

Annex 2

Draft legislative proposal

Proposal for a

COUNCIL REGULATION to protect marriage and family

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Community, and in particular Article 81(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas:

- (1) The international community has, in the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1966 International Covenant on Economic, Social and Cultural Rights acknowledged a fundamental social dimension of the human person in reaffirming that the family based on marriage between one man and one woman, pre-dating the State, is the natural and fundamental group unit of society, and as such entitled to protection by society and the State (cf. UDHR, Art. 16, ICCPR, Art. 23, ICESCR, Art. 10);*
- (2) The 1989 Convention on the Rights of the Child recognizes that the child has the right to know and be cared for by his or her parents (cf. CRC, Art. 7(1)) and that the family, the fundamental group of society, is the natural environment for the growth and well-being of children (cf. CRC, Preamble para 5.);*
- (3) For the full and harmonious development of his or her personality, the child should grow up in a family environment, in an atmosphere of happiness, love and understanding (cf. CRC, Preamble para 6), and consequently the family should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community (cf. CRC, Preamble para 5.);*
- (4) The Preamble of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) underlines that "the Universal Declaration of Human Rights aims at securing the universal and effective recognition and obligations" and that "the governments of European countries ... are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law" and therefore are resolved "to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration".*
- (5) The many challenges facing the family today, including current social conditions, render it difficult for many to understand the authentic nature of marriage, to achieve the ideal of fidelity and solidarity in conjugal love, to bring up children and to preserve the family unit. Such conditions have increased the disintegration of the family, which in turn, has negatively affected the common good of society.*

- (6) *Both society and the State have a legal obligation to support the family in the task of giving birth to children and educating them to live as responsible citizens and contributors to the community in a way that promotes individual human flourishing and the overall common good of society.*
- (7) *Binding international human rights law (such as UDHR, Article 16, and ECHR, Article 12) inextricably links the notion of "founding a family" to the notion of "marriage"; thereby clarifying that the purpose of a marriage is the founding of a new family;*
- (8) *The protection of family life, as enshrined in international human rights documents, has the specific purpose of protecting the family, which "is entitled to protection by society and the State" (UDHR, Article 16 § 3; ICCPR, Article 23 § 1) "while it is responsible for the care and education of dependent children" (ICESCR, Article 10 § 1).*
- (9) *The well-being of children is the primary purpose the legal protection that is granted to the family and marriage;*
- (10) *The legal recognition that society provides to a couple is granted not in view of the existence of sentiments of love within that couple, which fall within the remit of private life, but in view of the potential contribution to the common good that couple can make by founding a family;*
- (11) *The relationship between a father or mother and his or her child is ipso facto a family relationship. By contrast, the relationship between the parents is a family relationship only as a result of their freely expressed will to found a family. In legal systems where the institution of marriage is available this will is manifested through the legal act of marriage. In a legal sense, therefore, the notion of family should be defined through descent and marriage.*
- (12) *It therefore appears adequate and reasonable to provide a specific legal status with specific protections to the union between a man and a woman;*
- (13) *It appears equally adequate and reasonable that an equal status and equal protections should not be provided to other life forms that are different in fact and purpose from marriage.*
- (14) *While Article 9 of the EU Fundamental Rights Charter states that "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", it does not contain any definition of marriage. This provision leaves leeway for Member States to adopt whichever definitions they prefer (provided that these are in keeping with other international obligations), but it does not oblige the EU, when acting within its own competences, or any of its Member States, to legislate for, or legally recognize, any novel forms of marriage, such as the marriage between persons of the same sex.*
- (15) *The EU has so far provided different definitions of "family" in different legislative texts, based on a variety of different Treaty articles. It appears desirable to harmonise those definitions;*
- (16) *The definitions of "family" and "marriage" solely for the purposes of legislation adopted within the remit of the European Union's competences leave intact Member States' exclusive competences to legislate on matters pertaining to Family Law. Within the remit of those exclusive competences, Member States may therefore notwithstanding this Regulation adopt wider definitions of "family" and "marriage";*
- (17) *Member States should remain free in the exercise of their competences regarding family law. No Member State should therefore be obliged to recognize*

definitions of "marriage" and "family" that stand in contradiction to its own ordre public

HAS ADOPTED THIS REGULATION:

Article 1 - Scope

Leaving intact the competence of Member States to legislate on marriage and the family within their own sphere of competence, this Regulation applies to all legal acts adopted by the European Union on the basis of the TEU, and to all measures adopted by Member States to transpose or implement such legal acts of the EU.

Article 2 - Definition of marriage, family and family life

In determining the meaning of any legal act pertaining to EU law, or of any ruling, regulation, or interpretation of the European Commission or of any EU agencies,

(a) the word 'marriage' means a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife;

(b) the word 'family' comprises

(i) the spouses,

(ii) the descendants of a person and/or its spouse,

(iii) the direct relatives in the ascending line of a person or its spouse."

(c) the words 'family life' and 'family relationship' comprise the relationship between

(i) the spouses, or

(ii) a person and any of the persons referred to in sub-paragraph (b), items (ii) to (iii).

Article 3 - Powers reserved to Member States

No Member State shall be required to give effect to any public act, record, or judicial proceeding of any other State, regarding a relationship between persons that is treated as a marriage or family under the laws of such other State, or a right or claim arising from such relationship, if that relationship does not correspond to the definitions set out in Article 2.

Article 4 – Repeals

The following provisions are repealed as from the entry into force of this Regulation:

- Article 2 (2) of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*
- Article (2)(1)(b) of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*
- (...)¹*

Article 5 - Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Done at Brussels, (date)

*For the Council
The President*