

Authentic instruments and parenthood Between recognition and acceptance

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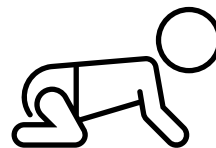
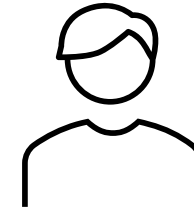
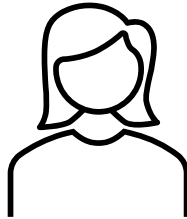
The Proposal

Authentic instrument with no binding legal effect	Decision	Authentic instrument with binding legal effect	European Certificate of Parenthood
Acceptance (Art. 44-45)	Recognition (Art. 24-34 + Art. 40-43))	Recognition (Art. 35 to 39 + Art. 40-43)	Effects (Art. 46 to 57)
Public authority or other authority (Art 4(6))	Court (Art. 4(4))	Public authority or other authority (Art 4(6))	Issuing authority

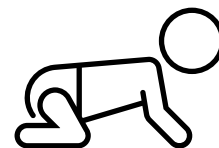
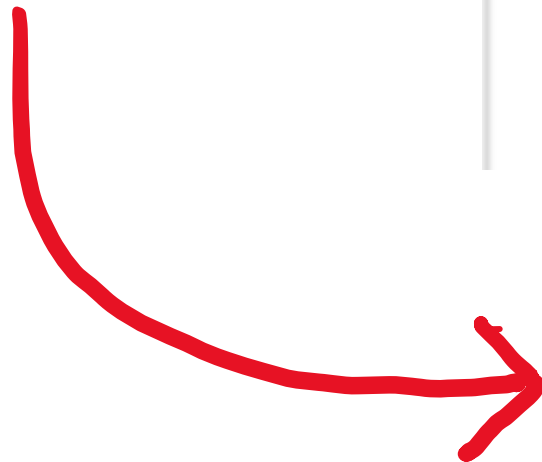
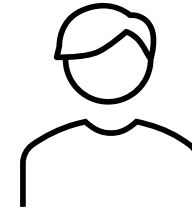
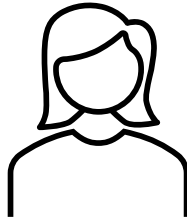
Thou shall make a choice

Authentic instrument with no binding legal effect	Decision	Authentic instrument with binding legal effect
“Documents which do not establish parenthood with binding legal effect but which <i>provide evidence of the parenthood</i> established by other means” (Proposal, p. 13)	Decision of a court of a Member State (Art. 4(5))	“Documents <i>establishing parenthood</i> with binding legal effect” (Proposal, p. 13)

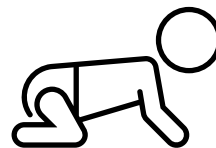
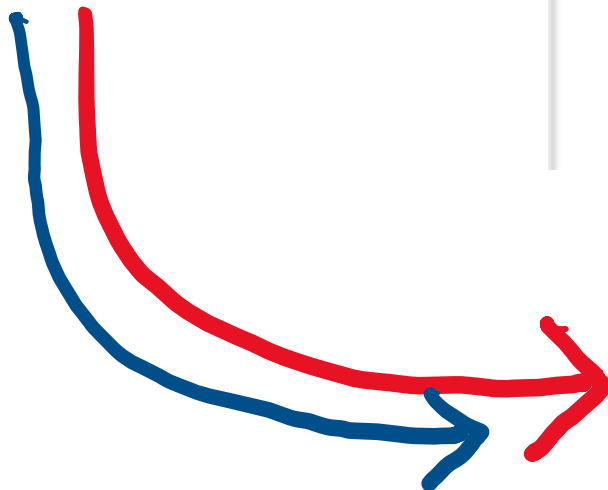
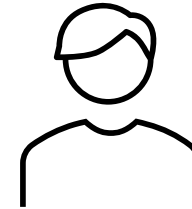
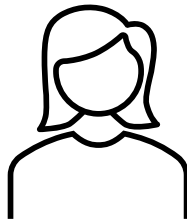
A child born in France



