COUNCIL OF
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LIMITE

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OUTCOME OF PROCEEDINGS

of :	Working Party on Migration and Expulsion
on :	17 and 22 January 2001
No. prev. doc. :	11524/00 MIGR 76
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

The Working Party on Migration and Expulsion continued its third reading of the above proposal (**Articles 1-3 and 13-21**).

Delegations will find under II the complete text of the draft Directive, with the comments made by delegations during the meetings on this dossier shown in footnotes.

II

Draft

COUNCIL DIRECTIVE

on the right to family reunification [1]

Chapter I

General provisions

Article 1

The purpose of this Directive is to establish the conditions for exercise of the right to family reunification enjoyed by third-country nationals residing lawfully in the territory of the Member States and citizens of the Union who do not exercise their right to free movement.[2]

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[1] A upheld a general reservation, mainly due to the fact that the Commission proposal did not take account of the quota system which applied in Austria.
NL upheld a parliamentary scrutiny reservation.
D maintained a linguistic scrutiny reservation on the entire amended Commission proposal.
FIN pointed out that its authorities are still holding internal consultations on the entire Draft Directive.

[2] D wanted it to be possible for third-country nationals of German origin ("*Aussiedler*"), who are entitled to German nationality under German law to be excluded from the benefit of family reunification.

Article 2

For the purposes of this Directive:

(a) *"third-country national"* means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community, including stateless persons;

[(b) *"refugee"* means any third-country national or stateless person enjoying refugee status within the meaning of the Convention relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;]

(c) "*applicant*"[1] means a third-country national residing lawfully in a Member State, or a citizen of the Union[2], who is applying to be joined by members of his family;

(d) "*family reunification*" means the entry into and residence in a Member State by family members of a citizen of the Union or of a third-country national residing lawfully in that Member State in order to ~~form or~~ [3] preserve the family unit, whether the family relationship arose before or after the resident's entry;

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[1] Many delegations felt that the drafting of point (c) should be reviewed in certain language versions to take account of the amended wording of Article 7 (1), first sentence which provides for the application to be made either by the person lawfully residing in a Member State or by the family members residing outside the Union. To that end it was suggested to replace "applicant" in the English version by "sponsor". See also footnote 1 on page 13.

[2] Scrutiny reservation from D on the sentence ',or a citizen of the Union,'.

[3] NL maintained scrutiny reservation on the deletion of the words 'form or'.
GR entered a reservation considering that family reunification should be limited to the preservation of the family unit. It therefore wanted the deletion of the words 'form or' and of the phrase ',whether the family relationship arose before or after the resident's entry;'.
Cion opposed the suggestion from GR.
The Presidency noted that broad agreement had been reached in the Strategic Committee that family reunification should cover both the creation and the preservation of the family unit.

(e) "*residence permit*" means a permit or authorisation issued by the authorities of a Member State in accordance with its legislation allowing a third-country national to reside in its territory, with the exception of provisional authorisations pending examination of an application for asylum, or decisions whose sole purpose is to suspend the enforcement of an expulsion order without thereby opening up a right of residence.

Article 3

1. This Directive applies where the applicant is:

   (a) [1]a third-country national residing lawfully in a Member State and holding a residence permit issued by that Member State for a period of at least one year, and having a reasonable prospect of obtaining a long-term right of residence. Member States may authorise family reunification on a discretionary basis, where the applicant holds a residence permit which does not offer the prospect of long-term residence[2].

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[1] Scrutiny reservation from S.
A objected that the wording of point (a) still did not cover the **purpose** of the applicant's residence.

[2] E maintained a scrutiny reservation on the current wording of this sentence.
Cion suggested replacing the second sentence of point (a) by the following text taken from the Commission proposal for a Directive on minimum standards on procedures for granting and withdrawing refugee status :
"Member States may decide to apply the provisions of this Directive to applicants whose residence permit has been issued for a period of less than one year"
which could be inserted in as a separate subparagraph of Article 3.
F was favourably disposed to such a suggestion.
D and A wanted to study the text further.

