

Une stratégie familiale pour l'Union européenne

*Encourager l'Union à faire
de la famille une priorité*



Commission des Épisopats de la Communauté Européenne

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La croissance du PNB et de la productivité est un objectif politique aisément accepté et généralement légitime. Ce n'est donc pas une coïncidence si la Stratégie de Lisbonne de l'Union européenne, qui vise à faire de l'Union la région la plus compétitive du monde d'ici 2010, a fortement attiré l'attention des milieux politiques à l'échelon européen.

Bien que cette Stratégie contienne une série d'objectifs sociaux et environnementaux, elle n'aborde pas réellement la question des relations sociales. Or, s'il est vrai que l'existence d'un fort capital humain et social comme condition *sine qua non* de la croissance est une idée qui a été explorée dans le contexte de la Stratégie de Lisbonne, il n'est fait aucune mention significative de la famille dans les documents associés à cette Stratégie, alors que la famille est généralement au cœur des relations sociales de tout un chacun. De fait, les questions liées à la famille y sont à peine envisagées.

Selon une étude publiée par *Eurobaromètre*, la plupart des Européens affirment que la vie de famille est ce qu'il y a de plus important dans leur vie¹. Le fait d'être accepté et intégré dans une

¹ *Eurobaromètre* 44/3, Printemps 1996

famille est considéré par les Européens comme un facteur essentiel de bien-être personnel. Une autre conclusion que l'on peut tirer de cette étude ainsi que d'études comparables, c'est que compte tenu du niveau de richesse existant actuellement dans la plupart des régions d'Europe, le sentiment d'être heureux et la satisfaction à l'égard de sa propre vie ne sont plus étroitement liés à une l'augmentation constante des revenus.

Toutefois, se dire très satisfait de sa vie de famille ne signifie pas nécessairement que l'on est satisfait du nombre d'enfants que l'on a. Selon une autre étude récente², il existe un fossé récurrent entre le nombre d'enfants que les Européens jugent idéal d'avoir et le nombre d'enfants qu'ils ont effectivement.

Les politiques de l'Union européenne devraient donc se focaliser sur la promotion de familles plus stables et de situations familiales permettant aux couples d'avoir le nombre d'enfants qu'ils désirent. Ceci aurait un impact sur une autre question politique urgente pour l'Europe : la tendance déficitaire de la démographie européenne, à laquelle l'augmentation du nombre d'enfants par famille serait une réponse directe.

En 2002, le taux de fertilité de l'Union européenne est demeuré à 1,47 enfants par femme, ce qui est considérablement au-dessous du taux nécessaire pour maintenir la population à son niveau actuel. Il faut savoir que le taux de remplacement est de 2,1 enfants par femme. Le fardeau financier qui est lié à la baisse du taux de natalité peut éventuellement être compensé par l'augmentation continue de la croissance et aussi, dans une certaine mesure, par l'augmentation de l'immigration. Mais une croissance, une productivité et une immigration plus importantes ne conduiront pas en elles-mêmes à un renversement de la tendance démographique déficitaire de l'Union européenne. Ceci ne sera possible que si les Européens ont davantage d'enfants.

² Eurobaromètre 56/2, Automne 2002

³ Commission européenne, *La Situation Sociale dans l'Union européenne 2003*

L'importance de la famille est mise en évidence si l'on observe son impact positif sur la santé. «Le soutien social est important pour la santé et particulièrement déterminant pour la bonne santé aux deux extrémités du cycle de la vie. Les réseaux sociaux – qui se composent des membres de la famille, des proches, des pairs et des amis – contribuent à protéger et à renforcer la santé de chacun. (...) La famille fournit toujours la base de soins et d'aide pour les enfants et les adultes dans tous les Etats membres et le rôle de la famille en matière d'offre de soins est considéré comme important et positif.»³ Ceci est particulièrement vrai dans le cas des personnes âgées. Si les tendances actuelles se poursuivent, d'ici 2020, 46% des personnes de 85 ans et plus dans les Etats membres actuels de l'Union européenne vivront seules.

La vague de chaleur de l'été dernier a attiré l'attention sur les divergences (et les insuffisances) des politiques nationales ad hoc des différents pays d'Europe face à ce type de crise. Elle a montré que la famille, comme élément de base de l'intégration sociale et comme «communauté d'amour» et de solidarité fondamentale, était devenue faible et qu'elle avait besoin d'être soutenue. Elle a donné une pertinence nouvelle à l'appel lancé par le Concile Vatican II dans la Constitution Pastorale *Gaudium et Spes* (§ 52.2) : «La famille est en quelque sorte une école d'enrichissement humain (...) et le lieu de rencontre de plusieurs générations qui s'aident mutuellement à acquérir une sagesse plus étendue et à harmoniser les droits des personnes avec les autres exigences de la vie sociale. [Elle] constitue ainsi le fondement de la société. Voilà pourquoi tous ceux qui exercent une influence sur les

Pour compléter la Stratégie de Lisbonne, le Secrétariat de la COMECE propose que les décideurs européens élaborent une Stratégie familiale de l'Union européenne qui soutienne les Européens dans le domaine de leur vie auquel ils sont le plus attachés et qui puisse contribuer de façon substantielle au renversement de la très forte baisse démographique de la population de l'Union.

communautés et les groupes sociaux doivent s'appliquer efficacement à promouvoir le mariage et la famille. Que le pouvoir civil considère comme un devoir sacré de reconnaître leur véritable nature, de les protéger et de les faire progresser, de défendre la moralité publique et de favoriser la prospérité des foyers».