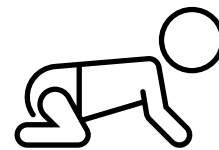
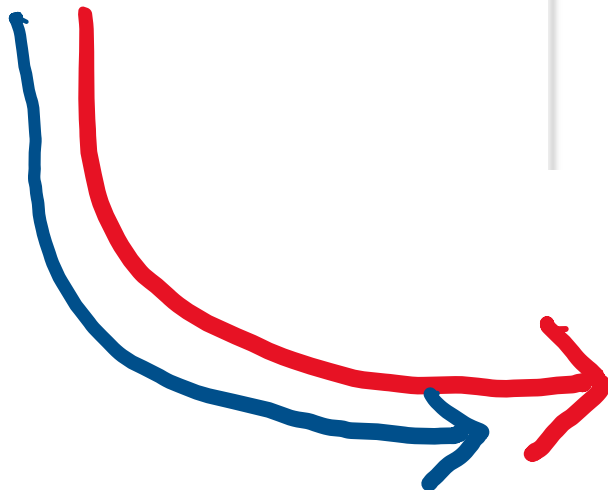
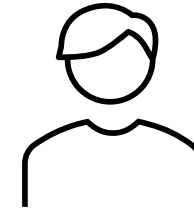
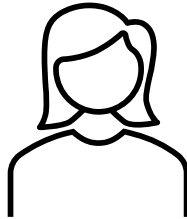
A child born in France



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A child born in France



Working with 2 categories – an assessment



Ordinary // exceptional case

Drawing the line between the 2 categories :

- Specific to each Member State – requires detailed knowledge of law of MS of origin
- Specific to each parent
- One and the same birth certificate could have
 - Constitutive effect for one parent; evidentiary effect for the other
 - Constitutive and evidentiary effects for *one* parent

Question : why limit *acceptance* to acts without binding effects?

Working with 2 categories – an assessment

Binding
legal effect

No binding
legal effect

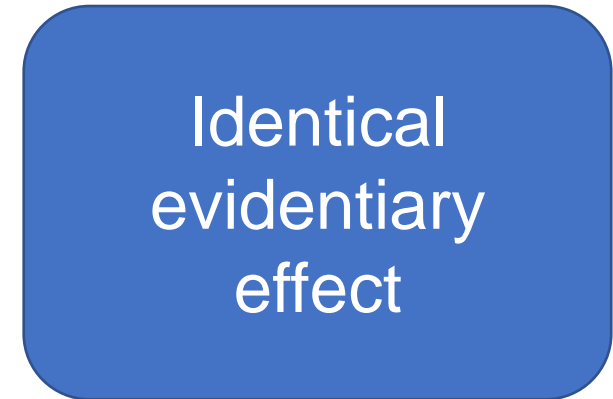
**What's in a
NAME?**

Focus on acceptance (Art. 45)



