



# **Commission proposal on the recognition of parenthood between Member States**

**ELRA**

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**Maria Vilar Badia  
European Commission**

## Background

- **Problem:** complaints to COM, petitions to EP, judicial proceedings on problems with the recognition of parenthood within the Union
- **Causes:**
  - ✓ national law: different MS laws on how to establish and recognise parenthood
  - ✓ EU law: under EU law on free movement:
    - recognition of parenthood (i) only for EU citizens or their family members, and (ii) for the purposes of rights derived from **EU law** (e.g. entry, residence in another MS), but
    - no recognition of parenthood (i) for all citizens, or (ii) for the purposes of rights derived from parenthood under **national law**, e.g. nationality, inheritance, maintenance, legal representation of child in another MS (e.g. medical, schooling)
  - ✓ international law: no general convention on the recognition of parenthood

- **Consequences of no recognition:**
  - adverse impact on children's rights
  - need to start legal proceedings for recognition in another MS
  - deterrence of the exercise of the right to free movement
- COM President 2020 SOTEU speech: **political commitment**
- **COM proposal** adopted on 7 December 2022
- **Primary consideration:** rights of child and best interests of child
- **Aims:** facilitate recognition, protection of children's rights, provide legal certainty and continuity of parenthood, reduce litigation costs
- **Legal basis** - Art 81(3) TFEU: "measures concerning family law with cross-border implications"
  - **VMA case:** EU law on free movement does not require recognition of parenthood for the purposes of rights derived from parenthood under **national law**
  - **special legislative procedure:** unanimity in Council after consulting European Parliament

## Proposal

- **Scope:** gender-neutral text. Covers recognition of parenthood of:
  - **all children** without discrimination: irrespective of conception, birth, type of family (same-sex parents, domestic adoption, surrogacy)
  - irrespective of **nationality** of child or parents
  - where parenthood has been established **in a MS**. Recognition of parenthood established **in a third country** remains subject to MS law
- Harmonisation of **private international law** rules
  - jurisdiction: which MS is competent to establish parenthood
  - applicable law: which national law applies to establish parenthood
  - recognition of judgments and authentic instruments (documents issued by administrative authorities or notaries) establishing parenthood
  - acceptance of authentic instruments with evidentiary effects (for example, birth certificate)

## Proposal

- MS cannot invoke **public policy** contrary to the EU Charter (e.g. discriminating against same-sex parents) to refuse:
  - the application of another State's law to establish parenthood
  - the recognition of parenthood established in another MS
- Creation of **European Certificate of Parenthood** (ECP)
  - gender-neutral document to provide evidence of parenthood in another MS
  - optional for citizens but must be issued by MS competent authority on request by child or its legal representative
  - uniform contents and uniform effects irrespective of MS of issuance
  - uniform form existing in all EU official languages, so reduction of translation costs for citizens

## **State of play**

- Council discussions underway: text politically sensitive
- EP supportive of the proposal

## **Questions or comments?**

*[Maria.Vilar-Badia@ec.europa.eu](mailto:Maria.Vilar-Badia@ec.europa.eu)*