

PARENTHOOD WITHOUT BORDERS - JUDICIAL COOPERATION FOR CROSS-BORDER FAMILY SECURITY IN THE EU

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ABSTRACT

Cross-border mobility and diverse family forms are increasingly common in the European Union, yet legal recognition of parenthood remains fragmented along national lines. This paper examines how the lack of mutual recognition of parent-child relationships across EU Member States – especially for children born via surrogacy, assisted reproduction, or adoption in “rainbow families” – undermines children’s rights and legal certainty. We critically analyze the current legal framework, including the Brussels IIb Regulation’s limitations and key jurisprudence from the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR) (V.M.A., Coman, Mennesson, Labassee, etc.). The analysis reveals that while incremental judicial solutions have advanced free-movement rights, significant gaps persist in protecting the continuity of parent-child bonds across borders. Building on evidence from the European Commission’s 2022 ICF Study and recent policy debates, we explore options for ensuring mutual recognition of parenthood, notably the proposed EU Regulation introducing common private international law rules and a European Certificate of Parenthood. Adopting a child-centric, advocacy-oriented perspective, the paper argues that an EU-level solution is imperative to safeguard the best interests of the child. Practical and normative recommendations are offered to achieve an EU system in which “parent in one Member State, parent in all Member States” becomes a reality, placing children’s rights at the core of cross-border family law cooperation.

Keywords: *Best Interests of the Child, Children’s Rights, Cross-Border Parenthood, EU Private International Law, European Certificate of Parenthood, Mutual Recognition of Family Status*

1. INTRODUCTION

In an increasingly integrated Europe, families often move or have legal ties spanning multiple countries. However, when it comes to the legal status of parents and children, national boundaries can abruptly fracture a child’s identity. A child who is fully recognized as someone’s son or daughter in one Member State may find

that parenthood status denied or ignored in another. This discrepancy poses more than an abstract legal problem – it strikes at the heart of a child’s sense of security and rights. Cases of children born via surrogacy, conceived through assisted reproductive techniques (ART), or adopted by non-traditional families have exposed a patchwork of rules across the EU, in which the parent-child relationship is sometimes not portable across borders. The result is a landscape of uncertainty: parents travel or relocate at the risk of one of them being treated as a legal stranger to their own child, and children face the possibility that their family ties will vanish when crossing an internal EU border. This paper explores how such fragmentation undermines children’s fundamental rights and what the European Union can do to establish “parenthood without borders” through enhanced judicial cooperation. The central premise of this discussion is that the best interests of the child must be a primary consideration in all actions concerning children – a principle enshrined in Article 3 of the UN Convention on the Rights of the Child (UNCRC)¹ and Article 24 of the EU Charter of Fundamental Rights.²

From a children’s rights perspective, the current lack of automatic cross-border recognition of parenthood is not just a bureaucratic inconvenience; it is a direct threat to a child’s right to identity, family life, and non-discrimination. The problem has gained urgency in light of social changes and increased mobility. More children are being born via cross-border surrogacy arrangements or to LGBTQ+ families, and more EU citizens are living abroad with their families. The European Commission estimates that up to two million children in the EU currently may face difficulties having their parenthood recognized when moving between Member States.³ Each such case represents a child whose status and rights could be in limbo.⁴ The question this paper addresses is how EU law and policy can evolve to ensure that children do not lose their legal parents when they cross a border. In pursuit of that answer, we will first map the fragmentation of parenthood recognition in Europe and the attendant risks to children, then critically assess the existing legal framework and judicial responses, and finally propose pathways toward an EU-wide solution that places children’s rights at the forefront.

¹ Convention on the Rights of the Child, United Nations Treaty Series, vol. 1577, p. 3.

² Charter of Fundamental Rights of the European Union [2000] OJ C 364/1.

³ Explanatory Memorandum to the Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, COM(2022) 695 final, 7 December 2022, accompanied by SEC(2022) 432 final and SWD(2022) 390–392 final.

⁴ Barzó, T., *A demográfiai kihívásokra adott családpolitikai válasz hazánkban [Family Policy Response to Demographic Challenges]*, Miskolci Jogi Szemle, Vol. 18, No. 2, 2023, pp. 23–41.

2. FRAGMENTATION OF LEGAL PARENTHOOD RECOGNITION IN THE EU

European countries have developed their parentage laws independently, resulting in fragmented rules on who is recognized as a child's legal parent. This fragmentation is especially pronounced for children born through surrogacy, conceived via ART (assisted reproductive technologies), or born into non-traditional families (such as same-sex couples or unmarried partners). In the absence of a unifying EU framework, a child's legal parents in one Member State may not be considered the legal parents in another.

Perhaps the starkest divergence surrounds children born through **international surrogacy arrangements**. At least 14 EU Member States categorically do not recognize parenthood established via surrogacy abroad.⁵ Countries like Poland and Finland, for example, will only acknowledge the woman who gives birth as the mother, thus refusing to recognize the intending parent(s) listed on a foreign birth certificate. By contrast, about nine Member States (including Austria, Belgium, France, and others) do recognize surrogacy-based parenthood from abroad, despite often banning surrogacy domestically.⁶ These states have turned to principles like the *best interests of the child* and the child's right to identity to justify recognition even when surrogacy violates national public policy. For example, Austrian courts, applying the best-interests principle, have recognized foreign surrogacy arrangements notwithstanding Austria's ban on surrogacy. France, after years of resistance, now allows full transcription of a foreign birth certificate for children born via surrogacy abroad, following landmark judgments and pressure from the ECtHR. The Belgian judiciary, lacking legislative guidance, has issued conflicting decisions – some refusing recognition as against public policy, others accepting it in light of the child's rights. This inconsistency across (and even within) jurisdictions means the legal parentage of a surrogate-born child is a dice roll dependent on which country (or even which court) is involved.

