



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

MIGR 18

OUTCOME OF PROCEEDINGS

of : Working Party on Migration and Expulsion

on : 12 and 13 March 2001

No. prev. doc. : 6450/01 MIGR 11

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 and completed its third reading of the above proposal.

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 reunification¹

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

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;

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.

- (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) "*sponsor*" means a third-country national residing lawfully in a Member State, or a citizen of the Union¹, who wants to be joined by members of his family;
- (d) "*family member*" means the third country national, who wants to join the sponsor;
- (e) "*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~~² preserve the family unit, whether the family relationship arose before or after the resident's entry;
- (f) "*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;
- (g) ³"*unmarried partner*"⁴ means a third-country national living in a duly proven durable relationship with the sponsor, including a third-country national linked to the sponsor by a registered partnership, if the legislation of the Member State concerned treats the situation of unmarried partners as corresponding to that of married couples⁵.

¹ Scrutiny reservation from D on the sentence ', or a citizen of the Union,'

² NL maintained a scrutiny reservation on the deletion of the words 'form or'.

³ I and P felt that the text contained in Article 2, point (g) should be moved to Article 5(1).

⁴ D, E, F and A maintained reservations concerning unmarried partners. F and D preferred to leave the option of authorising family reunification in the case of unmarried partners to the discretion of the Member States.

⁵ F and I queried how the assessment concerning the existence of rules granting unmarried partners a treatment corresponding to that of married couples in national legislation would be carried out and who would be responsible for such an assessment.

Article 3

1. This Directive applies where the sponsor is:
 - (a) 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.
 - [(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 sponsor's family members are third-country nationals, irrespective of their legal status.

2. This Directive shall not apply where the sponsor 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.

¹ The Strategic Committee on Immigration, Frontiers and Asylum agreed that all provisions concerning family reunification of refugees should be grouped in a separate Chapter of this Directive and invited the Commission services to submit appropriate texts.

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 Directive¹; 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.

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.

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.

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 sponsor's spouse, or an unmarried partner;
 - (b) the minor children of the sponsor and of his/her spouse or unmarried partner¹, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State;
 - (c) the minor children including adopted children of the sponsor or his/her 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 parent² shall be required³;

¹ NL took the view that evidence should be provided that children have not only legal ties, but also a genuine relationship with the family. Cion opposed this suggestion, which would result in imposing an additional condition to be fulfilled.

² 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. I wondered whether in cases of shared custody persons other than the parents could be responsible for the child. Presidency felt that this issue should be further clarified.

³ D maintained a scrutiny reservation on (c).

- (d) the relatives in the direct ascending line of the sponsor or his/her spouse or unmarried partner¹ who are dependent on them and have no other means of family support in the country of origin²³
- (e) children of the sponsor or his/her spouse or unmarried partner, being of full age, who are unmarried⁴ and who are objectively unable to satisfy their needs by reason of their state of health⁵⁶.
2. In the event of a polygamous marriage, where the sponsor already has a spouse 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 law⁷ of the Member State concerned and must not be married or have entered into an unmarried relationship⁸.

¹ I felt that family reunification of grand-parents should be authorised only when such people could have an important role in the family, such as giving financial support or assisting the children.

² F and A, pointing out that only the members of the nuclear family should be covered, took the view that relatives in the direct ascending line as well as minors of full age should remain outside the scope of this Directive. This would imply that family reunification of such persons could be authorised by the Member States on a discretionary basis. FIN, while stressing the need for a clear distinction between the members of the nuclear family referred to in (a), (b) and (c) and the other family members referred to in (d) and (e), wanted relatives in the direct ascending line and minors of full age to be covered. D, supported by NL, while preferring these two categories to be covered, pointed out that Member States need to be allowed some discretion when examining the relevant cases.

³ I wondered whether family reunification of relatives in the direct ascending line of the sponsor's spouse could be authorised at the same time or even before the spouse has been reunited with his/her family. The Presidency, while observing that, as a general rule, family reunification of relatives should be subsequent to that of spouses, felt that this issue needs to be further clarified.

⁴ NL suggested adding '**and have not entered into an unmarried relationship**'.

⁵ See footnote 2.

⁶ I thought that rather than the state of health a more objective criterion such as incapacity to work should be taken into account.

⁷ 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.

⁸ F entered a reservation concerning unmarried partnership.

- [4. Where the sponsor 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 sponsor.]

