

## Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on the right to family reunification'

(2000/C 204/09)

On 10 February 2000, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs, and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 May 2000. The rapporteur was Ms Cassina.

At its 373rd plenary session on 25 May 2000, the Economic and Social Committee adopted the following opinion by 81 votes to three, with eight abstentions.

### 1. Introduction

1.1. The Commission's draft directive is designed to underpin the right of third country nationals residing lawfully in a Member State to family reunification and to establish a harmonised framework for exercising that right (determining to whom the right will apply, conditions for entering a Member State, reunification application procedures, residence permits and related rights, etc.). In accordance with the subsidiarity principle, the Member States will be responsible for designing some of the procedures (e.g. practical conditions to be met by the applicant, procedures for checking supporting documents, the initial duration of the family members' residence permit in the event that the applicant has an unlimited residence permit, and procedures for applying rights connected with residence).

1.2. The directive fits in with the application of Title IV of the Treaty<sup>(1)</sup>, and is based on Article 63 (3). It follows on from the conclusions of the Tampere European Council meeting (15/16 October 1999), which recognised that the: 'European Union needs a comprehensive approach to migration', and a 'more vigorous integration policy (which) should aim at granting (third country nationals) rights and obligations comparable to those of EU citizens' and that there is a 'need for approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin'. The Tampere conclusions also stated the need for 'rapid decisions', taking into account not only the reception capacity of each Member State, but also their historical and cultural links with the countries of origin.

1.2.1. The directive does not apply to third country nationals whose applications for refugee status have not received definitive answers or to nationals who are covered by temporary protection. Neither does it apply to seasonal

workers, temporary workers or third country nationals who hold residence permits valid for less than a year.

1.3. The right to family reunification will apply to third country nationals residing lawfully in a Member State, and to refugees (within the meaning of the Geneva Convention), stateless people and people enjoying subsidiary protection (for humanitarian reasons, in cases of war or other events that have caused expatriation). Applicants for reunification must be in possession of a legal residence permit valid for at least one year in the Member State in question<sup>(2)</sup>.

1.4. Family reunification will apply to spouses, non-married children who are minors (including adopted children and children in custody), partners with whom the applicants can prove they have a durable relationship, dependent relatives in the ascending line and children of full age who cannot look after themselves for reasons of poor health or disability. For refugees and people enjoying subsidiary protection, the provision is extended to other family members (for humanitarian reasons, owing to dependency on the applicant). Students may be joined by spouses and children only [Article 5(5)].

1.5. As cases of Community citizens who are not exercising or have not exercised their right to free movement are not covered by Regulation (EEC) No 1612/68 or other texts governing the free movement of persons, and are dealt with in widely varying ways in the Member States, they are covered by the current draft directive, with a view to ensuring equal treatment for EU citizens in such circumstances (reunification, with an EU citizen who has not exercised the right to free movement, of family members who are third country nationals).

1.6. Applications must be examined and a written response given within six months. When family members are authorised to join the applicant, any visas (including transit visas) required must be issued promptly and free of charge. When authorisation is refused, a written explanation must be given. There are procedures for redress through the courts.

<sup>(1)</sup> 'Visas, asylum, immigration and other policies related to free movement of persons'.

<sup>(2)</sup> This does not apply to refugees.

1.7. The Member States may require a number of practical conditions to be met by the person applying for the right to family reunification (sufficient resources, accommodation, insurance cover for the family, etc.).

1.8. The proposal provides for family members authorised to join the applicant to be issued with residence permits valid for the same period as that of the applicant. If the applicant holds a permanent residence permit, they may be granted an initial permit of one year. Family members will have immediate right of access to education, vocational training and work (employed and self-employed).

1.9. After a maximum period of four years, the spouse or partner and any children who have reached full age will have the right to an autonomous residence permit. Where circumstances are especially difficult (widowhood, divorce, separation, abandonment, repudiation, or death of relatives in the ascending or descending line), the permit may be granted after just one year of residence.

1.10. In proven cases of fraud, irregularities or falsification of information or evidence, permits may be withdrawn and family members expelled. Checks should be carried out in the event of well-founded suspicions of irregularities or fraud, but these must not be in any way abusive.

