

Edit Frivaldszky

(...)

Mr. Alexander Italianer,  
Secretary General

European Commission  
rue de la Loi 200  
B-1049 Bruxelles/Brussel

### **European Citizens' Initiative**

Dear Secretary General,

With this letter I have the honour to submit, on my own behalf as well as on behalf of six-cosignatories, the request under Article 4 (1) of Regulation (EU) No 211/2011 to register a new European Citizens' Initiative.

Yours faithfully,

Edit Frivaldszky

# Annex 1

## Submission

- **Title of the proposed citizens' initiative (maximum 100 characters):**  
Mum, Dad & Kids - European Citizens' Initiative to protect Marriage and Family
- **Subject-matter (maximum 200 characters):** A horizontally applicable regulation that defines the meaning of marriage and family for EU law: marriage is a union between a man and a woman, and family is based on marriage and/or descent.
- **Objectives of the proposed citizens' initiative on which the Commission is invited to act (maximum 500 characters):** The increasing fragmentation of the concepts of "family" and "marriage" poses a problem for the EU. EU legislation refers to both terms, but the meaning is increasingly unclear, and there are diverging definitions in different EU Directives. This initiative proposes to remedy this situation by adopting a EU-wide definition of both terms that is compatible with the legislation of all Member States. In keeping with Art. 9 of the Fundamental Rights Charter it fully respects the competence of each Member State to legislate on marriage and family.
- **Provisions of the Treaties considered relevant by the organisers for the proposed action:**  
Art. 9 of the EU Fundamental Rights Charter, Art 81.3 TFEU
- **Personal details of the 7 required committee members (full names, postal addresses, nationalities and dates of birth), indicating specifically the representative and his/her substitute as well as their e-mail addresses and telephone numbers :** (to be completed)
- **Documents that prove the full names, postal addresses, nationalities and dates of birth of each of the 7 members of the citizens' committee:** (to be completed)
- **All sources of funding and support for the proposed citizens' initiative (known at the time of registration) worth more than €500 per year and per sponsor:** (to be completed)

### Optional:

- **Address of the website for the proposed initiative (if any):** (to be added)
- **Draft legal act (maximum 5 MB):** (see Annex 2 below)
- **Annex (maximum 5 MB) with more detailed information on the subject, objectives and background to the proposed citizens' initiative:** (see Annex 3 below)

## 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 "(t)he 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 the TFEU, 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*
- (...) <sup>1</sup>*

## **Article 5 - Entry into force**

*This Regulation 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*

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<sup>1</sup> To be completed

# Annex 3

## Legal Analysis

### Introduction

An increasing number of EU Member States have adopted legislation to allow "registered partnerships", "civil partnerships" or even same-sex "marriages" for homosexuals. At the same time, there is strong evidence that wide parts of the population are very uncomfortable with regard to the surreptitious re-definition of marriage and family, which does not correspond to their own experiences and moral convictions, and which they feel has the potential of seriously undermining the rights and protections that are due to the marriage of a man and a woman and the family resulting therefrom. 16 Council of Europe Member States (8 of which are also Member States of the EU) have enacted constitutional provisions clarifying that "marriage" is a union between a man and a woman.

The European Commission seems to be taking the side of the innovators, with VP Frans Timmermans announcing his intention to push Member States to legally recognize same-sex "marriages" concluded abroad, even if their own public order does not provide for them.

The present proposal therefore aims to protect the uniqueness of marriage as a union between a man and a woman. It is in line with the European Union's competences as laid out in Article 81.3 of the TFEU and Article 9 of the Fundamental Rights Charter. It remains within the context of the EU's legislative competences, and does not aim to interfere with the competences of Member States. Indeed, in protecting the marriage that is legally recognized in *all* Member States, it protects Member States against undue pressures to accept re-definitions of marriage and family they do not themselves find desirable.

### Marriage and Family in the EU Treaties

The most relevant provision to be quoted here is Article 81.3 of the Treaty on the Functioning of the European Union (TFEU), which provides as follows:

*"Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.*

*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.*

*The proposal referred to in the second subparagraph shall be notified to the national Parliaments. 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."*

Upon reading this provision, two points should be noted:

- First, it would be wrong to say that the EU has no competences in family law. What this provision says is that **the EU indeed does have competences to regulate family law, insofar as it has cross-border implications**. That criterion is **open to interpretations**. In actual fact, it could be said that *nearly every aspect* of family law can have cross-border implications: there can be marriages with cross-border implications, or adoptions, or divorces, all of which have directly to do with the family. Much in the same vein, inheritance procedures, taxation and social laws, asylum and immigration policies all depend at least indirectly on the definition of

marriage and the family. With the increasing mobility of people, family law issues with cross-border implications are becoming increasingly frequent.

- Secondly, the real restraint on the EU acting as a regulator of family law is not really its lack of competences, but rather **the procedural requirement of unanimity**. This has so far worked in favour of the natural family, because it has to some extent prevented the EU from imposing same-sex "marriages" and similar on Member States, which otherwise it might have done.