De son côté, le pape Jean-Paul II a lancé un appel dans son Exhortation Apostolique Post-synodale *Ecclesia in Europa* et le Secrétariat de la COMECE exhorte donc l'Union européenne à répondre avec créativité à cet appel lorsque le pape demande de «veiller à ce que les Etats et l'Union européenne elle-même mettent en place des politiques familiales authentiques et adaptées» (§ 91).

Ceci pourrait se faire en donnant un nouvel élan à la Stratégie de Lisbonne et en la complétant par une Stratégie familiale de l'Union européenne en 2004, une année déclarée

Année Internationale de la Famille par les Nations Unies. Le but général de cette stratégie serait de faire de l'Union européenne élargie la région du monde la plus favorable à la famille d'ici 2010. Une telle stratégie devrait comporter la participation de l'Union, des Etats membres et d'autres acteurs et être conforme au principe de subsidiarité. Même s'il est nécessaire de se mettre d'accord sur les objectifs, les différents acteurs devraient donc conserver la compétence de décider du mode de réalisation de ces objectifs.

Conformément à la procédure utilisée pour élaborer la Stratégie de Lisbonne, ce serait à la Commission européenne de proposer les objectifs globaux de cette stratégie, sur lesquels se prononcerait le Conseil européen en tenant compte de l'avis du Parlement européen. Afin de lancer le débat à ce sujet, le Secrétariat de la COMECE voudrait faire quelques suggestions quant aux objectifs globaux possibles d'une Stratégie familiale de l'Union européenne.

Une stratégie familiale pour l'Union européenne

Objectifs globaux

1. *Améliorer l'intégration des personnes âgées dans la société – essentiellement en aidant leur famille à leur venir en aide*
 - 1.1. Utiliser la «méthode ouverte de coordination» pour les politiques concernant la dépendance liée à la vieillesse, méthode qui reposerait sur la révision des mécanismes de soutien et des systèmes de financement existants, dans le but de définir des normes communautaires minimales permettant de traiter le problème de la dépendance liée à la vieillesse.
 - 1.2. Revoir les meilleures pratiques en ce qui concerne les allocations et les systèmes nationaux destinés à traiter le problème de la dépendance liée à la vieillesse; veiller, dans des délais déterminés, à procéder à l'échange des différents plans nationaux de façon à ce que chacun puisse véritablement bénéficier de conditions de vie décentes et avoir réellement le choix de continuer de vivre chez soi ou d'être pris en charge par des institutions spécialisées, même ceux qui n'ont pas de moyens financiers suffisants ou qui sont frappés par la maladie ou la sénilité.
 - 1.3. Etablir dans tous les Etats membres le droit à un emploi temporaire à mi-temps pour les personnes qui souhaitent s'occuper de leurs parents; veiller à ce que ces employés bénéficient de garanties sociales appropriées, telles que le droit de retourner au plein emploi et à une compensation financière

leur permettant d'avoir des revenus stables et de maintenir les cotisations de sécurité sociale à leur niveau antérieur pendant la période où ils fournissent des soins. Le coût supplémentaire de ces mesures pourrait être compensé par des économies correspondantes au niveau du coût des soins en hôpital ou en établissement spécialisé.

2. *Promouvoir des règlements et des politiques plus justes et plus favorables aux enfants*

- 2.1. Inclure dans le prochain Rapport Conjoint de l'Union européenne sur l'Inclusion Sociale une évaluation des meilleures pratiques nationales en ce qui concerne la gestion des logements sociaux en vue de fournir aux familles nombreuses une habitation de taille adéquate à un coût raisonnable, que ce soit dans le centre-ville ou dans des quartiers résidentiels. Ceci permettrait que les conditions de vie des enfants ne soient pas affectées défavorablement par la décision de leurs parents d'avoir un autre enfant en dépit de restrictions matérielles ou autres.
- 2.2. Explorer la possibilité d'intégrer les logements sociaux dans la liste de services d'intérêt général de la Commission européenne et examiner la possibilité de rendre les projets de logements sociaux aptes à recevoir un appui via les Fonds Structuels européens.
- 2.3. Demander à la Commission européenne de réaliser une étude s'inscrivant dans la ligne de l'objectif du Conseil européen de Barcelone de mars 2002, qui était de réduire de façon significative le nombre de personnes menacées de pauvreté et d'exclusion sociale. Cette étude porterait sur les programmes nationaux de soutien à la famille (et plus particulièrement sur les allocations directes pour chaque enfant et/ou sur les avantages fiscaux) en tenant compte à la fois de la taille et de l'équité du

soutien apporté, en vue d'éviter le piège de la pauvreté pour les familles nombreuses.

