

**Opinion of the European Economic and Social Committee on the ‘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

(2012/C 229/14)

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On 15 November 2011, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

*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.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 April 2012.

At its 481st plenary session, held on 23 and 24 May 2012 (meeting of 23 May), the European Economic and Social Committee adopted the following opinion by 131 votes to 5 with 8 abstentions.

## 1. Introduction

1.1 The Stockholm programme and the European Pact on Immigration and Asylum have both identified family reunification as an area in which EU policies need to evolve on an ongoing basis, particularly as regards integration measures. In 2003, common European immigration rules were adopted to regulate the conditions for exercising the right to family reunification of third-country nationals at EU level.

1.2 The Directive defines the conditions of entry and residence for non-EU family members joining a non-EU citizen already legally residing in a Member State. This Directive does not apply to EU citizens.

1.3 The Commission itself, in its first report on the implementation of the Directive (COM(2008) 610 final), identified its national implementation problems and shortcomings.

1.4 The Commission has considered it necessary to initiate a public debate on family reunification, highlighting certain issues within the remit of the Directive, which is the purpose of this Green Paper. All stakeholders have been invited to reply to different questions on how to apply more effective rules on family reunification at EU level.

1.5 Depending on the outcome of this consultation, the Commission will decide whether any concrete policy follow-up is necessary (e.g. modification of the Directive, interpretative guidelines or status quo).

## 2. General comments

2.1 The European Economic and Social Committee welcomes the European Commission's efforts to organise a broad public debate on the Directive on family reunification. As the voice of organised civil society, the EESC will offer its support when it comes to organising these consultations and will express its opinion based on the experiences gathered.

2.2 The EESC is concerned to note that, in the current political, economic and social context, the debate on immigration issues has become very sensitive. The financial and economic crisis has affected the solidarity between individuals and opened the door to more radical discourse and political action. It must be emphasised that Europe's demographic and economic outlook makes opening the door to third-country nationals wishing to live in the EU a necessity. European society must continue to be open, regardless of fluctuations in the labour market. Although necessary, the debate on family reunification in the context of immigration policy could call into question existing rules and practices, many of which are important steps towards achieving political objectives.

2.3 The European Economic and Social Committee supports this debate and, above all, will take action to ensure that the voice of organised civil society is instrumental in achieving this agenda. Irrespective of the political and economic challenges that European society faces, it is vital to protect and strengthen the respect for fundamental rights upon which the European venture is built.

2.4 The EESC appreciates the European Commission's openness towards civil society and the academic world, as both sectors have critically evaluated the content and implementation of the Directive on many occasions. In this context, it emphasises the positive role played by the European Integration

Forum, which facilitates structured dialogue between the European institutions and various stakeholders concerned with migration and integration issues.

2.5 The Committee believes that the debate on the Directive and its impact should focus on the practical aspects of implementation and that the way in which action will be taken and the instruments used should be established during a subsequent phase, again with the consultation of stakeholders.

2.6 The Directive should be debated in the light of the many international treaties and conventions protecting private life, the family and family members, particularly children. The right to respect for private and family life is – and should be considered – a fundamental right, regardless of the nationality of the individuals in question. Family reunification is directly and indirectly enshrined in a wide variety of documents: the Universal Declaration of Human Rights (Articles 12, 16 and 25), the Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 7), the EU Charter of Fundamental Rights (Articles 8, 9, 24 and 25) and the European Social Charter (Article 16).

2.7 The EESC believes that the debate on the Directive is necessary and timely, given the accumulation of empirical data on family reunification and in order to stay abreast of the technological resources which could be used during procedures for granting residence permits (e.g. DNA testing). Another aspect that must be taken into account is the case law of the European Court of Justice.

2.8 Although much data exists on migration, the Committee notes that in highly sensitive areas such as fraud and forced marriages, there is not enough evidence to guide policy-making. The Committee therefore recommends furthering efforts to collect information, particularly qualitative data, in such sensitive and pertinent areas.

