
- The estimated costs for households using authentic instruments under this PO are estimated at EUR 174-331-179 million per year (on average), a reduction of approximately 70 % compared to the baseline. This translates to an average cost of procedures requiring authentic instruments of between EUR 141 and EUR 260 (compared to EUR 458-838 in the baseline).
- The cost reduction for households is expected to be generated by the simplification of the administrative procedures, which will eliminate the need for translations and transposition or notarisation of documents, and related costs. The procedural efficiency generated by this PO will further simplify the administrative procedures for recognition of parenthood, so that legal support will rarely be needed. Administrative fees (when applied) are expected to remain. It is also possible that administrations will apply fees for issuing the ECP. However, given the large reduction in costs they generate, the impact of ECP-related fees on households

Assessment criterion	Score*	Assessment (text)
		<p>is expected to be negligible. In addition, the Regulation would provide that the fees for an ECP should not be excessive.</p> <ul style="list-style-type: none">• This PO is expected to limit the number of contentious procedures with authentic instruments resorting to court decisions (only 10 % of complex cases will require a court decision, compared to 80 % of the cases in the baseline).• The PO is expected to have positive effects on costs for households for procedures requiring court decisions. In addition to the lower share of administrative procedures needing court decisions to decide on recognition of parenthood, this PO is expected to benefit from minimum standards for the format and content of all existing modes of recognition of parenthood (PO 2b), which will also simplify court decisions. The combined effect of a lower share of cases requiring court decisions and of lower legal costs for households is expected to reduce the overall costs of court decisions for households, estimated at about EUR 6 to EUR 30 million per year (92 % reduction compared to the baseline).• This translates to an average cost of procedures requiring court decisions of between EUR 1 680 and EUR 4 530 (compared to EUR 2 800-7 500 in the baseline). The reduction in the average costs stems from lower legal fees (procedures will be more standardised and simpler over time) and additional expenses (e.g. fewer additional translations, experts' opinions, DNA tests). Court fees are not expected to change.• This PO is expected to have a positive impact on the costs for national administrations and judiciary. It is estimated to generate an additional reduction in the time and effort needed for national administrations to process cases, due to the clearer legal framework and administrative procedures, and the further efficiency gains provided by the ECP. This is likely to translate into a reduction of costs for national administrations of about 52-77 % compared to the baseline, corresponding to EUR 174-EUR 333 million annually. This translates into an average cost per procedure requiring authentic instruments for national administrations of EUR 98-408 (compared to EUR 427-848 in the baseline).• Similarly, the costs for the judiciary are expected to fall under this PO, due to the lower share of cases requiring court decisions and the simplification of procedures. Overall costs for the judiciary of recognition of parenthood requiring court decisions are estimated at EUR 2 million and EUR 7.4 million per year. This translates into an average cost per procedure of approximately EUR 580-1 120 (compared to EUR 3 820-5 150 in the baseline).

Assessment criterion	Score*	Assessment (text)
Expected impacts		
Social impacts	+3	<p>In the context of this PO, the social impacts should be at least as positive as PO 2b, if not more so.</p> <p>The consequences of the non-recognition of parenthood can translated at social level into:</p> <ul style="list-style-type: none"> - stigmatisation of children from an early age, for example at school where they may be singled out or mocked; - an increased risk of exclusion of parents from the school or educational life of their children, or from access to the rights and benefits to which they would normally be entitled; <p>These effects should be mitigated by this PO.</p> <p>In addition to ensuring that all mobile families have their links recognised across borders (PO 2b), the ECP would facilitate the speed of such recognition by avoiding the need for parents to undertake steps to prove family links when arriving at school or with social or health services, for example, thus protecting children from the potential risk of stigmatisation or exclusion.</p> <p>In addition, the ECP would include gender-neutral references to 'parent', preventing situations of forced coming-out and the resulting stigma for children and their parents²³⁰. Indeed, procedures and documents providing evidence of parent-child relationships and including the name of two parents of the same sex may lead to questioning by national authorities on topics that fall under the remit of a private family life (e.g. sexual orientation).</p>
Fundamental rights (on the basis of BRG Tool #28)	+3	<p>Children and their families may find some of their (fundamental) rights altered and violated in cases of non-recognition (see Sections 3.2 and 3.4). In the following situations, this PO would help to protect:</p> <ul style="list-style-type: none"> - Respect for private and family life: the persistence of administrative and legal obstacles to the recognition of parenthood in Member States runs counter to the fundamental rights guaranteed to the child by Article 7 (Respect for private and family life) and Article 24 (Rights of the child) of the CFR, which would be avoided with PO3. The establishment of rules guaranteeing the recognition of parenthood validly established in a Member State (PO 2b) should remove some of these administrative and legal obstacles, while the ECP would save time for families and administrations and contribute to avoiding the alteration of private and family life. - The right to non-discrimination (Article 21 CFR; Article 14 ECHR) implies that Member States must ensure that the recognition of civil status documents establishing parenthood

²³⁰ NGOs – interviews – EU/FR (25 February 2022, NELFA and APGL).

Assessment criterion	Score*	Assessment (text)
		<p>is not undermined by discrimination of any kind, in particular on the grounds of race, colour, sex, language, religion, political or other opinion of the child or their parents. Again, by ensuring cross-border recognition of the status from the moment it is legally established in an EU jurisdiction (PO 2b), this option (PO 3) would not only remedy the abuses and violations that exist today but would add a guarantee of rapid and automatic recognition through the ECP. As soon as family ties are established, neither parents nor children would have to face possible discrimination in having their family status recognised when moving to another Member State.</p> <p>- On the right to identity (Article 7 UNCRC), the UN Committee on the Rights of the Child has emphasised that Member States are obliged not to discriminate against or infringe upon the identity of individuals in the registration process – the implementation of the ECP would solve any problems related to possible loopholes in the registration of children's names or civil status.</p> <p>PO 3 would also benefit all families without distinction if it does not specify the identity the gender of the parents.</p>
Efficiency		
Administrative and compliance costs	+2	<p>The introduction of the ECP is likely to require training for the judiciary and national administrations, estimated at approximately 0.5 % of the judiciary costs for court proceedings and the administrative costs for authentic instruments²³¹. It is also possible that additional accompanying measures will be put in place, such as communication campaigns targeting mobile citizens, NGOs and other associations, representative organisations of lawyers, etc. This will be left to the discretion of individual Member States.</p> <p>Each Member State will determine the national authorities that will have competence to issue the ECP (administrative authorities, courts, others).</p> <p>In addition, there would be no need for Member States to adapt their IT systems to issue the ECP. As for other EU civil law legislation, the forms related to the Regulation, including the ECP form, would be available to citizens via the e-Justice portal. The ECP could thus be completed online and generated as a PDF document via the portal.</p> <p>The full realisation of the benefits from the ECP may require some accompanying measures, such as communication campaigns.</p>

²³¹ In line with the assumptions used by the European Commission's Impact Assessment on the European Certificate of Succession (COM(2009) 154 final). Training costs are considered recurring costs (see Annex 6).

Assessment criterion	Score*	Assessment (text)
Simplification	+3	<p>This PO will impact administrative processes and court proceedings. In addition to a reduction in costs for households, national administrations and the judiciary, it is expected to simplify court proceedings and the administrative procedures in place to process cases of recognition of parenthood. The adoption of the ECP is expected to reduce the supporting documentation needed for recognition of parenthood, related translations and legal assistance, the overall length of the procedures, and the need for additional acts (e.g. notary acts) for transposing national birth certificates into the registries of the receiving Member States.</p> <p>In the case of court proceedings, it is expected to further reduce the number of procedures requiring court decisions, as well as contributing to an overall reduction in the length and litigation costs.</p> <p>The full realisation of the simplification potential will depend on its adoption by households, administrations, judiciary and legal practitioners. In addition, the procedures will be crucial. Should they be very complex, the use of the ECP will be limited.</p>
Economic impacts	+1	<p>This PO is expected to facilitate the recognition of parenthood by simplifying and improving the clarity of the legal framework and the administrative procedures. This will improve well-being of children and their families, reducing the emotional distress linked to difficulties in recognition of parenthood. The improved psychological and emotional well-being may improve public health.</p> <p>Positive impacts on social protection and social inclusion (of children and families) can lead to better child development in the longer term.</p> <p>These are indirect effects of the PO, whose wider economic impact can be considered positive.</p>
Coherence with other EU policies		
Coherence with other EU policy objectives	+3	<p>The measures under this PO are aligned and complementary to the EU instruments (policy and legislation) currently in place.</p> <p>By envisaging rules aimed at protecting the rights of children to an identity, to family life and to non-discrimination, this option is fully aligned with the 2021 EU Strategy on the Rights of the Child.</p> <p>By allowing parents, regardless of their sexual orientation, to have their family life and related rights recognised beyond (yet intra) EU borders complies with the LGBTIQ Equality Strategy 2020-2025.</p> <p>This measure goes further by creating an ECP. The synergies between the EU instruments mentioned in PO 2b and these measures are likely to be more significant, considering that rights stemming from parenthood are already regulated at EU</p>

Assessment criterion	Score*	Assessment (text)
		level. The measures would reinforce the protection of children and ensure that their best interests are prioritised in parenthood recognition procedures. Notably, the ECP is expected to be much simpler and shorter than the European Certificate of Succession.
Legal and political feasibility		Legal feasibility is high, but challenges are expected in those jurisdictions that may express some reluctance towards PO 2b. It is anticipated that political feasibility is the same as under PO 2b.

6.2 Comparison of options

Table 5 presents an overview of the rating of the impacts of each PO.

Table 5. Comparison of each POs

	Non-legislative option	Legislative options		
	PO 1	PO 2a	PO 2b	PO 3
Effectiveness				
Objective 1 Facilitate recognition of parenthood between Member States	0	+0.5	+2	+3
Objective 2 Ensure legal certainty, predictability, and continuity of parenthood	+0.5	+0.5	+2	+3
Objective 3 Ensure respect for fundamental rights of children and other family members	+0.5	+0.5	+2	+3
Objective 4 Reduce costs and legal and administrative burden for families, national administrations, and national judicial systems	+0.5	+1	+2	+2
Social impacts				
Right to social benefits	+0.5	+1	+2	+ 3
Psychological impacts (Stigmatisation, school drop-out, risk of poverty)	+0.5	+1	+2	+3
Fundamental rights				

Study to support the preparation of an impact assessment on a possible Union legislative initiative on the recognition of parenthood between Member States

Right to an identity	+0.5	+1	+2	+3
Right to non-discrimination	+0.5	+1	+2	+3
Right to respect for private and family life	+0.5	+1	+2	+3
The rights of the child	+0.5	+1	+2	+3
Efficiency				
Administrative and compliance costs	+0.5	+1	+2	+2
Simplification	0	+1	+2	+3
Economic impacts (excluding compliance and implementation costs, which are discussed separately)	0	+0.5	+1	+1
Coherence with EU policies				
LGBTIQ Equality Strategy 2020-2025 and 2021 EU Strategy on the Rights of the Child	+0.5	+1	+2	+3

6.3 Preferred option

Based on the research for this study, and in line with the comparative analysis of the anticipated impacts for each suggested option, the preferred option is **PO 3 – wider legislative initiative**.

Having assessed the impacts, as well as the effectiveness and efficiency of the suggested options, PO 3 appears the **most likely to address the problems currently faced by children, families and Member States' authorities** (administrative and judicial).

PO 1, which has no legal force but simply invites Member States to take measures based on provisions prescribed in a Recommendation, would allow for a slight improvement in the situation in those countries that implement the Recommendation to the letter. The Recommendation would encourage Member States to adopt in their national laws rules on the law applicable to parenthood with a cross-border element proposed by the Commission, and would suggest measures aimed at harmonising Member States' rules on the recognition of parenthood.

The improvement would have a very limited effect and would allow only a small proportion of the families concerned to see their situation – particularly their fundamental rights – respected.

PO 2 goes further than PO1 in imposing binding measures concerning parenthood with cross-border implications. It consists of two sub-options (PO 2a and PO 2b).

In general, PO2 would provide for minimum rules for the recognition of parenthood established either by court decision or by an authentic instrument. At a minimum, the legislative proposal would cover conflict of law rules, jurisdiction, and recognition of parenthood, which is particularly necessary in view of the variety of existing national rules.

PO 2 would be the only way to eradicate (in a homogeneous way, as applicable in all Member States) the violations of the most fundamental rights of children and families (see Section 6.1.2). The current barriers to the right to identity, to respect for private and family life, as well as to non-discrimination (of both children and parents) originate in the heterogeneity of the rules that exist at European level, notably the fact that a family validly established in one Member State may suddenly be denied rights in another Member State on the basis of non-recognition of those family bonds.

In addition, PO 2 would have a positive impact on the costs and procedures incurred by families and national institutions alike, as the rules would be harmonised, although still in the hands of national courts and authorities. This would save time (and money) for families and institutions.

Under PO 2a, the rules defined in this Regulation would only apply to families whose parenthood has been established via a court decision, i.e. 1-2 % of families in Europe. PO 2b would apply to families whose parental ties and ensuing rights have been recognised either by a court decision or by an authentic act, covering more than 97 % of families in the EU, and thus benefitting more families and national institutions.

Finally, PO 3, which comprises PO 2b and the establishment of an ECP, would have all of the advantages of PO 2b and also allow faster recognition of the parenthood links already established in a Member State. The possibility for European citizens to travel with an ECP reflecting the rules laid down in the Regulation (PO 2b) would also contribute to legal clarity and certainty at EU level.

Overall, the preferred PO 3 is expected to have an additional positive effect on the costs of recognition of parenthood for mobile EU households, as well as for national administrations and the judiciary. These economic impacts are based on the assumption that most (if not all) EU mobile households will require an ECP, whose

procedures will be relatively simple and low-fee, and that the approximation of the administrative and court procedures for cross-border recognition of parenthood will be applied consistently across Member States. It is also expected that the share of mobile EU households will increase moderately in the next decade or so, broadening the share of the potential target population.

Over a 10-year period, the preferred PO 3 is expected to bring notable savings for all stakeholders directly involved in cross-border recognition of parenthood.

For mobile households, this PO will reduce the costs related to recognition of parenthood by between 85 % and 88 % compared to the baseline. A positive effect is expected in the case of both authentic instruments and court decisions.

- The estimated costs for households using authentic instruments under this PO are EUR 79-179 million per year (on average), which represents a reduction of 92-95 % compared to the baseline. This translates to an average cost of procedures requiring authentic instruments of between EUR 35 and EUR 75 (EUR 480-845 in the baseline).
- The cost reduction for households is expected to be generated by the overall simplification of the administrative procedures, eliminating the need for translations and transposition/notarisation of documents, and by a substantial reduction in the need for legal support.
- This PO is expected to have a limited positive impact on the costs for households of procedures requiring court decisions. The combined effect of a lower share of cases requiring a court decision and lower legal costs for households is expected to reduce the overall costs of court decisions for households, estimated at about EUR 363-940 million per year, by 82-84% compared to the baseline. This translates to an average cost of procedures requiring court decisions of between EUR 1 880 and EUR 4 600 (EUR 2 900-7 000 in the baseline) This reduction is driven by lower legal fees (simpler, standardised procedure) and fewer additional expenses (e.g. translations, experts' opinions, DNA tests).
- This PO is expected to have a positive impact on the costs for national administrations and judiciary.
- PO 3 is estimated to further reduce the time and effort needed by national administrations to process these cases, as an effect of the clearer legal framework and administrative procedures, and the efficiency gains provided by the ECP. This is likely to translate into a reduction of costs for national administrations of about 44-55 % compared to the baseline, corresponding to EUR 3 583-12 920 million annually. This translates to an average cost per procedure requiring authentic instruments for national administrations of EUR 1 586-EUR 5 295 (EUR 3 050-8 550 in the baseline).
- Similarly, the costs for the judiciary are expected to fall under this PO, as an effect of the lower share of cases requiring court decisions and the simplification of procedures. Overall costs for the judiciary of recognition of parenthood requiring court decisions are estimated at EUR 1 235-8 106 million per year. This translates to an average cost per procedure requiring court decisions of the judiciary of approximately EUR 6 393 – EUR 39 631 (EUR 10 000-50 000 in the baseline).

The full realisation of the benefits from the ECP may require some accompanying measures, such as communication campaigns.

7 How will monitoring and evaluation be organised?

The functioning and performance of the preferred option (Regulation on the recognition of parenthood between Member States on rules concerning recognition of court decisions and authentic instruments, together with an ECP) will need to be monitored to assess its contribution to facilitating the recognition of parenthood between Member States.

Competent national authorities will be responsible for compiling evidence on the main achievements of this policy initiative at EU and Member State level.

This will help to improve the functioning of the recognition of parenthood for families, national administrations and judicial authorities. Responsible national authorities will be asked to report regularly on the functioning and performance of the mechanisms and tools for recognition of parenthood between Member States (e.g. making use of existing data collection practices or creating new ones if needed). The Commission will review the indicators periodically and evaluate the functioning and performance of the legislative action every seven years.

Table 6 presents the indicators and data sources proposed for the specific objectives of the preferred policy intervention on recognition of parenthood

Table 6. Monitoring and evaluation framework for the preferred PO for recognition of parenthood

Specific objective	Indicators	Sources	Data collection frequency
Facilitate the recognition of parenthood between Member States	Number of proceedings for cross-border recognition of parenthood (per Member State)	Civil registrars and court decisions	Annual
	Number of proceedings for cross-border recognition of parenthood using the ECP (per Member State)	Civil registrars	Annual
	Families' level of awareness and satisfaction with the available mechanisms for cross-border recognition of parenthood	Surveys/enquiries of families	Every two years
	Level of satisfaction of national administrations with the available mechanisms for cross-border recognition of parenthood	Surveys/enquiries of national administrations	Every two years
	Level of satisfaction of the judiciary with the available mechanisms for cross-border recognition of parenthood	Surveys/enquiries of the judiciary	Every two years
	Case-law on cross-border recognition of parenthood (incidence, facts and grounds for decision)	National and EU case-law reporting	Annual
Specific objective 2:	Number of proceedings (and outcomes) for cross-border recognition of parenthood using authentic instruments (per Member State)	Data from registrars and competent national administrations	Annual

Specific objective	Indicators	Sources	Data collection frequency
Ensure legal certainty, predictability and continuity of parenthood	Number of proceedings for cross-border recognition of parenthood requiring court decisions (per Member State)	Data from court registrars	Annual
	Number of proceedings (and outcomes) for cross-border recognition of parenthood using the ECP (per Member State)	Data from court registrars	
	Number court decisions on proceedings for cross-border recognition of parenthood appealed (per Member State)	Data from appeal court registrars	Annual
	Average length of recognition of parenthood using authentic instruments (per Member State)	Data from registries and competent national administrations	Annual
	Average length of recognition of parenthood using ECP (per Member State)	Data from registries and competent national administrations	Annual
	Average length of recognition of parenthood requiring court proceedings (per Member State)	Data from court registries	Annual
	Level of satisfaction of stakeholders with the available mechanisms for cross-border recognition of parenthood (families, national administrations, judiciary, legal professionals)	Surveys/enquiries of families, national administrations, judiciary, legal professionals Studies and reports from legal professionals' bodies	Every two years
Specific objective 3: Views on fundamental rights of children		Surveys/enquiries of families Reports from NGOs and families' representative organisations	Every two years

Specific objective	Indicators	Sources	Data collection frequency
Ensure respect for the fundamental rights of children	Views on other relevant impacts on children and families (e.g. psychological stress)	Surveys/enquiries of families Reports from NGOs and families' representative organisations	Every two years
	Cases brought before the ECtHR concerning EU Member States		
Specific objective 4: <i>Indicators suggested for specific objective 2</i>			
Reduce costs and legal and administrative burden for families, national administrations and national judicial systems	Share of requests for recognition of parenthood using national authentic instruments (per Member State)	Data from civil registries	Annual
	Share of requests for recognition of parenthood requiring transposition of national authentic instruments (per Member State)	Data from civil registries Data/survey on notaries	Annual
	Number of ECPs issued and related fees, if applied (per Member State)	Data from civil registries	Annual
Status of implementation (one year after the Regulation enters into force)	IT components for issuing ECP deployed within one year (per Member State)	Data from national competent authorities	Year 2 from entry into force of the Regulation
	Costs of design and deployment of IT components for issuing ECP	Data from national competent authorities	Year 2 from entry into force of the Regulation
	Maintenance costs of IT components for issuing ECP	Data from national competent authorities	Year 2 from entry into force of the Regulation
	Implementation of training campaigns for personnel in national administrations (per Member State)	Data from national competent authorities	Year 2 from entry into force of the Regulation

Specific objective	Indicators	Sources	Data collection frequency
	Share of personnel in national administrations trained (per Member State)	Data from national competent authorities	Year 2 from entry into force of the Regulation
	Implementation of training campaigns for the judiciary (per Member State)	Data from national competent authorities	Year 2 from entry into force of the Regulation
	Share of personnel in the judiciary trained (per Member State)	Data from national competent authorities	Year 2 from entry into force of the Regulation
	Design and implementation of information and communication campaigns for families	Data from national competent authorities Reports from NGOs and families' representative organisations	Year 2 from entry into force of the Regulation

Annexes

Annex 1 List of literature reviewed

Title	Author	Year	Link
Legislation and policy			
Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000	Council of the European Union	2003	Link
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	Council of the European Union	2009	Link
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	European Parliament, Council of the European Union	2012	Link
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	European Commission	2016	Link
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	European Parliament, Council of the European Union	2003	Link
Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption	HCCH	1993	Link
Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children	HCCH	1996	Link
United Nations Convention on the Rights of the Child (UNCRC)	UN	1989	Link
United Nations Convention on the Reduction of Statelessness	UN	1961	Link
General Comment No. 7 to the Convention on the Rights of the Child	UN Committee on the Rights of the Child	2005	Link
EU Strategy on the Rights of the Child	European Commission	2021	Link

Title	Author	Year	Link
LGBTIQ Equality Strategy 2020-2025	European Commission	2020	Link
EU reports and studies			
Inception impact assessment on a regulation on the recognition of parenthood between Member States	European Commission	2021	Provided by DG JUST
Minutes of the first meeting of the Expert Group on the recognition of parenthood between Member States (11 June 2021)	European Commission	2021	Link
GREEN PAPER - Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records	European Commission	2010	Link
Mapping of studies on the difficulties for LGBTIQ people in cross-border situations in the EU	European Commission (DG JUST)	2019	Link
Analytical legal report 2019: The application of the social security coordination rules on modern forms of family	European Commission (DG EMPL)	2020	Link
Regulating international surrogacy arrangements	European Parliament	2016	Link
A comparative study on the regime of surrogacy in EU Member States	European Parliament	2013	Link
The situation of single parents in the EU	European Parliament	2020	Link
Cross-border recognition of adoptions	European Parliament	2016	Link
European Parliament Resolution of 2 February 2017 with recommendations to the Commission on cross-border aspects of adoptions	European Parliament	2017	Link
Resolution on the future of the LGBTIQ list of actions (2019-2024)	European Parliament	2019	Link
Resolution on public discrimination and hate speech against LGBTIQ people, including LGBTIQ free zones	European Parliament	2019	Link
Obstacles to the free movement of rainbow families in the EU	European Parliament	2021	Link
Joint non-paper by 18 Member States on the future of the LGBTIQ list of actions	18 Member States	2018	Link
Private international law in a context of increasing international mobility: challenges and potential	European Parliament	2017	Link
EUFAM policy guidelines	University of Milan	2017	Link
Study for an impact assessment on European initiatives on mutual recognition of the effects of civil status records	Matrix Insight	2014	Provided by DG JUST
Final Report for the European Commission on the project No JLS/2006/C4/004 relating to a comparative study on the legislation of the Member States of the	Freyhold, Vial & Partner Consultations	2008	Provided by

Title	Author	Year	Link
European Union on civil status, practical difficulties encountered in this area by citizens wishing to exercise their rights in the context of a European area of justice in civil matters and the options available for resolving these problems and facilitating citizens' lives			DG JUST
Practice guide for the application of the Brussels IIa Regulation	European Commission, EJN	2014	Link
Children on the move: a private international law perspective	European Parliament	2017	Link
Report on the 2019 elections to the European Parliament	European Commission	2019	Link
Legislative train schedule - Regulation on the recognition of parenthood between Member States	European Parliament	2021	Link
Briefing on adoption of children in the European Union	European Parliament	2016	Link
Adoption: cross-border legal issues workshop	European Parliament	2015	Link
Analytical legal report 2016 - access to healthcare in cross-border situations	European Commission	2016	Link
Making EU citizens' rights a reality: national courts enforcing freedom of movement and related rights	FRA	2018	Link
Impact of teleworking during the COVID-19 pandemic on the applicable social security	ELA	2021	Link
Cross-border family situations - recognition of parenthood – OPC	European Commission	2021	Link
International publications			
A study into the rights and legal status of children being brought up in various forms of marital or non-marital partnerships and cohabitation	Council of Europe	2009	Link
Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements	Permanent Bureau HCCH	2011	Link
Report on the cross-border recognition of domestic adoption	Permanent Bureau HCCH	2016	Link
A study of legal parentage and the issues arising from international surrogacy arrangements	Permanent Bureau HCCH	2014	Link
Factsheet on children's rights	ECtHR	2021	Link
Factsheet on parental rights	ECtHR	2021	Link
Factsheet on gestational surrogacy	ECtHR	2021	Link
Principles for the protection of the rights of the child born through surrogacy (Verona Principles)	International Social Service	2021	Link
COVID-19 impacts on LGBTIQ communities in Europe and Central Asia: a rapid assessment report	ILGA Europe	2020	Link
Report of the Special Rapporteur on the sale and sexual exploitation of children, including child	UN	2018	Link

Title	Author	Year	Link
prostitution, child pornography and other child sexual abuse material			
Birth registration for every child by 2030: are we on track?	UNICEF	2019	Link
Literature			
European private international law on legal parentage? Thoughts on a European instrument implementing the principle of mutual recognition in legal parentage	Saarloos, K.J.	2010	Link
The cross-border legal recognition of rainbow families under EU law	Tryfonidou, A., for NELFA	2020	Link
EU free movement law and the children of rainbow families: children of a lesser god?	Tryfonidou, A.	2019	Link
Planning the future of cross-border families	Viarengo, I. And Villata, F. C.	2020	Link
EU law and the mutual recognition of parenthood between Member States: the case of <i>V.M.A. v Stolichna Obsthina</i>	De Groot, D., European University Institute	2021	Link
The construction of fatherhood under the jurisprudence of the European Court of Human Rights	European University Institute	2016	Link
More and more together: legal family formats for same-sex and different-sex couples in European countries Comparative analysis of data in the LawsAndFamilies Database	Waaldijk, K.	2017	Link
Same-sex families and legal recognition in Europe	Digoix, M.	2020	Link
Gestational surrogacy: a European overview and the Spanish case. A feasible proposal?	Castañeda Alegre, L., Navarro Andreu, M.A. and Siaba Crespo, S.	2020	Link
Concepts of 'family' under EU law – lessons from the ECHR	Stalford, H.	2002	Link
(EUFAM) Planning the future of cross-border families – a path through coordination	Viarengo, I. and Villata, F.C.	2020	Link
Same-sex relationships and beyond – gender matters in the EU (3 rd edition)	Boele-Woelki, K. and Fuchs, A.	2017	Link
Fundamental rights and best interests of the child in transnational families	Bergamini, E. and Ragni, C.	2019	Link
Perspectives for the unification and harmonisation of family law in Europe	Boele-Woelki, K.	2003	Link
Plurality and diversity of family relations in Europe	Boele-Woelki, K. and Martiny, D.	2019	Link
The right to family life in the European Union	González Pascual, M. and Torres Pérez, A.	2017	Link

Title	Author	Year	Link
Protecting the right to a nationality for children of same-sex couples in the EU – a key issue before the CJEU in <i>V.M.A. v Stolichna Obsthina</i> (C-490/20)	Cabral, P.	2021	Link
When the dust settles: migration policy after Brexit	Migration Policy Institute	2016	Link
Defining ‘family members’ of EU citizens and the circumstances under which they can rely on EU Law	Milios, G.	2020	Link
ART in Europe, 2017: results generated from European registries by the European Society of Human Reproduction and Embryology (ESHRE)	European IVF-Monitoring Consortium (EIM)	2021	Link
Surrogacy: time for a self-sufficiency approach	Armstrong, S.	2020	Link
Assisted reproductive technology in Europe: usage and regulation in the context of cross-border reproductive care	Präg, P. and Mills, M.C.	2017	Link
Surrogate motherhood in Greece: statistical data derived from court decisions	Ravdas, P.	2017	Link
<i>Gestation pour autrui: quelles sont les évolutions du droit?</i>	Vie Publique	2018	Link
Russian State Duma proposes bill restricting surrogacy... again	Weis, C.	2021	Link
Childlessness in Europe: contexts, causes, and consequences	Kreyenfeld, M. and Konietzka, D.	2017	Link
Family dynamics and child outcomes: an overview of research and open questions	Härkönen, J., Bernardi, F. and Boertien, D.	2017	Link
The child’s best interest in gamete donation	Takes, F.	2022	Link

Case-law

CJEU	ECtHR
C-673/16 Coman (Link)	Mennesson v. France (application no. 65192/11) (Link)
C-129/18 SM (Link)	Labassee v. France (no. 65941/11) (Link)
C-9/74 Casagrande (Link)	Laborie v. France (no. 44024/13) (Link)
C-235/87 Matteucci (Link)	Paradiso and Campanelli v. Italy (no 25358/12) (Link)
C-32/75 Cristini (Link)	D v. France (no 11288/18) (Link)
C-148/02 García Avello (Link)	A.D.-K. v. Poland (no 30806/15) (Link)
C-353/06 Grunkin and Paul (Link)	Taddeucci and McCall v. Italy (application no. 51362/09) (Link)
C-541/15 Freitag (Link)	E.B. v. France (application no. 43546/02) (Link)
C-02/21 K.S. (PPU) (Link)	X and others v. Austria (application no. 19010/07) (Link)
C-490/20 V.M.A. (Link)	A.H. and others v. Germany (application no. 7246/20) (Link)

Title	Author	Year	Link
C-336/94 Dafeki (Link)	Schlittner-Hay v. Poland (Applications nos. 56846/15 and 56849/15) (Link)		
	Y.P. v. Russia (application no. 8650/12) (Link)		
	C and E v. France (nos. 1462/18 and 17348/18)		
	Negrepontis-Giannisis v. Greece (application no. 56759/08)		
	Marckx v. Belgium (application No. 6833/74)		
	Boeckel and Gessner-Boeckel v. Germany (application n° 46808/16)		
	Wagner and J.M.W.L. v. Luxembourg (application no. 76240/01)		
Advisory Opinion			
Advisory Opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother (no P16-2018-001)	ECtHR	2018	Link
Data and statistics			
Live births outside marriage, selected years, 1960-2019 (share of total live births, %) May 2021	Eurostat	2021	Link
Marriage and divorce statistics	Eurostat	2021	Link
Rainbow Europe Map - reflecting the legal and policy human rights situation of lesbian, gay, bisexual, trans and intersex (LGBTI) people in Europe	ILGA Europe	2021	Link
EU citizens living in another Member State - statistical overview (August 2021)	Eurostat	2021	Link
Being young in Europe today - family and society (July 2020)	Eurostat	2020	Link
Women in the EU are having their first child later	Eurostat	2021	Link
Population on 1 January by age group, sex and citizenship	Eurostat	2021	Link
Children in migration – residence permits for family reasons Statistics explained	Eurostat	2021	Link
UK Office for National Statistics blog - Are there really 6m EU citizens living in the UK?	UK Office for National Statistics	2021	Link
Migration statistics quarterly report: August 2020	UK Office for National Statistics	2020	Link
Living abroad: British residents living in the EU: April 2018	UK Office for National Statistics	2018	Link
Annual report on intra-eu labour mobility 2020	Eurostat	2020	Link
European atlas of fertility treatment policies	Fertility Europe	2021	Link

Annex 2 Overview of stakeholders consulted

Key stakeholders at EU and national level were invited to participate in the study. Different modes of consultation were developed and offered to stakeholders: an online survey for civil registrars in the Member States, a written questionnaire or live (online) interview for officers of the relevant ministries, and interviews for NGOs and judicial staff.

This annex and its tables present a comprehensive list of the stakeholders who were approached and contributed to the study.

A total of 5 EU-level stakeholders were approached for scoping interviews, of which 2 were consulted, as showcased in Table 7 below.

Table 7. EU-level stakeholders

Stakeholder	Type of interview	Status	Date of first/last contact	Date of interview
FRA - Research Department, Social Research	Scoping interview	Interview completed	16 September 2021, 21 September 2021	6 October 2021
ILGA	Scoping interview	Interview completed	16 September 2021	29 September 2021

Two groups of stakeholders were consulted as part of the national consultations - civil registrars and ministries.

Permanent representations were also approached as part of the consultation. A total of 62 civil registrars were approached during the consultation, of which 22 civil registrars from 12 Member States responded to the survey. In addition, 22 out of 26 ministries approached responded to the request for consultation of which 21 through a questionnaire and 1 through an interview. 16 of the 22 ministries were approached through the permanent representations of their respective country. Table 8 shows the stakeholders consulted as part of the national consultations.

Table 8. National stakeholders

Stakeholders	Member State	Stakeholder name	Mode of consultation	Status	Date of first/last contact	Date of interview / receipt of questionnaire	Comments
Civil registrars	AT	Registry Office	Survey	Completed	22 November 2021	Not applicable	Completed, although not invited by study team
Civil registrars	AT	Registry Office and Citizenship Association	Survey	Completed	22 November 2021	Not applicable	Completed, although not invited by study team
Civil registrars	BE	City of Leuven	Survey	Completed	22 November 2021	Not applicable	Completed, although not invited by study team
Civil registrars	BE	Registry Office	Survey	Completed	22 November 2021	Not applicable	

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Civil registrars	DE	Registry Office; Hamburg	Survey	Completed	22 November 2021	Not applicable	
Civil registrars	DE	Registry Office Hamburg-Mitte	Survey	Completed	Not applicable	Not applicable	Completed, although not invited by study team
Civil registrars	DK	Ministry of Church Affairs	Survey	Completed	Not applicable	Not applicable	Completed, although not invited by study team
Civil registrars	EE	Ministry of the Interior	Survey	Completed	22 November 2021 2 December 2021	Not applicable	
Civil registrars	EE	Tallinn Civil Registry	Survey	Completed	22 November 2021 2 December 2021	Not applicable	
Civil registrars	EE	Unknown	Survey		Not applicable		
Civil registrars	IE	Office of the Registrar General	Survey		Not applicable		
Civil registrars	IT	National Association of Civil Status and Registry Officers	Survey	Completed	22 November 2021	Not applicable	Completed, although not invited by study team
Civil registrars	IT	Municipality of Brunico	Survey	Completed	22 November 2021	Not applicable	Completed, although not invited by study team
Civil registrars	LU	Embassy of Luxembourg in Brussels	Survey				
Civil registrars	NL	City Council of Maastricht	Survey	Completed	22 November 2021	Not applicable	Completed, although not invited by study team
Civil registrars	NL	The Hague City Hall	Survey	Completed	22 November 2021 2 December 2021	Not applicable	
Civil registrars	PL	Association of Civil Registry Officers of	Survey	Completed	22 November 2021	Not applicable	Completed, although not invited by study team

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		the Republic of Poland					
Civil registrars	PL	Not indicated	Survey	Completed	Not applicable	Not applicable	Completed, although not invited by study team
Civil registrars	PL	Not indicated	Survey	Response not received	Not applicable	Not applicable	Not invited by study team
Civil registrars	RO	Registry Office	Survey				
Civil registrars	RO	Registry Office	Survey				
Civil registrars	SI	Division for Civil Status, Public Documents and Residence Registration	Survey	Completed	22 November 2021	Not applicable	
Permanent representation	BE	Justice and Home Affairs (JHA) Counsellors Judicial Cooperation (Civil), e-Justice	Interview/questionnaire	Completed	6 December 2021 19 January 2022	19 January 2022	
Permanent representation	BG	Head of Justice section + Judicial Cooperation (Civil Law), Data Protection, e-Justice	Interview/questionnaire	Completed	6 December 2021 28 January 2022	29 January 2022	
Permanent representation	DE	Judicial Cooperation Civil law, Service of documents, eJustice + Justice & Consumer Policy Unit	Interview/questionnaire	Completed	6 December 2021 24 January 2022	24 January 2022	

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Permanent representation	EE	Judicial Cooperation in Civil Matters, Company Law, Collective Redress, AECE, eJustice, eLaw	Interview/questionnaire	Completed	6 December 2021 7 January 2022	7 January 2022
Permanent representation	ES	Judicial Cooperation in Civil Matters, Data Protection, Company Law	Interview/questionnaire	Completed	6 December 2021 7 January 2022	7 January 2022
Permanent representation	FR	Judicial Cooperation (Civil), contract law, liability law	Interview/questionnaire	Completed	6 December 2021 6 January 2022 14 January 2022	14 January 2022
Permanent representation	IE	Civil Justice, e-Justice, FREMP and Equality Issues	Interview/questionnaire	Completed	6 December 2021 16 December 2021	16 December 2021
Permanent representation	IT	Judicial Cooperation (Civil), e-Justice, MFF + Assistant Justice Unit	Interview/questionnaire	Completed	6 December 2021 5 January 2022	5 January 2022
Permanent representation	LT	e-Justice, Judicial Cooperation (Civil), Civil Law, Consumer protection, Intellectual property	Interview/questionnaire	Completed	6 December 2021 25 January 2022	25 January 2022
Permanent representation	LV	Judicial Cooperation (Civil), Company Law, COPEN (victim rights)	Interview/questionnaire	Completed	6 December 2021 6 January 2022 12 January 2022	12 January 2022
Permanent representation	MT	Civil Justice; e-Justice (Shadowing Criminal Justice; e-	Interview/questionnaire	Completed	6 December 2021 10 January 2022	10 January 2022

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		Justice, FREMP & Data Protection) + JHA Unit Coordinator					
Permanent representation	NL	Judicial Cooperation (Civil), Judicial Cooperation (Brussels IIA)	Interview/questionnaire	Completed	6 December 2021 10 January 2022	10 January 2022	
Permanent representation	PT	Civil Judicial Cooperation / e-Justice	Interview/questionnaire	Completed	6 December 2021 6 January 2022 7 January 2022	7 January 2022	
Permanent representation	SE	Judicial Cooperation (Civil Law), Intellectual Property and Copyright, Company Law, Consumer Protection	Interview/questionnaire	Completed	6 December 2021 14 January 2022	14 January 2022	
Ministries	AT	Ministry of Justice	Questionnaire	Questionnaire completed	27 October 2021	12 January 2022	
Ministries	BE	Ministry - <i>Service Publique Fédéral Intérieur</i> ; Directorate-General for Institutions and Population	Questionnaire	Questionnaire completed	6 December 2021	19 January 2022	Received through the Permanent Representation
Ministries	BG	Ministry of Justice, Director of 'International Adoptions'	Questionnaire	Questionnaire completed	6 December 2021	28 January 2022	Received through the Permanent Representation
Ministries	CZ	Ministry of Justice	Questionnaire	Questionnaire completed	27 October 2021 6 December 2021 8 February 2022	16 February 2022	

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Ministries	DE	Federal Office of Justice	Questionnaire	Questionnaire completed	27 October 2021 6 December 2021 10 December 2021	24 January 2022	Received through the Permanent Representation
Ministries	EE	Ministry of Justice	Questionnaire	Questionnaire completed	27 October 2021 6 December 2021	7 January 2022	Received through the Permanent Representation
Ministries	ES	Ministry of Justice	Questionnaire	Questionnaire completed	27 October 2021 6 December 2021	7 January 2022	Received through the Permanent Representation
Ministries	FI	Ministry of Justice - Department for Private Law and Administration of Justice, International Judicial Assistance, international maintenance obligations, EJN	Questionnaire	Questionnaire completed	27 October 2021	20 January 2022	
Ministries	FR	Ministry of Justice	Questionnaire	Questionnaire completed		14 January 2022	Contacted and received through the Permanent Representation
Ministries	HR	Ministry of Labour, Pension System, Family and Social Policy	Questionnaire	Questionnaire completed	27 October 2021 6 December 2021	4 February 2022	
Ministries	HU	Ministry of Justice	Questionnaire	Questionnaire completed	27 October 2021 6 December 2021	16 February 2022	

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Ministries	IE	Ministry of Justice	Interview	Interview conducted	6 December 2021	16 December 2021	Contacted through the Permanent Representation
Ministries	IT	Ministry of Justice	Questionnaire	Questionnaire completed	27 October 2021 6 December 2021	5 January 2022	Received through the Permanent Representation
Ministries	LT	Ministry of Justice	Questionnaire	Questionnaire completed		25 January 2022	Contacted and received through the Permanent Representation
Ministries	LV	Ministry of Justice	Questionnaire	Questionnaire completed		12 January 2022	Contacted and received through the Permanent Representation
Ministries	MT	Ministry of Justice	Questionnaire	Questionnaire completed		10 January 2022	Contacted and received through the Permanent Representation
Ministries	NL	Ministry of Justice	Questionnaire	Questionnaire completed		10 January 2022	Contacted and received through the Permanent Representation
Ministries	PT	Ministry of Justice	Questionnaire	Questionnaire completed	27 October 2021 6 December 2021	7 January 2022	Received through the Permanent Representation
Ministries	RO	Ministry of Justice	Questionnaire	Questionnaire completed	27 October 2021 6 December 2021	21 January 2022	
Ministries	SE	Ministry of Justice	Questionnaire	Questionnaire completed		14 January 2022	Contacted and received through the Permanent Representation
Ministries	SK	Ministry of Justice	Questionnaire	Questionnaire completed		9 February 2022	Contacted and received through the Permanent Representation

Ministries	SI	Ministry of Justice	Questionnaire	Questionnaire completed	21 January 2022	Contacted and received through the Permanent Representation
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A total of 28 NGOs were approached during the scoping interviews stage, of which 6 stakeholders were consulted through interviews, as showcased in Table 9 below. In addition, 2 representatives from the judiciary were also interviewed.

