

Amended proposal for a Council Directive on the right to family reunification ⁽¹⁾

(2002/C 203 E/23)

COM(2002) 225 final — 1999/0258(CNS)

(Submitted by the Commission on 2 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third-country nationals.

(2) Article 63(3) of the Treaty provides that the Council is to adopt measures on immigration policy. Article 63(3)(a) provides, in particular, that the Council is to adopt measures relating to the conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunification.

(3) Measures concerning family reunification must be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(4) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for

admission and residence of third-country nationals, to be based on a common evaluation both of economic and demographic trends within the Union and of the situation in countries of origin. The European Council accordingly asked the Council rapidly to adopt decisions on the basis of Commission proposals. Those decisions were to take account not only of the absorption capacity of each Member State but also their historical and cultural links with countries of origin.

(5) In order to evaluate migration flows and to prepare for the adoption of measures by the Council, the Commission needs to have access to statistical data and information on the legal immigration of third-country nationals in each Member State, and in particular on the number of permits issued, and on their type and validity; to this end, Member States must regularly and rapidly make the necessary data and information available to the Commission.

(6) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the European Union should ensure fair treatment of third-country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union.

(7) The Laeken European Council on 14 and 15 December 2001 reaffirmed its commitment to the policy guidelines and objectives defined at Tampere and noted that there was a need for new impetus and guidelines to make up for delays in some areas. It confirmed that a genuine common policy on immigration implied the establishment of common standards on procedures for family reunification and called on the Commission to present a new amended proposal.

(8) Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third-country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in Article 2 and Article 3(1)(k) of the Treaty.

(9) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

⁽¹⁾ OJ C 62 E, 27.2.2001, p. 99.

(10) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(11) Family reunification applies to members of the nuclear family, that is to say the spouse and the minor children. It is for States to decide whether they wish to extend this category and authorise family reunification for relatives in the ascending line, children who are of full age and unmarried partners.

(12) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(13) The integration of family members should be promoted. To that end, they should be granted a status independent of that of the applicant after a period of residence in the Member State. They must enjoy access to education, employment and vocational training on the same terms as the person with whom they are reunited.

(14) Effective, proportionate and dissuasive measures should be taken to prevent and penalise breaches of the rules and procedures relating to family reunification.

(15) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the establishment of a right to family reunification for third-country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to determine the conditions in which the right to family reunification may be exercised by

third-country nationals residing lawfully in the territory of the Member States.

Article 2

For the purpose 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, including stateless persons;

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

(c) 'applicant for reunification' or 'applicant' means either a third-country national residing lawfully in a Member State and 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 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;

(e) '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.

Article 3

1. This Directive shall apply where the person applying for reunification is a third-country national residing lawfully in a Member State and holding a residence permit issued by that Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third-country nationals of whatever 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;

(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.

3. This Directive shall not apply to members of the family of a Union citizen.

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;

(b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

5. This Directive shall not affect the possibility for the Member States to adopt or retain more favourable provisions for persons to whom it applies.

6. Article 4(1), (2) and (3), the second subparagraph of Article 7(1)(c) and Article 8 may not have the effect of introducing less favourable conditions than those which already exist in each Member State on the date of adoption of this Directive.

CHAPTER II

Family members

Article 4

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;

(b) the minor children of the applicant and of his/her spouse, 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 or must be recognised in accordance with international obligations;

(c) the minor children including adopted children of the applicant or his/her spouse where one of them has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in points (b) and (c) must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of adoption of this Directive.

2. The Member States may, by law or regulation, 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) first-degree relatives in the direct ascending line of the person applying for reunification or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the applicant or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third-country national, with whom the applicant is in a duly attested stable long-term relationship, or of a third-country national who is bound to the applicant by a registered partnership in accordance with Article 5(2), and the unmarried minor children, including adopted children, of such persons.

4. In the event of a polygamous marriage, where the applicant 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.

5. Member States may require the applicant and his/her spouse to be of a minimum age, and in any event the age of legal majority, before the spouse is able to join him/her.

