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European Commission
Directorate General for Justice
Unit A1 – Judicial Cooperation in Civil Matters
B-1049 Brussels
BELGIUM
Via fax 32-2-299-6457
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Re.: Call for Position Papers
Green Paper: Less Bureaucracy for Citizens: Promoting Free Movement of Public Documents and Recognition of the Effects of Civil Status Records

Dear Sir/Madam:

Greetings from Romania's Families Alliance! We are a secular, nongovernmental, non- profit organization organized under the laws of Romania. We have a large national following and promote family values and pro-life positions. We represent the profamily and prolife views of hundreds of thousands of Romania's families. On their behalf, we respond to the call for input requested by the European Commission in relation to the referenced Green Paper on the streamlining of public documents and the mutual recognition of civil status records in the member states of the European Union. We are grateful for the opportunity to do so, but respectfully object to the scope and breadth of the proposed recommendations and regulations. They are overreaching and some are not compatible with the principles and values which we espouse.

1. Lofty Goals and not so Lofty Goals

We commend the European Commission for being concerned about matters of consequence and importance in the daily lives of the EU citizens. Nevertheless, we must take exception with some of the matters which the Green Paper is tackling because they constitute, in our view, a **subterfuge for the legislative process of national states** and a substitute for the legislative process of the European Union. Here, we are concerned especially with matters of marriage, family and the civil status records of citizens. On these subjects the Treaty of Lisbon has spoken rather clearly and explicitly, emphasizing that family and marriage matters remain national competences, to be left to the exclusive discretion of the Member States.

Thus, the Green Paper embodies an indirect **rejection of the principle of the subsidiary**. Accordingly, we object to the attempt of the Commission to override the competence of Member States in family and marriage matters by imposing on them an obligation to give effect and recognition to family and marriage variances for which there either is no national prescription or the national legislation of member states explicitly prohibit.

In this context, we emphasize that, as the European Court of Human Rights has repeatedly stated, Member States must be allowed a healthy "margin of appreciation" with respect to internal matters and social institutions whose substance and meaning are shaped by the distinct cultural or traditional aspects of a given member state's history and civilization. Thus, what might be appropriate in Scandinavian culture might not be appropriate in Romanian culture and vice versa. And perhaps there are no other aspects of societal intercourse more profoundly shaped by culture, tradition, history and religion, than family and marriage. Serious consideration must also be given to the fact that societal development is uneven and widely disparate over the vast landscape which is the European Union. A most recent example of this wide disparity is the revised Hungarian Constitution which expressly defines marriage as the union between a man and a woman in conformity with the tradition and cultural tenets of the Hungarian people and with the Universal Declaration of Human Rights. At the opposite end is Sweden which only 2 years ago legislated same sex marriage. It would thus be inappropriate to impose an obligation on Hungary to recognize and give effect in Hungary to same sex marriages concluded between Swedish or Hungarian citizens in Sweden. This anomaly would be offensive to the most elementary notions of national sovereignty and the sovereign will of the Hungarian people as expressed in their Constitution. Ideological uniformity has never been a stated objective of the EU, and we trust that ideological pluralism will continue to thrive.

2. Erroneous Quantifiers

We take issue with some of the evidence the Green Paper relies upon to justify its objective of simplifying the recognition of civil status documents. We do not believe, for instance, that Eurobarometer Surveys can constitute a compelling justification for seeking uniformity throughout the EU. The surveys do not tackle the more fundamental issues of national sovereignty and respect for national sovereignty. It is hardly to be doubted, for instance, that if citizens were asked if they agreed to surrender their national sovereignty in exchange for a simpler regime for the recognition of civil status documents, their overwhelming response would be in the negative. Even so, however, such an answer would not necessarily constitute a basis for not attempting to attaint otherwise legitimate objectives.

3. Marriage Certificates

Member States should only be asked to extend recognition to **marriage certificates** which are compatible with the domestic legislation of the country in which the foreign certificate of marriage seeks recognition. This would resolve a lot of the concerns which our constituency has and which many other states in the European Union also have. Romania is one of them.