### 3. Specific comments

3.1 *Scope. Who can qualify as a sponsor for the purpose of the Directive?*

#### Question 1

— Are these criteria (reasonable prospect for the right of permanent residence at the time of application as regulated in Article 3 and a waiting period until reunification can actually take place as regulated in Article 8) the correct approach and the best way to qualify sponsors?

3.1.1 The Committee believes that the existence of the condition of reasonable prospects is much too vague from a legal point of view, and could be interpreted in too restricted a way. Therefore, it is recommended that the condition of possession of a residence permit of at least one year be maintained, but that the second condition of reasonable prospects be removed.

3.1.2 Likewise, the minimum waiting period could be problematic. The right to a family life and to privacy are fundamental rights. The EESC believes that the realisation of this right will enable reunification sponsors under the Directive to have the right to launch family reunification procedures from the time the residence permit is issued, but that the minimum residence period should be removed.

3.1.3 The Committee understands the distinction between highly qualified and less qualified migrants in terms of the status and protection conferred upon them. However, it points out that the European economy needs all of them equally, and unequal treatment in the area of rights and the protection of private and family life on the grounds of qualifications cannot be accepted.

3.2 *Eligible family members. Mandatory provisions - the nuclear family.*

#### Question 2

— Is it legitimate to have a minimum age for the spouse which differs from the age of majority in a Member State?

— Are there other ways of preventing forced marriages within the context of family reunification and if yes, which?

— Do you have clear evidence of the problem of forced marriages? If yes how big is this problem (statistics) and is it related to the rules on family reunification (to fix a different minimum age than the age of majority)?

3.2.1 The Committee considers that the regulations on minimum age do not go far enough towards combating forced marriages and affect the fundamental right to family life. One possibility would be to assess the type of marriage by means of an investigation or interview after the reunification of a family within the territory of a Member State. In order to increase the chances of identifying forced marriages, which almost exclusively affect women, it is recommended that a system of incentives be devised for people who admit that they have been forced into marriage. One solution (but not the only one) would be to offer these people a residence permit for at least one year. The EESC does not possess any clear evidence of forced marriages and recommends involving the European Commission and other specialists in obtaining the relevant data.

#### Question 3

— Do you see an interest in maintaining those standstill clauses which are not used by Member States, such as the one concerning children older than 15?

3.2.2 The Committee considers that it is not necessary to maintain those two clauses. The first clause which concerns integration conditions for children over 12 has only been used by one Member State. Moreover, establishing necessary integration conditions could be an inconsistent and arbitrary process which could affect the rights of people in vulnerable situations, such as minors. Meanwhile, the second clause, for minors over 15, is problematic. This clause has not been used by any Member State. To ask a minor about grounds other than family reunification is problematic from an ethical point of view, given that reunification is carried out on the basis of a right established by every international convention on child protection.

### 3.3 *Optional clause - other family members*

#### Question 4

— Are the rules on eligible family members adequate and broad enough to take into account the different definitions of family existing other than that of the nuclear family?

3.3.1 These rules are not broad enough, as there is no single definition of family which applies in non-EU and EU countries. The EU does not have a legal basis for defining the family, but it does have instruments to prevent discrimination. The rules on family reunification should be flexible enough to take into account the different types of family structures recognised at national level (including same-sex marriages, single-parent families, civil partnerships, etc.) and the potential inclusion of other types of relationships.

3.3.2 Given that more than half the Member States have used the optional clause and have included the parents-in-law among those eligible for family reunification, the EESC believes that it would be useful to maintain this optional clause. Doing so will enable Member States to extend family reunification to other family members, should they so wish. For example, it could be extended to parents-in-law, who can play a beneficial role in the emotional and intellectual upbringing of their grandchildren.

### 3.4 *Requirements for the exercise of the right to family reunification - Integration measures*

#### Question 5

— Do these measures efficiently serve the purpose of integration? How can this be assessed in practice?

