Opinion of the Economic and Social Committee on the Amended proposal for a Council Directive on the right to family reunification

(COM(2002) 225 final — 1999/0258 (CNS))

(2002/C 241/21)

On 23 May 2002 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 20 June 2002. The rapporteur was Mr Mengozzi.

At its 392nd Plenary Session (meeting of 17 July 2002) the Economic and Social Committee adopted the following opinion by 118 votes to seven, with two abstentions.

1. Introduction

1.1. The Commission has presented an amended proposal for a Council Directive on family reunification, which follows on from a draft directive on the same subject presented on 1 December 1999; that draft had no result, after consideration by the Parliament (6 September 2000), the Commission itself (10 October 2000), the Council [1] (May 2000, May 2001 and September 2001) which did not lead to a conclusion.

1.2. The Laeken European Council of 14 and 15 December 2001 addressed a request to the Commission to resume consideration of the matter, taking account of course of the difficulties which had arisen mainly at Council level.

1.3. The new Commission proposal, while formally affirming the right to family reunification, makes it subject to a series of procedures which are more restrictive than those envisaged in the 1999 draft directive. As early as Article 1 of the new draft, the wording is revealing: whereas in the original draft the aim was 'to establish a right to family reunification', in the current draft it becomes 'to determine the conditions in which the right to family reunification may be exercised'.

1.4. The changes reflect the prevailing attitude which emerged in the Council debate. In particular, there is an obvious concern to ensure that the legislation in force in some Member States is reflected in the articles of the directive. As a result, a provision which had been conceived of as a framework of principles has become a lowest common denominator of the laws already applying in the Member States.

2. Specific comments

2.1. It is significant that Article 3(6) introduces a 'standstill' clause whereby Articles 4(1), (2) and (3), 7(1)(c) and 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'. This clause, while designed to prevent any use of the directive to make certain national provisions more restrictive, also draws attention to the fact that some articles of the amended proposal (those listed in Article 3(6)) are much more restrictive than the current rules covering the same matters in a number of Member States.

It should also be pointed out that the 'standstill' clause does not prevent Member States from making their own legislation in the field more restrictive before the present draft directive is adopted. Thus it is necessary for the Commission to include in the final text a request to Member States not to amend their relevant legislation in this period.

2.2. The most serious of the proposed changes are:

1) The requirement of having 'reasonable prospects of obtaining the right of permanent residence' (Article 3(1)) which, combined with that of holding a residence permit valid for one year or more, provides no room for manoeuvre regarding permits valid for less than a year, or even shorter contracts. Moreover, in a Member State where the residence permit is linked to the work contract, it is probable that immigrants would at best have short-term contracts, and that as a result their residence permits would have no prospect of becoming permanent. There is therefore a risk in such cases that the 'right' to reunification may never be exercised.

[1] See the ESC Opinion in OJ C 204, 18.7.2000.

2) The derogation envisaged in the last paragraph of Article 4(1) enables a Member State to verify, in the case of a child aged over 12 years, whether 'he or she meets a condition for integration provided for by its existing legislation on the date of adoption of this Directive'. It is not entirely clear what the 'condition for integration' might be, but it seems clear that this derogation is intended to meet the requirements of Member States which increasingly wish to select the potential of very young migrants to meet their own production needs.

3) The time-limit for responding to the application for reunification is extended from six to nine months (Article 5(4)), but in exceptional circumstances a Member State may extend it to a maximum of one year. The EESC takes the view that the six-month limit was already more than enough, and therefore has doubts about its extension to nine months.

4) Member States may require an applicant to have resided legally on their territory for a period not exceeding two years (Article 8, first paragraph). However, by way of derogation the waiting period between submission of the application and issue of a residence permit to the family members may be as long as three years, if the legislation of the Member State in question takes account of its 'reception capacity'. An obvious comment is that this provision leaves a great deal to the Member State's discretion, and that there could be some 'political' flexibility in the criteria actually applied.

5) The 'family relationship' may be verified (Article 5(2)) through interviews and other investigations at the discretion of the Member States. It is worrying that these checks are additional to the presentation of documentary evidence of the family relationship; moreover, the checks could become a pretext for prolonging the procedure or building up a negative response. Thus they could turn into actual harassment and an invasion of privacy, especially in cases (Article 5(2), last paragraph) where the application concerns the unmarried partner of an applicant.

6) Finally, a more general observation: the proposal contains many small changes the effects of which are potentially damaging to human dignity. One example is Chapter VII, 'Penalties and redress', Article 16 (particularly point (1) (b) and (c) and point (4)), where it is regarded as normal to demand morally impeccable behaviour on the part of a third-country national, in terms of family relationships, in contrast to what is normally expected of EU citizens.

3. **Conclusions**

3.1. It can be inferred from the specific comments above that the text proposed by the Commission shows considerable signs of the difficulties which emerged in two years of debate in the Council among the Member States, or at any rate some of them.

3.2. The Committee therefore is decidedly opposed to these important proposed changes to the 1999 text. However, it does not wish formally to issue a negative opinion on the proposal, in the hope — rather than a firm belief — that this final stage will lead to rapid completion of the procedure and the definitive adoption of the directive.

3.3. The Committee firmly points out that the Laeken European Council, and previously the Tampere European Council, confirmed that the setting of common rules on family reunification is an important aspect of a true common immigration policy.

3.4. Finally, the Committee points out that the European Union's Charter of Fundamental Rights is a reference point and source of guidance for European and national legislation; while acknowledging the delicate nature of the problems covered by the draft directive and the special sensitivity of European citizens on these matters, it hopes that family reunification problems can also be solved and that this will contribute to the process of social integration which must accompany the migratory flows now affecting all the states of the European Union.

Brussels, 17 July 2002.

The President

of the Economic and Social Committee

Göke FRERICHS