COUNCIL OF THE EUROPEAN UNION

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LIMITE

MIGR 68

OUTCOME OF PROCEEDINGS

of :	Working Party on Migration and Expulsion
on :	27 July 2001
No. prev. doc.:	10922/01 MIGR 62
No. Cion prop.:	11123/00 MIGR 68 (COM(2000) 624 final)
Subject:	Amended proposal for a Council Directive on the right to family reunification

I

At its meeting on 27 July 2001, the Working Party continued its study of the above proposal on the basis of texts concerning several of the Directive's articles put forward by the Presidency in 10922/01 MIGR 62.

The purpose of these texts was to transpose the approach developed by the Presidency in 10394/01 and 10842/01 into legislative provisions; the Presidency proposed differentiating between the rights to be accorded to the three categories of family member referred to in Article 5(1) to (3).

At the Permanent Representatives Committee's meetings on 5 and 19 July 2001 there was broad support for this approach. Coreper gave the Working Party a mandate to examine, at technical level, the possibility of varying the rights to be accorded to the different categories of family members in connection, in particular, with the question of time limits/waiting times for these rights to be granted, and also to study further the evidence to be produced to establish the existence of a relationship between unmarried partners, referred to in the third subparagraph of Article 6(2).

– With regard to **Article 6**, and the third subparagraph of Article 6(2) in particular, after a discussion of the discretion that Member States could have in assessing the evidence referred to in this provision, the following wording was adopted:

"When examining an application concerning the unmarried partner of the sponsor, Member States shall take into account, in order to establish a family relationship, factors such as a common child, previous cohabitation, registration of the partnership or any other reliable means of proof."

The Spanish delegation nevertheless entered a scrutiny reservation. Although the Swedish delegation did not contest the fact that account should be taken of registration of the partnership as one of the factors that could prove the existence of a couple, it pointed out that registered partnerships were considered to be a category in their own right in Sweden, with specific characteristics, as distinct from partnerships between married or unmarried people. The Swedish delegation therefore wanted registered partnerships to be mentioned explicitly in Article 5(3), which referred only to unmarried partners.

When this point was being studied, the German and Netherlands delegations reiterated their reservations concerning the nine-month time limit referred to in **Article 6(4)**, as they wanted a longer period to be taken into account. On the same paragraph 4, the Austrian delegation wanted a footnote added to stipulate that the legal consequences of national authorities' failure to take a decision on a request for family reunification within the time limit set by the Directive would be determined on the basis of the administrative regulations applicable in the Member State concerned.

– With regard to **Articles 8, 13 and 14**, which referred to time limits/waiting times for the rights accorded by the Directive to be granted to the sponsor and/or family members, agreement could not be reached on the proposals from the Presidency, as delegations in the main upheld the positions they had adopted in previous discussions on the provisions in question.

Delegations agreed to only part of the amendments proposed by the Presidency for **Article 16**, on rejection of an application for entry and residence for the purpose of family reunification or withdrawal or refusal to renew a residence permit.

The Italian and Austrian delegations pointed out that their national laws on family reunification were currently being revised. In this context the Austrian delegation indicated that the amendments envisaged would in any case not affect the system of quotas applicable in Austria regarding third country nationals admitted into its territory.

Delegations will find below, in II, the texts of Articles 8(1), 13(2), 14(2), 15(2), and 16(1) and (3) as contained in 10922/01 MIGR 62, with the comments made by delegations in the footnotes.

II

Article 8

1. When the application for family reunification is submitted, the Member State concerned may ask the sponsor/family member to provide evidence that the sponsor has:

   (a) accommodation regarded as normal for a comparable family in the same region and which meets general health and safety standards in force in the Member State concerned;

   (b) sickness insurance in respect of all risks in the Member State concerned for himself/herself and the members of his/her family;

   (c) stable resources which are higher than or equal to the level of resources below which the Member State concerned may grant social assistance. Where this provision cannot be applied, resources must be higher or at least equal to the level of the minimum social security pensions paid by the Member State. The stable resources criterion shall be evaluated by reference to the nature and regularity of the resources.