Table 9. NGOs and judiciary representatives

Stakeholders	Member State	Stakeholder name	Mode of consultation	Status	Date of first/ last contact	Date of interview/ receipt of questionnaire	Comments
NGOs	EU level	Europe for Family	Interview	Interview conducted	9 February 2022 28 February 2022	21 February 2022	
NGOs	EU level	Network for European LGBTIQ Families' Associations (NELFA)	Interview	Interview conducted	25 February 2022	25 February 2022	
NGOs	EU level	Child Identity Protection	Interview	Interview conducted	27 January 2022 10 February 2022	28 February 2022	
NGOs	FR	Association of Gay and Lesbian Parents	Interview	Interview conducted	27 January 2022 15 February 2022 23 February 2022	25 February 2022	
NGOs	LV	Movement <i>Dzīvesbiedri</i>	Interview	Interview conducted	10 February 2022	22 February 2022	
NGOs	RO	ACCEPT Association	Interview	Interview conducted	10 February 2022	25 February 2022	
Judiciary	BE	Judge in the Family Court	Interview	Interview conducted	11 February 2022 16 February 2022	24 February 2022	
Judiciary	PL	Lawyer specialised in anti-discrimination	Interview	Interview conducted	2 February 2022 15 February 2022	17 February 2022	

Annex 3 Stakeholder consultation synopsis report

A3.1 Introduction and stakeholder consultation strategy

This synopsis report provides an overview of the stakeholder consultation activities carried out for the study to support the preparation of an impact assessment on a possible Union legislative initiative on the recognition of parenthood between Member States. Section A3.1 provides an overview of the consultation strategy, Section A3.2 outlines the consultation activities and tools, and Sections A3.3 and A3.4 present a summary of the results of the stakeholder consultation, by stakeholder type and theme.

The goal of the consultation was to ensure that all relevant stakeholders at EU, national and international level were given an opportunity to express their views on the possible Union legislative initiative on the recognition of parenthood between Member States. The consultation relied on a mix of methods and tools to ensure a comprehensive and representative collection of views and experiences. The strategy centred on consulting the following stakeholder categories:

- EU-level officials (EU institutions and agencies);
- National authorities dealing with parenthood matters (national ministries, registration authorities, such as civil and population registrars, judiciary representatives);
- NGOs at national and EU level.

A3.2 Consultation activities and tools

The tools and methods were complementary and extensive, reaching out to all relevant stakeholders, including:

- **OPC** open to the general public;
- **Online survey** targeting registration authorities such as civil and population registrars at Member State level;
- An **email questionnaire** or **semi-structured interviews** for:
 - National ministries
 - Judiciary representatives
 - NGOs (EU and national level)
 - EU-level officials

Table 10 summarises the numbers and types of stakeholders consulted through each tool, followed by an examination of each consultation activity.

Table 10. Overview of consulted stakeholders, by consultation tool

Stakeholder category	OPC	Online survey	Targeted interviews and written questionnaires
EU-level officials			2
National ministries			22
Civil registrars		22	
Judiciary representatives*			2
NGOs*	19		6

EU citizens	323
Other (e.g. non-EU citizens)	2

OPC

An OPC was launched by the Commission to gather input and feedback from citizens and organisations on the recognition of parenthood for families in cross-border situations. It sought to identify the problems that can arise in cross-border situations in the Union where the parenthood of a child established in one Member State is not recognised in another Member State. It also aimed to collect views on the desirability of a possible EU-level initiative on the recognition of parenthood between Member States and on the scope of such an initiative. The OPC was open from 19 May 2021 until 25 August 2021. A total of 389 responses were received, which were analysed by ICF and presented in a summary report submitted to DG JUST during the inception phase of the study. That summary report was then published by DG JUST²³² in October 2021.

The majority of respondents answered as individuals (84 %), with almost all being EU citizens (more than 99 %) and only two non-EU respondents. The remaining categories of respondents (16 %) answered on behalf of public authorities (7 %), NGOs (5 %), academics or research institutions (1 %), business organisations (1 %), trade unions (less than 1 %), or other organisations (2 %). Responses were received from 23 Member States (AT, BE, BG, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, MT, NL, PL, PT, RO, SE, SI, SK). There were no respondents from four Member States (CY, HR, LU, LV).

Online survey

An online **survey** was developed for **registration authorities such as civil and population registrars**. The survey, which was expected to last approximately 45 minutes, was carried out online and targeted stakeholders in 26 Member States. To maximise response rates and ensure that the questionnaire was relevant, the survey was piloted by ICF before rollout. The survey was launched on 22 November and initially remained open until 22 December 2021. To secure an appropriate response rate, the survey was supported by three rounds of reminders, and the deadline for completion was extended until 28 January 2022 to accommodate the holiday period. A total of 22 responses - 15 full responses and seven partial responses, from 12 Member States (AT, BE, DE, DK, EE, IE, IT, LU, NL, PL, RO, SI) were generated at the closure of the survey.

The survey structure was user-friendly, and was launched using Qualtrics™, a versatile software package for the creation, deployment, management and analysis of online surveys. The questionnaire included a mix of mandatory and optional closed questions, allowing for quantitative and statistical analyses, as well as open questions that allowed respondents to provide evidence, including data, supporting their views and assertions. The questionnaire and its protocol were agreed with DG JUST before the launch of the survey. Personally identifying data were removed from the dataset as part of the data processing. The study team analysed the anonymised responses directly from csv/Excel format and used Excel for quick data visualisation. Where possible, a bivariate analysis (comparing two variables) was used in order to showcase if and how responses varied between sub-groups of respondents.

Written questionnaires

A questionnaire targeting national ministries dealing with parenthood matters was developed by ICF in collaboration with DG JUST. The questionnaire aimed to gather information about current practices on the establishment and recognition of parenthood

²³² See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12878-Recognition-of-parenthood-public-consultation_en

in the Member States. The targeted consultation process started on 27 October 2021, with national ministries invited to complete the questionnaires by end-January. In order to engage the most relevant stakeholders at national level, the study team requested support from the national experts. The consultation of national ministries was supported by three rounds of reminders and the deadline for participation was extended until end-February 2022 to allow more stakeholders to respond to the questionnaire. At the time of submission of the report, 22 Member States had taken part, either through the questionnaire (AT, BE, BG, CZ, DE, EE, ES, FI, FR, HR, HU, IT, LT, LV, MT, NL, PT, RO, SE, SI, SK) or participating in an interview (IE).

Targeted interviews

Scoping interviews at EU level

Scoping interviews with EU-level officials took place in September 2021. The discussions allowed for a deeper understanding of problems encountered by families and children and pointed to some interesting data demonstrating these problems.

Targeted interviews with NGOs

The consultation process started in January 2022, with national and European NGOs invited to participate in an interview or to complete the questionnaires by end-February. In order to engage the most relevant NGOs at national level, the study team requested support from the national experts. The consultation was supported by regular reminders and the deadline for participation was extended until end-March 2022 to allow more stakeholders to participate. Overall, six interviews have taken place with NGOs (three EU NGOs; three national NGOs)

Targeted interviews with judiciary representatives

The consultation process started in January 2022, with judiciary representatives invited to participate in an interview. The consultation was supported by regular reminders and the deadline for participation was extended until end-March 2022 to allow more stakeholders to participate. In total, two interviews took place with judiciary representatives (one with a judge and one with a lawyer).

A3.3 Main stakeholder feedback per consultation activity

Findings from the OPC

Current situation and problems relating to the non-recognition of parenthood

The majority of respondents to the OPC consider the **lack of EU harmonised rules on the recognition of parenthood** to be a **serious problem**, most of whom were also aware of **instances where parenthood established in one Member State was not recognised in another**. They noted that the primary reason for not recognising parenthood established in another Member State is that **the recognition of parenthood is contrary to the national law** of the Member State where recognition is sought²³³, with **birth certificates**²³⁴ and **judicial decisions** establishing parenthood²³⁵ being the **main documents not recognised**. Where parenthood was not recognised, the cases mainly involved **a child born from surrogacy**²³⁶, **a child born through ART**²³⁷ and **second-parent adoption by the partner of the biological parent**²³⁸. In general, the parenthood of the non-

²³³ OPC, 72 %, 184 responses out of 256.

²³⁴ OPC, 40 %, 127 responses out of 333.

²³⁵ OPC, 22 %, 71 responses out of 333.

²³⁶ OPC, 37 %, 116 responses out of 330.

²³⁷ OPC, 23 %, 73 responses out of 330.

²³⁸ OPC, 21 %, 65 responses out of 330.

biological parent was most frequently not recognised **where the parenthood of the biological parent was recognised**²³⁹. Among the main rights denied to the child or parents in the instances where parenthood was not recognised were the **parental right to act as the legal representative of a child**²⁴⁰ and the **issuance of the documentation necessary for a child to obtain proof of nationality**²⁴¹. Other rights frequently denied included the **refusal of the parental rights to travel alone with a child or to authorise a child to travel alone**²⁴² and the **right of issuance of passport or identity card** for a child by the Member State of nationality²⁴³. In addition, a considerable share of respondents²⁴⁴ believe that the possible non-recognition of parenthood has **dissuaded families from travelling with their child** within the Union, or from moving with their child to another Member State.

Procedural hurdles in the recognition of parenthood procedures

The most common problems indicated by respondents were that the **recognition procedure before administrative authorities was excessively lengthy**²⁴⁵, that the **recognition required bringing the case to a court**²⁴⁶, that the **procedure before administrative authorities required legal advice**²⁴⁷, and that the **procedure before administrative authorities was expensive**²⁴⁸. In cases where the parenthood was recognised, the estimated length of the recognition procedure before the administrative authorities was typically between 12 and 24 months²⁴⁹, while cases that required bringing a case to court typically lasted more than two years²⁵⁰ or between one and two years²⁵¹.

Possible EU initiative to facilitate cross-border recognition of parenthood between Member States

Overall, the majority of respondents²⁵² agreed that **EU adoption of legislation would facilitate the cross-border recognition of parenthood**, compared to leaving recognition to the national law of Member States. A large share of those respondents²⁵³ also supported the idea of the **Union playing another role in facilitating the recognition of parenthood**. The main role the EU could play is through **promoting cooperation between national authorities** (e.g. organising judicial training or thematic meetings)²⁵⁴, **issuing guidance**²⁵⁵ or **raising citizens' awareness about the existing problems** with the recognition of parenthood²⁵⁶. By contrast, only a minority²⁵⁷ of respondents indicated that the Union should have **no role** in this matter. As regards the law that should determine the parenthood of a person, the most common option indicated was the **law of the habitual residence of their parents**²⁵⁸, followed by **the nationality of the person**²⁵⁹, **the law of the habitual residence of their**

²³⁹ OPC, 35 %, 109 responses out of 311.

²⁴⁰ OPC, 59 %, 146 responses out of 248.

²⁴¹ OPC, 52 %, 128 responses out of 248.

²⁴² OPC, 44 %, 108 responses out of 248.

²⁴³ OPC, 42 %, 105 responses out of 248.

²⁴⁴ OPC, 44 %, 147 responses out of 337.

²⁴⁵ OPC, 28 %, 83 responses out of 301.

²⁴⁶ OPC, 26 %, 79 responses out of 301.

²⁴⁷ OPC, 26 %, 78 responses out of 301.

²⁴⁸ OPC, 18 %, 55 responses out of 301.

²⁴⁹ OPC, 30 %, 29 responses out of 98.

²⁵⁰ OPC, 27 %, 27 responses out of 100.

²⁵¹ OPC, 21 %, 21 responses out of 100.

²⁵² OPC, 60 %, 232 respondents out of 384 fully agreed; 3 %, 12 respondents out of 384 somewhat agreed.

²⁵³ OPC, 96 %, 235 responses out of 244.

²⁵⁴ OPC, 54 %, 207 responses out of 381.

²⁵⁵ OPC, 47 %, 180 responses out of 381.

²⁵⁶ OPC, 44 %, 168 responses out of 381.

²⁵⁷ OPC, 30 %, 113 responses out of 381.

²⁵⁸ OPC, 11.5 %, 42 responses out of 365.

²⁵⁹ OPC, 10 %, 36 responses out of 365.

parents provided the parents have lived in the Member State a minimum number of years²⁶⁰, the law of the habitual residence of the person²⁶¹ and the law of the country where the person is born²⁶². A considerable share of respondents²⁶³ consider that should the Union legislate on the cross-border recognition of parenthood, **the legislative instrument should include rules on the recognition of judicial decisions**, while a minority²⁶⁴ believe that the legislative instrument should not include such rules but, rather, outline rules on the recognition of parenthood **as attested by a public document** (e.g. birth certificate). Finally, a significant majority of respondents²⁶⁵ noted that it would be useful if the possible EU legislative instrument provided for an **ECP** that is acceptable throughout the Union, while a minority²⁶⁶ consider the **currently available national documentation to be sufficient**.

Impact of possible EU legislation facilitating the cross-border recognition of parenthood

In terms of expected impacts of the possible EU legislation, a great majority of OPC respondents anticipate positive effects in the following areas:

- Children's fundamental rights, such as the right to a family life and the right to non-discrimination²⁶⁷;
- Children's welfare, including their emotional and psychological well-being²⁶⁸;
- Facilitating the exercise of the right of children to travel and move within the Union with their families²⁶⁹;
- Legal certainty for families in respect of their parenthood in another Member State²⁷⁰;
- Legal certainty for national administrations and simplification of their procedures for the recognition of parenthood²⁷¹;
- Costs, time and burden for citizens related to court proceedings on the recognition of parenthood²⁷²;

²⁶⁰ OPC, 5 %, 18 responses out of 365.

²⁶¹ OPC, 5 %, 18 responses out of 365.

²⁶² OPC, 5 %, 20 responses out of 365.

²⁶³ OPC, 42%, 154 responses out of 363; Of those, 78 % (120) of responses came from EU citizens, while 9 % (14) of responses came from public authorities and 12 % (19) of responses from other organisations.

²⁶⁴ OPC, 24 %, 88 responses out of 363; Of those, a majority were EU citizens (88 %, 77 responses, of which half (38) were from SK citizens), while 6 % (5) came from public authorities and an organisation, respectively. One response here was also provided by a non-EU citizen.

²⁶⁵ OPC, 41% (155) of respondents (of which 85 % (131) were from EU citizens, 8 % (12) from public authorities, 6 % (10) from other organisations, and 1 % (2) from non-EU citizens) consider that such a certificate would be useful and that including it in the possible EU legislative instrument should be a priority, while 16 % (60) of respondents (of which 73 %, 44 were EU citizens, 17 % (10) were public authorities, and 10 % (6) were from other organisations) indicated that an ECP would be useful.

²⁶⁶ OPC, 37 %, or 141 responses out of 379; Of those, 87 % (122) were from EU citizens, of which 79 % (96) were from SK citizens, while 2 % (3) were from public authorities, and 11 % (16) from other organisations.

²⁶⁷ OPC, 58 %, 218 responses out of 373 indicated a very positive impact on children's fundamental rights, and 7 % (25) indicated a mildly positive impact.

²⁶⁸ OPC, 54 %, 200 responses out of 371 indicated a very positive impact on children's welfare, including their emotional and psychological well-being, and 9 % (35) indicated a mildly positive impact.

²⁶⁹ OPC, 57 %, 211 responses out of 369 indicated a very positive impact on facilitating the exercise of the right of children to travel and move within the Union, and 11 % (39) indicated a mildly positive impact.

²⁷⁰ OPC, 61 %, 227 responses out of 370 indicated a very positive impact on improving legal certainty for families, and 6 % (21) indicated a mildly positive impact.

²⁷¹ OPC, 56 %, 204 responses out of 367 indicated a very positive impact on improving the legal certainty for national administrations, and a further 9 % (34) indicated a mildly positive impact.

²⁷² OPC, 52 %, 193 responses out of 368 indicated a very positive impact on costs, time and burden for citizens related to court proceedings, and 11 % (39) indicated a mildly positive impact.

- Costs, time and burden for national judicial systems related to court proceedings on the recognition of parenthood²⁷³.

Findings from the online survey

Establishment and registration of parenthood in Member States (including conflict of laws rules)

Nearly all respondents²⁷⁴ indicated that **parenthood can be established by operation of law** in their Member State. A majority of respondents²⁷⁵ indicated that parenthood can be established by court decision or by acknowledgment of paternity or maternity before a public authority (e.g. registrar or notary).

A significant majority of respondents²⁷⁶ specified that it is **not possible under their national law to establish parenthood in favour of more than two parents**.

The following information is registered in the civil or population register once parenthood has been established, according to all respondents²⁷⁷:

- Date of birth of the child;
- Place of birth of the child;
- Name of the child;
- Sex/gender of the child;
- Name of the parents of the child;
- Date of registration;
- Registration office.

A significant majority of respondents²⁷⁸ reported that the sex/gender of the parents of the child, as well as whether the child was adopted (domestically, in another country or as an inter-country adoption) is registered in the civil or population register once parenthood has been established.

At the same time, 40 % (6 responses out of 15) indicated that information about the parents is recorded as **'mother-father'** in the civil or population register, whereas 33 % (5) indicated 'parent-parent'. 'Mother-father/co-mother' was specified by two respondents.

All respondents²⁷⁹ noted that birth certificates (or extracts from the register) are issued in their Member State. **The majority of respondents²⁸⁰ said that parenthood certificates (or extracts from the register) are issued** in their Member State.

- According to all respondents²⁸¹, a birth certificate includes the date of birth of the child, the place of birth of the child, and the name of the child. Most respondents²⁸² indicated that the sex/gender of the child and the names of the parents can also be found on a birth certificate. The majority of

²⁷³ OPC, 50 %, 183 responses out of 367 indicated a very positive impact on costs, time and burden for national judicial systems related to court proceedings, and 10 % (37) indicated a mildly positive impact.

²⁷⁴ Survey of civil registrars, 93 % (14 responses out of 15).

²⁷⁵ Survey of civil registrars, 67 % (10 responses out of 15) by court decision, 53 % (8 responses out of 15) by acknowledgement of paternity or maternity before a public authority (e.g. registrar or notary).

²⁷⁶ Survey of civil registrars, 82 % (14 responses out of 17).

²⁷⁷ Survey of civil registrars, 100 % (15 responses out of 15).

²⁷⁸ Survey of civil registrars, 87 % (13 responses out of 15).

²⁷⁹ Survey of civil registrars, 100 % (15 responses out of 15).

²⁸⁰ Survey of civil registrars, 73 % (11 responses out of 15).

²⁸¹ Survey of civil registrars, 100 % (15 responses out of 15).

²⁸² Survey of civil registrars, 87 % (13 responses out of 15).

respondents²⁸³ highlighted the date of issuance of the birth certificate and the date of registration as well;

- According to all respondents²⁸⁴, a parenthood certificate includes the date of birth of the child, the place of birth of the child, the name of the child, the sex/gender of the child, the names of the parents of the child, the date of issuance of the parenthood certificate, and the issuing authority. Most respondents²⁸⁵ also highlighted the sex/gender of the parents and the date of registration.

A majority of respondents²⁸⁶ reported a **central civil or population register** in their Member State.

On **surrogacy**, 40 % of respondents (6 responses out of 15) indicated that the national law of their Member State expressly bans surrogacy, 13 % (2) that the national law of their Member State does not regulate surrogacy but allows the registration of a child born out of surrogacy in another EU Member State, 15 % (2) that the national law of their Member State does not regulate surrogacy but allows the registration of a child born out of surrogacy in a non-EU country, and 7 % (1) that the national law of their Member State does not regulate surrogacy and does not allow the registration of a child born out of surrogacy in another country, or the national law of their Member State regulates surrogacy and allows it under certain conditions. Three respondents indicated different scenarios.

On the **laws that apply to establish parenthood in a cross-border situation (e.g. conflict of laws rules)**, the majority of respondents²⁸⁷ indicated **the nationality of the child**, while half²⁸⁸ highlighted the **nationality of both parents**. Only a minority²⁸⁹ selected the law of the habitual residence of the child, the nationality of one of the parents, the law of the habitual residence of one or both of the parents, the law of the forum (i.e. the law of their Member State), or the law of the State of birth. Where more than one of the applicable laws can apply to establish parenthood in a cross-border situation, any of the applicable laws can be chosen, according to half of the respondents²⁹⁰. A minority of respondents²⁹¹ indicated that the applicable laws must be applied in a hierarchical order.

Recognition of parenthood established in another Member State

All respondents²⁹² indicated that a **civil registrar** is competent in their Member State **to deal with the recognition of a foreign document on parenthood established in another Member State**. At the same time, a significant majority of respondents²⁹³ noted that a **court** is capable of this as well. Only a minority²⁹⁴ pointed towards a population register, municipality, embassies/consulates, notary, or tax authorities.

According to a significant majority of respondents²⁹⁵, a **validity test** is the control mechanism applied in their Member State before recognising a foreign document on

²⁸³ Survey of civil registrars, 67 % (10 responses out of 15) date of issuance of the birth/parenthood certificate, 60 % (9) date of registration.

²⁸⁴ Survey of civil registrars, 100 % (4 responses out of 4).

²⁸⁵ Survey of civil registrars, 75 % (3 responses out of 15).

²⁸⁶ Survey of civil registrars, 53 % (8 responses out of 15).

²⁸⁷ Survey of civil registrars, 57 % (8 responses out of 14).

²⁸⁸ Survey of civil registrars, 50 % (7 responses out of 14).

²⁸⁹ Survey of civil registrars, 43 % (6 responses out of 14), 36 % (5), 29 % (4), 21 % (3), 21 % (3), and 21 % (3), respectively.

²⁹⁰ Survey of civil registrars, 50 % (5 responses out of 10).

²⁹¹ Survey of civil registrars, 30 % (3 responses out of 10).

²⁹² Survey of civil registrars, 100 % (14 responses out of 14).

²⁹³ Survey of civil registrars, 79 % (11 responses out of 14).

²⁹⁴ Survey of civil registrars, 43 % (6 responses out of 14), 21 % (3), 21 % (3), 14 % (2) and 14 % (2), respectively.

²⁹⁵ Survey of civil registrars, 79 % (11 responses out of 14).

parenthood established in another Member State, i.e. the parenthood indicated in the foreign document is recognised if the document is valid under the law of the Member State of issuance. A majority of respondents²⁹⁶ highlighted **a competence test**, i.e. the parenthood indicated in the foreign document is recognised if the document was issued by an authority which was competent under the law of the Member State of issuance.

When asked 'Does the procedure for the recognition of a foreign document on parenthood differ between (i) EU Member States, and (ii) non-EU countries?', a significant majority of respondents²⁹⁷ indicated the option **to grant citizenship, or issuing a passport or an ID card**. A majority of respondents²⁹⁸ listed the options to grant custody rights, visiting rights, maintenance rights or inheritance rights; to grant parental rights (e.g. giving consent for medical treatment, enrolling in school, opening a bank account for a child), to grant child-related allowances, and to grant child-related tax deductions.

The procedure for the recognition of a foreign document on parenthood does not differ between (i) EU Member States, and (ii) non-EU countries, according to a significant majority of respondents²⁹⁹. Most³⁰⁰ noted that **the procedure for the recognition of (i) a foreign document (such as an administrative document or a notarial document) on parenthood, and (ii) a foreign judgment on parenthood does not differ** either. A significant majority³⁰¹ similarly indicated that **the procedure for the recognition of (i) a foreign administrative document on parenthood, and (ii) a foreign notarial document on parenthood does not differ**.

Finally, in order to register the parenthood indicated in a foreign document that has been recognised, **registration can be made directly on the basis of the foreign document**, according to a majority of respondents³⁰².

Possible EU initiative to facilitate cross-border recognition of parenthood between Member States

A substantial majority of respondents³⁰³ believe that an **EU legislative instrument facilitating the recognition of parenthood between Member States would have added value** compared to the current situation where each Member State applies its own rules. In addition, a significant share³⁰⁴ indicated that it would be useful for the EU legislative instrument to provide for an **optional ECP** (issued by national authorities at the request of a citizen) that is accepted throughout the EU.

Findings from the written questionnaires

Current legal framework on establishment and recognition of parenthood in Member States

The large majority of ministries mentioned that parenthood is **established by operation of law**³⁰⁵, by **judgment**³⁰⁶, or through a **form of acknowledgement of**

²⁹⁶ Survey of civil registrars, 71 % (10 responses out of 14).

²⁹⁷ Survey of civil registrars, 85 % (11 responses out of 13).

²⁹⁸ Survey of civil registrars, 69 % (9 responses out of 13), 69 % (9), 62 % (8) and 54 % (7), respectively.

²⁹⁹ Survey of civil registrars, 79 % (11 responses out of 14).

³⁰⁰ Survey of civil registrars, 71 % (10 responses out of 14).

³⁰¹ Survey of civil registrars, 85 % (11 responses out of 13).

³⁰² Survey of civil registrars, 62 % (8 responses out of 13).

³⁰³ Survey of civil registrars, 12 out of 14 responses – 79 % (11) fully agreed and 7 % (1) somewhat agreed.

³⁰⁴ Survey of civil registrars, 12 out of 14 responses – 57 % (8) indicated that an ECP would be useful, and 29 % (4) indicated that an ECP would be useful and its inclusion in a possible EU legislative instrument should be a priority.

³⁰⁵ Written questionnaires for ministries, 100 %, 21 responses out of 22.

³⁰⁶ Written questionnaires for ministries, 95 %, 20 responses out of 22.

parenthood³⁰⁷. A minority stated that an administrative decision reflected in an administrative document³⁰⁸, a notarial act³⁰⁹, a court settlement³¹⁰, or an extra-judicial agreement between the parents³¹¹ **establishes parenthood**.

With regards to surrogacy, a considerable share of ministries **expressly ban surrogacy**³¹², and a minority **allow and regulate surrogacy**³¹³. A considerable share **do not regulate surrogacy**³¹⁴.

A large majority of ministries³¹⁵ replied that '**conflict of laws**' are applied in their **Member State** for the establishment and recognition of parenthood. The diversity of responses reflects the diversity of national legislation on such matters. The responses mostly covered the **connecting factor for determining the law** applicable to the establishment of parenthood. A majority indicated that the **nationality of the child** is a connecting factor³¹⁶, as well as the **nationality of one or both parents**³¹⁷. A considerable share also said that the habitual residence of the child is the connecting factor³¹⁸, as well as the habitual residence of the parent(s)³¹⁹. Ministries also mentioned other connecting factors³²⁰. **Recognition of parenthood** was mentioned by a minority of ministries³²¹ and **two grounds of refusal** were noted by ministries: (i) the lack of a connecting factor in the determination of the competence of the authority; and (ii) public policy. The vast majority of ministries indicated that their national 'conflict of laws' rules **do not allow**, even in a limited way, the **parent(s) to choose the law** applicable to the establishment of parenthood³²².

A large majority of ministries mentioned that **courts establish parenthood** in their Member States when there is a cross-border element³²³, as well as **civil registrars**³²⁴. Other authorities were also mentioned³²⁵.

Half of the ministries reported that their Member State **concluded bilateral and multilateral agreements** on the establishment of parenthood in cross-border situations or on the recognition of parenthood established abroad³²⁶. The other half stipulated that their Member State **did not conclude such bilateral or multilateral**

³⁰⁷ Written questionnaires for ministries, 59 %, 13 responses out of 22.

³⁰⁸ Written questionnaires for ministries, 27 %, 6 out of 22 respondents.

³⁰⁹ Written questionnaires for ministries, 18 %, 4 out of 22 respondents.

³¹⁰ Written questionnaires for ministries, 4 %, 1 out of 22 respondents.

³¹¹ Written questionnaires for ministries, 4 %, 1 out of 22 respondents.

³¹² Written questionnaires for ministries, 45 %, 10 out of 22 responses.

³¹³ Written questionnaires for ministries, 9 %, 2 out of 22 responses.

³¹⁴ Written questionnaires for ministries, 41 %, 9 out of 22 responses.

³¹⁵ Written questionnaires for ministries, 73 %, 19 out of 22 responses.

³¹⁶ Written questionnaires for ministries, 59 %, 13 out of 22 responses.

³¹⁷ Written questionnaires for ministries, 50 %, 11 out of 22 responses.

³¹⁸ Written questionnaires for ministries, 41 %, 9 out of 22 responses.

³¹⁹ Written questionnaires for ministries, 32 %, 7 out of 22 responses.

³²⁰ Written questionnaires for ministries, 14 % (3 out of 22 responses) referred to the law of the *forum*, 14 % (3) referred to the law governing the general effects of the marriage of the mother or parents, and 10 % (2) referred to the law of the Member State at birth. Very few ministries mentioned: (i) the law applicable to the personal relations between the parents at the time of the birth (5 %, 1 out of 22 responses), (ii) the law governing the preconditions of contestation of parenthood (5 %, 1 out of 22 responses), (iii) the law of the State where the mother of the child is present or is an applicant for asylum at the time of birth (5 %, 1 out of 22 responses), (iv) the law of the State where the dispute regarding the paternity of a child arose (5 %, 1 out of 22 responses); (v) the law of the State issuing the birth certificate (5 %, 1 out of 22 responses), and (vi) the law of the country with which the family life of the adopters is most closely connected (5 %, 1 out of 22 responses). Specific 'conflict of laws' rules for revocation of paternity were mentioned by one ministry.

³²¹ Written questionnaires for ministries, 9 %, 2 out of 22 responses.

³²² Written questionnaires for ministries, 77 %, 17 out of 22 responses.

³²³ Written questionnaires for ministries, 86 %, 19 out of 22 responses.

³²⁴ Written questionnaires for ministries, 68 %, 15 out of 22 responses.

³²⁵ Written questionnaires for ministries, a representative body abroad, such as a consulate (18 %, 4 out of 22 responses), notary (14 %, 3 responses), and municipal administrative bodies (9 %, 2 responses).

³²⁶ Written questionnaires for ministries, 50 %, 11 out of 22 responses.

agreements³²⁷. Multilateral agreements³²⁸ and bilateral agreements³²⁹ were mentioned by the ministries.

Half of the ministries stated that their Member State was **not considering legal initiatives** in respect of substantive law on the establishment of parenthood, conflict of laws rules for the establishment of parenthood in cross-border situations, and rules concerning the recognition of parenthood established abroad³³⁰. Nevertheless, a considerable share mentioned that their Member State is **considering such legal initiatives**³³¹. The most recurring legislative reforms mentioned were: (i) **surrogacy**³³²; and (ii) the **establishment of parenthood**, which might also include 'conflict of laws' rules (e.g. specifically for same-sex couples, as mentioned by two ministries, and paternity, as indicated by one ministry)³³³.

Existing problems

The **main practical problems** that arise in connection with the recognition of parenthood established abroad, according to ministry representatives, are related to the **recognition of parenthood of same-sex parents**³³⁴ and the **recognition of parenthood established abroad following surrogacy**³³⁵. Practical problems were also indicated in relation to the formal requirements for documents (e.g. legalisation and translation needed), the cases where the father of the child is considered to be the mother's husband and the requirement for consent of the other parent (often the mother) to recognition³³⁶. Other problems include:

- The deprivation by one parent of the other's right to see their child, in cases where parenthood is awarded to only one parent abroad;
- The differences between countries in drawing up birth certificates (e.g. where the origin of one parent is not established, but one Member State provides for fictitious entry of a parent but others do not);
- Receiving the relevant documents for entering the parenthood in the registry;
- Recognition of court decisions issued abroad;
- Existence of more than one father or mother of the child on a foreign certificate of parenthood;
- Impossibility of obtaining certain documents in the context of adoption proceedings.

The majority of ministry representatives³³⁷ expect that the **existing problems with the recognition of parenthood established abroad are likely to persist**, while a considerable share of respondents³³⁸ believe that the **challenges will increase in the**

³²⁷ Written questionnaires for ministries, 50 %, 11 out of 22 responses.

³²⁸ Written questionnaires for ministries, The Hague Convention was mentioned by 5 ministries, the Convention on the establishment of maternal descent of natural children was ratified by DE, EL, ES, LU, NL, and CH, TR, and was mentioned by one ministry, and the Act on recognition of Nordic judgments and acknowledgements of paternity was mentioned by two ministries.

³²⁹ Written questionnaires for ministries, AT and PL concluded a Treaty on Mutual Relations in Civil Legal Matters and on Documents (mentioned by 1 ministry); LT concluded treaties on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters with 13 countries, e.g. EE, LV, PL, and it was mentioned by 1 ministry; and Treaties on Judicial Assistance containing provisions on parenthood concluded by RO with CZ, HU and PL were mentioned by 1 ministry.

³³⁰ Written questionnaires for ministries, 50 %, 11 out of 22 responses.

³³¹ Written questionnaires for ministries, 36 %, 8 out of 22 responses.

³³² Written questionnaires for ministries, 18 %, 4 out of 22 responses.

³³³ Written questionnaires for ministries, 18 %, 4 out of 22 responses.

³³⁴ Written questionnaires for ministries, 45 %, 10 out of 22 responses.

³³⁵ Written questionnaires for ministries, 36 %, 8 out of 22 responses.

³³⁶ Written questionnaires for ministries, each problem was indicated by 9 % (2) of 22 responses.

³³⁷ Written questionnaires for ministries, 50 %, 11 out of 22 responses.

³³⁸ Written questionnaires for ministries, 32 %, 7 out of 22 responses.

future. The main reasons identified for the continuation and increase of the problems were the **differences in Member States' legislation** on the establishment and recognition of parenthood³³⁹, as well as the **increasing mobility** of people in the EU³⁴⁰. Other reasons were **new family models**³⁴¹, the **lack of rules on surrogacy**³⁴², and the **lack of EU harmonised rules on parenthood**³⁴³.

Almost half of the ministries³⁴⁴ reported that the **conflicting judgments or administrative/notarial documents on the parenthood of the same person has not occurred in practice**, while a considerable share³⁴⁵ indicated that they have **experienced such situations**, albeit rarely³⁴⁶.

The majority of ministry representatives³⁴⁷ indicated that there are **groups of children that are affected disproportionately by problems related to the recognition of parenthood**, while only a small share³⁴⁸ indicated that **no groups of children are affected**. The main groups of children affected are children of same-sex parents³⁴⁹ and children born through surrogacy³⁵⁰. Children born outside of marriage³⁵¹ were also believed to be disproportionately affected.

Member States ensure that the **best interests of the child are provided for in national legislation**³⁵² and by **applying international and EU conventions on the rights of the child**³⁵³. In addition, to ensure the best interest of the child is applied, no specific procedure is required when recognising parenthood established abroad in some Member States³⁵⁴. Other means indicated include:

- Allowing alternative connecting factors when applying conflict-of-laws rules;
 - Guaranteeing fair process of recognition of parenthood;
 - Participating in initiatives to improve mutual recognition;
 - Recognising parenthood of children born through surrogacy.
-
- Cost and length of the recognition procedure

When a citizen requests the recognition of an administrative document on parenthood (e.g. birth certificate, parenthood certificate, extract of a civil or population register) by an administrative authority, the **average length of the recognition procedure** varies between Member States, with more than half of the ministries indicating that no data are available³⁵⁵. The following lengths of recognition procedure were mentioned by participants:

- 30-60 weeks (three Member States);
- One week (two Member States);
- 30 days/one month (one Member State);

³³⁹ Written questionnaires for ministries, important factor reported by seven Member States.

³⁴⁰ Written questionnaires for ministries, important factor reported by seven Member States.

³⁴¹ Written questionnaires for ministries, important factor reported by four Member States.

³⁴² Written questionnaires for ministries, important factor reported by three Member States.

³⁴³ Written questionnaires for ministries, important factor reported by two Member States.

³⁴⁴ Written questionnaires for ministries, 45 %, 10 out of 22 responses.

³⁴⁵ Written questionnaires for ministries, 41 %, 9 out of 22 responses.

³⁴⁶ Written questionnaires for ministries, four Member States indicated that the situation arises rarely, one Member State that it arises frequently, and one that it arises sometimes.

³⁴⁷ Written questionnaires for ministries, 64 %, 14 out of 22 responses.

³⁴⁸ Written questionnaires for ministries, 18 %, 4 out of 22 responses.

³⁴⁹ Written questionnaires for ministries, reported by nine Member States.

³⁵⁰ Written questionnaires for ministries, reported by eight Member States.

³⁵¹ Written questionnaires for ministries, reported by four Member States.

³⁵² Written questionnaires for ministries, 59 %, 13 out of 22 responses.

³⁵³ Written questionnaires for ministries, 27 %, 6 out of 22 responses.

³⁵⁴ Written questionnaires for ministries, 18 %, 4 out of 22 responses.

³⁵⁵ Written questionnaires for ministries, 55 %, 12 out of 22 responses.

- 20 working days (one Member State);
- 15 days (one Member State);
- 10 working days (one Member State);
- Immediate recognition³⁵⁶ (one Member State).

Regarding the **average cost for a citizen of a recognition procedure before an administrative authority**, more than half of the ministries indicated that the procedure is free of charge³⁵⁷, with some reporting that this does not include other costs such as costs for translation, postage and legalisation. Some ministries³⁵⁸ indicated that no data are available, while a small minority³⁵⁹ indicated other fees.

No data are available on the **average cost to national administrations for a recognition procedure before an administrative authority** for the majority of Member States³⁶⁰, while one Member State reported little or no costs.