[(b) a refugee, irrespective of the duration of his residence permit,] [1]

(c) a citizen of the European Union who has not exercised the right to free movement,[2]

if the applicant's family members are third-country nationals, irrespective of their legal status.

2. This Directive shall not apply where the applicant is:

(a) a third-country national applying for recognition of refugee status whose application has not yet given rise to a final decision; or

(b) a third-country national authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;

(c) a third-country national authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

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[1] D, E, F, A and P maintained reservations on the inclusion of refugees in the scope of the Directive.
FIN and S recalled that, following Parliament's opinion, in the amended Commission proposal, persons benefiting of subsidiary protection have been excluded from the scope of the Directive. While regretting such a development, they could also accept the exclusion of refugees, who should then be covered in a separate legal instrument.
GR and I, while agreeing with the exclusion of beneficiaries of subsidiary protection, took the view that the family reunification of refugees should be covered by this Directive.
L and NL felt that both beneficiaries of subsidiary protection and refugees should be included in the scope of the Directive.
With a view to reaching a compromise, B suggested that all provisions concerning refugees should be grouped in a specific Chapter of this Directive, and cover only the nuclear family as referred to in Article 8 of the ECHR. It also added that an alternative would be to address the question of the family reunification of refugees in a separate Community instrument, as suggested by several delegations.

[2] Reservations from D and NL.

3. This Directive shall not apply to family members of citizens of the Union who have exercised their right to free movement of persons.

4. This Directive is without prejudice to more favourable provisions of:

   (a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other, which entered into force before the date of entry into force of this Directive[1]; or

   (b) the European Social Charter of 18 October 1961 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

[1] E entered a scrutiny reservation and A a reservation on this provision. Both delegations stressed the need for flexibility. In particular, they took the view that Member States should be given the possibility of concluding multilateral and bilateral agreements with third countries, containing more favourable provisions, also after the entry into force of this Directive.

Article 4

By way of derogation from this Directive, the family reunification of third-country nationals who are family members of a citizen of the Union residing in the Member State of which he is a national and who has not exercised his right to free movement of persons, is governed *mutatis mutandis* by Articles 10, 11 and 12 of Council Regulation (EEC) No 1612/68 and by the other provisions of Community law listed in the Annex.

Chapter II

Family members

Article 5

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

   (a) the applicant's spouse, or an unmarried partner living in a duly proven durable relationship with the applicant, if the legislation of the Member State concerned treats the situation of unmarried couples as corresponding to that of married couples; [1]

[1] E wanted deletion of the passage starting with the words "or an unmarried partner…".
D preferred to leave the option of authorising family reunification in the case of unmarried partners to the discretion of Member States and entered a scrutiny reservation.

(b) the minor children of the applicant and of his spouse or unmarried partner, including children adopted [1] in accordance with a decision taken by the competent authority in the Member State concerned or a decision recognised by that authority [2];

(c) the minor children including adopted children of the applicant or his spouse or unmarried partner, where one of them has custody and the children are dependent on him or her; where custody is shared, the agreement of the other parent [3] shall be required; [4]

(d) the relatives in the ascending line [5] of the applicant or his spouse or unmarried partner who are dependent on them and have no other means of family support in the country of origin;

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[1] S felt that (b) should also cover adoption decisions which, under the terms of international agreements, are immediately enforceable.
Cion thought that S's concern should be met by the text of the second part of the sentence, referring to any decision recognised by the Member State.
B believed that the current wording could be interpreted as meaning that recognition by the Member State concerned was also required in the case of adoption decisions which came into force as soon as they were taken in the country of origin.
NL suggested including a reference to existing international instruments.
The Presidency thought that this point could be examined in more detail.
A drew delegations' attention to the problem of adoptions of convenience, whose sole purpose was to obtain a status for the adopted person allowing that person access to the labour market, and declared its intention to attempt to control and contain this phenomenon.