   The Member State may require the **sponsor** [1] to meet the conditions referred to in paragraph 1 for a period not exceeding **the following time limits**:

   – **one year where the family member is the spouse or a minor child as referred to in Article 5(1);**
   – **two years where the family member is a direct ascendant or a child of full age as referred to in Article 5(2);**

[1] A wanted "sponsor" to be replaced by "sponsor/family member".

– **three years where the family member is the unmarried partner referred to in Article 5(3).** [1]

However, if the sponsor does not meet the said conditions, Member States shall take into account family members' contributions to the household income.

[remainder unchanged].

[1] F considered that it was inappropriate to draw a distinction between the categories and that a system of differentiated time limits would be too complicated; it suggested that there be a single time limit of one year for all categories. FIN/NL and S were opposed to the idea of unmarried partners being treated differently from members of the nuclear family. As a compromise, NL suggested a two-year time limit for all categories. EL suggested replacing the current wording with the following:
"*Member States may require evidence that the said conditions are met when a residence permit is issued or renewed*".
The delegation stressed that the advantage of this proposal was that no time limit was set, as the person concerned had to meet the condition concerning adequate resources until he/she was entitled to a permanent residence permit in the territory of the Member State concerned. D and A had proposed a single five-year time limit for all the categories of family members referred to in Article 8, but they agreed to the suggestion from GR, while F and NL did not. Although F noted that this was a pragmatic suggestion, it considered that as a consequence the discussion on time limits would be postponed and brought up again in discussions on other articles in the Directive. NL underscored the link between this provision and Article 16 and drew attention to the possible consequences that might arise if no time limits were set in Article 8. Pres considered that Article 8 should set a maximum time limit and reiterated that the Working Party was required to study the question of the time limits provided for in the Directive as a whole. Cion stated that it would not be opposed in principle to setting differentiated time limits, but wondered why this provision should accord less favourable conditions to unmarried partners than to members of the nuclear family. With respect to the comments from delegations that wanted relatively long time limits, it wondered whether it was actual practice in the Member States for families to be split up if their members failed to meet the conditions regarding adequate resources after having lived in the territory for several years.

Article 13

1. [unchanged].

2. The Member State concerned shall grant the family members a renewable residence permit of the same duration as that held by the sponsor.

   Where the sponsor's residence permit is permanent or for an unlimited duration, the Member States may grant family members residence permits of limited duration during:

   - **the first two years as regards the spouse and minor children referred to in Article 5(1);**
   - **the first three years as regards the direct ascendants and children of full age referred to in Article 5(2);**
   - **the first four years as regards the unmarried partner referred to in Article 5(3).** [1]

[1] EL supported the Pres proposal. F considered that it was inappropriate to differentiate between the categories of family members and suggested that a single two-year time limit be set. FIN/NL and S considered that unmarried partners should be eligible to enjoy the same treatment as that given to members of the nuclear family. NL in particular wanted a general two-year time limit. D accepted the idea of differentiating between categories but nevertheless preferred a five-year time limit for all categories. E, supported by P, emphasised the voluntary nature of this provision and considered that family members should be able to hold the same kind of residence permit as that of the sponsor. This delegation also considered that if this provision were to contain a time limit it should in any case be as short as possible. Cion stated that even though it was not opposed to the idea of different time limits according to category, it would be inappropriate not to give unmarried partners the same treatment as was given to members of the nuclear family. It also wanted the time limits to be as short as possible. Pres noted that the delegations raised the same problems when discussing Article 13 as they had when discussing Article 8. In response to a question from the A delegation, which wondered if the Austrian system whereby, if the sponsor held an unlimited residence permit, the family member was entitled to a five-year residence permit and could apply for an unlimited residence permit after the first two years of residence, Pres considered that this system was stricter than that provided for under the Directive. It stated that such a system could not be compatible with the Directive unless the unlimited residence permit were issued automatically after two years.

Article 14

1. [unchanged].

