"Third-State connections" in the proposal for an EU regulation on parenthood: more than a regime of circulation of the status between Member States?*

Conexiones con terceros Estados en la propuesta de reglamento europeo en materia de filiación: ¿más que un régimen de circulación del estatuto personal entre Estados miembros?

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Abstract: Starting from the main features of the scope of application of the proposal for an EU regulation on parenthood, the paper follows a cross-cutting assessment with a view to determining whether, and how, the proposed instrument considers the elements of connection that a parent-child relationship may have, in a given case, with States that are not members of the EU. Some final considerations are then proposed on the possible policy grounds underlying the analysed provisions.
Keywords: parenthood; EU regulation proposal; non-EU States; fundamental rights.

Resumen: Partiendo de las principales características del ámbito de aplicación de la propuesta de reglamento europeo en materia de filiación, este trabajo sigue una evaluación transversal para determinar si, y cómo, el instrumento propuesto considera los elementos de conexión que una filiación puede tener, en un caso dado, con Estados que no son miembros de la UE. A continuación, se proponen algunas consideraciones finales sobre los posibles motivos políticos subyacentes a las disposiciones analizadas.
Palabras clave: filiación; propuesta de reglamento europeo; terceros Estados; derechos fundamentales.

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I. Introduction: the context and objectives of the proposal for an EU regulation on parenthood

1. The continuity of the parenthood status within the European Union (EU) has become the subject matter of a recent proposal for a regulation, grounded on the legal basis of Article 81.3 TFEU, that was published by the European Commission on 7 December 2022[1] (hereinafter also «proposal»). This instrument builds on a highly sensitive and debated legal issue, which not only imposes to primarily protect the fundamental rights of the individuals concerned and to strike a balance with the constitutive values of national legal orders, but in the European framework further requires to consider the allocation of competences between the EU and the Member States. The scope of the proposal covers all aspects of private international law, namely providing uniform rules concerning jurisdiction and law applicable to cross-border parenthood, as well as on recognition of decisions and acceptance of authentic instruments in this field, and it additionally creates an optional standard form to facilitate the circulation of the status (i.e. the European Certificate of Parenthood – ECP)[2]. The main goal is therefore to grant an effective protection to the fundamental rights and other rights of children, which may be negatively affected by the non-recognition of parenthood (or for limited purposes) between Member States, and furthermore, to ensure legal certainty and predictability to the relevant legal regime and to streamline the costs and legal requirements for claiming recognition of the status in another Member State.

2. The legislative initiative was announced already in 2020 in the State of the Union address delivered by the President of the European Commission von der Leyen[3], then subsequently included among the political priorities of two policy instruments: first, the LGBTIQ Equality Strategy 2020-2025[4] that aims at promoting the EU dimension of equality and non-discrimination in general, and second, the EU strategy on the rights of the child of 2021[5], the objective of which is to mainstream the protection of minor children across all EU policies. Moreover, the proposal is also in line with earlier positions of the EU institutions, which all shared the view of supporting the adoption of measures to allow the recognition of the effects of civil status records between EU Member States, including those concerning birth, parenthood and adoption[6].

3. Prior to the proposal, however, legal issues related to parenthood have been excluded from the respective scopes of application of EU instruments of judicial cooperation in cross-border family law enacted on the legal basis of Article 81.3 TFEU, which govern, *inter alia*, private international law

[1] 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. For an overview of its main contents, see A. Tryfonidou, "Cross-Border Legal Recognition of Parenthood in the EU", Study PE 746.632, April 2023, available online; also L. Carpaneto, "Filiazione, circolazione degli status e diritto internazionale privato: la nuova proposta di regolamento UE e orizzonti di sviluppo", *Aldricus blog*, 9 January 2023, available online.

[2] See Article 1 of the proposal on its subject matter.

[3] The reference is to her well-known statement «[i]f you are parent in one country, you are parent in every country» (State of the Union address 2020, available online, p. 22).

[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Union of Equality: LGBTIQ Equality Strategy 2020-2025*, COM(2020) 698 final of 12 November 2020.

[5] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU strategy on the rights of the child*, COM(2021) 142 final of 24 March 2021. It should be clarified at the outset that the proposal does not limit its scope to minor children, as it applies regardless of the age of the child concerned: see further *infra*, paragraph II of this paper.

[6] See, already in 2010, European Council, *The Stockholm Programme – An open and secure Europe serving and protecting citizens*, *OJ* C 115 of 4 May 2010, p. 1, and the related action plan (communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Delivering an area of freedom, security and justice for Europe's citizens, Action Plan Implementing the Stockholm Programme*, COM(2010) 71 final of 20 April 2010), as well as the green paper *Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records*, COM(2010) 747 final of 14 December 2010; in 2017, the European Parliament resolution with recommendations to the Commission on cross border aspects of adoptions (2015/2086(INL)).

aspects of related matters such as parental responsibility[7], maintenance obligations[8] and succession[9]. Indeed, parenthood has been considered as an aspect pertaining to civil status and, consequently, falling within the remit of the Member States, still conditional on compliance with the principles of the EU legal order[10]. Considering another perspective, Regulation (EU) 2016/1191[11] does include in its scope public documents (and certified copies thereof) relating to birth, parenthood and adoption[12]; being grounded on the different legal basis of Article 21.2 TFEU, however, it only introduces a simplification in the administrative formalities required for the circulation of those documents between Member States, without regulating the effects of the legal situations therein attested.

4. Against this background, the proposal can complement the existing EU legislation from a two-fold standpoint. On the one hand, the proposed regulation would operate alongside the current instruments of judicial cooperation in family matters with a view to resolving legal issues on the parenthood of a child as preliminary questions in respect of parental responsibility, maintenance obligations and succession[13]. On the other hand, the circulation of public documents on birth, parenthood and adoption under the proposed regulation would also encompass the recognition of their effects, without affecting Regulation 2016/1191 and its scope of application limited to the authenticity of those documents[14].

5. The issue of the recognition of the parenthood status lawfully established in an EU Member State has already been addressed also by the Court of Justice in the well-known *V.M.A.* case[15], but under the different perspective of the exercise of the rights deriving from Union citizenship, in particular the

[7] Council Regulation (EU) 2019/1111, 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), *OJ* L 178 of 2 July 2019, p. 1, in particular Article 1.4.a thereof.

