



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 11 April 2001**

**7612/01**

**LIMITE**

**MIGR 22**

**OUTCOME OF PROCEEDINGS**

of : Strategic Committee on Immigration, Frontiers and Asylum

on : 29 and 30 March 2001

No. prev. doc. : 7144/01 MIGR 18

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 29 and 30 March 2001, the Strategic Committee on Immigration, Frontiers and Asylum examined some draft proposals presented by the Presidency concerning the following provisions of the draft Directive on the right to family reunification: Article 2, point (g), Article 5, Article 7(2), Article 9, Article 10, Article 11 and Article 12.

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**<sup>1</sup>

#### 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.<sup>2</sup>

##### 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;

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<sup>1</sup> 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. A has communicated to the Secretariat that it maintains furthermore general reservations on most of the individual articles of the draft Directive.

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.

<sup>2</sup> 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<sup>1</sup>;
- (c) "*sponsor*" means a third-country national residing lawfully in a Member State, or a citizen of the Union<sup>2</sup>, 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~~<sup>3</sup> 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) "*unmarried partner*" 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 aliens legislation of the Member State concerned treats the situation of unmarried partners as comparable to that of married couples<sup>4</sup>.

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<sup>1</sup> 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. These provisions, which still have to be examined by delegations, have been inserted in the new Chapter IVbis.

<sup>2</sup> Scrutiny reservation from D on the sentence ', or a citizen of the Union,'

<sup>3</sup> NL maintained a scrutiny reservation on the deletion of the words 'form or'.

<sup>4</sup> E questioned the opportuneness of referring to the legislation of the Member State concerned and stressed furthermore the difficulties of proving the existence of a durable relationship for persons living in third-countries. Emphasizing the risk of fraud and abuse, it maintained its reservation on this definition. I entered a scrutiny reservation.

### 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 citizen of the European Union who has not exercised the right to free movement,<sup>1</sup>

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.

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<sup>1</sup> 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<sup>1</sup>; 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.

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<sup>1</sup> 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<sup>1</sup>

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 partner<sup>2</sup>, 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 custodian shall be required<sup>3</sup>;

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<sup>1</sup> E entered a reservation concerning unmarried partnership.

<sup>2</sup> NL maintained that evidence should be provided that children have not only legal ties, but also a genuine relationship with the family. Cion opposed this approach, which would result in imposing an additional condition to be fulfilled.

<sup>3</sup> D maintained a scrutiny reservation on (c).

2. Member States shall also authorise on a case-by-case basis the entry and residence of the following family members:
  - (a) the relatives in the direct ascending line of the sponsor or his/her spouse or unmarried partner, subject to the condition that they are dependent on them and are deprived of necessary means of family support in the country of origin;
  - (b) children of the sponsor or his/her spouse or unmarried partner, being of full age, who are unmarried and have not entered into a durable unmarried relationship, subject to the condition that they are objectively unable to satisfy their needs by reason of their state of health<sup>1</sup>.
3. 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.

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<sup>1</sup> The Strategic Committee held an in-depth exchange of views on the structure to be given to Article 5, during which it was generally felt that a distinction should be made in the treatment of cases concerning the nuclear family and other cases (hence the split of former paragraph 1 into two paragraphs). With regard to the new paragraph 2, D felt that the text should bring out clearly that such cases should be dealt with by the Member States in a discretionary manner. GR and F suggested replacing "shall" by "may" in the first line of paragraph 2. E could accept the suggestion of GR and F for point (a). I maintained a scrutiny reservation on point (b). Cion for its part was willing to study this new structure but felt that further parameters for the handling of the cases covered in paragraph 2 were necessary. Presidency said it would endeavour to refine the text further in consultation with the Commission services.

4. The minor children referred to in (b) and (c) of paragraph 1 must be below the age of majority set by the law <sup>1</sup> of the Member State concerned and must not be married or have entered into an unmarried relationship.

#### **Article 6**

[deleted]

### **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.

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<sup>1</sup> 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 maintained a reservation, wanted this provision either to refer to the age of 16 years or to allow some flexibility for children aged between 16 and 18.



2. The application shall be accompanied by: family member(s)' travel documents<sup>1</sup>, 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 necessary<sup>2</sup>.

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.<sup>3</sup>

4. The competent authorities of the Member State shall give the sponsor/family member(s) written notification of the decision as soon as possible and in any event no later than nine months from the date of application.<sup>4</sup>

Reasons shall be given for any decision rejecting the application.

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.

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<sup>1</sup> 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.

<sup>2</sup> D entered a reservation on this subparagraph.

<sup>3</sup> 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.

<sup>4</sup> A entered a reservation on the time-limit.