Advances in ART and evolving social norms have enabled **same-sex couples** to become parents (e.g. two mothers through donor insemination, or two fathers through surrogacy or joint adoption). Yet, Member States differ greatly in recognizing these family ties. A majority of EU countries now permit some form of same-sex parenting (especially for two women, if one gives birth and the other can

⁵ Morel, S. *et al.*, 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, European Commission, Directorate-General for Justice and Consumers, Unit A1 – Civil Justice, Brussels, 2022, p. 17.

⁶ *Ibid.*

adopt or be registered as co-mother), but a significant minority do not. For instance, by 2022 only 8 Member States allowed joint adoption by same-sex couples in a registered partnership (beyond those that allow same-sex marriage).⁷ Several countries (primarily in Central-Eastern Europe) still exclude same-sex couples from recognition as joint parents altogether. If a child has two legal mothers or two fathers in State A, that status may be rejected in State B which insists a child cannot have parents of the same gender. Such was the predicament in the CJEU's *V.M.A.* case: a child born in Spain to a Bulgarian–Gibraltarian same-sex couple had a Spanish birth certificate listing two mothers, but Bulgarian authorities refused to issue a Bulgarian birth certificate because Bulgarian law did not recognize two mothers.⁸ This lack of consensus extends to births via donor gametes or IVF: some Member States still impose requirements that reflect traditional heteronormative assumptions (e.g. requiring a father's name even if the child has none, or only recognizing the birth mother and treating her female partner as a legal stranger). Transgender parents also face uncertainty – for example, if a trans man gives birth, some national laws might insist on listing him as “mother”, causing cross-border confusion if another country lists him as father.⁹¹⁰ In short, children of LGBTQ+ families face a high risk of non-recognition in many jurisdictions, a direct consequence of Member State divergences on marriage, partnership, and parentage equality.

Adoption laws are another area of divergence. While all EU countries recognize adoption in some form, who can adopt and which adoptions are recognized varies. Many states historically restricted adoption to married heterosexual couples, though this has gradually liberalized. If a child is adopted by a single parent or by an unmarried couple in one country, will that adoption be recognized elsewhere? Not necessarily. For example, a single-parent adoption valid in State X may not be recognized in State Y that does not allow singles to adopt, or a second-parent adoption by a same-sex partner may be denied recognition in a country that forbids same-sex adoption. A notable case is *Wagner v. Luxembourg*,¹¹ where Luxembourg refused to recognize a Peruvian single-mother adoption, leaving the child legally parentless in Luxembourg – a situation the ECtHR found violated the child's right to family life.

⁷ Morel *et al.*, *op. cit.*, note 4, p. 27.

⁸ Case C-490/20 *V.M.A. v Stolichna obshtina, rayon 'Pancharevo'* ECLI:EU:C:2021:1008, para. 22.

⁹ *McConnell v Registrar General for England and Wales* [2020] EWCA Civ 559.

¹⁰ *R (on the application of TT) v Registrar General for England and Wales* [2019] EWHC 2384 (Fam).

¹¹ Judgment *Wagner and J.M. W.L. v. Luxembourg* (2007) European Court of Human rights, Application No. 76240/01.

Even among EU states that are party to the 1993 Hague Adoption Convention,¹² which streamlines intercountry adoption recognition, gaps remain: the Convention covers adoptions between different countries, but not all cross-border situations. For instance, a purely domestic adoption (child and parents same nationality) might not be automatically recognized elsewhere if the family later moves.

The European Commission has noted that non-recognition of adoptions can create obstacles for children in claiming nationality or inheritance from their adoptive parents. Especially sensitive are cases of adoption by unmarried or same-sex couples, which some states refuse to acknowledge.¹³ Thus, an adoptive parent in one country might not be seen as a parent in another, again subjecting the child to a legal vacuum.

Fragmentation also appears in **less common scenarios**, such as the recognition of kafala (Islamic guardianship) or foster parenthood, or situations involving multiple parent figures. Few EU states allow any form of multi-parent recognition (more than two legal parents), while others strictly adhere to the two-parent model, potentially clashing if a child from a jurisdiction with a different concept moves. Moreover, differing rules on establishing parentage (e.g. the marital presumption of paternity, which in some countries is rebuttable and in others irrebuttable) can lead to conflicting results as to who the “legal” father or mother is. In cross-border cases, these differences can surface unexpectedly – for example, if a birth certificate from Country A lists a father by virtue of marriage presumption, Country B might refuse recognition if in B the timing of birth would not attribute paternity or if B requires a genetic link for paternal recognition. Each discrepancy represents a point where one legal system’s determination of parenthood may be deemed invalid by another system.

This panorama of divergent laws demonstrates that legal parenthood in the EU is anything but uniform. What one Member State’s law “joins together” (a parent and child), another may “put asunder.” Such fragmentation means families cannot count on continuity of their legal status when they cross borders, undermining the predictability and legal certainty that should ideally accompany the EU’s free movement regime. It is important to note that these conflicts are not merely theo-

¹² Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, Hague Conference on Private International Law, concluded 29 May 1993, entered into force 1 May 1995.

¹³ Explanatory Memorandum to the Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, COM(2022) 695 final, 7 December 2022, accompanied by SEC(2022) 432 final and SWD(2022) 390–392 final.

retical. They have materialized in numerous court cases and personal ordeals, often with harsh consequences for the children involved. We turn next to the risks and rights implications that arise when parenthood is not recognized across borders.

