



**COUNCIL OF
THE EUROPEAN UNION**

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8491/01

LIMITE

MIGR 39

INTRODUCTORY NOTE

from : Council Secretariat

to : Permanent Representatives Committee

No. prev. doc. : 8209/01 MIGR 32

No. Cion prop. : 11123/00 MIGR 68 (COM(2000) 624 final)

Subject : Amended proposal for a Council Directive on the right to family reunification

1. By letter received on 21 January 2000, the Commission presented a proposal based on Article 63 of the Treaty establishing the European Community for a Council Directive on the right to family reunification.¹

The aim of the proposal is to establish common rules for the entry into and residence in a Member State of family members of third-country nationals residing lawfully in the Member State concerned.

2. The European Parliament delivered its Opinion on 6 September 2000.²
3. Following the Opinion of the European Parliament, the Commission presented, by letter received on 11 October 2000, an amended proposal.³

¹ 5396/00 MIGR 6 (COM(99) 638 final).

N.B. The United Kingdom and Ireland have not notified their intention to participate in the adoption of this Directive. Given also the position of Denmark with respect to measures under Title IV of the Treaty, the Directive will therefore be addressed to **twelve** Member States.

² 11040/00 ADD 1 PE-RE 56.

³ 11123/01 MIGR 68 (COM(2000) 624 final).

4. The Working Party on Migration and Expulsion and the Strategic Committee on Immigration, Frontiers and Asylum have met regularly in order to examine this proposal. The text resulting from the latest meeting of the Strategic Committee on 7 and 8 May 2001 is set out in the Annex.
5. Although progress was recorded in the Strategic Committee on a number of provisions, many reservations or scrutiny reservations remain on provisions of a more technical nature.

The following have been identified as sensitive political issues on which delegations' positions diverge considerably :

a) Definition of the family for the purposes of family reunification (Article 5)

While consensus exists on the fact that the members of the nuclear family - spouse and minor children - shall have a right to family reunification (Article 5(1)), no agreement has been forthcoming concerning other family members. Some delegations want relatives in the direct ascending line and children of full age (Article 5(2)), as well as other family members (Article 5(3)) and unmarried partners (Article 5(6)) to be covered by the Directive and accordingly enjoy the rights provided for the members of the nuclear family, while allowing Member States some discretion in authorising family reunification of such categories. Other delegations, on the contrary, feeling that no distinction needs to be made among family members other than the members of the nuclear family, consider that family reunification of such persons should remain outside the scope of the Directive and should be authorised in accordance with the applicable national legislation.

b) Time-limits

Various time-limits are set out in the Directive - in particular the period during which the sponsor has to meet the conditions of having appropriate accommodation, sickness insurance and stable resources (Article 8), the period during which Member States may grant family member(s) residence permits of limited duration (Article 13), the period for granting independent residence permits (Article 15). The question of introducing a waiting period before granting access to the labour market has also been raised (cf. Article 14).

While some delegations favoured setting long deadlines with a view in particular to avoiding risks of abuse, others strongly contested such an approach which would in their view run counter conclusions of the Tampere European Council which called for a vigorous integration policy with regard to third-country nationals.

For its part, the **Austrian delegation** has upheld a general reservation on the Directive as a whole. This delegation maintains that the draft Directive is incompatible with the quota system for family reunification operated in Austria which, while limiting the numbers of persons able to benefit from family reunification, in many respects offers more generous treatment than the rules contained in the draft Directive.

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 have not exercised their right to free movement.

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 and GR maintained linguistic scrutiny reservations on the entire draft Directive.

- (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 Union, who wants to be joined by members of his family;
- (d) "*family member*" means the third-country national, who wants to join the sponsor in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;¹
- (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 preserve the family unit, whether the family relationship arose before or after the resident's entry;
- (f) "*residence permit*" means an authorisation of whatever type issued by a Member State which grants right of residence within its territory. This definition shall not include temporary permission to reside in the territory of a Member State for the purposes of processing an application for asylum or a residence permit.

¹ Linguistic reservation from D.

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 Union residing in the Member State of which he/she is a national and who has not exercised his/her right to free movement of persons,¹

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 D and NL maintained reservations on this point. D pointed out that its reservation is linked to the question of third-country nationals of German origin (*Aussiedler*), who are entitled to German nationality under German law.

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 other¹; 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.
5. This Directive shall not affect the prerogative of the Member States to adopt or retain more favourable provisions for persons to whom this Directive applies².

Article 4³

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/she is a national and who has not exercised his/her 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 and A maintained scrutiny reservations.

² Scrutiny reservation from D and NL.

³ D and NL maintained reservations linked to the reservations concerning Article 3(1)(b). In particular NL considered that it would be wrong to refer to the provisions of Regulation 1612/68 which are in its view far too lax to be applied in the case in question.