— Which integration measures are most effective in that respect?

— Would you consider it useful to further define these measures at EU level?

— Would you recommend pre-entry measures?

— If so, how can safeguards be introduced in order to ensure that they do not de facto lead to undue barriers for family reunification (such as disproportionate fees or requirements) and take into account individual abilities such as age, illiteracy, disability or educational level?

3.4.1 The Committee believes that integration measures are welcome; they should not be conceived or implemented as obstacles to family reintegration but should work in favour of the sponsors and family members. The EESC believes that the integration measures should be taken by EU Member States rather than by non-EU countries.

3.4.2 The European Agenda for the Integration of third-country nationals identifies an integration toolbox that could be used. In the context of this toolbox, the EESC believes that emphasis should be placed on language learning and on formal and non-formal education. The Committee has on many occasions argued that education is a key aspect of integration. The use of these tools must be adapted to suit the demographic and socio-economic characteristics of the family members. It is recommended that minors be included in formal and non-formal learning programmes and adults and seniors in language learning and vocational training programmes, such as programmes for e-inclusion. These measures could help family members contribute to the economy and society in both the host country and the country of origin.

3.4.3 The EESC believes that pre-entry measures should be avoided. Ideally, family members reunited in the EU will have language skills or cultural/educational knowledge which will facilitate their integration. However, this should not be made a condition for reunification, where the people involved do not possess such knowledge. In addition to unjustified obstacles (e.g. fees), the institutional infrastructures of the EU Member States and non-EU countries may not be able to support these pre-entry measures. Establishing integration measures in the territory of the Member State could provide a greater level of protection for family members, greater support from sponsors and a greater chance for integration. NGOs can play a major role in integration, but the key role must be performed by the authorities, who have a legal responsibility and the resources needed for integration.

### 3.5 *Waiting period in relation to reception capacity*

#### Question 6

— In view of its application, is it necessary and justified to keep such a derogation in the Directive to provide for a three year waiting period as from the submission of the application?

3.5.1 Given that only one Member State has used this derogation, the EESC believes that there is no justification for maintaining it. Moreover, the decision to grant residence permits should be taken in the light of individual circumstances and not reception capacity. Reception capacity is variable and is the result of some policies that can be changed if need be.

### 3.6 Entry and residence of family members.

#### Question 7

— Should specific rules foresee the situation when the remaining validity of the sponsor's residence permit is less than one year, but to be renewed?

3.6.1 The residence permits of the sponsor and the family members must be valid for the same period. Before all permits expire and in order to avoid time differences, a common application for all the members of a family could be submitted.

### 3.7 Asylum related questions. Exclusion of subsidiary protection.

#### Question 8

— Should the family reunification of third-country nationals who are beneficiaries of subsidiary protection be subject to the rules of the family reunification Directive?

— Should beneficiaries of subsidiary protection benefit from the more favourable rules of the family reunification Directive which exempt refugees from meeting certain requirements (accommodation, sickness insurance, stable and regular resources)?

3.7.1 The Committee believes that beneficiaries of subsidiary protection should be subject to the more favourable rules of the family reunification Directive and therefore be included in it. Beneficiaries of subsidiary protection come from countries and areas recognised as dangerous for their health and wellbeing. This makes it even more necessary to move towards harmonising the two statutes.

### 3.8 Other asylum related questions.

#### Question 9

— Should Member States continue to have the possibility to limit the application of the more favourable provisions of the Directive to refugees whose family relationships predate their entry to the territory of a Member State?

— Should family reunification be ensured for wider categories of family members who are dependent on the refugees, if so to what extent?

— Should refugees continue to be required to provide evidence that they fulfil the requirements regarding accommodation, sickness insurance and resources if the application for family reunification is not submitted within a period of three months after granting the refugee status?