[2] S wanted to use the term "**competent authority**" rather than "**that authority**", since the authorities which adopted decisions were not the same in Sweden as those which enforced them.

[3] S, supported by A, pointed out that the term "**parent**" ought to be replaced by the phrase "**other person responsible for the child**", since a person other than a parent - such as a guardian – could be responsible for the child.

[4] D entered a scrutiny reservation on (c).

[5] D and A entered reservations. Believing that family reunification should be granted solely to members of the nuclear family (parents and children), they felt that the Presidency's suggested clarification which involved adding the word "**direct**" before "**ascending**" was not enough to settle this problem.
E entered a scrutiny reservation on the addition of the word "**direct**" before "**ascending**".

(e) children of the applicant or his spouse or unmarried partner, being of full age, who are unmarried and who are objectively unable to satisfy their needs by reason of their state of health.[1] [2]

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[1] GR wanted to qualify the state of health by adding the word **"serious"**.
I thought the reference to the state of health was too vague and that an objective criterion such as incapacity for work should be taken into account.
Cion said that this matter should be examined.

[2] D/A/P and FIN entered reservations on (d).
D and A pointed out that the family reunification of adult children was a rare occurrence and that Member States should be entitled to authorise such reunification on a discretionary basis.
B and S, on the other hand, felt that the opportunities open to adult children should be extended, providing their state of health justified it (B).
P commented that Portuguese law, which granted family reunification to adult children under 21 and disabled adult children, was more advantageous than the Directive.
Cion observed that, although the number of cases involving the family reunification of adult children was fairly limited, it was something that needed to be taken into account for the sake of family unity. As to extending the scope of the provision, Cion would be prepared to envisage the inclusion of a paragraph providing for an extension to all other family members (as is the case, for instance, in paragraph 4 concerning refugees).
As a compromise, D, supported by A, suggested inserting a clause to cover the relatives in the ascending line referred to in (d) and the adult children referred to in (e) specifying that Member States would have a large measure of discretion in exceptional cases of this kind. The following text submitted to the Strategic Committee by the Presidency to replace the current (c) and (d):
"***Member States remain free to grant family reunification in other situations if they deem this necessary pursuant to Article 8of the European Convention on Human Rights".***
met with reservations from B and Cion, which felt that such a text allowed Member States too much freedom at the expense of harmonisation, while D, NL and S entered scrutiny reservations.

2. In the event of a polygamous marriage [1], where the applicant already has a spouse [2] living with him in the territory of a Member State, the Member State concerned shall not authorise the entry and residence of a further spouse, nor the children of such spouse, without prejudice to the provisions of the 1989 Convention on the Rights of the Child.

3. The minor children referred to in (b) and (c) of paragraph 1 must be below the age of majority set by the law [3] of the Member State concerned and must not be married [4].

[4. Where the applicant is a refugee, the Member States shall facilitate the reunification of other family members not referred to in paragraph 1, if they are dependent on the applicant.]

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1 Several delegations felt that the provisions of this paragraph were rather contradictory, since although polygamous marriage was not recognised and only the family reunification of the spouse living with the applicant in the territory of a Member State was authorised, an exception was provided for in the case of the children of other spouses.
In reply to a comment by I on the relationship between Article 3(1)(c) and the paragraph concerned, Cion – while emphasising that the aim of this provision was to try and strike a balance – acknowledged that there was a risk of creating a disparity between spouses. Cion added that this discrimination was deliberate, allowing for the fact that the women were separated from their husbands and that it was considered preferable not to separate them from their children. In response to a remark by A, Cion said that paragraph 2 made no reference to polyandry on account of the very small number of such cases.
D, supported by A, suggested deleting the whole paragraph, thus enabling Member States to apply their own national rules in such cases.
P, pointing out that Portuguese law forbade discrimination between sons, endorsed the D proposal. S opposed the D suggestion.

