

Opinion of the Committee of the Regions on ‘The Green Paper on family reunification’

(2012/C 225/02)

THE COMMITTEE OF THE REGIONS

- points out that the need to tackle the specific issue of family reunification coincides with the attention given to a new European agenda for integration (CdR 199/2011), and a European culture of multilevel governance (CdR 273/2011) which urges the Committee of the Regions to take action;
- notes that the Green Paper indicates that in some cases the application of the directive is used as a deterrent and points out that the arrangements for family reunification cannot be viewed as a means to curb migration flows; the specific aims of reunification are to improve the integration of legal migrants and to comply with the right to a family;
- stresses that people’s right to live with their family, as well as the right and the duty to provide for, educate and bring up their children and thus to have their children with them, are fundamental rights and duties, independent of citizenship; points out that this is recognised in many instances of national and international case law which agree on this point;
- points out that the States must act with due regard for the principles of proportionality and subsidiarity, in order to give the regions and local communities a stronger role in the application of integration policy and to provide them with a stable, legally sound frame of reference;
- the Committee calls for a stronger local-level role in multilevel governance, a crucial condition for a consistent immigration policy which complies with fundamental rights and is capable of promoting the wellbeing of host communities and immigrants.

Rapporteur	Sergio SOAVE (IT/PES), Mayor of Savigliano (CN)
Reference document	Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)
	COM(2011) 735 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

Frame of reference

1. welcomes the Commission's decision to open up a debate on family reunification, the subject of Directive 2003/86/EC, in order to assess various problems which have arisen in the course of the directive's application and to look into the criticisms made by various parties (NGOs, local communities, academia);

2. endorses the decision to use the Green Paper, which examines a number of key issues in the directive and asks a series of questions, as a basis for discussion; is pleased that the Commission will only decide on any practical measures to be adopted after this consultation has taken place;

3. points out that local and regional authorities have a key role to play in managing integration and social cohesion policies. They should therefore be fully involved in discussions on the enactment of the rules on family reunification in order to facilitate both the proper integration of immigrants in the host country and any reform of the directive;

4. emphasises that this initiative is in line with the Stockholm Programme of December 2009 and the European Pact on Immigration and Asylum of September 2008;

5. points out that the need to tackle the specific issue of family reunification coincides with the attention given to a new European agenda for integration (CdR 199/2011), and a European culture of multilevel governance (CdR 273/2011) which urges the Committee of the Regions to take action;

Political backdrop to the opinion

6. believes, upon careful consideration, that the economic crisis which is convulsing Europe may distort people's judgment regarding the directive. Another factor here is the concomitant influx of people arriving in Europe, some of them fleeing the effects of the undeniably major and positive political movement known as the Arab spring which has affected many Southern Mediterranean countries;

Principles and evaluations

7. notes that the Green Paper indicates that in some cases the application of the directive is used as a deterrent and in this

context points out that the arrangements for family reunification cannot be viewed as a means to curb migration flows, a problem which should be tackled at source and in other ways. The specific aims of reunification are to improve the integration of legal migrants and to comply with the right to a family, a principle enshrined in every charter of rights;

8. stresses that people's right to live with their family, as well as the right and the duty to provide for, educate and bring up their children and thus to have their children with them, are fundamental rights and duties, independent of citizenship; points out that this is recognised in many instances of national and international case law which agree on this point. Specifically, Article 16 of the 1948 Universal Declaration of Human Rights describes the family as the 'natural and fundamental group unit of society' which is 'entitled to protection by society and the State'. Article 9 of the EU Charter of Fundamental Rights includes the right to a family among the fundamental rights of the individual;

9. calls for immigration policies to comply fully with these fundamental rights, in line with the case law of the Strasbourg and Luxembourg courts which have handed down clear and consistent judgments on this point;

10. also calls for a practical evaluation of the impact of family reunification. The directive asserts that family reunification is a factor in social and cultural stability which itself promotes integration, fostering economic and social cohesion to the benefit of host local authorities. It must indeed be recognised that the application of the right to family reunification is a step forward for migration policies which demonstrate their maturity by focusing on the stabilisation of immigrants as a vital tool for effective social and economic integration in the host country. This is also a decisive and practical means to curb illegal immigration and decrease dangerous forms of social exclusion;

11. notes that every European constitution views the family tie as a source of specific duties of economic and social solidarity. Promoting this tie among immigrant families through more robust recognition of the right to family reunification would therefore appear to be a way to encourage foreigners to realise that the many obligations (both administrative and organisational) imposed upon them are not merely the result of repressive policies or police requirements; they are part of a more general project working towards the overall development

of society, to which they are *actively* called upon to contribute, not only by claiming rights but also by acknowledging duties which underpin the principles of *public mindedness* and *responsibility* towards others;

12. with this goal in mind, hopes that particular attention will be given to protecting the 'nuclear family' (the focus of the directive) and, within this frame of reference, to the right to reunification of minor children, who merit specific and stronger protection. As regards other types of family, in relation to the rules and customs of the migrant's State of origin, believes that evaluating individual or specific cases should be left up to the Member States; if, however, as a result of the consultation, the European Commission concludes that it would be necessary to adopt a common definition of 'family' at the European level, this definition has to be consistent with the definitions included in other EU instruments;

13. considering the importance of these general principles and evaluations, does not believe that there is any need to substantially curtail individual States' margin of discretion, which is recognised by the directive and confirmed by the Lisbon Treaty. Nonetheless, points out that the States must act with due regard for the principles of proportionality and subsidiarity, in order to give the regions and local communities a stronger role in the application of integration policy and to provide them with a stable, legally sound frame of reference.