[8] 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, *OJ* L 7 of 10 January 2009, p. 1. See in particular Article 22 thereof, which excludes that the recognition of a maintenance decision under said Regulation may have any effect on the recognition of the parentage underlying the maintenance obligation that gave rise to the decision.

[9] 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, *OJ* L 201 of 27 July 2012, p. 107, in particular Article 1.2.a thereof.

[10] As stated by the Court of Justice in a well-established line of case law: e.g., CJEU 1 April 2008, *Tadao Maruko*, C-267/06, ECLI:EU:C:2008:179, *ECR* 2008 I-1757; 12 May 2011, *Vardyn*, C-391/09, ECLI:EU:C:2011:291, *ECR* 2011 I-3787; 8 June 2017, *Freitag*, C-541/15, ECLI:EU:C:2017:432.

[11] 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, *OJ* L 200 of 26 July 2016, p. 1. For a comprehensive assessment of this Regulation, also in connection with EU free movement law and other EU instruments of civil judicial cooperation, see the papers published in the journal *Papers di diritto europeo*, 2023, *Special Issue*, available online, as a research output of the EU project «Identities on the move. Documents cross borders – DxB».

[12] In addition, the Regulation 2016/1191 applies to other facts constituting civil status and registration matters, which are listed in Article 2.1 thereof: a person being alive; death; name; marriage, including capacity to marry and marital status; divorce, legal separation or marriage annulment; registered partnership, including capacity to enter into a registered partnership and registered partnership status; dissolution of a registered partnership, legal separation or annulment of a registered partnership; domicile and/or residence; nationality; absence of a criminal record. Furthermore, said Regulation covers public documents concerning electoral rights with the specifications set out in its Article 2.2.

[13] As clarified by Recital 29 of the proposal.

[14] With regard to the relations with Regulation 2016/1191, see Article 2.2 and Recital 15 of the proposal.

[15] CJEU 14 December 2021, *V.M.A.* v *Stolichna obshtina, rayon "Pancharevo"*, C-490/20, ECLI:EU:C:2021:1008. In the extensive literature on this case, see, e.g., M.C. Baruffi, "Il riconoscimento della filiazione tra persone dello stesso sesso e la libera circolazione delle persone nell'Unione europea", *Famiglia e Diritto*, 2022, pp. 1098-1103; L. Bracken, "Recognition of LGBTQI+ parent families across European borders", *Maastricht Journal of European and Comparative Law*, 2022, pp. 399-406; M. Grassi, "Riconoscimento del rapporto di filiazione omogenitoriale e libertà di circolazione all'interno dell'Unione europea", *Rivista di diritto internazionale privato e processuale*, 2022, pp. 591-609; F. Maoli, "La sentenza *Pancharevo* della Corte di giustizia UE sul riconoscimento del rapporto di filiazione e diritti connessi alla cittadinanza europea", *Ordine internazionale e diritti umani. Osservatorio sul diritto internazionale privato e diritti umani*, 2022, available online, pp. 555-565; A. Tryfonidou, "The ECJ recognises the right of rainbow families to move freely between EU Member States: the *VMA* ruling", *European Law Review*, 2022, pp. 534-549.

right to free movement and residence within the EU. In this context, the Court of Justice has largely referred to its previous case law concerning the consequences of Union citizenship on the circulation of personal and family status[16], by means of which the rights conferred by Articles 20-21 TFEU and Directive 2004/38/EC[17] were afforded a wider effectiveness. Unlike the earlier decisions, however, in *V.M.A.* the Court of Justice was called upon to rule, for the first time, in a case involving the parenthood status of a child born in Spain to a couple of women (a British national and a Bulgarian national) by means of heterologous in vitro fertilisation performed according to the relevant national legislation. The birth certificate of the child, drawn up by the Spanish authorities and attesting the parenthood of both women, was not recognised in Bulgaria for the purposes of recording the birth of a national of that Member State and obtaining an identity card or passport required to freely move and reside in the EU. The Court has nonetheless held that the Member State of which that child is a national, as well as any other Member State, is obliged to recognise the parent-child relationship as attested in the birth certificate issued in a Member State for the (sole) purposes of allowing the child to exercise, with each of the parents resulting in the document, the rights deriving from Union law on free movement. This was argued on the basis of principles already expressed in the previous *Coman* case, originating from the different background of a same-sex marriage lawfully concluded in a Member State that was equally subject to recognition in another Member State even though it did not provide for same-sex marriages in its legal order, in order to confer a derived right of residence to the third-country national spouse in the Member State of which the Union citizen was a national[18]. The obligation as stated in *V.M.A.*, and prior to that in *Coman*, is therefore characterised by an instrumental nature[19], and consequently does not impose on the Member States the recognition of the personal and family status for purposes other than the exercise of free movement rights under EU primary and secondary law, nor it requires any changes of the substantive national legislations in matters of family law and civil status.

6. In relation to this line of case law briefly recalled, the proposed regulation on parenthood is not intended to have implications on the enjoyment of the rights to freely move and reside in other Member States that Union law guarantees to children and their parents, as clearly stated by Article 2.1 of the proposal. With a view to exercising those rights, proof of the parent-child relationship can be provided by any means and the presentation of the attestations accompanying judicial decisions and authentic instruments according to the relevant annexes of the proposal is not mandatory, nor the use of the European Certificate of Parenthood[20]. Nevertheless, Recital 14 of the proposal underlines that the person

[16] Recalling a few of these decisions: CJEU 2 October 2003, *Garcia Avello*, C-148/02, ECLI:EU:C:2003:539, *ECR* 2003 I-11613; 19 October 2004, *Chen*, C-200/02, ECLI:EU:C:2004:639, *ECR* 2004 I-9925; 14 October 2008, *Grunkin e Paul*, C-353/06, ECLI:EU:C:2008:559, *ECR* 2008 I-7639; 8 March 2011, *Ruiz Zambrano*, C-34/09, ECLI:EU:C:2011:124, *ECR* 2011 I-1177; 16 July 2015, *Singh*, C-218/14, ECLI:EU:C:2015:476; 13 September 2016, *Rendón Marin*, C-165/14, ECLI:EU:C:2016:675; 10 May 2017, *Chavez-Vilchez*, C-133/15, ECLI:EU:C:2017:354; 8 May 2018, *K.A. and Others*, C-82/16, ECLI:EU:C:2018:308; 5 June 2018, *Coman*, C-673/16, ECLI:EU:C:2018:385; 26 March 2019, *SM*, C-129/18, ECLI:EU:C:2019:248.