[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.]

Chapter III

Submission and examination of the application

Article 7

1. Member States shall decide whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned:
 - (a) either by the sponsor in the Member State where he/she resides or
 - (b) by the family member or members.

2. The application shall be accompanied by: family member(s)' travel documents¹, documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 5, 8 and, where applicable, 9 and 10.

In order to obtain evidence that a family relationship exist, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found necessary².

When examining an application concerning the unmarried partner of the sponsor, Member States shall consider as evidence of the family relationship factors such as a common child, previous cohabitation and any other reliable means of proof.

3. 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.³

¹ E, supported by E, stressed the need for a distinction between the stage of the procedure aimed at granting family reunification and the stage concerning the issue of visas for entry in the Member States. Noting that Member States should be able to conduct investigations and examine some evidence during the stage concerning the issue of visas, it pointed out that family member(s)' travel documents are requested only during this second stage.

² D entered a reservation on this subparagraph.

³ B and D entered reservations on paragraph 2, insofar as family members already present in the territory of a Member States are allowed to submit an application only in exceptional circumstances or for humanitarian grounds.

4. The competent authorities of the Member State shall give the sponsor/family member(s) written notification of the decision within six months of the date on which a complete application is made.¹

[If the application is not accompanied by all the documentary evidence referred to in paragraph 2, the competent authorities shall inform the sponsor 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.]

Reasons shall be given for any decision rejecting the application.

- [4. If the sponsor 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 B, F and NL maintained reservations on the six-month period. Those delegations observed that in a number of circumstances such a period, even if a suspension could be granted, will be not long enough to enable national administrations to complete the examination of applications, in particular when investigations and checks are carried out by the consular authorities in third-countries. L preferred not to set any deadline in this provision. I, stressing the difficulties of defining a 'complete file', felt that this provision should provide for a deadline, but Member States should be allowed some discretion.

Chapter IV

Requirements for the exercise of the right to family reunification

Article 8

1. The Member States may refuse to allow the entry and residence of family members on grounds of public policy, domestic security or public health¹.
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.

Article 9

1. When the application for family reunification is submitted, the Member State concerned may ask the sponsor to provide evidence that he/she has:
 - (a) accommodation which is at least equivalent in size to that provided as social housing² 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;

¹ E wanted a reference to Article 5 of the Convention implementing the Schengen agreement, which contains a list of grounds for refusal, to be included in this provision.

² D suggested replacing the existing wording with the words '**accommodation oriented to the standards requested for social housing**'. Concerning 'social housing', I felt that this provision should contain a reference to the requirements provided for in 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.

The Member State may require the sponsor to meet the conditions referred to in paragraph 1 for a period not exceeding two years after the entry of the family member(s)¹. However, if the sponsor does not meet the said conditions, Member States shall take into account family members' contributions to the household income²³.

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 sponsor 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 sponsor is a refugee.]

¹ GR, NL and A, arguing that the conditions referred to in (a), (b) and (c) should be met for a longer period, entered reservations on the two-year time limit. A took the view that the said conditions should be fulfilled for at least four years, since, in accordance with Article 13(1), family members are granted an independent residence permit only after such a period of residence. On the contrary E, noting that once family reunification has been granted family unit should be preserved, opposed setting any time limit in this provision.

² D and GR entered reservations on the fact that Member States shall take into account family members' contributions to the household income.

³ E and I entered scrutiny reservations on this subparagraph.

Article 10

1. The Member States may require the sponsor to have resided lawfully in their territory for a period not exceeding one year¹, before having his family members join him.
- [2. Paragraph 1 shall not apply if the sponsor is a refugee.]

Chapter V

Entry and residence of family members

Article 11

1. As soon as the application for family reunification has been accepted², 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, including transit visas where required³.
2. The Member State concerned shall grant the family members a renewable residence permit of the same duration as that held by the sponsor. If the sponsor'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.⁴

¹ D, GR, L and A maintained reservations on the one-year period.

² E, F and I, stressing the need for a clear distinction between the stage of the procedure concerning the examination of applications for family reunification and the stage concerning the issue of visas to family members, wished this text to be reviewed.

³ E wanted the sentence '**including transit visas where required**' to be deleted.

