



A CRITICAL ASSESSMENT OF THE COMMISSION'S PARENTHOOD PROPOSAL

Alina Tryfonidou, Professor of European Law, Neapolis University Pafos (CY) &
Visiting Professor, University of Reading (UK)

5 July 2023

WHAT WILL THE PROPOSED REGULATION ACHIEVE?

- The proposed Regulation is a very positive step towards a wholesome EU solution to the problem of non-recognition of parenthood in the EU in situations which present a cross-border element:
 - It shall not provide merely ad hoc solutions (as is the case with judicial solutions) but, rather, it seeks to provide a **complete solution** to the problem of non-recognition of parenthood in situations where parenthood was established in an EU Member State.
 - It shall require the cross-border recognition of parenthood ***for all legal purposes*** (not just for the purpose of the exercise of EU free movement rights – as is currently required by ECJ case-law (*V.M.A.* case (2021))).
 - It is a **child-focused instrument** which aims to protect the fundamental rights and best interests of **every** child (even in situations involving families comprised exclusively of TCNs).
 - It shall **enhance legal certainty** and will, as a result, save time and costs both for families and for national judicial and administrative authorities involved in the procedures for the establishment and recognition of parenthood.

GAPS IN PROTECTION THAT WILL PERSIST EVEN IF THE PROPOSED REGULATION WILL ENTER INTO FORCE (IN ITS CURRENT FORM)

It will **not apply to Denmark** (as Title V of Part Three TFEU does not apply to Denmark); unless Ireland exercises its opt-in, it will also not apply to Ireland.

It has a **limited territorial scope** of application: it does not apply to situations where parenthood was established in a third country.

It includes **no safeguards for protecting the child's right to know its origins.**

RECOMMENDATIONS

- Very technical instrument –
 - Recommended that the **Commission should issue guidelines** (in simple language) on its application and enforcement.
 - Recommended that national judges, civil servants, and legal practitioners should receive **training** in order to be able to interpret and apply the Regulation uniformly.
- The proposed Regulation includes (as is usual with PrIL instruments) a **public policy exception**: it must be ensured that this exception is **interpreted narrowly and is not (ab)used by the Member States** in order to avoid their obligations under the instrument.
- A provision should be added that will state that in all procedures concerning the establishment and recognition of parenthood which fall within the scope of application of this instrument, the **right of the child to know its origins** should as far as possible be protected.
- Biggest challenge: to **achieve unanimity without ending up with a (very) watered-down version of the instrument**.
 - Enhanced cooperation not a solution

Thank you!