Marriage and family laws have been altered radically in some of the West European countries and have, at the same time, been recast in their traditional sense in some of the East European states. Hungary is the latest example. Lithuania, too, has defined the family and the marriage institution in its Constitution as have Poland, Latvia, and Bulgaria. Romania, too, has undertaken, in 2009 to define marriage in its natural sense as the union between a man and a woman, explicitly prohibiting, at the same time, marriages between persons of the same sex, and has decreed that same sex marriages concluded abroad by Romanian citizens or by foreign citizens are not be given effect or recognition in Romania.

If the Green Paper's recommendations are actually implemented, they would necessarily conflict with, or even displace, the laws sovereignty adopted by the people of Romania in the matter of marriage and family configuration. This result in turn, would not only be an anomaly, but would also conflict with the Treaty of Lisbon and would have the effect of undermining the national sovereignty of Romania. Romania also does not permit the formation of civil partnerships under Romanian law or the recognition of civil partnerships concluded in other countries. The people of Romania have the right, conferred to them by virtue of sovereignty, the Treaty of Lisbon, and international law, to legislate as they please in this area. The European Commission, an unelected body, would thus act in an undemocratic manner and set a worrisome precedent not only in the matter before it now, but in others as well. Such that the citizens of the European Union would one day ask – do we not have any say in the matter?

But there are additional concerns as well. One relates to **terminology**. Some states have abolished the traditional terminology associated with marriage and the family. And this is, regrettably, reflected in the terminology used in the Green Paper. The Green Paper does not employ the terms "husband and wife." Why not? What's the harm? Instead, it has substituted them with the terms "partners," and "couples." And we ask, by whose authority? Similarly, some countries have abolished from the marriage certificate the traditional terminology of "man," "woman," "groom," "bride," "husband," or "wife," and have replaced them with terms that are alien and frankly offensive to those who view marriage and the family as sacred institutions, such as "part A," and "part B." Terminology has thus denuded marriage of its purpose and sanctity.

More problematic also is the notion that one state must recognize the **change of sex** of individuals from other states. This, too, shows insensitivity toward national norms of public policy and morality. "Gender" has become an ideological term which encompasses sex change, and gives expression to an emerging ideology of sexuality promoted, against the will of the EU's citizens, by the EU's various structures. In this regard, we find the Green Paper's extensive focus on sexuality highly offensive, an instrument, in fact, designed to promote the emerging ideology of sexuality, one with which we do not agree.

Adoptions pose similar problems. Some countries, Romania being one of them, does not permit same sex couples to jointly adopt children. This is the public policy of the Romanian people. It stands to reason that Romania should be allowed, again as a matter of national sovereignty, to refuse to recognize same sex adoptions concluded abroad.

More prudence is additionally dictated by **worrisome trends** we already see on the horizon. The Netherlands, for instance, is allowing some form of "marriage in three" on a contractual basis. This seems highly aberrant, but nevertheless within the national competence of the people of the Netherlands. This exercise of national sovereignty, however, should not be forced on the people of Romania who have chosen to exercise their legislative sovereignty differently. Suppose, for the sake of argument, that the Netherlands might, one day, decriminalize pedophilia and allow minors to marry minors or adults to marry minors. Or so-called interspecies marriages, of which we hear more and more. Once such strange and socially undesirable behavior is legalized in one European state, it stands to reason that the rest of Europe's states should not be compelled to recognize it, thereby giving full legitimacy in the entire European space to practices that are harmful. Hence, a healthy dose of restraint should be adopted from the start to prevent harmful consequences.

4. Conflicts of Laws

Contrary to the position of the Green Paper, we see an important and continuing role for the application of the legal mechanism of conflicts of laws in the recognition of some civil status records. The centuries old principle that a state may not be constrained to give full faith and credit to foreign documents or records which are contrary to the public policy of the host state should not be displaced. It continues to constitute a viable and vibrant principle of international law and it serves a good purpose. This principle was designed initially to prevent the importation or adoption into a country of foreign instruments or judgments which were viewed as being inherently undesirable by the standards and cultural norms of the host state. There is no sound, rational justification for discarding this principle out of hand in favor of the "automatic recognition" approach promoted by the Green Paper.

