



UNIVERSITÀ  
DEGLI STUDI  
DI BERGAMO

Dipartimento  
di Giurisprudenza

**Maria Caterina Baruffi**  
[mariacaterina.baruffi@unibg.it](mailto:mariacaterina.baruffi@unibg.it)

# Who decides on parenthood? The rules of jurisdiction

*EAPIL Webinars*  
*The Commission Proposal on Parenthood*

17 May 2023

# 7.12.2022: Parenthood Proposal

April 2023: EP Study  
on Cross-border  
Legal Recognition of  
Parenthood in the EU  
(A. Tryfonidou)

10.5.2023: Marburg  
Group's comments  
on the Commission  
proposal

States opposition

Positive aspects:  
the protection of the children rights  
through common jurisdictional direct rules

# Approach for the determination of jurisdiction

*Direct  
rules*

*Indirect  
rules*

- See also HCCH Expert Group, Final Report (November 2022)

1. Review of the jurisdiction of the court of origin and the principle of mutual trust
2. Proceedings for exequatur needed in case of review of the jurisdiction
3. Absence of direct rules and difficulties in the circulation of decisions

# Chapter II: uniform jurisdiction rules

## MAIN GOALS

Facilitate recognition of courts decisions

Facilitate recognition or acceptance of authentic instruments

Avoid parallel proceedings

> NO PARTY AUTONOMY

## Article 6 - General jurisdiction

In matters relating to parenthood, jurisdiction shall lie with the courts of the Member State:

**a)** of the **habitual residence** of the **child** at the time the court is seised, or

**b)** of the **nationality** of the **child** at the time the court is seised, or

**c)** of the **habitual residence** of the **respondent** at the time the court is seised, or

**d)** of the **habitual residence** of either **parent** at the time the court is seised, or

**e)** of the **nationality** of either **parent** at the time the court is seised, or

**f)** of **birth** of the child.

Habitual residence:  
CJEU case-law  
Recital 40

exorbitant

alternative

flexibility

access to  
justice

controversial

?

Any specific  
grounds =  
exclusive

?

Member  
State of the  
public  
authority

?

Member  
State where  
the register  
is kept

## Article 7

### Jurisdiction based on the presence of the child

Where jurisdiction cannot be determined on the basis of Article 6, the courts of the Member State **where the child is present** shall have jurisdiction.

The  
«presence  
rule»

- See Brussels II-b Regulation
- No Art. 6
- Relevant for third-country nationals
- **Recital 42**

# Article 8 - Residual jurisdiction

Where no court of a Member State has jurisdiction pursuant to Articles 6 or 7, jurisdiction shall be determined, in each Member State, by the **laws of that Member State.**

- Brussels II-b Regulation
- No Arts. 6 or 7
- Domestic PIL rules apply, including international instruments
- **Recital 43**



## Article 9 - *Forum necessitatis*

No  
other  
Arts.

Where no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an **exceptional basis**, rule on parenthood matters if proceedings cannot reasonably be brought or conducted or would be impossible in a **third State** with which the case is **closely connected**.

The case must have a **sufficient connection** with the **Member State** of the court seised.

See  
Explanatory  
Memorandum  
+ **Recital 44**

civil war, or  
cannot  
reasonably  
be  
expected to  
bring  
proceedings  
in a third  
State

**Combined  
framework** of  
residual  
jurisdiction  
and *forum  
necessatis*


- Exorbitant, but no equal in other EU PIL acts
- Best interests of the child
- Purpose: no denial of jurisdiction
- Protection of fundamental rights as disgregating factor

- Excessive?

~~Residual jurisdiction / *forum necessitatis*~~

- Reference to national laws: divergences

Solution: uniform regime



No  
coincidence  
between  
*forum* and *ius*

**Applicable law:**  
MAIN FACTOR:  
habitual  
residence of the  
person giving  
birth; otherwise,  
State of birth  
(Art. 17)

**Jurisdiction:**  
Member State  
of birth is ONE  
alternative  
ground

# Specific provisions

- **Article 10 - Incidental questions**

- Brussels II-b Regulation
- Limited effects
- **Recital 45** (see example)

- **Article 11 - Seising of a court**

- **Recital 48**

- **Article 12 - Examination as to jurisdiction**

- **Article 13 - Examination as to admissibility**

Procedural  
nature

See Recital 46

Common  
rules in the  
*EU acquis*

- **Article 14 - *Lis pendens***

- identity: same causes of action and parties (!?)