Chapter II

Family members

Article 5¹

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;
 - (b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned² or a decision which is automatically enforceable due to international obligations of that Member State;

¹ The Strategic Committee held an in-depth exchange of views on Article 5, in particular concerning the rules to be applied to family members other than members of the nuclear family, who are covered in paragraphs 2, 3 and 6 (based on a proposal from B as amended by Pres). E, feeling that this provision should not contain any distinction among categories of other family members, suggested replacing the said paragraphs with a single clause which would read as follows:

'On a case by case basis the entry and residence of any other family member of the sponsor or spouse can be authorised pursuant to the applicable legislation of the Member State of the sponsor's residence.'

It also suggested replacing recitals 10 and 11 with the following text:

'This Directive expressly recognizes the right of family reunification to the spouse and minor children. Other cases, such as relatives in the ascending line, children of full age and unmarried partners, will be examined in accordance with the applicable aliens legislation of the Member State concerned.'

F supported the E suggestion, while B, GR, NL and FIN preferred maintaining the text of paragraphs 2, 3, 6 and 7 as currently drafted, although NL and FIN objected that the new presentation drawn up by the Presidency omitted the children of unmarried partners. D, A and P, while expressing favourable views on the current approach, felt that the E suggestion merited further consideration.

² D considered that the question of adoptions in accordance with a decision taken by a Court should be further examined to see if this provision is consistent with the obligations arising from the Hague Convention.

- (c) the minor children including adopted children of the sponsor or his/her spouse 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.

Member States may provide for further conditions concerning the existence of a genuine family relationship with the family members referred to in points b) and c).¹

2. Member States may 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, subject to the condition that they are dependent on them and are deprived of necessary means of family support in the country of origin;²
 - (b) children of the sponsor or his/her spouse, being of full age, who are unmarried, subject to the condition that they are objectively unable to satisfy their needs by reason of their state of health.
3. Member States may authorise on a case-by-case basis the entry and residence of any other family member of the sponsor or spouse.
4. 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 Child³.

¹ Following the meeting of the Strategic Committee, Cion has notified that it objects to the addition of this subparagraph.

² I maintained a reservation concerning family reunification of relatives in the direct ascending line of the spouse.

³ See footnote 2 on page 11.

5. The minor children referred to in (b) and (c) of paragraph 1 must be below the age of majority set by the law¹ of the Member State concerned and must not be married or have entered into an unmarried relationship.
6. Member States may authorise the entry and residence of third-country national unmarried partners living in a duly proven durable relationship with the sponsor, including a third-country national linked to the sponsor by a registered partnership².
7. Third-country nationals whose entry and residence has been authorised pursuant to paragraphs 2, 3 and 6 shall enjoy the rights to be conferred on family members under this Directive.³
8. Member States may require the sponsor and his/her spouse to be of a minimum age before the spouse is able to join him/her.

Chapter III

Submission and examination of the application

Article 6

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 either by the sponsor or by the family member or members.

¹ 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 E maintained a reservation and D entered a scrutiny reservation concerning unmarried partners. A and P felt that unmarried partners should be granted a comparable treatment only where corresponding rules exist in the aliens legislation of the Member State concerned.

³ A entered a reservation and GR a scrutiny reservation on this paragraph.

2. The application shall be accompanied by: family member(s)' travel documents, documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 5, 7 and, where applicable, 8 and 9.

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.

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.

A Member State may accept, in appropriate circumstances, other applications submitted when the family members are already in its territory.

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.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.¹

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 Child².

¹ Scrutiny reservations from D and A.

² Various delegations agreed that the reference to the 1989 Convention on the Rights of the Child should be deleted inter alia, since the Community is not a Contracting Party to this Convention, and that said Convention should be mentioned only in the recitals, as suggested by the Council Legal Service.

Chapter IV

Requirements for the exercise of the right to family reunification

Article 7

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, domestic security or public health.
2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy and domestic security.
3. The grounds of public policy or domestic security must be based exclusively on the personal conduct of the family member concerned.
4. 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 8

1. When the application for family reunification is submitted, the Member State concerned may ask the sponsor/family member to provide evidence that the sponsor has:
 - (a) accommodation regarded as normal for a comparable family in the same region and which meets its general health and safety standards in force in the Member State concerned;
 - (b) sickness insurance in respect of all risks in the Member State concerned for himself/herself and the members of his/her family;
 - (c) stable resources which are higher than or equal to the level of resources below which the Member State concerned may grant social assistance. Where this provision cannot be applied, resources must be higher or at least equal to the level of the minimum social security pensions paid by the Member State. The stable resources criterion shall be evaluated by reference to the nature and regularity of the resources.

The Member State may require the sponsor/family member 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 income.