- Available data

Possible EU initiative to facilitate cross-border recognition of parenthood between Member States

The majority of ministry representatives³⁶¹ believe that the **existing problems linked to the recognition of parenthood will evolve** in the absence of legal initiatives (at EU or international level) and are likely to **worsen in the future**. Among the main reasons indicated for possible aggravation are the **increasing mobility of modern families**³⁶², the **differences in Member States' substantive law**³⁶³, and the **absence of harmonised legislation** in the area³⁶⁴. Other anticipated challenges centre on the increasing **diversification of families**³⁶⁵ and the **recognition of surrogacy**³⁶⁶.

The main way to solve or mitigate the existing problems linked to the recognition of parenthood between Member States, according to most of the ministries³⁶⁷, is through the **harmonisation of Member States' legislation on the recognition of parenthood and the adoption of common rules**. Other possible solutions are the **promotion of cooperation between national authorities**³⁶⁸ (e.g. training, thematic meetings), the provision of **up-to-date information/inventory of the rules**³⁶⁹ applied on the matter of parenthood in Member States, and the **adoption of a common instrument for parenthood** (e.g. an ECP)³⁷⁰.

³⁵⁶ In cases where both parents are present at the registry.

³⁵⁷ Written questionnaires for ministries, 59 %, 13 out of 22 responses.

³⁵⁸ Written questionnaires for Ministries, 27 %, 6 out of 22 responses.

³⁵⁹ The following fees were reported by three Member States: EUR 2.60, EUR 7, EUR 27 for a claim and a judgment/EUR 54 for an appeal.

³⁶⁰ Written questionnaires for ministries, 95 %, 21 out of 22 responses.

³⁶¹ Written questionnaires for ministries, 68 %, 15 out of 22 responses.

³⁶² Written questionnaires for ministries, important factor reported by seven Member States.

³⁶³ Written questionnaires for ministries, important factor reported by five Member States.

³⁶⁴ Written questionnaires for ministries, important factor reported by five Member States.

³⁶⁵ Written questionnaires for ministries, important factor reported by three Member States.

³⁶⁶ Written questionnaires for ministries, important factor reported by two Member States.

³⁶⁷ Written questionnaires for ministries, 68 %, 15 out of 22 responses.

³⁶⁸ Written questionnaires for ministries, 9 %, 2 out of 22 respondents.

³⁶⁹ Written questionnaires for ministries, 9 %, 2 out of 22 respondents.

³⁷⁰ Written questionnaires for ministries, 9 %, 2 out of 22 respondents.

Most ministry representatives³⁷¹ believe that the **EU should act in order to solve or mitigate the existing problems** linked to the recognition of parenthood between Member States.

- Soft law measures

The majority of the ministry representatives³⁷² believe that the **EU should adopt soft-law measures to facilitate the recognition of parenthood** between Member States, although a considerable share noted that such measures **would not be sufficient** to resolve the challenges in the area. A small share of respondents³⁷³ indicated that the **EU should not adopt soft law measures**, as they would not be effective.

Ministry representatives' opinions varied as to whether the adoption of soft law measures would resolve the current problems linked to the recognition of parenthood between Member States, and their likely evolution. On one hand, a considerable share of ministries³⁷⁴ perceive that **soft law measures would contribute to resolving existing challenges**, although problems will not be solved entirely in the absence of legislation. Conversely, nearly half of the ministries³⁷⁵ indicated that **soft law measures are unlikely to solve existing problems**, with one argument suggesting that the extent and complexity of the problems raised by the establishment of parenthood at cross-border level demand a global solution that can only be achieved by a legal instrument.

Different **good practices to protect the best interests of the child** that could be promoted in connection with the recognition of parenthood between Member States were indicated by ministry representatives, chiefly that the **best interests of the child should be examined from various angles in each case**³⁷⁶ (e.g. the child's views; preservation of the family environment and of the parent-child relationship; care, protection and safety of the child). **Increasing the competency of the judiciary** (e.g. exchanging knowledge between Member States on international legislation or the legislation applicable to the establishment and recognition of parenthood within each Member State; conducting training on how to meet the needs of the child) were also recommended³⁷⁷. Other good practices include:

- Harmonising the applicable law rules at EU level;
- Automatic recognition or acceptance of birth certificates issued by the authorities of one Member State by the authorities of another Member State without the type of affiliation being stated in these certificates;
- Recognition of decisions on parenthood that are valid in the country of origin in another Member State;
- Mandatory representation of children by special legal representatives and ensuring the right to be heard;
- Ensuring that the child's right to information is respected.

- Legislative measure at EU level

Nearly all of the ministry representatives³⁷⁸ believe that the **adoption of EU legislation on the recognition of parenthood between Member States would add value in**

³⁷¹ Written questionnaires for ministries, 77 %, 17 out of 22 responses.

³⁷² Written questionnaires for ministries, 64 %, 14 out of 22 responses, of which 6 indicated such measures would not be sufficient.

³⁷³ Written questionnaires for ministries, 23 %, 5 out of 22 responses.

³⁷⁴ Written questionnaires for ministries, 41 %, 9 out of 22 responses, of which 4 indicated soft law measures would help to solve the issues, and 5 indicating they could potentially resolve them.

³⁷⁵ Written questionnaires for ministries, 45 %, 10 out of 22 responses.

³⁷⁶ Written questionnaires for ministries, 23 %, 5 out of 22 responses.

³⁷⁷ Written questionnaires for ministries, 14 %, 3 out of 22 responses.

³⁷⁸ Written questionnaires for ministries, 91 %, 20 out of 22 responses.

addressing the problems. Some reservations were raised by a small share of representatives³⁷⁹, chiefly concerning the need for such EU regulation, the difficulty in finding a common solution for all Member States, and the importance of not undermining any existing protections under national law (e.g. prohibition on anonymous gametes donor).

A substantial share of ministries³⁸⁰ believe that if legislation on the recognition of parenthood between Member States is adopted by the EU, **the legislation should cover both the recognition of judgments on parenthood and the recognition of authentic instruments.** Among the main arguments are that the outcome should be the same for both categories of documents and should cover all differing national approaches, that parenthood is mostly reflected in authentic instruments, and that a larger scope of protection would be afforded to children. In addition, a small share of ministry representatives³⁸¹ perceive that the **legislation should cover only the recognition of judgments on parenthood**, noting the similarity to existing processes governed by the existing legislation, increased complexity due to the variety of authentic documents, and the fact that authentic acts are more closely linked to the competence of the Member States with regard to substantive family law.

With regard to the expected impacts of EU legislation facilitating the recognition of parenthood between Member States, ministry representatives anticipate all examined areas to be positively impacted. For instance, a substantial majority of respondents believe that EU legislation would have a **positive impact** on the **cost, time and burden related to administrative procedures on the recognition of parenthood for national administrations**³⁸² and **for citizens**³⁸³, as well as the **cost, time and burden related to court proceedings on the recognition of parenthood for national judicial systems**³⁸⁴ and **for citizens**³⁸⁵. In addition, a **positive impact** is anticipated for **legal certainty for national administrations** (and simplification of their procedures for the recognition of parenthood)³⁸⁶ and **for families** (in relation to parenthood of their children in another Member State)³⁸⁷. In addition, **children's fundamental rights**³⁸⁸ (e.g. the right to a family life and the right to non-discrimination) and **children's welfare**³⁸⁹ (including their emotional and psychological well-being) would be **positively impacted** by EU legislation. Finally, a majority of respondents also expect **positive impacts** of EU legislation on **facilitating the exercise of the right to free movement within the EU of children with their families**³⁹⁰.

³⁷⁹ Written questionnaires for ministries, 4 out of the 20 representatives that indicated the adoption of EU legislation on the recognition of parenthood between Member States would have added value to address the problems.

³⁸⁰ Written questionnaires for ministries, 68 %, 15 out of 22 responses.

³⁸¹ Written questionnaires for ministries, 18 %, 4 out of 22 responses.

³⁸² Written questionnaires for ministries, 55 %, 12 out of 22 responses, of which 8 expect a mildly positive impact and 4 a very positive impact; 14 % (3) expect no impact, and 9 % (2) expect a negative impact.

³⁸³ Written questionnaires for ministries, 59 %, 13 out of 22 responses, of which 8 expect a mildly positive impact and 5 a very positive impact; 18 % (4) expect no impact.

³⁸⁴ Written questionnaires for ministries, 64 %, 14 out of 22 responses, of which 7 expect a mildly positive impact and 7 a very positive impact; 14 % (3) expect no impact and 5 % (1) a negative impact.

³⁸⁵ Written questionnaires for ministries, 68 %, 15 out of 22 responses, of which 7 expect a mildly positive impact and 8 a very positive impact; 14 % (3) expect no impact.

³⁸⁶ Written questionnaires for ministries, 73 %, 16 out of 22 responses, of which 8 expect a mildly positive impact and 8 a very positive impact; 14 % (3) expect no impact.

³⁸⁷ Written questionnaires for ministries, 73 %, 16 out of 22 responses, of which 2 expect a mildly positive impact and 14 a very positive impact; 5 % (1) expect no impact.

³⁸⁸ Written questionnaires for ministries, 73 %, 16 out of 22 responses, of which 4 expect a mildly positive impact and 12 a very positive impact; 5 % (1) expect no impact.

³⁸⁹ Written questionnaires for ministries, 73 %, 16 out of 22 responses, of which 5 expect a mildly positive impact and 11 a very positive impact; 55 % (1) expect no impact.

³⁹⁰ Written questionnaires for ministries, 77 %, 17 out of 22 responses, of which 2 expect a mildly positive impact and 15 a very positive impact; 9 % (2) expect no impact.

Regarding the **expected adjustment costs** for Member States resulting from the **introduction of a new EU legislative instrument** on the recognition of parenthood between Member States, the majority of ministry representatives³⁹¹ anticipate **one-off costs**, with high, moderate and low costs expected across countries. **Recurring costs** are expected by more than half of respondents³⁹² and are anticipated to be moderate and low. In addition, a minority³⁹³ indicated that it is not possible to assess the recurring and one-off costs of an ECP at this stage. In general, costs related to the introduction of an ECP are expected to stem from amendments to existing national legislation, training of civil registrars and judges, and the adaptation of IT systems.

A substantial majority of ministries³⁹⁴ perceive that the **adjustment costs resulting from the introduction of a new EU legislative instrument would be compensated by its positive impact** on the recognition of parenthood between Member States for citizens and national authorities in the medium or long term. In addition, some representatives³⁹⁵ indicated that a clear indication of what the legislative instrument would entail is needed in order to assess the adjustment costs.

A large majority of ministry representatives³⁹⁶ perceive that an **ECP would facilitate the recognition of parenthood between Member States**. In addition, a small share of ministries³⁹⁷ indicated that some elements must be taken into consideration before assessing whether an ECP would facilitate the recognition of parenthood:

- Concerns about the lack of clarity on the purposes for which an ECP could be introduced, the possible benefits for citizens, and the conditions under such a document would be issued and by which authority;
- The European Certificate of Succession proved burdensome for citizens and the national authorities, thus a suitable solution needs to be adopted for a potential ECP;
- National documents currently available seem sufficient (one ministry representative);
- One ministry queried the difference between an ECP and a birth certificate, noting that a birth can be re-registered in their Member State if there is an issue concerning legal parenthood;
- Another ministry representative stated that their Member State does not issue certificates of parenthood but only birth certificates.

Regarding the **expected adjustment costs** for Member States resulting from the **introduction of an ECP, one-off costs** are anticipated by half of the ministry representatives³⁹⁸ with both moderate and high costs expected. **Recurring costs** are expected by almost half of the respondents³⁹⁹ and are anticipated to be moderate. In addition, a minority⁴⁰⁰ indicated that it is not possible to assess the recurring and one-off costs of an ECP at this stage. In general, costs related to the introduction of an ECP are expected to be incurred from **amendments to existing national legislation, training of civil registrars and judges, and the adaptation of IT systems**.

³⁹¹ Written questionnaires for ministries, 64 %, 14 out of 22 responses, of which 3 expect the costs to be high, 3 to be moderate, and 1 to be low.

³⁹² Written questionnaires for ministries, 59 %, 13 out of 22 responses, of which 5 expect the costs to be moderate and 2 expect them to be low.

³⁹³ Written questionnaires for ministries, 18 %, 4 out of 22 responses.

³⁹⁴ Written questionnaires for ministries, 68 %, 15 out of 22 responses.

³⁹⁵ Written questionnaires for ministries, 23 %, 5 out of 22 responses.

³⁹⁶ Written questionnaires for ministries, 73 %, 16 out of 22 responses.

³⁹⁷ Written questionnaires for ministries, 23 %, 5 out of 22 responses.

³⁹⁸ Written questionnaires for ministries, 50 %, 11 out of 22 responses, of which 5 expect the costs to be moderate and 3 expect them to be high.

³⁹⁹ Written questionnaires for ministries, 45 %, 10 out of 22 responses, of which 6 expect the costs to be moderate and 1 expects them to be low.

⁴⁰⁰ Written questionnaires for ministries, 14 %, 3 out of 22 responses.

Finally, a majority of ministry representatives⁴⁰¹ perceive that **the adjustment costs for introducing an ECP would be compensated by the positive impact on facilitating the recognition of parenthood** for citizens and national authorities in the medium or long term, while a small share⁴⁰² indicated that further analysis is needed to determine this.

Findings from the targeted interviews

The targeted interviews were organised with two groups of stakeholders: the judiciary and NGOs.

• The judiciary

Current legal framework on establishment and recognition of parenthood in Member States

A large majority of judiciary respondents worked on cases where families dealt with issues concerning the establishment of parenthood in their family⁴⁰³, while a minority did not⁴⁰⁴. Of the main legal and procedural issues mentioned by the respondents, more than half related to issues involving some procedural/legal hassles for families of same-sex couples:

- Adoption cases for same-sex female couples in which the parent(s) did not give birth to the child⁴⁰⁵;
- Existing legal time limits for the registration of birth, which are different for married and non-married couples⁴⁰⁶;
- National law prescribes that a man and woman must be laid down on a birth certificate⁴⁰⁷.

The following legal and procedural issues were mentioned in connection with the marital status of parents:

- Legal assumption that a child is born to a married mother, during marriage or before 300 days after its dissolution⁴⁰⁸;
- Children born outside of marriage⁴⁰⁹.

Other legal and procedural issues were also raised:

- Transgender rights are not extensively regulated, creating difficulties, and competent authorities may not understand the administrative procedures for establishment of parenthood⁴¹⁰;
- Biological parent (father) is unwilling to recognise parenthood of the child in question⁴¹¹.

⁴⁰¹ Written questionnaires for ministries, 59 %, 13 out of 22 responses.

⁴⁰² Written questionnaires for ministries, 27 %, 6 out of 22 responses.

⁴⁰³ Interviews with the judiciary, 8 out of 10 responses.

⁴⁰⁴ Interviews with the judiciary, 1 out of 10 responses.

⁴⁰⁵ Interviews with the judiciary, 1 out of 10 responses.

⁴⁰⁶ Interviews with the judiciary, 1 out of 10 responses.

⁴⁰⁷ Interviews with the judiciary, 2 out of 10 responses.

⁴⁰⁸ Interviews with the judiciary, 1 out of 10 responses.

⁴⁰⁹ Interviews with the judiciary, 1 out of 10 responses.

⁴¹⁰ Interviews with the judiciary, 1 out of 10 responses.

⁴¹¹ Interviews with the judiciary, 1 out of 10 responses.

Some respondents reported cases involving the following: (i) same-sex couples (married or registered partnerships) and their children⁴¹²; (ii) children of single parents (e.g. when a biological link is involved)⁴¹³; and (iii) children born outside marriage⁴¹⁴. When describing the issues, each of the following jurisdictions was mentioned by one respondent: Belgium, Estonia, Italy, Luxembourg, Slovakia, while Poland was mentioned by two respondents.

Just under half of all respondents from the judiciary claimed that **their organisation supported families dealing with issues on the recognition of parenthood** (e.g. proven by birth certificates or judgments) when moving abroad⁴¹⁵, while almost half of all judiciary respondents did not⁴¹⁶. Each of the following legal/procedural struggles was mentioned by one respondent:

- (i) Recognition of marriage occurring abroad because presumption of paternity derives from marriage;
- (ii) Spelling of names on birth certificates;
- (iii) The *exequatur* procedure;
- (iv) Test of equivalence for authentic instruments;
- (v) One mother recorded and a 'random father' on Polish birth certificates and misunderstandings about foreign national legislation.

Almost half of the respondents from the judiciary⁴¹⁷ have been involved in **domestic adoption cases on the establishment or recognition of parenthood**, while a minority has not⁴¹⁸. Each of the following legal/procedural issues was mentioned by one respondent:

- (i) Jurisprudence is not always consistent (e.g. violation of public order when consent was not obtained from a parent for adoption);
- (ii) Same-sex couples cannot adopt;
- (iii) Single parents can adopt as an exception to the general rule;
- (iv) Single parents can adopt, but in practice this only occurs with relatives;
- (v) Adoption is accessible only to a married couple of two persons;
- (vi) Files are processed as domestic adoption but should be considered international adoptions.

When describing the issues, each of the following jurisdictions was mentioned by one respondent: Belgium, Ireland, Luxembourg and Africa, the Middle East and the US.

In **cases where families dealt with issues linked to the establishment or recognition of parenthood in cases involving ART**, half of the judiciary respondents indicated that they were involved in such cases⁴¹⁹, while one was not. Two respondents noted that the prohibition of ART for same-sex couples was a key legal/procedural problem. Each of the following legal/procedural issues was mentioned by one respondent:

⁴¹² Interviews with the judiciary, 4 out of 10 responses.

⁴¹³ Interviews with the judiciary, 4 out of 10 responses.

⁴¹⁴ Interviews with the judiciary, 3 out of 10 responses.

⁴¹⁵ Interviews with the judiciary, 3 out of 10 responses.

⁴¹⁶ Interviews with the judiciary, 4 out of 10 responses.

⁴¹⁷ Interviews with the judiciary, 4 out of 10 responses.

⁴¹⁸ Interviews with the judiciary, 2 out of 10 responses.

⁴¹⁹ Interviews with the judiciary, 5 out of 10 responses.

- (i) Contestation of parenthood to avoid parental responsibilities⁴²⁰;
- (ii) Prohibition of ART for single women;
- (iii) Laws in foreign countries;
- (iv) Adoption by the non-biological wife refused by the biological mother.

When describing the issues, each of the following jurisdictions was mentioned by respondents: Belgium, Spain, France.

A little over half of judiciary respondents⁴²¹ had dealt with **cases with issues linked to surrogacy**, while two respondents had not⁴²². Each of the following legal/procedural issues was mentioned by one respondent:

- (i) Diplomatic authorities refuse recognition of parenthood;
- (ii) Requesting transcription in national civil registers in addition to recognition of parenthood is more difficult;
- (iii) Surrogacy is not regulated by national or international legislation;
- (iv) When adoption is required, a certificate proving that a parent is prepared for adoption and consent for adoption from the surrogate mother in a notarial act;
- (v) The nature of the surrogacy contract is considered unacceptable under national law.

One respondent mentioned that legal/procedural difficulties are exacerbated where only one of the parents has a biological tie to the child. One respondent estimated that each year, there are about 10 cases involving registering children born from surrogacy in the civil and population register. When describing the issues, Ukraine was mentioned by four respondents, with each of the following jurisdictions referenced by one respondent: Belgium, Greece and Canada, Georgia, India, the UK, the US.

More than half of the respondents said that **PIL rules are applied by courts and other authorities** regarding establishment or recognition of parenthood in situations involving one or several cross-border elements⁴²³. They referred to the following:

- (i) The establishment of parenthood is determined based on the nationality of the persons involved (e.g. if the two adopting parents have Belgian nationality or different nationalities, Belgian law applies);
- (ii) The law of the habitual residence of the child at the time of the establishment of parenthood is applied in Spain,
- (iii) If the case appears before the court, domestic law usually applies. The law of foreign country is applied when this is foreseen in bilateral or international treaties ratified by Lithuania.
- (iv) In cases where citizens have multiple nationalities, national legislation allows for the application of foreign law where that law is more favourable.

One respondent (out of 10) stated that in Kafala adoption cases in France, the most complicated aspect is to determine the applicable law.

⁴²⁰ LU; A reform is planned that will create a register for ART agreements so that parties can be protected in case the other party denies being involved in the ART agreement so as to avoid parental responsibilities. This initiative has the best interest of the child at its core.

⁴²¹ Interviews with the judiciary, 6 out of 10 responses.

⁴²² Interviews with the judiciary, 2 out of 10 responses.

⁴²³ Interviews with the judiciary, 6 out of 10 responses.

According to judicial respondents, the **main legal and procedural obstacles** that families or organisations encounter in dealing with procedures linked to **the recognition of judgments on parenthood** relate to obstacles connected to refusal grounds: (i) public policy⁴²⁴; (ii) evasion of law (*fraude à la loi*)⁴²⁵; and (iii) the decision in question is not final or enforceable in the State where it was rendered⁴²⁶. Two respondents (out of 10) mentioned the *exequatur* procedure as a main legal and procedural obstacle. Another respondent mentioned that the exclusive power of State bodies in the matter of recognition of parenthood prevents it. Another party indicated that the main legal and procedural obstacle is where the party to the proceedings is deprived of the possibility to act before the court or any competent body because of incorrect procedural steps applied by the State body. One other respondent claimed that no refusal of recognition of a judgment establishing parenthood had occurred in its jurisdiction. On the **consequences of a refusal to recognition of parenthood**, one respondent mentioned legal uncertainty and denial of fundamental rights over a long period of time.

According to three respondents (out of 10), **foreign administrative documents on parenthood (e.g. birth certificate or extract) are transcribed into national law**. One respondent explained that the applicant must provide a certified transcription into the national language and the surname in its original form is preserved, while another explained that spelling of the data contained in the foreign document is adjusted to national spelling rules. Two respondents indicated that a national document on parenthood will be issued that will co-exist with the foreign administrative document on parenthood.

With regards to the **main legal and procedural obstacles** that these families or organisations encounter in dealing with procedures linked to **the recognition of administrative documents on parenthood**:

- a) Two respondents mentioned that when administrative bodies observe two parents with the same sex on birth certificates, they request a DNA test to record only the biological parent; if the parents refuse, a separate court proceeding is started;
- b) One respondent reported that a strong suggestion that one of the parents is not linked biologically to the child leads to mandatory adoption by the second parent;
- c) Another respondent said that recognition of parenthood is against the fundamental principles of the national legal order and public order.

According to one respondent, the main legal and procedural obstacle encountered by families or organisations in **recognition of notarial acts** was the lack of documents proving the statements of the parties concerned.

One respondent (out of 10) replied that **recognition of parenthood is necessary** to obtain a national number, ID cards and to exercise all types of rights. By contrast, two respondents claimed that **recognition of parenthood had no consequences** for the rights of the child.

Two respondents provided the following information on **procedures to contest recognition of parenthood established abroad**:

- (i) Only parenthood established through mutual consent by both parents might be contested in front of a court;

⁴²⁴ Interviews with the judiciary, 4 out of 10 responses.

⁴²⁵ Interviews with the judiciary, 2 out of 10 responses.

⁴²⁶ Interviews with the judiciary, 1 out of 10 responses.

- (ii) When parenthood is established through a judicial (claim) procedure, the final court decision cannot be contested.

When asked about the **number of cases where families had to resort to litigation** to try to have parenthood recognised in another Member State, one respondent replied that parenthood-related cases are very rare and estimated approximately two cases each year. Another respondent explained that there are currently seven cases pending, including one case referred by a national tribunal to the CJEU for a preliminary ruling.

Existing problems

The following **groups of children were mentioned as disproportionately affected by the problems in question:**

- (i) Children of male and female same-sex couples in Belgium and Poland⁴²⁷;
- (ii) Children of refugees⁴²⁸;
- (iii) Children with one or no parent with the nationality of the country of residence in Poland⁴²⁹;
- (iv) Children of single parents⁴³⁰.

Two respondents (out of 10) indicated that no group of children was disproportionately affected by these problems.

According to the respondents, in the event of **refusal of recognition of parenthood on grounds of public policy, the following actions are taken in Member States to guarantee the rights of the child:**

- (i) Tribunals/courts turn to social services or child protection services⁴³¹;
- (ii) Tribunals/courts allocate a guardian to the child⁴³²;
- (iii) Unofficial tutorship can be granted, a status associated with certain aspects of parental authority but that does not equate to full parental authority⁴³³;
- (iv) Psychological expertise is triggered for the child and the child is heard in front of the tribunal/court⁴³⁴;
- (v) The rights of the child are not to be denied by authorities depending on the transcription of the foreign birth certificate⁴³⁵.

Respondents estimated the **average length of the recognition of parenthood proceedings before tribunals/courts**, whether concerning an administrative document on parenthood on appeal or a judgment on parenthood:

- (i) Close to half of the judiciary respondents said that such procedures take between two and five years depending on the types of procedure (e.g. adoption) or circumstances (e.g. one party living abroad, or a doubt about

⁴²⁷ Interviews with the judiciary, 2 out of 10 responses.

⁴²⁸ Interviews with the judiciary, 1 out of 10 responses.

⁴²⁹ Interviews with the judiciary, 1 out of 10 responses.

⁴³⁰ Interviews with the judiciary, 1 out of 10 responses.

⁴³¹ Interviews with the judiciary, 2 out of 10 responses.

⁴³² Interviews with the judiciary, 1 out of 10 responses.

⁴³³ Interviews with the judiciary, 1 out of 10 responses.

⁴³⁴ Interviews with the judiciary, 1 out of 10 responses.

⁴³⁵ Interviews with the judiciary, 1 out of 10 responses.

the biological tie between the parent and the child, can lengthen proceedings)⁴³⁶;

- (ii) Some respondents indicated that procedures take some months, up to two years⁴³⁷;
- (iii) One respondent mentioned the possibility to engage quick emergency procedures⁴³⁸.

One respondent explained that the following circumstances create delays: translation of foreign legislation and new issues arising in proceedings (e.g. correct spelling of names).

Respondents estimated the **average cost of recognition of parenthood proceedings before a tribunal/court** as follows:

- (i) Some respondents said that the cost of proceedings is very low⁴³⁹;
- (ii) A minority of respondents indicated that the legal representation costs can be quite significant⁴⁴⁰;
- (iii) One respondent said that the procedural costs are free⁴⁴¹;
- (iv) One other respondent said that minor costs are incurred for legalisation of birth certificates⁴⁴².

Possible EU initiative to facilitate cross-border recognition of parenthood between Member States

Half of respondents stated that they could not comment on the **EU intervention on facilitating cross-border recognition of parenthood**. Others that the EU should intervene and that this should happen through binding instruments in the form of a Regulation and an ECP⁴⁴³. Very few respondents believe that the EU should not intervene on this matter⁴⁴⁴. One respondent mentioned that more flexibility in choosing the applicable law would be **another solution to solve the identified problems**, while two respondents (out of 10) said that no other solutions were identified.

Two respondents indicated that their role meant they have an impact on the integration and social well-being of families, the emotional and psychological well-being of families, and longer terms social matters such as poverty and social protection and social inclusion. They explained that they take these factors into account during the decision-making process.

Close to half of the judiciary respondents said that the options envisaged by the EU would have an **impact on fundamental rights**, specifically on freedom of movement, the best interest of the child and non-discrimination (particularly discrimination against children adopted jointly or by one parent only, in comparison to children adopted by same-sex couples)⁴⁴⁵.

⁴³⁶ Interviews with the judiciary, 4 out of 10 responses.

⁴³⁷ Interviews with the judiciary, 3 out of 10 responses.

⁴³⁸ Interviews with the judiciary, 1 out of 10 responses.

⁴³⁹ Interviews with the judiciary, 3 out of 10 responses.

⁴⁴⁰ Interviews with the judiciary, 2 out of 10 responses.

⁴⁴¹ Interviews with the judiciary, 1 out of 10 responses.

⁴⁴² Interviews with the judiciary, 1 out of 10 responses.

⁴⁴³ Interviews with the judiciary, 3 out of 10 responses.

⁴⁴⁴ Interviews with the judiciary, 2 out of 10 responses.

⁴⁴⁵ Interviews with the judiciary, 4 out of 10 responses.

Some respondents⁴⁴⁶ consider the **measures envisaged to be feasible**, but two respondents foresee ethical challenges in relation to surrogacy, while another anticipates challenges for some Member States in accepting such legislation.

- **NGOs**

Current legal framework on establishment and recognition of parenthood in Member States

A minority of NGO respondents indicated that they **supported families dealing with issues regarding the establishment of parenthood in their family**⁴⁴⁷. One respondent (out of nine) said that they did not support families dealing with issues regarding the establishment of parenthood in their family, and the others did not specify⁴⁴⁸. The following legal and procedural obstacles faced by families and respondents were reported:

- (i) Same-sex relationships are not recognised within national legislation, and therefore, the non-biological *de facto* parent or guardian cannot exercise parental rights and obligations⁴⁴⁹;
- (ii) Polygamy is banned under national law⁴⁵⁰.

When describing the legal and procedural obstacles, each of the following jurisdictions was mentioned by one respondent: Belgium (to a certain extent), Cyprus, Spain, Italy, Lithuania, Latvia, Romania, and Russia, the UK. When asked about the **number of cases on establishment of parenthood**, one respondent (out of nine) mentioned one case on the establishment of parenthood for same-sex couples. Two respondents explained that families (with a same-sex couple) do not reach out to authorities when facing a prohibition. One respondent noted that the number of cases is likely to increase. One respondent referred to the **specific legal frameworks these cases involve**, citing PIL, while two others referred to equality and anti-discrimination legislation.

A minority of respondents indicated that they **supported families dealing with issues regarding the recognition of parenthood (e.g. proven by birth certificates or judgments) when moving abroad**⁴⁵¹. One respondent (out of nine) said that they did not support families dealing with these issues, while six respondents did not specify. The following main legal and procedural obstacles were encountered by families and respondents:

- (i) Refusal of recognition and enforcement of a foreign court decision when the DNA does not correspond to the established status⁴⁵²;
- (ii) No legal framework that establishes any recognition of family rights or protection of people in same-sex family relationships⁴⁵³;
- (iii) Recognition of an authentic instrument abroad⁴⁵⁴.

Two respondents (out of nine) claimed that families with same-sex parents were more affected than other families. However, one respondent referred to families with more

⁴⁴⁶ Interviews with the judiciary, 3 out of 10 responses.

⁴⁴⁷ Interviews with NGOs, 2 out of 9 responses.

⁴⁴⁸ Interviews with NGOs, 6 out of 9 responses.

⁴⁴⁹ Interviews with NGOs, 3 out of 9 responses.

⁴⁵⁰ Interviews with NGOs, 1 out of 9 responses.

⁴⁵¹ Interviews with NGOs, 2 out of 9 responses.

⁴⁵² Interviews with NGOs, 1 out of 9 responses.

⁴⁵³ Interviews with NGOs, 1 out of 9 responses.

⁴⁵⁴ Interviews with NGOs, 1 out of 9 responses.

than two parents for a child when explaining issues encountered by families for the recognition of parenthood when moving abroad.

On cases of **families dealing with procedures and issues linked to the establishment or recognition of parenthood in domestic adoptions**, two respondents (out of nine) stipulated that they did not support families dealing with those issues and seven respondents did not specify. The following main legal and procedural obstacles were encountered by families and respondents:

- (i) Adoption for same-sex couples is prohibited⁴⁵⁵;
- (ii) Adoption is allowed for married and single parents, and same-sex couples are *de facto* excluded⁴⁵⁶;
- (iii) In practice, local family councils will not validate adoptions for single parents⁴⁵⁷.

When describing the legal and procedural obstacles, each of the following jurisdictions was mentioned by one respondent: France, Latvia, Romania. On the **number of cases on recognition of parenthood in cases involving domestic adoptions**, three respondents (out of nine) mentioned that there were no cases involving same-sex spouses or same-sex couples in a registered partnership wishing to adopt jointly. One respondent indicated that there were no cases involving same-sex or different-sex couples (married or in registered partnerships) where one partner is the legal partner.

When asked about cases of **families dealing with procedures and issues linked to the establishment or recognition of parenthood in cases involving ART**, one respondent (out of nine) reported that they supported families with these kinds of issues, while eight did not specify. One respondent reported that the main legal and procedural obstacle encountered by families and respondents was the refusal of recognition of parenthood for same-sex couples, and made reference to Latvia. By contrast, two respondents explained that there was no obstacle because in France, parenthood is established *ex ante* the birth of the child. Another respondent declared that there was no legal or procedural obstacle in general, without specifying a justification.

For cases of **families dealing with procedures and issues linked to the establishment or recognition of parenthood in cases involving surrogacy**, two respondents (out of nine) stipulated that they did not support families dealing with those issues, while the remaining seven did not specify. The following main legal and procedural obstacles were encountered by families and respondents:

- (i) Prohibition of surrogacy⁴⁵⁸;
- (ii) Lack of legislation on surrogacy⁴⁵⁹;
- (iii) Transcription of the foreign birth certificate into national civil registries⁴⁶⁰.

When describing this obstacle, three respondents referred to the US, two mentioned Canada and Ukraine, and the following had one mention each: Belgium, India and Latin America.

One respondent specified that **PIL, and, where relevant, bilateral and multilateral treaties, are applied as conflict rules** by authorities in respect of the

⁴⁵⁵ Interviews with NGOs, 1 out of 9 responses.

⁴⁵⁶ Interviews with NGOs, 1 out of 9 responses.

⁴⁵⁷ Interviews with NGOs, 1 out of 9 responses.

⁴⁵⁸ Interviews with NGOs, 4 out of 9 responses.

⁴⁵⁹ Interviews with NGOs, 1 out of 9 responses.

⁴⁶⁰ Interviews with NGOs, 1 out of 9 responses.

establishment or recognition of parenthood in situations involving a cross-border element.

Regarding the main **legal and procedural obstacles that families encountered in dealing with procedures linked to the recognition of notarial acts** (authentic instruments) **and extra-judicial agreements on parenthood issued in another Member State**, one respondent indicated that challenges stem from the fact that some families are not aware of such documents (this is a challenge for both different-sex and same-sex couples).

On issues linked to the **contestation of parenthood established abroad**, one respondent indicated that these concern families with more than two people, as parenthood could be contested in these cases, as well as issues with ethical implications, such as the anonymity of donors of biological material.

Existing problems

Three respondents (out of nine) reported distinct **practical problems** most commonly arising in relation to recognition of parenthood:

- (i) All over the EU, the social parent does not have any right or status and is therefore fully dependent on the legally recognised parent;
- (ii) In Lithuania, same-sex families face discrimination in a variety of sectors, including tax, employment, social security, healthcare, inheritance, insurance, and legal proceedings, in addition to childcare and adoption (there is no option for same-sex couples to jointly access the adoption services or become the legal guardians of a child);
- (iii) In France, with regards to ART and adoption, an exceptional transition clause allows adoption without taking into account the legal relationship of the initial parent with the child (i.e. consent from the initial parent is not required). Another respondent stated that there are no practical problems in France, however;
- (iv) In Romania, recognition of parenthood for same-sex couples and ensuing matters (e.g. if the birth certificate is not transcribed, the child remains stateless).

Two respondents (out of nine) expect that these **practical problems with the recognition of parenthood will continue or even increase**. The following groups of children are affected disproportionately by these problems:

- (i) Children growing up in same-sex families⁴⁶¹;
- (ii) Undocumented children, stateless children and/or migrant and refugee children⁴⁶².

One respondent (out of nine) estimated an **average length of one month in Romania for recognition of parenthood procedures before an administrative authority**. Two elements were reported to cause delays in Cyprus: (i) recognition of documents from third countries (i.e. non-EU); and (ii) bureaucracy. One respondent mentioned that France has quicker procedures for children born through surrogacy. The **average length of the recognition of parenthood proceedings before tribunals/courts** was estimated to be several months (under certain circumstances) in Cyprus, France and Latvia⁴⁶³. One respondent (out of nine) explained that the

⁴⁶¹ Interviews with NGOs, 4 out of 9 responses.

⁴⁶² Interviews with NGOs, 1 out of 9 responses.

⁴⁶³ Interviews with NGOs, 3 out of 9 responses.

contestation of a decision delays court proceedings. It was estimated that in certain circumstances (e.g. same-sex couples request recognition of parenthood, or contestation takes place during the proceedings), proceedings can last up to one year or several years in Cyprus and Romania⁴⁶⁴.

One respondent (out of nine) estimated the **average cost of a recognition procedure before a Latvian administrative authority** in the range of EUR 0 to EUR 20/30, depending on the type of document and whether it needs to be approved by a notary. By contrast, two respondents indicated that in Romania and France, the procedures are free of charge. When asked about the **average cost of recognition proceedings before a court**, one respondent (out of nine) estimated the cost in Latvia to be EUR 30 for the first instance and additional fees (lawyer etc).

Possible EU initiative to facilitate cross-border recognition of parenthood between Member States

The majority of respondents⁴⁶⁵ believe that the Union should intervene in facilitating the cross-border recognition of parenthood, as opposed to leaving recognition to the national law of Member States. By contrast, two respondents specified that the EU should not intervene in this matter, as it is within the national competence of Member States. All of those stating that the EU should intervene specified that this should occur through the introduction of binding instruments in the form of a Regulation and an ECP. Among the arguments in favour of binding EU intervention on facilitating cross-border recognition of parenthood were that it would safeguard the rights of children and same-sex families and that it would facilitate the free movement of families.

On the anticipated impacts of an EU intervention on fundamental rights, most respondents⁴⁶⁶ expect these to be positive, in particular in relation to the best interest of the child principle, freedom of movement, and the principle of non-discrimination. One respondent indicated that additional impacts that need to be considered include the impacts on the right to have an identity, the right to have a nationality and to know your family relations (e.g. for medical reasons). On the other hand, two respondents perceive that a possible binding EU intervention could have certain negative impacts on fundamental rights (e.g. on the best interest of the child, or the gestational exploitation of women). Some respondents⁴⁶⁷ indicated that they anticipate the impacts on social matters of bringing EU intervention would be positive, with one suggesting that this would have a positive impact on legal certainty and two pointing to positive impacts on all social matters, in particular:

- Integration and social inclusion;
- Impact on emotional/psychological well-being of parents and children;
- Longer-term impacts on children (e.g. poverty, early school leaving, lasting damage for children growing up with absent-parents);
- Impacts on social protection and social inclusion.

On the other hand, anticipated negative impacts on social matters include potential negative psychological, health and emotional consequences, as well as the forced coming out of parents.

⁴⁶⁴ Interviews with NGOs, 2 out of 9 responses.

⁴⁶⁵ Interviews with NGOs, 6 out of 9 responses.

⁴⁶⁶ Interviews with NGOs, 6 out of 9 responses.

⁴⁶⁷ Interviews with NGOs, 4 out of 9 responses.

Annex 4 Analysis of the existing legal framework at EU and Member State level

A4.1 Relevant EU legal instruments and policies

Although substantive family law falls under the competence of the Member States, several EU instruments show that it has the necessary competence to adopt measures concerning family law with cross-border implications, and has constantly exercised that competence in recent years in order to maintain and develop an area of freedom, security and justice in which the free movement of persons is ensured. The Union has already adopted a number of instruments on family law and succession, including **common conflict rules**, as well as on **jurisdiction** and **the recognition of judgments**.

These legislative instruments address only some of the legal effects deriving from marriage, parenthood and other family relationships, and the nature of the relationships remains out of scope⁴⁶⁸. The absence of specific references to same-sex couples in these pieces of legislation allow Member States to decide if they can be recognised as spouses, registered partners or other for the relevant legislative purposes. The same is true for ISAs and for certain adoptions with a cross-border element, including their recognition between Member States.

The EU and international instruments that can be considered directly relevant to couples and children in cross-border situations are briefly summarised in Tables 11 and 12.

⁴⁶⁸ Article 1(3)(a) Brussels IIa Regulation, Article 22 Maintenance Regulation, and Article 1(2)(a) Succession Regulation clearly state this in their texts.