2 I entered a scrutiny reservation on the replacement of "épouse" by "conjoint" (no effect on the English version).

3 D and A wanted a fairly flexible wording on the age of majority to be adopted, since various ages could be taken into account in the Member States. In particular, D, which entered a scrutiny reservation, wanted some flexibility for children aged between 16 and 18.

4 S wished to replace the words "**must not be married**" by the phrase "**must not be cohabiting or living in a registered partnership**".

5. Third-country nationals residing in a Member State for the purpose of study [1] may not be joined by the relatives in the ascending line defined in (d) of paragraph 1.

[Article 6

If the refugee is an unaccompanied minor, the Member States may:

(a) authorise the entry and residence for the purposes of family reunification of his relatives in the ascending line without applying the conditions laid down in Article 5(1)(d);

(b) authorise the entry and residence for the purposes of family reunification of other family members not referred to in Article 5, where the minor has no relatives in the ascending line or such relatives cannot be traced.]

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[1] S and FIN thought this provision should be broader and not aimed solely at third-country nationals residing for the purpose of study.
FIN, noting the connection between paragraph 5 and (d) and (e) of paragraph 1, entered a reservation.
D suggested broadening the scope of the provision by referring more generally to persons with a specified right of residence.
In this context, NL noted that the wording of this paragraph would have to take account of the solution ultimately adopted for Article 3(1)(a).
GR, pointing out that family reunification for students was not authorised under existing legislation in Greece, entered a reservation on paragraph 5. If the alternative text submitted to the Strategic Committee by the Presidency to replace (c) and (d) of paragraph 1 were adopted, paragraph 5 would become redundant.

Chapter III

Submission and examination of the application

Article 7

1. In order to exercise the right to family reunification, an application for entry and residence of one or more family members shall be submitted to the competent authorities of the Member State, either by the applicant in the Member State where he resides, or by the family member or members in the country where that or those member(s) reside [1]. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 5, 8 and, where applicable, 9 and 10.

2. The application shall be submitted when the family members are outside the territory of the Member State.

   By way of derogation from the first subparagraph, the Member State concerned shall examine an application submitted when the family members are already in its territory, in exceptional circumstances or on humanitarian grounds.[2]

3. The competent authorities of the Member State shall give the applicant written notification of the decision within six months of the date on which a complete application is made [3].

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[1] The Working Party agreed that this provision should be supplemented to clarify that it is for the Member States to decide, according to their national rules, whether the application has to be lodged in the Member State where the applicant resides or in the country where family members reside.

[2] B wanted a distinction to be drawn between cases in which the persons concerned were required to hold visas and those in which they were not.

[3] NL and A entered reservations on the six-month period, which they felt was too short. D entered a scrutiny reservation.

[If the application is not accompanied by all the documentary evidence referred to in paragraph 1, the competent authorities shall inform the applicant and grant him a period appropriate to the circumstances, of not less than one month, in which to complete the application.

In such cases, the six-month period shall be suspended and begin to run again as soon as the supplementary documentary evidence has been submitted.] [1]

Reasons shall be given for any decision rejecting the application.

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[1] The **Strategic Committee** held a detailed exchange of views on these subparagraphs, in particular on whether the six-month period should be suspended and what the consequences of such suspension would be.
I thought that Member States should be left a certain amount of discretion. It considered that when an application was manifestly unfounded, Member States should be entitled to reject it without having to grant a further period.
L, endorsing I's views, felt it would be simpler to provide for the rejection of any incomplete application and the submission of a new application by the person concerned.
D, indicating its support for L and I, called for greater flexibility on time limits.
B pointed out that the inclusion of a provision to suspend the period was the result of a compromise text on which the Working Party had reached agreement in principle. Believing that the text should be clarified on this point, B wondered whether, once an application had been completed and the suspension had ended, a new period of six months began to run or whether the administration only had the remaining unelapsed time of the original period.
The Presidency suggested adding a reference in the text to the notion of a "**complete file**".
Cion was opposed to this suggestion, which would be tantamount to leaving the question of whether a file was complete to the sole discretion of the competent authority.
Finally, I and A drew attention to the issue of the consequences of no decision by the end of the period, which was not dealt with by this provision.
Cion pointed out that if there was no decision within the allotted time, two consequences were conceivable under the Directive: on the one hand, in States where the "silence means refusal" rule applied, family members would have the right to apply to the courts in accordance with the provisions of Article 16; on the other hand, Member States could take measures against officials who had failed to complete examination of applications.
The Presidency considered that it was for national law to determine what penalties should apply in the case of delays or no response on the part of the administration, and that it would therefore not be appropriate to take this issue into account in the context of the Directive.

