

EU Parenthood Proposal: scope and definitions

Cristina González Beilfuss
Universitat de Barcelona



I. Introduction

- Purpose: to examine what is covered by the Proposal : Chapter I (Scope and definitions).
- Not exhaustively, but selectively.



I. Substantive scope

- Two provisions: art. 1 and 3 which are further clarified by the definitions in art. 4.
- Overlap between arts. 1 and 3 ?
- Art. 3 positive definition: art. 3.1/ negative list of exclusions art. 3.2
- Positive definition: “Civil matters of parenthood in cross-border situations”

Parenthood is defined as the parent-child relationship established in law- art. 4.1

- Terminology: Alternatives parentage/filiation.
 - Recital 24-biologic, genetic, by adoption or by operation of the law.
- The Regulation covers both the establishment and the contestation of parenthood.- art. 4.3.
 - The role of disputes and paternity claims.



I. Scope

Substantive scope- excluded matters

- Parenthood is a status from which many rights derive. These rights are excluded: parental responsibility, maintenance, succession (why trusts?) and nationality.
- Does it make sense to mention emancipation or the legal capacity of natural persons? What is the connection between these and the status of being someone's child.
- Existence, validity or recognition of a marriage or of relationship deemed to have comparable effects.

This issue is crucial- preliminary questions are very common. The exclusion seems to imply that there cannot be a common rule on preliminary questions-see Recital 30. Would it not make sense to have such a rule?. What about marriage dissolution?



I. Scope

Substantive scope- excluded matters

- Adoption: only intercountry adoption is excluded. Recital 27 .The Regulation does not cover adoptions **where the child and the adoptive parents have their habitual residence in different States**, regardless of whether they fall under the Convention or not. Discrepancy between language versions.
- The recognition of domestic adoptions is covered. Recital (25) suggests that no rules on international jurisdiction or applicable law are needed – but **so-called domestic adoptions are in fact very often international adoptions** because of the nationality of those concerned. And we would need PIL rules for these. In principle Chapters II and III apply.
- Relationship between adoption and child protection.
- Adoption: includes full and simple adoption. Would there be a need to define adoption as at least creating a bond of filiation between adopters and adoptee in order to exclude kafala?



I. Scope

-Space

- Jurisdiction-residual rules of jurisdiction of MS apply. but given the wide range very limited role.
- Applicable law: universal rules.
- Decisions rendered in a MS
- Documents issued in a MS- they can be issued following the recognition of a decision rendered in a Third State.



I. Temporal scope

- Date of entry into force/date of application-art- 72
- Transitional provisions- art. 69- application to prior decisions or authentic instruments if the jurisdiction and applicable law rules were applied



Other matters

- Art. 2- do we need this?
It goes without saying that primary law prevails
If at all, placed at the end ??

Art. 5. The same applies.

