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Proposal for a Strategy of the European Union for the Support of Couples and Marriage

A Working Document
of the COMECE Secretariat



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Introduction

In recent years, at European level, family related issues have gained increasing attention. The public highlight was the conclusion of the European Alliance for Families among EU governments. This initiative was launched by the German Presidency of the European Union in May 2007. Earlier, in March 2004, the COMECE secretariat published the document, *“A Family Strategy for the European Union. An Encouragement to make the family an EU priority.”* The document was well received in the political world and in civil society.

Following this initiative the COMECE secretariat submits a new document proposing a strategy of the European Union for the support of couples and marriage. The document highlights difficulties married couples face in contemporary Europe. Demographic implosion and family breakdown present serious risks, and high emotional, social and financial costs to European society. Directly or indirectly they are linked to the difficulties of couples to engage in and maintain stable relationships, to sustain enduring commitment and thus to promote marriage as its most fulfilled form. The question has become pressing as how best to assist couples when they face a serious crisis, and how to address the particularly challenging task of raising and educating children. It is in Europe’s general interest to support and strengthen that stable and responsible relationship between a man and a woman, of which marriage is the ideal expression. Addressing this challenge is a task for public policy in Europe, one which will become ever more important. Member states in the European Union hold a prime responsibility, especially when it comes to strengthening marriage as an institution, so that it retains its attractiveness for young couples and future parents. However, the European institutions should each be persuaded of the need for action within the specific competence of each. The subsequent reflection and proposals in this document are intended to promote a debate on this latter point.

The interest of EU institutions in demography and in family matters has grown in recent years. In 2005 the European Council

adopted a Youth Pact. The Youth Pact addressed the fact that one third of couples in Europe are having fewer children than they desire. Also, in 2005, the European Commission presented a Green Paper, *“Confronting demographic change: a new solidarity between generations”*¹. The European Commission stressed the unprecedented demographic changes which the European Union is facing due to the fact that people in Europe live longer and birth rates are declining. A Communication by the European Commission on promoting solidarity between generations followed in early 2007. In May 2007 the EU governments concluded a *“European Alliance for Families”* as already mentioned². Other European institutions, such as the European Parliament and the European Economic and Social Committee, have contributed through own-initiative resolutions to the new debate, as have background papers published by the European Commission Bureau of European Policy Advisers, and through several Eurobarometer special surveys.

Nevertheless the difficulties facing married couples today have not been sufficiently addressed at the European level. In many ways the crisis of the family is a crisis of modern society. The emancipation of women, which is a welcome development, has brought with it new challenges for couples. Men and women struggle to translate the new gender balance into a stable relationship that can respond to the multiple challenge of leading a twin professional career, raising children in a sometimes difficult environment and, perhaps, caring for older members of the family. Very often the result is a break-up of the couple and the family, which is in many cases a traumatic experience, which may have a very negative psychological impact for partners and especially children. Such a development within the marriage very often, brings with it a steep deterioration of the economic

¹ The European Commission, Green Paper *“Confronting demographic change: a new solidarity between the generations”*, COM(2005)94 final, 16.3.2005

² Conclusions of the Council and of the representatives of the Governments of the Member States, meeting within the Council, on the importance of an Alliance for families, SOC 185, 23.5.2007

situation for the remaining (mono-parental) family.³ Whilst these broken families, and the children and youth in them, need special attention and support in order to avoid poverty, an adequate policy would be a policy of prevention. Prevention of divorce and separation (especially in situations where children are concerned) is therefore an important task for politics at all levels as well as for the Church and other actors in civil society.

This document does not put into question the current agreement in the EU concerning the competence of member states in family law and family policy. On the contrary, it intends to ask for and promote a debate on what the EU institutions can do within their existing competences and through existing EU policies to help couples across Europe in their efforts to create, firstly, a loving and stable relationship, and then to become good parents.⁴ In an annex interested readers may find a more detailed overview on the current situation of family law and legislation on marriage where it has acquired an EU dimension.

In subsequent parts this document therefore presents possible EU policy initiatives in favour of married couples under two headings. The first promotes ideas for helping couples in their specific relationship. The second addresses the challenge of parenting.

³ *“At the statistical level there is evidence to associate growing up in single-parent families and stepfamilies with greater risk to well-being – including a greater risk of school drop-out, of leaving home early, of poorer health, of low skills, and of lower pay.”*, UNICEF, *Child poverty in perspective: An overview of child well-being in rich countries*, February 2007, p.23.

⁴ Long-term relationships, and especially marriage as its ideal form, fulfil also other important social functions such as example intergenerational solidarity. At least this has been addressed at least partly in the earlier document of the COMECE secretariat « A Family Strategy for the European Union : An encouragement to make the family an EU priority ».

1. Loving and stable couples are a social capital in need of support

Loving and stable couples are a social capital for all Europeans. They are founts of mutual trust in society. They are the preferable instance for bringing up children. The Church cherishes marriage between a man and a woman as a sacrament of love. Therefore, it supports legislation which promotes the family founded on marriage and the stability and faithfulness it implies. EU member states consider civil marriage as a basic institution for society which is intended to provide protection for its weakest members and best hope: children. Even so, for many couples living together in cohabiting relationship marriage is still the ideal. A recent study in the UK showed that three quarters of men and women under 35 reported that they were planning to or probably would get married.⁵ A study in Hamburg/Germany reported that 83 percent of the 30 year-olds wished to stay with their partner for their entire life.⁶ Another important study states with a general view on Europe: “For example, in 1998, only 11% of 25 to 34-year olds in the European Union, which comprised 15 countries at that time, said that they were against marriage in response to a question in a Eurobarometer survey. Only France and Belgium, with around 20% had higher proportions saying that they were against marriage, with most of the other countries clustered in the 8% to 11% range. Even in countries as Sweden and Denmark, where cohabitation is the most prevalent, 90 % of the young men and women were in favour of marriage”⁷. The Population Policy

⁵ Cf. Dr. Ernestina Coast, *Honourable Intentions? Attitudes and Intentions among Currently Cohabiting Couples in Britain*, presented at the British Household Panel Survey (BHPS) conference on 5 July 2007. In Dr. Coast’s research among unmarried couples under 35 in the UK three quarters of men and women reported that they were planning to or probably would, get married.

⁶ The study from 2000 was reported in Hanns Jellouschek, *Paarberatung und Paartherapie – gestern und heute*, in: „*Stimmen der Zeit*“, September 2007, 606 – 618.

⁷ Kathleen Kiernan, *Redrawing the boundaries of marriage*, in : *Journal of Marriage and Family* 66, (November 2004), 980-987.

Acceptance Survey has shown that only a small minority of about five percent prefers not to raise children on the basis of marriage.⁸

The break-up of a longstanding relationship as a couple, married or unmarried, is in many cases a psychological and moral disaster for the partners involved, and the children involved often suffer traumatic experiences.⁹ Single-parent families, which are 85 % headed by a woman, run a considerably greater risk of falling into poverty.¹⁰ Family break-up puts at risk its capacity for caring for the elderly and disabled, and hence increases the pressure on state mechanisms for social protection.

The growing divorce rate in the EU should therefore be a serious concern for European policy makers. Over the last 25 years (1980-2005) the number of divorces has increased by more than 50%. More than 13,5 million divorces over the last 15 years have affected over 21 million children.¹¹ Public policy and private initiatives should be reinforced, especially through a more consistent offer of prevention measures, in order to help married couples to stay together, in order to resolve inevitable conflicts within their relationship, with the aim of avoiding a break-up of the relationship. The increasing number of divorces is a consequence of the social and cultural erosion of marriage as a basic institution of society in Europe. Today, the broad social acceptance of divorce reinforces this development. Three out of four Europeans consider a long-term stable relationship to be as

⁸ Cf. The demographic Future of Europe – Facts, Figures, Policies, p.9 (<http://www.bosch-stiftung.de/content/language1/downloads/PPAS-en.pdf>) The Population Policy Acceptance Survey was coordinated by the German Bundesinstitut für Bevölkerungsforschung. It covered fourteen European countries.

⁹ For detailed numbers see Eurostat, The family in the EU25 seen through figures, 12 may 2006. See also The Report on the Evolution of the Family in Europe 2007 published by the Institute for Family Policies, Madrid.

¹⁰ Women and poverty in the EU, European Parliament resolution on women and poverty in the European Union (2004/2217 (INI)), P6_TA(2005)0388.

¹¹ Cf. Institute for Family Policies, The Report on the Evolution of the Family in Europe 2007, Madrid, p. 25.

good as marriage, yet world-wide three persons out of five consider marriage the aim of one's life.¹²

WHAT CAN BE DONE AT THE EUROPEAN UNION LEVEL?