- 2.4. Réviser la Directive européenne sur le congé parental (96/34/CE) et mettre en place, dans des délais déterminés, des plans nationaux définissant le droit de chaque enfant à bénéficier de structures d'accueil après la fin du congé parental.
 - 2.5. Renforcer les efforts pour atteindre l'objectif fixé par le Conseil européen de Barcelone, à savoir «mettre en place, d'ici 2010, des structures d'accueil pour 90% au moins des enfants ayant entre trois ans et l'âge de la scolarité obligatoire et pour au moins 33% des enfants âgés de moins de trois ans»⁴.
- ## 3. *Promouvoir des règlements et des politiques plus justes en matière de mariage et d'éducation des enfants*
- 3.1. Revoir les meilleures pratiques nationales dans l'Union européenne en vue d'encourager le mariage comme point de départ de chaque famille; faire connaître et promouvoir les mesures de prévention du divorce (par exemple, en accordant une reconnaissance officielle aux conseillers conjugaux et en leur attribuant davantage de fonds) afin d'aller à l'encontre de l'idée de plus en plus répandue selon laquelle le divorce est la solution automatique aux problèmes et aux crises inévitables au sein d'un couple. De même que l'Union européenne prévoit la réunification des familles séparées par les frontières extérieures de l'Union – même si c'est de façon beaucoup trop limitée –, elle doit accroître ses efforts pour mettre fin à la désintégration des familles à l'intérieur de ses propres frontières.
 - 3.2. Réviser l'excellente Directive de l'Union européenne sur le congé

⁴ *Conclusions de la Présidence - Barcelone*, 15-16 mars 2002, § 32

parental en vue d'élargir les réductions et la flexibilité en matière de temps de travail, ce qui permettrait aux parents d'avoir leur mot à dire dans le quotidien de leurs enfants : par exemple, la généralisation et l'extension du congé parental au moyen de la reconnaissance légale du droit de chacun des parents à s'occuper de ses enfants en bas âge (notamment la possibilité de mettre en place des compensations financières par des économies correspondantes dans des établissements spécialisés, la possibilité de prendre des demi-journées de congé pour participer aux activités scolaires, la possibilité de travailler à temps partiel pendant toute l'année pour pouvoir prendre ses congés pendant les vacances scolaires, ou la possibilité d'avoir un travail à mi-temps permettant aux parents d'être libres le matin ou l'après-midi).

- 3.3. Elaborer, conformément au principe de subsidiarité, des plans nationaux visant à renforcer la mise en œuvre des règles existantes pour pouvoir réconcilier vie professionnelle et vie familiale (la discrimination des sexes et un traitement inéquitable en ce qui concerne les promotions professionnelles et les augmentations salariales pourraient faire l'objet d'une évaluation; des labels de qualité à l'appui de la réconciliation entre vie professionnelle et vie familiale pourraient être décernés; enfin, les pénalités et les sanctions en cas d'infractions pourraient être augmentées).
- 3.4. Développer la sensibilisation à l'idée selon laquelle les activités familiales et l'emploi ont une égale valeur, et ce au moyen de campagnes européennes prônant la famille, promouvant des responsabilités égales pour les pères et les mères qui élèvent une famille (un véritable partage des tâches) et soulignant la responsabilité sociale des entreprises en la matière. Le Pape a exprimé *«le souhait que le service rendu par les mères dans le*

*cadre de la vie familiale, au même titre que le service rendu par les pères, soit considéré comme une contribution au bien commun, y compris à travers des formes de reconnaissance économique»*⁵.

4. Promouvoir des liens plus étroits entre les générations

- 4.1. Examiner les meilleures pratiques de l'Union européenne en ce qui concerne la mise à disposition de structures d'accueil conjointes pour personnes âgées et jeunes enfants (promotion de partenariats entre crèches d'enfants et maisons de retraite, soutien des associations de «bons grands-parents», une aide juridique permettant aux personnes âgées de participer à l'enseignement scolaire à titre bénévole, logements sociaux permettant de loger plusieurs générations sous le même toit ou à proximité les unes des autres, etc.).
- 4.2. Revoir les droits des grands-parents dans le cadre des différentes législations nationales, en cas de divorce ou de séparation des parents, en vue de promouvoir des pratiques qui tiennent mieux compte de la nécessité de maintenir les liens entre grands-parents et petits-enfants en dépit des tensions pouvant exister entre parents et de donner, chaque fois que possible, une vision plus constructive du mariage et de la stabilité familiale.
- 4.3. Etudier la possibilité de prévoir la suspension progressive de l'activité professionnelle à titre volontaire pour les grands-parents qui souhaitent s'occuper de jeunes enfants (un «congé parental pour grands-parents» à plein temps ou à mi-temps), de reconnaître le rôle croissant des grands-parents dans les noyaux familiaux où les deux parents travaillent, notamment la possibilité de mettre en place des compensations financières financées par des économies correspondantes au niveau de ce que coûtent les organismes d'accueil de jeunes enfants.

⁵ Jean-Paul II, Exhortation Apostolique Post-synodale *Ecclesia in Europa*, N° 43.

5. *Promouvoir le soutien de l'Etat aux familles ayant des besoins particuliers*

- 5.1. Revoir les meilleures pratiques de l'Union européenne en ce qui concerne l'intégration des enfants handicapés dans les structures de socialisation (écoles, camps de vacances et organisations de jeunesse), y compris l'adaptation des bâtiments existants à leurs besoins spécifiques.
- 5.2. Promouvoir le soutien de l'Etat à l'égard des coûts supplémentaires découlant d'un handicap, notamment les soins et le suivi à domicile.
- 5.3. Promouvoir l'égale dignité de tous les enfants et de tous les êtres humains, quelles que soient leurs capacités physiques et mentales respectives, au moyen de campagnes nationales de sensibilisation.
- 5.4. Faire mieux entendre la voix des associations de défense des familles et des enfants handicapés dans le processus décisionnel, conformément aux Conclusions du Conseil des ministres des affaires sociales de l'Union européenne (réf. 15206/03) et leur accorder le droit d'être consultées dans tous les processus décisionnels nationaux et européens au sujet des questions liées à la famille.
- 5.5. Simplifier les règles bureaucratiques régissant l'adoption, dont l'application prend beaucoup trop de temps, en facilitant en particulier l'accès à cette possibilité à ceux qui manquent de moyens financiers ou de compétences administratives, en vue de fournir le plus rapidement possible une famille aux enfants qui n'en ont pas.
- 5.6. De façon générale, s'occuper davantage des situations de souffrance familiale, comme par exemple les familles qui vivent

dans la misère, celles qui connaissent des situations de maltraitance, ou celles qui vivent dans des quartiers au taux de criminalité élevé.