[17] 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, *OJ* L 158 of 30 April 2004, p. 77.

[18] For a more detailed discussion of the *Coman* case, see, e.g., U. Belavusau, D. Kochenov, "Same-sex spouses: More free movement, but what about marriage? Coman", *Common Market Law Review*, 2020, pp. 227-242; M. Grassi, "Sul riconoscimento dei matrimoni contratti all'estero tra persone dello stesso sesso: il caso 'Coman'", *Rivista di diritto internazionale privato e processuale*, 2019, pp. 739-776; J.J. Rijpma, "You Gotta Let love Move", *European Constitutional Law Review*, 2019, pp. 324-339; A. Tryfonidou, "The ECJ Recognises the Right of Same-Sex Spouses to Move Freely Between EU Member States: The Coman ruling", *European Law Review*, 2019, pp. 663-679; G. Rossolillo, "Corte di giustizia, matrimonio tra persone dello stesso sesso e diritti fondamentali: il caso *Coman*", *SIDIBlog*, 8 July 2018, available online.

[19] In this sense, see further O. Feraci, "Il riconoscimento 'funzionalmente orientato' dello '*status*' di un minore nato da due madri nello spazio giudiziario europeo: una lettura internazionalprivatistica della sentenza '*Pancharevo*'", *Rivista di diritto internazionale*, 2022, pp. 564-579, at p. 571; J. Meeusen, "Functional recognition of same-sex parenthood for the benefit of mobile Union citizens – Brief comments on the CJEU's *Pancharevo* judgment", *GEDIP/EGPIL*, 2022, available online. The "instrumental" approach was reiterated in a subsequent case having a similar factual background as *V.M.A.*, on which the Court of Justice ruled with the order of 24 June 2022, *Rzecznik Praw Obywatelskich*, C-2/21, ECLI:EU:C:2022:502.

[20] See the opening statement of Annexes I, II and III of the proposal, containing the attestations referred to, respectively,

requesting the recognition is free to decide to avail himself/herself of these attestations or the ECP also in the context of the exercise of the rights of free movement.

7. As compared to the *V.M.A.* case, the proposal can fill a current gap insofar as the recognition of the parenthood established in another Member State is not imposed under Union law for all purposes. Being a legislative measure based on Article 81.3 TFEU, the proposed regulation is thus able to overcome the existing difficulties in the circulation of families across the EU[21], allowing children and parents to fully exercise the rights deriving from the parent-child relationship under national law (e.g. nationality, the right to a name, custody and access rights, maintenance and succession rights, legal representation).

8. As a final point in these introductory considerations, it is worth mentioning that the proposal elaborated by the European Commission is not the only legislative project that is currently being discussed with regard to the cross-border recognition of parenthood. Already back in 2010, the Hague Conference of Private International Law (HCCH) launched the Parentage/Surrogacy project to focus on the private international law issues surrounding the legal parentage of children, as well as international surrogacy arrangements. The advancement of the legislative work was entrusted with an Experts' Group, which concluded its mandate with the publication of its Final Report[22] in November 2022. More precisely, it proposed the creation of two different legal instruments, both having binding force: one, in the form of a convention, aimed at introducing private international law rules in the area of parenthood, and the other one, in the form of a separate protocol, concerning specifically the parent-child relation-ship resulting from an international surrogacy arrangement. The Final Report was presented during the HCCH Council of General Affairs and Policy held in March 2023, which further mandated a Working Group to explore provisions for one new instrument drawing on the ideas and assessment contained in the Final Report of the Experts' Group, and, if necessary, to consider the possibility of two instruments[23]. Although in the different context of the HCCH, the Parentage/Surrogacy project, also in its most recent developments, shares with the EU proposal the common objectives of ensuring «predictability, certainty and continuity»[24] of the parenthood status in international situations, as well as of protecting the human rights of all individuals concerned, especially those of children[25].

II. The scope of the analysis: the existence of "third-State connections" in the proposal and their implications (…)

9. The analysis carried out in this paper takes as a starting point the elements of connection that a parent-child relationship may have, in a given case, with States that are not members of the EU[26], and intends to follow a cross-cutting perspective with a view to assessing how (and, preliminarily, whether) the proposal for an EU regulation on parenthood takes into account these factors and their impact on the circulation of the legal status between EU Member States that constitutes the main objective of the proposed instrument.

court decisions, authentic instruments with binding legal effects and authentic instruments with no binding legal effects. The same is also provided in Annex V in relation to the European Certificate of Parenthood.

[21] As illustrated in Recitals 10-11 of the proposal.

[22] Parentage/Surrogacy Experts' Group, Final Report *The feasibility of one or more private international law instruments on legal parentage*, available online.

[23] See further the Conclusions & Decisions (C&D) of the March 2023 meeting of the Council on General Affairs and Policy, in particular paras. 3-8 thereof.

[24] Conclusions & Decisions, cited above, para. 5.b. The same terminology is extensively used also in the EU proposal, both in its text and in the European Commission's Explanatory Memorandum.

[25] For an in-depth analysis of the two legislative projects from a comparative perspective, see L. Válková, "The Commission proposal for a regulation on the recognition of parenthood and other legislative trends affecting legal parenthood", *Rivista di diritto internazionale privato e processuale*, 2022, pp. 854-899.

[26] Just to imagine some common examples: the nationality of the parents and/or the child, as well as their habitual residence, the State of birth.

