Adoption in the proposal for a European Parenthood Regulation

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Recently, an article I wrote about adoption in the proposal for a European Parenthood Regulation was published in the Dutch *Journal of Family and Youth Law* (*Tijdschrift voor Familie- en Jeugdrecht*, 2026/3). This article examines the uncertainties and gaps in the regulation of adoption and argues for an autonomous European Adoption Regulation to adequately govern international adoptions. Below is a summary in English of the article.

Introduction

On 7 December 2022, the European Commission submitted a Proposal for a European Parenthood Regulation to govern jurisdiction, applicable law, and the recognition of decisions and authentic instruments relating to parenthood (COM(2022) 695 final). Although adoption is mentioned in the proposal, it remains to a significant extent unclear which types of adoption are covered by the proposal and how these adoptions are regulated. The proposal refers to adoption in three provisions—articles 1(2), 3(2)(e) and 66(3)—while explicitly excluding international (Dutch version) or intercountry (English version) adoption from its scope (article 3(2)(e)). This raises questions concerning the proposal's formal scope, since the terms 'international adoption' and 'intercountry adoption' are not synonymous.

Furthermore, it is initially unclear which substantive forms of adoption are governed by the proposal, since this is not explicitly stated in the provisions. The explanatory memorandum and recitals provide some guidance, but in certain cases it is necessary to consult additional documents to fully understand the material scope, and even then, some aspects remain ambiguous.

The unclear formal and material scope in relation to adoptions is indicative of the inadequate regulation of international adoption law in the proposal. The proposal also remains unclear, incomplete, or even entirely silent on several other essential

points. The article addresses the scope of the proposal, and then three questions: whether the proposed international jurisdiction rules and conflict-of-laws rules also apply to adoptions (point 2 below), what the legal consequences are of recognising a foreign adoption (point 3 below), and whether the proposal also governs the (recognition of) conversion of a "simple" or "weak" adoption, *i.e.*, an adoption which does not cut off the legal family ties between the child and the family of origin, into a "strong" or "full" adoption, *i.e.* an adoption which does cut off these ties (point 4 below).

1 Scope of the proposal with respect to adoption

1.1 Formal scope

a) Domestic adoptions (non-intercountry adoptions)

The proposal distinguishes between *domestic adoptions* (non-intercountry adoptions), and *intercountry adoptions*. Domestic adoptions, where the child and the adoptive parent(s) reside in the same Member State, fall implicitly within the scope, whereas intercountry adoptions—where the child is transferred across borders due to or with the purpose of the adoption—are excluded (article 3(2)(e)). This creates uncertainties, for example, in situations where one adoptive parent resides in another Member State. It is therefore recommended that the regulation explicitly apply to *non-intercountry adoptions*, after which this term should be clearly defined. In my view, this definition should include situations where one adoptive parent resides in another Member State, as long as there is no cross-border transfer of the child. Furthermore, for the sake of clarity, the regulation should also define precisely what is meant by an excluded 'intercountry adoption'.[1] However, the proposal is criticised for excluding intercountry adoptions that fall outside the 1993 Hague Adoption Convention, which could lead to "limping adoptions' within the EU, *i.e.* adoptions that are valid in one Member State, but not in another.

b) Adoptions from a Member State

Furthermore, the proposal is limited to the recognition of non-intercountry adoptions *from a Member State* and excludes adoptions from third countries (article 3(3)). However, I argue that it is conceivable that a European regulation

could include recognition rules for decisions from third countries, as the EU appears to have the competence to do so.[2] A uniform recognition policy would increase legal certainty within the Union by providing a clear framework for when (adoption) decisions from outside the EU should or should not be recognised. This would eliminate the need for Member States to rely on national recognition rules and would generally prevent “limping” third-country adoptions.[3] However, the political feasibility of such rules remains questionable.

The article questions whether the proposal requires Member States to recognise a decision from another Member State that recognise a third-country adoption. The proposal does not explicitly address this issue. However, expert group reports suggest that such recognitions would not automatically circulate between Member States.[4] Since the proposal does not clearly regulate this matter, it is recommended that the Regulation specify whether it applies to these cases. Several authors, including Barth,[5] and Kohler and Pintens,[6] oppose the application of European recognition rules to recognition decisions made by Member States. In principle I oppose them too, as this could make the public policy of one Member State decisive for the others.[7] For this reason, a common European recognition policy for third-country adoptions is preferable,[8] although its political feasibility is questionable.