1.11. The directive is without prejudice to more favourable provisions of bilateral and multilateral agreements with third countries, the European Social Charter (1961) and the European Convention on the Legal Status of Migrant Workers (1977).

## 2. General comments

2.1. The Committee warmly welcomes the Commission's initiative for the fact that it applies the new Treaty provisions by helping to develop a cohesive framework for Member States' migration policies, while rigorously applying the principle of subsidiarity, and because it is inspired by full respect for human rights, and the rights of families and minors, as prescribed by the major international acts and conventions<sup>(1)</sup>. Not all the international instruments cited by the Commission

in its report have been ratified by all (or some) Member States; nonetheless, the fact that the Commission proposal is taking those texts into consideration as it begins to implement Treaty Title IV, mentioned in point 1.2, bodes well for those international standards to be ratified and implemented by the Member States on a timely and more generalised and responsible basis.

2.2. The Committee is pleased to note that those eligible to claim the right to family reunification include employees and self-employed workers as well as displaced people, refugees, and people enjoying subsidiary protection. It is also pleased that more favourable conditions and procedures apply for refugees and displaced persons. The fact that these categories of people are dealt with together corresponds perfectly with the legal basis chosen and highlights the social dimension and the aim to promote the personal and family integration of third country nationals in the EU. The one incontrovertible condition is that the applicant be lawfully resident in a Member State.

2.3. The Committee is glad to see that the Commission proposal (though somewhat more limited in scope) responds to many of the demands it has made in a number of opinions<sup>(2)</sup> issued from the early 1990s onwards, relating to the need to establish a common legal framework to cover entry and residence conditions for third country nationals and to guarantee the right to family reunification in a clear and harmonised manner, as more than a right in itself but also as a social, personal and cultural instrument to favour the integration of third country nationals. The Committee gives the Commission its full backing to draft a series of proposals to cover other aspects relating to third country nationals living on EU territory and hopes that those proposals will soon be the subject of a full debate leading to rapid practical decisions on the part of the EU institutions.

2.4. The principle of equal treatment with EU citizens, which the draft directive aims to promote, must be upheld. As some provisions are deferred to national legislation under the subsidiarity principle, the Committee will, in its 'specific comments', pinpoint articles which leave room for discretion and therefore require the Member States to apply the basic criteria contained in the directive, so as to ensure that

<sup>(1)</sup> For instance: the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic and Social Rights (1966); Convention No 143 of the International Labour Organisation (1975); the UN's International Convention on the protection of the rights of all migrant workers and members of their families (1990); various statements by the High Commissioner for Refugees (UNHCR); the Convention on the Rights of the Child (1989); the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); the European Social Charter (1961) and the European Convention on the Legal Status of Migrant Workers (1977).

<sup>(2)</sup> Opinion on the free movement and residence of workers — OJ C 169, 16.6.1999; Opinion on the free movement of workers — OJ C 235, 27.7.1998; Opinion on extension to third countries — social security — OJ C 157, 25.5.1998; Opinion on the right of third country nationals to travel in the Community — OJ C 153, 28.5.1996; Opinion on immigration and asylum policies — OJ C 393, 31.12.1994; Additional opinion on the status of migrant workers from third countries — OJ C 339, 31.12.1991; Opinion on the status of migrant workers from third countries — OJ C 159, 17.6.1991.

disparities in some of the conditions for the right to reunification do not distort migratory flows or lead to major differences in treatment from one country to another.

2.5. The Committee notes that on signing the Treaty, the UK and Ireland introduced protocols enabling them to opt in or out of applying the above-mentioned Title IV. Denmark, meanwhile, formally opted out under its own protocol. The Committee very much hopes that Ireland and the UK will decide to opt in and make a positive contribution to the directive in question. The Committee believes, however, that the practice of introducing opt-out procedures makes the Community decision-making process vulnerable to pressure from the Member States that have opted out and yet take part in discussions on the legislation concerned. The Committee hopes that the government of Denmark, whose opt-out is definite, will contribute positively and constructively if it takes part in the debate.

### 3. Specific comments

3.1. The fact that the draft directive clearly states that the objective of family reunification [Article 2 (e)] is 'to form or preserve the family unit' (whether the relationship arose before or after the applicant's entry) is highly significant.

