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REPORT

on the amended proposal for a Council directive on the right to family reunification

(COM(2002) 225 – C5-0220/2002 – 1999/0258(CNS))

(Renewed consultation)

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Carmen Cerdeira Morterero

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 6 September 2001, the European Parliament adopted a position on the proposal for a Council directive on the right to family reunification (COM(1999) 638 – C5-0077/2000 – 1999/0258(CNS)).

By letter of 23 May 2002 the Council again consulted Parliament, pursuant to Article 67 of the EC Treaty, on the amended proposal for a Council directive on the right to family reunification (COM(2002) 225 – 1999/0258(CNS)).

At the sitting of 29 May 2002 the President of Parliament announced that he had referred this amended proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0220/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Carmen Cerdeira Morterero rapporteur at its meeting of 2 July 2002.

The committee considered the Commission proposal and the draft report at its meetings of 21 January 2003 and 19 March 2003.

At the last meeting it adopted the draft legislative resolution by 26 votes to 18, with 0 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans, vice-chairman; Carmen Cerdeira Morterero, rapporteur; Mary Elizabeth Banotti, Johanna L.A. Boogerd-Quaak, Alima Boumediene-Thiery, Giuseppe Brienza, Kathalijne Maria Buitenweg (for Pierre Jonckheer), Marco Cappato (for Mario Borghezio), Carlos Carnero González (for Walter Veltroni pursuant to Rule 153(2)), Charlotte Cederschiöld, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Evelyne Gebhardt (for Michael Cashman), Adeline Hazan, Ewa Hedkvist Petersen (for Martine Roure), Margot Keßler, Timothy Kirkhope, Eva Klamt, Ole Krarup, Alain Krivine (for Fodé Sylla), Jean Lambert (for Heide Rühle), Marjo Matikainen-Kallström (for The Lord Bethell), Rosa Miguélez Ramos (for Ozan Ceyhun pursuant to Rule 153(2)), Claude Moraes (for Martin Schulz), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Marcello Dell'Utri), Hubert Pirker, Elly Plooij-van Gorsel (for Baroness Sarah Ludford pursuant to Rule 153(2)), Bernd Posselt, José Ribeiro e Castro, Ingo Schmitt (for Giacomo Santini), Ilka Schröder, Patsy Sørensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Christian Ulrik von Boetticher and Olga Zrihen Zaari.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 24 March 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the amended proposal for a Council directive on the right to family reunification
(COM(2002) 225 – C5-0220/2002 – 1999(CNS))**

(Consultation procedure – renewed consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(1999) 638¹),
 - having regard to the amended Commission proposal to the Council (COM(2002) 225²),
 - having regard to its resolution of 6 September 2000 on the initial consultation³,
 - having regard to Article 63 of the EC Treaty,
 - having been consulted again by the Council pursuant to Article 67 of the EC Treaty (C5-0220/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0086/2003),
1. Approves the amended Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
 5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 116, 26.4.2000, p. 66.

² OJ C 203 E, 27.8.2002, pp. 136-141.

³ OJ C 135, 7.5.2001, p. 174.

Amendment 1
Recital 1

(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.

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community, ***and in particular Article 61 thereof***, 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.

Justification

It is in Article 61 of the EC Treaty that specific reference is made to the legislative measures concerning the areas listed in the recital.

Amendment 2
Recital 2

(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.

(Does not affect English version.)

Justification

(Does not affect English version.)

Amendment 3 Recital 3

(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.

(3) Measures concerning family reunification must be adopted in conformity with the obligation to protect the family and respect family life enshrined ***in Articles 12 and 16 of the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948, in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, in Article 7 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000, and in many other instruments of international law.***

Justification

The major international instruments enshrining the universal right to family reunification should be indicated, as should the specific articles which set out this right.

Amendment 4 Recital 3 a (new)

(3a) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, which constitutes the very essence of the common European

acquis in the area of fundamental rights. In accordance with the principle of universality, the vast majority of the rights set out in the Charter are applicable to any person regardless of their nationality or place of residence; the Charter enshrines a set of rights that are applicable to citizens of the Member States and to citizens of third countries residing in the European Union.

Justification

In view of the reasonable doubts over the legal nature of the Charter of Fundamental Rights and the extent to which it has binding force in courts of law, it is important for the Directive to make explicit reference to respect for the fundamental rights that are set out in it and to reflect the European Union's approach and tradition of equal treatment of EU citizens and third-country nationals.

Amendment 5 Recital 3 b (new)

(3b) In accordance with measures 36 and 38 of the Council and Commission Action Plan of 3 December 1998, the European Union is to adopt, on the one hand, an instrument on the lawful status of legal immigrants within two years of the Treaty of Amsterdam entering into force, and in addition, within five years of this, rules on the conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and resident permits, including those for the purposes of family reunion.