1.1 Support and promotion training for pre-marital couples and enrichment programmes for married couples such as couple communication training and stress prevention programs through an exchange of good practice and information campaigns.

There is a saying: "Marriages are celebrated in heaven but lived out on earth." Many couples start their marriage full of enthusiasm and good intentions. And still an increasing number of them fail due to conflicts which arise in the course of marriage or even existed beforehand. They were taken as a pre-marital mortgage into the marriage. It is a misunderstanding that happy marriages lack conflicts and problems. Not that the problems themselves are the problem of a partnership. But the way they are dealt with is a significant factor in a stable and functioning partnership.

Couple communication training¹³ and stress prevention training for couples¹⁴ programmes improve the communication and problem solving abilities among partners. Couple exercises make them aware of failures in communication. They learn how to express their positive and negative feelings in due form and to face problems in a fair way and – if possible – to solve them.

A long-term study on the effect of the Partnership Learning Programme (EPL) in Germany, that prepares young couples for marriage, showed that participating couples had – independent of

¹² Cf. AC Nielson, Love and marriage barometer, February 2007.

¹³ E.g. EPL – Ehevorbereitung – ein partnerschaftliches Lernprogramm (matrimony preparation – a learning-program in partnership) a program for young couples of the Institut für Forschung und Ausbildung in Kommunikationstherapie e.V., München (www.institutkom.de).

¹⁴ E.g. Freiburger Stresspräventionstraining für Paare (FSPT) of the Institute for family research and counselling, University Fribourg, Switzerland, http://www.unifr.ch/iff/index_iff.htm.

age, sex and education – a more favourable development in their marriage satisfaction and lower break-up and divorce rates than other couples.¹⁵

An exchange among EU member states on good practices, like the above mentioned example, should help to launch a debate on the best ways to prepare couples for marriage especially through communication training and stress prevention. An exchange of good practices should also include programmes designated for married couples helping them to improve their communication capacities in a crisis situation.

1.2. Creation of a legal framework for reconciling professional and private life

Although social partners have been invited to review the Parental Leave Directive, they have not come up with a proposal yet. The European Commission, therefore, should exercise its role and assume its responsibility. A revised proposal by the European Commission should include more flexibility for parents to share, to extend and to delay parental leave.

A common commitment by governments to improve the legal framework for reconciling professional life and family life is a key element of the Lisbon Strategy. It should be translated now into action at the European level. Nearly fifty percent of parents in the UK indicate that they had to put their career life first even if that affected their family life.¹⁶ In its Communication “Towards

¹⁵ After five years 23,8% of the comparative group couples were divorced while the divorce rate of the EPL training couples was 3,9%, Institut für Kommunikation und Ausbildung in Kommunikationstherapie, Ehevorbereitungsprogramm – Ein Partnerschaftliches Lernprogramm (EPL): Konzeption der EPL-Studie und wesentliche Ergebnisse, http://www.institutkom.de/f_eplstudie.pdf.

¹⁶ A balance between work and family remains an equally shared ideal of young men and women according to recent US research based on in depth interviews among men and women aged 18 –32. The Children’s Society in the UK published the second part of its “The Good Childhood Inquiry” on 17 July 2007 among UK adults. 61 % said that parents do not get enough time to spend with

*Common principles of Flexicurity: More and better jobs through flexibility and security*¹⁷, the European Commission has identified social protection provisions that “help people combine work with private and family responsibilities such as childcare” as an element of modern social security systems. A common principle of “flexicurity” should be support for gender equality by “offering possibilities to reconcile work and family life.” European trade unions and employers reached an agreement on a joint text defining the main challenges facing Europe's labour markets and proposing common recommendations on the issue of flexicurity on 18 October 2007. They called upon EU member states to “put in place the framework to develop workplace practises improving the work/life balance and in this way promote full use of the productive potential of the European labour force”¹⁸.

The review of the Lisbon Strategy in March 2008 should be a welcome occasion to strengthen the social dimension of the Lisbon Strategy through the introduction of further initiatives for reconciling of family and professional life. What can be done for example to allow couples in a situation of crisis to devote the time needed in order to deal with and to heal a conflict? Is it possible to imagine mechanisms that allow them to reduce temporarily their professional workload? A study on the feasibility of such provisions might be a revealing path to explore.

Satisfying the desire for parenthood or for caring for dependent adults, or the disabled, should not conflict with education or career choices, or constitute a barrier to staying in or returning to education or pursuing a career.¹⁹ On the other hand, the longer time young people spend in education paving their way to

their children while almost half of those questioned (48%) said that they had to put their career first even if that affected their family life.

¹⁷ European Commission, *Towards common Principles of Flexicurity*, COM(2007)359, 27th June 2007.

¹⁸ Key challenges facing European Labour Markets: A joint analysis of European Social Partners, p. 58.

¹⁹ European Parliament resolution of 19 June 2007 on a regulatory framework for measures enabling young women in the European Union to combine family life with a period of studies (2006/2276/INI).

satisfactory employment, the more difficult it is for them to start a family. Thus there is a need to create a social and economic environment supportive of young people with family responsibilities with their educational and professional challenges.

To that end the EU should raise awareness on the subject, combat the discriminatory treatment of parents by employers as well as by educational institutions. The EU should also promote measures to facilitate availability of relevant social and healthcare services and insurance. The exchange of best practice should be encouraged with regard to support for students with family responsibilities.

1.3. EU funding-rules should not exclude initiatives for family-friendly housing

Poverty, the risk of poverty and the stress this situation imposes on a couple can be considered important causes of family break-up. This is particularly relevant for young couples whose wish to become parents might be confronted with the reality of a lack of resources. Hence, in many EU member states access to adequate housing is an overwhelming obstacle for low-income couples wishing to create a family. In a recent report the European Parliament addressed the question of housing in the context of the EU's regional policy²⁰. It specifically asked for an *“integrated approach, rooted in the principles of subsidiarity and proximity...to promote access to housing ...(and) to improve quality of life for all generations”*. At the end of May 2007²¹ the European Commission published its Fourth Cohesion Report, and a Cohesion Forum was opened in September 2007 in order to discuss a series of questions concerning future challenges for European regions such as demographic change.

²⁰ European Parliament, Resolution of 10 May 2007 on housing and regional policy.

²¹ Cf European Commission, 4th Cohesion Report (Com/2007/273).

EU Regional Policy should devise its funding rules in a way that they do not exclude the use of European funds for initiatives to improve general housing conditions for young couples with low income. Notwithstanding the principle of subsidiarity European Cohesion Policy should be seen not only as an instrument to be adapted for addressing demographic change in Europe but also as a contribution to efforts to reverse a negative trend.

1.4. Domestic Violence

Domestic violence by men against women darkens the life of many couples and is one of the causes of family break-up. It is very often a consequence of a couple's incapacity to deal properly with conflicts. The problem exists in all EU member states and in all social classes. Data on this phenomenon is difficult to obtain and to interpret. However, the World Health Organisation has estimated that world wide – depending on the country and the assessment method – between 10% and 69% of women have been physically attacked by their husband or partner.

Additionally, violent patterns of behaviour are affecting children either in direct or indirect form, by disrupting their perception of social relationships, and often being one of the main factors contributing to juvenile delinquency. Juvenile delinquency can be effectively combated only by adopting an integrated strategy at national and European level.²²

More studies at the EU level²³ on the extent of domestic violence should be carried out in order to better understand the phenomenon and to devise counter-measures, for example through information campaigns. In this regard the proposal by the European Economic and Social Committee for a Pan-European

²² See: European Parliament resolution of 21 June 2007 on juvenile delinquency, the role of women, the family and society (2007/2011(INI)).

²³ It is most welcome that in Declaration 11 to the Reform Treaty the EU “*in its general efforts to eliminate inequalities between women and men*” committed itself to “*aim in its different policies to combat all kinds of domestic violence.*”

strategy to combat domestic violence should be carefully studied by the European Commission.²⁴

1.5. Encouraging academic research on the importance of the family for society and the value of marriage through the European Framework Research Programme

Scientific research conducted within the 6th Research Framework Programme proved the great value and necessity of research on family related issues, such as combining work and motherhood, family, work and social care, and flexibility in balancing work and family life.²⁵ The EU wide research on conflict prevention and resolution among couples would contribute to a better understanding of the phenomenon of family break-up and thus help to improve preventive therapeutic measures.