Table 11. European legal instruments relevant to children and their parenthood

No.	Instrument	Short summary of instrument objectives	Provisions related to parenthood
#1	2003, Brussels IIa (Council regulation 2201/2003) [recast regulation fully enters into force in August 2022, see #2]	In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding (recital 5)	Scope: - This Regulation shall not apply to the establishment or contesting of a parent-child relationship (Article 1(3)(a)) - This Regulation applies to judgments and authentic instruments (recital 22 and Article 46) - This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to divorce, legal separation or marriage annulment, the attribution, exercise, delegation, restriction or termination of parental responsibility (Articles 1(1) and 1(2))
#2	2019, Brussels IIa recast (Council Regulation 2019/1111)	Repeals Brussels IIa Regulation (as of August 2022) so as to provide more effective rules protecting children and their parents caught up in cross-border parental-responsibility disputes, e.g. custody, access rights and child abduction Seeks to speed up procedures because of the need to move quickly to protect the best interests of the child in many of these circumstances	Scope: Civil matters related to parental responsibility, including measures for the protection of the child (among others) Like Brussels IIa, this Regulation does not apply to the establishment or the contesting of a parent-child relationship (Article 1(4)). Entry into force: August 2022
#3	Maintenance Regulation (Council Regulation (EC) No 4/2009)	Provides common rules on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations	Scope: - Applies to maintenance obligations established through court decisions, court settlements or authentic instruments, all of which are defined within the Regulation - Article 22 expressly notes that 'the recognition and enforcement of a decision on maintenance under this Regulation shall not in any way imply the recognition of the family relationship, parentage, marriage or affinity underlying the maintenance obligation which gave rise to the decision'
#4	Succession Regulation (Regulation (EU) 650/2012)	Provides legal certainty to beneficiaries of international succession, avoids conflicting decisions, and simplifies proceedings	Scope:

		Introduces a European Certificate of Succession to be used by heirs, legatees, executors of wills or administrators of the estate to demonstrate their status and/or exercise their rights or powers in another EU country	- Applies to all EU countries, except Ireland and Denmark ⁴⁶⁹ - Deaths on or after 17 August 2015 Entry into force: July 2012 Article 2(a) of this Regulation explicitly excludes from its scope 'the status of natural persons, as well as family relationships'
#5	Regulation on Public Documents (Regulation (EU) 2016/1191)	Simplifies the circulation of certain public documents within the EU Abolishes the apostille requirement (see below) and simplifies formalities regarding certified copies and translations. Also, translation cannot be required where the public document is accompanied by a multilingual standard form	Scope: - Covers public documents including administrative documents, notarial acts, judgments, and consular documents in certain areas - Areas covered by the Regulation include birth, name, marriage, parenthood, including adoption, or nationality - The Regulation covers only the authenticity of the public document and not the recognition of its contents or effects Entry into force: 16 February 2019
#6	Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States	It lays down the conditions for the right of free movement and residence for EU citizens and their family members and defines family members for this purpose It also sets out the limits to those rights on grounds of public policy, public security or public health	Scope: - Applies to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members. The notion of family member includes a spouse, a partner in a registered partnership with an EU citizen, and direct descendants under the age of 21 Entry into force: April 2006
#7	EU treaties - Treaty on the Functioning of the European Union (TFEU), Charter of Fundamental Rights of the European Union (CFR)(2016) and	The EU Treaties are binding agreements between EU Member States. They set out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its Member States. Every action taken by the EU is founded on the Treaties	Scope: EU and Member States, EU competence, fundamental rights Article 4 TEU: 2. 'The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional [...] 3. [...] The Member States shall take any appropriate measure, general or particular,

⁴⁶⁹ DK and IE continue to apply their national laws to international successions. The other Member States apply their national rules on recognition and enforcement to decisions given in these two countries.

Treaty on European Union (TEU)

to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. [...]

Article 20 TFEU: '1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. [...] 2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia: (a) the right to move and reside freely within the territory of the Member States'

Article 21(1) TFEU: 'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect'

Article 7 CFR, 'Respect for private and family life': 'Everyone has the right to respect for his or her private and family life, home and communications'

Article 9 CFR, 'Right to marry and right to found a family': 'The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights'

Article 24 CFR, 'The rights of the child': '1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests'

Article 45 CFR, 'Freedom of movement and of residence': '1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States. 2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State'

Table 12. Policy documents and international legal instruments relevant to children and their parenthood

No.	Instrument	Short summary of instrument's objectives	Provisions related to parenthood
#1	EU LGBTIQ Equality Strategy 2020-2025	Sets out a series of measures to step-up action to integrate LGBTIQ equality in all policy areas and to help to lift the voices of LGBTIQ minorities. It aims to bring together Member States and actors at all levels in a common endeavour to address LGBTIQ discrimination more effectively by 2025	The strategy acknowledges that due to differences in family law across Member States, family ties may cease to be recognised when rainbow families cross the EU's internal borders. Some rainbow families experience difficulties in having their documents and relationships legally recognised, resulting in legal difficulties for both their private and family life As a consequence of the shortcomings identified in the Strategy, the Commission pledged to improve the legal protection for rainbow families in cross-border situations and to ensure that their rights and freedom of movement are recognised
#2	2021 EU Strategy on Rights of the Child	Addresses persisting and emerging challenges and proposes concrete actions to protect, promote and fulfil children's rights in today's ever-changing world	Thematic area 4 - Child-friendly justice: an EU where the justice system upholds the rights and needs of children Under the Strategy, the Commission committed to propose a horizontal legislative initiative in 2022 to support the mutual recognition of parenthood between Member States
#3	HCCH - Parentage/Surrogacy Project	Pursuant to a mandate from its Members, the Permanent Bureau of the HCCH is studying the PIL issues encountered in relation to the legal parentage of children, and ISAs in particular	Scope: the current work of the Experts' Group focuses on developing potential provisions for inclusion in both: - a general PIL instrument on legal parentage and - a separate protocol on legal parentage established as a result of international surrogacy arrangements In March 2021, the Council on General Affairs and Policy (CGAP) of the HCCH extended the mandate of the Experts' Group by one year to allow submission of its final report at its 2023 meeting. However, the project is in its preparatory phase and it may take many years before any binding instrument is prepared, agreed by HCCH members and widely ratified
#4	Work of the International Commission on Civil Status (ICCS)	The ICCS is an international organisation created in 1949. Its objectives are to facilitate international cooperation in civil status matters and to further the exchange of information between civil registrars. To achieve the general aims, the ICCS draws up normative instruments. To date, 34	ICCS is comprised of six members (four of which are EU Member States) and eight ⁸ observant states (of which five are EU Member States). The instruments of the EU and the ICCS now co-exist in Europe. They encourage and promote good practices among civil registrars but are not all binding instruments, thus their application is inconsistent and only in place in certain Member States

Study to support the preparation of an impact assessment on a possible Union legislative initiative on the recognition of parenthood between Member States

		international conventions and 11 recommendations have been adopted	
#5	European Convention on Human Rights (ECHR)	The ECHR protects the human rights of people in countries that belong to the Council of Europe. Compliance with the ECHR and its correct interpretation are safeguarded by the ECtHR, which provides a forum for people who believe their rights have been denied, allowing them to have their cases heard	Scope: the 27 EU Member States are all members of the Council of Europe Article 8 – Right to respect for private and family life Article 14 – Prohibition of discrimination
#6	UN Convention on the Rights of the Child (UNCRC)	Recognises that the child, for the full and harmonious development of their personality, should grow up in a family environment	Scope: For the purposes of the UNCRC, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. Article 7: ‘1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless’ Article 8: ‘1. State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, State Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity’
#7	1961 UN Convention on the Reduction of Statelessness	Aims to prevent and reduce statelessness over time. It establishes an international framework to ensure the right of every person to a nationality. It requires that States establish safeguards in their nationality laws to prevent statelessness at birth and later in life	All Member States are parties to the Convention, except Greece, France and Slovenia, which are only parties to the 1954 Convention (Convention relating to the Status of Stateless Persons), and Estonia and Poland, which are not party to either Convention
#8	European Convention on the Adoption of Children (Council of Europe, 2008)	Aims to take account of social and legal developments while keeping to the ECHR and bearing in mind that the child’s best interests must always take precedence over any other considerations. It sets out a collection of legal rules	Scope: - 18 Member States have ratified the Convention, 3 have signed it - Applies to the adoption of a child who, at the time when the adopter applies to adopt the child, has not attained the age of 18, is not and has not

		aimed at harmonising the adoption of children in Europe, according to the core principles of the Council of Europe	been married, is not in and has not entered into a registered partnership and has not reached majority Article 11: 'Upon adoption a child shall become a full member of the family of the adopter(s) and shall have in regard to the adopter(s) and his, her or their family the same rights and obligations as a child of the adopter(s) whose parentage is legally established'
#9	Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (The Hague Convention)	The objectives of the Convention are: a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law; b) to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children; c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention' (Article 1)	Scope: The Hague Convention only applies to intercountry adoptions and has no effect on the recognition of adoptions when a family moves to another Member State
#10	Principles for the protection of the rights of the child born through surrogacy (Verona Principles 2021)	These Principles are designed to inspire and provide guidance on legislative, policy and practical reforms on the upholding of children's rights born through surrogacy. The Verona Principles are drafted to assist States and other stakeholders in their discussions about possible responses to surrogacy. However, they have only an informative purpose and no binding effect	Principle 12: Birth notification, registration and certification 12.6: 'Certification of the birth should be issued for all children born through surrogacy. This should not lead to any discrimination for reasons of the child's birth or other status. The certification of a birth is closely linked to the fulfilment of many other rights, inter alia, to a name, nationality and identity, the enjoyment of the highest attainable standard of health and education' 13.2: A State's application of nationality law should be without any discrimination related to circumstances of birth, including surrogacy. The policy of States regarding the nationality of a child born through surrogacy should be guided by the overriding importance of avoiding a situation in which a child is stateless

Policy context at international and EU level

Mutual recognition of parenthood has been on the **European Commission agenda** for some years. As early as 2010, a European Commission Green Paper suggested adopting measures on the recognition of civil status records, including on parenthood, e.g. a European Civil Status Certificate as an optional document (alongside national documents) to facilitate cross-border formalities⁴⁷⁰. This recommendation was not put into practice.

More recently, the European Commission highlighted the need to ensure that parenthood established in one Member State is recognised in all other Member States. In her State of the Union speech in September 2020, Commission President von der Leyen said, 'if you are parent in one country, you are parent in every country'⁴⁷¹.

This objective has also been included in various political strategies, such as the Commission's 2021 Strategy on the Rights of the Child⁴⁷² and the LGBTIQ Equality Strategy 2020-2025⁴⁷³. The EU Strategy on the Rights of the Child aims to prioritise a child-friendly justice system throughout the EU that upholds the rights and needs of children, especially when they are involved in judicial proceedings directly or when decisions have a considerable impact on their lives, such as divorce, custody proceedings, or migration and status determination procedures⁴⁷⁴.

Previous steps have sought to foster international cooperation between Member States' national authorities on the recognition of parenthood, with limited success. For example, the international intergovernmental organisation CIEC aims to facilitate international cooperation in civil status matters and improve the operation of national civil status departments, by drafting recommendations based on studies. Nevertheless, the conventions and recommendations adopted by CIEC have had limited success, which has been attributed to the reluctance of national authorities to implement the proposed changes⁴⁷⁵.

Several initiatives at international level target relevant topics, such as international surrogacy agreements and the recognition of legal parentage. In 2015, the HCCH set up an Expert Group to carry out research and find possible solutions for an international instrument. That Group has met twice a year since 2016 and is now considering a possible international instrument on the recognition of parenthood, with an additional protocol on ISAs. In 2023, the Expert Group intends to submit its conclusions on the feasibility of a convention on legal parentage and a separate optional protocol on legal parentage established through ISAs.

Since 2009, the European institutions have identified a need for more harmonised legislation on adoption⁴⁷⁶. The European Parliament has also adopted three

⁴⁷⁰ European Commission, Green Paper on less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records, 2010, pp. 10-11.

⁴⁷¹ State of the Union Address by President von der Leyen at the European Parliament Plenary, available at https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

⁴⁷² European Commission, EU Strategy on the Rights of the child, 2021, p. 18, available at: https://ec.europa.eu/info/sites/default/files/ds0821040enn_002.pdf

⁴⁷³ European Commission, LGBTIQ Equality Strategy 2020-2025, 2020, p. 18, available at: https://ec.europa.eu/info/sites/default/files/lgbtiq_strategy_2020-2025_en.pdf

⁴⁷⁴ European Commission, EU Strategy on the Rights of the Child and the European Child Guarantee, n.d., available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee_en

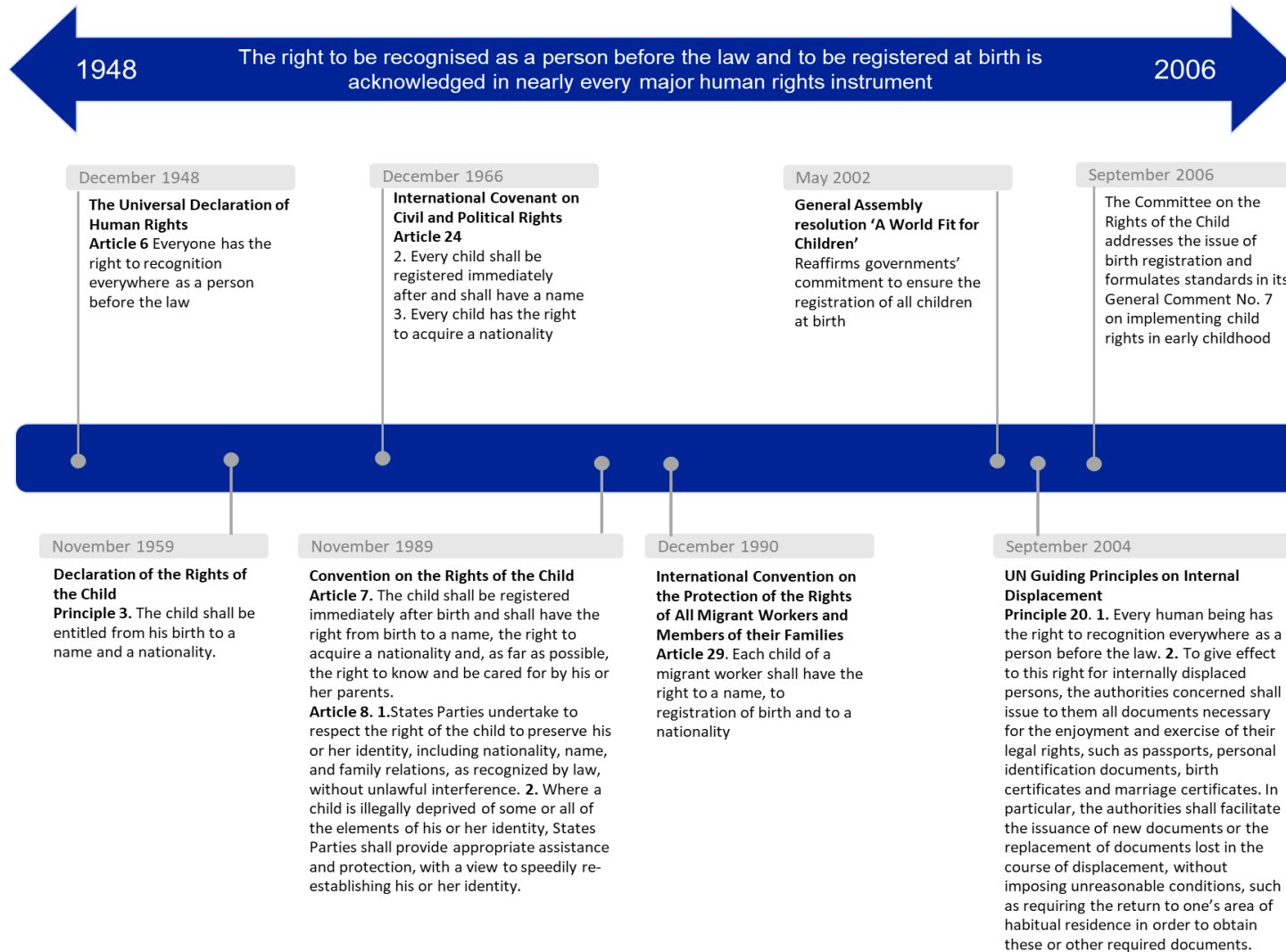
⁴⁷⁵ Freyhold, Vial & Partner Consultations, *Final Report for the European Commission on the project No JLS/2006/C4/004 relating to a comparative study on the legislation of the Member States of the European Union on civil status, practical difficulties encountered in this area by citizens wishing to exercise their rights in the context of a European area of justice in civil matters and the options available for resolving these problems and facilitating citizens' lives*, Synthesis report, 2008, p. 8.

⁴⁷⁶ European Parliament, *International adoption in the European Union*, Policy Department, 2009, pp. 164-165.

resolutions, one of which states that there is a 'clear need for European legislation to provide for the automatic cross-border recognition of domestic adoption orders'⁴⁷⁷.

⁴⁷⁷ European Parliament, Resolution of 19 January 2011 on international adoption in the European Union, 2010/2960(RSP); European Parliament, Resolution of 2 February 2017 with recommendations to the Commission on cross-border aspects of adoptions, 2015/2086(INL), paragraph 23. Other relevant resolutions include resolutions of 14 September 2021 and of 5 April 2022 on the initiative of the Commission to adopt a proposal on the mutual recognition of parenthood, as well as that of 14 September 2021 on LGBTIQ rights in the EU (2021/2679(RSP)) and that of 5 April 2022 on Protection of the rights of the child in civil, administrative and family law proceedings (2021/2060(INI)),

Figure 10. International instruments recognising the right to be registered at birth



Source: ICF, based on UNICEF, 2019.

A4.2 Comparative analysis of legal frameworks in place in EU Member States

A4.2.1 Findings – national research

This section presents the findings obtained from the research carried out at Member State level.

Limitations of the findings presented in this section

The study team reviewed all 26 national reports⁴⁷⁸ and the findings are presented here.

The large volume of information was extracted in comparative tables prepared for each question, with a narrative then prepared to summarise the findings and the patterns shown evident these tables.

A4.2.2 Establishment of parenthood and recognition of parenthood: national legal frameworks

A4.2.2.1 Establishment of parenthood

Overview of findings

In 17 Member States, it is possible to establish parenthood by an **authentic instrument**, in 19 Member States, it is not possible to establish parenthood by a **court settlement** (possible or required in some situations in five Member States), and in four Member States, **extra-judicial documents** establish parenthood.

Adoption is possible in all Member States, including for single individuals although with restrictions for single men in some countries such as HU, and PL.. Adoption appears to be necessary for a different-sex spouse to become the second parent of a child in all Member States; different-sex registered partners may become parents via adoption in eight Member States⁴⁷⁹. With regards to same-sex spouses, adoption is necessary to become the second parent of a child in 12 Member States⁴⁸⁰; for same-sex registered partners, adoption is necessary to become the second parent in 11 Member States⁴⁸¹. Alternative options include foster parenthood (AT), acknowledgement of the child (BE), compliant recognition (ES), acquisition of guardianship (IE), joint exercise of parental responsibilities (PT) and judicial determination (NL).

⁴⁷⁸ As indicates in Section 1, Denmark was not covered as part of this study, due to the fact that it would not take part in this initiative.

⁴⁷⁹ AT, BE, EE, ES, HR, MT, PT, SE.

⁴⁸⁰ AT, BE, DE, ES, FI, FR, IE, LU, MT, NL, PT, SE.

⁴⁸¹ AT, BE, DE, EE, ES, IE, IT, MT, PT, SE, SI.

25 Member States regulate **ART** (except LU). Examples of ART that are legally banned include sex selection⁴⁸², cloning⁴⁸³, sperm and egg donation (LT (embryo)). Same-sex partners are excluded from making use of ART in 13 Member States⁴⁸⁴.

Surrogacy and more precisely its regulation, is a complicated and sometimes unclear subject.

Banned - either expressly by criminal law or implicitly by other texts - in 14 Member States⁴⁸⁵, surrogacy is, in many Member States, neither prohibited nor allowed, leaving legal uncertainty but also the legal presumption that the mother of the child is the woman who gave birth, so that de facto surrogacy would be prohibited or complicated (adoption would be necessary). In 19 Member States, authorities register a child born through surrogacy (in civil or population registers)⁴⁸⁶.

All Member States **register all births taking place within their territory**, even where the parent(s) of the child do not have their habitual residence in that Member State.

In 20 Member States⁴⁸⁷, **conflict rules** do not allow the possibility for the parent(s) to choose the law applicable to the establishment of parenthood.

No Member State applies different conflict rules depending on **whether the child is a minor or an adult**.

In 15 Member States, the **law applicable** to the establishment of parenthood **does not change throughout the life of a child**.

A4.2.2.2 Substantive law

General requirements for the establishment of parenthood

This section summarises how parenthood is generally established in Member States and which authorities are able to do this. It outlines the Member States in which parenthood can/cannot be established by an authentic instrument, court settlement, or an extra-judicial document on parenthood (which is not an authentic instrument). For the purposes of this analysis, several concepts are understood as follows:

An **authentic instrument** is a document that has been formally drawn up or registered as an authentic instrument in any Member State, the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose.

A **court settlement** constitutes a settlement in a given matter, which has been approved by a court or concluded before a court in the course of proceedings.

An **extra-judicial document** (which is not an authentic instrument) is agreed between two parties and subsequently registered by a public authority. Examples include extra-

⁴⁸² BG, CY, DE, EL, HR, HU, LV, MT, PT, RO, SI.

⁴⁸³ BG, CY, DE, EL, ES, FI, HR, HU, LV, MT, PT, RO, SI.

⁴⁸⁴ AT (male), CY, CZ, EL, FR (male), HR, HU, IT, LV, PL, PT (male), RO, SI.

⁴⁸⁵ AT, BG, DE, ES, FI, FR, HR, HU, IT, LT, MT, PT, SE, SI.

⁴⁸⁶ AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, IE, LU, LV, NL, PT, RO, SE, SI.

⁴⁸⁷ AT, BE, BG, CY, CZ, DE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT.

judicial agreements on divorce or parental responsibility matters under the recast Brussels IIb Regulation.

The desk research by national legal experts found that in all Member States, parenthood can be established by both operation of law and judgment. In 22 Member States⁴⁸⁸, **judges** are able to establish parenthood, in 16 Member States⁴⁸⁹, parenthood can be established by **civil registrars**, while **notaries** establish parenthood in six Member States⁴⁹⁰. In 17 Member States, it is possible to establish parenthood by means of an **authentic instrument**. Conversely, in the remaining nine Member States⁴⁹¹, parenthood cannot be established by an authentic instrument, with an exception in Croatia where paternity can be recognised by a will. In certain Member States (e.g. CY), authentic instruments do not exist as a concept.

Parenthood can be established by **court settlement** in only seven Member States⁴⁹². In five Member States⁴⁹³, it is possible to establish parenthood by **an extra-judicial document**. In the Netherlands, the extra-judicial document takes the form of a deed of recognition, which is not a notarial deed. In Cyprus, the relevant law provides that a child may be voluntarily recognised either through an affidavit signed before the Registrar of the Court where the child is habitually resident, or by the testamentary will of the father. Similarly, in Czechia, the man whose paternity has been determined by an affirmative statement of both the mother and the man, is presumed to be the father. Such a statement might be made in a court or directly in the Registrar's Office. In Estonia, paternity can be established based on the application of the father, provided he has the consent of the mother of the child. A person can acknowledge paternity and consent for registration of paternity in person, digitally signed in a secure online environment, or authenticated by a notary public or an Estonian consular officer.

⁴⁸⁸ AT, BG, CY, CZ, DE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK.

⁴⁸⁹ BE, BG, CZ, EE, ES, FI, FR, HR, IT, LT, LU, LV, NL, PL, PT, RO, SI.

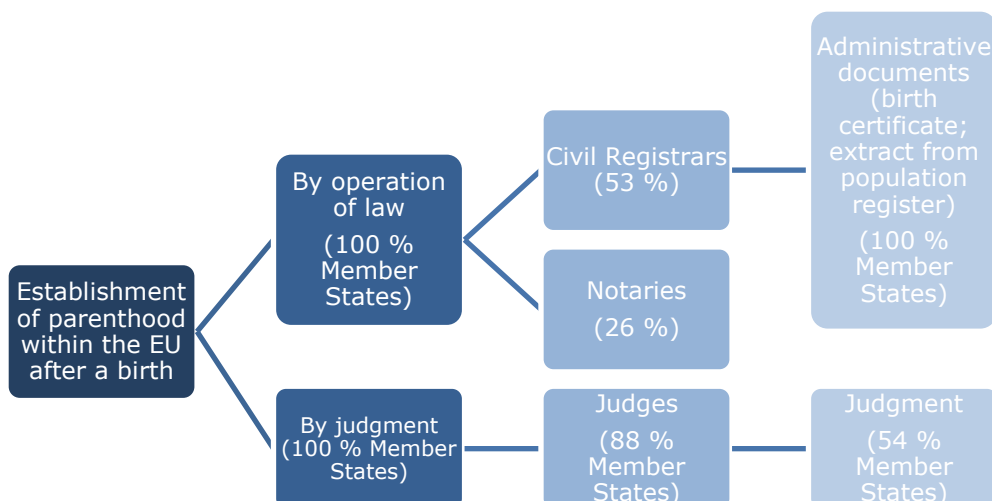
⁴⁹⁰ FR, LT, LU, MT, NL, PL (only in special circumstances).

⁴⁹¹ CY, CZ, FI, HR, HU, IE, LV, SE, SK.

⁴⁹² CY, EE, FR, LT, MT, NL, RO.

⁴⁹³ CY, EE, CZ, LV, NL.

Figure 11. Overview of establishment of parenthood within the EU



Methods of establishing parenthood

This section explores the **legal presumptions** of parenthood in place in the Member States, specific rules on the establishment of parenthood for **children born outside marriage**, and rules concerning the establishment of parenthood further to a **paternity acknowledgement**. The possibility for a child to have **more than two parents**, as well as the **recognition of parenthood of a same-sex non-genetic parent** are also described. Finally, the difference in rules establishing parenthood based on the age of the child is discussed, as well as the **time limits** in place for the establishment of parenthood.

Legal presumptions

Figure 13 presents the legal presumptions of parenthood that have been identified in the Member States, by category and with examples from individual Member States.

Figure 12. Contexts for the methods of establishment of parenthood

Birth within marriage	•AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK
Birth within a certain period of divorce or death	•AT, BG, DE, CZ, EE, FR, IT, LT, LV, PL, PT, RO, SI
Birth within a certain period after remarriage	•AT, CZ, DE, HR, LT, LV, PT
Presumption of motherhood	•AT, BE, BG, CZ, DE, EL, ES, FI, FR, HU, IT, LV, NL, RO, SE, SK
Other	•CZ, DE, HR, HU, LV, SK, SE

Source: ICF elaboration

The most common legal presumption is that **birth within marriage** gives rise to parenthood. The presumption that **birth within a certain period after divorce or death** gives rise to parenthood exists in 13 Member States. In Spain and Poland, children born after the marriage and 300 days following its dissolution or the spouses'

separation (legal or *de facto*), are presumed to be the husband's children. The presumption that **births within a certain period after remarriage** gives rise to parenthood is present in seven Member States only.

Seven Member States have expressed other legal presumptions. For example, in Germany, it is presumed that a man who has acknowledged his paternity is the father of the child ('existence of an acknowledgement'). In 15 Member States, a **presumption of motherhood** exists, whereby the woman who gave birth to the child is considered to be the child's mother. This presumption may not be contested in six Member States⁴⁹⁴.

In Spain, filiation becomes matrimonial filiation from the date of the parent's marriage, when the marriage takes place after the birth of the child, provided that the fact of filiation is legally determined. Similarly, in Bulgaria and Czechia, if a child is born in a period between the date of entering into marriage and the 300th day after the divorce, the mother's spouse is presumed to be the father. It is also considered that the man whose paternity has been determined by an affirmative statement of both the mother and the man, is presumed to be the father of the child, where paternity has not been determined pursuant to other presumptions. A so-called 'one and a half' presumption on paternity stipulates that if a child conceived through artificial insemination is born to an unmarried woman, the man who gave consent to the artificial insemination is presumed to be the child's father.

In Hungary, if paternity cannot be established on the basis of the presumption based on the mother's marriage, the man who participated with the mother during their cohabitation relationship in an assisted reproduction procedure that resulted in the child, shall be considered the father of the child. Another presumption states that if the mother neither lived in marriage, nor took part in an assisted reproductive procedure giving rise to the presumption of paternity, or if the presumption of paternity was rebutted, the man who acknowledged the child to be his own in a declaration of paternity with full effect shall be considered the father of the child. Finally, a non-rebuttable presumption of establishment of paternity by a judgment of the court exists in Hungary, if the identity of the father of the child cannot be established either on the basis of the mother's marriage, an assisted reproduction procedure, or a declaration of paternity in full effect.

Parenthood for a child born outside of marriage

In 19 Member States⁴⁹⁵, there are specific rules for the establishment of parenthood of a **child born outside marriage**.

In seven Member States⁴⁹⁶, there are no specific rules. In Austria, for example, if the non-marital father or female partner wants to establish parenthood, he or she has to acknowledge the parenthood or apply for a positive judicial determination of parenthood. In Bulgaria, the father can recognise the child born out of marriage, while in Czechia, although there are no specific rules, the legal presumptions (acknowledgement of paternity by affirmative statement and determination of paternity by the court due to sexual intercourse in the relevant period or through test DNA) will still apply. In Estonia, filiation is the basis for the establishment of all parenthood. In Slovenia, the paternity of the child must be established by acknowledgement or through a non-contentious civil procedure. In Slovakia, legal

⁴⁹⁴ AT, BG, CZ, DE, HU, NL.

⁴⁹⁵ BE, CY, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE.

⁴⁹⁶ AT, BG, CZ, DE, EE, SI, SK.

presumptions of establishing parenthood take into account whether the child was born during, after the dissolution, or outside of the marriage.

*Establishment of parenthood further to a paternity acknowledgement*⁴⁹⁷

In 17 Member States⁴⁹⁸, a **paternity acknowledgement** is followed by registration of this information in the relevant civil registers or equivalent. However, the procedures following the paternity acknowledgement vary significantly, with nine Member States⁴⁹⁹ requiring the consent of the mother, child, or legal guardian for such establishment of parenthood.

Number of parents

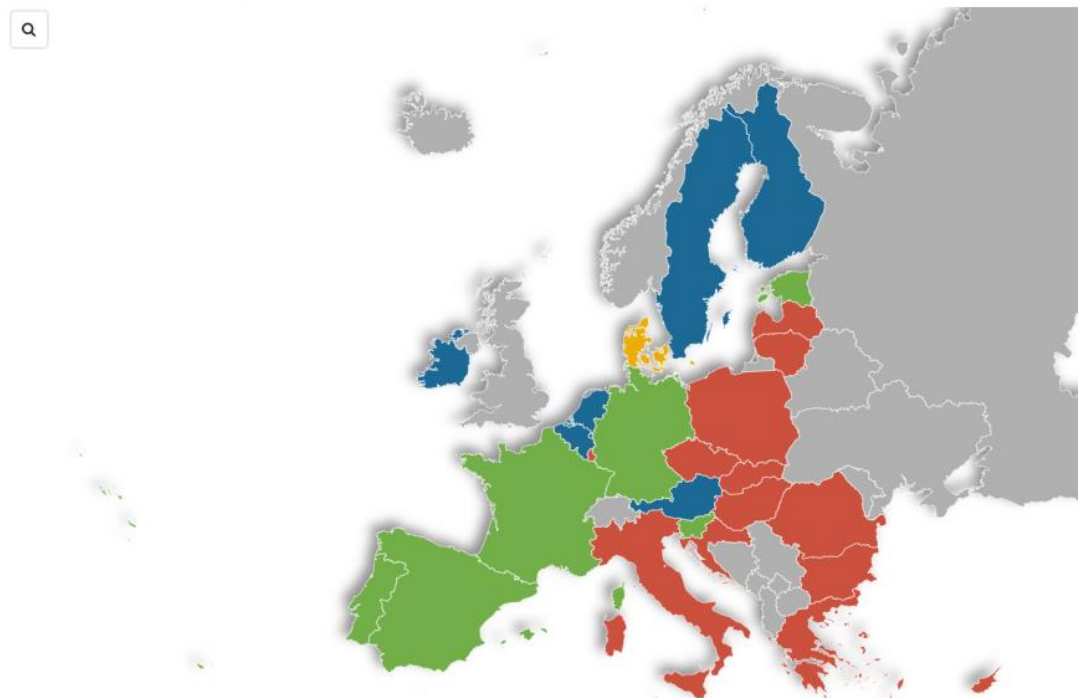
No Member State allows a child to have **more than two parents**.

Recognition of parenthood for non-genetic parent in the context of same-sex marriage/partnership

Figure 13. Recognition of parenthood for non-genetic parent in same-sex marriage/partnership

Recognition of parenthood for non-genetic parent in same-sex marriage/partnership

- Non-EU
- Parenthood of the non-genetic spouse/registered partner over the child of the genetic parent is established by operation of law
- Recognition of parenthood for the non-genetic parent in the context of same-sex marriage or partnership is not possible
- Not applicable
- The non-genetic spouse/registered partner must adopt the child to become the second parent of the child



Source: XXX.

⁴⁹⁷ The answers of national legal experts reflected different interpretations of the question.

⁴⁹⁸ AT, BE, BG, CZ, DE, ES, FR, HR, HU, IE, IT, LV, NL, PL, PT, RO, SE, SK.

⁴⁹⁹ AT, CY, DE, EE, ES, HR, LT, PL, PT.

Rules on establishment of parenthood depending on the age of the child

In 16 Member States⁵⁰⁰, rules on the establishment of parenthood differ depending on the **age of the child**. Conversely, in six Member States⁵⁰¹, the rules remain the same throughout the child's life.

Time limits for the establishment of parenthood.

Twelve Member States⁵⁰² do not prescribe time limits for the initiation of court proceedings on the establishment of parenthood. In Spain and Italy, the lack of time limits refers to the establishment of parenthood when sought by the child, while in Bulgaria, time limits do not apply to the establishment of motherhood. In 10 Member States⁵⁰³, time limits exist for establishment of parenthood. In Spain, time limits exist for the parents only, while in Germany, the time limits relate to the age at which the child will be heard in court proceedings. In Sweden, the time limit concerns the consent of the mother for the confirmation of paternity made by the father if such confirmation of paternity was made digitally. In Greece, the right of the mother to request the recognition of the paternity of her child expires after five years since the birth of the child. In Croatia, a child may file a lawsuit to establish maternity or paternity up to the age of 25.

The regulations in Czechia change on the basis of the relevant legal presumption. For the first, second and third presumptions, there are no time limits. However, as regards the 'conversion in favour of the first presumption', the statements of the child's mother's husband or her former husband, or the man who claims to be the father of the child and/or the child's mother are made in court proceedings initiated by the application of any of the parties within one year of the child's birth.

In four Member States⁵⁰⁴, the experts provided no information or the situation is unclear in relation to time limits for the establishment of parenthood.

Proof of parenthood and contestation

Proof of parenthood that can be provided to the authority requested to establish parenthood

Different types of proof may be provided to establish paternity, including acknowledgement of paternity, presumption of paternity, possession of state and other.

⁵⁰⁰ BE, BG, EE, EL, ES, FI, HR, HU, IT, LT, LU, LV, NL, PL, PT, SE.

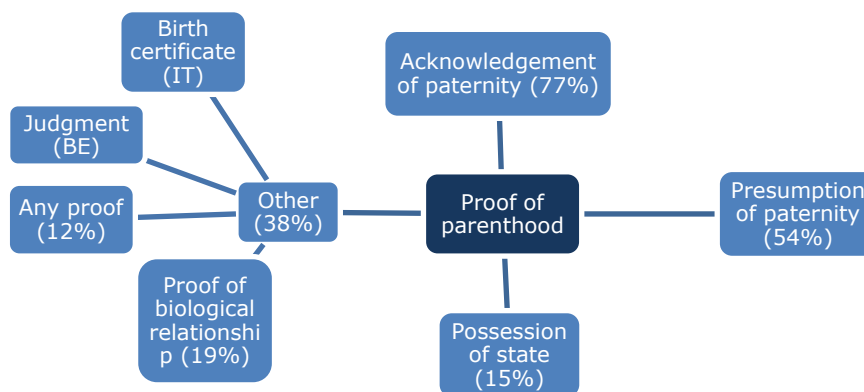
⁵⁰¹ AT, DE, IE, RO, SI, SK.

⁵⁰² AT, BE, CY, DE, EE, ES, FI, IE, IT, LT, RO, SI.

⁵⁰³ BG, EL, FR, HR, HU, LV, PL, PT, SE, SK.

⁵⁰⁴ CZ, LU, MT, NL.

Figure 14. Proof of parenthood used to establish parenthood



For a general overview of the establishment of parenthood within the EU, see Figure 2.

Recording parenthood once it has been established

Once parenthood is established, recording of parenthood in **civil status registers** or **population registers** occurs in all Member States. Seven Member States⁵⁰⁵ also then record that parenthood on the birth certificate.

Documents that citizens can use to provide evidence of their parenthood, once it has been established

In all Member States, **administrative documents** such as birth certificates and extracts from the population register can be used to provide evidence of parenthood. In 13 Member States⁵⁰⁶, a court judgment may also constitute proof of parenthood.

Legal value of an administrative document on parenthood

In 26 Member States, administrative documents provide evidence of parenthood established by **law, judgment, notarial act**, or another document establishing parenthood. Poland is the only Member State where administrative documents actually establish parenthood.

Contestation

Persons contesting parenthood, the reasons invoked, and authorities involved

Not all national legal experts answered all elements of this question.

In all Member States, parenthood can be contested before a court.

Who can contest parenthood?

Mother

Father

Child

Person claiming that they are the parent

Public prosecutor

Guardianship authority

Court

⁵⁰⁵ BG, FI, LT, LU, LV, NL, PL, PT.

⁵⁰⁶ AT, BE, CY, DE, ES, FI, FR, HR, HU, LV, NL, PL, SK.

Other

Of the people who can legally contest parenthood:

- **The mother** can contest the parenthood of only the father in 10 Member States⁵⁰⁷ and the parenthood of both the mother and father in 13 Member States⁵⁰⁸;
- **The father of the child** can contest parenthood in 25 Member States (not FI);
- **The child** can contest parenthood in 23 Member States⁵⁰⁹;
- 13 Member States allow **all persons claiming that they are the parent** of the child to contest parenthood that was otherwise established⁵¹⁰.

In five Member States⁵¹¹, **authorities** can also contest parenthood. In France, Hungary and Portugal, this includes the **public prosecutor**, in Hungary the **guardianship authority** as well, while in Czechia the court may do so. In 11 Member States⁵¹², other parties are able to contest parenthood, including parties from previous proceedings (AT), the parents of the father if he is deceased (CY, LV), the forced heirs or heirs of the deceased (ES, LT, SE), the child's descendant (HU), guardians of a parent who is a minor (LT), certain persons affected by a possession of state (ES, RO), or anyone claiming to have an interest in the matter (EE, IT, PT, RO).

As regards the reasons for which parenthood can be contested, in 16 Member States⁵¹³, certain persons are able to contest where they **claim that they are not the parent of the child**. In Latvia, the presumption of parenthood can also be contested, while in Malta, the procedure typically occurs when an inaccurate attribution of parenthood has transpired.