(1) OJ C 19, 23.1.1999, p. 1.

Justification

The Council and Commission Action Plan on how best to implement the provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice, which was adopted by the JHA Council of 3 December 1998, is a policy paper of paramount importance in this area and it is absolutely essential to include a reference to it.

Amendment 6

Recital 4, first paragraph

(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.

(4) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, ***and in particular in Point 20 of the Conclusions thereof***, 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.

Justification

It is necessary to specify the actual point adopted by the Tampere European Council that relates to the subject matter of the Directive.

Amendment 7

Recital 6

(6) The European Council, at its special meeting in Tampere on 15th and 16th October 1999, stated that the European

(6) The European Council, at its special meeting in Tampere on 15th and 16th October 1999, ***and in particular in Point***

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.

18 of the Conclusions thereof, 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.

Justification

Same as for previous amendment.

Amendment 8

Recital 7

(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.

(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, **in particular in Point 40 of its Conclusions**, that a genuine common policy on **asylum and** immigration implied the establishment of common standards on procedures for **asylum, reception and** family reunification and called on the Commission to present a new amended proposal.

Justification

Even if the scope of this proposal for a Directive goes beyond the category of refugees and applies more generally to third-country nationals who have been residing lawfully in the EU for a specific period of time, the Laeken European Council of 14 and 15 December 2001 made a specific link, in Point 40 of its Conclusions, between asylum and family reunification in the case of refugees.

Amendment 9
Recital 7a (new)

(7a) The Council should adopt as rapidly as possible the proposal for a Council directive submitted by the Commission on 12 September 2001 on minimum standards for refugee status and the status conferred by subsidiary protection, including the right of people enjoying such status to family reunification.

Justification

It is important that the Council should adopt this proposal for a Council directive, on which Parliament adopted a legislative resolution on 22 October 2002 based on the report by Jean Lambert (A5-0333/2002).

The Seville European Council set June 2003 as the deadline for the Council to reach a political agreement.

Amendment 10
Recital 11

(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.***

(11) Family reunification applies to members of the nuclear family, that is to say the spouse, and the minor children.

Registered or unmarried partners, irrespective of sex, shall be eligible for family reunification, where the legislation or practice of the host Member State treats unmarried and registered partners in a corresponding manner to married couples.

It is for ***the Member*** States to decide whether they wish to extend this category and authorise family reunification for relatives in the ascending line ***and for*** children who are of full age.

Justification

The amendment seeks to reflect and respect the diversity of family relationships that exist in today's society.

Amendment 11 Recital 11 a (new)

(11a) Family reunification also applies to children of full age and to relatives in the ascending line where such persons have no other means of family support in the country of origin and are objectively unable to provide for their own needs on account of their state of health.

Justification

Exceptional circumstances where the applicant's relatives in the ascending line or children of full age are dependent on the applicant and are objectively unable to see to their own basic needs owing to poor health and the absence of any means of family support should also be adequately taken into account.

Amendment 12 Recital 12

(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.

(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 as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

Justification

Amendment 13

Recital 15

(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.

(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 ***establishing the minimum conditions for achieving*** those objectives and does not go beyond what is necessary for that purpose.

Justification

Linguistic clarity.

Amendment 14

Article 1, title

Article 1

Article 1

Purpose

Justification

This draft report suggests, in the form of amendments, a title for each of the articles contained in the legislative proposal.

These titles will enable the content of each article to be readily grasped, making the text easier to read and more accessible.

Amendment 15 Article 2, title

Article 2

Article 2

Definitions

Justification

See justification for Amendment 14, applied to Article 1.

Amendment 16 Article 2, point (b)

(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;

(b) "refugee" means any third-country national or stateless person enjoying refugee status ***by satisfying the criteria set out in Article 1A*** of the ***Geneva*** Convention on the Status of Refugees of 28 July 1951, as amended ***and supplemented*** by the Protocol signed in New York on 31 January 1967, ***and the criteria established in Chapters II and III of Council Directive .../.../EC on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection;***

Justification

Refugee status should only be granted to persons who satisfy the criteria laid down in Article 1A of the Geneva Convention on the Status of Refugees.

These criteria have also been established in the above-mentioned proposal for a directive, which forms part of the raft of measures adopted by the Tampere European Council in October 1999 with a view to establishing a common European asylum system.

Amendment 17

Article 3, title

Article 3

Article 3

Scope

Justification

See justification for Amendment 14, applied to Article 1.

Amendment 18

Article 3, paragraph 2, point (b)

(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;***

(b) a third-country national ***who applies for temporary protection and in respect of whose application a final decision has not yet been taken;***

Justification

The scope of the directive should include refugees and persons who enjoy a subsidiary form of protection, as provided for in the Commission proposal (COM(1999) 638) and as broadened by Parliament in its report.