[4. [1] If the applicant is a refugee and cannot provide documentary evidence of the family relationship, the Member States shall have regard to other evidence of the existence of the family relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.]

5. When examining an application, the Member States shall have due regard to the best interests of minor children, in accordance with the 1989 Convention on the Rights of the Child.

[1] I called for a specific reference to be made in paragraph 4 to nationals of countries which have no central authorities, such as Somalia and Afghanistan.

Chapter IV

Practical conditions [1] for the exercise of the right to family reunification

Article 8

1. The Member States may refuse [2] to allow the entry and residence of family members on grounds of public policy, domestic security or public health. [3]

2. The grounds of public policy or domestic security must be based exclusively on the personal conduct of the family member concerned.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

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[1] GR thought that the concept of "**practical conditions**" should be clarified.

[2] GR wished to replace "**may refuse**" by "**shall refuse**".

[3] E felt that the list of reasons on the basis of which entry and residence could be refused was too restrictive, since there were also other reasons, particularly by virtue of obligations arising from international law. It called for the addition of a specific clause setting out all the cases to be taken into consideration, or a clause referring to Article 5 of the Convention implementing the Schengen Agreement, which included a list of grounds for refusal.
Cion noted that in addition to the three cases referred to in this Article, other possibilities for refusal were provided for in the Directive, particularly in Chapter IV, which set out the conditions which applicants must fulfil. It would welcome the addition of a clause setting out all the grounds for refusal referred to in the Directive, provided it was drafted clearly and precisely and without prejudice to the possibility of Member States providing for other grounds for refusal. It also opposed E's suggestion of adding the words "**in principle**" before "**on grounds of public policy, domestic security or public health**".
E also raised the question of whether an entry in the SIS not linked to a breach of public order could be regarded as a sufficiently serious reason for refusal.
Cion, while pointing out that only entries relating to breaches of public order should be taken into account, said that other entries relating to particularly serious incidents could be considered, providing that such consideration covered only the personal conduct of the family member concerned.
In reply to a comment from I, Cion observed that the three grounds for refusal of entry and residence referred to in this Article concerned only the family member, since the applicant who already resided in the territory of the Member State could be the subject of other measures in the event, for instance, of breaches of public policy.

Article 9

1. When the application for family reunification is submitted, the Member State concerned may ask the applicant to provide evidence that he has [1]:

   (a) accommodation which is at least equivalent in size to that provided as social housing 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 and the members of his family;

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[1] D, supported by A, wondered about the interpretation of this Article. It asked whether the fact that the applicant met the requirements laid down in this provision had to be established solely at the time the application was lodged or whether it could also be established at a later stage. It pointed in particular to cases where an applicant might have sufficient resources at the time of his application but was no longer able to support his family after submitting it, thus having to rely on public assistance. It therefore suggested adding a new paragraph 4 reading as follows:
"***4. Where the conditions referred to in paragraph 1 are no longer fulfilled, Member States may refuse to issue a residence permit or extend its validity. The refusal of any such extension may not be considered when the family member has resided in the Member State for more than……years.***"
I, supported by L, thought that this provision left too many options, as the Member State concerned would be able to ask applicants to fulfil either one or other of the conditions laid down. It thought that, to ensure that the same type of assessment was carried out in all Member States and to avoid any kind of distortion, applicants should have to fulfil at least two conditions in all Member States: i.e. have suitable accommodation and an adequate income.
GR and NL also wanted a stricter text.
B and S, however, preferred to keep the current wording.
In response to a comment by B, Cion stated that this provision was simply intended to maintain the status quo, and was not opposed to the application of rules laid down by national legislation.