3.8.1 The Committee believes that the definition of the family should not include the criterion of time. Some people found a family not in a third country but within the Member States. A family can be reunited regardless of the time and place in which it was founded. Family reunification should be extended to include more diverse categories, particularly with regard to children who are 18 or over or siblings, taking into account factors of risk in the country of origin together with cultural factors. Secondly, the deadlines for submitting the application for family reunification should be abolished or extended so that it is possible for sponsors to contact family members who might be living in very remote areas, and to prepare all the documents needed for the family reunification process. A time limit could be included relating to the expiry date of the temporary residence permit (e.g. 6 months).

### 3.9 Fraud, abuse, procedural issues - Interviews and investigations.

#### Question 10

— Do you have clear evidence of problems of fraud? How big is the problem (statistics)? Do you think rules on interviews and investigations, including DNA testing, can be instrumental in solving them?

— Would you consider it useful to regulate more specifically these interviews or investigations at EU level? If so, which type of rules would you consider?

3.9.1 The EESC does not possess any clear evidence of problems of fraud. It believes that interviews and investigations are legitimate provided that they do not render the right to family reunification nugatory.

— The EESC is against DNA testing. Although it is a valid scientific means of establishing biological links between people, it does not cover the range of emotional, social and cultural links that can be formed between members of the same family, who may not necessarily be related biologically. In the case of adopted people, DNA testing is irrelevant. Moreover, DNA testing can reveal highly delicate family situations such as adoptions that have been kept secret or infidelities. DNA tests clearly infringe the right to privacy and can lead to personal traumas for which the public authority cannot be held liable. Therefore, the EESC believes that there should be rules regarding investigations and interviews, which should cover the full range of legal and technological instruments in existence. It could prove beneficial to involve the European Agency for Fundamental Rights in this context. The Committee is open to

cooperation with the European institutions and other bodies in order to draw up these rules. The Committee also draws attention to the proportionality principle. Family reunification cannot be treated as a matter for criminal law.

### 3.10 *Marriages of convenience*

#### Question 11

- Do you have clear evidence of problems of marriages of convenience? Do you have statistics of such marriages (if detected)?
- Are they related to the rules of the Directive?
- Could the provisions in the Directive for checks and inspections be more effectively implemented, and if so, how?

3.10.1 The EESC does not possess any clear evidence of marriages of convenience. The future rules on checks, inspections and interviews could help to restrict this phenomenon. The EESC emphasises that the relevant rules should be drawn up in cooperation with the European agency for Fundamental Rights in order to ensure that there is no impact on the basic rights of those involved.

### 3.11 *Fees*

#### Question 12

- Should administrative fees payable in the procedure be regulated?
- If so, should it be in a form of safeguards or should more precise indications be given?

3.11.1 The EESC does not think it would be legitimate to have different levels of fees. It is therefore necessary to set

financial ceilings which should not defeat the basic objective of the Directive. The EESC believes that either a single, minimum ceiling should be imposed or all the fees should be established on the basis of per capita income or another indicator in the third country. As the application is submitted on an individual basis, another, more preferable alternative would be to impose a ceiling relating to the income of each applicant (e.g. proportion of average annual income). Minors should be subject to minimal fees or exempted from them altogether.

### 3.12 *Length of procedure - deadline for the administrative decision*

#### Question 13

- Is the administrative deadline laid down by the Directive for examination of the application justified?

3.12.1 The EESC believes that the Directive should be amended so as to align common practices at Member State level. It therefore recommends reducing the deadline from 9 months to 6 months.

### 3.13 *Horizontal clauses*

#### Question 14

- How could the application of these horizontal clauses be facilitated and ensured in practice?

3.13.1 The EESC believes that the most reasonable means of implementing the horizontal clauses with regard to both the best interests of minor children and the need for individual examinations, and also in order to resolve other problematic aspects of family reunification, is to draw up specific, harmonised rules on all possible types of examinations, checks and inspections. These rules should be proportional and should comply with basic human rights.

Brussels, 23 May 2012.

*The President*  
*of the European Economic and Social Committee*  
Staffan NILSSON

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