II. QUESTIONS ASKED BY THE GREEN PAPER

THE COMMITTEE OF THE REGIONS

The concept of family and the requirements of family relationships

14. considers that, without prejudice to the right of every third-country national residing legally in the EU to be reunited with their family members, it is understandable that this right should be made subject to specific conditions, always provided that it is without prejudice to the spirit of the directive which aims to facilitate their integration and stabilisation;

15. considers that the current wording of the directive might create legal uncertainty as well as doubts as to interpretation, and calls for an evaluation of the case for establishing at European level a minimum length of residence which would reconcile the need for stability with respect for the right to a family life, using circular-migration type models when having recourse to voluntary return programmes;

16. suggests that the minimum age laid down for reunification of the spouse should generally be aligned with the age of majority established by the national legislation of the host country, with derogations for a lower age considered on an

exceptional basis. This will guarantee the greatest possible uniformity and avoid potential age-based discrimination;

17. draws attention to the fact that the two derogations to the right to family reunification of minor children (Article 4(1), last paragraph, and Article 4(6)) have rarely been used and so could be repealed. At any rate, recommends that all decisions on this point be taken with a view to the best interests of the child and to assuring the protection of the minor child's rights. On the same grounds, also recommends that the right to reunification of minor children be guaranteed even if there is no marriage tie between the parents, in order to avoid any form of discrimination between legitimate and natural children;

18. as regards the optional clause relating to family members other than the spouse or registered partner and children, considers that the individual Member States should retain a margin of discretion in setting criteria. Notes that the directive in force does not clearly set out (as it should do) the consequences for family members in the event of the death of the sponsor, annulment of the marriage, divorce, the sponsor leaving the Member State, or successful contestation of paternity;

Integration measures

19. recommends preventive monitoring of the effectiveness of the various measures already in place (pre-departure measures and measures applied in the host country). On the basis of this initial screening, nonetheless recommends against pre-departure measures which might be impossible to implement for the sponsor's family members owing to illiteracy, material costs, distance from towns, etc. and which in practice would preclude the right to reunification; furthermore, considers that where attendance at language classes and/or classes on civic education and/or knowledge of the history and culture of the host society is required after arrival in the host country, the classes should be provided free of charge in order to avoid income-based discrimination, and draw on European Integration Modules;

Waiting period and reception capacity

20. when evaluating other material conditions which the sponsor residing in the Member State is required to meet (accommodation, health insurance, stable and regular resources), recommends that these conditions should comply with the principle of proportionality and not result in arbitrary restrictions. In particular, hopes that when enacting the directive, the Member States will ensure that their rules regarding these conditions are rooted in objective and verifiable criteria and not in generic provisions which might be interpreted in an arbitrarily restrictive fashion;

21. suggests that the criterion of the Member State's 'reception capacity' as a factor in the evaluation of whether reunification should be approved should be abolished, as it constitutes an additional tool for controlling migration flows, in contrast with the principles of EU law;

22. considers that the length of the residence permit for the sponsor's family members should be aligned strictly with that of the sponsor, with a view to the possibility of adopting solutions in line with circular migration models when having recourse to voluntary return programmes;

Asylum issues

23. as regards family reunification of third-country nationals who have been granted some form of specific protection (asylum, status of refugee, subsidiary protection), considers that, in accordance with the Stockholm Programme, the various types of status should be dealt with through specific, separate rules which take account of the specific situation of people who have been granted such protection (including the practical difficulties involved in providing information and documents). The directive on the general arrangements for reunification should therefore not be applied to the family members of foreigners granted some form of protection; the family reunification of these foreigners, including in the case of family ties established subsequent to the entry into the host State, should be the subject of separate rules;

Fraud, abuse and procedural issues

24. considers that, unless used as a last resort, the decision taken by a number of Member States to introduce DNA testing for the identification of children could constitute a violation of the principle of proportionality in addition to violation of fundamental rights, such as the right to respect for private and family life (Article 8 of the ECHR);

25. with regard to the fraud which it is feared might be perpetrated by means of marriages of convenience, asks the Commission and/or the Member States to provide data on the real extent of this phenomenon; in the absence of specific cases, believes it would be useful for targeted investigations to be carried out in all the Member States to get a more accurate idea of what is happening and promote good practice in addressing such problems;

26. with regard to the costs of family reunification borne by the sponsor, flags the risk that an artificial increase in administrative costs could be used by some States to place arbitrary limits on entry, in clear contrast with the principle of proportionality whereby the means should be suited to the aim pursued: the aim is to promote, not to preclude, the exercise of the right under consideration. The Member States should therefore be asked to set the cost in such a way as to avoid undermining the application of the directive;

27. considers that the Member States should be recommended to comply with the deadline for reaching a decision on the request for reunification laid down by the directive; any derogation procedure established by the State for the purpose of extending this deadline beyond any reasonable period is an obstacle to the proper enactment of the directive;

Respect for horizontal clauses

28. with regard to the alleged difficulties in complying with the two mandatory horizontal clauses laid down by the directive, calls on the European Commission to adopt all the instruments and measures enshrined in the treaties and intended to ensure that the Member States comply fully with Community law.

III. FINAL COMMENTS

29. The Committee calls for a stronger local-level role in multilevel governance, a crucial condition for a consistent immigration policy which complies with fundamental rights and is capable of promoting the wellbeing of host communities and immigrants. Exemplary experiences of integration have been recorded in many European regions and communities and many ambiguous points in national legislation with regard to the practical interpretation of the directive have been resolved using the practical experience of local institutions. The Committee underlines the need to assemble as much information as possible on this subject and is willing to cooperate fully with the Member States and other European institutions in collecting and disseminating information and best practice where these data are available at local and regional level.

Brussels, 3 May 2012.

*The President
of the Committee of the Regions*
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