3.2. The definition of 'family members' [Article 5(1)(a)] includes the applicant's spouse or an 'unmarried partner living in a durable relationship with the applicant', providing that the legislation of the Member State concerned treats the situation of unmarried couples as 'corresponding to' that of married couples. In the Committee's view, the concept of 'corresponding to' should be interpreted in the light of Article 2(e) mentioned in the previous point (forming or preserving the family unit) and Article 7(5) (the best interests of the children). What counts is that the non-married couples are free to live together, support each other, secure legal recognition for, raise and educate their children, and exercise the rights and duties of parents. Restrictive interpretations are therefore to be avoided, and for that reason, the Committee calls upon the Commission to monitor the transposal of Article 5 of the directive into national legislation and report back as provided under Article 18.

3.3. Reunification with dependent relatives in the ascending line and children of full age demands careful regard for humanitarian and social considerations. Children of full age may be reunited with the applicant providing they are unmarried and unable to take care of themselves for health reasons [Article 5(1)(e) and Article 12(2)], but they are not eligible to claim the right to follow training or take up

employment. However, Article 13(2) states that this category of family member too may claim an autonomous residence permit, but mentions no time scale (apart from the maximum residence period of four years). If an autonomous residence permit can be issued in a Member State after, say, a year (thus offering an opportunity to work or follow training), it is difficult to understand why those rights, linked to autonomous residence, cannot apply from the time of entry. The exception in Article 12(2) should therefore be removed.

3.3.1. The Committee would point out that the draft directive does not cover certain cases of vulnerable people in particular difficulty, for instance where:

- a) children of full age are married and both spouses are in seriously bad health (entry is not permitted);
- b) children of full age are disabled or seriously ill (in which case entry is allowed but not access to training or work); it would be unfortunate if reunification brought these people help within the family but denied them the opportunity to live a full personal and social life;
- c) relatives in the ascending line are living in extreme poverty (but not allowed to work).

The Committee hopes that the Member States will facilitate reunification and also social and occupational integration for this type of humanitarian case too, in line with the provisions of Article 5(4) of the proposal regarding refugees and people enjoying subsidiary protection.

3.4. The Committee welcomes the provision made [Article 5(2)] for reunification with just one wife in the event of a polygamous marriage (reaffirming the principle of the family unit), and the fact that reunification with children from other wives is permitted if the 'best interests of the child so require' [this idea is reiterated in Article 7(5)].

3.5. The recognition of the specific circumstances of unaccompanied refugee children (with more favourable conditions) is of major importance (Article 6). Under Article 6(a), such children may be joined by other family members not mentioned under Article 5, if there are no relatives in the ascending line or such relatives cannot be traced. However, this provision should also cover cases where relatives in the ascending line are unable to take responsibility for the child, always bearing in mind the criterion mentioned under Article 7(5) (the best interests of the child).

3.5.1. The Committee notes that unaccompanied children do not always fall into the refugee category and that they are arriving in the EU in increasingly problematic numbers (take for instance minors who are exploited or forced into prostitution or crime). This issue cannot be covered by the present directive, but it should be treated as a matter of urgency and tackled through legislation and measures designed primarily to protect victims and promote social rehabilitation. The same point was made at the Tampere summit, where attention was drawn to the need to decide on penalties to stamp down on the perpetrators of exploitation and human trafficking and to protect victims and help them make a fresh start. The Committee hopes that the Commission will lose no time in publishing proposals on the subject.

3.6. It is not clear why in Article 7 (submission of the application) reference is made in the singular to 'an application' for 'a member' of the family. For the sake of clarity, the Committee calls for the text to be reworded to read: 'one or more members of his family' (in line with the explanation given in the comments on Article 7).

3.7. Explanations for applicants whose applications for reunification have been refused must be provided in good time in writing, and must give the reasons for the decision. Applicants must also be given an opportunity to appeal in accordance with national legal procedures. The Committee also believes that applicants whose applications for reunification have been refused should be informed of the possibility of appealing to the European Court of Justice in order to establish whether national rules and procedures conform with Community legislation.