(c) stable resources which are higher than or equal to the level of resources below which the Member State concerned may grant social assistance.[1]

Where the first subparagraph cannot be applied, resources must be higher than or at least equal to the level of the minimum social security pension paid by the Member State.

2. The conditions relating to accommodation, sickness insurance and resources provided for by paragraph 1 may be set by the Member States only in order to ensure that the applicant will be able to satisfy the needs of his reunified family members without further recourse to public funds. They may not have the effect of discriminating between nationals of the Member State and third-country nationals.

[3. Paragraph 1 shall not apply if the applicant is a refugee.]

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[1] NL felt that (c) should include a clear definition of the concept of stable resources and suggested specifying that applicants should prove they had stable resources for at least one whole year.
F thought that the level of income proposed in the Directive was too low to enable applicants to support their families.
Noting these comments, Cion said it was hesitant about amending the criteria, which were based on Community law and designed to ensure that third-country nationals received comparable treatment to that received by citizens of the Union.

Article 10

1. The Member States may require the applicant to have resided lawfully in their territory for a period not exceeding one year [1], before having his family members join him.

[2. Paragraph 1 shall not apply if the applicant is a refugee.]

Chapter V

Entry and residence of family members

Article 11

1. As soon as the application for family reunification has been accepted [2], the Member State concerned shall authorise the entry of the family member or members. The Member States shall grant such persons every facility for obtaining the requisite visas [3], including transit visas where required [4]. Such visas shall be issued without charge. [5] [6]

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[1] GR entered a substantive reservation on the one-year period, pointing out that a new draft law currently before the Greek Parliament provided for a period of three years.
L felt that one year was too short to check the stability of the applicant's resources.
A thought that one year was not long enough to allow integration into the host State.
Cion, emphasising the need for a strict framework for the waiting period, said that a distinction had to be made between the requirement of residence in the territory of the Member State for a certain period, which was needed to qualify for family reunification, and assessment of the applicant's degree of integration and level of income. This distinction should become clearer once the outstanding issues relating to the scope of the Directive had been settled.

[2] I wished to replace "**accepted**" with "**approved**".

[3] FIN and S said that their legislation did not provide for the issue of personal visas, but for the grant of residence permits, which the applicant could obtain from the consular authorities. They entered scrutiny reservations. In reply to a question from FIN, Cion said that Finland would not be obliged to amend its legislation under this provision.

[4] E said that including transit visas gave rise to certain difficulties, as the text did not distinguish between transit visas which were covered by the Schengen Agreement and those which were not.
Cion explained that the wording of this Article contained a general reference to transit visas because the Directive was also addressed to States which were not party to the Schengen Agreement.

[5] D/E/GR/NL/A and P entered reservations on the question of whether the visas should be free of charge.
FIN and S wished to give this matter further thought.

[6] E thought that the wording of paragraph 1 was confusing, as the various stages of the procedure were not made clear. It entered a reservation on the whole of paragraph 1.

2. The Member State concerned shall grant the family members a renewable residence permit of the same duration as that held by the applicant. If the applicant's residence permit is permanent or for an unlimited duration, the Member States may limit the duration of the family members' first residence permits to one year. [1]

Cion said the question of the procedure to be followed and its various stages could be examined.