1.2 Material scope

a) Legal parent-child relationship

Only adoptions that establish a legal parent–child relationship are implicitly included in the proposal, so it does not seem to cover forms of care such as *kafala* or foster care.

Recital 26 refers to adoptions that establish a *permanent* parent-child relationship. This raises the question of whether the proposal only covers irrevocable adoptions, meaning adoptions that cannot be undone in the Member State where they were established. However, I believe this is not the case; rather, the intention seems to be that a genuine legal filiation bond must have been created. It is preferable that this be explicitly clarified in the proposal, as is done in het Hague Adoption Convention of 1993 (Article 2(2)), to avoid any misunderstandings.

Recital 26 further indicates that the proposal covers both “full” adoptions—which sever legal ties with the biological family—and “simple” adoptions, where those ties remain. However, this is not expressly regulated. The recitals refer to whether the “legal relationship” between the child and the family of origin is ended or maintained, but since the term “legal relationship” can be interpreted more broadly than “family-law relationship,” it would be preferable to use the latter term.

The proposal is silent on whether family-law relationships are created between the child and the legal relatives of the adoptive parent(s), even though this is essential given the distinct legal consequences of adoption compared with regular parentage. The absence of any mention regarding these relevant forms of establishment might suggest that, for the purposes of the proposed regulation, it is immaterial whether they are used. However, this is not certain, and an explicit provision on this point would be preferable.

b) Judgments and authentic instruments with binding effect

According to Article 1, the proposal covers the recognition of both judicial decisions (Article 24 *et seq*.) and authentic instruments with binding legal effects (Article 36 *et seq*.). However, there is considerable uncertainty regarding the distinction between these two types of instruments, particularly as authentic instruments with binding effects presumably do not exist within the European Union.[9] With respect to adoptions, the proposal does not apply to purely contractual adoptions or those established automatically by law. However, such forms do not occur in the European Union.

c) Minor and adult adoptions

Article 4(2) indicates that the proposal covers both minor and adult adoptions, as the term ‘child’ is defined as ‘a person of any age whose parentage must be established, recognised or proved’. While the provision primarily focuses on regular parent-child relationships, if it is accepted that the proposal also applies to adoptions, then the age of the child at the time of adoption appears to be irrelevant.[10]

d) No requirements regarding the adoptive parent(s)

Finally, the proposal does not impose specific requirements regarding the status

of adoptive parents. Article 4 refers to “a particular parent or parents” and “any parent”. This indicates that the proposal covers single-parent adoptions—including stepparent or partner-of-parent adoptions—as well as adoptions by two persons jointly, without setting requirements relating to the marital status or sexual orientation of the adoptive parent(s). The European Commission has thus opted for the broadest possible material scope of application in this regard.[11]

2. **International jurisdiction and applicable law**

Although the proposal clearly provides for the recognition of domestic adoptions from Member States, it remains unclear whether the rules on international jurisdiction and conflict-of-laws are applicable to adoption.

The explanatory memorandum and Recital 25 indicate that the proposal does not apply to parentage in purely domestic situations without cross-border elements, such as a domestic adoption that takes place entirely within a single Member State. In this respect, the European Commission appears to assume that non-intercountry adoptions are, by definition, domestic cases without any cross-border aspect. However, this assumption is demonstrably incorrect. In fact, a non-intercountry adoption may well have an international character, for example, where the adopted child and/or the adoptive parent(s), though habitually resident in the same Member State, hold the nationality of another Member State or a third country. In such cases, there is in fact an *international* non-intercountry adoption, which raises questions about whether the court addressed has international jurisdiction to decide on the adoption request and which law should be applied. These questions of jurisdiction and applicable law seem to be left out, however.

Nevertheless, scholars suggest that the proposed international jurisdiction and conflict-of-law rules do apply to adoptions.[12] However, some of them argue that these rules are unsuitable for adoptions, as they are not primarily designed to prioritise the best interests of the child or to grant jurisdiction to the court best placed to assess those interests.[13]

The prevailing opinion in the literature thus seems to be that the proposed international jurisdiction and conflict-of-law rules do indeed apply to adoptions

but are nevertheless unsuitable. In my view, however, this position cannot be reconciled with the wording of the regulation, its explanatory memorandum and the recitals. My conclusion is therefore that these rules are not applicable to adoptions. They are clearly drafted solely for regular parentage relationships. Although the European Commission sought to regulate the recognition of non-intercountry adoptions from a Member State under the regulation, it has otherwise left international adoption law untouched. Since there appears to be differing views on this matter, clarity is needed on this point.[14] There should be specific private international law rules on adoption.