2. Member States may restrict access to employment or self-employed activity by **direct** [1] ascendants or children of full age as referred to in Article 5(2) **and by the unmarried partner referred to in Article 5(3)** [2].

Article 15

1. [unchanged].

2. [*change to French version*].

[remainder unchanged].

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[1] In response to a question from Pres, most delegations stated that they would be in favour of adopting a broad definition of "ascendants", which would not be limited to direct ascendants. In contrast, EL and S considered that the definition of ascendants should include only parents. In this context, I maintained that, in the case of direct ascendants, instead of referring to the family tie to the sponsor, account should be taken of whether the ascendant was a dependant of the sponsor or not. B could accept either definition but pointed out that as far as descendants were concerned the Directive took into account only *direct* descendants (i.e. children). NL considered that this question should be studied in the context of Article 5 and entered a scrutiny reservation.

[2] FIN/F/NL and S were against the possibility of unmarried partners being treated less favourably than members of the nuclear family. Cion agreed with these delegations. NL stated that, even if limits were justified, it would be better to achieve greater harmonisation and curb Member States' margin for manoeuvre; it preferred the original wording of this paragraph. D reiterated its reservation on this discussion and A said it would have difficulty with a situation where there were no limits on access to employment for members of the nuclear family too. With regard to ascendants, EL considered that only exceptionally should these members of the family be authorised to have access to the labour market. It therefore suggested that the words "*may restrict*" be replaced with "*may authorise*".

Article 16

1. Member States may reject an application for entry and residence for the purpose of family reunification or, where applicable, withdraw or refuse to renew[1] a family member's residence permit in one of the following cases:

(a) where the conditions set out in this Directive are not or are no longer met;

(b) where the sponsor and the member(s) of his/her family do not have or no longer have an effective conjugal or family life [2] [3].

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[1] F considered that a distinction should be made between the cases provided for in this provision (rejection of an application for entry and residence, withdrawal and refusal to renew the residence permit). Pres wondered whether it was worth doing this, since as a result the text would be rather long and complicated.

[2] F and NL said they had problems taking a position on this provision, especially on (a) and (b), until the issue of time limits provided for by the Directive had been settled. With particular reference to (b), NL stated that the Strategic Committee had agreed to insert a clause into Article 5(1) regarding the requirement that there be an effective relationship, and not just a legal relationship, between the family members eligible for family reunification. NL considered that as the condition set in (b) should be met at the time of admission into the territory for the purpose of family reunification, that condition should be incorporated into Article 5. E and F were against the NL proposal.

[3] Cion wondered about the scope of the term "effective conjugal life". It wondered whether strict interpretation of this term might not lead to the situation where a married couple, who had not married for convenience but who were "going through a bad patch" and not living together for a while, might be liable to the sanctions referred to in Article 16. As the Directive provided for sanctions to be applied in cases of marriages of convenience, the Commission considered that this provision would penalise legally married couples who, in particular in the event of separation, might be obliged to continue living together against their will rather than risk having the residence permit withdrawn or not renewed. The Commission considered that these aspects of conjugal life, which were personal matters, should not be taken into account or assessed. E agreed with the Cion arguments. Pres considered that (b) had to be added, as the cohabiting criterion on its own was insufficient, and the Member States should be able to require evidence of at least some relationship between the persons concerned. In response to the concerns expressed by the Cion, Pres stressed that checks would not be carried out systematically as to whether the persons concerned met this condition. S endorsed the Pres proposal and D entered a reservation.

Member States may also reject an application for entry and residence for the purpose of family reunification or, where applicable, withdraw or refuse to renew the residence permit of the unmarried partner where it is established that the latter or the sponsor is married or has a proven durable relationship with another person. [1]

2. [unchanged].

3. Member States may withdraw or refuse to renew a family member's residence permit where the sponsor's residence has ended and the family member is not yet entitled to an independent residence permit under Article 15(1) or has not been granted such permit under Article 15(2) [2]**.**

[remainder unchanged].

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[1] S supported the addition of this subparagraph.

[2] Article 16(3) did not give rise to any comments from delegations.