Amendment 19
Article 3, paragraphs 4 and 5

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.

Article 3a

More favourable provisions

1. This Directive is without prejudice to more favourable provisions *contained in*:

- (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, *which came into force prior to the entry into force of this Directive*;
- (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.

2. This Directive shall not affect the possibility for the Member States to adopt or retain more favourable *legal, regulatory or administrative* provisions for persons to whom it applies, *provided that such provisions are compatible with it*.

Justification

Community legislation should be clear, straightforward and precise.

That is why paragraphs 4 and 5 of Article 3 should be grouped together in a new Article and under a succinct heading which avoids any possibility of an error with regard to their content. Paragraphs 4 and 5 of Article 3 should therefore become paragraphs 1 and 2 of the new article.

In the same way, given that the proposal for a directive lays down certain minimum common standards, it is important not to give the impression that these might prevent the Member States from implementing more favourable provisions in this area, as long as these provisions are compatible with the directive. At the same time, any more favourable standards contained in international legal instruments and agreements binding on the European Community and its Member States should also apply.

Amendment 20 Article 3 a (new)

Article 3a

1. This Directive shall not apply to pre-existing or recently introduced national rules which may contain provisions or criteria relating to family reunification which are more favourable than those laid down in this Directive.

2. Transposition of this Directive may not under any circumstances provide justification for reducing the level of protection which is already provided by the Member States as regards family reunification in the areas covered by this Directive.

Justification

It should be pointed out that the Directive lays down minimum standards and that the Member States are fully entitled to adopt more favourable rules on family reunification. Furthermore, the Directive is in line with the customary position relating to international human rights conventions, Article 63 of the EC Treaty and the practice adopted by the European Union in other sectors such as the environment, social issues and consumer protection. In the social field, however, a number of Member States take a broader view of integration, including in the area of family reunification. Since an EU Directive must not

cause the Member States to lower the level of protection they provide, the clause proposed in paragraph 2 serves to protect more favourable national provisions.

Amendment 21
Article 3 b (new)

Article 3b

Non-discrimination clause

Member States shall apply the provisions of this Directive without discrimination on the grounds of sex, race, nationality, membership of a particular social group, health, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

Justification

This article highlights the fact that the decision to grant family reunification should be free from any discrimination and that it is the duty of the Member States to ensure this principle is respected.

The wording is based on Article 3 of the Geneva Convention, Article 13 of the EC Treaty and Article 21 of the Charter of Fundamental Rights of the European Union, as well as Article 14 of the European Convention on Human Rights and Fundamental Freedoms.

Amendment 22
Article 4, paragraph 1, point (a)

(a) the applicant's spouse;

(a) the applicant's spouse, irrespective of sex, according to the relevant national legislation, or the applicant's registered partner, irrespective of sex, according to the relevant national legislation or the applicant's unmarried partner, irrespective of sex, with whom the applicant has a durable relationship, if the legislation or practice of the host Member State treats

unmarried couples in a corresponding manner to married couples and in accordance with the conditions laid down in any such legislation

Justification

The amendment seeks to reflect and respect the diversity of family relationships that exist in today's society.

The provision concerning unmarried couples is only applicable in those Member States where couples in this type of relationship have equivalent legal status to married couples. Consequently, this provision does not in any way entail a harmonisation of national laws concerning the recognition of unmarried couples, but simply facilitates the application of the principle of equality of treatment.

In order to avert potential abuses, unmarried partners should have to be in a long-term relationship.

Amendment 23 Article 4, paragraph 1, point (b)

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;

b) the minor children of the applicant and of his/her spouse or ***unmarried or registered partner as defined in point (a), or of the applicant and of his/her unmarried partner, without distinction as to whether they were born in or out of wedlock***, 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;

Justification

The amendment seeks to reflect and respect the diversity of family relationships that exist in today's society.

Allowing for the necessary changes, the justification for the previous amendment also applies to this amendment concerning the children of unmarried couples.

Amendment 24

Article 4, paragraph 1, point (c), first subparagraph

(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.

(c) the minor children including adopted children of the applicant or his/her spouse, ***and of the applicant or his/her unmarried partner, or of the unmarried or registered partner as defined in point (a)***, where one of them has custody and the children are dependent on him or her; ***in cases of joint custody the agreement of the other parent is required;***

Justification

The arguments in support of the first part of this amendment are the same as for the previous amendment.

The amendment also harmonises this facet of custodial law at Community level in order to avoid a situation where it would be possible for Member States to adopt contradictory legislative measures in such a sensitive area.

The amendment seeks to reflect and respect the diversity of family relationships that exist in today's society.

Amendment 25

Article 4, paragraph 1, point (c a) (new)

(c a) the first degree relatives in the direct ascending line of the applicant or his/her spouse, and of the applicant or his/her

unmarried partner where they are dependent on him/her and have no other means of family or other support in the country of origin.