3. RISKS TO CHILDREN'S RIGHTS AND LEGAL CERTAINTY

When a child's legally recognized parenthood is not carried over from one country to another, the child pays the price. The effects of non-recognition reverberate through virtually every aspect of a child's life, from the mundane to the profound. Here, we analyze the risks posed to children's rights and well-being, illustrating them with examples and drawing on human rights norms that underscore why continuity of parenthood is vital.

3.1. LEGAL LIMBO AND IDENTITY CRISIS

At the most fundamental level, a child whose parent-child relationship is not recognized abroad is plunged into legal limbo. The child may suddenly have no legally recognized parents in the host country, or only one parent instead of two. This directly implicates the child's right to an identity. Under Article 7 of the UNCRC, every child has the right to be registered immediately after birth, to a name, and to know and be cared for by their parents.¹⁴ Non-recognition effectively negates this right by denying the legal parentage that is part of the child's identity. The UNCRC Committee has taken a firm position¹⁵ that failure to recognize a parent-child relationship can lead to a denial of the child's enjoyment of fundamental rights,¹⁶ and it calls on states to diligently solve these remaining problems.¹⁷ Imagine a child who in their home country has an official birth certificate naming their mother and second mother – suddenly, in a new country, that document is rejected and one of their mothers “disappears” in the eyes of the law. The child's personal identity – which includes their family ties – is being stripped away. The trauma and confusion this can inflict on a child should not be underestimated. Psychologically, children rely on the stability of knowing who their parents are and that those parents have the authority to care for them. Legal limbo undermines that stability.

¹⁴ Convention on the Rights of the Child, United Nations Treaty Series, vol. 1577, p. 3.

¹⁵ UN Committee on the Rights of the Child, Concluding Observations: Paraguay, UN Doc. CRC/C/15/Add.27, 1994, para. 10.

¹⁶ UN Committee on the Rights of the Child, Concluding Observations: China, UN Doc. CRC/C/15/Add.56, 1996, para. 16.

¹⁷ Ziemele, I., *A Commentary on the United Nations Convention on the Rights of the Child – Article 7*, Martinus Nijhoff, Leiden/Boston, 2007.

3.2. OBSTACLES TO BASIC RIGHTS AND SERVICES

A panoply of practical problems flows from the non-recognition of parenthood. Children may encounter difficulties accessing healthcare, education, or other social services in the host country if their parent is not legally acknowledged. For example, medical consent for a procedure might be refused because the accompanying adult (unrecognized parent) has no legal standing, or a school might not allow a parent to enroll or pick up a child without proof of parentage. Even something as simple as obtaining a library card or signing a permission slip can turn into an ordeal if a parent's signature is not legally valid. In more serious situations, the lack of legal parenthood can hinder the child's right to maintenance and inheritance. If one of the unrecognized parents dies, the child might be unable to claim a survivor's pension or inheritance in a country that didn't consider that person their parent. In the *Mennesson* case,¹⁸ the twin girls born via surrogacy to French parents in the United States were not recognized as the French father's children for years, which gave them an "inferior status" in French law, including diminished inheritance rights, and created practical difficulties in day-to-day life. The ECtHR noted that this harmed the children's rights under Article 8 ECHR (right to private life) because nationality and inheritance are facets of identity and legal security. Non-recognition can also jeopardize a child's right to nationality. Many countries confer citizenship to a child through their parents (*ius sanguinis*). If a state refuses to recognize a legal parent who is its national, the child might be denied citizenship by descent from that parent. In extreme cases, a child could become stateless – for instance, if the country of birth doesn't grant nationality and the parents' home country won't acknowledge the parent-child link needed for the child to acquire their citizenship. The *V.M.A.* case presented such a risk: the child, born in Spain, was a Bulgarian citizen by descent through her Bulgarian mother, but without a Bulgarian birth certificate (which was denied due to the two mothers issue) she could not get a Bulgarian passport.¹⁹ Thus, Bulgaria's non-recognition effectively trapped the child in a limbo with respect to citizenship and travel documents.

3.3. IMPEDIMENTS TO FREE MOVEMENT

A core promise of the EU is the freedom of movement – the idea that citizens (including children) can move and reside freely in any Member State. When parenthood isn't recognized, this freedom is undermined for families. A child may be unable to obtain a passport or identity card if the competent authority in the

¹⁸ Judgment *Mennesson v. France* (2014) European Court of Human Rights, Application No. 65192/11.

¹⁹ Judgment *Wagner and J.M. W.L. v. Luxembourg* (2007) European Court of Human Rights, Application No. 76240/01.

home country refuses to issue documents listing the “unrecognized” parent. In *V.M.A. v. Bulgaria*, the Bulgarian authorities’ refusal to issue a birth certificate listing both mothers meant the child could not get a Bulgarian passport. The CJEU found this to be incompatible with the child’s EU free movement rights: every EU citizen child must have documentation to travel with their parents, and a Member State is obligated to issue an ID or passport to its citizen regardless of that state’s discomfort with the child’s parentage as established abroad.²⁰ In effect, the Court said Bulgaria must practice a form of “*functional recognition*” – at least to the extent of acknowledging the parent-child relationship for issuing identity documents.²¹ Indeed, the CJEU has emphasized that a child cannot be deprived of the genuine enjoyment of their EU rights due to the form of their family. A similar logic applied in *Coman v. Romania* (2018),²² where the CJEU held that for the purpose of granting an EU citizen’s spouse a residence right, a Member State must recognize a same-sex marriage lawfully concluded abroad. Just as *Coman* prevented a Member State from invoking public policy to refuse to treat a same-sex spouse as “spouse” under EU free movement law, *V.M.A.* prevents a state from denying the parenthood of a same-sex couple’s child when it would impede the child’s movement and residence with their parents.²³ These cases underscore that non-recognition of status can act as a travel ban on children: families may be deterred from moving altogether, or face mobility hurdles that other families do not. Such unequal access to free movement is a form of discrimination against the child on the basis of their family situation, something EU law and the Charter (Article 21 non-discrimination) cannot tolerate.²⁴