National laws are in conflict in many of the matters which are the object of the Green Papers precisely because they reflect the variety of Europe's cultures. The concept is not new and the judicial approach to resolving conflicts of laws should continue to be viewed as a viable instrument for attaining the aims of the Green Paper.

5. No Comfort

We are not comforted by the insistence of the Green Paper that "... the Commission has neither the power nor the intention to propose the drafting of **substantive** European rules ... to modify the national definition of marriage." Compelling states to **procedurally** recognize structures which contravene national definitions of marriage would have the same effect, and this, more regrettably, in the absence of explicit legislation to the contrary. Consequently, "automatic recognition" is not a viable option and would subvert national laws that are in conflict.

6. Learning from a Just System

Much can be learned, however, from the experience of a very sophisticated legal and political system, that of the United States, a system with significantly greater longevity and stability than

the European Union. Unlike the European Union, the US Constitution constitutionally mandates the states to give **full faith and credit** to the acts and papers of the other states. (Article IV Section 1 in the US Constitution: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.") The obligativity of this clause is unquestionable and clear. Yet, in recent years, precisely in the context of marriage, family relations, and adoptions, US federal courts of appeals have been categorical that a state may not be constrained, under this constitutional pledge, to give full faith and credit to documents and acts which the host state deems contrary to its own laws and public policies.

Two recent cases highlight the right of states to not blindly recognize just any records or official paper of other states. The first case is a decision by the Texas Court of Appeals in Dallas (August 2010) which refused to give recognition, under Texas law, to a same sex marriage contracted in the State of Massachusetts. The second case, decided just this month by the federal Fifth Circuit Court of Appeals in New Orleans ruled that adopting same sex couples, who lawfully adopted in the State of New York a child born in Louisiana, could not constrain the State of Louisiana to issue another birth certificate to the adopted child to reflect the names and identity of the same sex couple. The court ruled that the State of Louisiana could decide for itself, and in the context of sound public policy, that it is not in the best interest of children to have birth certificates reissued which would deprive them of the right to have their biological parents listed in the original birth certificates as opposed to the identity of the same sex couple. See, ***Adar v. Smith*** No. 09-30036 (April 12, 2011) http://oldsite.alliancedefensefund.org/userdocs/AdarOpinion.pdf.

In fact, the history of recognition of civil status records among the US states is so rich and the judicial decisions so enlightening, that the European Commission would be well advised to inspire itself from it. Especially considering that far from being a federal state, the European Union is just that, a loose union of sovereign, independent states.

7. Proposed Remedies

Finally, we believe the European Commission could easily accommodate our concerns and the concerns of millions of like-minded citizens of the European Union as follows.

1. The Commission should establish **clear parameters** for the mutual recognition of civil status records, but only to the extent to which they do not conflict with the laws of the host country or are offensive to the public policy, morals, or traditional values of the host state.

2. The Commission should respect and uphold the **principle of the subsidiary** in matters in which the Treaty of Lisbon speaks forthrightly.

3. Where automatic recognition is not feasible because of matters of national sovereignty or other legitimate strictures, the Commission should encourage states to enter, on a willing basis, into **bilateral or multilateral agreements** for the full recognition of civil status

certificates. For instance, Sweden and Spain could enter into such an agreement with respect to the full recognition of marriage certificates because both countries have legalized same-sex marriage and adoptions by same-sex couples. Romania, Hungary or other states which have not legalized same-sex marriage should not be coerced to do so, thereby subverting their national laws and policy on the matter.

4. To counter unnecessary bureaucracy and address the **time sensitive interests** of the EU citizens, the Commission could seek to impose a relatively short, yet reasonable, period of time, for the authorities in one country to recognize or decline recognition of civil status records.

5. Admit and accept as a given reality the legislative diversity of the Member States and seek to **harmonize only areas that overlap**, not those that are in conflict, marriage, adoption, family formation and dissolution being among them.

CONCLUSION

We hope our analysis was helpful and will be taken into consideration when the final recommendations are made. Please contact us if you need additional input.

Respectfully submitted,

Peter Costea, PhD, President
Alliance of Romania's Families

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