We can conclude from this that, although as a result of the unanimity requirement it might be difficult to actually adopt legislation to regulate the family and marriage, this issue clearly pertains to the sphere of secondary law and is therefore by no means excluded from becoming the subject of an ECI. (cf. Art. 4(2) of Regulation 211/2011)

## Marriage and Family in the Fundamental Rights Charter

Article 9 of the **EU Fundamental Rights Charter (FRC)** provides as follows:

*"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."*

It might be argued that this provision *obliges the EU* to guarantee the right to marry and the right to found a family in accordance with national laws, including where those laws have re-defined marriage to include "marriages" between two persons of the same sex.

However, the provision actually operates in a very different manner. **It safeguards Member States' freedom to legislate on marriage without undue interference.** The EU can neither prevent a Member State from treating a same-sex couple as "marriage", nor can it impose the concept of same-sex "marriage" on any Member State that is not willing to accept it. It follows from this that references in EU legislation (as opposed to the national legislation of some Member States) must be understood as a reference to what is recognized as marriage in *all* Member States, i.e. the common denominator.

An EU Regulation that defines marriage as the permanent union between a man and a woman as proposed by this ECI would refer to such a common denominator, as such unions can be recognized as marriages in all Member States. It would therefore correctly implement Art. 9 of the FRC. Indeed, such legislation seems necessary to correctly implement Art. 9 FRC: it would forestall attempts to impose an obligation on EU Member States to recognize same-sex "marriages" concluded in other Member States even though they are contrary to the domestic legal order. At the same time, it would not prevent Member States wishing to do so from providing for same-sex "marriages" within their own spheres of competence.

## Marriage and Family in other EU Legislative Acts

There are currently not many legal acts in the EU in which marriage and the family play a role, but there are some, and there soon could be more. Remarkably, some of those legal acts contain their own definitions of terms such as "spouse" or "family member".

In particular, **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** is of interest here, as it contains (in its Article 2 (2)) a definition of "family members":

*"2) 'Family member' means:*

*(a) the spouse;*

*(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats*

*registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;*

*(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);*

*(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);"*

Certain pressure groups are using this provision as a basis for seeking an affirmation that the term "spouse" also relates to same-sex couples having contracted same-sex "marriage" in a Member State foreseeing same-sex "marriages". There is, however, no definition of marriage in the Directive, so that arguably each Member State might interpret that term according to its own legislation, which would leave e.g. Poland free to not recognize a Dutch same-sex "spouse".

The second EU legislative act where "family" prominently appears in the title is **Directive 2003/86/EC on the right to family reunification**. Interestingly, this Directive also contains a definition of "family members" – with no reference to "registered partnerships", but with the clarification that in cases of polygamous marriages only one "spouse" may benefit from family reunification.

The definitions are thus inconsistent, and they become even more inconsistent when we extend our outlook to other measures where "family" does not appear in the title. For example, **Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime** has yet another ad-hoc definition of "family members", which includes *"the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim"*.

There may be many more definitions which we have neither the time nor the space to reproduce here. But all of these definitions evidence the fact that the EU has never hesitated to define terms related to "family" if and where such definition was necessary for the purposes of EU legislation.

The legal basis for these existing definitions of "family" was *not* Article 81.3 TFEU. Instead, Directive 2004/38/EC was based on (Ex-)Articles 12, 18, 40, 44 and 52 of the Treaty establishing the European Community (TEC), which allowed using the procedure in Article 251 of that Treaty (i.e., a procedure requiring a qualified majority, but not unanimity, of Member States). The abovementioned provisions of the TEC have in the meantime been recast into the following provisions of the TFEA: Articles 18 (non-discrimination on grounds of nationality), 21 (freedom of movement and residence for EU citizens), 46 (freedom of movement for workers), 50 (freedom of establishment), and 59 (free circulation of services).

Directive 2003/86/EC was based on Article 63(3)(a) TEC (Immigration and Asylum), which meant that the vote had to be unanimous. With the Lisbon Treaty, this provision has become part of Article 79 TFEU, which allows legislation to be adopted through the "ordinary" procedure (i.e. with qualified majority). Directive 2012/29/EU is based on Article 82(2) of the TFEU, which allowed for adoption through the "ordinary" procedure.

This means that **the EU has developed a practice of adopting legislative texts that contain definitions of "family" on the basis of the "ordinary" legislative procedure, i.e. a procedure that requires the qualified majority, but not the unanimity, of Member States**. There are currently not less than seven different Treaty provisions (namely Articles 18, 21, 46, 50, 59, 79, and 82, of the TFEU) that have been used for that purpose. One may conclude that the EU institutions currently view every TFEU provision that allows for the use of the "ordinary" legislative procedure as a potential legal basis for defining "marriage" or "family" in a way that is binding for Member States, provided that such definition is necessary for the purposes the respective legislative act seeks to achieve. This practice is highly questionable in view of the unanimity requirement in Article 81.3 TFEU, as it appears to sideline that requirement.



## Proposal

The ECI has as its objective to request the Commission to draft legislation that defines the family and related terminology ("spouse", "marriage", etc.) horizontally and in accordance with natural law.

This definition would imply that:

- Marriage is understood solely as the permanent and life-long union between one man and one woman
- "Family members" are the spouses themselves, their common progeny, and the direct ascendants of each of them.

The definition would not include:

- Same-sex couples
- Non-married couples
- Polygamous relationships

The new definition would apply horizontally to all measures pertaining to EU secondary legislation, in which the above-mentioned terms are used.

Any competing definitions in existing legislative acts would be abrogated.

## Annex 4

### Citizens' Committee

(...)