3.4. EMOTIONAL AND DEVELOPMENTAL HARM

Beyond formal rights, the human impact on a child caught in these legal uncertainties is significant. Children sense when a parent is marginalized or disempow-

²⁰ Marinkás, G., *Some Remarks on the CJEU’s ‘Pancharevo’ Decision With Special Regard to the Nexus Between the Primacy of EU Law and the National Identity of Member States*, Law, Identity and Values, Vol. 3, No. 1, 2023, pp. 177–201.

²¹ EAPIL Editorial, *Functional Recognition of Same-sex Parenthood for the Benefit of Mobile Union Citizens – Brief Comments on the CJEU’s Pancharevo Judgment*, EAPIL Blog, 3 February 2022, available at: [https://eapil.org/2022/02/03/functional-recognition-of-same-sex-parenthood-for-the-benefit-of-mobile-union-citizens-brief-comments-on-the-cjeus-pancharevo-judgment/], Accessed 28 March 2025.

²² Case C-673/16 *Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* [2018] ECLI:EU:C:2018:385.

²³ Gyeney, L., *Same Sex Couples’ Right to Free Movement in Light of Member States’ National Identities. The legal analysis of the Coman case*, Iustum Aequum Salutare, Vol. 14, No. 2, 2018, pp. 149–171.

²⁴ Case C-2/21, *Rzecznik Praw Obywatelskich v K.S. and Others*, Order of the Court (Tenth Chamber) of 24 June 2022, ECLI:EU:C:2022:502.

ered. If, for instance, one of their two parents is consistently unable to sign forms, make decisions for them, or is not acknowledged by authorities, the child may internalize a message that something about their family is “illegitimate” or not accepted. This can cause stress, stigma, and anxiety. Particularly in cases involving LGBTQ+ families, children may face the added psychological burden of seeing their family relationships invalidated by law due to prejudice. This contravenes the spirit of the child’s right to non-discrimination (UNCRC Article 2 and Charter Article 21), which guarantees that children should not suffer any disadvantage because of the status of their parents (including sexual orientation or mode of conception). The *Coman* and *V.M.A.* judgments implicitly acknowledged that the children of same-sex couples must not be treated worse than those of different-sex couples. Fragmentation also can lead to separation of families: consider a situation where only one parent is legally recognized in the host state – if something happens to that parent (illness, death, or even a bureaucratic requirement that the recognized parent be the one to sign for something), the child might be left in a vulnerable position because the other parent has no rights to step in. In extreme scenarios, families have had to split up or leave a country due to non-recognition. The ECtHR has recognized that where a de facto family life exists between a child and intending parents, the state’s failure to recognize those ties violates Article 8 (the right to family life) because it fails to respect the family life that actually exists.²⁵ The Court has repeatedly ruled that it is the child who suffers from such legal gaps, and the child’s best interests – to have stability and security in their family relationships – should normally overcome abstract public policy concerns the state may have about, for example, surrogacy or the parents’ marital status.

3.5. LEGAL INEQUALITIES AND UNCERTAINTY

From the perspective of legal certainty, the current situation creates intolerable unpredictability. Parents cannot know in advance whether their family will be recognized or rejected in a given jurisdiction without embarking on costly legal proceedings in each new country. The 2022 ICF study highlighted that families face lengthy administrative and judicial procedures to establish or confirm parentage in cross-border situations – often involving duplicate lawsuits, translations of documents, and sometimes re-adoption or parentage orders in the new state.²⁶ This is financially onerous and emotionally taxing.

The study estimated that households across the EU incur hundreds of millions of euros in costs annually trying to resolve cross-border parenthood issues (court fees,

²⁵ Morel *et al.*, *op. cit.*, note 4, p. 56.

²⁶ Morel *et al.*, *op. cit.*, note 4, p. 55.

lawyers, travel), with a projected €5–12 billion aggregate cost over a decade. Likewise, national administrations and courts expend significant resources on these disputes. These are resources and energy diverted from a child's upbringing into legal battles that would be unnecessary if a uniform recognition regime existed.

Moreover, outcomes can vary dramatically even for similar facts, leading to inequalities among children. A child with two mothers moving to Country A may obtain recognition via a court order applying the child's best interests, while an essentially identical family moving to Country B may be flatly denied because that country's courts or laws take a stricter view. Such disparities are fundamentally at odds with the notion that all children in the EU are entitled to the same basic protections. The Charter of Fundamental Rights affirms that children have the right to maintain a relationship with both parents (Article 24(3)) and that in all actions concerning children, their best interests must be a primary consideration (Article 24(2)).²⁷ National divergences that cause one parent to vanish from the legal framework violate these principles by effectively denying the child the care and protection of one parent.

In summary, the failure to ensure cross-border continuity of parenthood status gravely endangers children's rights to identity, family life, and non-discrimination, and introduces harmful uncertainty into their lives. Non-recognition is not a neutral act – it actively deprives the child of protections and benefits they previously had, which is why both the CJEU and ECtHR have condemned it in strong terms. When children of same-sex or surrogate-born families are denied rights granted to other children, it amounts to unequal treatment that the EU's fundamental values cannot justify. The gravity of these risks sets the stage for examining how the law currently addresses – or fails to address – the problem, and why a better solution is needed.