3. **Legal effects of recognising foreign adoptions**

The proposal does not explicitly address the legal effects of recognising a foreign adoption, leaving unclear what exactly is recognised. Case law of the Court of Justice of the European Union suggests that a recognised decision must be granted the same authority and effect as in the Member State of origin (*Hoffman/Krieg*; *Apostolides/Orams*; *Prism Investments/v/d Meer*; *Gothaer Allgemeine Versichering/Samskip*; *BNP Paribas SA/TR*). But what does this mean for the recognition of an adoption?

It goes without saying that recognition should at the very least include the legal parent-child relationship between the child and the adoptive parent(s), since establishing such legal relationships is the fundamental aim of the proposal. Nevertheless, it seems desirable that this be explicitly clarified, so that there can be no doubt—especially in the case of simple adoption.

But does it end there? Should the creation of new family-law ties between the child and the legal relatives of the adoptive parent(s), as well as the possible severance of the original family-law relationships, also be recognised under the proposal, or are these legal consequences left to the ordinary law of the Member States? Perhaps the previously mentioned principle of the Court of Justice can or should be interpreted broadly, so that these legal consequences must also be recognised when they have arisen in the Member State where the adoption was pronounced. However, whether this is the case remains uncertain.

The foregoing leads me to conclude that an explicit provision is necessary, clearly stating the legal consequences of recognising either a full or simple adoption for

the legal parentage of the individuals concerned. This is essential to prevent Member States from taking divergent approaches, which could result in inconsistent or limping family law relationships across borders. In my view, it should simply be stipulated that the recognition of a foreign adoption means that *all* legal consequences for the lineage of those concerned are recognised—no more, no less. Such a provision is not only essential for achieving the objectives of the proposal, namely legal certainty and predictability—but is also dogmatically necessary.[15] By its very nature, adoption concerns both the creation of new family-law relationships and the possible dissolution of existing ones, and, consequently, the recognition of a foreign adoption also pertains to these aspects.[16] In short, if new family-law ties have been established between the child and the legal relatives of the adoptive parent(s) in the Member State where the adoption took place, or if the original family-law relationships have been severed there, then not only should the legal parent-child relationship between the child and the adoptive parent(s) be recognised, but these additional legal consequences should be recognised as well. Other possible legal consequences, such as those relating to parental authority, maintenance, name and inheritance, do not fall within the scope of the concept of adoption and therefore remain governed by their own private international law rules. This aligns with Article 3(2) of the proposal, which states, among other things, that the regulation does not apply to parental responsibility (subsection b), maintenance obligations (subsection f) and succession (subsection g).

4. **Conversion of simple adoptions into full adoptions**

The proposal does not explicitly address the conversion of simple adoptions into full adoptions, an important issue in adoption law whereby original family-law ties are severed. Although the EU lacks competence to regulate substantive family law, it may be able to adopt at least recognition rules for conversion decisions. The absence of such rules may lead to legal uncertainty about a child's legal parentage across Member States, which may also affect the child's identity development. Greater clarity and regulation in this area are therefore necessary.

By way of conclusion: argument for an autonomous European Adoption

Regulation

In the article I argue that the current proposal insufficiently accounts for the special nature and legal consequences of adoption. International adoptions merit an autonomous and clear regulation within European private international family law. A separate European Adoption Regulation would provide space to address adoption-specific issues such as recognition, conversion, jurisdiction, and conflict-of-law rules. Common recognition rules are necessary to prevent “limping adoptions” and to enhance legal certainty for all parties involved. Although political feasibility poses challenges, a separate regulation is seen as the most effective way to regulate international adoptions within the EU.

In sum, the proposed European Parenthood Regulation insufficiently regulates adoption and fails to acknowledge the unique legal consequences associated with it. International adoptions require an autonomous European Adoption Regulation that offers room for careful and effective governance, with the aim of ensuring legal certainty and predictability for all involved, in particular the children.

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[1] See also European Group for Private International Law (EGPIL), *Observations on the Proposal for a Council Regulation in matters of Parenthood*, 2023, https://gedip- egpil.eu/, p. 2, no 7, and C. Budzikiewicz e.a., *The Marburg Group’s Comments on the European Commission’s Parenthood Proposal*, Cambridge: Intersentia 2024, https://epub.ub.uni- muenchen.de/, pp. 10- 11.