10. From the extent of the scope of the proposed regulation, it is apparent that the Commission opted for a comprehensive approach. Article 3.1 of the proposal stipulates that it shall apply to «civil matters of parenthood in cross-border situations» and the subsequent Paragraph 2 lists a number of aspects that are excluded from the material scope, which are variably regulated in other EU[27] or international legal sources[28], or remain subject to the exclusive competence of Member States[29]. At the same time, another essential feature of the proposal is the clear-cut (at least in its wording) delimitation of the territorial scope as laid down in Article 3.3, which leaves out the recognition or acceptance of court decisions and authentic instruments given, drawn up or registered in a third State. These cases, as underlined in Recital 32, are governed by the national law of each Member State, and this reference should be read as to include any relevant international agreement to which the given Member State is bound. In this regard, the only requirement for the proposed regulation to apply is, therefore, that the document establishing or proving parenthood be issued in a Member State, in accordance with the clarification provided by the European Commission in the Explanatory Memorandum to the proposal[30].

11. As it is common policy practice in EU secondary law, in order to ensure a uniform application of its provisions, Article 4 of the proposal lays down several definitions, among which at least those specifically related to the subject matter of the proposed instrument can be mentioned. More precisely, the notion of «parenthood» shall be referred to «the parent-child relationship established in law»[31] and its establishment is intended as «the determination in law of the relationship between a child and each parent» (including where this follows a claim contesting a parenthood established previously). As regards the individuals concerned, a «child» shall be identified as «a person of any age whose parenthood is to be established, recognised or proved». From these broad provisions it can be inferred that, for the purposes of falling within the scope of application of the proposal, the relationship between the parent and the child may be biological, genetic or adoptive (either full or simple), or by operation of law, provided that it is established in a Member State as specified in Recital 24. No relevance is instead attached to any of the following elements: (i) the reproductive techniques by means of which the child was conceived or born, thus including assisted reproduction and surrogacy; (ii) the personal situation of the parent (who can be either legal or intended, single or in a *de facto*, registered or married couple); (iii) the age of the child (minor or adult, and even deceased or not yet born); (iv) the nationality of the parent(s) and the child[32]. As a result, the parenthood envisaged by the proposed regulation is essentially a "neutral" concept[33]: while the necessary requirement is that the legal status shall in any case be established within the Union, the proposal applies irrespective of how the child was conceived or born, of the type of family of origin, of the nationality of the parent(s) and the child, as well as of his or her place of birth, with a view to ensuring the enjoyment of equal rights. As the European Commission underlined in the

[27] Such as parental responsibility, maintenance obligations and succession matters, respectively governed by the above-cited Regulations 2019/1111, 4/2009 and 650/2012.

[28] As in the case of intercountry adoption, regulated under the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

[29] This applies to the legal issues of the existence, validity or recognition of a marriage or other relationships having comparable effects; the legal capacity of natural persons; emancipation; nationality; the legal requirements for the recording of parenthood in a register of a Member State.

[30] COM(2022) 695 final, cited above, p. 3.

[31] A previous reference for this notion in EU secondary law was included in Recital 14 of Regulation 2016/1191, which applies, as already mentioned, to public documents concerning parenthood providing for the exemption of legalisation and other administrative formalities where they are issued in a Member State and will need to be presented in another Member State.

[32] On these aspects, it is useful to refer to the clarifications made in Recitals 21, 24 and 26 of the proposal.

[33] This represents a significant departure from previous instruments of judicial cooperation in family matters, in particular Regulation 2019/1111 and Regulation (EU) No 1259/2010 (Council Regulation (EU) No 1259/2010, of 20 December 2010, implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, *OJ* L 343 of 29 December 2010, p. 10) that did not define the concepts of «marriage» and «spouse» for the purposes of their application. This gave rise to uncertainties in the interpretation ranging from the identification of autonomous notions of EU law and the reference to the corresponding notions provided under national law, with the consequence that these Regulations were differently applied in the various Member States. For an in-depth assessment of this issue, see F. Pesce, "La nozione di 'matrimonio': diritto internazionale privato e diritto materiale a confronto", *Rivista di diritto internazionale privato e processuale*, 2019, pp. 777-818.

Explanatory Memorandum to the proposal, it is indeed meant to be a key action to support equality and non-discrimination and the rights of children as universal rights.

12. From the broad terms of the subject matter and the definitions, and notwithstanding Article 3.3 concerning the undisputed aspect that the recognition of decisions and authentic instruments from third States is not governed by the proposed regulation, it follows that the parenthood may feature elements of connection also with third States and still fall within the scope of application of the proposal. The reference is mainly, even though not exclusively, to the parenthood deriving from a cross-border surrogacy arrangement, which is not excluded from the outset from the scope of the proposal nor subject to a separate (and optional) legal regime as it has been suggested in the different context of the mentioned HCCH Parentage/Surrogacy project. Against this background, in the following sections the implications of "third-State connections" inherent in the parenthood status will be assessed in the light of the solutions provided in the proposal with a view to determining their application and possible gaps that may arise.

1. (…) in the jurisdictional regime

13. The regime of jurisdiction set out in the proposal is designed to apply whenever a court of a Member State is called upon to rule on the establishment of parenthood with a cross-border element. The rules are structured according to a system that firstly sets out general alternative grounds[34] based on the principle of proximity between the court and the child concerned to facilitate access to justice (Article 6), and subsequent grounds that apply where jurisdiction cannot be established under the general provisions, drafted in similar terms as the corresponding rules contained in previous EU regulations adopted in cross-border family and succession law. In the first place, jurisdiction can be based on the presence of the child (Article 7), which may be particularly relevant in respect of third-country nationals, such as children who are applicants for or beneficiaries of international protection, or children internationally displaced because of disturbances occurring in their State of habitual residence. When no court of a Member State is found to have competence pursuant to the proposed regulation, the rule on residual jurisdiction (Article 8) allows to take into account, in each Member State, the applicable domestic laws[35], which thus comes into play in the event that the connecting factor of the relevant jurisdictional provisions is located outside the EU. Both grounds of jurisdiction were modelled upon the provisions of Regulation 2019/1111 related to parental responsibility matters (which already followed the legislative choice made by its predecessor, Regulation (EC) No 2201/2003[36]).