In the current 7th Research Framework Programme the European Commission should launch a call for proposals in the Specific Programme “cooperation” under Theme 8 “Socio-economic sciences and the humanities”. An Observatory on Demographic Issues created in the context of the European Alliance for Families – be it within the European Foundation for the Improvement of Living and Working Conditions in Dublin or as an independent entity – could intensify and promote research relating to family break-up.

²⁴ Cf European Economic and Social Committee, Domestic violence against women (Soc/218), 16/3/2006.

²⁵ Cf the following projects: Using flexibility to balance work and family life (Institut für Höhere Studien, Austria), Combining work and motherhood (Université Libre de Bruxelles, Belgium), Men and Social Problems – A New Approach? (Aalborg University, Denmark), Female employment and family formation (Université Paris X Nanterre, France), Policy responses to changing family structures in Europe (Loughborough University, the UK), Families, Work and Social Care in Europe (University of Tampere, Finland).

1.6. Provision of support for local associations and for voluntary organisations whose goal is to support couples and families

Delivering first aid to couples in difficulties and thus making the most important step to save a family from breaking up is very often undertaken by friends, colleagues or neighbours. Local networks and associations may provide a necessary follow-up when more professional help is needed. These initiatives vary from member state to state. An exchange of good practice organised among local organisations might therefore be useful to cross fertilise them. The European Commission could examine the feasibility of putting in place such an exchange of good practices among local associations in the framework of the Roadmap for EU Action on Gender Equality between Men and Women 2006 – 2010, for example in the context of priority area 4 “*Eradicating gender based violence and trafficking*”.

The next Roadmap for EU action on gender equality starting in 2011 should include a specific priority area “*Promoting gender equality through the prevention of family break-up*”. At the European level an exchange of best practice in supporting couples in a crisis should be organised within the new demography forum. Its next edition in 2010 could be at least partly devoted to this issue.

1.7. Encouragement for business to include in corporate social responsibility programmes initiatives in favour of stabilising couples.

Big companies should be encouraged to establish a service for psychological assistance for employees without a restriction on working conditions, especially since the organisation of work has resulted in the suppression of informal opportunities for exchange and discussion among employees. In July 2007 a Peugeot factory in Mulhouse/France opened a unit for psychological assistance for employees with a special phone number designated. Composed of psychologists, physicians and social workers, the unit is tasked to deal with psycho-social risks, including family issues among employees and to work in close co-operation with

the social partners.²⁶ Taking account of examples like this should lead the European Commission to include this dimension in future programmes for corporate social responsibility.

The European Foundation for Working and Living Conditions in Dublin should launch a series of studies on the concern for family break-up in businesses' social responsibility programmes.

1.8. Inclusion in the European debate on mobility of problems posed to families through commuting.

The modern labour market demands a high degree of mobility and flexibility by employees. In Germany, for example, every sixth employee does not live at his or her place of work. In particular the number of weekend commuters has increased lately.²⁷

For commuters the task of harmonising employment and family is becoming more and more difficult. Commuters may feel only marginally involved in important family decisions with a consequent increase in the risk of conflict among couples.

Whilst an important solution to this problem might be found in the current debate among social partners on “flexicurity” and the reconciliation of professional and family life, the debate on the European Commission’s Green Paper²⁸ on urban transport would provide an opportunity to discuss the risk of increased commuting and traffic stress to the wellbeing of a couple and a family.

²⁶ The example was presented in La Croix, 17/7/7.

²⁷ See: Regina Monch, *Wie mobil ist der Mensch?* In: Frankfurter Allgemeine Sonntagszeitung, 15. Juli 2007, Nr. 28, p. 62, cf. also L. Stafford, *Maintaining Long-Distance and Cross Residential Relationships*, Mahwah (Erlbaum).2004.

²⁸ European Commission, *Towards a new culture for urban mobility*, COM (2007) 551 final, 25.9.2007.

1.9. Promotion of better understanding of social and cultural backgrounds between spouses (and their next of kin) in trans-national marriages through an exchange of good practices and information campaigns

The European Union allows people an unprecedented level of free mobility within its territory. As it has become much easier to travel, work, and study within the Union, very often marriages and families are being formed among individuals from different member states. Couples settle down in another member state. As a result, either both spouses or at least one of them find themselves in a new context. Both then discover cultural differences between themselves. National affiliations and obligations may be stronger than expected.

The increasing number of trans-national marriages in the EU therefore prompts a number of questions. How is the basic family unit defined in different national settings? How are gender relations organised? How do family members communicate and interact across the border? Spouses have to develop new strategies to cope with a dispersed family network and to organise interaction with family members within and beyond the borders.²⁹ In short there are not only enriching elements for each couple but also potential causes for misunderstanding and conflict.

Within the 2008 Year of Intercultural Dialogue efforts should be made to highlight the particular socio-cultural experience of trans-national marriages, especially those with a strong intercultural dimension. The long-term goal would be to reinforce divorce prevention for those couples whose split-up risk is particularly high.

²⁹ Jutta Lauth Bacas , *Cross-border marriages and the formation of Transnational Families: A case study of Greek-German couples in Athens*, WPTC-02-10.

1.10. Once a split-up cannot be avoided try to protect the weakest part in cross border divorce proceedings

The increased number of divorces observed in national contexts (the number of divorces in the EU-25 was estimated at 2.1 per 1.000 inhabitants in 2004; i.e. 4 out of 10 marriages results in divorce)³⁰ has been also reflected in the increase in the dissolution of trans-national marriages. International divorces include a wide variety of cases, for instance of spouses of different nationalities, or having the same nationality but living in a member state other than their original state. Statistics show that there are approximately 170,000 international divorces in the EU each year, i.e. 16% of all divorces. These numbers illustrate the particular difficulties EU couples encounter in their marriage. Dissolution of marriage always entails legal consequences which become more complex in international divorces. These problems concern determination of the jurisdiction and of applicable law for divorce and legal separation, parental responsibility, maintenance obligations, and matrimonial property.

Legislation touching upon family matters with cross-border implications has become one of the most dynamically evolving parts of the EC law.³¹ Since 2004 there have been many initiatives which directly or indirectly touch upon these matters (See Annex to this document).

³⁰ Europe in figures – Eurostat yearbook 2006-07, p. 68.

³¹ A majority of EU citizens, as shown by a recent Eurobarometer Survey (n° 188, October 2006) expect the EU to play a role in regulating the cross border matters concerning family law. Although the opinions vary with regard to what action the European Union should take as a priority, 76% percent of the overall EU population expect the EU play a role to facilitate legislation for recognizing civil status certificates (birth certificate, marriage certificate) and establishing standard formats for specific documents, in another member state. Two-thirds (67%) expect the EU to facilitate legislation in child custody dealings in another member state and another 63% to facilitate inheritance in another member state. A majority of the citizens (60%) expect the EU to play an active role in divorce matters.

Whilst most of these initiatives can be welcomed as strengthening the rules generally serves to protect more effectively the weakest parties, European legislation should be limited only to matrimonial and parental matters. There exists a vast diversity of family unions in the EU member states. However, marriage is the only one legally recognised by all member states. The respect for the Community principle of subsidiarity requires therefore that it should be left to the sole competence of the member states to regulate legal consequences of the registered partnerships and de-facto unions.

Introducing EU wide regulations might eventually entail an obligation for member states to recognise forms of union other than marriage which, on account of their legal or cultural traditions, they do not recognise. Furthermore, removing some of the remaining differences between marriage, on one side, and other forms of union, on the other side, would further erode marriage – a unique institution of the common European heritage.

2. Good Parenting

From a Catholic point of view the right and duty of parents to educate their children is “*essential*”, since it is connected with the transmission of human life. “It is original and primary with regard to the educational role of others, on account of the uniqueness of the loving relationship between parents and children; and it is irreplaceable and inalienable, and therefore incapable of being entirely delegated to others or usurped by others”.³² The primary role of parents in the up-bringing of their children must be respected by policy makers.

It is, therefore, important to recognise that a couple has to shoulder an important financial burden once the couple begins to rear children. Financial support for parents as organised by EU member states is therefore wholly justified. However, beyond all material considerations, being a parent is not an easy task for many other reasons. In fact, the challenge of being good parents has increased in recent decades. For example, parenthood involves the question not only of spending more time with children but also the quality of the time spent together counts. A recent study in France showed that among parents the conviction prevails that it is more demanding to raise children today.³³

The Council of Europe stressed in a recent Recommendation that the family is a primary unit of society and that parenting plays a fundamental role in society and for its future. The Council of Europe asked governments to respect the fact that “*parents have the prime responsibility for their child*” and that they should “*promote initiatives aiming to make people aware of the value and importance of positive parenting*” and to “*(normalise) participation in parenting programmes*”³⁴. Given the current trend towards individualisation of the transmission of values, whether

³² Compendium of the Social Doctrine of the Church, N° 239

³³ Cf IPSOS, Parent – un metier difficile et souvent frustrant, September 2001.