¹ D and A maintained that this provision should provide for a longer time-limit. Those delegations supported a suggestion from GR to link the duration of such time-limit to the period which is required to grant family members the status of long term migrants or the autonomous residence permit referred to in Article 15. E, supported by B and E, stressing that this provision is not consistent with Article 8 of the European Convention on Human Rights, reiterated that a time-limit of two years is too long and should be reduced to one year. Cion supported B, E and F.

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 9

The Member States may require, in particular where the sponsor was born in a Member State or entered its territory as a minor child, said sponsor to have resided for a certain period which shall not exceed in principle two years. In particular circumstances this period may be extended.¹

¹ Scrutiny reservation from F and Cion.

Chapter V

*Family reunification of refugees*¹

Article 10

1. In respect of family reunification of refugees, the provisions of Article 5 shall apply.
2. The Member States may grant family reunification of other family members not referred to in Article 5, if they are dependent on the refugee.
3. If the refugee is an unaccompanied minor, the Member States may²:
 - (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(2)(a)³;
 - (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 traced⁴.

¹ D entered a scrutiny reservation and A maintained a reservation on this Chapter. A took the view that family reunification of refugees falls under asylum law and remain outside the scope of this Directive. F maintained that, in order to avoid abuse, since refugees are granted more favourable provisions, family reunification under this Chapter should be authorised only when they have entered into a family relationship before being granted refugee status. Opposing the approach from E, Cion took the view that the family reunification of refugees should be authorised irrespective of the fact that they have entered into a family relationship before or after being granted refugee status.

² GR entered a reservation on the term 'may'.

³ B and S maintained that this point should be binding for parents and optional for other family members.

⁴ GR and A maintained reservations on this point.

Article 11

1. Where a refugee exercises the right to family reunification, the provisions of Article 6 shall apply, subject to paragraph 2¹.
2. Where 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 lacking².

Article 12

1. ³By derogation from Article 8, the Member States shall not request the refugee/family member to provide, in respect of applications concerning those family members referred to in Article 5(1), the evidence that the refugee fulfils the requirements of accommodation, sickness insurance and stable resources⁴.
2. By derogation from Article 9, 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.

¹ D and A maintained scrutiny reservations on this paragraph.

² GR maintained a reservation on this paragraph.

³ D, observing that Member States should be allowed a certain amount of discretion, maintained a reservation on this paragraph.

⁴ GR and NL maintained scrutiny reservations concerning the derogation from the requirements referred to in Article 8.

Chapter VI

Entry and residence of family members

Article 13

1. Once the application for family reunification has been approved, the Member State concerned shall authorise the entry of the family member or members. In that regard, Member States shall grant such persons every facility for obtaining the requisite visas.
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.¹

Article 14

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;²
 - (c) access to vocational guidance, initial and further training and retraining.

¹ D wanted the duration of this time-limit to be extended to five years. On the other hand E, supported by B, stressing the need for promoting the integration of reunited family members, considered that the four year time-limit proposed by the Commission was too long.

² D, GR, L 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. Cion, supporting E and F, opposed introducing any waiting period into this provision.

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

Article 15

1. At the latest after four years of residence¹, and provided the family relationship still exists, the spouse or unmarried partner² 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 an independent residence permit to relatives in the direct ascending line and to children of full age to whom Article 5(2)(a) and (b) applies.³
3. In the event of widowhood, divorce, separation⁴, or death of relatives in the ascending or descending line, an independent 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 an independent residence permit in the event of particularly difficult circumstances.

¹ D and A, noting that this provision is linked to Article 5, maintained reservations. E wanted the time-limit to be reduced to two years.

² E maintained a reservation regarding unmarried partners.

³ D maintained a scrutiny reservation on this paragraph. A maintained a reservation linked to Article 5.

⁴ E maintained a scrutiny reservation concerning separation.

Chapter VII

Sanctions and redress

Article 16

1. Where the conditions set out in this Directive are not met, Member States may reject an application for entry and residence for the purpose of family reunification or, where applicable, withdraw or refuse to renew a family member's residence permit.¹
2. Member States may also reject an application for entry 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) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;
 - (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.
3. Member States shall undertake specific checks where there are grounds for suspicion. Specific checks may also be undertaken in connection with the renewal of family members' residence permit.

¹ E and F reiterated that this provision would allow Member States excessive possibilities for withdrawing or refusing to renew a family member's residence permit and maintained reservations on this paragraph. Observing that the wording of this provision should be reviewed to include a reference to the Articles in which such possibility is provided for, those delegations stressed that Article 8 should in no circumstances be invoked for withdrawing or refusing to renew a family member's residence permit.

Article 17

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 members of his family.

Article 18

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 19

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

¹ D considered that the reference to national provisions whose infringement may result in the application of sanctions should be clarified. Cion noted that this provision is a standard clause which has been used in several Community instruments since 1993.

Chapter VIII

Final provisions

Article 20

No later than two years after the deadline set by Article 21 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 21

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 22

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

Article 23

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