In four Member States (ES, HU, PL, PT), parenthood can be contested on **grounds of invalidity** of the title declaring the parenthood. In Portugal, this relates to the lack of capacity of the individual considered to be the parent; annulment may be obtained on the grounds of incapacity, error or coercion. In three Member States (HU, LU, PT), fraud constitutes a reasonable ground to contest parenthood; in Hungary, this is when circumventing of the law has occurred, while in Portugal, this would be in case of coercion. In Hungary, parenthood can be contested if there has been no consent from the alleged father during an ART procedure. In Estonia, parenthood can be contested

⁵⁰⁷ AT, CY, CZ, DE, EE, LV, RO, SE, SI, SK.

⁵⁰⁸ BE, BG, EL, ES, FR, HR, HU, IE, IT, LT, MT, NL, PT.

⁵⁰⁹ AT, BE, BG, CY, DE, EE, EL, ES, FI, FR, HR, HU, IT, LT, LV, MT, NL, PL, PT, RO, SE, SI, SK.

⁵¹⁰ BE, BG, CY, DE (narrowly defined cases only), EE, ES, FI, FR, HR, LT, LV, RO, SI.

⁵¹¹ BG, CZ, FR, HU, PT.

⁵¹² AT, CY, EE, ES, HU, IT, LT, LV, PL, RO, SE.

⁵¹³ AT, BE, BG, CZ, EL, ES, HR, HU, LV, MT, NL, PT, RO, SE, SI, SK.

if the previous proceedings did not include some of the obligatory participants or where the obligatory consent was not obtained from the biological parents or the child who is older than 10.

Appealing decisions on the establishment of parenthood given by a court, an administrative authority or a notary

In 25 Member States, such decisions can be **appealed**, with IE being the exception.

Rules on contestation of parenthood depending on the age of the child

In 13 Member States⁵¹⁴, the rules on the contestation of parenthood **differ depending on the age of the child**. Conversely, in eight Member States⁵¹⁵, the rules remain the same throughout the child's life. In Portugal, maternity and voluntary acknowledgement of paternity can be contested without time limit, however there are time limits in respect of contesting the presumption of paternity. Further clarifications are needed for five Member States⁵¹⁶ whose information is inconclusive.

Time limits for the contestation of parenthood.

In six Member States⁵¹⁷, **no time limits** exist for the contestation of parenthood. In Italy, this is only the case where the claimant is the child. Time limits exist for contestation of parenthood in 19 Member States⁵¹⁸. Limited information is available for Finland, Estonia and Luxembourg, and further clarifications are needed.

Adoptions

Adoption is possible in all Member States, including by single individuals.

Adoption appears to be **necessary in all Member States for a spouse to become the second parent of a child**. For different-sex spouses, adoption to become the second parent of a child is possible in all Member States. For different-sex registered partners, adoption is possible to become the second parent in eight Member States⁵¹⁹. In the Netherlands, alternatives are possible to become the second parent. Different-sex registered partners may not adopt in eight Member States⁵²⁰. In Lithuania, the draft Law on registered partnerships has yet to be adopted and only spouses have the right to adopt. In France, full and simple adoptions are theoretically possible for a single person, however full adoption removes the parentage of the biological parent, while simple adoption transfers parental authority from the biological parent to the adoptive parent. In Italy, single individuals can only apply for a simple adoption (i.e. an adoption under particular situations, where children keep contact with the family of origin and the adopting parents do not have any right to the property of the child,

⁵¹⁴ BE, BG, EE, EL, ES, HR, HU, IT, LU, LV, MT, NL, SK.

⁵¹⁵ AT, CY, DE, FI, IE, LT, RO, SI.

⁵¹⁶ CZ, ES, FR, PL, SE.

⁵¹⁷ DE, FI, FR, IE, IT, LT.

⁵¹⁸ AT, BE, BG, CY, CZ, EE, EL, ES, HR, HU, IT, LV, MT, NL, PL, PT, RO, SE, SI, SK.

⁵¹⁹ AT, BE, EE, ES, HR, MT, PT, SE.

⁵²⁰ CY, EL, FI, IT, LT, LU, RO, SI.

while the child is an heir of the parents). Different-sex registered partnerships are not possible in eight Member States⁵²¹.

As regards same-sex spouses, adoption is necessary to become the second parent of a child in 12 Member States⁵²². In the remaining 14 Member States, same-sex marriage is not possible, therefore adoption to become a second parent is not applicable. For same-sex registered partnerships, adoption is necessary to become the second parent of a child in 11 Member States⁵²³. Alternative options are possible in Croatia and the Netherlands: in the Netherlands, these include recognition and judicial determination; in Croatia, the life partner of the child's parent has the right to exercise parental responsibility for the child. Again, in France, full and simple adoptions are theoretically possible for a single person, but full adoption removes the parentage of the biological parent and simple adoption transfers parental authority from the biological parent to the adoptive parent. Same-sex registered partners may not adopt in six Member States⁵²⁴. Same-sex registered partnership is not possible in six Member States⁵²⁵.

Alternative options to become the second parent of a child include acknowledgement of the child (BE), compliant recognition (ES), acquisition of guardianship (IE), joint exercise of parental responsibilities (PT), and judicial determination (NL). In Austria, foster parenthood is one of the alternative options to become the parent of a child.

ART

ART refer to procedures used to address infertility, which include artificial insemination, IVF, cryopreservation of sperm or embryos, embryo transfer, fertility medication and hormone treatments.

Twenty-five Member States **regulate ART** (except LU). Examples of **ART that are legally banned** include sex selection⁵²⁶, cloning⁵²⁷, sperm and egg donation⁵²⁸, and embryo donation⁵²⁹.

Table 13. Overview of civil status and medical limitations to ART

Conditions for ART		Member States
Civil status	Exclusion of same-sex partners	13 Member States - AT (male), CY, CZ, EL, FR (male), HR, HU, IT, LV, PL, PT (male), RO, SI

⁵²¹ BG, CZ, DE, HU, IE, LV, PL, RO.

⁵²² AT (male), BE, DE, ES, FI, FR, IE, LU, MT, NL, PT, SE.

⁵²³ AT (male), BE, DE, EE, ES, IE, IT, MT, PT, SE, SI.

⁵²⁴ CY, CZ (may not adopt jointly), EL, FI, HU, LU.

⁵²⁵ BG, LT, LV, PL, RO, SK.

⁵²⁶ AT, BG, CY, EL, HR, HU, IT, LV, MT, PT, RO, SI.

⁵²⁷ AT, BG, CY, EL, ES, FI, HR, HU, IT, LV, MT, PT, RO, SI.

⁵²⁸ IT, LT (embryo).

⁵²⁹ SI.

	Couples and individuals	16 Member States - BE, BG, CY, EE, EL, ES, FR, HR, HU, IE, IT, LV, NL, PT, RO, SE
	Couples only	5 Member States - AT, CZ, LT, PL, SI
Medical conditions	Age limit for women	10 Member States - AT, BE, BG, CZ, EL, FR, LV, PT, SE, SI

In Austria and Belgium, the maximum age limit is 45, compared to 43 years in Bulgaria and 49 in Czechia. In Portugal, ART can be availed of from the age of 18. In Latvia, the female gamete donor may be between the ages of 18 and 35, while the male gamete donor may be between the ages of 18 and 45. Greece stipulates that ART is permissible up to 'the reproductive age' of the person, while in Slovenia, the woman must be 'of sufficient age to give birth'. In France, age limits take into account the medical risks of procreation linked to age and the interest of the child to be born. In Sweden, sperm and egg donors must have reached the age of majority.

In Italy, any form of selection of embryos or gametes is banned, as is cloning.

On the variation of rules on the establishment of parenthood when individuals or couples use ART, five Member States⁵³⁰ reported that rules vary on joint parenthood of same-sex spouses or same-sex registered partners by operation of law. Four Member States⁵³¹ noted that rules vary for adoption by the non-genetic same-sex spouse or same-sex partner. Three Member States⁵³² replied that the rules do not vary.

Surrogacy

Surrogacy is **banned**, expressly or implicitly, in 14 Member States⁵³³ and is regulated in five Member States⁵³⁴.

Authorities differ in their approaches to the parenthood of a child born out of surrogacy, where surrogacy is not regulated or expressly banned, depending on whether the surrogacy occurred in the Member State, another Member State or a third country.

⁵³⁰ AT, BE, FI, IE, SE.

⁵³¹ DE, EE, ES, NL.

⁵³² HU, LV, MT.

⁵³³ AT, BG, DE, ES, FI, FR, HR, HU, IT, LT, MT, PT, SE, SI.

⁵³⁴ CY, DE, EE, EL, FI.

Figure 15. Parenthood for a child born out of surrogacy

How authorities address parenthood of a child born out of surrogacy		
<p>Own Member State</p> <ul style="list-style-type: none"> Surrogacy is considered a crime (4 - DE, ES, HU, IT) Surrogacy is considered an administrative offence (1 - AT) Legal motherhood remains with the woman giving birth (11 - AT, DE, EE, FI, HR, LV, NL, PL, PT, RO, SE) Child can be adopted by its intended parent(s) (7 - AT, BE, CZ, EE, NL, RO, SE) Genetic mother/co-father of the child cannot have their parenthood recognised (1 - IE) Authorities will register a child born through surrogacy, either in the civil register or population register (19 - AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, IE, LU, LV, NL, PT, RO, SE, SI) Authorities will not register birth certificate if authorities know that the child was born through surrogacy (1 - PL) 	<p>In another Member State</p> <ul style="list-style-type: none"> If the parenthood of the intended parents has been established by a legal act, the parenthood thus established shall be recognised by authorities (10 - AT, BE, BG, EE, ES, FR, HU, PL, PT, SI) Judgment from another country confirming adoption by planned social parents can be recognised. Only in this case will social parents be registered (1 - DE) Surrogacy is against the public order (1 - HR) PIL rules apply to parenthood of a child born through surrogacy (1 - NL) Legal motherhood remains with the woman giving birth (3 - FI, LV, SE) Genetic mother/co-father of the child cannot have their parenthood recognised (1 - IE) Authorities will register a child born through surrogacy, either in the civil register or population register (19 - AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, IE, LU, LV, NL, PT, RO, SE, SI) 	<p>In a non-EU country</p> <ul style="list-style-type: none"> The same rules apply as to other EU Member States (16 - AT, BE, BG, EE, ES, FI, FR, HR, IE, LU, LV, NL, PL, PT, SE, SI) No specific rules for this scenario (2 - DE, RO)

A4.2.2.3 Conflict of laws rules on the establishment of parenthood

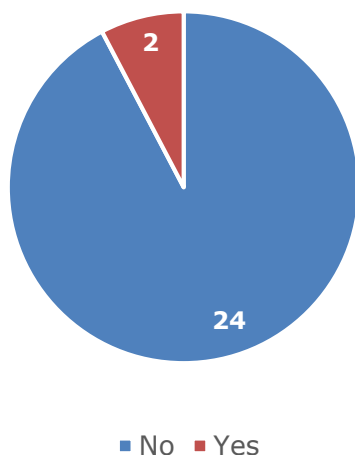
Description of conflict of laws rules applied by Member States

All Member States **register all births taking place within their territory**, even where the parent(s) of the child do not have their habitual residence in that Member State. In situations where a child is born in a cross-border situation, most Member States' authorities register the birth of a child in the civil or population register with the names of the persons who allege to be the parents, however a smaller number of Member States' authorities apply their conflict rules to establish the parenthood of the child in accordance with the applicable law.

The applicable conflict law for the establishment of parenthood in all Member States is the Member States' **rules on PIL**. The most common connecting factors applied are the **nationality of the child** and the **child's habitual residence**.

In most Member States, the conflict rules **do not provide the possibility for the parent(s) to choose the law applicable to the establishment of parenthood**. That option is possible in some Member States, however.

Figure 16. Possibility to choose the law applicable to the establishment of parenthood



The Netherlands: the parent(s) can choose the applicable law in very limited circumstances

Estonia: the relevant law gives priority to the legislation of the state of residence of the child at the time of birth, however a parent can contest or establish parenthood according to the law of the state of residence

Bulgaria: there is no legal option for the parents to choose the applicable law, but the parents can propose the law that is more appropriate. It is then for the court to choose the applicable law and the court is expected to investigate all options under the relevant legislation

If one of the parents is a resident or a national of a Member State and the **child is born abroad**, registration is possible in almost all Member States. In Italy, a birth certificate created abroad is transcribed, while in the Netherlands, the authorities issue a deed of registration attesting the foreign registration of birth.

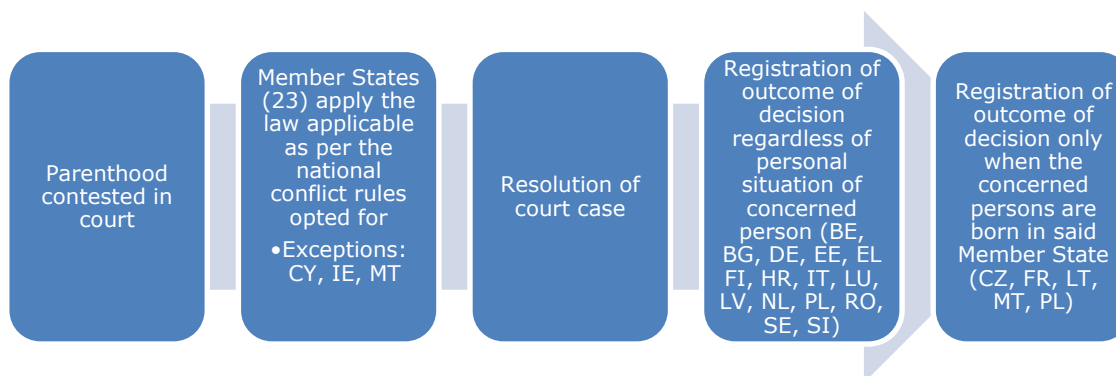
Some Member States, including Austria, require the child to be a citizen of the Member State for the registration. Austria and Germany also register children born abroad who are stateless, or a person of uncertain nationality, or a recognised refugee if they have habitual residence in the Member State. Cyprus and Czechia maintain special registries for children born abroad. In France, registration is only possible by the French consulate abroad, where the consuls act in the capacity of civil registrars.

In the majority of Member States, the **law applicable to the establishment of parenthood does not change throughout the life of a child**. In six Member States⁵³⁵, however, the law applicable to the establishment of parenthood changes throughout the life of a child. In Portugal, conflict rules establish the moment at which the connection is relevant, which can be the moment of the establishment of the relationship, or the moment of birth, or the dissolution of the marriage (where that happened earlier).

When parenthood with a cross-border element is contested in court, the majority of the Member States apply the **law applicable as per the national conflict rules**. Cyprus and Ireland, however, apply their substantive law on establishment of parenthood. Malta takes the approach of applying Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

⁵³⁵ AT, CZ, DE, ES, MT, PT.

Figure 17. Process of contestation of parenthood with a cross-border element



A4.2.3 Recognition of parenthood established in another Member State

The recognition of parenthood established in another Member State may take place based on administrative documents, judgments, notarial acts, or extra-judicial agreements. In most Member States, the competent authorities for recognition are courts (at various levels) and civil registrars.

A4.2.3.1 Formal recognition of parenthood

The vast majority of the Member States consider the formal recognition of parenthood established in another Member State to be necessary for the following situations:

- Entitlement to custody rights, succession rights and maintenance rights;
- To obtain family allowances;
- To obtain tax deductions;
- To give consent to medical treatment for a child;
- Right to be enrolled in the same school as a sibling.

Table 14. Recognition of parenthood as a prerequisite for certain rights

Parenthood is a prerequisite for:	Member States	Percentage of total Member States
Entitlement to custody rights	22 - BE, BG, CY, CZ, EE, EL, ES, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI	85 %
Family allowances	22 - BE, BG, CY, CZ, EE, EL, ES, FR, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, RO, SE, SI, SK	85 %
Tax reductions	19 - BE, BG, CY, CZ, EE, EL, ES, FR, HR, HU, IE, IT, LT, LV, MT, PL, PT, RO, SI	73 %
Giving consent to medical treatment	20 - BG, CY, CZ, EE, EL, ES, FR, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, RO, SI, SK	77 %
Right to be enrolled in the same school as a sibling	15 - BG, CY, EL, ES, FR, HR, HU, IE, IT, LT, LV, MT, PL, RO, SI	58 %

Right to make decisions about the child's religious and secular education	1 - IE	<0.1 %
Being granted nationality	22 - AT, BE, BG, CY, CZ, EE, EL, ES, FR, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, RO, SI, SK	85 %
Obtaining travel documents	19 - AT, BE, BG, CY, CZ, EE, EL, ES, FR, HR, HU, IE, IT, LT, LV, MT, PL, RO, SI	73 %
Being granted inheritance rights	20 - AT, BE, BG, CY, CZ, EE, EL, ES, FR, HR, HU, IT, LT, LU, LV, MT, NL, PL, RO, SI	77 %
Being granted maintenance rights	20 - AT, BE, BG, CY, CZ, EE, EL, ES, FR, HR, HU, IE, IT, LT, LU, LV, MT, PL, RO, SI	77 %
Being granted parental responsibility rights	21 - AT, BE, BG, CY, CZ, EE, EL, ES, FR, HR, HU, IE, IT, LU, LV, MT, NL, PL, RO, SI, SK	81 %
To acquire a national ID number	1 - BG	<0.1 %

A4.2.3.2 Recognition of judgments

Rules and procedures applicable for the recognition of a judgment on parenthood given in another Member State

The rules and procedures applicable for the recognition of a judgment on parenthood given in another Member State vary across the countries. However, eight Member States⁵³⁶ automatically recognise foreign judgments if certain conditions are met.

In Austria, the procedure for the recognition of parenthood established abroad is not explicitly regulated; rather, the recognition rules for foreign adoptions are applied by analogy. Final foreign decisions on parenthood are recognised if the requirements set out in the Non-Contentious Proceedings Act are met.

In Belgium, recognition will be granted if the authenticity of the judgment is established and there are no refusal grounds. Without awaiting the decision of an administrative authority, the parties concerned can initiate proceedings before the family court to obtain the recognition of a foreign judgment establishing parenthood.

In Bulgaria, the foreign judgment shall be recognised by the authority before which it is brought. For the establishment of parenthood, this authority is the civil registrar. This means that the recognition of a judgment could be sought in a special procedure only after a denial of the civil registrar to recognise it, or incidentally in the framework of another dispute.

In Croatia, the foreign court decision shall be recognised if the applicant for recognition has submitted proof that foreign decision is *res iudicata* under the law of the state in which it was rendered.

⁵³⁶ DE, EL, EE, FI, FR, IT, ES, PL.

In Cyprus, the relevant law provides for the possibility of recognition of foreign judgments in cases where a bilateral or multilateral treaty allows it, or where the judgment in question was taken in a common law country.

In Czechia, the rules depend on whether a Czech citizen is involved in the establishment of the recognition of parenthood. In Spain, the rules and procedures differ depending on the type of parenthood established in the decision and on whether the issue of recognition is raised directly in the registry.

In Finland, there is no need for parenthood established in another Member State to be formally recognised. Similarly in Germany, foreign judgments shall be recognised without a requirement for a particular proceeding (except judgments in marital matters). In France, judgments relating to the status and capacity of persons are automatically recognised, while in Italy, recognition is automatic, subject to conditions. Judicial proceedings are required only if the judgment must be enforced or the recognition is contested. In Greece, a judgment of a foreign civil court is recognised and automatically has the binding effect of *res judicata* according to Greek law. In Poland, no special procedure is required for the recognition of a foreign judgment. In Estonia, automatic recognition of the judgment is possible when such judgment establishes facts that are the basis for vital statistics entry.

In Hungary, the party concerned may request a special court procedure for the recognition of a foreign judgment and the court will hear the case in non-contentious proceedings. In Ireland, in case of any dispute concerning parenthood, the parenthood will usually need to be established under Irish law.

In Latvia, an application for recognition or recognition and enforcement of a ruling of a foreign court shall be submitted for examination to a district (city) court. The decision to recognise and enforce a ruling of a foreign court or a decision to refuse the application shall be taken by a judge sitting alone, on the basis of the submitted application and the documents attached thereto, within 10 days of initiation of the case, without inviting the parties.

In Lithuania, judgments of foreign courts in the territory of the Republic of Lithuania have legal effect and can be enforced only after they have been recognised by the Court of Appeal. By contrast, in Portugal, if the parenthood bond derives from a judgment pronounced by a foreign court, it must be reviewed and confirmed in Portugal. The foreign judgment produces the effects ascribed to it in the State of its origin, once it has satisfied the conditions of its effectiveness enshrined in Portuguese law.

The Netherlands applies two sets of rules to the recognition of parenthood established abroad: one set applies to parenthood established through a judicial decree, the other to parenthood established by means of a legal act. All courts are competent to deal with recognition of foreign parenthood and no jurisdiction requirement is needed. A foreign judgment on parenthood is recognised by operation of law, unless a ground for refusal applies (i.e. the foreign judgment was obtained without a proper fair trial, or the research and legal procedure on which the judgment is based was inadequate).

In Slovakia, foreign judgments require recognition by a special decision of a Slovak court if they are related to matrimonial matters (divorce, declaration of nullity of marriage, or determination that the marriage did not come into existence) if at least one of the parties is a Slovak citizen, and matters of determination (establishment or contestation) of parentage, if at least one of the parties is a Slovak citizen. Foreign judgments concerning the parenthood of foreign citizens are recognised automatically and have the same legal effect as a decision of a Slovak court if the parties are not citizens of the Slovak Republic and it is not contrary to Slovak public policy.

Competent courts dealing with the recognition of foreign judgments on parenthood

The **courts dealing with the recognition of foreign judgments** vary, depending on the Member State. Table 15 presents an overview of the relevant courts.

Table 15. Competent courts dealing with recognition of foreign judgments on parenthood

Types of courts		
District Court		AT, EL, FI, HU, LU, LV, SE, SI
Regional Court		SK
Municipal Court		HR
Territorially competent courts/local jurisdiction		CZ, DE, ES, PL, RO
Family Court		BE, CY
Civil Court		BG, MT
Court of Appeal		BE, IT, LT, PT
Supreme Court		CZ, LT
Judicial Court		FR
Magistrate Court		DE
All county and city courts		EE
All courts		NL
Not specified		IE

Main features of the recognition procedure before a court

This section presents an overview of the procedures applied by the competent courts in the Member States in the recognition of parenthood.

Recognition procedures before a court vary significantly across the Member States.

Table 16. Recognition procedures in court

Member State	Recognition procedures before a court
AT	Anyone with a legal interest can and must file an application for 'explicit recognition' or for 'explicit non-recognition', both of which shall be carried out in an independent procedure. Public bodies are not entitled to file an application. The application for recognition shall be accompanied by a copy of the decision and proof of its finality under the law of the State of origin. Best interest of the child principle is a priority.
BE	A copy of the original judgment must be submitted, and the judge will examine whether a refusal ground is present, however the content of the document will not be verified.
BG	An action for recognition of a foreign judgment/act may be brought before the court only if the recognition is denied by the civil registrar. Priority of the Bulgarian judgment is established, regardless of whether it was initiated earlier than the foreign judgment and regardless of the fact that the case has not yet resulted in a final judgment.
CY	The application for recognition shall be accompanied by a copy of the decision and proof of its finality under the law of the State of origin. Judgment should be final and conclusive. An application for registration of the foreign judgment should be accompanied by an affidavit, a certified copy of the judgment and a certified translation.

CZ	The court may decide the case without ordering a hearing, and the form of the decision is a judgment.
FI	Where necessary, the Helsinki District Court may confirm, by application, whether a decision on paternity issued in a foreign country is recognised in Finland (e.g. when the parents do not have the necessary documentation from their home country).
DE	The same rules apply as to regular parenthood cases (see p. 8 et seq. supra). However, only the requirements for recognition and possible obstacles have to be scrutinised by the court.
EE	Recognition of a judgment is decided on the basis of an application, accompanied by the relevant judgment and its translation. The court will assess whether the formal requirements of the judgment are fulfilled and if the judgment is made by the competent authority.
EL	In order to declare the foreign title enforceable, it has to be proven that it is enforceable under the law of the State in which it has been rendered.
ES	If the recognition of a foreign judgment is the principal question, an ad hoc procedure is needed. Recognition of a judicial decision on parenthood may also arise in the course of another proceeding as an incidental question (filiation, maintenance, succession).
HR	The procedure of recognition of a foreign court decision is a non-contentious procedure in which the recognition is decided as the main matter. If no final decision has been rendered on the recognition of a foreign court decision, each court may decide on the recognition of that decision in the procedure as a preliminary issue.
HU	No special procedure is necessary for recognition of a foreign judgment. If the party concerned requests a special court procedure, the court will hear the case in non-contentious proceeding.
IE	Judgments given in one EU Member State must be recognised and enforced in another EU Member State.
IT	The party initiating the proceedings shall lodge an application with the competent Court of Appeal (i.e. the court of the place where the judgment must be implemented), which then establishes the hearing for the appearance of the parties. The defendant must be notified of both the application and the decree scheduling the hearing, at least 30 days before the deadline for their appearance set by the court.
LV	A decision to recognise and enforce a ruling of a foreign court or a decision to refuse the application shall be taken by a judge on the basis of the submitted application and the documents attached thereto, within 10 days of initiation of the case, without inviting the parties.
LT	Applications for recognition of a foreign judgment are heard by a single judge of the Court of Appeal of Lithuania; however, the President of the Court of Appeal of Lithuania or the President of the Civil Cases Division, taking into account the complexity of the case, has the right to form a three-judge panel.
LU	Recognition is typically sought incidentally in proceedings that are not mainly concerned with the establishment of parenthood but that require the issue to be addressed.
MT	General civil procedure applies.
NL	There is no standard procedure and recognition can happen outside the court by means of registration of the foreign establishment in the civil status register.

PL	The general rule is that a foreign judgment is recognised <i>ex lege</i> , unless there are grounds specified in national law.
PT	The foreign judgment produces the effects ascribed to it in the State of its origin, once satisfied the conditions of its effectiveness are enshrined in Portuguese law.
RO	The court cannot examine the substantive portion of the foreign decision, nor can it modify the decision, except to verify the procedural conditions provided in the Civil Procedural Code.
SI	The court shall limit itself to examining whether the conditions referred to the recognition in the provisions of the PIL Act are met.
SK	The Regional Court in Bratislava is competent for recognition of foreign decisions in matrimonial matters, in matters involving establishment (determination or contestation) of parenthood or adoption of a child. For recognition of foreign decisions on placement of or contact with the child, the District Court for the habitual residence of the child hears the case, and, in absence thereof, the District Court for the residence of the child; when no such court exists, the District Court Bratislava I. The proceedings on recognition shall commence by an application which may be filed by a person who is referred to as a party in the foreign decision and, in matrimonial matters, in matters involving establishment (determination or contestation) of parentage or adoption of a child also by a person with a manifest legal interest in the matter. Parties to the proceedings shall be the applicant and all persons against whom the foreign decision shall be recognised. If the applicant fails to specify them in the application, the parties to the proceedings shall be all persons referred to as parties in the foreign decision. The application for the recognition of a foreign decision shall specify the court addressed, the identity of the applicant, the matter to which it relates and the purpose of the application; it shall be signed and specify the date of delivery. The application shall specify the foreign decision, the name of the authority of origin, the date when the foreign decision became binding or provide information on its enforceability and it shall list all supporting documents attached to the application. The application shall be filed in a number of copies with supporting documents, allowing one copy to be retained by the court and each party to be served with one copy.

Is automatic recognition alone subject to possible refusal grounds? What are the possible refusal grounds?

Aside from Malta, the Member States provide **additional refusal grounds** besides public policy.

Table 17. Refusal grounds in addition to public policy

Additional refusal grounds	Member States
Prior conflicting judgment	23 Member States (excluding IE, IT)
Lack of jurisdiction	11 Member States (AT, BG, CY, FI, FR, DE, LT, LU, LV, PL, PT)
Not respecting the principle of fair trial	15 Member States (AT, HR, CY, FI, DE, HU, IE, IT, LT, LV, NL, PL, PT, SI, RO)

Dutch legislation provides for a refusal ground on the basis that the 'research and legal procedure on which the judgment is based, was inadequate, which seems to be vaguely defined and open to interpretation. In Finland, there is no need for parenthood established in another Member State to be formally recognised because it is already recognised without a separate procedure.

Is recognition subject to an applicable law test?

In 20 Member States⁵³⁷, recognition is **not subject to an applicable law test**.

Austria deems the foreign judgment to be protected by the sovereignty of the foreign court or authority, therefore automatic recognition occurs if no ground for refusal is relevant. The Dutch Civil Code contains rules on applicable law, but they cannot be used to refuse another Member State's judgment on parentage. In Portugal, there is a nationality privilege exception, which means that if a judgment was given against a person of Portuguese nationality, the request for revision and confirmation may also be challenged on the grounds that the result would have been more favourable if the foreign court had applied Portuguese law, when the latter is the competent law under the Portuguese conflict rule. In Estonia, the court examines the prerequisites for recognition of the court decision but does not verify the correctness of the court decision in the part of the merits of the matter.

Conversely, in six Member States⁵³⁸, recognition is subject to such a test. In Ireland, if there is no applicable convention or treaty, then common law applies. Accordingly, when a foreign judgment exists in an issue of legal parentage, it may still be determined *de novo* by the *lex fori*. In Latvia, the ruling of a foreign court shall not be recognised if the foreign court has not applied the law of such country as should have been applied in conformity with the conflict-of-laws rules of Latvian PIL. In Romania, there is a general rule that the refusal of recognition cannot be invoked on the sole ground that the court issuing the foreign judgment applied a different law than that determined by Romanian PIL. However, when the recognition involves the civil status and capacity of a Romanian citizen, it can be refused on the basis that the adopted solution varies from that which would have been reached under Romanian legal provisions.

Is recognition subject to a jurisdiction test?

Twelve Member States⁵³⁹ subject the recognition to a **jurisdiction test**. In Slovenia, national courts have exclusive jurisdiction, therefore if a foreign court made the decision in a matter where Slovenian courts would have exclusive jurisdiction, the recognition will be refused for this reason.

Fifteen Member States⁵⁴⁰ do not subject the recognition to a jurisdiction test. In Austria, the judgment is protected by the sovereignty of the foreign court or authority, therefore automatic recognition occurs if no ground for refusal is relevant. In Bulgaria, the civil effects of foreign judgments shall be respected on the occasion of their enforcement.

Can a refusal to recognise the foreign judgment on parenthood be appealed?

All Member States provide the possibility to appeal against a refusal to recognise a foreign judgment on parenthood.

In Czechia, no appeal is possible when the Supreme Court is competent for recognition of judgment on determination and contestation of parenthood (i.e. where at least one of the parties is a Czech national).

Consequences of recognition of a foreign judgment:

⁵³⁷ AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, LT, LU, MT, NL, PL, PT, SI.

⁵³⁸ ES, IE, IT, LV, RO, SE.

⁵³⁹ AT, BG, CZ, DE, ES, LV, LT, LU, RO, SE, SI, SK.

⁵⁴⁰ BE, CY, EE, EL, FI, FR, HR, HU, IE, IT, MT, NL, PL, PT, SI.

The consequence of the recognition of parenthood is generally to **register the parenthood in the national civil register**. This is observed in 24 Member States⁵⁴¹. By comparison, a national document on parenthood is issued in only nine Member States⁵⁴². In Germany, a national document may be issued if the recognition is registered in the national civil register. In Estonia, it is possible to get national document printouts from the register, including a printout of parenthood status.

Does the procedure for the recognition of a foreign judgment on parenthood differ between Member States and non-EU countries? If yes, what are the differences?

In 20 Member States⁵⁴³, the procedure for the recognition of a foreign judgment on parenthood **does not differ between Member States and non-EU countries**. In five Member States⁵⁴⁴, the procedure differs. In Belgium, it only differs with regard to the authenticity of the document. In Malta, the main difference is the ease of verification of documentation. In Romania, for non-EU countries, the judgments need to be recognised by Romanian courts according to Romanian legislation.

A4.2.3.3 Recognition of administrative documents

The recognition of foreign administrative documents is essential to facilitate the lives of citizens who need to present a public document in another EU Member State.

Rules and procedures applicable for the recognition of an administrative document of parenthood issued in another Member State

Most Member State have **simplified procedures** for the recognition of an administrative document on parenthood issued in another Member State. The findings show several trends: some Member States consider the foreign administrative document to be evidence of parenthood, others carry out a substantive check, and still others automatically recognise foreign administrative documents.

Table 18. Recognition procedures for administrative documents

Member State	Recognition procedures
AT	Recognition requires a valid public document. It may be refused on the grounds of public policy and severe procedural defects
BE	Recognition is subject to a validity check according to the substantive law and may be refused on the grounds of public policy, evasion of law, or conflict of laws
BG	The same rules are applied as for the recognition of foreign judgments
CY	In practice, parenthood is recognised as described in the foreign administrative document automatically, unless there is a ground of refusal based on public policy or other serious reasons which would necessitate a more thorough review by the authorities

⁵⁴¹ AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IT, IE, LT, LU, LV, MT, NL, PL, PT, RO, SI, SK.

⁵⁴² BE, BG, CY, EL, ES, HR, HU, IT, RO.

⁵⁴³ AT, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LU, NL, PL, PT, SI, SK.

⁵⁴⁴ BE, LT, LV, MT, RO.

CZ	If the foreign administrative document is valid as a public instrument in the place of issuance or if it is issued by a diplomatic representative or a consular office in Czechia, it has evidential authority provided it includes the prescribed authentication. Such a public instrument must be subsequently recognised as a foreign judgment in order to obtain legal effects
FI	Foreign decisions of a court or another authority are accepted as evidence of paternity. Finnish authorities accept foreign legal acts if they constitute a parental relationship in the State where the measure was taken
FR	Civil status record is a proof of parenthood established abroad but in order to also be recognised under French law, two prior formalities must be carried out - translation and legalisation. Practically, however, foreign birth certificates will in most instances suffice as full evidence of parenthood
DE	General rules on administrative proceedings apply, and the authorities evaluate the effect of foreign documents at their discretion (particularly the evidentiary effect)
EE	Vital Statistics Officer can recognise foreign administrative documents based on the application of the person. The application must include all of the relevant documents that are legalised or authenticated by a certificate (apostille). The Officer must ascertain that the information included in the application and the document are true before making a change in the population register
EL	Applicant must file a written petition to the Civil Registrar, accompanied by all supporting documents
ES	Procedure depends on the effect to be recognised. For automatic recognition by the register, the foreign document must have been granted by a competent foreign authority in accordance with the laws of the Member State of issuance. In addition, the foreign registry must have similar guarantees to those required by Spanish law and the registration of the foreign certification must not be manifestly incompatible with Spanish public order. The fact of parenthood or the act carried out by the foreign authority recorded in the foreign administrative document is valid according to the law determined by the Spanish PIL provisions
HR	The Administrative Law Regulation contains no provisions on the procedure for recognition of a foreign administrative act. The competent authority to which the duly certified foreign public document is presented, applies it and, until proven otherwise, accepts that it also certifies the content of the status to which it relates. If there is a reasonable suspicion that certain data entered in the State registry are inaccurate, or inaccuracies are indicated by data from other official records, the registrar is obliged to check the accuracy of these data before registration
HU	Foreign certifications can be accepted if they are certified as authentic, with exceptions provided to ease the process of recording facts related to childbirth in the civil register
IE	The multilingual standard form (MSF) is attached to the public document (e.g. birth certificate), is recognised in Ireland, and will act as a translation

IT	The civil status registrar shall verify that the administrative document meets the requirements, both on a substantive and a formal level, provided in the Italian legal order. If the compliance is verified, the registrar is allowed to register (<i>trascrizione</i>) the administrative document in the civil status register
LV	One or both of the parents apply to the Office of Citizenship and Migration Affairs, attaching either the birth certificate or an extract from a civil or population register issued in another country. If an administrative case has been initiated on the basis of an application, the decision to issue an administrative act shall be made within one month of receipt of the application
LT	An act of civil status registered or approved in foreign countries can be used without any special recognition procedure. However, these documents must be translated into Lithuanian and legalised or certified by apostille, unless international treaties or EU legislation provide otherwise
LU	Foreign administrative documents are used as evidence of the existence of parenthood, based on which local rules that grant benefit to parents and children may be applied
NL	Recognition procedure is simple and applies by operation of law
PL	Foreign administrative documents are considered proof in the same manner as domestic documents of the same kind
PT	Foreign administrative documents are considered proof in the same manner as domestic documents of the same kind
RO	For foreign civil status documents of Romanian citizens to have evidentiary power, they must be formally registered or transcribed by the civil registrar according to the national law, otherwise they are not recognised legally
SI	The facts of citizens of the Republic of Slovenia created abroad shall be entered in the register on the basis of an extract from a foreign body. Where an extract from abroad cannot be obtained, the birth may be entered in the register on the basis of a decision of the competent authority, provided that the party submits other evidence which indisputably proves the time and place of the occurrence of the parenthood
SK	Foreign administrative documents are usually legalised by competent bodies within the same government department as the body issuing the public document. The Ministry for the Interior legalises public documents issued by authorities within its jurisdiction (e.g. certificates of citizenship, sole proprietor licences, personal status decisions). District authorities certify registry office documents (except decisions relating to personal status), such as birth certificates, marriage certificates, death certificates. The recognition application must include the child's birth certificate, an international or extended version if available, as well as documentation of how the paternity was established (e.g. declaration, court order, administrative decision)

Administrative documents are considered **evidence of the parenthood** established through other means in another Member State in 12 EU countries⁵⁴⁵. In five Member

⁵⁴⁵ AT, CY, DE, FI, FR, HR, HU, LT, LU, LV, MT, PL.

States⁵⁴⁶, the administrative document constitutes a **record of facts** and parenthood needs to be established under the substantive law or conflict rules of their own Member State. Seven Member States⁵⁴⁷ consider administrative documents to be documents that establish parenthood. Lithuania and Latvia consider administrative documents as evidence of the parenthood established through other means in another Member State, as well as documents that establish parenthood.

Similarly, Cyprus and Portugal also consider administrative documents in two ways. In Cyprus, administrative documents are evidence of the parenthood established through other means in another Member State and also constitute a record of facts and parenthood needs to be established under the substantive law or conflict rules of their own Member State. In Portugal, administrative documents are considered to be documents that establish parenthood and also records of facts and parenthood needs to be established under the substantive law or conflict rules of their own Member State.

In the majority of Member States, the **Civil Registrar** is the competent authority to deal with the recognition of foreign administrative documents on parenthood.

Automatic recognition is subject only to the condition that the foreign administrative document is valid and has a **binding effect** in the Member State of origin in seven Member States⁵⁴⁸. Fifteen Member States⁵⁴⁹ require additional conditions, such as substantive checks.

All Member States for which information is available provide for **public policy as a refusal ground**. Five Member States⁵⁵⁰ provide for additional refusal grounds, such as prior conflicting judgments or not respecting the right to a fair trial. In Romania, certificates or extracts issued by foreign authorities regarding same-sex marriage or civil partnerships concluded or contracted abroad constitute a refusal ground, as same-sex marriage or same-sex civil partnership is considered against public policy.

Eight Member States⁵⁵¹ authorities **apply their own PIL** provisions on applicable law and may refuse recognition of the administrative document if the results achieved under their own PIL rules on applicable law do not coincide with the results in the administrative document. In nine Member States⁵⁵², authorities apply their own PIL rules on international jurisdiction and may refuse the recognition of the administrative document if the results achieved under their own PIL rules on international jurisdiction do not coincide with the results shown in the administrative document.

Refusal to recognise the foreign administrative document can be appealed in all Member States, except France.

⁵⁴⁶ BG, CY, IE, IT, PT.

⁵⁴⁷ BE, CZ, LT, LV, MT, NL, PT.

⁵⁴⁸ AT, CY, FI, HR, LT, NL, PT.

⁵⁴⁹ BE, BG, CZ, EE, EL, ES, HU, IT, LU, LV, MT, PL, RO, SK, SI.

⁵⁵⁰ AT, BE, BG, CZ, RO.