4. THE CURRENT LEGAL FRAMEWORK AND ITS GAPS: BRUSSELS IIB AND BEYOND

Given the significant cross-border implications described above, one might expect that EU law would already provide a safety net to ensure parenthood is respected Union-wide. However, the legal reality is that establishing and recognizing parenthood has largely remained within the domain of national law, with only piecemeal international coordination. The historical and ideological legacies of CEE countries continue to shape their legal frameworks, leading to disparities in the protec-

²⁷ Charter of Fundamental Rights of the European Union [2000] OJ C 364/1.

tion and recognition of children's rights.²⁸ In this section, we critically examine the existing framework, highlighting its gaps and the reasons they persist. We focus first on EU legislation (particularly the Brussels IIb Regulation) and then on relevant international instruments, before turning to the stop-gap solutions provided by case law.

Brussels IIb Regulation (EU) 2019/1111 – also known as Brussels IIb or Brussels IIa Recast – is the EU's principal regulation on matrimonial matters and parental responsibility, which entered into application in August 2022.²⁹ While this recast introduced improvements in custody and child abduction procedures, it explicitly excludes issues of legal parentage from its scope. Article 1(3)(a) of Brussels IIa (and similarly in Brussels IIb) provides that the Regulation “*shall not apply to the establishment or contesting of a parent-child relationship*”. This exclusion means that Brussels IIb, like its predecessor, offers no rules on international jurisdiction, applicable law, or recognition of decisions in matters of parenthood or filiation. A judgment establishing parenthood in Member State X is not automatically recognizable in Member State Y under Brussels IIb, because such judgments fall outside its material scope.

For example, if a court in State A issued an order recognizing a man's paternity via surrogacy or a second-parent adoption by a woman's same-sex spouse, that order cannot be directly enforced in State B under Brussels IIb. By contrast, if it were a custody or contact order (parental responsibility), Brussels IIb would generally ensure recognition and enforcement across the EU. This dichotomy is a crucial gap: parental *responsibility* rights travel, but the basic legal fact of *parenthood* does not necessarily travel.

The rationale for excluding parentage from Brussels IIa/IIb was historically tied to Member State sensitivities. “Family law” in matters of status (marriage, filiation, adoption) is seen as touching on national identity, cultural and moral values. Under the EU Treaties, any measures in the field of family law with cross-border implications require unanimity in the Council (TFEU Article 81(3)),³⁰ giving each Member State a veto. As a result, EU legislators have trodden carefully – Brussels IIa (2003) was ground-breaking in covering divorce and parental responsibility,

²⁸ Váradi-Csema, E., *Children's Rights and the Criminal Protection of Minors*, in: Gárdos-Orosz, F.; Varga, Zs. (eds.), *Criminal Legal Studies: Legal Studies on Central Europe*, Central European Academic Publishing, Miskolc–Budapest, 2022, pp. 413–435.

²⁹ Regulation (EU) 2019/1111 of the European Parliament and of the Council of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) [2019] OJ L178/1 (Brussels IIb Regulation).

³⁰ Treaty on the Functioning of the European Union (TFEU) (Lisbon).

but parentage was a bridge too far at that time. Two decades on, Brussels IIb still avoids the issue, reflecting the reality that Member States did not yet agree to bring filiation into EU competence. Some states likely feared that including parentage recognition could force them to accept results (like parentage through surrogacy or of same-sex partners) that contradict their domestic public policy. Indeed, the Regulation's recitals and the legislative history indicate that matters of civil status are left to national law. This cautious approach, however, has perpetuated an uneven patchwork. EU law has frameworks for recognizing foreign judgments in civil and commercial matters, and even for many family-related orders (maintenance, custody, child abduction), but the *family status* of a child is essentially ungoverned at the EU level.

International law offers only partial remedies. Several Council of Europe conventions exist on family status (for example, the 1967 European Convention on the Adoption of Children,³¹ revised in 2008,³² and conventions by the International Commission on Civil Status (CIEC) on recognition of surnames,³³ etc.), but these have limited uptake and often exclude controversial scenarios. The 1967 Adoption Convention (revised 2008) sets some common principles on adoption, but not all EU states are party and it does not ensure automatic cross-border recognition of adoptions in all cases. For instance, it doesn't guarantee that an adoption by an unmarried couple in State A will be accepted in State B. The CIEC conventions, where applicable, facilitate cooperation among civil registrars, but again not all EU countries participate.

More significant is the 1993 Hague Adoption Convention, to which all EU Member States are now party.³⁴ This Convention does require recognition of adoptions made in other contracting states, *if* the adoption falls under the Convention's scope (essentially, an adoption where the child was habitually resident in one state and moved to the adoptive parents' state). The Hague Convention greatly helps in typical intercountry adoption cases, but it does not cover all possible adoption scenarios. Specifically, domestic adoptions that later need recognition abroad, or

³¹ European Convention on the Adoption of Children, Council of Europe, opened for signature 24 April 1967, entered into force 26 April 1968, European Treaty Series No. 58.

³² European Convention on the Adoption of Children (Revised), Council of Europe, opened for signature 27 November 2008, entered into force 1 September 2011, Council of Europe Treaty Series No. 202.

³³ International Commission on Civil Status, Convention No. 4 on the Changes of Surnames and Forenames, signed at Istanbul on 4 September 1958, entered into force 16 February 1961.