[1] P thought that granting family members a residence permit which was permanent or for an unlimited duration, after granting them an initial permit which was limited to one year, would amount to treating them more favourably than other third-country nationals who, in order to obtain the same residence permit, would have to fulfil the condition of a certain period of residence in the territory of the Member State. It said that such preferential treatment would be contrary to the rules provided for in Portuguese law.
GR considered the provisions of this paragraph to be rather contradictory.
A thought that the paragraph was pursuing a number of irreconcilable aims.
L, entering a reservation on this paragraph, claimed that granting family members a residence permit also entailed giving them access to employment. In addition, it wished to provide for the possibility of a second one-year renewal of the initial residence permit before the grant of a permanent permit.
S, backed by FIN, wished to provide for a period of two years instead of one.
Cion explained that the aim of the paragraph was to create a parallel between the applicant's situation and that of the family member, while introducing a derogation from that principle in the second sentence, by providing for the possibility of limiting the duration of the family member's initial residence permit to one year. In reply to a question from B and E, it said that, firstly, irrespective of its nature, the permit issued to the family member should be of an identical duration to that of the applicant and that, secondly, the family member should enjoy the same rights as the applicant.

Article 12

1. The applicant's family members shall be entitled, in the same way as citizens of the Union [1], to:

   (a) access to education;

   (b) access to employment and self-employed activity [2];

   (c) access to vocational guidance, initial and further training and retraining.

2. Member States may restrict access to employment or self-employed activity by relatives in the ascending line or children of full age to whom Article 5(1)(d) and (e) applies.

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[1] Several delegations (B/E/GR/L and P) entered reservations on the question of access under the same conditions as citizens of the Union. Cion stressed the necessity, in the framework of a proposal designed to ensure the integration and family life of third-country nationals, of granting family members not only entry and residence in the territory of the Member States, but also access to the labour market. It drew attention to the undesirable consequences of not authorising access to the labour market.
The Presidency pointed out that the question of granting access to the labour market on the same conditions as citizens of the Union had been the subject of a wide-ranging debate in the Strategic Committee (see **8633/00 MIGR 42**).
I referred to the conclusions of the Tampere European Council, according to which third-country nationals should be granted comparable rights to those of citizens of the Union.
D and A entered reservations on (a) and (b) of this paragraph which in their view, would lead to family members being treated more favourably than the applicant.

[2] A said that in Austria family members did not have direct access to the labour market.
NL said that under Netherlands law the applicant had to have access to paid employment, and that dependent family members had access to the labour market under certain conditions.

Article 13

1. At the latest after four years of residence [1], and provided the family relationship still exists, the spouse or unmarried partner [2] and a child who has reached majority shall be entitled to an autonomous residence permit independent of that of the applicant.[3]

2. The Member States may issue an autonomous residence permit to children of full age and to relatives in the ascending line to whom Article 5(1)(d) and (e) applies. [4]

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[1] NL and D maintained scrutiny reservations on the period of four years.

[2] Several delegations maintained reservations regarding unmarried partners pending further consideration of Article 5.

[3] IRL, FIN, A, S and UK maintained reservations in relation to the granting of an autonomous residence permit.
B considered that a residence permit should be granted to family members only insofar as family ties with the applicant exist and should be subject to the same requirements and conditions established for the applicant's permit.
I emphasised that, to ensure their full integration into social life, family members must be granted an independent status.
L suggested for its part specifying that an autonomous permit be granted to family members who fulfill the conditions listed in Article 12.
GR stressed that Article 13 imposes an obligation on Member States to grant an autonomous residence permit to family members and warned about risks of abuse.
The Presidency said it would endeavour to draw up an alternative wording.

[4] D maintained a scrutiny reservation on this paragraph.
Reservation from A linked to Article 5.

3. In the event of widowhood, divorce, separation [1] or death of relatives in the ascending or descending line, persons who have entered by virtue of family reunification and have been resident for at least one year [2], may apply [3] for an autonomous residence permit. Where necessary by reason of particularly difficult situations [4], Member States shall accept such applications.

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[1] A felt that the concept of separation should be clarified.

[2] D, FIN and S ,which want the text to allow more flexibility, maintained reservations, particularly concerning the time limit.

[3] B wanted to be able to prohibit persons who have entered by virtue of family reunification ('cascade' effect) from being able to apply themselves for further family reunification and maintained a reservation.