⁵⁵¹ BE, DE, EL, ES, FI, IE, PT, RO.

⁵⁵² AT, BG, CZ, EE, ES, FI, MT, PT, RO.

Sixteen Member States⁵⁵³ issue a **national document** on parenthood that co-exists with the foreign administrative document on parenthood, while five Member States do not issue such a national document.

The procedure for the recognition of a foreign administrative document on parenthood differs for Member States and non-EU countries in 8 Member States⁵⁵⁴.

Consequences of the recognition and transcription of foreign administrative documents into national law

On the **consequences of the recognition and transcription of the foreign administrative document into national law**, the parenthood of the child/adult is registered in the civil or population register in 20 Member States⁵⁵⁵ if the foreign administrative document is recognised. In Germany, technically, foreign administrative documents cannot be recognised. In addition to registration, 10 Member States⁵⁵⁶ also issue a national document on parenthood.

A4.2.3.4 Recognition of notarial acts and extra-judicial agreements

Member States' approaches to the rules and procedures of the recognition of a notarial act and extra-judicial agreement vary. For the recognition of a notarial act on parenthood, most Member States⁵⁵⁷ apply the **same rules as for the recognition of a foreign administrative document** on parenthood. Italy applies the same rules as for the recognition of a foreign judgment on parenthood. Three Member States expressly **deny the recognition** of a notarial act. In Bulgaria, the establishment of parenthood by a notarial act is contrary to public policy, in Cyprus there are no notaries and therefore, public authorities are reluctant to recognise notarial acts in matters not covered by EU legislation, while in Hungary, the provisions of its PIL have to be applied in civil cases, including family law cases, thus such documents cannot be accepted as proof. In Greece, there are no explicit rules for the procedure for the recognition of a notarial act, and in Slovenia, a notarial act issued in a foreign country has the same validity as notarial acts issued under domestic laws on notarial acts.

For **extra-judicial agreements** on parenthood concluded in another Member State, 14 Member States⁵⁵⁸ apply the same rules as for the recognition of foreign judgments and administrative documents, while five Member States⁵⁵⁹ expressly prohibit the establishment of parenthood by extra-judicial agreements.

A4.2.3.5 Unknown institutions and public policy

Member States' approaches to addressing foreign concepts that are unknown to their own national law

Family law is deeply rooted in countries' cultural contexts, meaning that legal institutions that exist and function in one Member State can be unknown in the legal system of another. Due to increased mobility in recent decades, the number of cross-

⁵⁵³ AT, BE, BG, CZ, DE, EL, ES, FR, HR, HU, IT, NL, PL, PT, RO, SI.

⁵⁵⁴ BE, CY, EL, IE, IT, MT, RO, SI.

⁵⁵⁵ AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IT, LT, LV, MT, NL, PT, RO, SI.

⁵⁵⁶ BE, CY, EL, ES, HR, HU, IE, IT, LT, RO.

⁵⁵⁷ BE, CZ, EE, ES, FI, HR, IE, LT, LU, LV, MT, NL, PL, RO.

⁵⁵⁸ BE, CZ, EE, ES, FI, IE, LT, LU, LV, MT, NL, PL, SE, SI.

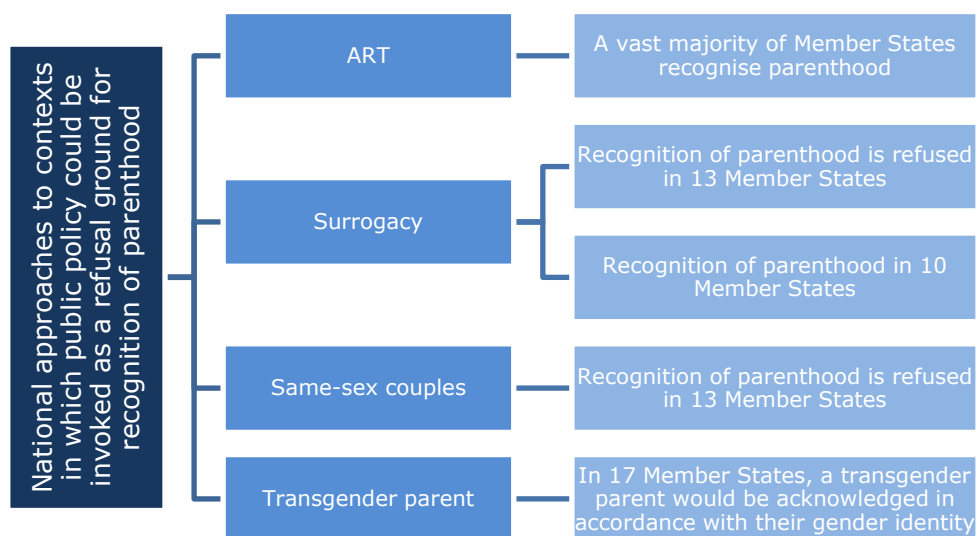
⁵⁵⁹ AT, BE, BG, HU, IT.

border parenthood cases is growing, prompting the need to tackle the various challenges that may arise.

One of those issues is the problem of unknown institutions, i.e. how Member States, in dealing with the recognition of parenthood established in another Member State, approach foreign concepts that are unknown to their own national law (e.g. adoption of an adult, simple adoption, multiple parenthood). This section presents the findings from the national reports and explores whether public policy would be invoked in Member States to refuse the recognition of parenthood.

Most Member States do not recognise unknown institutions. However, some Member States utilise a more flexible, case-by-case approach when the foreign concept does not constitute a refusal ground. Here, the foreign concept is adapted to the closest institutions in their national law, provided there are no refusal grounds based on public policy.

Figure 18. Public policy as a refusal ground



Source: ICF elaboration

Recognition of parenthood established with the help of ART in another country

Twenty-four Member States⁵⁶⁰ **would legally recognise parenthood** established with the help of ART in another country.

The Austrian Constitutional Court concluded that medically assisted procreation will have to be legally recognised regardless of the potential conflict of law. Furthermore, Austrian courts are obliged to apply the best interest of the child principle in such cases. Similarly in Germany, the choice of law rules and the regulations on the establishment of parenthood apply irrespective of the conception method. In Bulgaria, the establishment of parenthood with the help of ART is regulated by Bulgarian law.

Recognition of parenthood established through surrogacy in another country

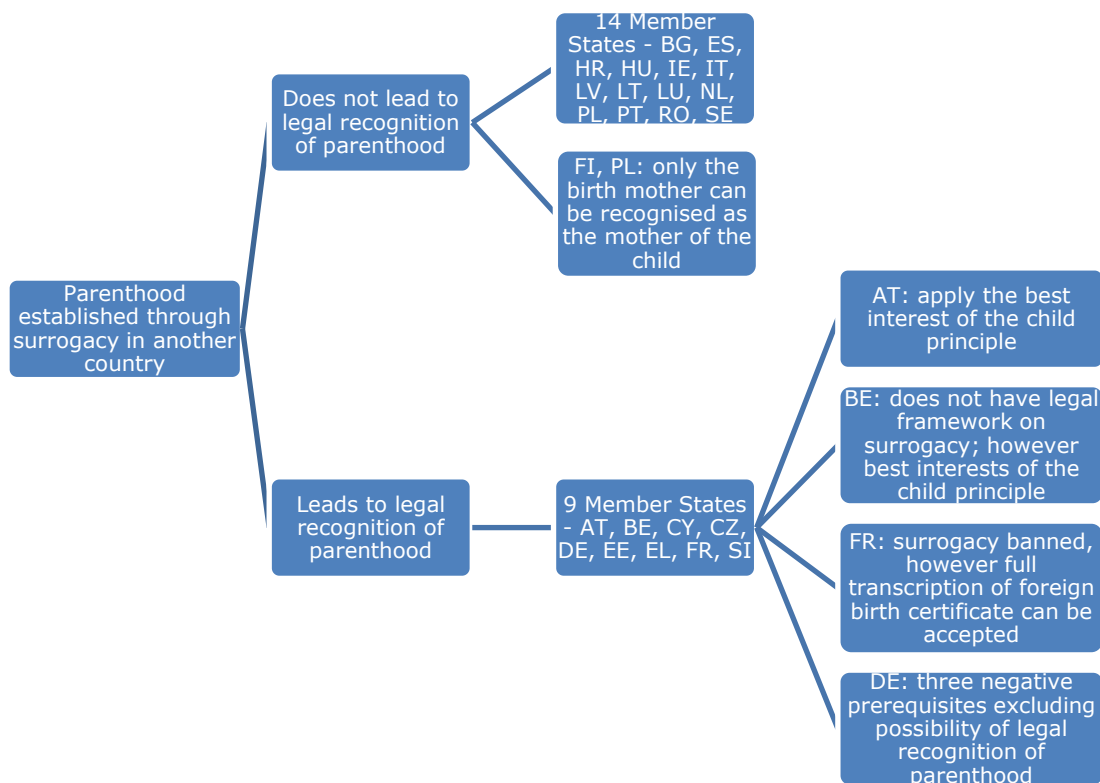
Two approaches to this issue are evident among the Member States. In one group of 14 Member States⁵⁶¹, **such circumstances would not lead to legal recognition of**

⁵⁶⁰ AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SI, SK.

⁵⁶¹ BG, ES, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SE.

parenthood, while the remaining nine Member States⁵⁶² that **would indeed legally recognise parenthood** under such conditions.

Figure 19. Recognition of parenthood established through surrogacy in another country



Source: ICF Elaboration

In Finland, parenthood established through surrogacy in another country is not legally recognised because only the birth mother can be recognised as the mother of the child. The surrogate⁵⁶³ would therefore be legally acknowledged as the mother.

In Austria, the case-law of the Constitutional Court held that recognition of parenthood established abroad through surrogacy will be recognised irrespective of the fact that surrogacy is banned in Austria. Austrian courts shall apply the best interest of the child principle. Belgium does not have a legal framework on surrogacy. Nevertheless, parenthood would be legally recognised in such situations, due to the best interests of the child principle and implementation of the child's rights to respect for private and family life. The Belgian case-law is not consistent, as there are decisions declaring parenthood established through surrogacy in another country as violating public policy, as well as decisions declaring otherwise.

In France, despite surrogacy being banned at national level, the *Cour de Cassation*, as the relevant authority, accepts the full transcription of the foreign birth certificate in

⁵⁶² AT, BE, CY, CZ, DE, EE, EL, FR, SI.

⁵⁶³ 'Surrogate' is 'the woman who agrees to carry a child (or children) for the intending parent(s) and relinquishes her parental rights following the birth'. In this paper, this term is used to include a woman who has not provided her genetic material for the child. In some Member States, in these circumstances, surrogates are called 'gestational carriers' or 'gestational hosts' (Permanent Bureau of the Hague Conference on Private International Law, *Preliminary report on the issues arising from international surrogacy arrangements*, Glossary, 2012, available at: <https://assets.hcch.net/docs/d4ff8ecd-f747-46da-86c3-61074e9b17fe.pdf>)

the French civil status register if the surrogacy procedure took place abroad. German legislation provides three negative prerequisites excluding the possibility of legal recognition of parenthood: 1) parenthood cannot be recognised if the surrogate did not collaborate voluntarily with the intended parents (the mere fact that the surrogate mother received a financial remuneration does not automatically entail voluntariness); 2) unclear identity of the surrogate mother or the arrangements between the surrogate mother and the intended parents; 3) where basic fairness requirements provided for in the surrogate mother's jurisdiction were ignored.

Recognition of parenthood when a different-sex couple is married, in a registered partnership, or in a de facto relationship

This section presents an overview of findings on the question of whether the recognition of both parents depends on **whether a different-sex couple is married, in a registered partnership, or in de facto relationship**. The majority of the Member States⁵⁶⁴ answered in the negative.

In Bulgaria, the marital status of parents is irrelevant to the establishment of parenthood. The legal status is equal for children born to married parents and those born outside of marriage.

Estonia and Romania answered that there is a difference: in Estonia, marriage and registered partnership are recognised but *de facto* relationships are not. Romanian law does not recognise civil and registered partnerships.

Recognition of parenthood when a same-sex couple is married, in a registered partnership, or de facto relationship

In 12 Member States⁵⁶⁵, the parenthood of the two parents **is not recognised in the case of a married same-sex couple**, or a same-sex registered partnership, or a same-sex *de facto* relationship.

In Belgium, only co-motherhood with two legally recognised mothers is acknowledged. In Austria, Czechia, Germany, Finland, France, Ireland, the Netherlands and Portugal, parenthood of both parents is legally recognised.

The courts often refer to the child's best interest principle when deciding on the matter. German courts assess whether there is a *de facto* relationship between a child and a non-genetically related parent in order to examine if the parenthood is indeed reflected in the child's life. Czechia's Constitutional Court concluded that, despite the fact that the parenthood of two same-sex persons is forbidden by Czech legislation, failure to recognise a foreign decision where the family life was in fact constituted in the form of surrogacy by the same-sex parents, is contrary to the best interests of the child.

Recognition of parenthood of a transgender parent in accordance with their gender identity as legally recognised in the Member State where the parenthood was established

In 17 Member States⁵⁶⁶, **a transgender parent is acknowledged** in accordance with their gender identity as legally recognised in the Member State where the parenthood was established.

In Bulgaria, the implications related to the parenthood of transgender persons are not regulated and the general rules concerning establishment of parenthood apply. Hence,

⁵⁶⁴ AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, SE, SI.

⁵⁶⁵ BG, CY, EL, ES, HR, HU, IT, LT, LU, LV, PL, RO.

⁵⁶⁶ AT, BE, BG, CZ, DE, EE, ES, FI, FR, HR, IE, LV, NL, PT, RO, SE, SI.

the parenthood of a transgender parent is recognised in line with their gender identity. Czechia has **no clear regulation**, but it is questionable whether without surgical gender reassignment, changes in the public registers provided abroad would affect the change of personal status (thus it is presumed that in case of absence of sex reassignment, the parenthood of a trans parent would not be recognised in accordance with their gender identity as legally recognised in the Member State where the parenthood was established).

In Cyprus, there is **no clear regulation** on this issue. In Hungary, Italy, Lithuania and Poland, parenthood of a transgender parent is not recognised in these circumstances.

Guarantees to the rights of the child in the event of refusal of recognition on grounds of public policy

There is a notable **lack of a consistent approach to this matter among the Member States**. A considerable number did not provide any information on measures to ensure the rights of the child in the situations described above.

In Austria, the authorities are obliged to follow the best interest of the child principle in every decision they make. This means that the best interest of the child must take priority when assessing the possibility of public policy violation.

In Cyprus, interested parties may appeal the denial decision to the Administrative Court. The Commissioner for the Protection of the Rights of the Child may also take action within their legislative power to safeguard the rights of the child.

In Czechia, the best interests of the child must be a primary consideration in decisions concerning children, by virtue of UNCRC.

In France, the child can continue to live with their parents despite the denial decision. Germany takes a case-by-case approach, in that the authorities have to determine what would be the best for the well-being of the child. Upon a non-recognition decision, the authorities will evaluate whether living with the non-recognised parents is in the best interest of the child, or if another solution would better secure the child's best interest. Ireland's Department of Justice issued guidelines in 2012 as an interim measure pending the enactment of legislation governing such arrangements. The guidelines set out the principles of Irish law governing the establishment of legal parentage and the steps necessary for a genetic father of the child to obtain a declaration of parentage and be appointed a guardian. Notwithstanding these guidelines, the actions that can be taken to mitigate adverse consequences flowing from non-recognition of parentage of a child who has already been born and whose custody has been transferred are limited.

In Italy, the child can be recognised by other legal means, such as simple adoption in specific circumstances. Recent case-law of the Constitutional Court and national judges are moving towards full recognition of the status.

Latvian authorities must comply with the Law on the Protection of Children's Rights, thus there is a strong emphasis on ensuring the recognition of the child's parenthood to guarantee the child's rights.

In the Netherlands, the provision that the woman who gave birth to the child becomes the child's legal mother is fundamental and even if the recognition of parenthood established abroad is refused on grounds of public policy, the child will always have at least one legal parent: the mother who gave birth.

In Slovenia, protection of the rights of the child has priority. Accordingly, a child should not be put in a position where their rights would be violated due to the refusal of recognition of parenthood.

In Lithuania, a decision to refuse parenthood recognition can be appealed, including individual constitutional appeal.

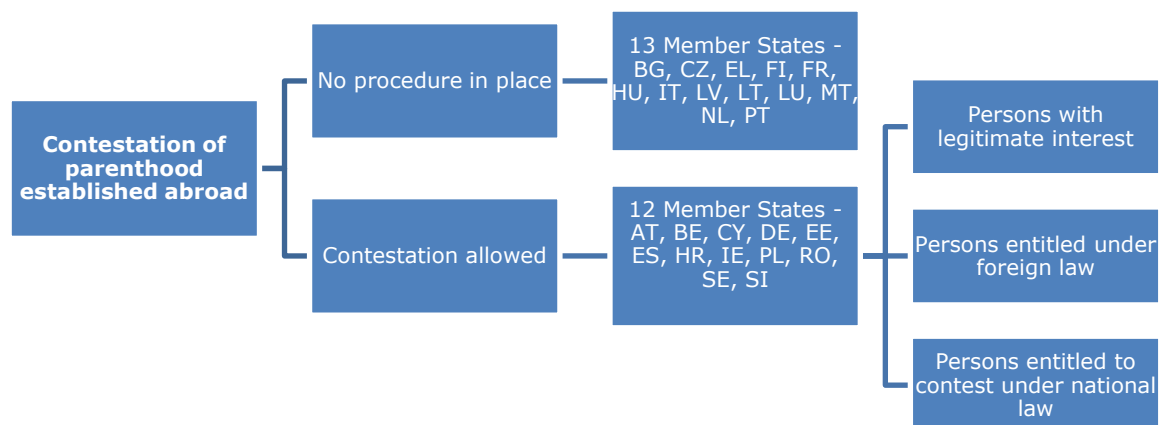
Poland protects the rights of the child by confirming their Polish citizenship and issuing their Polish identification documents. In Spain, Italy, Portugal and Romania, it is possible to use adoption to form a legal bond between the child and the parents in case of the denial of recognition.

Four Member States⁵⁶⁷ have no provisions that would guarantee the rights of the child. In Greece, there are no explicit provisions to regulate the protection of the rights of the child and no relevant case-law. It is possible, however, to ask for protection by filing an action for a provisional protective order.

A4.1.2.6 Contestation of parenthood established abroad

About half of the Member States **do not have a procedure in place to contest the recognition of parenthood established abroad**. In Member States that **allow contestation**, the persons who are entitled to contest the recognition of parenthood established abroad are those (i) who have legitimate interest, (ii) the persons entitled under foreign law, or (iii) the persons entitled to contest under national law. The courts are the authorities competent to deal with the contestation. In all Member States where data are available, parenthood is registered in the national civil register if it has been successfully challenged.

Figure 20. Contestation of parenthood established abroad



Source: ICF Elaboration

A4.3 Conflicting judgments

This section provides an overview of Member States' handling of situations during the recognition of foreign judgments and administrative documents where there is a conflicting prior judgment or administrative document between the same parties or on the parenthood of the same person.

In case of conflicting judgments, 14 Member States **refuse recognition**⁵⁶⁸. Three Member States⁵⁶⁹ open a procedure to definitively establish the parenthood.

In Germany, the court will first determine whether the judgments in question meet the general requirements and if there truly is a conflict between them. Where there is a conflict between two foreign judgments, the time of issuing the judgment has to be taken into account and the prior decision takes precedence. If one of the conflicting judgments is German, it will prevail. Similarly in Portugal, if there is a conflict between

⁵⁶⁷ BG, EL, HR, HU.

⁵⁶⁸ AT, BE, BG, CY, CZ, EL, ES, FI, HR, HU, LV, NL, SE, SI.

⁵⁶⁹ EE, FR, LT.

a foreign judgment and a Portuguese judgment decision, the recognition of foreign judgment will be refused by *res judicata*. In Romania, administrative acts regarding civil status are considered authentic instruments and therefore have probative value, unless the contrary is proven. Foreign documents have probative value if they are transcribed in the Romanian civil register.

In Italy, the civil registrar refuses the recognition of a conflicting document. If a judgment or document issued abroad modifies the status already recorded in the Italian civil status register, it must be verified pursuant to the recognition procedure. In Poland, if a birth certificate indicates the mother's husband as the father and there is a subsequent foreign judgment stating so, the foreign judgment will be recognised and a birth certificate will be amended accordingly.

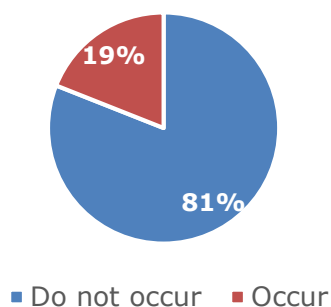
In Ireland, if a conflict arises or a false declaration of parenthood is suspected by registrars, a verified marriage certificate and proof of identity may be required from married parents. In the case of unmarried parents, a statutory declaration can be requested if the father is outside the country.

In Luxembourg, the issue has not been addressed by courts.

Practical appearance of conflicting judgments or administrative documents on the parenthood of the same person

This section answers the question of whether the situation of conflicting judgments or administrative documents on the parenthood of the same person occur in practice in the Member States.

Figure 21. Practical appearance of conflicting judgments/administrative documents on parenthood of same person



Source: ICF Elaboration

Twenty-one Member States reported that this situation does not occur in practice⁵⁷⁰. The reports on Cyprus, Germany, Italy, Latvia, Spain state otherwise. In the case of Cyprus and Italy, this situation happens only rarely.

A4.4 International relations

Rules applied for the recognition of parenthood depending on the States or regions in which parenthood is established

Twenty Member States⁵⁷¹ do not apply different rules for the recognition of parenthood, whereas four Member States⁵⁷² apply different rules, depending on the States or regions in which parenthood is established.

Finland has special measures in place for Denmark, Sweden and Iceland and Norway, in accordance with the Act on recognition of Nordic decisions of paternity. Sweden also has special measures for these countries.

Table 19. International agreements with a Member State or a third country concerning the recognition of parenthood

Member State	International agreement with a Member State or a third country concerning the recognition of parenthood
AT	Agreement between the Republic of Austria and the Republic of Turkey on the Recognition and Enforcement of Judgments and Settlements in Civil and Commercial Matters State Treaty between the Republic of Austria and the Republic of Poland on Mutual Relations in Civil Matters and on Deeds Friendship and Residence Treaty between the Republic of Austria and the Empire of Iran
BE	None
BG	Mutual agreement with Poland, Romania and Hungary, as well as with Vietnam, Democratic People's Republic of Korea, Mongolia, Cuba and Syria

⁵⁷⁰ AT, BE, BG, CZ, EE, EL, FI, FR, HR, HU, IE, LT, LU, MT, NL, PL, PT, RO, SE, SI.

⁵⁷¹ AT, BE, BG, CZ, DE, EE, EL, ES, FR, HR, HU, IE, IT, LU, MT, NL, PL, PT, RO, SE, SI.

⁵⁷² CY, FI, LT, LV.

CY	Certain bilateral agreements, predominantly with Russia
CZ	Bilateral agreements with Albania, Belarus, Georgia, Kyrgyzstan, Hungary, Moldova, Mongolia, Poland, Russia, Ukraine Signatory country to the Hague Convention and the European Convention on the Adoption of Children
DE	Convention on the determination of maternal descent of children born out of wedlock of 12 September 1962 Convention on the extension of the powers of authorities competent for the recognition of children born out of wedlock of 14 September 1961
EE	Estonia-Russia Legal Assistance Treaty Estonia-Ukraine Legal Assistance Treaty
ES	Bilateral conventions on recognition and enforcement of judicial decisions in civil and commercial matters with Member States and third countries Convention on the determination of maternal descent of children born out of wedlock of 12 September 1962 Convention on the extension of the powers of authorities competent for the recognition of children born out of wedlock of 14 September 1961.
FI	Act on recognition of Nordic decisions of paternity (352/1980), paternity decisions made in Denmark, Sweden, Iceland and Norway are automatically in force in Finland
FR	None
HR	None
HU	Yes
IE	UNCRC ECtHR
IT	Party to the HCCH Party to the ICCS
LT	15 bilateral international treaties on jurisdiction, applicable law and legal assistance in civil and family cases
LU	The Hague Convention governs the recognition and effects of adoptions between Contracting States. Registration in Luxembourg civil registries can be done without any formal judicial procedure
LV	Bilateral (trilateral) legal aid agreements with nine countries: Estonia, Lithuania, Poland, Belarus, Kyrgyzstan, Moldova, the Republic of Uzbekistan, the Russian Federation, Ukraine
NL	None
PL	Bilateral agreement with France

	Party to the HCCH
PT	None
RO	None
SE	Act on acknowledgement of Nordic paternity decisions provides that judgments regarding paternity that have been determined in Denmark, Finland, Iceland or Norway also apply in Sweden
SI	Party to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters Agreement between the Republic of Slovenia and Bosnia and Herzegovina on legal assistance in civil and criminal matters
SK	None

Potential future adoption of national laws or international agreements regarding the recognition of parenthood, domestic adoption, or surrogacy

The section presents the Member States that are currently considering the adoption of national laws or international agreements on the recognition of parenthood, domestic adoption, or surrogacy.

Table 20. Potential national laws or international agreements

Member State	Potential future adoption of national laws or international agreements regarding the recognition parenthood, domestic adoption or surrogacy
AT	The government programme for the legislative period until 2024 provides only for selective adjustments in the area of family law (e.g. terminological amendments concerning parenthood) Further legislative action against the commercialisation of surrogacy is planned
BE	No
BG	No
CY	No
CZ	No data available
DE	Participates in the work of the HCCH on parentage and surrogacy
EE	No
EL	No
ES	No
FI	No

FR	Participates in the work of the HCCH on parentage and surrogacy. A draft bill on adoption is currently being discussed by the French Parliament
HR	No
HU	No
IE	Part 7 of the Health (Assisted Human Reproduction) Bill 2022 will introduce regulations on domestic surrogacy. This Bill was published in March 2022 and is currently proceeding through the Irish Parliament
IT	<p>Amendment to Article 12 of Law no. 40 of 19th February 2004 concerning the punishability of the offence of surrogacy committed abroad by an Italian citizen was presented in March 2018 and in July 2020; currently under examination</p> <p>A proposal for a national law on provisions combating reproductive tourism were submitted in March 2019 and examination started in 2022</p> <p>A proposal for a national law to introduce rules governing solidarity and altruistic pregnancy was submitted in April 2021 but examination has not started yet</p> <p>Participation in the HCCH Parentage/Surrogacy Project</p>
LT	No
LU	No
LV	<p>The Ministry of Justice recently drafted a Civil Union Bill which has already been discussed in the Committee on Legal Affairs of the Parliament and is expected to be discussed in a sitting of the Parliament shortly. This legal framework would allow different-sex couples and same-sex couples to enter a civil union. According to the Civil Union Bill, a civil union may be entered into by two natural persons in the form of a notarial deed. In order for the Civil Union Law to function properly, it would be necessary to make amendments to a number of laws and regulations, including Notary Law, Law on the Register of Natural Persons, Law on Registration of Civil Status Documents, Civil Procedure Law. The Civil Union Bill does not regulate issues such as custody of individual children of each party, maintenance, access rights, adoption of children. However, the legal framework of the institution of civil union could potentially give more protection to the rights of children in rainbow families.</p> <p>In order to comply with the judgment of the Constitutional Court, the Parliament unanimously (in the first reading) supported amendments to the Labour Law that will ensure the possibility for another person, who is not the child's father, to take 10 working days of parental leave. The provision provides for the same duration of leave and the rules for exercising the right as in the case of leave for the father of the child. The Constitutional Court has set a deadline of 1 June 2022 for the legislator, within which it must adopt the necessary legal regulation</p>
MT	Considering proposals concerning EU cross-border family situations: recognition of parenthood
NL	Yes, is currently discussing a bill on the recognition of surrogacy (<i>Wet kind, draagmoederschap en afstamming</i>)
PL	No
PT	No
RO	No

SE	Extensive amendments to Chapter 1 of the Children and Parents Code which regulates parenthood. These changes came into effect on 1 January 2022 The government investigation: new rules regarding foreign parenthood and adoption in certain situations – the investigation on increased possibilities to make foreign parenthood applicable in Sweden was published in June 2021 and is expected to result in several legislative changes
SI	A bill was made to amend the Register Act, which proposes a new paragraph 4 to Article 6 and which specifically refers to cases of birth registrations from abroad, especially from countries that allow surrogacy
SK	No

Austria takes a cautious approach to legislative initiatives and proposals concerning family law are preceded by assessments/surveys of the current situation. The government legislative projects for the period until 2024 only provide for selective adjustments in the area of family law. Legal terminological amendments concerning parenthood are envisaged, due to the opening of marriage to same-sex couples. Legislative action against the commercialisation of surrogacy is planned.

France, Germany and Italy participate in the work of the HCCH on parentage and surrogacy. A draft bill on adoption is currently being discussed by the French Parliament.

A4.5 Practical application of national rules

A4.5.1 Problems and challenges identified

Nature/typology of issues identified

This section provides a categorisation of the practical problems and challenges that arise in Member States in the application of the national rules, as well as descriptions of the problems for each category.

Practical problems arising in relation to the recognition of parenthood in the Member States

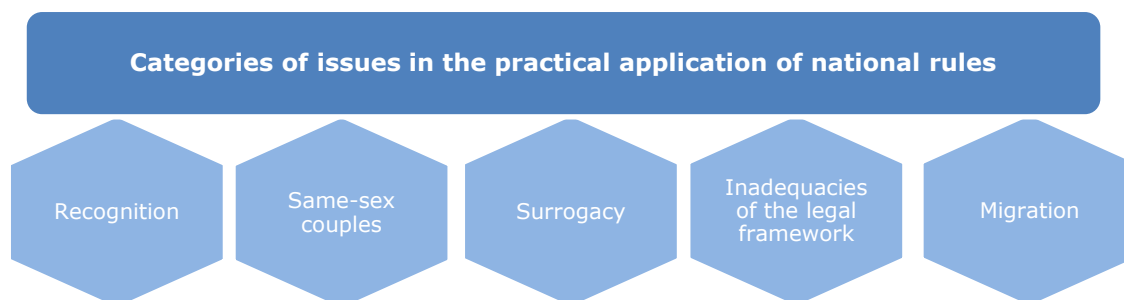
Most Member States experience practical problems in relation to the recognition of parenthood, with only five⁵⁷³ reporting no problems in practice.

Nature of the problems arising in relation to the recognition of parenthood

The issues identified in terms of the practical application of national rules can be classified under the following categories: surrogacy, recognition, inadequacies of the legal framework, same-sex couples and migration.

⁵⁷³ HR, HU, LT, LU, SI.

Figure 22. Categorisation of issues in the practical application of national rules



Surrogacy

Surrogacy issues can occur for a variety of reasons. The main causes of practical problems are the lack of regulation and explicit/implied bans on surrogacy. For instance, in Austria, surrogacy is implicitly banned by virtue of a number of provisions, with the ancient Roman principle *mater semper certa est* as the cornerstone, having been incorporated into the General Civil Code. This was to ensure that even in the case of surrogacy it is not the intended mother but the surrogate mother who becomes the legal mother of the child by the act of birth. However, even though the ban on surrogacy continues to apply to domestic cases, the case-law of the Constitutional Court has led to the possibility of legally circumventing the Austrian ban on surrogacy, provided the child is carried by a surrogate mother abroad. In Ireland, there is no domestic legislation regulating either domestic or international surrogacy. The genetic/non-genetic intended mother and the non-genetic father in surrogacy situations cannot be recognised as parents and can only acquire guardianship (parental responsibility) a minimum of two years after the birth of the child. Thus, they are unable to make any important decisions pertaining to the child's welfare until the child is at least two years old. In Italy, problems of surrogacy tourism arise due to an explicit ban on surrogacy.

In Czechia, there is a lack of regulation on surrogacy.

In Germany, the law itself does not permit surrogate motherhood, for ethical reasons. However, potential parents take a different view and search for a surrogate mother abroad. In Poland, certain issues may arise due to surrogacy not being regulated. This includes refusal of transcription, refusal of confirmation of Polish citizenship, obstacles in obtaining the national identification number (PESEL), which in turn is needed to apply for identification documents, including a passport. In Romania, surrogacy is not permitted. In Sweden, surrogacy is not expressly banned, but there is an implied ban on facilitating surrogacy arrangements.

Application of legal framework

Practical problems arise from the application of the substantive national laws. For example, in Czechia, the Civil Code does not foresee contestation rights of the child, which is problematic in the context of the first legal presumption of paternity ('birth within marriage', 'marriage after divorce' and 'birth after remarriage') and the second legal presumption paternity (affirmative declaration of the parents), as these legal presumptions do not require verification of the biological link between child and father. Although the child might have legal interest to contest an already-determined father and to ascertain biological paternity, the child does not have contestation right. The

determination of paternity on the basis of affirmative declaration of the parents (second legal presumption paternity) is even more problematic, as no child's consent with the affirmative declaration of the parents is required, while the lack of a time limit means that the paternity may be also determined in respect of an adult child (i.e. without their consent and without the possibility to contest such paternity). A man who believes that he is the biological father does not have the contestation right and thus cannot establish the reconciliation between legal and biological parenthood. The only remedy to these cases is in Article 793 of the Civil Code, in conjunction with Article 419 of the Act on Special Court Proceedings, which enable a court, including of its own motion, to initiate proceedings on a denial of paternity, if (i) the child's father was determined by an affirmative statement of both parents (i.e. only within the second presumption of paternity), (ii) such legally determined father cannot be the child's father and (iii) such denial is in the interest of the child. As such, the Act on Special Court Proceedings explicitly designates the child as a party to the proceedings in the case concerning determination and contestation of paternity, but the Civil Code does not require the consent of the child regarding the determination of paternity when paternity is based on the affirmative declaration of the parents. Nor does the child have an active legitimation for a motion of contestation of paternity. Pursuant to case-law, the recommended situation for the child's life is to achieve a balance of biological, sociological and legal aspects of parenthood. Only in the case of the second presumption of paternity can the court, of its own motion, initiate proceedings on denial of paternity (if paternity, which has been determined by an affirmative statement of both parents in a case that the child's father determined in this manner cannot be his father) if it is required by the evident interest of the child and in order to fulfil the provisions guaranteeing fundamental human rights.

Recognition

The causes of recognition issues are many and varied. In Belgium and Finland, the cause relates to the submission of the required documents. In Belgium, issues arise when the applicant(s) is/are unable to submit authentic documents or complete documents. It is difficult to remedy the lack of documentary evidence, as Belgium has no general rule in place for missing documents. In Finland, when a child is born abroad the details should be notified to the Digital and Population Data Services Agency to record the child in the Population Information System. It is necessary to have the third-country birth certificate legalised, translated and attached to the notification. Families coming from countries with poor access to administrative and supporting services (e.g. asylum seekers), may not have the necessary documentation.

In Bulgaria, issues relate to the ambiguity surrounding the competent court in the event that recognition has been denied by the civil registrar.

In Germany, recognition issues concern: paternity, which can be fraudulent if bribery occurs; maternity, in instances where it was established abroad with a court decision; and the authenticity of third-country documents. In Portugal, problems relate to the recognition of foreign public acts on the equivalence of the means of proof of the facts subject to registration. In France, there is no legal action to request recognition of parentage established abroad when a court decision has not been taken, in cases when civil status record is contested, or to ensure that filiation is recognised.

In Czechia, recognition problems arise from the approach adopted by the legislature, which determines different, stricter treatment in case of judgments concerning Czech citizens. The stricter recognition regime is justified by the interest in protecting Czech citizens in relation to decisions of foreign authorities on vital issues of fundamental importance and sensitivity. Reasons for a more liberal approach concerning foreign nationals in relation to the recognition of decisions should be seen in the fact that these are matters that do not concern Czech citizens, and there is lower social interest in controlling the relevant decisions. In a situation where none of the participants is a

Czech citizen, the foreign participants may benefit from informal recognition under certain conditions. In such cases, recognition of judgment on adoption by a same-sex couple is possible in principle, unless the court recognises that such recognition would be contrary to public policy. Foreign families where the parents are of the same sex may be more advantaged than families where one of the members is a Czech citizen. This provision is intended to prevent Czech participants from circumventing the Czech legal regulation of domestic adoption, by adopting a child abroad.

Inadequacies of the legal framework

In Cyprus, PIL rules on these issues are typically based on common law rules, and there is a lack of either case-law or doctrinal analysis.

In Czechia, the legal framework is silent on matters relating to the right of the child and presumed biological father in proceedings concerning contestation of paternity.

Same-sex couples

In Latvia, there are issues in establishing parenthood concerning same-sex marriages, as these are not recognised under Latvian law. This is also the case for Italy, where same-sex couples are not allowed to adopt. Romania does not allow same-sex marriage or civil partnerships and problems arise in connection with same-sex marriages and civil partnerships concluded abroad either by Romanian or foreign citizens, which are not recognised in Romania.

Migration

In Finland, families of migrants and asylum seekers have poor administrative access and supporting services, which results in a lack of the documentation needed to register their child in the Finnish Information Population System. In Malta, some issues concern verification of claims of parenthood, particularly in the context of migration, and instances where the child is born and listed with deliberately wrong details to avoid asylum refusal.

Estimated frequency of problems arising in relation to the recognition of parenthood

No Member State gave an estimate of how often these problems arise, citing the unavailability of such data, or quantifications difficulties.

Expected persistence or increase of problems with the recognition of parenthood

Twenty Member States⁵⁷⁴ expect the problems with recognition of parenthood to continue. In Bulgaria and Romania, that expected increase is due to political reasons, and Romanians' use of the growing number of countries allowing surrogacy. In Bulgaria, the expected increase reflects the conservative and populist waves that politicises issues such as surrogacy, registered partnerships and same-sex marriages, with same-sex couples and their children likely to continue to face difficulties. In Romania, problems are likely to increase for partnerships that are not recognised by Romanian law, such as same-sex couples. Ten Member States stated that a lack of change will cause the problems to continue⁵⁷⁵. This is evident in Belgium, where the problems with documentation evidence will persist as people fleeing war, violence, climate change, etc. are often forced to leave their country without their official documents. In addition, not every State in the world has a working administration, and in certain countries, births are simply not (systematically) registered. In Cyprus and Czechia, the problems will continue because no legislative initiatives are being taken and the legislative framework is inadequate. In Sweden, as long as surrogacy arrangements are not regulated, there is a risk that the question of establishing

⁵⁷⁴ AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HU, IT, LT, LV, NL, PL, PT, RO, SE, SI.

⁵⁷⁵ AT, BE, BG, CZ, EL, FR, LV, PL, RO, SE.

maternity will continue to cause uncertainty as to the child's parentage because prospective parents must travel abroad to enter into surrogacy arrangements if ART is required. However, it is possible that this problem may be resolved if the proposed legislative changes are enacted.

Problems in the recognition of parenthood of same-sex couples will continue as long as same-sex marriages are not recognised⁵⁷⁶.

Groups of children affected

The term 'affected' refers to children disproportionately affected by the problems identified in the preceding section, depending for example on the Member State where parenthood has been established, the civil status of their parents, and the type of family. Groups of children can be classified as follows: children born from surrogate mothers, children born outside marriage, children of same-sex couples, children of migrants, and donor-conceived children. In general, where there are issues with recognition of parenthood in certain family types, such as same-sex couples, then the children of those couples will be disproportionality affected.

A4.5.2 Costs and length of procedures

Administrative procedures

The timeframes involved can be deduced in certain Member States based on national administrative law. In Austria, authorities are obliged to issue the decision within six months. In Estonia, it takes one month, on average. In Greece, this is highly dependent on the case and whether or not lawyers are involved. The appropriate authority in Athens is understaffed, causing delays in the procedure. In Slovenia, the procedure does not take long – less than half an hour. In Ireland, a birth certificate can easily be ordered by phone (though not yet online) and phone orders are usually processed in five working days. No information was provided on the timing in Romania and Sweden.