³⁴ Council of Europe, Recommendation Rec(2006)19 of the Committee of Ministers to member states on policy to support positive parenting, 13.12.2006.

they are moral, cultural, humanistic or religious, counts among the more difficult tasks which parents have to accomplish today. However, this task is essential for the future of European society, and parents need support and education on being a parent. This may start already in schools where pupils may be better informed about the responsibilities concomitant with the role of a parent but also in later life. In what follows a number of measures at European level are suggested for the support of couples in their task of parenting.

WHAT CAN BE DONE AT THE EUROPEAN UNION LEVEL?

2.1. Differentiation of the employment rate goal in the Lisbon Strategy

Through its Lisbon Strategy, the EU has implicitly given support to the specific form of the dual income couple, insofar as the Strategy set out as principal objectives an overall employment rate of seventy percent of the active population and of over sixty percent for women. It should however help to avoid discrimination against those couples who decide that one of them stays at home to bring up small children. In the consultative document “*Europe’s Social Reality*,” by the Bureau of European Policy Advisers, the dual earner income family is presented as a new social norm, which calls for policy makers to adapt and to increase provisions for childcare.³⁵ There is insufficient information about the reasons for couples nowadays both working fulltime while their children are still very small. In many cases the main reason may be simply financial and not ideological. Whilst child-care facilities therefore need to be increased in number and improved in quality throughout Europe, this policy shift should not lead to negative discrimination against those who have opted for the other solution

Such discrimination can concern, among others, fiscal treatment or pension rights for the person staying at home. Even

³⁵ Cf. A consultation paper from the Bureau of European Policy Advisers: *Europe’s social reality*, 26/2/2007, p. 31.

disregarding a person, who may suffer from this discrimination, deciding to stay at home with his or her young child, his or her choice must be guaranteed at least in financial terms.

In the process of reviewing the Lisbon Strategy a signal should be sent to public opinion that staying at home and looking after small children is an important and welcome contribution to the well-being of all citizens in the European Union. One should for example consider introducing a differentiated employment rate of only 50% for the active population with small children (aged 0 – 3 years). EU member states should furthermore engage in an exchange on good practices on measures designed to fight discrimination against single-earner families.

2.2. Giving greater priority to the construction and renovation of quality childcare facilities in European Structural Funds

Another target of the Lisbon Strategy concerns the number of childcare facilities in the European Union for childcare provision for at least 90 percent of those aged three years or over and for at least 33 percent of children less than three years. Although the European Council has reiterated these targets they are far from being reached. The main responsibility lies specifically within member states.

European Cohesion Policy promotes co-financing of projects to improve access to affordable child care and EU member states should make more use of this facility. It is welcome that the European Commission is planning a Communication on childcare for 2008.³⁶ In particular the quality of child care must receive due attention.

³⁶ Cf the speech of Vladimir Spidla, Member of the European Commission, with responsibility for Employment, Social Affairs and Equal Opportunities at the Plenary session of the European Parliament on 13th March 2007.

2.3. Investigating the possibility of a Grand-Parental Leave Directive

The issue of work-life balance forms an already established element of the EU social policy debate. However, the focus is primarily upon working parents of small children. The needs of working people struggling with the care for older children, for elderly or for sick family members have not yet stimulated corresponding policy attention. Often, those who decide to give priority to family obligations are excluded from paid employment or career perspectives. In the majority of cases it affects women. On the other hand a couple often relies on a larger informal support system (parents, brothers & sisters, neighbours, friends) in order to cope with the twin challenge of a professional career and the education of their children. Grand-parents very often play a prominent and positive role in the up-bringing of their grandchildren.

Grand-parental leave of up to two years – open to employees who are approaching the end of their professional career and who wish to insert a longer transitional period between their active life and retirement – could permit grand-parents to assume this role more actively. The European Commission should initiate consultation among European social partners on the idea of a Grand-Parental Leave Directive at the EU level.

2.4. Reduction of VAT on essential items for rearing a child

Parents with young children bear an important financial burden. Specific arrangements in fiscal policy are an indirect way of supporting them. With regard to fiscal measures, the European Union has competence in the area of indirect taxation. This concerns in particular VAT. Reduced rates of VAT are an important means for EU member states to help a specific group of citizens and or a sector of the economy. In order to avoid fiscal dumping the European Union lists in its VAT directive those products and services eligible for reduced rates. Until today essential child care

items are not included in these lists. In July 2006³⁷ the European Commission committed itself to the communication of a proposal allowing national governments to reduce the rate of VAT on baby diapers. In its Communication on VAT rates, other than standard VAT rates, dated 5 July 2007, the European Commission aired the idea of reforming the current EU rate structure and the introduction of a very low rate for goods and services of first necessity and of a second rate for other purposes “*that are not basic needs but are felt deserving of preferential treatment*”. It has furthermore suggested that the second rate should also be applied to “*children’s clothes or baby nappies*”.³⁸

Following a call for action by European Family Federations, the European Commission should offer concrete help to parents of young children and propose an amendment to the 6th VAT directive enabling national governments to use reduced rates of VAT on essential child care items. Moreover, in the course of deliberation on the Commission’s Communication, Council and European Parliament should defend the inclusion of essential child care items in the category of goods and services of first necessity rendering them eligible for a very low rate.

2.5. Contributing to increased public awareness of the challenge of good parenting

The importance but also the challenge of parenting in contemporary society is not always recognised in public debate. Schools and universities depend in their work on the education and effective transmission of values given to children by their parents. Respecting the freedom of parents and giving them every available and necessary support is therefore a very important policy goal, to which the European Union should also contribute through information campaigns and an exchange of good practice. An interesting example of good practice is the

³⁷ Cf the European Commission’s press release on the issue (IP/06/1031).

³⁸ European Commission, Communication to the Council and the European Parliament on VAT rates other than standard VAT rates (COM(2007)380 final, 5.7.2007, p.11.

initiative “*kess-erziehen*” in Germany, where parents of children who are at least two years old take part in a course consisting of five specific units: raising basic social needs; reacting appropriately; trusting children to assume responsibility for their own acts, solving problems, developing co-operation.³⁹ You could call this method one of prompting children to act on suggestions and hints by way of entering into the learning experience.

In order to raise public awareness on the challenge of good parenting the European Parliament should call for a European Year for Good Parenting in 2011.

2.6. Consideration of specific risks for children and of methods of aiding parents to avoid them

Children run specific risks that greatly impact their opportunities in adult life. Among these risks are those related to an uncritical use of modern technology, to contact with drugs and alcohol, to unhealthy food. Public policy makers at EU level are well aware of these risks and have taken several measures to combat them. A general approach is followed in particular through the drafting of an EU strategy towards the rights of the child,⁴⁰ although it should be noted that for many observers this proposal does not sufficiently acknowledge the role and responsibility of the parents for their child. A sectorised approach is followed in this document through identifying a certain number of specific risks.⁴¹ Special attention is paid to the role played by parents who have to guide and give a first orientation to their children:

³⁹ For further information consult: www.kess-erziehen.de

⁴⁰ Cf. European Commission, Communication Towards an EU Strategy on the Rights of the Child (2006)367final.

⁴¹ Not all conceivable risks have been included in this overview. One could have added for example a section on juvenile delinquency. Cf. on this issue the European Parliament resolution of 21 June 2007 on juvenile delinquency, the role of women, the family and society (2007/2011(INI)). Nos 7 and 8 emphasises the particular role of parents in combating juvenile delinquency.

2.6.1. Operation of an effective ban on the most brutal video “killer games”

Recent studies have shown that playing violent video-games affects children’s self-control, their capability to keep their emotions in check, as well as their concentration⁴². Moreover, according to a study published in 2005 by the Berlin Charité Hospital, “killer games” train the mind to develop aggressive reactions and behaviour in real-life situations, while other studies prove that this type of video-game renders a person insensitive and unemotional when confronted with real life brutality. “Killer games” also lead to a decrease of social concern and of readiness to help.