3.8. The practical conditions referred to in Article 8 relate to the freedom to refuse entry for reasons of 'public health'. The Committee believes that refusal on these grounds should be restricted to cases where it would be impossible to find treatment in the EU or where there is a high and uncontrollable risk of contagion. Member States should meanwhile allow reunification in cases of serious or infectious illness, providing the applicant is able to guarantee access to appropriate care, often unavailable in certain countries of origin.

3.8.1. The Committee hopes that the Member States will apply Article 8(2) in accordance with the principle of proportionality and that a distinction will be drawn between minor offences and serious criminal offences for which sentence has been passed. People who have committed minor offences and have decided to mend their ways and integrate fully and honestly into the host society have a greater incentive to do so with direct support from family.

3.8.2. The Committee sincerely hopes that family members who are reunited will be given equal treatment with EU citizens regarding health, welfare and social protection. In its opinion on the Commission communication 'A concerted strategy for modernising social protection', the Committee called for research into the need to make the Member States' social protection systems more open and responsive to the problems linked to the reception and integration of third country nationals.

3.9. The Committee warmly welcomes the provisions in Article 13 for issuing autonomous residence permits to family members, and especially the more favourable conditions specified under Article 13(3) for difficult social or personal circumstances. It believes that the last sentence ('Where necessary by reason of particularly difficult situations, Member States shall accept such applications.') should be interpreted as an obligation, as indicated in the comments on the article in question.

3.10. The Committee agrees on the need for controls and penalties in the event of fraud or non-compliance with the rules governing reunification, but feels that it is extremely difficult to tell whether a marriage has been contracted or a de facto relationship established for the sole purpose of gaining access to a Member State, without conducting demeaning checks and invasive enquiries. The Committee stresses that invasive checks and enquiries go against the spirit and the letter of the directive and that the Member States should conduct specific checks only 'where there are grounds for suspicion' [Article 14(2)]. The Committee therefore calls on the Member States to comply with these criteria, while also ensuring that invasive practices are not applied at local government level.

3.10.1. As an aside, the Committee notes that the increase in marriages of convenience is encouraged by the restrictions on the entry of third country nationals, and by the red tape and the complexity of the procedures imposed on people with a legitimate desire to emigrate to the EU. The Committee is convinced that clear and simple rules and procedures are required to manage migratory flows, allowing for controlled growth and uncovering illegal migratory practices. In this respect the Committee refers to the opinions quoted in point 2.3 and to its contribution to the Paris Euro-Mediterranean economic and social summit (1996), which proposed a pilot scheme for managing migratory flows, to facilitate entry, integration and possible repatriation if the 'migration plan' proved unsuccessful.

3.10.2. There should be broad harmony in the types of check and penalty used. The Committee calls on the Member States to ensure a high level of coordination when implementing the directive, to avoid overly disparate conditions causing a distortion in migratory flows (tendency to choose the most liberal country).

3.10.3. The Committee is fully aware that criminal rings organise marriages of convenience either for financial gain, or as a way of drawing their victims into prostitution or into their own criminal activities. The Committee therefore calls on the Commission to move fast to draw up — and on the Member States to adopt as a matter of urgency — harmonised provisions for identifying and punishing the leaders of such rings, with effective, dissuasive and fitting penalties, alongside

other measures for protecting and rehabilitating victims, as already mentioned under point 3.5.1.

3.11. The Committee welcomes the provision (Article 18) requiring the Commission to issue a report on the application of the directive within two years of the transposition deadline. The Committee expects its opinion to be sought and hopes that the report will appear regularly (every two or three years).

Brussels, 25 May 2000.

*The President*  
*of the Economic and Social Committee*  
Beatrice RANGONI MACHIAVELLI

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APPENDIX

**to the Opinion of the Economic and Social Committee**

**Defeated amendment**

The following amendment, which received at least a quarter of the votes cast, was defeated in the course of the debate.

**Point 2.5**

Delete the last sentence ('The Committee hopes that ... takes part in the debate.')

*Reason*

The ESC should not judge the Member States' willingness to take part in the debate on EU provisions. The Danish opt-out is the result of a referendum approved by the Danish parliament and the other EU Member States.

An opt-out does not mean that Denmark is not prepared to respect the other Member States' desire for a common approach, nor does it mean that Denmark is not prepared to implement the EU's common provisions.

*Result of the vote*

For: 34, against: 45, abstentions: 12.

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