Data were not provided on the average costs for administrative procedures in several Member States⁵⁷⁷, or the costs were difficult to estimate.

In five Member States⁵⁷⁸, a price can be estimated for obtaining a birth certificate. In Malta, a full copy of the birth certificate costs EUR 9.95. In Austria, the principle of tax law applies, according to which the material and personnel expenses for the actual official act are to be borne by the territorial authority to which the authority is organisationally assigned. The costs for the retrieval of civil status data are referred to as administrative charges and are thus regarded as a public-law fee for a special, directly used service of a territorial authority. In Estonia, an average cost of the recognition procedure is EUR 10.

In Czechia and Germany, there is no formal recognition procedure. Nine Member States⁵⁷⁹ impose no fees. In Belgium, the administration operates free of charge and in Czechia, there are no fees because there is no formal recognition procedure. In Hungary, it is free of charge unless translations are required. Similarly in Portugal, fees are not incurred, only if registry recognition concerns Portuguese nationals. In Greece, while the procedure is free of charge, lawyer fees and translation costs may be incurred.

⁵⁷⁶ BG, CZ, LT, LV, PL, SE.

⁵⁷⁷ BE, FI, IE, MT.

⁵⁷⁸ DE, HR, IE, MT, PL.

⁵⁷⁹ BE, BG, CZ, EL, FR, HU, LV, PT, SI.

Table 21. Average length and cost of administrative procedures

Member State	Average length of procedure for the recognition of parenthood	Average costs of recognition procedure before administrative body
AT	Maximum time limit for administrative decisions in Austria is six months after receipt of the application. Due to the principle of automatic recognition, the usual time span for a decision is much shorter	Free of charge. Material and personnel expenses for the actual official act are borne by the territorial authority to which the authority is organisationally assigned
BE	No data available	Belgian administrations operate free of charge. (The costs to obtain a legalised copy of the foreign document are for the person requesting the recognition)
BG	7-14 days from the day of submission of the application, where necessary to collect evidence of material circumstances it should be issued within 30 days	Free
CY	There is no standard length of the recognition procedure, but to the extent that the case is uncontested, it shall be typically concluded without undue delay, other than standard bureaucracy found in Cypriot public service	Usually low in uncontested cases as it involves submission of a written request. Cost depends on whether the recognition is requested in conjunction with other procedures
CZ	Administrative authority will take into account foreign public instruments when making an entry into the register, which may take several days or weeks	No fees as there is no recognition procedure
DE	No data available	Approximately EUR 10. However, there is no formal recognition procedure – the cost will differ between the German States
EE	On average, one month	Average EUR 10
EL	Dependent on case and involvement of lawyers	Free of charge (lawyer's fees and translation costs may be incurred)
ES	No data available	Costs vary
FI	No data available	No data available
FR	N/A: Action does not exist in France – only transcription of the birth certificate of a French child into the French civil status registers can be requested	Free of charge. However, translation and legalisation fees apply to foreign birth certificates
HR	Around 30-60 days	No data available
HU	Approximately 1-2 weeks if all certificates are presented	Free of charge, unless translations are required
IE	Birth certificate can be ordered by phone (not yet online) and processed in five working days	A full birth certificate costs EUR 20. Postage is EUR 1.50 per order in Ireland and EUR 2 per order outside of Ireland

IT	Recognition of parenthood after birth within three days at the hospital; may take 10-15 days to become effective Recognition of parenthood before the public registrar is immediately effective	Free of charge
LT	On average, 20 working days	EUR 6-25
LU	The documents are relied on without any particular procedure. They are provided to the relevant authority	Free of charge
LV	Within one month	Free of charge
MT	If stored in the public registry – several days	EUR 9.95 for full copy birth certificate, EUR 2.25 for abridged version
NL	Between six and nine months	Dependent on hourly rate of the lawyer – around EUR 150-250/h.
PL	Transcription should be done immediately, up to two months if case is complex/contentious	Fee for transcription is EUR 50
PT	6-18 months in the first instance; 24-30 months if appealed	Registry recognition: free of charge if Portuguese, if not EUR 180
RO	30 days	RON 110 (approx. EUR 22)
SE	No data available	No data available
SI	Less than 30 minutes	Free
SK	3 months	No extra cost for recognition. If the original birth certificate is requested, the issue of the first original birth certificate is free of charge. If a duplicate birth certificate is needed, a fee of EUR 5 has to be paid at the registry office

Court proceedings

Based on the data from Member States with exact information on costs available, it is observed that the fees are generally low (less than EUR 200). However, the cost of translation and DNA evidence is difficult to estimate.

No precise answer can be provided on timeframe, but it can nevertheless be deduced in most Member States. Table 22 summarises the costs and timeframe for the procedure for the recognition of parenthood.

Table 22. Average length and costs for court proceedings

Member State	Average length of procedure for the recognition of parenthood	Average costs of recognition procedure before court
AT	No data available	In non-contentious proceedings, the principle of 'obligation to reimburse costs' applies, although the law itself provides for

		exceptions in various matters, e.g. expert opinions for DNA tests are associated with costs. The parties may choose to obtain procedural assistance for interim relief from the payment of these costs
BE	On average, less than one year	EUR 165 fee to initiate judicial proceedings
BG	Claims should be submitted to the Sofia City Court, which is usually overloaded, making it difficult to determine the average length of the court procedure. Where the parent takes the route of appellate procedure before the administrative court, the procedure may be shorter	Average cost comprises court fees and lawyer fees. A fee of BGN 50 (EUR 25) should be collected on an application for recognition of a judgment and an authentic document of foreign courts and other authorities. Lawyer's fees are not less than BGN 300-500
CY	Between two and three years	Uncontested proceedings usually cost EUR 500-1 000. Contested proceedings' costs depend on several factors
CZ	Within a year, on average. Not possible to calculate the length of proceedings before district courts	No fee. In case of proposals for the recognition of foreign decisions in matters of determination of parenthood, the cost is CZK 2 000
DE	General average length of proceedings at a local court in Germany is five months; no term specified for recognition cases	EUR 264 for lawyers' fees for a retainer agreement, which is not mandatory
EE	Up to six months, depending on whether the official translations of the judgment are submitted with the application	EUR 10 as a State fee for making a family law petition. All the costs of the translation are borne by the petitioner unless the court decides otherwise
EL	Between one and two years for cases before the court of first instance in no adversarial proceedings	EUR 10, excluding the translation fees, which are borne by the petitioner
ES	No data available	No data available
FI	No data available	No data available
FR	N/A: Action does not exist in France – if there is a judgment then an individual can apply to the judge for an <i>exequatur</i> ; if there is only a foreign civil status record, an application for recognition of parenthood cannot be made to the court	No data available
HR	Average length of non-contentious proceedings is 302 days	Excluding lawyers' fees, the court costs of the first instance proceedings amount to EUR 33

HU	No data available	The rate of duty is 1 %, or not less than HUF 5 000 and not more than HUF 350 000
IE	Ireland does not have a family court; recourse is made to the District and Circuit Courts. Delays are common	Costs of solicitors; in cases where paternity is in dispute, paternity testing needs to be taken into account
IT	No data available	The court procedure for the recognition of parenthood of an adult person requires administrative costs amounting to approx. EUR 520, plus the costs for service of documents (approx. EUR 30), plus the costs of legal assistance For minors (under 18 years old), the court procedure is free of administrative charges. There will be just the costs for the service of documents (approx. EUR 30) and the costs of legal assistance
LT	1-2 months in the Court of Appeal and in the event of cassation appeal to the Supreme Court, about three additional months	Lawyers' fees: EUR 50-300 per hour
LU	No data available	Fees charged by lawyers are not governed by any particular rules. The fees would be at least EUR 7 000
LV	According to the statistical data provided by the courts' administration for 2019-2021, the administrative court proceedings take less than three months in the first instance and about 3-12 months in the second instance. Meanwhile, a decision to recognise and enforce a ruling of a foreign court or a decision to refuse the application shall be taken by a judge sitting alone, on the basis of the submitted application and the documents attached thereto, within 10 days of initiation	State duty of EUR 30
MT	Depends on the complexity of the case, the number of witnesses (if any) that must be heard, and the evidence brought	The cost varies and depends on the number of procedural acts (submissions) made by the lawyer
NL	Between six and nine months	Can be estimated from the hourly rate of the lawyer, which is approx. EUR 150-250 (excluding VAT)
PL	No data available	PLN 100 PLN – claim to administrative court for cases concerning civil status and citizenship; similar amount is due for an appeal to the Supreme Administrative Court

		300 PLN – proceeding concerning recognition of a foreign judgment as well as filing an appeal and appeal in cassation.
PT	6-18 months in the first instance; 24-30 months in cases of appeal, as well as the need for examination and expertise	Average cost of court fees – EUR 306 per part, as the value of the case is EUR 30 000.01. For forensic examinations, between EUR 204 and EUR 714 per sample obtained from the interested parties. Less expensive if the Public Prosecutor’s Office intervenes as the child’s representative, as it is exempt from costs
RO	Approximately 60 days	Fee for initiating court proceedings in these types of matters related to family law is around EUR 12. There is always a possibility to be exempted from paying legal fees in certain conditions according to the law, as the State could provide financial help. However, when parenthood is contested in court, given that DNA evidence almost always needs to be provided, the costs will most likely include DNA evidence costs, which are fairly expensive
SE	No data available	No data available
SI	Approximately two to three months	EUR 45
SK	No available case-law; however, courts try to make sure that proceedings are not unnecessarily lengthy	No extra cost above the regular court fee

Case-law

Relevant case-law was identified in 19 Member States⁵⁸⁰. In six Member States, no case law was provided⁵⁸¹. Most of the cases related to surrogacy⁵⁸². In Austria, the district court in Tyrol recognised a Ukrainian decision recognising an Austrian couple as the legal parents of a child born to a surrogate mother in Ukraine. In Italy, the surrogacy case of the *Corte di Cassazione*⁵⁸³, concerning a same-sex male couple, denied parenthood of two children born in Canada through surrogacy as it was deemed to go against public policy.

The *Mennesson* case provides that if surrogacy, which is banned in France, is conducted abroad, then the *Cour de Cassation* accepts the full transcription of the foreign birth certificate in the French civil status registers. In another surrogacy case, the Court of first instance of Thessaloniki refused recognition, on the ground that the foreign decision was contrary to public policy. The Court noted the fact that the

⁵⁸⁰ AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, IT, LU, MT, PL, RO, SE, SI, SK.

⁵⁸¹ HR, HU, IE, LT, LV, PT.

⁵⁸² AT, BE, DE, EL, FR, IT, LU, PL, SE.

⁵⁸³ *Corte di Cassazione*, Italy, no. 12193.

surrogacy procedure, which took place abroad, the *post-mortem* fertilisation and the adoption were conducted according to Russian rules, which are different to the corresponding requirements imposed by Greek law. In a Swedish case, the Swedish Supreme Court acknowledged a foreign judgment from the US, on the establishment of maternity.

In six Member States⁵⁸⁴, case-law touched on public policy. In Belgium, there is contradicting case-law: one case states that parenthood established through surrogacy entails a public policy violation, whereas another states the opposite. Irrespective of whether or not a public policy violation is found, the best interests of the child and the child's rights to respect for private and family life oblige Belgian courts to recognise parenthood established abroad through surrogacy. Depending on the judge, the foreign judgment or birth certificate is recognised as such and/or adoption proceedings are necessary.

Pursuant to German case-law, it is not contrary to German public policy if a foreign law does not provide for any time restrictions for challenging paternity.

Table 23. National case-law

Member State	Case-law where the courts in a Member State have interpreted national provisions in relation to the recognition of parenthood established in another country
AT	Austrian Constitutional Court, Judgment of 14.12.2011, B 13/11 Austrian Constitutional Court, Judgment of 11.10.2012, B 99/12 Austrian Supreme Court, Judgment of 27.11.2014, 2 Ob 238/13h Regional Court (Linz), Judgment of 09.02.2011, 15 R 457/10x District Court (Tyrol), Judgment of 21.11.2019, 2 FAM 54/19z
BE	Natural filiation: Court of Appeal Liège 12 June 2017 and 26 October 2016, Tijdschrift@ipr.be 2019 (www.ipr.be), No. 4, 27-32 ® missing birth certificate, child born in Congo Court of Appeal Ghent 3 November 2016, Tijdschrift@ipr.be 2017 (www.ipr.be), No. 1, 43-46 ® missing birth certificate Family Court Antwerp 17 June 2019, Tijdschrift@ipr.be 2019 (www.ird.be), No. 4, 33-35 ® missing birth certificate, person born in Tibet Family Court Ghent 15 March 2018, No. 17/822/B, Tijdschrift@ipr.be 2019 (www.ipr.be), No. 3, 210-213 ® recognition Ghanaian birth certificate Surrogacy: Court of Appeal Ghent 4 February 2021, No. 2019/FE/17, Tijdschrift@ipr.be 2021, No. 1, 40-54 ® recognition of parenthood established in California (USA) (2 intended fathers) Court of Appeal Brussels 10 August 2018, No. 2017/FQ/4, Tijdschrift@ipr.be 2018 (www.ipr.be), No. 4, 15-21 and Actualités du droit de la famille 2019, Nos. 4-5, 159-162 ® recognition of parenthood established in California (USA) (2 intended fathers)

⁵⁸⁴ AT, BE, DE, EL, IT, RO.

Member State	Case-law where the courts in a Member State have interpreted national provisions in relation to the recognition of parenthood established in another country
	Court of Appeal Ghent 20 April 2017, No. 2014/EV/87, Tijdschrift@ipr.be 2017 (www.ipr.be), No. 3, 71-86 @ recognition of parenthood established in California (USA) (2 intended fathers)
BG	<p>Administrative case No 3654/ 2020 before the Sofia City Administrative Court</p> <p>Judgment of the Supreme Court of Cassation No 278 of 27.10.2015, civil case No 219/2015, IV civil division</p> <p>Judgment No. 2832 of 03.12.2018 of the Sofia Appeal Court</p> <p>Judgment of the Supreme Court of Cassation No 232 of 11.04.2013 case No 2401/2013 IV civil division</p> <p>Judgment of the Supreme Court of Cassation on case No. 1285/2019</p>
CY	<i>Fella v Republic of Cyprus</i> through Immigration Officer, Minister Interior
CZ	<p>Judgment of Czech Constitutional Court Pl. ÚS 6/20</p> <p>Decision of the Constitutional Court of 29 June 2017, No I. ÚS 3226/16</p>
DE	<p>Bundesgerichtshof, 10 December 2014, XII ZB 463/13, last accessed on 3 November 2021</p> <p>Bundesgerichtshof, 3 April 2019, XII ZB 311/17, ECLI:DE:BGH:2019:030419BXIIZB311.17.0</p> <p>Bundesgerichtshof, 26 August 2009, XII ZB 169/07</p> <p>Oberlandesgericht Bremen, 30th June 2017, 1 W 31/17, ECLI:DE:OLGHB:2017:0630.1W31.17.0A</p> <p>Oberlandesgericht Celle Senat, 19 August 2019, 21 UF 118/18, ECLI:DE:OLGCE:2019:0819.21UF118.18.00</p>
EE	<p>Tallinn Circuit Court, civil law chamber (<i>Tallinna Ringkonnakohtu tsiviilkolleegium</i>), judgment of 15th of July 2019, no 2-18-11933/29</p> <p>Tallinn Circuit Court, civil law chamber (<i>Tallinna Ringkonnakohtu tsiviilkolleegium</i>), judgment of 12th of May 2014 no 2-07-45599/105</p> <p>Tallinn Administrative Court (<i>Tallinna Halduskohus</i>) judgment of 6th of September 2019, no 3-19-1101</p>
EL	<p>Court of first instance of Thessaloniki No 7013/2013</p> <p>Court of first instance of Athens No 2129/2011</p>
ES	<p>Spanish Supreme Court decision (<i>Sentencia del Tribunal Supremo</i>), 6 February 2014</p> <p>Court of Appeal (<i>Audiencia Provincial de Barcelona</i>), 17 March 2021</p> <p>Court of Appeal (<i>Audiencia Provincial de Palma de Mallorca</i>), 27 April 2021</p> <p>Court of Appeal (<i>Audiencia Provincial de Madrid</i>), 1 December 2020</p>

Member State	Case-law where the courts in a Member State have interpreted national provisions in relation to the recognition of parenthood established in another country
FI	KKO:1987:101, KKO:1983-II-117, KKO:1981-II-180
FR	6 April 2011: 3 decisions of the <i>Cour de Cassation</i> , no. 10-19053, Mennesson; no. 09-66486 Labassée; no. 09-17130 13 September 2013: 2 decisions of the <i>Cour de Cassation</i> No 12-18315 and No 12-30138 26 June 2014: 2 decisions of the ECtHR, Mennesson v. France (req. n°65192/11) and Labassée v. France (req. n°65941/11) 3 July 2015: 2 decisions of the <i>Cour de Cassation</i> in plenary session, No 14-21323 and No 15-50002 5 July 2017: decision of the <i>Cour de Cassation</i> No 16-16.455
HR	No examples given
HU	No published decisions on the recognition of parenthood
IE	EP v Attorney General [2013] IEHC 300 (https://www.bailii.org/ie/cases/IEHC/2013/H300.html)
IT	Constitutional Court 28th January 2021, no. 32 Constitutional Court, 28th January 2021, no. 33 <i>Corte di Cassazione (sezione unite civili)</i> , 8th May 2019, no. 12193 <i>Corte di Cassazione</i> , 30th September 2016, no. 19599 <i>Corte di Cassazione</i> , 22nd June 2016, no. 12962
LT	No examples given
LU	Court of Appeal of Luxembourg, 8 October 2014, case no 41158 District Court of Luxembourg, 24 January 2018, case no 174231
LV	Judgments are not publicly available
MT	No disaggregated statistics available. In 2018, 91 cases were decided
NL	Hoge Raad 02-11-2012, ECLI:NL:HR:2012:BX6962 Hoge Raad 19-05-2017, ECLI:NL:HR:2017:942
PL	Judgment of the Supreme Administrative Court dated 20 June 2018, signature: II OSK 1808/16 Judgment of the Supreme Administrative Court of 10 September 2020, signature: II OSK 1390/18

Member State	Case-law where the courts in a Member State have interpreted national provisions in relation to the recognition of parenthood established in another country
PT	No examples given
RO	Case 1035/2015 <i>Tribunalul Brasov</i> Case 453/2014 <i>Tribunalul Dolj</i> Case 987/2017 <i>Judecatoria Vaslui</i> Case 152/2018 <i>Tribunalul Vaslui</i>
SE	NJA 2019 s. 504 NJA 2019 s 969
SI	ECLI:SI:VSR:2010:II:IPS.462.2009
SK	Hefkova v Slovakia no. 57237/00

Estimated number of cases where families had to resort to litigation in order to have parenthood recognised in the Member State

Twenty-five Member States could not provide an estimate of the number of cases where families resorted to litigation, as this information was not publicly available or accessible. In Belgium, the cases were identified through an academic dissertation, with an estimated 44 cases dealing with recognition established abroad resorting to litigation between 1 January 2014 and 31 December 2019 for first instance judgments and between 1 January 2014 and 28 February 2021 for appeal judgments. In 31 cases, parenthood was the result of natural filiation; the remaining 13 cases examined the validity of a parent-child relationship established after surrogacy. The 31 cases on natural filiation also included requests of adults to obtain Belgian nationality for themselves. Case-law in Belgium is not systematically published, making it impossible to determine how many cases on the recognition of parenthood established abroad are submitted to the courts.

Data on children affected

No data were readily available in any of the Member States, nor could such be obtained.

Annex 5 Comparison of PO 2a and PO 2b

This annex presents the comparative analysis of the sub-options considered under PO 2 (PO 2a and PO 2b).

Unsurprisingly, and because it would affect most EU families, PO 2b has a greater beneficial impact than PO 2a for all of the identified objectives the assessment criteria (effectiveness, efficiency and coherence).

The detailed analysis is presented below.

A5.1 Comparative assessment of PO 2a and PO 2b

	PO 2a (+) positive impact (-) negative impact	PO 2b (+) positive impact (-) negative impact
Effectiveness		
Objective 1 Facilitate recognition of parenthood between Member States	<ul style="list-style-type: none"> + The recognition of parenthood would be made easier for families whose parenthood is established in a court judgment (a tiny share of the total number of EU families)⁵⁸⁵ - The facilitation of recognition of parenthood will positively affect only a minority of families - In this particular situation, families could be tempted to choose the most advantageous jurisdiction to have their parenthood recognised (<i>forum shopping</i>) 	<ul style="list-style-type: none"> + All families would benefit from the positive impact because PO 2b covers both authentic instruments and court judgments + The broader scope, including recognition of authentic instruments, would diminish the incentive to rush to court to get a court decision on the establishment of parenthood that could be recognised in other Member States
Objective 2 Ensure legal certainty, predictability, and continuity of parenthood	<ul style="list-style-type: none"> + Legal certainty, predictability and continuity of parenthood would impact some families (i.e. those whose parenthood is established in a judgment)⁵⁸⁶ + Barriers to free movement of some families would be removed (e.g. families deterred from moving to another Member State because of the lack of predictability as to recognition of parenthood for all purposes) + The CJEU would guarantee consistent interpretation of this regulation throughout the EU, which will have a 	<ul style="list-style-type: none"> + Legal certainty, predictability and continuity of parenthood would impact most families because it covers both authentic instruments and court judgments + Barriers to free movement of most families would be removed (e.g. families deterred from moving to another Member State because of the lack of predictability as to recognition of parenthood for all purposes) + The CJEU would guarantee consistent interpretation of this regulation throughout the EU, which will have a direct positive impact on the continuity of parenthood for most

⁵⁸⁵ The proportion of cases of parenthood established by court decision amounts to less than 1 % in the EU (13 157 families at most).

⁵⁸⁶ Ibid.

	<p>direct positive impact on the continuity of parenthood for some families, and also be indirectly positively correlated with the preservation of a child’s identity throughout their life</p> <ul style="list-style-type: none"> - Legal certainty, predictability and continuity of parenthood would positively affect only a minority of families + Some national authorities would be positively impacted by consistent rules directly binding all national authorities. Through harmonised rules on jurisdiction and the applicable law, the resulting approximation of judicial and administrative practices would foster legal certainty, predictability, and thus continuity of parenthood established by judgments 	<p>families, and also be indirectly positively correlated with the preservation of a child’s identity throughout their life</p> <ul style="list-style-type: none"> + Most national authorities would be positively impacted by consistent rules directly binding all national authorities. Through harmonised rules on jurisdiction and the applicable law, the resulting approximation of judicial and administrative practices would foster legal certainty, predictability, and thus continuity of parenthood established by judgments and authentic instruments
<p>Objective 3 Ensure respect for fundamental rights of children and other family members</p>	<ul style="list-style-type: none"> + Most fundamental rights that are of direct relevance (rights of the child and their family members) would be reinforced for a small proportion of families (those whose parenthood is established by a judgment) + The fundamental rights of children and other family members would be guaranteed for some families whose parenthood is established by a judgment. For instance, the right to maintain (on a regular basis) a personal relationship and direct contact with both parents would be better protected + The positive impact on combating discrimination is significant for some children. Compared to today, more children could have equal access to rights and benefits deriving from parenthood + The habitual residence of the child as connecting factor could be favoured in the harmonised regulation, thereby reducing the risk of 	<ul style="list-style-type: none"> + The fundamental rights of children and other family members would be guaranteed for a vast majority of families because it covers both authentic instruments and court judgments. Just as for PO 2a, the right to maintain (on a regular basis) a personal relationship and direct contact with both parents would be better protected + Potentially, the focus of the harmonisation could be on the ‘best interest of the child’, thereby guaranteeing that most children’s best interest is superior to other considerations (e.g. the interest of parents and the national core values or identity of a Member State) + The positive impact on combating discrimination is significant for most children. Compared to PO 2a, significantly more children could have equal access to rights and benefits deriving from parenthood

	<p>discrimination against families residing in a Member State without having the nationality of that State and whose parenthood is established by a judgment</p> <ul style="list-style-type: none"> - The fundamental rights of children and other family members would be reinforced and guaranteed for very few families 	<ul style="list-style-type: none"> + The child’s best interest is significantly better represented in daily life activities for a vast majority of children (the parent-child relationship being necessary to represent the child’s interest)
<p>Objective 4 Reduce costs and legal and administrative burden for families, national administrations, and national judicial systems</p>	<ul style="list-style-type: none"> + The reduction of the costs, length and administrative burden of recognition of parenthood procedures would have a positive impact on some families (those whose parenthood is established by a judgment) and national authorities (including administrations and judicial authorities) who would be charged to proceed to recognition of parenthood + National administrations would not be mandated to launch a full procedure to establish parenthood because the court judgment established in one Member State would have to be accepted in another. A reduction of the authorities’ burden is thus anticipated - The burden on national courts could also increase. Families might increasingly go to court, meaning that they would start litigation to obtain a judgment to facilitate the procedure for recognition of parenthood - The negative impacts of the rush to court could be the congestion of courts, prolonged procedures and additional costs. To have a court decision that could be recognised abroad, families will seek decisions in the national courts. The negative impact – higher burden – will be limited to those national courts 	<ul style="list-style-type: none"> + Compared to PO 2a, the reduction of the costs, length, and administrative burden of recognition of parenthood procedures would have a positive impact on the vast majority of families and national authorities (including administrations and judicial authorities). Families would benefit from less complex administrative procedures and would not need to rely on expensive legal advice in complex situations. As a corollary, fewer challenges would be expected for national judicial systems, reducing their workload + Unlike PO 2a, the possible negative impact on the national courts anticipated as a result of a possible rush to the courts is not anticipated here because parenthood laid down in authentic instruments is also covered in the regulation + Unlike PO 2a, the broader scope – including recognition of authentic instruments and court judgments – is unlikely to create an incentive to rush to a court to establish parenthood

Expected impacts		
Social impacts	<ul style="list-style-type: none"> + The decrease of non-recognition of parenthood for some families, quicker procedures for recognition of parenthood and more legal certainty would alleviate stress and distress for parents and children - The alleviation of stress and distress due to non-recognition of parenthood will concern only a minority of families and children + The decrease of non-recognition of parenthood for some families enables better access to social security rights, which favours social integration and decreases the risk of poverty⁵⁸⁷ - The increased social integration and decreased risk of poverty due to non-recognition of parenthood will concern only a minority of families and children 	<ul style="list-style-type: none"> + Due to its broader scope, the significantly lower incidence of non-recognition solutions adopted by national authorities and courts is expected to continue to alleviate longer-term negative impacts on children’s well-being + Shorter procedures and more legal certainty stabilise access to rights and benefits for parents and children, which favours social integration and decreases the risk of poverty - Automatic recognition of parenthood without covering certain fundamental rights of children (e.g. the right to have knowledge of their identity) may negatively impact the well-being of children in the long-term, as they may not have knowledge of potential health issues inherited from their biological parents⁵⁸⁸ - Similarly, a lack of knowledge about their ‘roots’ or biological parents might have a negative effect on the psychological and emotional well-being of children⁵⁸⁹
Fundamental rights	<ul style="list-style-type: none"> + The greatest foreseen positive impact on the fundamental rights of parents and children is on rainbow families, single parents, families with adopted children and those who had children through surrogacy. These types of families often need to establish parenthood through court proceedings, including contentious (e.g. contestation of parenthood) or non-contentious (e.g. adoption) situations. 	<p>In contrast to PO 2a, this PO would have a positive impact on a majority of families, as well as a more homogeneous positive impact on all types of families</p>

⁵⁸⁷ NGOs – interviews – EU (28 February 2022 - Child Identity Protection).

⁵⁸⁸ Ministries – interviews – IE (16 December 2022 - Department of Justice of the Irish Government); NGOs – interviews – EU (28 February 2022 - Child Identity Protection).

⁵⁸⁹ Ibid.

- The foreseen positive impact would concern only a few families

Efficiency

Administrative and compliance costs

- + Reduction (to some extent) of the costs related to recognition of parenthood in court decisions for household (largely by reducing costs for court proceedings)
- Only a limited share of households will experience such impacts
- + Reduction of costs for the judiciary in those cases where parenthood established in a court decision is recognised automatically (e.g. time and effort needed to process cases, and possibly some related expenses such as translators)
- Estimated reduction in costs for the judiciary would be quite limited overall

- + For a majority of families, a reduction (to some extent) of the costs related to recognition of parenthood in court decisions and authentic instruments for household is anticipated. For instance, a lower need for legal support (and related legal fees) to navigate the procedures is anticipated
- + A reduction of costs for national administrations and the judiciary is also expected (e.g. time and effort needed to process cases, and possibly some related expenses such as translations), as parenthood established in authentic instruments and court decisions will both be recognised

Simplification

- + Some degree of simplification of procedures is foreseen and the positive impact would concern some families
- The simplification of proceedings would only benefit a minority of cases

- + Some degree of simplification of procedures is foreseen and the positive impact would concern all families and national administrations
- + A simplification of procedures involving authentic instruments is foreseen, i.e. fewer accompanying documents to support procedures

Economic impact (excluding compliance and

- + The alleviation of stress and distress resulting from non-recognition of parenthood would improve public health

- + The alleviation of stress and distress resulting from non-recognition of parenthood would improve public health

<p>implementation costs which are discussed separately)</p>	<ul style="list-style-type: none"> + Better access to social protection and improved social inclusion would lead to more positive child development in the longer term and reduce welfare dependency - A very limited share of households would be impacted, thus the wider impacts are considered moderately positive 	<ul style="list-style-type: none"> + Better access to social protection and improved social inclusion would lead to more positive child development in the longer term and reduce welfare dependency
<p>Coherence</p>		
<p>Coherence with other EU policy objectives</p>	<ul style="list-style-type: none"> + Contribute to meeting the objective of connected EU instruments aiming to maintain and develop an area of freedom, security, and justice without internal frontiers + An increase in legal certainty is foreseen when applied simultaneously with other EU instruments sharing the same objective covering legal effects deriving from parenthood and laying down rules on jurisdiction and the recognition and enforcement of judgments⁵⁹⁰, thereby constituting potential synergies + As legal obstacles, administrative burdens or costs are generally considered before moving/travelling to another Member State, synergies are expected with EU instruments promoting free movement - As this PO might create an incentive to rush to court, the capability of the entire judiciary could be undermined 	<ul style="list-style-type: none"> + Like PO 2a, it will contribute to meeting the objective of connected EU instruments aiming to maintain and develop an area of freedom, security, and justice without internal frontiers + An increase in legal certainty is foreseen when applied simultaneously with other EU instruments sharing the same objective covering legal effects deriving from parenthood and laying down rules on jurisdiction and the recognition and enforcement of judgments⁵⁹¹, thereby constituting potential synergies + As legal obstacles, administrative burdens or costs are generally considered before moving/travelling to another Member State, synergies are expected with EU instruments promoting free movement + The broader scope, including recognition of authentic instruments and court judgments, would likely diminish the incentive to shop for the most favourable forum for the establishment and recognition of parenthoodThe concept of

⁵⁹⁰ For example, Regulation 2201/2003, Regulation 2019/1111, Regulation 4/2009, Regulation 650/2012.

⁵⁹¹ Ibid.

an authentic instrument would be autonomous and the CJEU will provide binding interpretation

Legal and political feasibility

- + Legal feasibility is high
- Member States likely to contest the legislative proposal may consider that their national core values are jeopardised. They may also perceive that their control is limited because the PO may favour certain types of substantive outcomes for recognition of parenthood decisions
- There is a risk that, given the sensitive nature of parenthood of non-traditional families, one or more Member States will be reluctant to accept the proposal, thereby considerably decreasing political feasibility

- + Legal feasibility is medium to high
- Some implementation challenges are to be anticipated, such as the different roles of courts and national authorities in the establishment and recognition of parenthood in each Member State, and as a result, the higher number of processes and infrastructures that will need to be adapted
- There is a higher risk of reluctance among Member States because of the broader scope of this PO, including recognition of authentic instruments and court judgments

Findings of the comparative assessment

PO 2a and PO 2b share many characteristics and, overall, both contribute to the achievement of the policy objectives, albeit to different degrees. PO 2a has a very limited scope as it only concerns families whose parenthood is established and recognised by a court decision, meaning that its positive impact would benefit only an estimated 13 000 families and several national authorities. By contrast, PO 2b would benefit about two million families.

PO 2b scores better on **effectiveness in achieving the four specific objectives**, mainly due to its broad scope. The expected positive impacts are more important in quantitative terms, i.e. a larger number of families and national authorities should benefit. Both options would contribute to: facilitating the recognition of parenthood while limiting the cost, duration and burden of procedures; ensuring legal certainty, predictability and continuity of parenthood; and maximising respect for the fundamental rights of children and parents. The impact on fundamental rights primarily relates to the right to maintain (on a regular basis) a personal relationship and direct contact with both parents, conditioned by the recognition of parenthood, the right to non-discrimination and the free movement of families.

Other effectiveness criteria include **social impacts and the impacts on fundamental rights and freedoms**. PO 2b essentially guarantees stabilised long-term positive impacts on the **social integration of families** (decreasing the risk of poverty) and **alleviates stress and distress** due to long recognition procedures that may still end in recognition of parenthood being denied. Similar positive impacts are expected for PO 2a, but they encompass **fewer families** and the anticipated stability would be limited by the narrower scope of the option. Under PO 2a and PO 2b, the distress resulting from a violation of children's **right to have knowledge of their identity** would most likely be maintained. Both POs have limited scope to solve the core of these identity issues and other policy options may be better suited. Nevertheless, the positive impacts of PO 2b outweigh the negative impacts.

Analysis for the **efficiency criterion** focused on compliance costs, simplification, and broader economic impacts. PO 2b scored highest, due to its higher positive impacts on the numbers of families and national authorities expected to benefit. More positive child development in the longer term, **reduction of welfare dependency**, and the positive impact on **public health** applied equally to both options.

PO 2a is **more coherent** with the existing legal framework and policies in the field of EU family law, justice, and free movement. The **anticipated synergies** could be limited for both options on the **grounds of public policy**. PO 2b, while still coherent with the existing legal framework and policies, could create confusion in respect of national and EU **definitions of 'authentic instrument'**.

A5.2 Assessment of PO 2a

Assessment criterion	Score*	Assessment (text)
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Effectiveness in achieving the objectives		
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Policy objectives for PO 2a		
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Assessment criterion	Score*	Assessment (text)
Objective 1 Facilitate recognition of parenthood between Member States	+0.5	For a minority of families ⁵⁹² - those established by a judgment – this PO would significantly contribute to facilitating recognition of parenthood between Member States. The perceived benefit of this PO was confirmed by 42 % of respondents to the OPC, while a minority (24 %) questioned the benefit. Other stakeholders also confirmed it ⁵⁹³ .
Objective 2 Ensure legal certainty, predictability, and continuity of parenthood	+0.5	<p>For the same minority of families, this PO is likely to contribute positively to legal certainty, predictability and continuity of parenthood. The approximation of judicial and administrative practices would foster legal certainty, predictability, thus continuity of parenthood established by judgments. Overall, a majority of respondents to the OPC anticipated a very positive impact from a potential EU regulation in general on improving legal certainty for national administrations⁵⁹⁴. A large majority of ministries expected a positive impact on legal certainty for national administrations (and simplification of their procedures for the recognition of parenthood)⁵⁹⁵ and for families (parenthood of their children in another Member State)⁵⁹⁶.</p> <p>The rules on recognition of parenthood court decisions would be laid down in a single EU instrument, the legal effects of which would be simultaneously, automatically, and uniformly binding on all national authorities. Recognition of parenthood would be more predictable for some EU families in specific situations, it would guarantee legal certainty in the long term and, to a greater extent, foster the stability and permanency of some parent-child (and broader family) relationships⁵⁹⁷.</p> <p>This potential new legal framework would also contribute to removing barriers to free movement of families (e.g. families are deterred from moving to another Member State because</p>

⁵⁹² Estimated at 13 000.

⁵⁹³ Survey of civil registrars: the vast majority of civil registrars (79 %, 12 out of 14 responses - 11 responses fully agreed and 1 somewhat agreed) believe that an EU legislative instrument facilitating the recognition of parenthood between Member States would have added value compared to the current situation where each Member State applies its own rules.

⁵⁹⁴ More than half of the respondents to the OPC (56 %) indicated that a possible EU instrument facilitating the cross-border recognition of parenthood would have a very positive impact on improving the legal certainty for national administrations. A small minority of respondents (11 %) indicated the instrument would have a mildly positive impact on this aspect. A majority of respondents (61 %) indicated that a possible EU instrument facilitating the cross-border recognition of parenthood would have a very positive impact on improving the legal certainty for families, and a minority of respondents (6 %) indicated the instrument would rather have a mildly positive impact. A small minority of respondents (13 %) indicated that a potential EU instrument would have a negative impact on the legal certainty for families, while another small minority (12 %) suggested that an EU instrument would have no impact. Finally, 8 % of respondents preferred not to answer.

⁵⁹⁵ Written questionnaires for ministries, 73 % (16) out of 22 responses, of which 8 expect a mildly positive impact and 8 a very positive impact; 14 % (3) expect no impact.

⁵⁹⁶ Written questionnaires for ministries, 73 % (16) out of 22 responses, of which 2 expect a mildly positive impact and 14 a very positive impact; 5 % (1) expect no impact.

⁵⁹⁷ When parenthood is not recognised, children more easily lose ties to a parent and the extended family of that parent (siblings, grandparents, etc.).

Assessment criterion	Score*	Assessment (text)
		<p>of the lack of predictability of recognition of their parenthood for all purposes).</p> <p>The CJEU would guarantee consistent interpretation of this regulation throughout the EU, with a direct positive impact on the continuity of parenthood for some families. Certain key components of a person's identity derive from parenthood (e.g. a name or nationality), thus continuity of parenthood has a positive impact on the formation of a child's identity and later preservation of that identity.</p>
<p>Objective 3</p> <p>Ensure respect for fundamental rights of children and other family members</p>	+0.5	<p>Under this PO, judicial practices would be approximated, and the focus could be on the best interest of the child. On that basis, an extensive positive impact on the fundamental rights of children is foreseen, albeit for a minority of families. A vast majority of ministries anticipated a mild to very positive impact on children's fundamental rights⁵⁹⁸ (e.g. right to a family life; right to non-discrimination).</p> <p>For a minority of families, this PO would significantly contribute to ensuring respect of one of the fundamental rights of children by combating discrimination. More children could have equal access to rights and benefits deriving from parenthood. In some contexts, the parent-child relationship is necessary to represent the child's interest⁵⁹⁹, and facilitating recognition of parenthood would also combat discrimination for some children.</p>
<p>Objective 4</p> <p>Reduce costs and legal and administrative burden for families, national administrations and national judicial systems</p>	+1	<p>This PO would contribute to reducing the costs, length, and administrative burden of recognition of parenthood procedures, which will have a beneficial effect on a minority of families (whose parenthood is established by a judgment) and national authorities (including administrations and judicial). A large majority of respondents believe that the EU legislation would have a positive impact on the costs, time and burden related to court proceedings on the recognition of parenthood for national judicial systems⁶⁰⁰ and for citizens⁶⁰¹.</p> <p>See PO 2b for the impact on costs, time and burden for national administrations.</p> <p>The increased legal clarity and consistency would reduce the costs and administrative burden for national administrations, which would no longer be mandated to launch a full procedure to establish parenthood, as a court judgment established in one Member State would be accepted in the others. Nevertheless, national courts would likely perpetuate</p>

⁵⁹⁸ Written questionnaires for ministries, 73 % (16) out of 22 responses, of which 4 expect a mildly positive impact and 12 a very positive impact. In addition, 5 % (1) expect no impact.