14. The final rule provided in the proposal, which is the *forum necessitatis* (Article 9), is instead inspired by other EU instruments, and namely Regulation No 4/2009 on maintenance obligations and Regulation No 650/2012 on succession, as well as the "twin" regulations on property regimes[37]. Simi-

[34] These being, more precisely: the habitual residence or the nationality of the child, the habitual residence of the respondent (who could be the person in respect of whom the child claims parenthood), the habitual residence or the nationality of either parent, all to be established at the time the court is seised, or additionally the State of birth of the child. The possibility of choosing between the alternative grounds can give rise to cases of "*forum* shopping", which is not a new phenomenon in the EU context: for a reflection on this issue with regard to surrogacy practices in the internal market, see M.C. Baruffi, "La maternità surrogata nella prospettiva del mercato interno", *La cittadinanza europea*, 2021, pp. 230-244.

[35] Also in this case, the reference to national legislation includes the international legal instruments in force for each Member State concerned, pursuant to the clarification made by Recital 43 of the proposal.

[36] 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, *OJ* L 338 of 23 December 2003, p. 1, no longer in force and repealed by Regulation 2019/1111 as of 1 August 2022.

[37] Respectively, Council Regulation (EU) 2016/1103, of 24 June 2016, implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, *OJ* L 183 of 8 July 2016, p. 1, and Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, *OJ* L 183 of 8 July 2016, p. 30.

larly to the previous examples, this clause is designed to confer jurisdiction, on an exceptional basis, to the courts of a Member State with which a case has a sufficient connection to rule on a parenthood matter that is closely connected with a third State. The objective is to remedy possible situations of denial of justice, as clarified also by the examples made in Recital 44 of the proposal, which refers to cases where proceedings prove impossible in a third State because of civil war, or where the child or another interested party cannot reasonably be expected to bring proceedings in a third State.

15. Insofar as it is relevant in this paper, further attention should be paid to the combined framework resulting from the rules applicable whenever jurisdiction cannot be established according to the general provision. Articles from 7 to 9 of the proposal indeed seem to set out a jurisdictional regime that has no equal in the previous instruments of EU civil judicial cooperation in family and succession matters, resulting in a substantially expansive effect of the grounds conferring jurisdiction to Member States in relation to situations where the parenthood is connected to third countries.

16. The "presence" rule is a fall-back provision already known in the *acquis* in EU civil judicial cooperation, but the proposal drafts it rather broadly with the consequence that it may become an exorbitant ground used to establish jurisdiction in a Member State also in cases having a substantially weak or random connection with the EU[38].

17. Furthermore, the subsequent rule of residual jurisdiction is provided alongside a *forum necessitatis*, while in the EU *acquis* an alternative between the two provisions is generally preferred: previous regulations employed the "earlier" approach of residual jurisdiction based on the reference to national law[39], while more recent instruments opted for the provision of the *forum* by necessity[40], either alone[41] or combined with an "EU-autonomous" subsidiary rule conferring jurisdiction to a given Member State[42]. Commentators have read such a legislative choice as «excessive», although grounded on a «commendable (..) intent[ion] to protect children from a lack of jurisdiction within the EU»[43], with the suggestion of removing the residual jurisdiction ground in favour of the sole *forum necessitatis* clause. The objective of protecting the best interests of the child, in particular by avoiding possible situations of denied access to justice in third States in a sensitive matter such as parenthood, seems indeed the ultimate aim of the peculiar combination found in the proposal. In addition, as not all Member States provide in their domestic legislation for exorbitant rules of jurisdiction inspired by the doctrine of *forum* by necessity or of *forum (non) conveniens*, the choice made in the proposal may thus be able to introduce a uniform regime in this regard. The European Commission may have also decided for this regime that, albeit unprecedented, could provide a sort of "safety" policy options regarding cases in which the parenthood status features the mentioned "third-State connections", so that they would find an applicable jurisdictional rule even though certain provisions of the proposal may ultimately be deleted during the political negotiations.

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[38] In this regard, the Comments on the European Commission's 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, elaborated by a group of German scholars known as "The Marburg Group" and published on 10 May 2023 (available online), provide the illustrative example of the members of a family living in a third State, none of whom holds nationality of an EU Member State, who could nonetheless bring parenthood proceedings before the courts of a Member State where they were having a holiday trip (at p. 21 of the Comments).

[39] As already mentioned, this approach was adopted by Regulation No 2201/2003 and then confirmed by its recast with Regulation 2019/1111.

[40] For a more comprehensive assessment of the operation of this clause in other EU instruments of civil judicial cooperation, see P. Franzina, "Forum Necessitatis", in I. Viarengo, F.C. Villata (eds.), *Planning the future of cross-border families*, Oxford-New York, Hart, 2020, pp. 325-330; R. Cafari Panico, "Forum necessitatis: judicial discretion in the exercise of jurisdiction", in F. Pocar, I. Viarengo, F.C. Villata (eds.), *Recasting Brussels I*, Padova, CEDAM, 2012, pp. 127-146; G. Rossolillo, "Forum necessitatis e flessibilità dei criteri di giurisdizione nel diritto internazionale privato nazionale e dell'Unione europea", *Cuadernos de Derecho Transnacional*, 2010, no. 1, available online, pp. 403-418; P. Franzina, "Sul forum necessitatis nello spazio giudiziario europeo", *Rivista di diritto internazionale*, 2009, pp. 1121-1129.

[41] As in Regulation No 650/2012, Regulation 2016/1103 and Regulation 2016/1104.

[42] This was the legislative choice made in Regulation No 4/2009.

[43] See The Marburg Group's Comments on the Parenthood Proposal, cited above, p. 22.

2. (…) in the conflict-of-laws regime

18. The provision of conflict rules serves the general objective of the proposal of ensuring legal certainty and predictability in the uniform private international law regime on cross-border parenthood. Not only are they instrumental to avoid conflicting decisions rendered by Member States' courts and to facilitate the subsequent recognition, but they may also counterbalance the broad choice of grounds of general jurisdiction set out in Article 6 that could lead to the well-known practice of "*forum* shopping".

19. It should be mentioned at the outset that the proposal confirms the traditional universal application of the law designated as applicable (Article 16), thus also including laws of States that are not members of the EU. The main rule to determine the law applicable to the establishment of parenthood is provided in Article 17.1 of the proposal, which pinpoints the law of the State of the habitual residence of the person giving birth at the time of birth. When the habitual residence of the person giving birth cannot be determined, the law of the State of birth shall apply on a subsidiary basis[44].