CHAPTER III

Submission and examination of the application

Article 5

1. Member States shall determine 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 applicant or by the family member or members.

2. The application shall be accompanied by family member(s)' travel documents and documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, 7 and 8.

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

When examining an application concerning the unmarried partner of the applicant, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership 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 in which the applicant resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

4. The competent authorities of the Member State shall give the applicant/family member(s) written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

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, but shall in no case exceed twelve months.

Reasons shall be given for the decision rejecting the application. The consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

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.

CHAPTER IV

Requirements for the exercise of the right to family reunification

Article 6

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 or 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 7

1. When the application for family reunification is submitted, the Member State concerned may ask the applicant or family member(s) to provide evidence that the applicant has:

- (a) accommodation regarded as normal for a comparable family in the same region and which meets the 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;
- (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 subparagraph cannot be applied, resources must be no less than 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 applicant to satisfy the conditions set out in paragraph 1 when renewing the residence permits of his family members for the first time.

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

2. The Member States may set the conditions relating to accommodation, sickness insurance and resources provided for by paragraph 1 solely in order to ensure that the applicant for family reunification 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 8

The Member States may require the applicant to have stayed lawfully in their territory for a period not exceeding two years, before having his family members join him.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive has regard for its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

CHAPTER V

Family reunification of refugees

Article 9

1. This Chapter shall apply to family reunification of refugees.
2. Member States may confine the application of this Chapter to refugees whose family relationships predate their refugee status.

Article 10

1. Article 4 shall apply to the definition of family members, except that the third subparagraph of paragraph 1(c) shall not apply to the children of refugees.
2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.
3. If the refugee is an unaccompanied minor, the Member States shall:
 - (a) authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);
 - (b) authorise the entry and residence for the purposes of family reunification of his legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

Article 11

1. Subject to paragraph 2, Article 6 shall apply to the submission and examination of the application.
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 lacking.

Article 12

1. By way of derogation from Article 7, the Member States shall not require the refugee/family member(s) to provide, in respect of applications concerning those family members

referred to in Article 4(1), the evidence that the refugee fulfils the requirements of accommodation, sickness insurance and stable resources.

2. By way of derogation from Article 8, the Member States may 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 VI

Entry and residence of family members

Article 13

1. As soon as the application for family reunification has been accepted, 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 applicant.

If the applicant has long-term resident status, the Member States shall issue to family members a renewable residence permit of at least one-year's duration, until they satisfy the conditions laid down by Directive .../.../EC for obtaining long-term resident status in their own right.

Article 14

1. The applicant's family members shall be entitled, in the same way as the applicant, to:
 - (a) access to education;
 - (b) access to employment and self-employed activity;
 - (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 4(2) applies.

Article 15

1. At the latest after five years of residence, and provided the family relationship still exists, the spouse or unmarried partner and a child who has reached majority shall be entitled to an autonomous residence permit, independent of that of the applicant.
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 4(2) applies.

3. In the event of widowhood, divorce, separation, 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.

CHAPTER VII

Penalties and redress

Article 16

1. Member States may also reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

- (a) where the conditions laid down by this Directive are not or are no longer satisfied;
- (b) where the applicant and his family member(s) do not or no longer live in a full marital or family relationship.
- (c) where it is found that the applicant or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, 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, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the applicant's residence comes to an end and the family member does not yet enjoy the autonomous right of residence under Article 15.

4. Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. Specific checks may also be undertaken on the occasion of the renewal of family members' 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 to the existence of family, cultural and social ties with his country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the applicant or members of his family.

Article 18

The Member States shall ensure that the applicant and/or the members of his/her family have the *de facto* and *de jure* 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.

CHAPTER VIII

Final provisions

Article 19

From time to time, and for the first time no later than two years after the deadline set by Article 20, 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. These proposals for amendments shall be made by way of priority in relation to Articles 3, 4, 7, 8 and 13.

Article 20

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than (31 December 2003). 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 21

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

Article 22

This Directive is addressed to the Member States.