³⁴ Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, concluded 29 May 1993, entered into force 1 May 1995, Hague Conference on Private International Law.

adoptions by couples not recognized in the other state (e.g. same-sex or unmarried) are not conclusively handled by the Convention.

Another avenue, the European Convention on Human Rights (ECHR),³⁵ isn't a direct recognition mechanism but sets human rights standards that indirectly pressure states to recognize foreign family ties to avoid violating Article 8 (right to private/family life). We will discuss ECtHR case law shortly; suffice to say here that while the ECtHR can declare a violation, it does not itself register a child's parentage – the state still must implement a solution.

As a result of these gaps, the burden falls on families to navigate a conflict of laws thicket. In practice, when facing a cross-border parenthood issue, a family might have to rely on national private international law (PIL) rules of the host country. Some Member States have introduced conflict rules or legislative fixes: for example, a country may allow recognition of a foreign birth certificate unless it manifestly contravenes public policy. But “public policy” (*ordre public*) is a notoriously subjective exception. One state's protective public policy (e.g. upholding traditional parentage) is another state's violation of child rights.

From a children's rights perspective, the status quo is untenable. The Office of the UN High Commissioner for Human Rights has underlined that every child has the right “*to recognition everywhere as a person before the law*” (echoing Article 7 UNCRC).³⁶ The fragmentation in the EU undermines this by making a child's legal personhood (in terms of who their parents are) variable by jurisdiction. The fundamental rights implications have not been lost on EU institutions. The European Commission explicitly acknowledged that non-recognition of parenthood *interferes with multiple fundamental rights*: the right to private and family life (ECHR Article 8; EU Charter Article 7), the right to identity and to have one's birth registered (stemming from UNCRC Article 7), and the right to non-discrimination (Charter Article 21). In fact, a host State's failure to recognize family ties lawfully established elsewhere can amount to a violation of the child's and parents' rights under both the ECHR and the EU Charter. The ECtHR has repeatedly held that where a *de facto* family life exists, a state must provide a legal possibility to recognize that relationship; outright refusal is usually a disproportion-

³⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), adopted 4 November 1950, entered into force 3 September 1953, Council of Europe, ETS No. 5.

³⁶ OHCHR, Birth Registration and the Right of Everyone to Recognition Everywhere as a Person Before the Law, United Nations, 2014, available at: [<https://www.ohchr.org/en/documents/thematic-reports/ahrc2722-birth-registration-and-right-everyone-recognition-everywhere>], Accessed 28 March 2025.

tionate interference with Article 8. This was established in cases like *Mennesson* and *Labassee* (France’s refusal to recognize foreign surrogacy parentage violated the child’s right to identity), and *Wagner* (Luxembourg’s non-recognition of foreign adoption violated Article 8). Given these human rights pressures, national courts and the CJEU have attempted to plug the gaps case by case.

Despite these judicial interventions, the current framework remains unsystematic. Families ideally should not have to litigate up to Strasbourg or Luxembourg to have their parenthood respected. The cases we’ve discussed – *Coman*, *V.M.A.*, *Mennesson*, etc. – are the tip of the iceberg, likely representing only a fraction of affected families (many of whom either avoid travel or endure hardships in silence).

5. TOWARD MUTUAL RECOGNITION - POLICY OPTIONS AND PROPOSED SOLUTIONS

Acknowledging the problems detailed above, European institutions have moved the issue of cross-border parenthood up the agenda. There is growing consensus that an EU-level solution is required to ensure that children’s familial status is respected across the Union. In this section, we explore the policy options that have been considered, with a focus on the European Commission’s recent proposal for a Regulation on the recognition of parenthood.³⁷ We also touch upon complementary or alternative mechanisms (such as international conventions or soft law) and evaluate how each might address the identified gaps.

On 7 December 2022, the European Commission adopted a proposal for a Regulation on private international law rules relating to parenthood, aiming to harmonize how parenthood established in one Member State is recognized in others. The proposal’s guiding principle is simple yet profound: if you are a legal parent in one EU country, you will be considered a parent in all EU countries, for all purposes. The core elements of the proposed regulation include:

Uniform Rules on Jurisdiction and Applicable Law: The proposal would set out which country’s courts have the authority to establish parenthood in cross-border situations and which country’s law applies to determine who the parents are. By unifying these rules, the regulation seeks to avoid situations where, for example, two countries each claim a different person as the parent or where no country accepts jurisdiction to establish parentage for a child. Consistent jurisdiction rules prevent parents from “forum shopping” or conversely, from being left without a

³⁷ European Commission, Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, COM(2022) 695 final, 7 December 2022.

forum. Consistent choice-of-law rules mean that the question “who is this child’s parent” will have the same answer irrespective of which Member State you ask, because they will all refer to the same applicable law criteria. This by itself increases predictability: parents will know under which law their status is determined (often this might be the law of the child’s habitual residence or of the birth).

Mutual Recognition of Parenthood: At the heart of the proposal is the obligation for every Member State to recognize the parenthood established in another Member State. This covers parenthood as evidenced either by a court decision or an “authentic instrument” (e.g. a notarized act or civil registry record) from the country of origin. In practice, this means if a child has a birth certificate or court order from Country A confirming X and Y as the parents, Countries B, C, and so on should accept X and Y as the legal parents with no need for re-litigation or re-registration. The recognition is intended to be automatic and for “all purposes” – meaning not just for EU free movement, but for any legal context (school enrollment, inheritance, etc.). There will, however, be limited exceptions: the Commission recognizes that some Member States might insist on a public policy escape hatch. The draft provides for “strictly defined exceptions” where recognition could be refused, but critically, any refusal must be evaluated case-by-case and in a non-discriminatory way. For example, a Member State might raise an exception if recognizing a particular parent-child relationship would be manifestly contrary to its fundamental principles (its public policy). But the text emphasizes that even public policy cannot be used arbitrarily, especially not in a way that discriminates against children of same-sex parents or other vulnerable groups. The expectation is that refusals would be very rare – perhaps conceivable in cases involving, say, clear abuse of process or something truly against *ordre public* – and even then subject to the overriding requirement to respect the child’s best interests and fundamental rights.