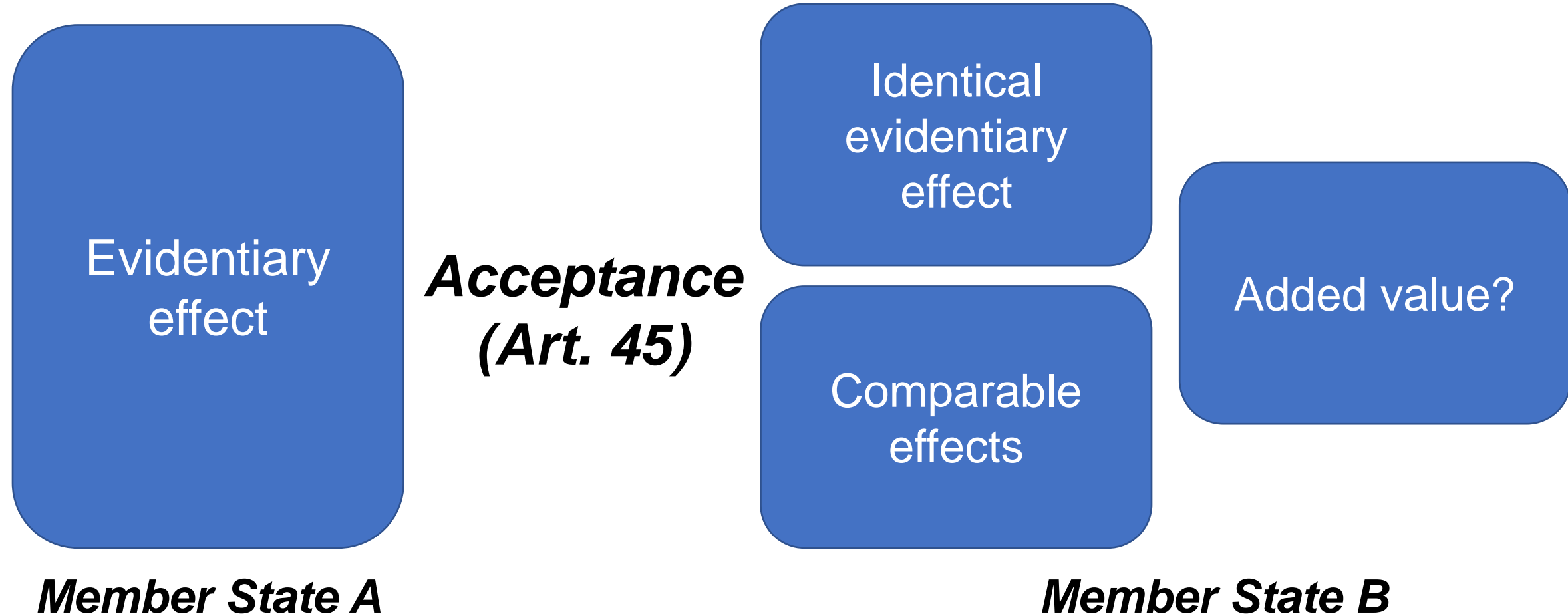
Member State A

***Acceptance
(Art. 45)***

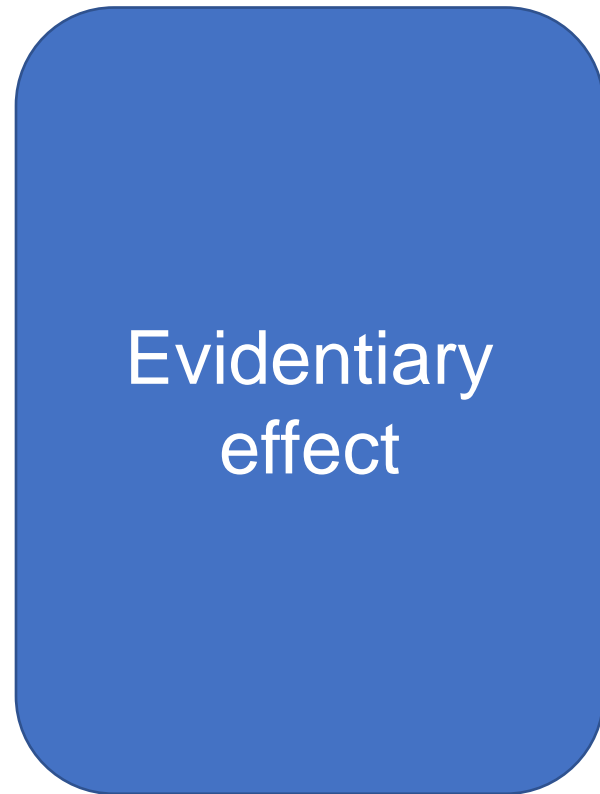


Member State B

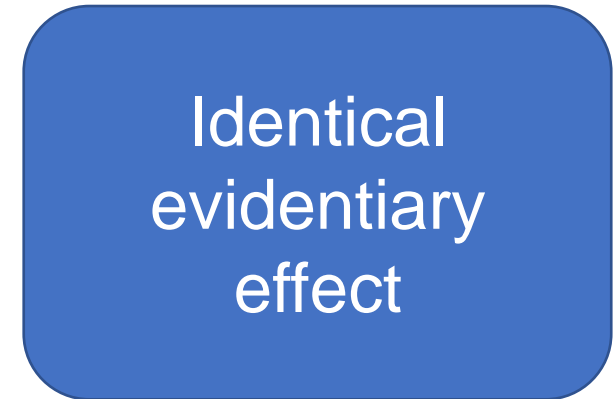
Focus on acceptance (Art. 45)