Many EU member states do not oblige retailers to restrict the sale of products classified as adult-oriented. Often product ratings derive from self-regulation through voluntary systems. Bearing all this in mind, the European Union should work on finding a clear and commonly accepted definition of the concept of "killer game" or "violent video game", establishing what contents must be associated with this definition and devising legislation banning the most brutal and potentially harmful videogames. A first framework for action was agreed in January 2007 at the meeting of EU Justice Ministers.⁴³ Implementation is simply left up to the goodwill of member states. The outcome of the meeting EU Justice Ministers, 13 June 2007, was only partially satisfactory. Discussions led to an agreement on a common action framework⁴⁴, but did not

⁴² Vincent P. Mathews, Yang Wang, Andrew J. Kalnin, Kristine M. Mosier, David W. Dunn and William G. Kronenberger, *Short-term Effects of Violent Video Game Playing: An fMRI Study*: study presented on the 29th of November 2006 at the annual meeting of the Radiological Society of North America (RSNA).

⁴³ Overview of the various national regulations, issue of a blacklist of banned games on the “InSafe” Internet website, eventual closer cooperation with producers of violent games as well as with Internet providers and implementation of penalties for retailers selling age-inappropriate games to minor, with a long term goals of Europe-wide standards and under-age control.

⁴⁴ E.g. tightening of national provision on the sale of "Killer games" to children, implementation of a list of common sanctions against retailers who sell violent

produce any agreement on an EU regulation of the classification of videogames. This may also be a matter for the Single Market regulatory framework.

A solution should consist in the inclusion of video-games in the scope of the directive (88/378) concerning the safety of toys which stipulates that “toys should not jeopardize the safety and/or health of users and/or third parties.” Perhaps the best solution would be a specific legal instrument. A code of conduct similar to the one already existing for the mobile phone sector could also be envisaged, but such an instrument can only be a supporting measure.

2.6.2. Helping parents to supervise their children’s use of mobile phone and Internet services

On the occasion of the celebration of Safer Internet Day in Brussels (6 February 2007) some leading operators in the European mobile phones market, under the umbrella of the European Commission, subscribed to a Framework on Safer Mobile Use by Younger Teenagers and Children. The operators have until February 2008 to adopt a national self-regulation code in compliance with the provisions of the agreement, in particular with regard to controls on access to adult contents, awareness campaigns for parents and children, classification of the commercial contents according to national rules, and combating illegal contents disseminated by mobile technology. The European Commission should closely monitor the compliance by all relevant parties with this agreement and with the deadline of February 2008, evaluating the content of such codes and, if necessary, suggesting the necessary changes and improvements. The European Commission announced a legislative proposal for a programme to protect children using the Internet and the new media 2009-2013, which follows on the current Safer Internet Plus programme. It should be

video-games to children, possibility of stricter age restrictions on violent games and stronger parental advisory warnings.

comprehensive and targeted so as to contribute to the combat against illegal and inappropriate contents, thus granting children a better and morally healthier future and enabling parents to protect their children.

The adoption of common standards for mobile based Internet filtering tools, as envisaged in the document summarising the results of the public consultation on Child safety and mobile phone services, issued by the European Commission in 2007 could be envisaged.

A common framework should be devised at EU level to help Member States act in a more effective and concerted way. Moreover, it must be borne in mind that a certain number of parents are not aware of the existence of possible means to block their children's access to harmful contents. Thus a comprehensive strategy for informing parents about possible "electronic" solutions to the issue should be launched.

An interesting experience from which to draw useful suggestions is the one concerning the Ombudsperson for minors in Norway, who not only leads promotional campaigns but also monitors the possible negative effects of legislative provisions on the protection of minors. The ombudsperson also contributes to the legislative process with input for the improvement of the provisions concerning Child Safety and Mobile Phone Services. The ombudsperson has free access to all administrative as well as private documents regarding cases concerning minors⁴⁵.

2.6.3. Helping parents to avoid obesity in their children

One in four children in the EU weighs too much. The number of overweight and obese children is rising by 400,000 annually. Obesity is a major risk factor for many chronic diseases and the economic cost of obesity and related illnesses is estimated at 7% of public health budgets in the EU. Following on a Green

⁴⁵ D. Porziani-M.C. Brugnoli, *Europe and the protection of minors*, 2005.

paper in 2005, the European Commission adopted, 30 May 2007, a Strategy for Europe on Nutrition, Overweight and Obesity related health issues.⁴⁶ The Commission states: *“Childhood is an important period to instil a preference for healthy behaviour, and to learn the life skills necessary to maintain a healthy lifestyle. Schools clearly play a crucial role in this respect”*. However, the Strategy fails to mention the role of parents, the family and the family home as an important environment in which to acquire these skills.

The strategy for Europe on Nutrition, Overweight and Obesity related health issues stresses the importance of childhood but it should recognise more clearly the central role of parents in the formation of eating behaviour of children. The strategy should be complemented by measures which are specifically aimed at parents.

2.6.4. Involving parents more closely in the prevention of alcohol and drug abuse by minors

Defining national drug policies remains the prerogative of individual member states. There is, however, common agreement that supportive action is needed at the EU level. In July 2007 the Council adopted a Common position concerning the adoption of the Specific Programme "Drug Prevention and Information"⁴⁷. The Programme pays special attention to the prevention of drug use among young people. It also refers to the role of parents, as those most directly or indirectly placed to act

⁴⁶ Cf. European Commission, White Paper on A Strategy for Europe on Nutrition, Overweight and Obesity related health issues, COM(2007)279final, 30th May 2007. Cf also European Parliament, Report on 'Promoting healthy diets and physical activity: a European dimension for the prevention of overweight, obesity and chronic diseases' (2006/2231(INI))

⁴⁷ Decision of the European Parliament and of the Council establishing for the period 2007-2013 the Specific Programme "Drug prevention and information" as part of the General Programme "Fundamental Rights and Justice". This programme aims at implementing targets identified by the EU Drugs Strategy 2005-2012 and the EU Drugs Action Plans 2005-2008 and 2009-2012.

on the phenomenon of drugs. Parental cooperation is vital for effective prevention.

The Annual Report for 2006 by the European Monitoring Centre for Drugs and Drug Addiction⁴⁸ deserves special attention. It underlines the importance of family based prevention and it also calls for improvement and intensification. The report further states that *'In pre-teenagers, family influence prevails over peer influence. The role of the family in establishing norms and support for children is more relevant to prevention than imparting information on substances.'* Family-based prevention in the EU is becoming more targeted and more firmly acknowledged. In June 2006 the European Commission published a Green Paper on the role of Civil Society in Drugs Policy in the EU⁴⁹. Following on the Green Paper in April 2007, the European Commission proposed setting up a Civil Society Forum on Drugs.

In designing EU instruments for promoting healthy lifestyles and for the creation of healthy living conditions, parents are foremost natural behavioural role models for their children. As such they merit particular attention in drafting these programmes. Once the Civil Society Forum on Drugs is operational, it should cover topics concerning social and family policies with a special reference to the role of parents in the protection of children exposed to drug hazards. Within the Forum participation of family or parent organisations having experience in the fight against drug related harm must be envisaged.

In Europe in the past ten years one of the major concerns was an increase among young people drinking alcohol, in particular among under-age children. In October 2006 the European Commission presented a document, *"EU strategy to support*

⁴⁸EMCDDA is one of the EU's agencies established in 1993 and based in Lisbon. It is the central source of comprehensive information on drugs and drug addiction in Europe.

⁴⁹ COM(2006) 316 final.

*Member States in reducing alcohol related harm*⁵⁰". The strategy identifies areas where the EU can support the actions of member states in reducing alcohol related harm; it also aims to promote the exchange of good practice between member states and sets out areas where industry can make a contribution, notably in the area of responsible advertising and marketing. The document underlines the important role of education, highlighting the validity of educational programmes in increasing the ability of young people, and their parents, to tackle alcohol problems and risky behaviour. In its resolution on the same topic the European Parliament suggested to launch educational campaigns directed "towards parents in order to prepare them to speak about alcohol related problems within a family setting"⁵¹.

The explicit reference to the involvement of parents is laudable. However, vague advocacy of the involvement of parents as only one of the actors and not the central ones seems inappropriate. The vital role of parents should be stressed and additional instruments developed in order to support them.

2.6.5. Paying special attention to children with mental health problems and their parents

Two million young people in Europe suffer from mental health problems. It was estimated that the overall "prevalence of mental disorders in adolescence is of the order of 15– 20%"⁵². Consequently, the adopted Reform Treaty amended article 152 of the renamed Treaty on the Functioning of the European

⁵⁰ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 24 October 2006 An EU Strategy to Support Member States in reducing alcohol related harm, COM(2006) 625 final.

⁵¹ European Parliament resolution of 5 September 2007 on an European Union strategy to support Member States in reducing alcohol related harm (2007/2005(INI)), 11i.