20. As a further exceptional provision applying in the event that the general conflict rule results in the establishment of parenthood in relation to only one parent, Article 17.2 envisages two alternatives (either the law of the State of nationality of one of the parents or, again, the law of the State of birth of the child) with a view to establishing the parent-child relationship as regards also the second parent. This further possibility is designed to be particularly relevant for the intended parent in a same-sex couple, whereby the wording of the provision (namely, the use of «may») does not impose obligations on the Member States that do not provide for same-sex marriages or partnerships in their legal orders but, at the same time, would avoid backtracking from the current possibilities afforded under EU free movement law[45]. Indeed, in a case where, under the law of the State of habitual residence of the person giving birth, only the establishment of parenthood in favour of the genetic parent were possible, the intended parent would nonetheless be able to refer to the exceptional provision to have also its parenthood established without being limited by the operation of the main conflict rule of the proposal[46]. Accordingly, the parenthood as regards each of the parent would be established by authorities of different Member States, but this would not have any impact on its subsequent recognition in the EU under the applicable regime set out in the proposal[47].

21. From the perspective that is relevant for this paper, it is interesting to focus on the main connecting factor of Article 17.1, that is the law of the State of habitual residence of the person giving birth at the time of birth. While it should allow that the applicable law is determined in most cases, including in relation to new-born children whose habitual residence may not be easily identifiable[48], the law so designated is nonetheless meant to apply to the establishment of parenthood without any changes throughout the life of the child. Consequently, said law applies also in a subsequent moment other than the time of birth, and possibly distant to that point in time, when the connection of the factual situation with that law may become less close or even non-existent. This appears even more significant if one considers that the applicable law may very well be that of a third State, due to its universal character under Article 16 of the proposal. It was probably to avoid such drawbacks that during the *travaux pré-*

[44] It is interesting to mention that the operation of the general rules of jurisdiction and applicable law laid down in the proposal is characterised by a departure from the traditional approach of seeking the coincidence between *forum* and *ius* as a priority, in order to accommodate the need to provide for a number of alternative grounds of jurisdiction (in the already illustrated Article 6) and to facilitate the determination of the law applicable with a straightforward connecting factor (in principle, Article 17.1).

[45] As mentioned in the introduction of this paper, according to the *V.M.A.* ruling of the CJEU the parenthood established in a Member State shall already be recognised within the EU for the purposes of the enjoyment of the rights to free movement and residence under Union law.

[46] The application of Article 17.2 of the proposal, however, is not without ambiguities. As their assessment falls outside the scope chosen for this paper, a more comprehensive critical discussion of this provision can be found in The Marburg Group's Comments on the Parenthood Proposal, cited above, pp. 32-37.

[47] As clarified by Recital 52 of the proposal.

[48] See Recital 51 of the proposal.

paratoires of the legislative initiative, the Expert Group appointed by the European Commission[49] had proposed a two-track system regarding the conflict rules, which would have provided, firstly, for the applicable law at the time of birth and, secondly, for the applicable law other than the time of birth[50]. In the latter instance, more precisely, the main connecting factor according to the proposed hierarchy would have been «the law of the State of the habitual residence of the child at the time the parenthood is established or at the time the court is seised», thus having a more substantial connection with the child and the developments in his or her life. In addition, the choice of the habitual residence of the child as a connecting factor would also appear more consistent with the approach followed in previous regulations of EU judicial cooperation in civil and family matters.

22. Additionally, although it was probably not envisaged when drafting of the proposal, another actual implication of the reference to the main connecting factor currently set out in the proposed Article 17.1 could be that a court of an EU Member State, where surrogacy is not allowed and where the intended parents reside, would be required to apply the law of a Member State or, in most cases, a third State (being it the State of the habitual residence of the person giving birth, i.e. the surrogate mother) in the case, which is not uncommon, where the intended parents have agreed that the surrogate mother would give birth in the Member State of their residence. This indeed appears a sensitive consequence that, again, finds its background in factual connections that the parenthood status may have also with third States, in this instance being the country in which cross-border surrogacy arrangements can be concluded according to the domestic rules and the surrogate mother is habitually resident.

23. A further aspect to consider in relation to the conflict-of-laws regime laid down in the proposal is the possibility of refusing the application of a provision of the designated foreign law on the ground that it is manifestly incompatible with the public policy of the *forum* (Article 22.1). The scope of this exception, which is a traditional safeguard in the EU *acquis*, is nonetheless significantly reduced by the clarification contained in Article 22.2, providing that such refusal must be exercised in compliance with the fundamental rights laid down in the EU Charter, particularly Article 21 thereof that prohibits discrimination[51]. It follows that the refusal to apply the law determined as applicable under the proposed regulation, also being that of a third State that is not bound to the principle of mutual trust underlying the system of EU civil judicial cooperation, appears as a limited possibility to be used with caution by Member States[52].

3. (…) in the regime of recognition of decisions and authentic instruments

24. Recognition of decisions and authentic instruments in matters of parenthood is probably the most practically relevant aspect of the proposal and it is regulated according to a three-fold system distinguishing between court decisions, authentic instruments with binding legal effects and authentic instruments with no binding legal effects. The divergencies existing in the domestic legislations of the Member States have justified the inclusion of an autonomous definition of «authentic instrument» in Article 4 of the proposal, referring to a document that has been formally drawn up or registered as such in any Member State and the authenticity of which relates to its signature and content, and has been

[49] Expert Group on the recognition of parenthood between Member States (E03765). Its members and the outcomes of its work can be found online in the Register of Commission Expert Groups.

[50] This proposal is summarised in the Minutes of the 7th Meeting of the Expert Group on the recognition of parenthood between Member States, of 22 February 2022, available online, pp. 1-2. A similar position is shared also in The Marburg Group's Comments on the Parenthood Proposal, cited above, pp. 32-37.