[2] See also A. Bonomi, ‘European private international law and third states’, *IPRax* 2017, pp. 190- 191; D. Martiny, ‘The recognition and enforcement of court decisions between the EU and third states’, in: A. Trunk & N. Hatzimihail (red.), *EU civil procedure law and third countries. Which way forward?*, Baden- Baden: Nomos Verlagsgesellschaft 2021, pp. 129- 130 en 138.

[3] Compare Bonomi 2017, pp. 190- 191, and Martiny 2021, p. 132 (note 3). See also S.M. Carbone, ‘What about recognition of third states’ foreign judgments?’, in: F. Pocar, I. Viarengo & F.C. Villata (red.), *Recasting Brussels I*, Milaan: Cedam 2012, p. 301 en W. Hau, ‘Unified European rules on the recognition and enforceability of third- country judgments’, *Law & Criminology Journal* 2025, par. 3.

[4] Minutes of 7 February 2022, of the 5th Meeting of the Expert Group on the recognition of parenthood between Member States, 2 December 2021, and Minutes of 20 February 2022, of the 6th Meeting of the Expert Group on the recognition of parenthood between Member States, 9 February 2022.

[5] M. Barth, 'Parent in every country? – Der Kommissionsvorschlag einer EU Abstammungs- VO mit Europäischem Elternschaftszertifikat', *Studentische Zeitschrift fur Rechtswissenschaft Heidelberg Wissenschaft online* 2023, p. 26.

[6] C. Kohler & W. Pintens, 'Entwicklungen im europäischen Personen-, Familien- und Erbrecht 2022- 2023', *FamRZ* 2023, p. 13, note 15.

[7] Compare C.G. van der Plas, A.F. Veldhuis & B.H.B. Verheul, 'Automatische erkenning en tenuitvoerlegging van vonnissen in het Europa van nu: de noodzaak van een nieuwe blik op wederzijds vertrouwen na *J/H Limited*', *NIPR* 2024, p. 263.

[8] See also C. González Beilfuss & I. Pretelli, 'The proposal for a European Regulation on Filiation Matters – Overview and Analysis', *Yearbook of Private International Law* 2022/2023, p. 292.

[9] Marburg Group 2024, p. 77 (note 1); C. Mayer, 'Keine verfahrensrechtliche Anerkennung von beurkundeten oder registrierten familienrechtlichen Rechtsgeschäften innerhalb der EU', *RabelsZ* 2025, p. 753 *et seq*.

[10] See also P. Twardoch, 'Regulating international filiation law at the EU- level. Comments on applicable law under the European Commission's Proposal', *European Review of Private Law* 2024, p. 276.

[11] See also D. Danieli, '"Third- state connections" in the proposal for an EU Regulation on parenthood: More than a regime of circulation of status between member states?', *Cuadernos de Derecho Transnacional* 2023, p. 1392- 1393.

[12] González Beilfuss & Pretelli 2022/2023, p. 291 en 296 (note 8); A. Fillers, 'Proposal for the Regulation in matters of Parenthood: A critical overview of jurisdiction and conflict- of- laws rules', in: *Revisiting the limits of freedom while living under threat. I*, Collection of research papers in conjunction with the 9th International Scientific Conference of the Faculty of Law of the University of Latvia, 2024, p. 227; Marburg Group 2024, p. 50-51 (note 1); Twardoch 2024, p. 275- 276 (note 10); I. Queirolo, 'The proposed EU Regulation on Parenthood: A

critical overview of the rules on jurisdiction', *The European Legal Forum* 2024, p. 3.

[13] Beilfuss & Pretelli 2022/2023, p. 291 (note 8); Observations EGPIL 2023, p. 1, No 4 (note 1); Fillers 2024, p. 228 *et seq.* (see note 12); Marburg Group 2024, p. 50-51 (note 1).

[14] See also Twardoch 2024, p. 289 (see note 10).

[15] A. Mens, *Erkenning en omzetting van buitenlandse adopties in Nederland. Over de betekenis van beide fenomenen in het Nederlandse internationaal privaatrecht*', diss. 2024, par. II.3.2.2.1.

[16] Ibid, par. II.1.3.2, II.3.2.2.1, III.1.3.2, III.4.3.2, and III.6.3.2.