⁵² European Commission, Report on state of young people's health in the European Union. A commission services working paper, February 2000.

Union by replacing “*human health*” by physical and mental health. This should stimulate the European Union, within its competencies, to make stronger efforts to combat mental health problems. Following on a Green Paper⁵³ and public consultation, the European Commission is currently elaborating a Mental Health Strategy.

A future European Mental Health Strategy must include measures to support parents whose children are affected by mental health problems.

2.6.6. Helping parents of disabled children

It is estimated that roughly five to ten percent of children in the EU are born disabled. Whilst for disabled adults the aim of independent living is a worthwhile concept, children with disabilities should be allowed to grow up within their families. However, parents of disabled children are confronted with many problems. The European Parliament has called on “*the member states to take due account of the problems faced by parents of children with disabilities, who are often forced to remain outside the labour market, and to promote policies to support and assist such parents*”⁵⁴.

The European Commission’s proposal for the next action plan on disability – due December 2007 – should therefore include measures targeted at parents of children with disabilities.

⁵³ European Commission, Green Paper Improving the mental health of the population: Towards a strategy on mental health for the European Union, COM(2005)484, 14/10/2005.

⁵⁴ The European Parliament, Report on the situation of people with disabilities in the enlarged European Union (A6 -0351/2006), 13/10/2006), N° 18. On 30 March 2007 the European Community for the first time in history signed a core UN human rights convention – the Convention on the Rights of Persons with Disabilities. The aim of the Convention is to end discrimination and exclusion of the physically and mentally disabled in education, jobs, and everyday life; the Convention requires its signatories to prohibit all kinds of discrimination on the basis of disability and to guarantee equal legal protection.

2.7. Identifying parenting in migrant families as a key challenge for integration

Migrant families face specific difficulties when they have to integrate into new culture. Learning a new language and adapting to a different value and educational system pose additional tasks for parenting. Whilst the positive contribution of migrant families to family life in Europe is evident, it cannot be ignored that communication among generations, among parents and children may be particularly difficult. Another aspect deserving particular attention concerns family reunification: considering the *consideranda* (4)⁵⁵, (8)⁵⁶ and (15)⁵⁷ of Council Directive 2003/86/EC of 22 September 2003, some improvements should be envisaged to make family reunification more effective and to remove some of the existing legal obstacles to the fulfilment of this possibility. This would not only have a tangible impact on migrants' family life, but would also affect the educational effort of migrant parents and facilitate the process of their integration.⁵⁸

A successful integration policy in the European Union should therefore stress the family dimension of integration, where the needs of the migrant family and not of the individual person are addressed through specific measures/ programmes. Together with the National Contact Points on Integration, an expert meeting should be convened on this issue with a view to the preparation

⁵⁵ "Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty".

⁵⁶ "Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favorable conditions should therefore be laid down for the exercise of their right to family reunification".

⁵⁷ "The integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of break-up of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions".

⁵⁸ Cf. the European Parliament resolution of 26 September 2007 on the policy plan on legal migration (2006/2251(INI)), 10. 21. 38 – 41.

of a report for the informal meeting of Integration Ministers in the EU in 2009. Reunification of migrant families should also be considered under the aspect of supporting parents in their task of raising children.

2.8. Avoiding family break-up: an effective measure to reduce child poverty

Since the '80s child poverty rates have increased in a number of EU member states.⁵⁹ At its meeting in Spring 2007 the European Council decided to make the fight against child poverty a priority. The EU joint reports on Social Protection and Social Inclusion for 2006 and 2007 list the elimination of child poverty and assistance to families among their key policy priorities. The joint report for 2007 reads: *“Children have a higher-than-average risk of poverty in most Member States. In some, almost every third child is at risk. Living in a single-parent or jobless household further compounds the risk.”*⁶⁰ Joblessness is strongly associated with a higher poverty risk for children, but children who live with a father or a mother alone run a much higher risk of poverty⁶¹. Reducing the number of divorces through preventive measures would therefore help to reduce the poverty risk for children.

Combating family break-ups should therefore be considered by the European Commission as an effective measure to achieve the proclaimed goal of the EU leaders in the fight against child poverty.

⁵⁹ An OECD Working Paper, entitled “What works best in reducing child poverty” (March 2007), lists Austria, West Germany, Italy, Ireland, the Netherlands and the United Kingdom, p.18.

⁶⁰ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Proposal for the Joint Report on Social Protection and Social Inclusion 2007, COM(2007)0013 final.

⁶¹ Cf OECD working paper, p.19.

Conclusion

Helping married couples to create a loving and stable relationship and to assume their educational role as parents must be considered as an important and necessary step in enhancing the European Union's social dimension. As shown above many initiatives are possible. The European Union can contribute in helping married couples to overcome and prevent crises and assist them in their most challenging task, which is the education of their children. Still more ideas may emerge in the course of further debate, which this document is intended to promote. Now European policy makers are tasked to take up these issues and develop appropriate and imaginative policies. They may also bear in mind the encouragement they received from Pope Benedict XVI during his visit to Austria, 7–9 September 2007, in an address to the public authorities and the diplomatic corps: *“Encourage young married couple to establish new families and to become mothers and fathers! You will not only assist them, but you will benefit society as a whole. I also decisively support you in your political efforts to favour conditions enabling young couples to raise children. Yet all this will be pointless, unless we can succeed in creating once again in our countries a climate of joy and confidence in life, a climate in which children are not seen as a burden, but rather as a gift for all.”* Indeed, many of the difficulties couples face today in maintaining the bond of marriage and in raising their children point to the difficulty of leading a meaningful life in modern society. This, of course, is not something that governments can deal with. A government cannot offer a meaningful life; its task is related to justice.⁶² Other actors have to stand in. Churches are certainly among them.

Brussels, 30 October 2007

⁶² Cf Pope Benedict XVI, Encyclical letter “Deus caritas est”, N° 28.

ANNEX

EU COMPETENCE IN FAMILY MATTERS

The European Union is not a sovereign state. The only powers that it does have are those that the member states have been willing to confer to it. Currently those competencies are contained in the consolidated version of the Treaty of Rome⁶³ (Articles 2 and 3). Neither family policy nor family law are mentioned there. According to the EC Treaty (art. 65, 67) the Council can adopt measures in the field of judicial co-operation in civil matters having cross-border implications with the exception of aspects relating to family law. Family law therefore remains the sole competence of member states. It is not therefore possible to harmonise the rules of substantive law.

Also Article 3 of the draft Treaty on European Union, as amended by the draft Reform Treaty⁶⁴, which defines the objectives of the Union, does not mention the family. In particular it states that the Union “shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.” It is quite revealing that the word “family” is not mentioned in this context, although a number of these objectives are achieved in the first instance in the framework of family relationships.

On the other hand, the Charter of Fundamental Rights, proclaimed in December 2000, refers to the family in many places and provides for the family to be protected on legal, economic and social levels⁶⁵. Only social policy belongs to the domain of competencies shared between the Union and the

⁶³ <http://europa.eu.int/eur-lex/en/treaties/selected/livre202.html>

⁶⁴ The draft Reform Treaty was presented by the Portuguese Presidency of the Council on 23 July 2007.

⁶⁵ By doing so the Charter of Fundamental Rights marks important progress when compared with the 1950 European Convention on Human Rights, which only deals with the right of marriage (Article AZ) and the right to privacy in private and family life (Article 8)
<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

member states, and even this is limited to issues concerning the reconciliation of professional life with private life, social protection, equal rights for women and men and measures concerning social exclusion.

In 2004 member states in the Council adopted the Hague Programme. In this Programme they explicitly foresaw the creation of certain instruments concerning some procedural aspects of family law – that is mutual recognition of decisions issued in different member states and improving judicial co-operation in civil matters. The Hague Programme stated that the instruments should cover matters of private international law and should not be based on harmonised concepts of "family", "marriage", or other.

When and if the draft Reform Treaty comes into force, family policy and family law will remain essentially within the competence of member states. The draft Reform Treaty amending the EC Treaty⁶⁶ in Chapter 3 (judicial cooperation in civil matters) refers only to the measures concerning family law with cross-border implications. Draft Article 69 D of the EC Treaty repeats the provisions of the former Constitutional Treaty stating that measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure⁶⁷. There is a novelty though. In Article 69 D (3) a clause is added. It obliges the European Commission to notify the proposal to National Parliaments. The provision later stipulates that 'if a National Parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted. In the absence of opposition, the Council may adopt the decision.' The latter provision is effectively almost an absolute safeguard for

⁶⁶ According to the draft Reform Treaty the EC Treaty will be renamed as Treaty on the Functioning of the EU.