[51] For a recent discussion of this exception focused on the operation of the proposed regulation, see S. De Vido, "Il riconoscimento delle decisioni in materia di filiazione nella proposta di Regolamento del Consiglio del 2022: oltre *Pancharevo* verso un ordine pubblico 'rafforzato' dell'Unione europea", *Eurojus*, 2023, no. 1, available online, pp. 35-57.

[52] The remark is expressed also from a broader perspective by M.C. Baruffi, "La proposta di Regolamento UE sulla filiazione: un superamento dei diritti derivanti dalla libera circolazione", *Famiglia e Diritto*, 2023, pp. 535-549, at p. 548.

established by a public authority, or other authority empowered for that purpose, by the Member State of origin. In addition, such differentiations in the national legal orders have required to identify two categories of authentic instruments: on the one hand, those establishing parenthood with binding legal effects in the Member State of origin[53] and, on the other hand, those having only evidentiary effects in the Member State of origin as regards a parenthood already established[54] or other facts[55]. The consequence of these distinctions is reflected in the rules of recognition that, in brief, assimilate the regime applicable to court decisions and authentic instruments with binding legal effects, to which an automatic recognition based on mutual trust applies (as provided, respectively, in Article 24 and Article 36 of the proposal), while for authentic instruments with no binding legal the different concept of acceptance is used to confer them the same evidentiary value (or the most comparable effects) as they have in the Member State of origin (Article 45).

25. As a common ground to refuse the recognition or, as the case may be, the acceptance of court decisions and authentic instruments, the reference is again to the public policy of the requested Member State to be applied, as already in the context of the conflict rules, in observance of the fundamental rights protected by the EU Charter. Further clarification on the operation of this exception can be found in the Explanatory Memorandum to the proposal[56], where the children's interests that must be taken into account when invoking such ground are viewed together with the objective of safeguarding their fundamental rights, as well as the need to preserve «genuine family links» between the child and the parents. Therefore, recourse to this exception must be subject to an assessment of the factual circumstances of each case, and not in a general and abstract manner. From these indications, it can be inferred that the children's interests are afforded a particular relevance, albeit not absolute, when striking the balance with other competing considerations in order to refuse recognition (or acceptance) in accordance with the public policy exception[57].

26. Focusing in more detail on the implications of possible connections of the parenthood status with third States, it seems that in the regime of recognition they are be able to come even more to the forefront, notwithstanding the fact that the provisions of the proposal are meant to apply to court decisions and authentic instruments with binding legal effects issued in an EU Member State, as well as to authentic instruments having evidentiary effects in the EU Member State of origin, and beside the already mentioned limitation of the territorial scope drafted in general terms by Article 3.3 of the proposal. In particular, throughout the proposed instrument there are no apparent indications concerning a potentially problematic situation, namely where a birth certificate drawn up in a third State has been registered and incorporated in the legal order of a Member State. Should that Member State allow the re-establishment of the parenthood under its national law, the status attested in a certificate or extract from that Member State's registers should be able to circulate within the Union according to the regime applicable to authentic instruments with no binding legal effects. However, such a case would imply that the birth certificate from a third State is first subject to recognition under the private international

[53] See the examples provided in Recital 59 of the proposal: «a notarial deed of adoption or an administrative decision establishing parenthood following an acknowledgment of paternity».

[54] Such is the case of a birth certificate, a parenthood certificate or an extract from the civil register on birth, as clarified in Recital 68 of the proposal.

[55] The following examples are listed in Recital 68 of the proposal: «a notarial or administrative document recording an acknowledgment of paternity, a notarial or administrative document recording the consent of a mother or of a child to the establishment of parenthood, a notarial or administrative document recording the consent of a spouse to the use of assisted reproductive technology, or a notarial or administrative document recording a possession of state».

[56] In particular, at pp. 16-17 of the European Commission's Explanatory Memorandum.

[57] A significant reference in this regard may come from the resolution of the *Institut de Droit International* «Human Rights and Private International Law», of 4 September 2021 (Rapporteur: Fausto Pocar; available online), in particular Article 14 thereof that states: «[i]n view of the recognition of a parentage relationship established in a foreign State, the best interests of the child should be taken into particular account in the assessment of the public policy of the State where recognition is sought». In the literature, on this Article of the resolution, see O. Feraci, "Art. 14 della risoluzione dell'*Institut de Droit International* su *Human Rights and Private International Law*: la circolazione transfrontaliera del rapporto di filiazione", *Diritti umani e diritto internazionale*, 2022, pp. 585-611.

law rules of the requested Member State, which may be different from the uniform provisions set out in the proposal, and can subsequently benefit from the regime of acceptance laid down in the proposed regulation that is designed to apply between Member States. Also this issue was already considered in the *travaux préparatoires* of the legislative initiative, whereby the Expert Group assisting the European Commission had suggested to insert a specification in the attestation accompanying the authentic instrument drawn up in the Member State in order to clarify whether that national document was based on the prior recognition under national law of a document on parenthood issued in a third State[58]. It is indeed striking that the final text of the proposal did not choose to deal with an issue involving authentic instruments with no binding legal effects such as birth certificates that are bound to circulate frequently in cross-border situations, being able to have evidentiary effects of the parenthood status even though according to a variable degree pursuant to the relevant rules of the Member State of origin.

27. Similar remarks can be made in relation to a further instance, perhaps more specific but still relevant, concerning the recognition of the parenthood between the intended parent, who is the same-sex partner of the genetic parent, and the child born in a third State under a valid surrogacy arrangement. The need that Member States' legal orders afford some kind of recognition to this parent-child relationship follows from a line of case law that the Strasbourg Court has progressively been developing in the interpretation of Article 8 of the European Convention on Human Rights (ECHR)[59]. Should the recognition be requested in Italy, for example, according to the most recent case law of the Supreme Court[60] recognition would take the form of a judicial decision whereby the competent court, upon condition of an assessment *in concreto* of the best interests of the child to maintain the factual relationship developed with the intended parent, could rule in favour of the establishment of an adoptive parenthood (more precisely, an adoption pursuant to Article 44.1.d of the Italian law on adoption[61]). The parenthood would thus be established in Italy by means of a domestic adoption, which could nonetheless be recognised in other Member States according to the rules on recognition provided in the proposed regulation[62]. However, as compared to the case previously imagined with regard to authentic instruments with no binding legal effects incorporating certificates drawn up in third States, this instance seems to raise less concern as there is an intervention of the court of a Member State in the establishment of the parenthood.