6. *Promouvoir les associations de défense des familles et une meilleure représentation des familles dans la vie publique*

- 6.1. Analyser les meilleures pratiques de l'Union européenne en ce qui concerne la représentation des familles au sein des différents forums de la vie publique (en réfléchissant notamment sur la mise en place de dispositions appropriées pour des catégories de famille spécifiques, telles que les familles à besoins particuliers mentionnées plus haut).
- 6.2. Promouvoir de nouveaux instruments et mécanismes au niveau des institutions de l'Union européenne en vue de favoriser une politique familiale plus cohérente et tournée vers l'intégration.
- 6.3. Promouvoir les échanges de vues au niveau de l'Union au sujet des mesures institutionnelles afin de tenir compte de la famille à l'échelon national, régional et local.
- 6.4. Explorer les mesures possibles au niveau de l'Union pour promouvoir les partages d'expériences et les liens institutionnels entre les différentes parties prenantes de chaque pays (associations de parents, parents d'élèves et d'étudiants, parents d'enfants handicapés, familles d'accueil, parents adoptifs, etc.) en vue de renforcer et de développer leurs structures.
- 6.5. Compléter la Résolution du Conseil des ministres de l'Union européenne sur le Capital Social et Humain (2-3 juin 2003) – qui fait référence à la contribution des familles et des associations de défense des familles à un micro niveau en ce qui concerne la formation de valeurs humaines et sociales – par l'élaboration d'une Résolution qui porte spécifiquement sur ce point.

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Propositions à débattre

Ces objectifs globaux et ces initiatives sont des propositions qui peuvent indubitablement être améliorées. Elles offrent matière à discussion et à débat. En les suggérant, le Secrétariat de la COMECE espère que les institutions et les acteurs politiques se rendront mieux compte que la tâche de renforcer la famille et de soutenir de nouveau le mariage comme point de départ idéal de chaque famille est une tâche qui mérite que l'on s'en occupe de près. La promotion de la famille rendra en définitive les citoyens de l'Union européenne plus heureux, produira une plus grande cohésion sociale, aura un effet positif sur la santé publique et pourrait

La promotion de la famille rendra les citoyens de l'Union européenne plus heureux, produira une plus grande cohésion sociale, aura un effet positif sur la santé publique et pourrait contribuer dans la foulée au renversement de la tendance déficitaire du taux de

contribuer dans la foulée au renversement de la tendance déficitaire du taux de natalité de l'Union.

La politique familiale doit rester une compétence des Etats membres. Mais la nécessité urgente de faire des progrès dans ce domaine justifie l'intensification des échanges de bonnes pratiques et la mise en place d'un certain nombre d'initiatives

communes, y inclus l'adoption de mesures législatives.

Bien des politiques mises en œuvre au niveau européen ne sont pas neutres à l'égard de la famille et peuvent ainsi avoir un impact positif ou négatif sur la famille et le mariage. Nous demandons donc aux institutions européennes de conjuguer leurs efforts pour compléter la Stratégie de Lisbonne par une stratégie européenne de la famille.

Annex:

Family Policy and the European Union⁶

"Is there such a thing as a European family? Is there such a thing as a European family policy? There is no doubt that there is such a thing as a European family, even if there are noticeable differences among our countries; while there is no such thing as a European family policy, even though it is possible to detect some resemblances among our various countries. In fact there is no Community competence in the area of family policy, and it is for the various Member States to implement or decline to implement policies in this field.

"This might be considered the end of the matter, but the issue is more complex. In fact, policies pursued at Community level in the area of health, education, employment and the fight against poverty and exclusion and policies concerning equal conditions for men and women all have an indirect impact on families and their children."

European Parliament Report on the protection of families and children (1999)

This quotation from an own-initiative report of the European Parliament on family matters illustrates the difficulties of family-policy within the European Union: according to the Treaties there is no such thing as "European family policy". Taking into account the national cultural and historical differences the Member States have reserved family-policy as their exclusive domain. The European Union

⁶ The information contained in this annex has been collected by the COMECE Secretariat from a variety of sources, most of which are available on the Internet. It does not represent the opinion of COMECE.

Institutions can only propose and execute supporting and complementary actions.

On the other hand families are affected by community regulations in many areas: social protection, working time, gender equality, competition, media-policy, formation and vocational training, health, development policy etc. It is not always certain if this is taken into account in European decision-making processes. This annex provides information on the following areas:

- The sharing of competences amongst the European Institutions in family-policy matters according to the Treaties (Part I)
- An overview of EU legislation that has an effect on the life of families (Part II) and on existing community policy (Part III)
- A view of future perspectives – according to the Draft Treaty establishing a Constitution for Europe (Part IV) and activities intended by the UN and the EU for the celebration of the Tenth Anniversary of the International Year of the Family (1994).