[4] NL and A felt that '**particularly difficult situations**' should be more clearly defined.
GR, F and S felt that this provision should contain only a general definition, thus leaving Member States a certain flexibility to define such situations.
Nevertheless, S would be in favour of adding some examples.
L maintained its scrutiny reservation.
P would prefer the wider wording '**humanitarian reasons**' rather than '**particularly difficult situations**', which it considers too vague and not precise.
A felt that it should be for the administration to evaluate the circumstances of the person concerned and to grant an autonomous residence permit for humanitarian reasons without the need for an application to be made.

Chapter VI

Sanctions and redress

Article 14

1. Member States may reject an application for entry [1] and residence for the purpose of family reunification, or withdraw or refuse to renew a family member's residence permit, where it is shown that:

   (a) entry [1] and/or residence was obtained by means of falsified documents or fraud[2];

   (b) the marriage [3] [4] or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State [5].

2. Member States shall undertake specific checks where there are grounds for suspicion [6].

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[1] D pointed out the incoherence in providing for rejecting an application for entry once entry has been obtained.

[2] Several delegations felt that the reference to "falsified documents or fraud" was insufficient. FIN suggested replacing '**fraud**' by '**by giving false or misleading information**', UK by '**deception**'.

[3] NL observed that the text should be amended to take into account unmarried partners.

[4] I and A stressed the difficulties of finding evidence in relation with marriages of convenience.

[5] Several delegations argued that the list of cases contained in Article 14 cannot be considered as exhaustive. They felt that, apart from the two specific cases covered therein, this provision should contain a general reference clause listing all situations in which a residence permit can be refused, withdrawn or not renewed.
D and A stressed the need of establishing a link particularly between Article 14 and Articles 8 and 9.
E wanted to include a reference to the Schengen Agreement, which contains the rules for entry and residence to be complied with.

[6] L and A , while considering that checks referred to in paragraph 1 should concern only the cases under (a) and (b) of paragraph 1, stressed that it is up to Member States to decide the kind, extent and duration of the checks to be undertaken.
A suggested deleting paragraph 2, and regulating provisions concerning checks in Article 17.

Article 15

Member States shall have proper regard for the nature and solidity of the person's family relationships and the duration of his residence in the Member State and for the existence of family, cultural and social ties with his country of origin where they withdraw or refuse to renew a residence permit or decide to order the removal of the applicant or members of his family [1].

Article 16

Where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered, the applicant and the members of his family have the right to apply to the courts [2]of the Member State concerned.

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[1] A queried whether this provision, which is based on the content of Article 8 of the European Convention of Human Rights, is needed at all. It noted that special attention should be paid to the consistency of the two provisions, in order to avoid any discrepancies in the interpretation. B observed that recital (2) of this Directive already makes a direct reference to Article 8 of the said Convention.

[2] IRL explained that, even if under Irish law there is no explicit right to appeal, a judicial review is possible in all circumstances.
A observed that under Austrian law the only competent court in such matters is the Verwaltungsgerichtshof. This court can only assess factual circumstances and decide if administrative decisions have been adopted in compliance with all procedural requirements and is prevented from the examination of the content and substance of such decisions. It queried whether the competence of this court would be compatible with this provision.
The Presidency felt that, to avoid any misundestanding and difficulties, the word '**courts**' could be replaced.
Cion would prefer to keep this word.

Article 17

The Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented [1]. The sanctions thus provided for must be effective, proportional and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 19 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Chapter VII

Final provisions

Article 18

No later than two years after the deadline set by Article 19 the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary.

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[1] D and A felt that difficulties could arise in the implementation of this provision, particularly when sanctions should be inflicted on public servants of Member States for non compliance with the terms of the Directive.
The Presidency felt that the question of sanctions applicable for infringements of national provisions adopted pursuant to this Directive should be clarified.

Article 19

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 [1] at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 20

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 21

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council
The President

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[1] The Presidency suggested replacing this date by a date which would be set at eighteen months from the date of adoption of the Directive.
D, F, NL and A entered scrutiny reservations on the suggested amendment.