- “first-in-time” rule

- **Recital 47**

- **Article 15 - Right of children to express their views**

- Brussels II-b Regulation

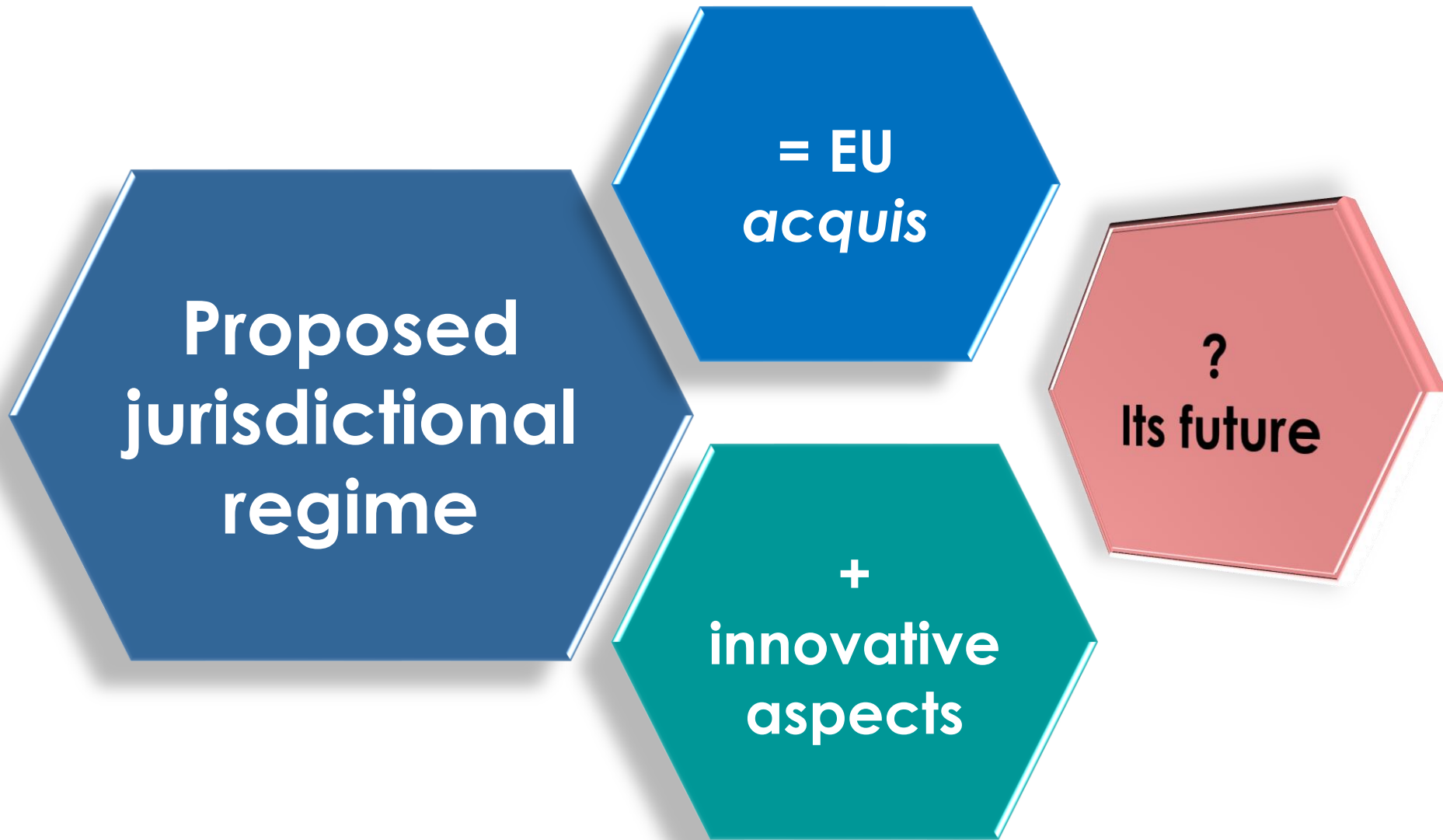
- not an obligation

- **Recital 49**

**? Right to know the origins**

- Parentage/Surrogacy Project of the Hague Conference
  - ISS Expert Group (Verona Principles)

# Conclusions





Thank you!