I. “Family” in the EU Treaties

The enumeration of Community competences in article 3,1 of the Treaty establishing the European Communities (TEC) does not mention the notion “family”. However a number of Community competences do have influence on family life and family ties:

“... 1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

(c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;

(d) measures concerning the entry and movement of persons as provided for in Title IV;

(g) a system ensuring that competition in the internal market is not distorted;

(h) the approximation of the laws of Member States to the extent required for the functioning of the common market;

(j) a policy in the social sphere comprising a European Social Fund;

(k) the strengthening of economic and social cohesion;

(p) a contribution to the attainment of a high level of health protection;

(q) a contribution to education and training of quality and to the flowering of the cultures of the Member States;

(r) a policy in the sphere of development co-operation;

Part III will present examples of Community legislation in the above mentioned areas.

Since the Community is not a state nor is provided with the characteristic features of a state it is limited to assigned competences: it has no “own competence”, i.e. it is not able to lay down its own activities and authorities but obtains them from the Member States (Article 4 TEC). The institutions of the European Communities therefore only can develop activities within the framework of their clearly outlined competences. Since the Community has no competence over family policy the Community is not entitled to be active in the area of family policy.

Despite this distinction of competences there is a certain tendency by

the Community to extend its competences and develop activities based on Article 5 II:

“... In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community..”...

Applied to the area of family policy this means the Community may be active in areas of shared competences if the aim of such an action cannot be fulfilled by measures of a single Member State –because the extent of the measure exceeds a Member State’s capacities, or because the objective of the measure affects the Community as a whole and therefore requires an involvement of the Community institutions. As provided in the Protocol on Subsidiarity, however, the Community’s involvement in this area is only permitted if its action has a substantial advantage over the action of a single Member State.

II. Family-related legislation of the European Union

There is no such thing as “European family law”. The legal relationships identified as “family ties” and the norms governing family life in both physiological and pathological phases are a matter left to the competence of Member States. Nevertheless, family ties and family life become a subject of European interest each time they come into play in a sphere of social life which is covered by EU legislation. When this occurs, they become so important as to alter the existing norms, either by widening or restricting their application, or by creating special provisions adapting the general framework to the specificity of family life.

In line with the subsidiarity principle, only some aspects of family life are regulated, or otherwise considered relevant by EU legislation. The scope of this paper is to illustrate which these aspects are and in which fields further developments can be expected in the near future.

II.1 Family in Employment and Social Legislation

This is the field where EU legislation having an impact on family has been most abundant. With reference to employment legislation, the main orientation of the EU has been to combine pursuing gender equality with reconciling professional and family life. In order to promote integration and social cohesion, Member States are called upon to create appropriate conditions to give women and men equal opportunities to access to and remain in the labour market. To this aim, child care services and assistance to other dependants must be provided and family and professional burden-sharing must be encouraged. Equal treatment requires that any unfavourable treatment on account of pregnancy or motherhood is qualified as discrimination on the ground of sex. Health and safety at work must be particularly granted to pregnant workers, to workers who have recently given birth or are breastfeeding, provided this protection does not impair women on the labour market. As for parental leave, the EU considers it as an individual and non transferable right for male and female workers. Member States should therefore adopt necessary measures to protect the latter from redundancy due to exercising this right and ensure they can return to the same or equivalent post at the end of such period. The right to equal treatment (i.e. the absence of all discrimination on the ground of sex, by reference in particular to

marital or family status) must be granted also to self-employed workers and to their spouses, where the latter habitually contribute to the former's activity. Member States are called upon not to hamper the constitution of companies between spouses.

As to social legislation, the EU has made efforts to co-ordinate the various national social security schemes in order to apply them to workers and their family members moving within the Community. It has also made possible for third-country nationals, legally resident in the Community, to benefit from this co-ordination. Significantly, this body of rules does not define family members, leaving this to national legislation. However, it is currently under revision. The future regulation will not only simplify it, but it will also broaden the definition of family to include forms of marriage allowed under law in different Member States. A shift from the traditional notion of family based on marriage is proposed in the actual procedure towards a new regulation for EU Institutions staff members. In the current state of play, recognised partnerships or confirmed stable partnerships are supposed to enjoy the same social benefits as those granted to married staff members. Taking into account the changes in the labour market and in the family structures, the EU has also recommended Member States to fight against social exclusion. The fundamental right to sufficient resources to live in dignity must therefore be accorded both to individuals and to family groups.

The following is a list of existing and draft legislation, given in chronological order, in the fields of employment and social policy:

- Council Decision 2003/578/EC of 22 July 2003 on guidelines for the employment policies of the Member States, *OJ L 197*, 05/08/2003, p. 0013 – 0021
- Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, *OJ L 124*, 20/05/2003, p. 1-3
- Procedure CNS/2002/0100 (COM (2002)0213 – A-5-0069/2003) for a Council Regulation amending Staff Regulations of Officials and the Conditions of Employment of other

servants of the European Communities

- Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, *OJ L 269*, 05/10/2002, p. 15-20
- Decision 1145/2002/EC of the European Parliament and of the Council of 10 June 2002 on Community incentive measures in the field of employment, *OJ L 170*, 29/06/2002, p. 1-6
- Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001 amending Council Regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, *Official Journal L 187*, 10/07/2001 p. 0001 – 0003
- Council Decision 2001/51/EC of 20 December 2000 establishing a Programme relating to the Community framework strategy on gender equality (2001-2005), *OJ L 017*, 19/01/2001 p. 0022 – 0029
- Procedure COD/1998/0360 (COM (1998)0779 - A-5-0226/2003 - COM(2003)0596) for a Council Regulation on coordination of social security systems to promote the free movement of persons (amending Reg. 1408/71)
- Council Regulation (EC) No 1290/97 of 27 June 1997 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, *OJ L 176*, 04/07/1997, p. 0001 – 0016

- Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, *OJ L 145*, 19/06/1996, p. 0004 – 0009; Council Directive 97/75/EC of 15 December 1997 amending and extending to UK Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC
- Council Regulation (EC) No 3095/95 of 22 December 1995 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71, Regulation (EEC) No 1247/92 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 1945/93 amending Regulation (EEC) No 1247/92, *OJ L 335*, 30/12/1995, p. 0001 - 0009
- Council Recommendation 92/441/EEC of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems, *OJ L 245*, 26/08/1992, p. 46-48
- Council Directive 92/85/EC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, *OJ L 348*, 28/11/1992, p. 1-8
- Council Recommendation 92/241/EEC of 31 March 1992 on child care, *OJ L 123*, 08/05/1992, p. 16-18
- Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy or motherhood, *OJ L 359*, 19/12/1986, p. 56-58

II.2. Judicial Co-operation among Member States on Family Matters

In the general scope of creating a common judicial area, special provisions have been adopted for judicial procedures on family issues with a transnational character (divorce, separation, annulment of the marriage, parental responsibility). The EU and Member States today share competence in this sector, governed by the principles of mutual recognition of judicial decisions and of the child's best interest. The forthcoming legislation will mostly deal with child abduction, as it occurs in situations of marital crisis. The fundamental right of the child to maintain, during or after a judicial procedure, regular contacts with his/her family members, enshrined in article 24 of the Charter of Fundamental Rights, is also implemented.

The following are the chief legal instruments:

- Procedure CNS 2003/0127 (COM (2003) 0348 - A5-0319/2003) Convention on jurisdiction, applicable law, recognition, enforcement and cooperation on respect of parental responsibility and measures for the protection of the children (the Hague Convention), aiming at exceptionally authorising MS to accede or ratify the Hague Convention in the interest of the Community, *OJ L 048*, 21/02/03, p. 3-13.
- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, *OJ L 338*, 23/12/2003 p. 0001 – 0029
- Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, *OJ L 160*, 30/06/2000, p. 19-36
- Proposal COM(2002)0520 final for a Council Decision on the signing by the European Community of the Council of Europe Convention on contact concerning children, *OJ C 020 E*, 28/01/2003, p. 369-369

II.3. Immigration and Asylum

Existing (or forthcoming) legislation in this sector is notable for two reasons: a) because it extends its favourable provisions to the family members of the beneficiaries; b) because it defines who these family members are. Therefore, family members are entitled to receive the statute of refugees or beneficiaries of subsidiary protection together with the applicant; similarly, family members may be granted a short term residence permit when accompanying a person who has been victim of illegal immigration or traffic in human beings. Third-country nationals who are members of the family of an EU citizen can legally reside in the territory of a Member State on a long-term basis and thus enjoy a specific status. Following the obligation to protect the family and respect family life, stemming from article 8 ECHR and from the Charter of Fundamental Rights, the EU has established the right to family reunification for third-country nationals who are lawfully residing in the territory of a Member State. Family reunification, in fact, facilitates social integration and contributes to socio-cultural stability. In addition, in order to preserve the family unit, asylum applications lodged by members of the same family shall be processed together by a single Member State. Derogations from the responsibility criteria should be allowed so as to bring family members together when humanitarian reasons exist. Family ties are also relevant to determine which Member State is competent for examining asylum applications. In receiving asylum seekers, Member States may consider particular family reasons, like pregnancy or single parenthood, as situations of special need. As for trafficking in human beings, children should be considered particularly vulnerable victims of it and appropriate assistance should be given to their families.

As to the definition of family members, it has been generally broadened. The directive on family reunification defines the nuclear family as made up of the spouse and children (minors), while it is for Member States to decide if they wish to authorise family reunification for relatives in the ascending line, adult unmarried children, unmarried or registered partners, with limits for polygamous households. The other provisions, though not making such distinction, have also considered family ties as going beyond the legal links.

The following legal instruments illustrate this development:

- Procedure CNS 2001/0207 (COM (2001)0510 - A5-0333/

2002) for a new Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

- Procedure CNS 2002/0043 (COM (2002)0071 - A5-0397/2002) for a new Council directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *OJ L 251, 03/10/2003, p. 12-18*
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, *OJ L 050, 25/02/2003, p. 1-10*
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for reception of asylum seekers, *OJ L 031, 06/02/2003, p. 18-25*
- Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, *OJ L 203, 01/08/2002, p. 1-52*
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, *OJ L 016, 23/01/2004 p. 0044 – 0053*
- Council Decision 2000/596/EC of 28 September 2000 establishing a European Refugee Fund, *OJ L 252, 06/10/2000, p. 12-18 (relates to family indirectly)*

II.4. Freedom of Movement

The aim of the EU's current initiative in this field is to provide a single legal basis to the right to free movement and residence for all

EU citizens and to replace the existing legislation related only to certain categories of beneficiaries (workers, students, service providers etc.). It actually considers free movement and residence in the host Member State as a proper individual right that extends also to the citizen's family, according to the jurisprudence of the European Court of Justice and to the Charter of Fundamental Rights. The notion of "family member" is also broadened.