⁴ D, L, A, NL and P, observing that a longer period should be set in this provision, maintained reservations on the time limit. A in particular noted that the time limit in Article 11(2) should be harmonised with the period of residence of four years provided for in Article 13(1) for granting family members an independent permit. F took the view that, once family reunification has been granted, the period of uncertainty for family members should be as limited as possible and opposed further extensions of the period of one year in Article 11(2).

Article 12

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:
 - (a) access to education;
 - (b) access to employment and self-employed activity^{1 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.

¹ B entered a scrutiny reservation and D, E, GR and L maintained reservations on the access to employment and self-employed activity. Those delegations pointed out that family members should not be granted automatic access to the labour market and stressed the need for introducing in this provision a waiting period. L suggested admitting family members to the labour market only when they have met the requirement of four years of residence referred to in Article 13(1). Cion opposed the suggestion of introducing a waiting period.

² A drew the attention of the delegations to the opinion given by the Council Legal Service concerning the legal basis to be adopted for a Directive on temporary protection, which is actually under examination and provides for access of third-country nationals to employment. Cion stated that the said opinion was requested by the Working Party on Asylum and needs to be examined at the highest political level by the relevant bodies.

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 a residence permit independent of that of the sponsor.
2. The Member States may issue a residence permit to children of full age and to relatives in the ascending line to whom Article 5(1)(d) and (e) applies.³
3. In the event of widowhood, divorce, separation, both legal⁴ or de facto⁵, or death of relatives in the ascending or descending line, a residence permit may be issued to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of a residence permit in the event of particularly difficult circumstances.

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

⁴ GR entered a reservation concerning legal separation.

⁵ E entered a reservation concerning de facto separation.

Chapter VI

Sanctions and redress

Article 14¹

1. Member States may reject an application for entry² 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 and/or residence was obtained by means of false or misleading information, false or falsified documents or fraud³;

¹ Several delegations wished to insert in the text of Article 14 or in a separate Article a general clause aimed at listing all circumstances in which Member States can reject an application for entry and residence for the purposes of family reunification, or withdraw or refuse to renew a family member's residence permit. The Presidency suggested adding a new Article 10a, which would read as follows:

'When the conditions referred to in Articles 3(1), 5, 7, 8 and 10 are not fulfilled, Member States may reject an application for entry and residence for the purpose of family reunification'.

GR felt that this provision should not be optional and suggested amending the text to avoid any misleading interpretation. E and I welcomed the Presidency's suggestion. Both delegations wanted the possibility which is granted to Member States in Article 14 to withdraw or to refuse to renew a family member's residence permit to be also extended to Article 10a. E further wanted Member States to be able to apply such measures when family members do not possess valid travel documents. A, supported by D, NL and P, suggested deleting this new provision and inserting the sentence *'the conditions referred to in Articles 3(1), 5, 7, 8, 9 and 10 are not fulfilled'* in Article 14 as a point (c) of paragraph 1. In this context, L took the view that a family member's residence permit could be withdrawn only in the circumstances referred to in Article 9. Moreover, L preferred maintaining a separate provision in Chapter VI rather than Chapter IV. Cion observed that the added value of this new provision is to make a clear distinction between the circumstances referred to in Article 10a and in Article 14. Concerning the possibility for Member States to withdraw or to refuse to renew a family member's residence permit in the circumstances referred to in Article 10a, Cion felt that for all relevant Articles it should be checked if such measures could apply. The Presidency, opposing the suggestion from A to merge Article 10a with Article 14, favoured maintaining two separate provisions. It also added that in all circumstances, pending further examination of the provisions listed in Article 10a, this issue needs to be addressed at a later stage.

² D pointed out the incoherence in providing for rejecting an application for entry once entry has been obtained.

³ A wanted the addition of the words *'or was unlawfully acquired'*.

- (b) the marriage, unmarried partnership or adoption was contracted or entered into for the sole purpose of enabling the person concerned to enter or reside in a Member State.

2. Member States shall undertake specific¹ checks where there are grounds for suspicion.

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 sponsor² or members of his family.

Article 16

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to apply to the courts where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

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. The sanctions thus provided for must be effective, proportional and dissuasive.

¹ B stressed the need to maintain, in order to avoid abuses, the cohabitation checks carried out on a more systematic basis, in particular during the first year after the entry of the family member(s).

² L suggested deleting the words '**or decide to order the removal of the sponsor**'.

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.

Article 19

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than [eighteen]months after the date of adoption. They shall forthwith inform the Commission thereof and shall notify it without delay of any subsequent amendment affecting them.

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