European Certificate of Parenthood (ECP): Taking inspiration from the successful European Certificate of Succession (used in inheritance matters), the proposal introduces a European Certificate of Parenthood. This would be an official document that families can obtain to easily prove parenthood across the EU. The ECP would be issued by a national authority (likely the civil registry or a designated office in the Member State where the child’s parenthood was originally established) and would contain standardized information about the child and parent(s). Crucially, it would not replace national birth certificates; it is optional and complementary. A parent could request an ECP, which would then be honored in all other Member States without the need for further formalities. The ECP is meant to be a user-friendly tool: for instance, if a Spanish birth certificate of a child with two mothers might confuse or alarm an official in another country,

an ECP – being an EU-recognized form – could smoothly demonstrate the legal parenthood. The ECP would contain key details such as the child’s name, date/place of birth, and the names of the parent(s) (potentially using neutral terms like “Parent 1 / Parent 2” to avoid gendered language that might trigger bias).

Scope and Limits: The regulation is proposed under the justice cooperation competence (Article 81 TFEU), which means it binds all Member States except Denmark (which has an opt-out in justice matters) and possibly Ireland (which can choose to opt in or out). So at minimum it would cover 26 Member States, and potentially 27 if Ireland opts in. The proposal intentionally does not force any Member State to change its substantive family law internally. For example, a country that prohibits surrogacy or does not allow same-sex marriage would remain free to keep those bans domestically. The regulation would not oblige that state to start allowing surrogacy arrangements on its soil; it would only require that state to recognize a parent-child relationship that was validly established in another state. This distinction is crucial for acceptability: it respects national sovereignty over family law definitions, while ensuring children are not harmed by those differences once a status has been created elsewhere. In essence, it tries to decouple status recognition from status creation. The idea is that recognizing a child’s existing legal parentage is a matter of that child’s rights and does not equate to endorsing or permitting the underlying process (be it surrogacy, adoption by a same-sex couple, etc.) in the recognizing state. The proposed regulation also clarifies that recognition duties apply regardless of how the child was conceived or the type of family (so it explicitly covers children born through ART, surrogacy, etc., and families of all constellations). However, it does not extend to recognition of parenthood established in non-EU countries – that remains subject to national law. The focus is on intra-EU situations, which is where the Union has the strongest interest and where mutual trust can be fostered. (That said, if this regulation is adopted, Member States might in practice also become more receptive to foreign parenthood cases generally).

The Commission’s objectives with this regulation are explicitly framed around children’s fundamental rights. The official rationale is to strengthen the protection of the fundamental rights of children in cross-border situations, including their right to identity, to non-discrimination and to family life, taking the child’s best interests as a primary consideration. This language reflects the influence of the UNCRC and the Charter. By proposing this law, the Commission has aligned itself with the principle that no child should be worse off just because their family is cross-border or non-traditional. The proposal is a clear response to the type of hardships documented: it cites how children can lose rights to inheritance or

maintenance when parenthood isn't recognized, and how currently families face administrative burdens and emotional distress.

The Commission's proposal, ambitious as it is, faces a challenging political path. Since it touches on sensitive matters (LGBTQ+ rights, surrogacy), unanimous approval by Member States is not guaranteed. However, there are encouraging signs. The European Parliament strongly backed the proposal in a plenary vote on 14 December 2023, with 366 votes in favor versus 145 against.³⁸ The Parliament's endorsement sends a political message that a majority of Europe's representatives agree with the principle of EU-wide parenthood recognition, regardless of sexual orientation of the parents or means of the child's birth. Members of European Parliament emphasized ending discrimination and the unequal treatment of "rainbow families" as a key goal of the regulation. The Parliament's support is important because, although family law measures use a special legislative procedure (Council unanimity with mere consultation of Parliament), it increases pressure on the Council to find consensus. It also reflects a shift in attitudes: many governments might now find it harder to openly oppose something framed as protecting children.

Still, opposition exists, primarily from certain more conservative governments. Some argue that recognizing parenthood from abroad, particularly in cases of surrogacy, might incentivize practices they prohibit at home (often labeled "surrogacy tourism" concerns). Others raise the specter of this undermining national identity or constitutional definitions of family. The Commission has attempted to allay these fears by the proposal's careful design: no change to domestic family law, only recognition of status for children's sake. The concept of public policy exception remains as a safety valve, albeit one to be used sparingly and under judicial oversight to ensure it's not covering arbitrary discrimination.