⁶⁷ The procedure is as follows: The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

those member states which often perceive the role of the EU as intervening in their internal matters, especially those relating to public morality or family law. By enhancing the role of national parliaments, at the same time the provision strengthens the principle of subsidiarity, reaffirming the competence of member states as regards family law.

The possibilities for European Union action in the domain of family law therefore consist mainly in exchanging information on best practice, the promotion of new approaches and the evaluation of experience. It may frame the actions of member states and introduce minimum thresholds for social protection, but no harmonisation of relevant national laws is foreseen.

In the absence of any harmonisation of national legislation on family matters, a certain number of policies and European texts still affect the family, or are obliged to take family relationships into account.

1. GENERAL REMARKS ON MARRIAGE

The concept of marriage has become particularly dynamic in the past decades. European societies have diverse views regarding marriage, the family it constitutes and its functions. The European legislation obviously is not a source of concepts, rights and obligations relating to marriage. However, in numerous acts it contains references to marriage, or has a direct or indirect influence on it.

The European Convention on Human Rights (ECHR) and the EU Charter on Fundamental Rights both declare the 'right to marry'. Article 9 of the EU Charter '*The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.*' is formulated in correspondence with Article 12 of the ECHR '*Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.*'. However, Article 9 is formulated in a neutral manner, because a reference to men and women is

omitted in this provision. The wording of both articles confirms that national legislation has a crucial role on legislation concerning marriage. At the same time, by considering the right to marry as a fundamental right, the Convention and the Charter reaffirm that it cannot be wholly governed only by national law and that international law provisions guarantee minimum human rights standards. The existence of the '*right to marry*' in the Convention and the Charter precludes any attempt to eliminate marriage as legal category.

The European Courts remain faithful to a traditional idea of marriage. As the European Court of Human Rights established in the e.g. *F. v. Switzerland* '*matrimony is so closely bound up with the cultural and historical traditions of each society and its deep-rooted ideas about the family unit*'⁶⁸. The Court also stated that 'a state may not restrict or reduce the right to marry in such a way or to such an extent that the very essence of the right is impaired'. The European Court of Justice (ECJ) in *D. and the Kingdom of Sweden v. Council*⁶⁹, advocating the generally accepted and traditional view of marriage, said that '*Community notions of marriage and partnership exclusively address a relationship founded on civil marriage in the traditional sense of the term*' (§ 26).

Formally Article 9 of the Charter does not preclude any restrictions to the right to marry. This, however, cannot be interpreted as an absolute freedom for every couple to claim the right from the responsible authorities to be married without fulfilling requirements of any kind. There is a general acknowledgement in all legal orders that the state can establish rules which restrict the right to marry, provided they are based on rational, reasonable, and non-arbitrary grounds. The majority of these rules are of universal nature, such as: marriageable age or

⁶⁸ Eur. Ct. H.R., *F. v. Switzerland* (Appl. No. 11329/85), judgment of 18 December 1987, Ser. A, No. 128, para. 33.

⁶⁹ ECJ, Case C-122/99 P and C-125/99 P, *D. and the Kingdom of Sweden v. Council*, [2001] ECR I-4319 (judgment of 31 May 2001)

monogamy. In this respect a direct reference exists in EC legislation⁷⁰.

The Council Directive 2003/86/EC on the right to family reunification for third-country nationals, 22 September 2003⁷¹, makes it clear that in the event of polygamous marriage, where the sponsor already has a spouse living with him in the territory of a member state, the member state concerned shall not authorize the family reunification of a further spouse (Article 4 §4).

As regards the minimum age, most of rules in international law refer to 'full age' or 'marriageable age'. This requirement not only presupposes physical maturity but also an individual's mental awareness and ability to make his or her own decisions. Although Article 9 of the Charter does not contain any reference to minimum age for marriage, this requirement remains relevant. According to the Council Directive on the right to family reunification, member states may require, 'in order to prevent forced marriages' and in order to 'ensure better integration', the sponsor and his/her spouse to be of a 'minimum age', before the spouse is able to join him/her' (Article 4 §5).

2. CROSS-BORDER PROCEEDINGS IN FAMILY MATTERS

The European Union allows people an unprecedented level of free movement. As people are free to travel, work, and study within the Union, very often marriages and families are being formed between individuals from different member states, or couples settle down in another member state. There has also been an increase in divorce cases.

⁷⁰ Other important preconditions for valid marriage refer to the requirement to enter into marriage completely voluntarily and to prevent marriages contracted under duress, threats, fraud and any other illegal coercion or domination of the will of one of the intending spouses (e.g. International Criminal Court (ICC)-Statute (Article 7(1)(c)), The Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children to the UN Convention against Transnational Organized Crime of December 2000).

⁷¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification for third-country nationals, OJ L 251 of 3 October 2003, p. 12.

Responding to some of these challenges, the EU institutions have been engaged in creating practical solutions and legal rules on jurisdiction, and applicable law in questions of divorce, parental responsibility, maintenance obligations, and the division of matrimonial property. It needs no further justification that all European instruments should offer the highest level of protection for the further functioning of the parties of the dissolved marriage and the family that they formerly constituted. Respect for the inviolability of fundamental rights and for the dignity of a human being has to play a central role in shaping European legislation. However, there are substantive differences anchored in the national laws of member states concerning the rules regulating the broad range of matrimonial matters. Moreover this diversity has to be respected and family law is and must remain the sole competence of member states.

The EU fully respects the family laws of member states, which remain very different for historical and cultural reasons. Therefore the EU does not intend to harmonise provisions of member states' substantive legal orders. Rather it intends to provide uniform rules to determine which state's law will apply in an international case. Nevertheless, the application of foreign law in domestic courts remains a controversial issue. The introduction of certain legal solutions concerning family matters could stimulate EU-wide discussions. Therefore EU institutions need a clear view the freely decided trans-frontier legal situation of citizens by affirming that there is no intention to impose harmonised EU family law as such, but that European actions are needed in this field in order to facilitate their life and protect their rights.

EC legislation touching upon family matters with cross-border implications has become one of the most dynamically evolving parts of EC legislation. Since 2004 there have been many initiatives which directly or indirectly touch upon these matters. One of the most significant ones is the following:

2.1 DIVORCE: Proposal for Regulation of 17 July 2006 amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters [COM (2006)0399] (so called Brussels III)

There are a number of problems that need to be addressed in cross-border divorce matters, namely: lack of legal certainty and predictability, risk of rush to court and lack of party autonomy. The proposal for a Regulation seeks to ensure adequate solutions to these issues. In terms of jurisdiction it introduces a limited possibility for the spouses to designate by common agreement the competent court. It also recognises that certain formal requirements need to be respected in order to ensure that both spouses are aware of the consequences of their choice. Where the parties have chosen jurisdiction, this court also has jurisdiction in relation to parental responsibility, provided certain conditions, for example, the best interests of the child are fulfilled. The proposal for a Regulation also introduces a limited possibility for the spouses to choose the law applicable. The choice is limited to laws with which the spouses have a close connection by virtue of: their last common habitual residence, if one of them still resides there; the nationality of one of the spouses; the law of the state of previous habitual residence or law of the Member State in which the application is lodged. Certain formal requirements are recognised as necessary to ensure that the spouses are aware of the consequences of their choice and to prevent abuse.

It seems opportune to limit, as much as possible, the possibility of the contractual freedom of the parties. It is necessary to assure the adequate protection of the weaker party; this is often not easy, if the parties have unlimited freedom in choosing the applicable law or jurisdiction. It has to be emphasised that marriage is not a contract of which the parties are free to determine the content, the effects or the terms of dissolution. Therefore the legal effects that come with the marriage cannot be considered as available for the unlimited freedom of the contracting parties. They are not an expression of private interests but of the interests to which the matrimony gives rise.

The draft Regulation fully respects the divorce laws of member states. It does not apply to the separation of unmarried couples and to civil annulment of marriage. The proposal introduces a limited possibility for the spouses to choose applicable law and competent court - only when there is a close connection to the law. It provides formal requirements to ensure that the spouses are aware of the consequences of their choice. The application of foreign law may be disregarded where this would be contrary to the public policy of the state providing the forum.