- Procedure COD 2001/0111 (COM (2001) 0257 final - A5-0009/2003 - COM (2003) 0199) for a new Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

II.5. Development

In the context of Development Policy, the family is particularly affected by a new regulation establishing the legal basis for the EU's financing, technical assistance, supply, training and evaluation of projects in the field of reproductive and sexual health in developing countries. On one hand, it forbids incentives to sterilisation, abortion and improper experimentation of contraceptive methods; on the other it promotes individual freedom of choice, the access to sexual and reproductive health services, to education, information and an adequate sanitary assistance, as well as methods of contraception and protection from sexually transmitted diseases.

- Regulation (EC) No 1567/2003 of the European Parliament and of the Council of 15 July 2003 on aid for policies and actions on reproductive and sexual health and rights in developing countries, *OJ L 224, 06/09/2003, p. 1-6*

II.6. Television Broadcasting

With the "Television Without Frontiers" directive of 1997, the EU aims to co-ordinate the national provisions regulating television broadcasting in order to bring their contents into line and ensure the free movement of such services. This directive concerns the family insofar as it refers to the Commission's Green Paper on the protection of minors and human dignity in television and information services.

It promotes the role of parents in controlling the programmes their children watch, as well as encouraging family viewing policies and other educational and informative measures.

- Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *OJ L 202, 30/07/1997 P. 0060 – 0070*.

III. European Family Policy

III.1. The European Observatory on the Social Situation, Demography and Family

The European Observatory on the Social Situation, Demography and Family was established by the European Commission in 1989 on the basis of the conclusions of the Council of Ministers responsible for Family Affairs meeting on 29 September 1989, as well as on the basis of Communication COM (89)363final on Family Policies, adopted by the Commission. It works in co-operation with the DG Employment and Social Affairs of the European Commission.

The Observatory is a multi-disciplinary network of independent experts established upon the request of the European Commission. As its main tasks, the Observatory:

- monitors political developments in Europe which have an impact on the social situation, demography and family;
- analyses political activities and the impact of family policies;
- monitors demographic, socio-economic and political changes which have an impact on families;
- stimulates academic debate on social, demographic and family issues as well as on related policies;
- organises annual seminars of the Observatory experts and invited speakers for a specialised audience. The Annual Seminar 2003 was dedicated to *health*. In 2002 it focused on *immigration and family*. The Milan Seminar in 2001 analysed *family forms and the young generation in Europe*. In 2000, *fertility* was on the agenda of the Seminar held in Seville. Reports are available on request on the Observatory's website or at its secretariat in Vienna;
- organises two closed meetings per year for the Observatory members.

The European Observatory has a National Expert from each Member State. This group of experts monitors and reports on developments

regarding the social situation, demography and family in their countries, in the light of the Observatory's annual research focus. Their reports are published on the Observatory's website and are good examples of the similarity as well as the differences in the Member States' developments in family policy.

Since 1998 the Observatory's work is co-ordinated by the Austrian Institute for Family Studies (ÖIF) in Vienna. The OIF's contract with the European Commission will end in 2004. The Commission has decided to stop the work of the Observatory by then. Family Policy will become part of the Union's Social Policy and will be followed and reported in the Union's annual social report.

The Observatory's work is documented on its website. Every other month, the Observatory publishes *sdf-puzzle*, an electronic newsletter offering scientific contributions on selected key topics. Information on conferences, other events and topical family issues is circulated via the biweekly newsletter *puzzle*.

www.oif.ac.at

www.europa.eu.int/comm/employment_social/eoss

III.2. The “Hermange Report” of the European Parliament (A4-0004/1999)

In January 1999 for the first time an own-initiative report on the protection of families and children (Rapporteur: Mrs Marie-Thérèse Hermange) was adopted by the plenary of the European Parliament – despite the notion that there is no such thing as a European definition of “family” and therefore no common basis on which to propose a European family policy.

After a demographic, sociological and technological assessment (and an overall view on the pluriformity of national family policies – different models of family allowances, parental leave and child care) the report outlined a comprehensive European family policy – with the protection of the child at its core.

According to the report such a family policy should be based on the following four principles:

- respecting freedom of choice for parents and taking account of the diversity of family models,

- *placing children at the heart of the European debate,*
- *going beyond the socio-economic approach geared solely to policies on benefits,*
- *taking account of respect for equal opportunities for men and women*

In its conclusions the report proposed the following steps and actions:

- On the institutional level, the installation of a unit within the European Commission devoted to family affairs and child protection; the installation of a Council of Ministers of Family Affairs; the strengthening of the European Observatory
- On the legislative level, the introduction of a family impact statement for all Community acts in areas as diverse as social policy, economic policy, environmental policy, agricultural policy and transport policy and the adoption of guidelines for actions in favour of children
- Finally the introduction of an active co-ordination between public authorities, non-governmental institutions and associations in actions aimed at reconciling family life and professional life, pre-school and school education, the structuring of urban areas, co-operation between judicial services, the police and social services to support family life and the protection of children

All the other concrete steps the report proposed aimed at a policy of protection of the child – from birth to adulthood, against violence, abuse and sexual harassment – and the support of the parents in fulfilling their task as parents (training courses for parenthood, parental leave, reconciliation of work, social life and family life).

Considering the status of the report and the lack of Community competences in this area the Commission could not take up the report's conclusions. The report contributed, however, to a discussion about the necessity of a Community family policy and the inclusion of family matters in different areas of Community policy.