III. Concluding remarks

28. The preceding paragraphs have tried to provide an appraisal of the elements of connection that a parenthood status may have with third States and it can be argued that the proposed regulation does take them into account in all aspects of its regime, even though in more or less explicit terms (and,

[58] See the Minutes of the 6th Meeting of the Expert Group on the recognition of parenthood between Member States, of 9 February 2022, available online, p. 2.

[59] For a recent judgment in this case law: European Court of Human Rights (ECtHR), 6 December 2022, *K.K. and Others* v *Denmark*, application no. 25212/21, ECLI:CE:ECHR:2022:1206JUD002521221. A detailed discussion of the approach of the ECtHR can be found in F. Pesce, "Gestazione per altri e discrezionalità nazionale 'depotenziata' nella prospettiva della CEDU", in F. Pesce (a cura di), *La surrogazione di maternità nel prisma del diritto*, Napoli, Editoriale Scientifica, 2022, pp. 155-168; I. Queirolo, F. Pesce, "La surrogazione di maternità innanzi alla Corte di Strasburgo", *La cittadinanza europea*, 2021, pp. 223-229.

[60] *Corte di cassazione, sezioni unite civili*, 30 December 2022, no. 38162. A comprehensive discussion on this judgment and its implications is provided, e.g., in the focus papers published by M. Sesta, G. Recinto, M. Dogliotti, A. Spadafora, *Famiglia e Diritto*, 2023, pp. 430-470. For a broader analysis of the position of Italian courts on cross-border surrogacy, also in comparison with the ECtHR case law, see M.C. Baruffi, "Surrogacy in the recent 'multilevel' case law", in C. Corso, P. Wautelet (sous la direction de), *L'accès aux droits de la personne et de la famille en Europe*, Brussels, Bruylant, 2022, pp. 85-112, as well as F. Marongiu Buonaiuti, "The evolution of the position of Italian case law concerning public policy in transnational family matters, in view of some recent judgment of the Italian Court of Cassation and Constitutional Court", *Cuadernos de Derecho Transnacional*, 2022, no. 1, available online, pp. 998-1010, for a reflection focused on the application of the public policy exception in the Italian case law.

[61] Legge 4 maggio 1983, n. 184, "Diritto del minore ad una famiglia", *Gazzetta Ufficiale della Repubblica Italiana* n. 133 del 17 maggio 1983, *Suppl. ord.* n. 28.

[62] See, in this regard, Recital 25 of the proposal.

also, more or less knowingly). Therefore, it is worth drawing some further considerations on possible reasons that could be attached to the policy choices designed in this regard.

29. An obvious common justification seems to be found in the main objective of the proposal of protecting the fundamental rights of children in cross-border situations, especially the right to non-discrimination set out in Article 21 of the EU Charter. The provisions analysed in the area of jurisdiction, as well as the conflict-of-laws rules, are indeed drafted according to this tenet, which nonetheless may at times run the risk of "overtaking" the functioning of those rules as currently found in the EU *acquis*, thus resulting in potential difficulties in their actual application in the Member States. In addition, when providing a limited scope of application of the public policy exception both in the context of the applicable law and the recognition of decisions and authentic instruments, the exclusive reference made to Article 21 of the EU Charter may suggest a sort of "hierarchy" in the objective of protection of fundamental rights. Consequently, as it was underlined in the reasoned opinion of the French Senate on the proposal[63], especially in cases relating to cross-border surrogacy this could lessen the relevance of other fundamental principles such as the human dignity (Article 1 of the Charter), the prohibition on making the human body and its parts as such a source of financial gain (Article 3.2 thereof), and the rights of the child (Article 24 thereof).

30. From a broader perspective, also the same scope of application of the proposal, despite its apparent clear-cut provisions, may seem to pave the way to uncertainties in its application in situations that would be particularly common in parenthood matters, such as the circulation of birth certificates drawn up in third States and then recorded in the civil and/or population registers of an EU Member State. Such an issue was again underlined in the reasoned opinion delivered by the French Senate, contesting the fact that the lack of a uniform definition of «situations transfrontiéres»[64] may indeed lead to uncertainties as to the application of the proposal to the recognition of parenthood established in a third State and then recognised in a Member State. In this regard, the proposal may further raise issues of compatibility with regard to the principle of subsidiarity and the allocation of competences between the EU and its Member States.

31. Therefore, even though the proposal is currently only at an early stage of the legislative process and it is difficult to envisage its developments, it seems possible to assume that the analysed elements of the proposed regulation may constitute sensitive issues that could heavily influence the already complex negotiations towards its adoption. This may further take the form of an enhanced cooperation in the event that unanimity within the Council required by Article 81.3 is not reached, but the outcome would not be entirely satisfactory considering the persisting absence of an EU-wide regulation of the private international law aspects of cross-border parenthood.

[63] *Sénat*, *Résolution européenne portant avis motivé sur la conformité au principe de subsidiarité de la proposition de règlement du Conseil relatif à la compétence, à la loi applicable, à la reconnaissance des décisions et à l'acceptation des actes authentiques en matière de filiation ainsi qu'à la création d'un certificat européen de filiation, COM(2022) 695 final*, 22 March 2023, available online, p. 9. France is not the only founding Member State to have delivered a reasoned opinion according to the subsidiarity control mechanism, as also did Italy by means of the resolution, of 14 March 2023, of the European Union Policies Standing Committee of the Senate (*risoluzione approvata dalla 4ª Commissione permanente sul progetto di atto legislativo dell'Unione europea n. COM(2022) 695 definitivo (Doc. XVIII*-bis*, n. 2) sui profili di conformità ai principi di sussidiarietà e proporzionalità*, available online); for a critical analysis of the Italian position, which seems to have focused its concerns on the practice of surrogacy, see G. Biagioni, "Malintesi e sottintesi rispetto alla proposta di regolamento UE in tema di filiazione", *SIDIBlog*, 3 April 2023, available online.

[64] *Sénat*, *Résolution européenne portant avis* motivé (…), cited above, p. 5.