The Council of the EU has reaffirmed that this Regulation is not intended as a harmonisation of divorce rules, on the occasion of the meeting of the Justice and Home Affairs Council held in Luxemburg on 19-20 April 2007 (2794th meeting). The Council stated that “the proposal does not establish the legal institution of divorce in a member state which does not know such institution nor does it oblige a member state to introduce divorce in its national law. Moreover, nothing in the proposal obliges the courts of a member state whose law does not provide for divorce to pronounce divorce by the application of the conflict of law rules of the proposal. The proposal does not determine the law applicable to marriage. The definition of marriage and the conditions of validity of marriage are matters of substantive law and therefore left to national law. Consequently the court of a member state which has jurisdiction as regards divorce or legal separation may assess the existence of a marriage according to its own law.”

2.2 MAINTENANCE OBLIGATIONS: Proposal for a Regulation of 15 December 2005 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations [COM (2005)649]

The proposal for a Regulation seeks to complement the Council Regulation (EC) Nr 2201/2003 of 27 November 2003 concerning jurisdiction, and the recognition and enforcement of judgements in matrimonial matters, and the matters of parental responsibility which expressly excludes maintenance obligations from its scope.

The objective of the harmonisation of conflict-of-law is to eliminate all obstacles which prevent the recovery of maintenance within the EU. It is especially important in EU member states facing the change of life style, resulting from more family breakdowns often followed by the poverty faced by the spouses and children.

The Green Paper of 2004 and the Commission's proposal evoked an important public debate concerning delicate family relations, the principle of solidarity and of fundamental rights. In the situation of a family breakdown it is important that those who are weak and dependent and were not responsible for the family breakdown are not economically damaged. Therefore crucial importance needs to be attached to the fact that the harmonisation instruments of the judicial systems of member states assure an adequate protection of human dignity.

Maintenance should be obtained easily, quickly and, generally, free of charge. Creditors should have the possibility to act with full knowledge of the situation, without being subjected to the diversity of national systems. A decision given in one member state should be automatically recognised and enforceable in another member state without requiring intermediate registration steps.

There are significant differences in the substantive laws of member states concerning maintenance obligations. The fundamental controversy concerns the scope of the regulation, that is, which obligations should be covered. Doubts arise in cases of maintenance relationships which are not accepted in all member states: between brothers and sisters, same sex spouses, registered partners. The proposal for a Regulation does not aim at rejecting the differences between member states. It intends to make sure that no decision will be given on the basis of a law lacking a sufficient connection with the family relationship concerned.

2.3 INHERITANCE: Green Paper of 1 March 2005 on succession and wills [COM (2005)65]

The initiative to address “cross-border” succession issues comes from the argument that individuals are free to travel and settle where they wish, buy goods in different countries, contract marriages or similar partnerships, and have children, who in turn may live in different EU countries. It is therefore important to create rules applicable across the Member States to make it easier to settle successions. The aim of the Green Paper is to gather information on the actual practical problems encountered in this field and to propose possible juridical solutions. Respecting certain historical and sociological specificities in different legal systems, the Commission underlines that a full harmonisation of the rules of substantive law is neither practical nor desirable.

This discussion, although addressing a particular specialist area of conflict-of-law rules, touches on broader issues. The law of succession now tends increasingly towards “contractualisation.” This deserves particular attention in order to avoid a situation where the testator would disinherit some of his family heirs without justification. The interests of incapacitated (minors, disabled) heirs should be specifically safeguarded, if a possible extension of the “contractualisation” of wills or the heirs' choice of applicable law modifies the reserved portion regime or creates inequalities. Therefore it is to be hoped that the future instrument will effectively serve the purpose of protection of the unity of the family and will offer guarantees of protection for fundamental principles.

Family relations often suffer severe tensions at the moment of division of the inheritance. In case of trans-national successions and the difficulties they cause, a European instrument which would clearly set rules on applicable law and jurisdiction, recognition of acts and documents, may effectively ease tensions and difficulties that arise.

2.4 MATRIMONIAL PROPERTY: Green Paper of 17 July 2006 on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition [COM (2006)400]

The Green Paper seeks to find solutions at Community level in order to adopt conflict-of-law rules so as to regulate settlement of the numerous “trans-national” matters concerning matrimonial property regimes, where different legal systems happen to collide. It is especially concerned with designating the law of the member state with which the situation is most closely connected as the applicable law and determining the rules of jurisdiction.

Allowing spouses to choose the jurisdiction or the law applicable to the matrimonial property regime is always a delicate matter as it is necessary to avoid the phenomenon of the so called law of forum shopping. Equal treatment is a priority in this respect. Therefore allowing for the unlimited free choice would not offer the right scope of protection to the weaker party, especially in cases of strong socio-economic disparities between them. Furthermore, such an unlimited freedom could lead to a situation where the property effects entailed with marriage are “equiparated” with the ordinary civil law contract.

However, providing a possibility of the choice of law applicable, or jurisdiction, may be helpful, and certain autonomy of the spouses’ will should be allowed. Such a choice could be permitted provided it is neither detrimental to any of the spouses nor to third parties, and where there is a substantial and objective connection with the designated member state. Allowing for a choice would serve the purpose of necessary simplification of the court proceeding. It would be preferable if the formal requirements of the agreement wherein the spouses have a choice were harmonised across the EU. Also certain procedural requirements to ensure that the spouses are aware of the consequences of their choice should be provided. It would be preferable that the future instrument be applicable to all matrimonial property from the commencement of the matrimonial bond to its dissolution. Allowing for changing the law when the marriage is dissolved could, in particular

circumstances, impose limits on the protection of the weaker party or on the third parties, and all encourage the search for more permissive legislation.

Establishing clear rules concerning the division of matrimonial property is vital for several reasons. First of all, clarity about the financial consequences of divorce is vital in safeguarding fair rules concerning the cost of living. Such clarity entails providing means for children's upbringing, and for protecting the weaker party in the dissolved marriage. Besides, the principle of equal treatment between spouses requires equal access to information.

3. CROSS-BORDER PROCEEDINGS IN CASE OF OTHER FORMS OF UNION

The final proposal contained in the document, the Green Paper of 17 July 2006, is important not only because it complements the existing and planned legal instruments concerning family law. Although it is entitled "Green Paper on conflict of laws in matters concerning matrimonial property regimes", its text also refers to "the difficulties arising in a European context for married and unmarried couples when settling the property consequences of their union and the legal means of solving them". Through the Green Paper the European Commission seems to be attempting to apply unified conflict-of-law rules on applicable law and jurisdiction to the property regimes other than the matrimonial ones (the registered partnerships and the de-facto unions). Since it also addresses registered partnerships and de facto unions, it indirectly provokes a question whether matrimonial property should receive the same treatment as the property owned in case of other relationships.

There is in fact much broader scope for the application of the EU approach. These matters are directly related to the regulation of unions of this character in the internal legislation of member states. This question is not within the competence of the European Union, but it belongs to the sovereign competence of member states. Currently there are only 11 member states that

recognise the registration of a union, whether heterosexual or homosexual, in lieu of marriage.

Introducing an EU wide regulation concerning the property aspects of the other forms of unions, that is of a union other than that of marriage, is premature and would entail common recognition of such unions in a situation where member states do not provide recognition for the legal aspects of such unions. Setting common rules on applicable law concerning such registered partnerships has to be preceded by the acceptance of this form of union in the national legislation of each and every member state. As long as this is not regulated, introducing common conflict-of-law rules is formally doubtful or at least premature. A question whether the EU should think of an instrument that would apply to such settlements has to be postponed until the development of the internal legal regulations in member states allows for such discussion. Until then the ordinary rules of civil and private international law offer sufficient protection. It is neither coherent nor logical to design law on the European level before any rules are designed on individual national levels.

Even more serious doubts arise in case of addressing de facto unions. Individuals who opt to cohabit without formality of any sort appear to choose not to be bound by the legal provisions of marriage or of civil partnership. The informal relationship of these individuals should not be legally recognised. And there is no need for any specific conflict-of-law rules for property issues arising from cohabitation. Granting the “quasi married” couples’ rights of the married would be illogical. They have chosen not to be bound by any legal regulations. If they do not want to admit the obligations linked to marriage, they cannot be granted the protection that it provides. For those who decide not to be legally bound, civil law offers several ways of regulating the property consequences of their informal union. Therefore, as far as the property law consequences of such relationships are concerned, analogous application of matrimonial property law is not justified.

Future EU instruments should be therefore limited only to matrimonial matters. This approach would be more considerate

and respectful of the current laws regulating marriage, as the only recognised union in the majority of member states. Endorsing the opposite solution would probably remove some of the remaining differences between marriage, registered partnership and cohabitation. Applying the same regime would favour such unions and put them on an equal footing with marriage. Consequently, this would further discourage people from getting married and lead to a process of undue diminution of marriage.