III.3. The “Bastos Report” of the European Parliament (A5-0092/2004)

On 9 March 2004, the European Parliament adopted another own-initiative report drafted by Regina Bastos MEP on “Reconciling professional, family and private life”. The report, based on a survey of the situation regarding family policy in the different Member States, sets out a number of ways in which progress could be made toward the targets set at the Barcelona summit in 2002, namely the elimination of obstacles to the participation of women in the labour market and the provision, by 2010, of childcare facilities for 90 per cent of children between 3 years old and the mandatory school age, and for 33 per cent of younger children.

Among other suggestions, the report urges the Commission to draw up a framework directive on reconciling professional, family and private lives and to organise an annual conference on the issue. They propose additional awareness raising measures by both the Commission and the Member States, and call for Member States to avoid taxation measures which penalise families and larger households. They add that family policy should make it possible for parents to spend more time with their children, and that better contact between parents and children would have a positive impact on family formation and family stability. To achieve these objectives, the report says there must be greater public investment in providing affordable, high-quality childcare. Member States are also urged to facilitate access to paid parental leave and other forms of long-term leave, including career breaks, as well as special short-term leave (e.g. for breastfeeding or for the illness of a family member). The report also stresses the importance of flexible working hours and distance working for both male and female employees.

Care for children is the most prominent aspect of this resolution but not the only one. Europe's population is ageing, with 17% of the population of the EU over 65 years old, and this percentage is growing fast, so steps have to be taken now. The report urges the Member States to provide the elderly with high quality care and domestic help, and to ensure adequate training for staff working in this area.

[Source: European Parliament Press Service]

IV. Family and the Draft Treaty establishing a Constitution for Europe

On 18 July 2003 the draft of the Treaty establishing a Constitution for Europe was adopted by the Convention on the Future of Europe. It contains the Charter of Fundamental Rights of the Union which was adopted by the European Council in Nice in December 2000. The draft contains several direct or indirect references to “family”. Part I, Article 3 of the draft names, under the heading “The Union’s objectives”, elements that are directly connected with family matters:

“It [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 children’s rights.”

According to Article I-5 II the Union pursues these goals in co-operation with the Member States, in full respect of their constitutional structure, their national identity and culture, as well as the principle of subsidiarity. In return, the Member States refrain from any action that could impede the Union in reaching the goals named under Article I-3:

*“Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Constitution.
The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution.”*

All socio-political measures and activities in connection with “family” come – according to Article I-13 II 6 – under the shared competences of the Union and the Member States:

*“Shared competence applies in the following principal areas: ...
– social policy, for aspects defined in Part III, ...”*

Such aspects are described in Articles III-103 ff.: the improvement of life and work conditions, proper social protection and equal

opportunities for men and women, the combating of social exclusion. All those areas are already mentioned in Article 136 ff. TEC.

All those measures aim only at “improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws of the Member States”. With respect to the rules in each of the Member States, the Union may establish minimum requirements by European laws or framework laws which will gradually be implemented by the Member States.

In concrete terms this means no harmonisation of social policy concerning the family for the foreseeable future or, at most, the elaboration and implementation of minimum requirements.

Two other references on the family are found in Article III-168 IIa – the Union develops a common immigration policy and regulates family reunification by European laws and framework laws – and in Article III-170 III – the Council of Ministers, acting unanimously, may lay down, on a proposal from the Commission a European decision determining those aspects of family law with cross-border implications.

In contrast with the other parts of the draft, Part II – the Charter of Fundamental Rights – mentions the family directly on several occasions:

Article II-7: *“Everyone has the right to respect for his or her private and family life, home and communications.”*

Article II-9: *“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.”*

Article II-14, 3: *“The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.”*

Article II-24, 3: *“Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.”*

Article II-33: *“The family shall enjoy legal, economic and social protection. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.”*

Article II-34, 1: *“The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.”*

The notions of “family” and “marriage” are not defined by the draft constitution. Article II-9 only mentions the right to marry and the right to found a family in accordance with the national laws of the Member States (who also define their understanding of “family” and “marriage”). There is no European agreement in this matter – “no such thing as a European family”.

In summary, family policy will rest mainly in the competence of the Member States. The Union will only take initiative if they have a certain European “added value” (e.g. transnational relevance, issues coinciding with areas of European Union competence). Such initiatives will not lead to the harmonisation of family policy on European level. This will not be changed fundamentally by the draft Treaty – at least in its present form.

V. 2004 – Ten years on from the International Year of the Family in 1994

In December 1997 the General Assembly of the United Nations proposed to organise in 2004 a follow-up to the 1994 International Year of the Family (IYF). The objectives of this tenth anniversary of the IYF should be to:

- Increase awareness of family issues among Governments as well as in the private sector;
- Strengthen the capacity of national institutions to formulate, implement and monitor policies in respect of families;
- Stimulate efforts to respond to problems affecting, and affected by, the situation of families;
- Undertake at all levels reviews and assessments of the situation and needs of families, identifying specific issues and problems;
- Enhance the effectiveness of local, national and regional efforts to carry out specific programmes concerning families, generate new activities and strengthen existing ones;
- Improve collaboration among national and international non-governmental organisations in support of families.

The Tenth Anniversary of the International Year of the Family 2004 was launched in December 2003. The whole programme will culminate in the holding of a plenary session of the Assembly on the topic of families. It will be devoted to a reaffirmation of commitments made and the identification of further actions, including encouraging the incorporation of effective family policies and programmes into national development strategies; and encouraging regional institutes to promote and undertake research and development of policies related to family issues.

The main focus of activities will stay on national and regional level. Under the Irish Presidency of the European Union in the first half of 2004, the European Union will organise a conference on “Families, change and social policy” – on 13-14 May 2004 in Dublin.