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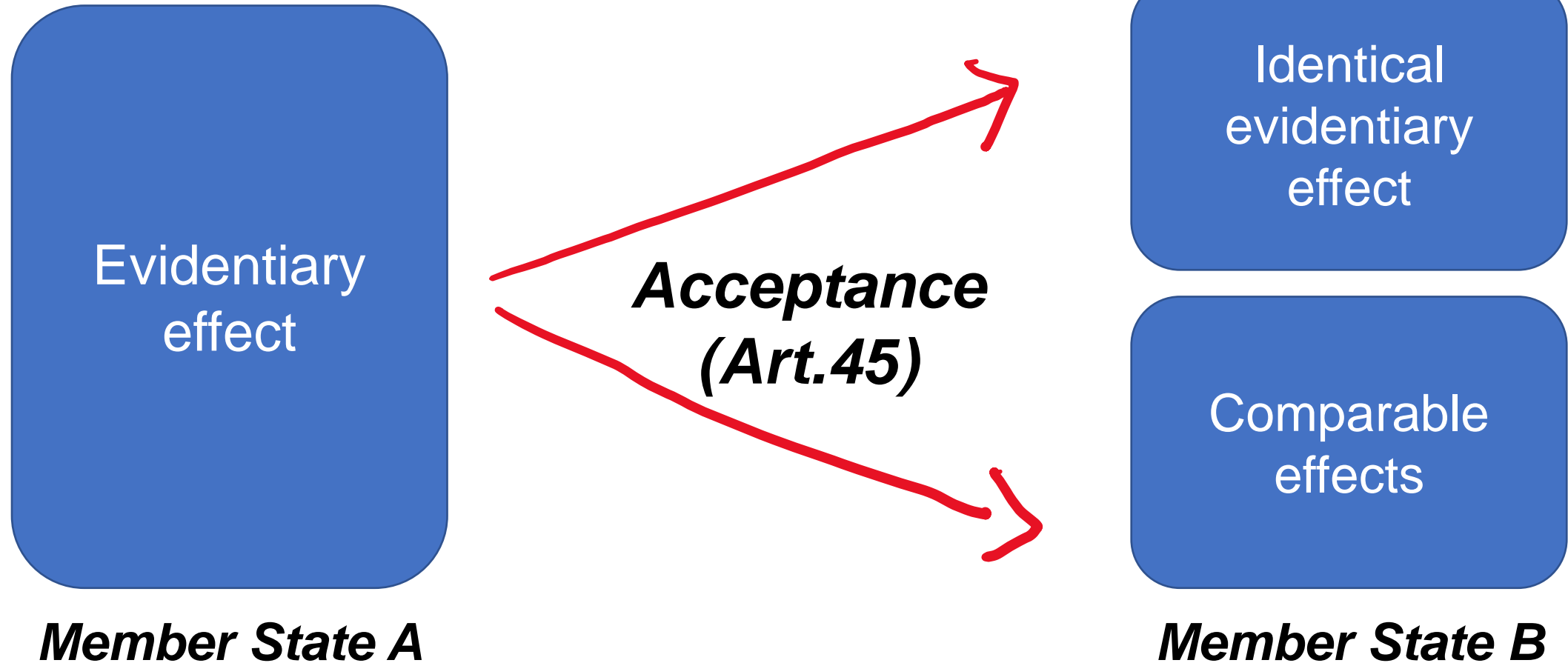


Member State A



Member State B

Focus on acceptance (Art. 45)



The way forward?



- (1) Adapt the language
- (2) Address the alternative routes for acceptance
 - Explain when MS addressed may choose to give ‘most comparable effects’
 - Clarify relationship between ‘most comparable effects’ and ‘public policy’
 - Strike out the ‘comparable effects’ possibility
- (3) Consider merging the 2 categories of authentic instruments?
An authentic instrument “has the same effects in another Member State as it has in the MS of origin”
- (4) Keep the users of the future Regulation in mind!