Another aspect of viability is practical implementation. The European Certificate of Parenthood would require each Member State to set up procedures to issue it. This entails training civil registrars, possibly digitizing records, and ensuring a quick turnaround so that families can get the certificate when needed (e.g. before a move). The regulation would likely also create a network or designate central authorities to facilitate information exchange (similar to what exists under Brussels IIb for child abduction, etc.), so that if any question arises about an ECP or a foreign birth certificate's authenticity, officials can verify details promptly. These

³⁸ Baccini, F., *EU Parliament with the Commission: parenthood to be recognized in all member states, against discrimination*, EUNews, 14 December 2023, available at: [<https://www.eunews.it/en/2023/12/14/eu-parliament-with-the-commission-parenthood-to-be-recognized-in-all-member-states-against-discrimination/>], Accessed 28 March 2025.

are surmountable logistical tasks, especially since a lot can be modeled on existing systems for documents like the European Succession Certificate or even the EU Digital COVID Certificate (which showed Member States can cooperate on issuing standard documents). It is imperative that EU Member States adapt their legal systems to address the evolving challenges posed by digital environments, ensuring that children's rights are uniformly protected across borders.³⁹

European legal systems often fail to translate abstract commitments into tangible protections for children.⁴⁰ The proposed EU Regulation and the European Certificate of Parenthood are therefore not merely legislative instruments, but vital tools to finally align legal practice with the child-centered values already enshrined in the UNCRC and EU Charter.

In the next and final section, we present concrete recommendations – both practical steps and normative guidance – to ensure that the emerging EU framework truly delivers cross-border family security with children's best interests at the center.

6. CONCLUSION

Family life in Europe is diverse and dynamic, but the guiding principle must be constant: the child's rights transcend borders. The fragmentation of parenthood recognition across EU Member States has persisted as an anomaly in an otherwise integrated Europe – a painful gap where children's identities and security fall through. As we have shown, this gap exposes children to tangible harms and fundamental rights violations, from bureaucratic limbo to deep personal trauma. However, the momentum for change is undeniable. Through careful doctrinal analysis and the advocacy lens of children's rights, this paper has illuminated both the problem and the pathway to its solution.

The critical analysis of the status quo underscored that instruments like the Brussels IIb Regulation, while valuable in other respects, stop short of protecting children's family status. Judicial developments – the CJEU's recognition of “functional” family ties for free movement and the ECtHR's insistence on legal parentage for surrogate-born children – have laid important stepping stones. Yet, relying on case-by-case court battles is neither efficient nor fair to children, who cannot wait through protracted litigation during their formative years. The European Union,

³⁹ Guštin, M., *Challenges of Protecting Children's Rights in the Digital Environment*, EU and Comparative Law Issues and Challenges Series (ECLIC), Vol. 6, 2022, pp. 453–486.

⁴⁰ Rešetar, B.; Emery, R., *Children's Rights in European Legal Proceedings: Why Are Family Practices So Different from Legal Theories?*, Family Court Review, Vol. 46, No. 1, 2007, pp. 65–77.

founded in part to ensure freedom, security and justice without internal frontiers, cannot fulfill that mission if a child's parent suddenly vanishes at a border checkpoint.

Encouragingly, the EU is on the cusp of a landmark reform. The proposed Regulation on cross-border recognition of parenthood, complete with a European Certificate of Parenthood, embodies the principle that a child's legal parent-child relationship is portable and must be respected everywhere in the Union. It reflects what should be self-evident: when a family enters a new country, they do not cease to be a family. Adoption of this Regulation would mark a quantum leap forward for children's rights in Europe – filling the void that has left too many families in uncertainty. It would give practical reality to the rights enshrined in the UNCRC, the EU Charter, and the case law: the right to an identity, to non-discrimination, to family life, and to have one's parents care for you without legal obstacle.

Of course, laws on paper alone will not suffice. That is why we need to emphasize implementation and broader recommendations: ensuring authorities embrace the new tools, courts uphold the spirit of mutual recognition, and stakeholders remain vigilant to put children's best interests first. A change of this magnitude also carries symbolic weight – it sends a message to every child in the EU that you matter, your family matters, and we, as a society, will protect that. Achieving parenthood without borders in the EU requires not only legislative adoption but implementation and a firm commitment to children's rights in practice. Member States should urgently approve the proposed EU Regulation. It ensures that parenthood established in one Member State is recognized across the EU, with narrow and exceptional public policy exclusions. National authorities should swiftly designate issuing bodies, ensure a uniform and secure certificate format, and promote awareness among officials and the public. The ECP must contain only essential, non-discriminatory data and be recognized as conclusive proof of parenthood EU-wide. Monitoring systems and feedback loops should be established to address operational challenges. All decisions on recognition must default to protecting the child's legal, emotional, and social continuity. Authorities should be legally required to assess the child's welfare before any refusal. Judges, registrars, and civil servants should be trained to apply this principle consistently. While substantive family law remains national, Member States should streamline administrative procedures for recognizing foreign parenthood and consider reforms—such as allowing second-parent adoption or clarifying surrogacy outcomes—to reduce cross-border conflicts. These recommendations aim to ensure that the legal reforms don't exist in a vacuum but are effective on the ground. The overarching theme is that children's rights and best interests must lead every step – from law-making to day-to-day administration.

In advocating for an EU system that places the child at the center, we are reminded of the simple yet profound truth that children themselves voiced in debates around these issues: “*I just want both my parents to be my parents everywhere.*” No legal technicality should ever stand in the way of that modest wish. The EU’s motto is “United in Diversity.” It is time to extend that unity to family law, by recognizing the rich diversity of family forms and ensuring that every child, regardless of how or where they were born or who their parents are, can rely on a continuum of care and legal recognition across borders.

Parenthood without borders is not a radical slogan – it is an affirmation of the core European values of equality, dignity, and the rule of law. It means a child from Paris to Warsaw, Madrid to Sofia, can hold an official document (a birth certificate or an ECP) and know that it speaks the same truth in any language: “These are my parents, and I am their child.” In a Europe that aspires to break down barriers, the last barriers falling should be those that separate a child from their parent. The reforms and recommendations discussed herein chart a course to that destination. The best interests of Europe’s children demand nothing less.

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