## 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 health<sup>1</sup>.
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 housing<sup>2</sup> 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;

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<sup>1</sup> 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.

<sup>2</sup> 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<sup>1</sup> 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)<sup>2</sup>. However, if the sponsor does not meet the said conditions, Member States shall take into account family members' contributions to the household income.

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.

## Article 10

The Member States may require the sponsor to have resided lawfully in their territory for a period not exceeding two years<sup>3</sup>, before having his family members join him.

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<sup>1</sup> NL suggested replacing the words '**stable resources**' with the words '**durable and independent resources**'.

<sup>2</sup> A stressed that reunited family members need to provide evidence that they meet for a certain period of time the conditions referred to in points (a), (b) and (c). Two delegations wanted a longer time-limit to be set (3-4 years for D and 3-5 years for NL). F, supported by E, feeling that this provision is not consistent with Article 8 of the European Convention on Human Rights, wanted the time-limit to be reduced to one year. Sharing the remarks from F, B took the view that the Directive should contain a provision whereby the fact of not cohabiting with the sponsor, proven by means of relevant checks, can be considered as a ground for not granting family members a residence permit or its extension.

<sup>3</sup> D, which wanted a longer period to be set in this provision, maintained a reservation.

## **Chapter IV bis**

### *Family reunification of refugees*

#### **Article 10a**

1. The Member States shall authorise the entry and residence, pursuant to this Directive, of family members of refugees.

Family members shall be those defined in Article 5(1).

2. The Member States shall facilitate the reunification of other family members not referred to in Article 5(1), if they are dependent on the refugee.
3. 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/her relatives in the direct ascending line without applying the conditions laid down in Article 5(1)(a);
  - (b) authorise the entry and residence for the purposes of family reunification of any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

#### **Article 10b**

1. Where a refugee exercises the right to family reunification, the provisions of Article 7 shall apply, subject to paragraph 2.
2. If a refugee cannot provide documentary evidence of the family relationship, the Member States shall have regard to other evidence of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

## Article 10c

1. By derogation from article 9, the Member States shall not request the refugee to provide the evidence that he/she fulfils the requirements of accommodation, sickness insurance and stable resources.
2. By derogation from article 10, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

## Chapter V

### *Entry and residence of family members*

## Article 11

1. As soon as the application for family reunification has been accepted<sup>1</sup>, 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 required<sup>2</sup>.
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 member(s) residence permits of limited duration during the first four years.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> E wanted the sentence '**including transit visas where required**' to be deleted.

<sup>3</sup> D, while agreeing with the period of four years, wanted this time-limit to be applicable only to the first residence permit granted to family members. E, supported by B, stressing the need for promoting the integration of reunited family members, opposed setting a time-limit of four years.

## 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;<sup>1 2</sup>
  - (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.

## Article 13

1. At the latest after four years of residence<sup>3</sup>, and provided the family relationship still exists, the spouse or unmarried partner<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> D, GR and A, which wanted the introduction into this provision of a waiting period before granting access to employment and self-employed activity and, in the case of A, to vocational training in point (c), maintained reservations. E and F, recalling the Tampere conclusions and observing that the integration of family members can be effectively achieved only if they are granted immediate access to the labour market, opposed setting any waiting period. E pointed out that setting a time period could lead to the family members seeking employment illegally.

<sup>2</sup> GR drew the attention of the delegations to the opinion given by the Council Legal Service concerning access to employment in the framework of the draft Directive on temporary protection.

<sup>3</sup> D and NL maintained reservations on the period of four years.

<sup>4</sup> Several delegations maintained reservations regarding unmarried partners pending further consideration of Article 5.

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

3. In the event of widowhood, divorce, separation, both legal<sup>1</sup> or de facto<sup>2</sup>, 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.

## Chapter VI

### *Sanctions and redress*

#### Article 14<sup>3</sup>

1. Member States may reject an application for entry<sup>4</sup> 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 fraud<sup>5</sup>;
  - (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 specific<sup>6</sup> checks where there are grounds for suspicion.

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<sup>1</sup> GR entered a reservation concerning legal separation.

<sup>2</sup> E entered a reservation concerning de facto separation.

<sup>3</sup> 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'***.

A, supported by D, NL and P, would prefer inserting the sentence *'the conditions referred to in Articles 3(1), 5, 7, 8, 9 and 10 are not fulfilled'* as new point (c) of Article 14(1).

<sup>4</sup> D pointed out the incoherence in providing for rejecting an application for entry once entry has been obtained.

<sup>5</sup> A wanted the addition of the words *'or was unlawfully acquired'*.

<sup>6</sup> 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).

## **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 sponsor<sup>1</sup> 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.

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<sup>1</sup> 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