⁵⁹⁹ For instance, in France, the parent-child relationship is necessary to be elected to represent the child's interest in parent organisations at schools (NGOs – interviews – EU/FR (25 February 2022, NELFA & APGL)).

⁶⁰⁰ Written questionnaires for ministries, 64% (or 14) out of 22 responses, of which 7 expect a mildly positive impact and 7 a very positive impact; 14% (3) expect no impact and 5 % (1) a negative impact.

⁶⁰¹ Written questionnaires for ministries, 68 % (15) out of 22 responses, of which 7 expect a mildly positive impact and 8 a very positive impact; 14 % (or 3) expect no impact.

Assessment criterion	Score*	Assessment (text)
		<p>the application of certain tests (e.g. validity test; substantive law test), maintaining some degree of administrative burden for authorities and families⁶⁰².</p> <p>Families might increasingly go to court, i.e. would start litigation to obtain a judgment to facilitate the procedure for recognition of parenthood. This would increase the burden on national judicial systems, thus this PO could have a somewhat negative impact too. In addition, court proceedings are burdensome, lengthy, and costly for families, meaning it is not the optimal solution.</p>
Expected impacts		
Social impacts	+1	<p>As a result of this PO, the incidence of non-recognition would decrease, creating a positive impact on the psychological effects on children (and their families). The likelihood of quicker procedures and greater certainty in recognition of parenthood might alleviate stress and distress of parents and children. However, a lower number of non-recognition solutions and certain legal barriers for families can still be expected.</p> <p>A majority of respondents to the OPC (54 %) indicated that a possible EU instrument facilitating the cross-border recognition of parenthood would have a very positive impact on children’s welfare, including their emotional and psychological well-being, while a further 9 % of respondents indicated that the EU instrument would have a mildly positive impact. A large majority of ministries foresee a positive impact on children’s welfare⁶⁰³ (including emotional and psychological well-being).</p> <p>This option would only apply to families whose parenthood was established through a court decision, substantially limiting the magnitude of the potential positive impact.</p>
Fundamental rights (on the basis of BRG Tool #28)	+1	<p>In general, the greatest foreseen impact is on rainbow families, single parents, families with adopted children, and those whose children were born through surrogacy. These types of families often need to establish parenthood through court proceedings, including contentious (e.g. contestation of parenthood) or non-contentious (e.g. adoption) situations.</p> <p>This PO will reduce the number of instances where non-recognition of parenthood in a court decision interferes with the child’s rights, in particular the right to respect for private</p>

⁶⁰² One consulted judge explained that when another law than the national law needs to be applied in virtue of the outcome of those tests or PIL, translations are requested from the claimants (i.e., families). It was also reported that not all judges request certified translations, to spare costs and time to claimants. Also, the tribunal keeps a small archive of translated legislation, but this is insufficient to be used in all situations. Overall, the delays resulting from these situations were estimated to be low (Judiciary – interviews – BE – 24/02/2022, Judge of the Family Tribunal at the French-speaking Brussels’ Tribunal of First Instance).

⁶⁰³ Written questionnaires for Ministries, 73% (or 16) out of 22 responses, of which 5 expect a mildly positive impact and 11 a very positive impact. In addition, 5% (or 1) expect no impact

Assessment criterion **Score*** **Assessment (text)**

and family life and the right to non-discrimination. This was confirmed by the OPC, where the majority of respondents (58 %) indicated that a possible EU instrument facilitating the cross-border recognition of parenthood would have a very positive impact on children’s fundamental rights, and several (7 %) indicated a mildly positive impact. A majority of ministries expect positive impacts of such EU legislation on facilitating families exercising their right to free movement within the EU⁶⁰⁴. By limiting the incidence of diverging Member States’ legislation on issues involving rainbow families and single parents, this PO could decrease the risk of discrimination for children in these families.

This PO would have an overall positive impact on the exercise of freedom of movement of families and a greater positive impact in certain specific circumstances. Court decisions rarely establish and prove parenthood, and this occurs both in contentious (e.g. contestation of parenthood or acknowledgment of fatherhood) and non-contentious (e.g. adoption and surrogacy) situations. The greatest positive impact is foreseen for these families, with 57 % of OPC respondents indicating that an EU initiative would facilitate exercising the right of children to travel and move within the Union with their families.

Efficiency

Administrative and compliance costs

+1

This PO is expected to have a positive impact on the costs and burden incurred by households and national administrations in Member States. Such positive impacts will affect the limited share of mobile households with children whose parenthood was established via court decisions in the first place (about 1 % of EU mobile households with children). Impacts on the remaining households, if any, are expected to be negligible, as are impacts on the judiciary in Member States. The table below provides an overview of the costs estimated for this PO, including compared to the baseline)⁶⁰⁵.

Overview of costs for PO 2a (EUR million)

Estimated costs for	Annual costs (average)		Over 10 years	
	Lower bound	Upper bound	Lower bound	Upper bound
- Households	534	790	4 093	6 058
(w.r.t. baseline)	-107	-688	-817	-5,273

⁶⁰⁴ Written questionnaires for ministries, 77 % (17) out of 22 responses, of which 2 expect a mildly positive impact and 15 a very positive impact; 9 % (2) expect no impact.

⁶⁰⁵ See Annex 6 for a detailed description of the methodology and assumptions used for the assessment, and the limitations of the analysis.

Assessment criterion	Score*	Assessment (text)			
- National administrations and judiciary	517	1 058	3 960	8 109	
(w.r.t. baseline)	-113	-301	-870	-2 307	
Total	1 051	1 848	8 053	14 167	
(w.r.t. baseline)	-220	-989	-1 686	-7 580	

This PO will somewhat reduce the costs related to recognition of parenthood for households. Overall, it will reduce the costs of recognition procedures for households whose parenthood was established through a court decision, estimated at EUR 534-790 million per year (a 5-17 % reduction compared to the baseline). These positive impacts are related to the approximation of judicial and administrative procedures for the recognition of parenthood determined via a court judgment. They manifest in easier administrative procedures for the (minority of) households concerned, with fewer documents to be transposed or notarised (and related fees), and lower need for legal counsel when carrying out the administrative tasks. Administrative fees (when applied) and translations costs are expected to remain unchanged. This translates to an average cost for the individual procedure of EUR 389-656 (EUR 458-838 in the baseline). That reduction will only apply to the approx. 1 % of mobile EU households with children. Those whose parenthood was not determined via court decision in the first place will incur the same costs as the baseline scenario.

This PO may lead to a limited reduction of households' costs for court decisions, due to increased legal clarity and consistency. The positive impacts will be limited (approx. 8-9 % reduction, EUR 517-1 058 million per year, on average).

The **cost reduction for the households** impacted will stem from **reduced costs of litigation** and related expenses (e.g. DNA tests; other proofs). Some of the costs will not be affected, such as court fees imposed by Member States and cost of translations of documents. Litigation costs will still apply. This translates to an average cost of procedures requiring court decisions of between EUR 2 500 and EUR 6 430 (EUR 2 800-7 500 in the baseline).

This PO is expected to **reduce the time and effort for national administrations** to process the 1 % of cases affected, given the clearer legal framework and administrative procedures. This is likely to translate to a reduction of costs for national administrations of about 2-3 % compared to the baseline (or an average cost per procedure

Assessment criterion	Score*	Assessment (text)
		<p>requiring authentic instruments⁶⁰⁶ for national administrations of EUR 371-736 (EUR 427-848 in the baseline)).</p> <p>Similarly, the costs for the judiciary are expected to fall under this PO, due to the simplification of procedures. Overall costs for the judiciary of recognition of parenthood requiring court decisions are estimated at EUR million per year. This translates to an average cost per procedure requiring court decisions of the judiciary of approx. EUR 3 280-4 630 (EUR 3 800-5 150 in the baseline).</p>
Simplification	+1	<p>This PO will impact court proceedings, which are a very limited share of the instances of recognition of parenthood in cross-border cases (about 1% of EU mobile households with children).</p> <p>In addition to some reductions in costs, this PO is expected to simplify the proceedings somewhat. The increased legal clarity and consistency will mean fewer full proceedings launched to recognise parenthood, as the court judgment established in one Member State would have to be accepted in another. This may also result in lower average length of court proceedings. The baseline is characterised by a very large variance in the length of court proceedings for recognition of parenthood, ranging from two-four months to up to one to three years (with outliers of up to five years). It is not possible to estimate the likely impact of this PO on the average length of court proceedings, which depend to a large extent on the structure and functioning of judiciary systems in Member States. However, it is expected to contribute to lowering the length of most court proceedings closer to the lower bound of the ranges.</p>
Economic impacts (excluding compliance and implementation costs. which are	+0.5	<p>This PO is expected to have a positive impact on the incidence of recognition of parenthood (albeit in a limited number of cases), simplifying and improving the clarity of the legal framework. This is expected to improve well-being of children and their families by reducing the emotional distress linked to difficulties in recognition of parenthood. That</p>

⁶⁰⁶ As indicated in Annex 6, with very few exceptions, all procedures for (cross-border) recognition of parenthood start as administrative procedures. A part of these procedures will not be solved at administrative level and will then require a court decision. Therefore, Option 2a, which provides a somewhat clearer legal framework, will have some (limited) positive impact on administrative procedures as well. This is explained in annex 6 (currently p. 233 'The vast majority (if not all) of the requests for cross-border recognition of parenthood start with procedures requiring authentic instruments. Even when parenthood is established via a court decision (as in the case of adoptions), that decision will be reported in the civil registry, so that households would normally travel with the birth certificate rather than the court decision. As the request is processed, households may be asked to provide additional documentation, including the original court decision.'

Assessment criterion	Score*	Assessment (text)
discussed separately)		improved psychological and emotional well-being may have an effect on public health. Positive impacts on social protection and social inclusion (of children and families), considered under the social impacts, can lead to more positive child development in the longer term and reduce welfare dependency. These are indirect effects of the PO and – given the very limited share of households impacted – can be considered moderately positive.
Coherence with other EU policies		
Coherence with other EU policy objectives	+1	<p>The objectives of this PO are complementary to the objectives and goals of other EU policies laid out in both the LGBTIQ Equality Strategy 2020-2025 and the 2021 EU Strategy on the Rights of the Child.</p> <p>It will contribute to meeting the objective of connected EU instruments to maintain and develop an area of freedom, security, and justice without internal frontiers. However, the EU instrument simplifying certain rules with regards to translation of public documents is not best suited for certain court decisions⁶⁰⁷. More importantly, in sharing the same objective as other instruments covering legal effects deriving from parenthood and laying down rules on jurisdiction and the recognition and enforcement of judgments⁶⁰⁸, the PO increases legal certainty when applied simultaneously with these EU instruments, thereby constituting potential synergies.</p> <p>The PO is complementary and acts in synergy with EU instruments promoting free movement and residence of EU citizens. In practice, the exercise of free movement and residence is correlated to the recognition of parenthood in that any legal obstacles, administrative burdens or costs are generally considered before moving/travelling to another Member State. It could reduce barriers to movement to another Member State for families whose parenthood was established in a contentious setting, or because of adoption or surrogacy. The measures will not affect the existing EU acquis, in particular free movement case-law⁶⁰⁹.</p> <p>The positive impact of the measures is expected to be significant, yet applicable only to the few instances in which parenthood is laid down in a judgment.</p>
Legal and political feasibility		Legal feasibility is high and political feasibility is expected to be lower than for PO 1. This reflects the need for the legislation to be adopted under the special legislative procedure requiring unanimity in the Council.

⁶⁰⁷ Recital 23 of Regulation 2016/1191 on public documents.

⁶⁰⁸ For example, Regulation 2201/2003, Regulation 2019/1111, Regulation 4/2009, Regulation 650/2012.

⁶⁰⁹ In particular, C-490/20 V.M.A.

Assessment criterion	Score*	Assessment (text)
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		Contestation of the measures is anticipated by those Member States lacking the political will to implement PO 1, i.e. those whose core national values are perceived as jeopardised by this binding measure. Other contestations may stem from: (i) favouring certain types of substantive outcomes for recognition of parenthood decisions, or (ii) if it seems impracticable to implement on national level.
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Annex 6 Costing methodology

This annex sets out the methodology and sources used to estimate the costs presented in the main report.

General approach

Sources

The assessment of the costs used multiple sources and triangulated data where possible. The main sources were:

- Desk research, including analysis of the references in Annex 1;
- Results of stakeholders' consultation, including:
 - OPC;
 - Online survey;
 - Written questionnaires;
 - Targeted interviews;
- Findings from the legal analysis.

General assumptions

Labour costs

In the absence of data for national administrations and judiciary, labour costs were estimated using several parameters:

Using the average estimated salary costs of relevant staff across all Member States, blended EU daily labour costs were derived from:

- Average remuneration of civil servants in national administrations in the EU, provided by Eurostat⁶¹⁰;
- Applying an assumption of 20 working days per month;

As the labour costs for the judiciary (judges and court staff) are expected to be higher than those for civil servants in national administrations, an uplift was added to the staff costs calculated for national administrative authorities. No uplift factor is specified in the BRG (no guidance on unit time cost build-up, allowing for overheads) but 25 % was an acceptable ratio when used by ICF in previous impact assessment support studies.

Daily labour costs were then calculated: (relevant staff monthly salary/20) x 2 (EUR 216/day for national administrative authorities, and EUR 270/day for judges and court staff).

Discount factor

In accordance with the revised version of the BRG, and in agreement with DG JUST, a 3 % social discount rate was applied.

Monetary results are expressed in current prices.

⁶¹⁰ Eurostat, Remuneration of civil servants – key indicators (Article 65), Average remuneration of national civil servants in central public administration, available at: https://ec.europa.eu/eurostat/databrowser/view/prc_rem_avg/default/table?lang=en

Dimensions of the issues considered

The definition of the problems required quantification of the number of cases of recognition of parenthood in cross-border instances for the different scenarios (i.e. domestic adoptions – both joint and single parent adoptions, and adoptions by individuals; children born from ART; children born through surrogacy; and the residual cases of households, either married or in registered civil partnerships, all scenarios for both different-sex and same-sex households).

The quantification adopted several steps, key assumptions and parameters.

The first step consisted of the quantification of **the EU mobile population**, which was estimated by:

- Using the overall figure for EU population in 2020 (447.3 million inhabitants provided by Eurostat (population statistics⁶¹¹) as the starting point (including the number of non-EU citizens living in the EU in 2020 - 23 million people)⁶¹²;
- Calculating the proportion of mobile citizens in the EU in 2020 (13.5 million people, from Eurostat⁶¹³), i.e. 3.2 %, which is in line with the latest EU Labour Mobility Report⁶¹⁴.

Subsequently, the share of **mobile households with children** was quantified by:

- Identifying the share of households with dependent children in the EU, i.e. 39 million households (Eurostat⁶¹⁵);
- Adjusting the figure to account for Denmark's opt-out position on this policy area;
- Using the same share of mobile population (i.e. 1 233 789). The step assumed that relevant households have the same mobility behaviour as the rest of the population.

The approach then distinguished between different-sex and same-sex couples. In view of the lack of official statistical sources for this task, and the wide variation of available sources (mostly articles and partial surveys, not very recent, and without comparative analysis across several Member States), it was decided to use ranges. In addition, there is likely to be wide variations across the EU, depending not only on the legal status of same-sex households, but also on attitudes to marriage and registered civil partnerships and ongoing social stigma. Available data from the US Census⁶¹⁶, while not directly applicable, provided a point for comparison. Using the sources available, it was decided to adopt a range of 6 % across the EU.

The available literature and statistics, while limited in terms of time series and geographical coverage, all noted that fewer same-sex couples tend to have children, compared to different-sex couples of similar socioeconomic status. When having children, same-sex couples tend to have fewer children than different-sex couples. Accordingly, the share of mobile same-sex households with children was estimated at between 1.5 % and 3 % of the total mobile households with children (rather than 4-8 % as in the general mobile population).

⁶¹¹ Eurostat, Migration and migrant population statistics - Statistics Explained.

⁶¹² Eurostat, 'Migrant population: 23 million non-EU citizens living in the EU on 1 January 2020', Migration and migrant population statistics.

⁶¹³ Ibid., 'there were 13.5 million persons living in one of the EU Member States on 1 January 2020 with the citizenship of another EU Member State.'

⁶¹⁴ European Commission, *Annual report on Intra-EU Labour Mobility 2020*, 2021, available at: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8369>

⁶¹⁵ Eurostat, Number of private households, by household composition, number of children and age of youngest child (1 000), available at: https://ec.europa.eu/eurostat/databrowser/view/LFST_HHNHTYCH/default/table?lang=en

⁶¹⁶ See: <https://www.census.gov/topics/families/same-sex-couples.html>

Eurostat data on household composition were used to quantify the number of children, considering households with one or more dependent children⁶¹⁷.

Subsequently, a split of mobile different-sex and same-sex households and children was calculated, as shown in Table 24.

Table 24. Mobile households and children, EU

	Households	Children	Mobile households and children
Different-sex	1 196 775 - 1 215 282	2 062 833 - 2 094 732	4 456 383 - 4 525 296
Same-sex	18 507 - 37 014	31 899 - 63 799	68 913 - 137 826
TOTAL	1 202 882 - 1 227 496	2 094 732 - 2 232 559	4 525 296 - 4 663 123

These figures include children born via ART and surrogacy, and adoptions.

The assessment of the dimensions of the problem involved quantifying the share of cases processed via authentic instruments and court decisions for the different scenarios.

This step used the information available from the legal analysis and from the stakeholders' consultation, coupled with data on EU mobility flows and major destination countries of EU mobility, to develop estimates. The following key parameters were used:

- All cases of adoption (both joint and second-parent adoption, for either different-sex and same-sex households) will require a court decision to establish parenthood. In cases of cross-border recognition, the process starts with a procedure requiring an authentic instrument;
- The vast majority (if not all) of the requests for cross-border recognition of parenthood start with procedures requiring authentic instruments. Even when parenthood is established via a court decision (as in the case of adoption), that decision will be reported in the civil registry, so that households would normally travel with the birth certificate rather than the court decision. As the request is processed, households may be asked to provide additional documentation, including the original court decision.

The process described above allowed for an estimate of likely current scenarios on the annual number of cross-border cases of recognition of parenthood.

In most of the cases for mobile different-sex households, recognition of parenthood would not be problematic and would be carried out entirely via authentic instruments (typically via administrative procedures). A small share of different-sex households (about 0.1 %) may encounter problems in the recognition of parenthood, and thus become 'problematic' cases that require court decisions. Conversely, the recognition of parenthood for mobile same-sex households is expected to be complex in most cases, starting with administrative procedures but requiring a court decision in about 80 % of cases.

⁶¹⁷ Eurostat, Number of private households by household composition, number of children and age of youngest child (1 000), available at: https://ec.europa.eu/eurostat/databrowser/view/LFST_HHNHTYCH/default/table?lang=en

⁶¹⁷ Ibid.

Table 25. Non-problematic and problematic cases of cross-border recognition of parenthood

	Households	Children	Mobile households and children
Non-problematic cases	1 195 578 - 1 214 067	2 060 770 - 2 092 638	4 451 927 - 4 520 771
Problematic cases	19 702 - 38 228	33 960 - 65 892	73 365 - 142 347
TOTAL	1 202 882 - 1 227 496	2 094 732 - 2 232 559	4 525 296 - 4 663 123

Ten-year projections

In the absence of legislative action in this domain, the problems identified will continue to evolve in line with the demographic dynamics of the EU population (e.g. trends in mobility, growth of the population, number of adoptions, and number of children born through ART and surrogacy).

Influence of Brexit and the COVID-19 pandemic

Brexit is not expected to have a significant effect on the mobility of EU citizens, although there may have been a spike in EU citizens coming to the UK before the change of immigration policies in order to secure their status before the deadline of the EU Settlement Scheme.

The COVID-19 pandemic temporarily affected the mobility of EU citizens, but the level of mobility is expected to return and, indeed, to grow, as are some of the issues that mobile citizens face when moving or working across borders. The normalisation of teleworking will create an incentive for more workers to change their residence from one Member State to another, together with their families. These kinds of situations may also increase the likelihood of growing numbers of issues related to the recognition of civil documents as families working remotely from different Member States are likely to need to have their parenthood documents recognised across borders. Family members may become involved in a cross-border civil status situation, even when just travelling.

Estimation of the baseline

The baseline estimation of the evolution of the dimensions of the problem followed the same approach described above. The following parameters were modified to account for the dynamics in EU mobility and demographics of the EU population:

- Increase in EU mobility to 5 %, i.e. regain the level of the 2007-2015 period, before Brexit and the COVID-19 pandemic;
- Slight increase in the EU population, as estimated by the Eurostat population projections⁶¹⁸;
- Continued decrease in the share of European households with dependent children (from 9.1 % in 2020 to 8.5 % in 2030)⁶¹⁹.

While complex and burdensome recognition of parenthood procedures that may still end in non-recognition of parenthood for all purposes could pose a barrier to the free movement of EU citizens (of households with children), the lack of robust data makes

⁶¹⁸ Eurostat, EUROPOP2019 - Population projections at national level (2019-2100), Population on 1st January by age, sex and type of projection, available at: https://ec.europa.eu/eurostat/databrowser/view/proj_19np/default/table?lang=en

⁶¹⁹ Ibid.

it difficult to quantify the obstacle. It is possible that the effects of the different policy options are slightly under-estimated, as they do not account for the increase in intra-EU mobility that may result from the reduction of obstacles to cross-border recognition of parenthood.

The combination of the demographic factors and existing legislative framework allows for an estimation of a likely scenario on the annual number of cross-border cases of recognition of parenthood for the next decade.

In the absence of planned changes in relevant legislation at EU level and in Member States, the parameters determining cases processed via authentic instruments and court proceedings would not change.

Given the conflicting factors described above, it is estimated that the number of EU mobile households affected by problems with cross-border recognition of parenthood will not change significantly compared to the figures in Table 24 and Table 25, which were used to estimate the baseline and the economic impacts of the POs.

Types of costs considered

The assessment of costs focused on the quantification and monetisation (to the extent possible) of administrative and compliance costs for households and for national administration and judicial authorities.

The focus was on the direct costs (and benefits/savings) for the main stakeholder groups that will be impacted (citizens/families, Member States' national administrations, judicial authorities), i.e. those costs that can be directly linked to the policy intervention. More specifically, the categories of direct costs assessed include direct compliance costs, enforcement costs and hassle costs (BRG Tool #56).

- Direct compliance costs include:
 - Adjustment costs: investments and expenses that citizens/families, national administrations and judicial authorities and EU institutions must bear in order to adjust their activity to the provisions included in the PO;
 - Administrative costs: costs borne by citizens/families, national administrations and judicial authorities and EU institutions as a result of administrative activities performed to comply with administrative obligations included in the PO;
 - Regulatory charges: fees, levies and taxes, such as fees requested by civil registrars when registering certificates;
- Enforcement costs associated with activities linked to the implementation of an initiative, such as monitoring and litigation;
- Hassle costs (resulting from delays, unnecessary waiting times, etc.) were not monetised, but the assessment considered any changes in the length of procedures for recognition of parenthood related to the policy intervention.

The assessment included the following types of direct costs:

- Direct compliance costs for citizens/families:
 - Time needed to carry out the administrative procedures and/or follow the court proceedings for recognition of parenthood under the different scenarios;
 - Compliance costs under the different scenarios: administrative fees, other costs (e.g. translation; interpreters); costs of litigation, legal representation (whether required by law or necessitated by the complexity of national procedures and/or litigation);
 - Adjustment costs are unlikely to be incurred by citizens/families;
- Compliance and adjustment costs for national administrations and judicial authorities for recognition procedures of parenthood requiring court decisions:
 - Time needed to carry out the administrative procedures and/or court proceedings for recognition of parenthood under the different scenarios;
 - Compliance costs under the different scenarios: staff costs, other costs (e.g. translation; interpreters), costs for participating in coordination initiatives at EU level (if any), training costs, etc.;
 - Enforcement costs, including number and costs of litigation;
 - Adjustment costs for adapting national frameworks to new EU rules, e.g. design of new rules and procedures, setting up information points (it is likely that such competence will be given to existing bodies/authorities), IT investment (e.g. for introducing and issuing the ECP).

In addition, to the impacts on administrative and compliance costs, the analysis considered larger economic impacts for society, such as:

- Improved well-being of children and families as a result of a simpler and clearer framework for recognition of parenthood reducing the emotional distress linked to difficulties in recognition of parenthood. This aspect is related to psychological and emotional well-being, and may help to improve public health;
- Impacts on social protection and social inclusion (of children and families), considered under the social impacts, which in turn can lead to more positive child development in the longer term.

Such impacts were largely assessed qualitatively, as they are indirect effects of the POs and it was difficult to define a direct causality link or provide any quantitative assessment of their scale.

Identification of the baseline costs

Administrative costs for households and national administrations and judicial authorities were quantified using a tailored Standard Cost Model (SCM) approach (BRG Tool #57).

The analysis identified the key steps currently undertaken for the recognition of parenthood under the different scenarios (including staff costs for administrations, time needed for the procedures to be completed, other costs such as translations and administrative fees, legal representation costs, legal opinions and tests such as DNA tests) and in the baseline.

Regulatory charges were quantified using data on current fees imposed by Member States for authentic instruments and court proceedings (presented in Annex 6, under 'Direct compliance costs'), as per BRG Tool #57.

Enforcement costs were assessed using an approach similar to the adjustment costs (as per BRG Tool #57)

Based on the data available, the quantification and monetisation of the baseline included a set of key parameters.

In the case of quantification of costs for households, the quantification and monetisation of costs followed the following formula (both in the baseline and for each PO):

$$\text{Total costs for households} = (\text{Fees} + \text{translation costs} + \text{costs for transposition and notarisation} + \text{costs for legal representation}) * \text{Number of cases processed}$$

The main cost elements (fees, translation costs, etc.) and related parameters (e.g. amounts and share of cases where they are incurred) are:

- Administrative fee of between EUR 20 and EUR 50 (lower bound and upper bound, respectively), applicable in 50 % of the cases;
- Other costs such as translation of documents, further supporting documentation, etc., quantified at between EUR 150 and EUR 250 (lower bound and upper bound, respectively), applicable in 100 % of cases;
- Legal representation costs, quantified at between EUR 500 and EUR 1 000 (lower bound and upper bound, respectively), applicable in 60 % of cases (based on civil registries' survey responses);
- Transposition and notarisation of documents from the Member State of origin, quantified at between EUR 300 and EUR 500 (lower bound and upper bound, respectively), applicable in 40 % of cases;

- The share of 'non-problematic' (decided via administrative procedures) and 'problematic' cases (requiring court decisions) of cross-border recognition of parenthood is presented in Table 25.

In the case of court proceedings, the key parameters used for quantifying costs for households included:

- Only 'problematic' cases of cross-border recognition of parenthood require court decisions and thus incur the related costs. It was assumed that only 80 % of the households in 'problematic' cases would require a court decision, given the economic costs and impact on the emotional well-being of the household;
- Court fees, estimated at between EUR 200 and EUR 250 (lower bound and upper bound, respectively), applicable in 100 % of cases;
- Other costs, including translations (between EUR 500 and EUR 1 000) and proofs such as DNA tests (between EUR 400 and EUR 750)) applicable in 80 % of cases;
- Legal representation, quantified for both different-sex and same-sex households:
 - between EUR 2 000 and EUR 8 000 (lower bound and upper bound, respectively), applicable in 100 % of cases.

In the case of quantification of costs for national administrations, the quantification and monetisation of costs (for the baseline and each PO) followed the following formula:

$$\text{Total costs for national administrations} = \text{Number of days per FTE} * \text{number of FTEs} * \text{daily wages} * \text{Number of cases processed}$$

The number of work days (full-time equivalent (FTE)) necessary to process a case of recognition of parenthood was quantified at between two (non-problematic cases) and 10 (problematic cases), with labour costs estimated as above. Court decisions, once finalised, are reported in the civil registries, with very limited additional costs (up to 1 FTE).

Administrative fees were treated as transfers.

In quantifying costs for the judiciary, the estimation and monetisation of the baseline for court proceedings included the number of days (FTE) necessary to process a case of recognition of parenthood, quantified at between 15 and 20 days, and monetised using labour costs as described above. The same formula was applied as for quantification of costs for national administrations above.

Court fees were treated as transfers.

Specific assumptions in assessing the POs

The quantification of the costs for each of the POs followed the same basic principles as for the baseline. The analysis identified the key steps in the recognition of parenthood under the different scenarios (including staff costs for administrations, time needed for the procedures to be completed, other costs such as translations and administrative fees, legal representation costs, legal opinions and tests such as DNA tests) in the baseline, and how these are likely to be impacted by the POs. The comparison between the effects of the PO and the baseline allowed the incremental costs of the POs to be quantified, thus identifying any saving/benefit.

Assessing the impact of each PO required modifying some of the key parameters used for the quantification of the baseline in order to model the expected impact of the changes. The sections below detail the parameters modified in each PO to account for the change to the baseline, as well as the rationale for each. Other factors outside of the POs will also be at play, such as increases in intra-EU EU mobility, further reduction in the number of domestic adoptions, increased use of ART.

PO 1

This PO is characterised by several uncertainties, notably the voluntary nature of the measure, the share of mobile households residing in the participating Member States and therefore potentially impacted in cases where an agreement will be reached (e.g. authentic procedures and/or court proceedings), thus the assessment was solely qualitative.

PO 2a

This PO was expected to have a positive impact on the costs and burden incurred by households and national administrations in Member States. These positive impacts will affect the limited share of mobile households with children whose parenthood was established via court decisions in the first place (an estimated 1 % of EU mobile households with children, based on stakeholders' feedback). Any impacts on the remaining households were expected to be negligible, as were impacts on the judiciary in Member States.

In the case of costs for households, the PO will introduce the approximation of judicial and administrative practices for parenthood determined via a court judgment. These effects will include easier administrative procedures for the minority of households concerned, with fewer documents to be transposed or notarised (and related fees), and less need for legal counsel when carrying out the administrative tasks required. Administrative fees (when applied) and translations costs are expected to remain unchanged. Accordingly, the following parameters were changed (the remaining parameters described for the baseline costs remained unchanged):

- Legal representation costs, quantified at between EUR 500 and EUR 1 000 (lower bound and upper bound, respectively), applicable in 30 % of cases (40 % in the baseline);
- Transposition and notarisation of documents from the Member State of origin, quantified at between EUR 300 and EUR 500 (lower bound and upper bound, respectively), applicable in 30 % of cases (40 % in the baseline).

These changes were only applied to 1 % of requests for recognition of parenthood originally decided via a court decision, and thus directly impacted. The remaining 99 % of the cases will incur the same costs as in the baseline.

The approximation of judicial and administrative practices for parenthood introduced in this PO will have positive effects on households' costs for court decisions. Accordingly, the following parameters were changed compared to the baseline:

- Lower additional expenses for households (between EUR 500 and EUR 1 000, lower and upper bounds, respectively, instead of EUR 700-1 740);
- Lower fees for legal representation (between EUR 1 500 and EUR 7 000 (lower bound and upper bound, respectively) for households in marriages or registered civil partnerships), applicable in 100 % of cases;

The approximation of judicial and administrative practices will have a positive impact on the time and effort expended by national administrations in processing the 1 % of requests impacted. The study estimated a 1-9 reduction in the FTE needed (compared to 2-10 in the baseline). A similar limited positive effect is applied to the costs for the judiciary, reduced to 14-18 FTEs (compared to 15-20 FTEs under the baseline), as an effect of the clearer legislative framework introduced.

The processing of the remaining 99 % of the cases via authentic instruments and court decisions will incur the same costs for national administrations and the judiciary as the baseline scenario.

PO 2b

PO 2b envisages the adoption of a legislative measure on the recognition of parenthood in other Member States both by court decision and authentic instruments. This PO is expected to contribute to reducing the costs, length, and administrative burden of recognition of parenthood procedures, which would have a positive impact on most families and national authorities.

The cost reduction for households is expected to be generated by an overall simplification of the administrative procedures, with less need to resort to legal support (and related legal fees) to navigate the procedures, or to provide additional documentation and transposition of documents (e.g. notary acts and related fees). These effects will be relevant for all cross-border requests for recognition of parenthood.

For households, the PO would simplify and harmonise judicial and administrative practices for the recognition of parenthood. These effects will include easier administrative procedures, fewer documents to be transposed or notarised (and related fees), and less need for legal counsel when carrying out the administrative tasks required. Administrative fees (when applied) and translations costs are expected to remain unchanged. Accordingly, the following parameters were changed (the remaining parameters described for the baseline costs remained unchanged):

- Legal representation costs, quantified at between EUR 500 and EUR 1 000 (lower bound and upper bound, respectively), applicable in 10 % of cases (60 % in the baseline);
- Transposition and notarisation of documents from the Member State of origin, quantified at between EUR 300 and EUR 500 (lower bound and upper bound, respectively), applicable in 10 % of cases (40 % in the baseline).

On households' costs for court decisions, the simplification and harmonisation introduced in this PO is expected to have positive effects for court decisions, with the following parameters changed compared to the baseline:

- Lower share of requests for recognition of parenthood requiring court decisions (quantified at 15 % of problematic cases, compared to 80 % in the baseline);
- Lower additional expenses for households (between EUR 500 and EUR 1 000, as in PO2a, applicable to 80 % of cases, both for parenthood recorded in authentic instruments and in a court decision);
- Lower fees for legal representation, due to simpler procedures and a lower share of parenthood cases rejected by the second Member State and requiring an appeal:
 - between EUR 2 000 and EUR 5 000 (lower bound and upper bound, respectively), applicable in 100 % of cases.

The simpler and clearer legislative framework for recognition of parenthood introduced by this PO will have a positive impact on the time and effort necessary for processing requests for the recognition of parenthood recorded in court decisions and authentic instruments. A reduction of 3-4 FTEs was estimated for problematic cases for recognition proceedings before administrative authorities (compared to 4-8 FTEs in the baseline) and 10-15 FTEs before the courts (15-20 days in the baseline).

The positive cost impacts for the judiciary are driven by two factors:

- Lower share of requests for recognition of parenthood requiring court decisions (quantified at 15 %, compared to 80 % in the baseline);
- Less time and effort necessary for examining each case and coming to a decision (estimated at 10-15 FTEs compared to 15-20 FTEs under the baseline).

PO 3

This option introduces an ECP to the provisions included in PO 2b.

This PO will further reduce the costs related to recognition of parenthood for households. A positive effect is expected for both authentic instruments and court decisions. The cost reduction for households is expected to be generated by an overall simplification of the administrative procedures, which will eliminate the need for translations and transposition/notarisation of documents, and related costs. The procedural efficiency generated by this PO will further simplify the administrative and court procedures for recognition of parenthood, so that legal support will only rarely be needed. Administrative fees (when applied) are expected to remain. It is also possible that administrations will apply fees for issuing the ECP. However, given the large reduction of costs they generate, the impact of ECP-related fees on households is expected to be negligible.

The magnitude of such benefits will depend to a large extent on the share of households that will request issuing of the ECP, which will remain a voluntary instrument. The estimates presented consider a high request rate for the ECP (about 70 % of cases). Accordingly, the following parameters were changed (the remaining parameters described for the baseline costs remained unchanged):

- Legal representation costs, quantified at between EUR 500 and EUR 1 000 (lower bound and upper bound, respectively), applicable in 5 % of cases (40 % in the baseline).
- No costs for translation, transposition or notarisation of documents from another Member State.

On households' costs for court proceedings for the recognition of parenthood, the simplification and harmonisation introduced in this PO will have more positive effects for court decisions than PO 2b only. Accordingly, the following parameters were changed compared to the baseline:

- Lower share of requests for recognition of parenthood requiring court decisions (quantified at 10 %, compared to 80 % in the baseline);
- Lower additional expenses for households (between EUR 500 and EUR 1 000, incurred in 50 % of cases);
- Lower fees for legal representation, due to simpler procedures and a lower share of parenthood cases rejected by the second Member State and thus requiring an appeal:
 - between EUR 1 200 and EUR 3 800 (lower bound and upper bound, respectively), applicable in 100 % of cases.

The simpler and clearer legislative framework for recognition of parenthood introduced by this PO will have a positive impact on the time and effort necessary for processing requests for recognition. A reduction of 1-2 FTEs was estimated for administrative proceedings in problematic cases (1-10 FTEs in the baseline), as well as a small reduction of effort in non-problematic cases (0.5 FTEs, compared to 1 FTE in the baseline).

The positive cost impacts for the judiciary are driven by two factors:

- Lower share of requests for recognition of parenthood requiring court decisions (quantified at 10 %, compared to 33 % in the baseline);
- Less time and effort necessary for examining each case and coming to a decision (estimated at 7-10 FTEs, compared to 15-20 FTEs under the baseline).

The introduction of the ECP is likely to require training for the judiciary and national administrations (including registries), which is estimated at approx. 0.5 % of the

judiciary costs for recognition proceedings, consistent with the parameters used for the European Certificate of Succession. Training costs were considered to be recurring annual costs (i.e. compliance costs for Member States). Estimates allowed for the possibility that not all staff will receive training on a yearly basis (annual training costs were reduced by 50 % on an annual basis, allowing for the possibility that about half of the relevant staff will receive training each year).

Limitations of the analysis

The lack of robust, comparable statistical evidence created uncertainties in the quantification of certain key parameters for the assessment of the costs and benefits of the baseline and policy options. These issues concerned some of the key parameters for the study:

- Number of households (and children) affected by the problems related to cross-border recognition of parenthood in the current situation;
- Evolution of the number of households (and children) affected by this problem in the coming decade;
- Current costs incurred by households, national administrations, and the judiciary in processing requests for cross-border recognition of parenthood, and how these costs may evolve.

One of the main difficulties was represented by the limited availability of data on the three items listed above, which influenced the quantification of the problem and of the costs of the baseline scenario.

Many of the data needed for the exercise are not collected at EU level at all (such as data on surrogacy) or not systematically and reliably, given the sensitivity of the topic and data protection considerations (e.g., information on sexual orientation of persons and thus on the number of rainbow families)⁶²⁰.

In addition, most of the procedures concerning recognition of parenthood take place before local administrative authorities in Member States, and are not recorded centrally. Similarly, court proceedings concerning recognition of parenthood taking place are not recorded centrally for statistical purposes in all Member States, and at any rate not with the level of detail needed by the study. As a consequence, data on the number of cases in the current situation as well as other relevant statistics were not available, which made more difficult to obtain projections over the 10 years period considered.

Similar difficulties were encountered for estimating the time needed and costs encountered by households, public administrations and the judiciary for cross-border recognition of parenthood in the current situation, and their likely evolution over 10 years.

The study defined an approach to estimate these parameters, based on some information collected via stakeholders' consultation, literature review, and expert assessment, as well as the expertise acquired in other impact assessments for DG JUST.

The parameters used for the baseline scenario and the impacts of the POs were discussed and agreed with DG JUST, and the assumptions used are described earlier in this annex.

⁶²⁰ As a rule, these data are collected on a voluntary basis only and based on self-identification.

Another limitation of the study concerns the lack of distributional considerations on the analysis, due to the lack of country-specific data on recognition of parenthood

Assessing the distribution of problems, the related costs and the impacts of the policy options across Member States would require country-specific data that were not available, so that the study could only consider the EU dimensions. Problems with cross-border recognition of parenthood may stem from discrepancies between Member States' substantive law on the establishment of parenthood and between Member States' applicable law rules on the establishment of parenthood in cross-border situations. On the other hand, problems with cross-border recognition of parenthood may materialise where certain ways of family formation are not legally accepted in national law of a Member State. However, since in each individual case public authorities in Member States (either at administrative or judiciary level) apply national laws, they often do so in a way to comply with the obligations stemming from international law and to protect the best interest of children. Therefore, national laws concerning parenthood are not a fully reliable indicator of how restrictive recognition is in each Member States and could not be used for deriving robust considerations for the study.



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