Justification

The Member States should also authorise the entry of the parents of the applicant and his/her spouse, or of the applicant and his/her unmarried partner where these first degree relatives in the direct ascending line are objectively unable to see to their own needs and have no other means of support, be it from their family or from other people. The approach to such cases should be harmonised at Community level.

Amendment 26

Article 4, paragraph 1, point (c), third subparagraph

<i>(c) 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.</i>	<i>Deleted</i>
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Justification

This subparagraph provides for a significant derogation from the general principle, and one which could give rise to unjustifiable differences in the treatment applied to minors from one Member State to another. It should therefore be deleted.

Amendment 27

Article 4, paragraph 1, point (c b) (new)

(c b) the adult unmarried children of the applicant or his/her spouse, or of his/her

unmarried partner, where they are dependent on him/her and are objectively unable to provide for their own needs on account of their state of health.

Justification

It should also be possible for adult unmarried children to be the subject of family reunification when, objectively, they have serious health problems and are still dependent on their parents. The approach to such cases should be harmonised at Community level.

Amendment 28

Article 4, paragraph 2, introductory sentence

<i>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:</i>	<i>Deleted</i>
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Justification

The amendment is intended to avoid the possibility of the Member States adopting divergent legislative provisions in attempting to meet the same objective.

Amendment 29

Article 4, paragraph 2, point (a)

<i>(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;</i>	<i>Deleted</i>
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Justification

Same as for previous amendment.

Amendment 30
Article 4, paragraph 2, point (b)

(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. Deleted

Justification

Same as for previous amendment.

Amendment 31
Article 4, paragraph 3

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. Deleted

Justification

Same as for previous amendment.

Amendment 32
Article 4, paragraph 4

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.

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, ***unless the best interests of a minor child so dictate, in accordance with*** the provisions of the 1989 Convention on the Rights of the Child.

Justification

The prime consideration should always be that of the best interests of minor children.

Amendment 33
Article 4, paragraph 5

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.

5. Member States may require the applicant and his/her spouse ***or registered or unmarried partner in accordance with Article 4, paragraph 1(a)*** to be of a minimum age, and in any event the age of legal majority, before the spouse ***or registered or unmarried partner*** is able to join him/her.

Justification

The Danish and Swedish translations do not tally with the English text, for example, and in any event the applicant and his/her spouse or registered or unmarried partner should be the

age of legal majority in accordance with the relevant national legislation.

Amendment 34
Article 5, title

Article 5

Article 5

Administrative procedures

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 35
Article 5, paragraph 1

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.*****

1. In order to exercise **his/her** right to family reunification, **the applicant or the family member shall submit** an application for entry and residence to the competent authorities of the Member State **in which the applicant is resident.**

Justification

It is the applicant who submits an application for the reunification of the members of his family since he is, after all, the one entitled to do. Furthermore, the applicant, being already resident, will find it easier to cope with the administrative procedure, thanks to his knowledge of the country's language and the workings of its authorities. In many parts of the world the Member States' consular representatives are hundreds of miles away from the places in which the family members live and are often swamped by applications for visas issued by the Member States concerned. Family reunification can be unnecessarily impeded if responsibility for decision-making is shifted to the Member States' representatives abroad.

Amendment 36
Article 5, paragraph 2, second subparagraph

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.

In order to obtain evidence that a family relationship exists, Member States may carry out interviews with the applicant and his/her family members ***if he/she/they is/are already on their territory*** and conduct other investigations, ***including DNA tests***, that are found necessary.

Justification

A DNA test is one of the most reliable means of investigation.

Amendment 37
Article 5, paragraph 2, third subparagraph

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.

When examining an application concerning the unmarried partner of the applicant, Member States shall consider factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

Justification

Amendment 38
Article 5, paragraph 4

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***

4. ***After considering the application*** the competent authorities of the Member State shall give the applicant written notification of the decision, ***which must be taken within a maximum period of six months***. Reasons

date on which the application was lodged.

shall be given for **any** decision rejecting the application.

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.*

Justification

If the applicant is to enjoy legal certainty, his/her application must be dealt with within six months at most. Should that application be rejected, reasons must be given so as to enable the applicant to appeal against the decision.

A period of six months is more than sufficient time for the administrative authorities of the Member State concerned to adopt a decision in response to the application.

Amendment 39

Article 5, paragraph 4, second subparagraph

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.

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 **nine** months.

Justification

Same as for the previous amendment, allowing for the necessary changes.

Amendment 40
Article 6, title

Article 6

Article 6

Public order, domestic security and public health

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 41
Article 6, paragraph 1

Does not affect the English version.

Justification

Amendment 42
Article 6, paragraph 2

2. Member States may withdraw or refuse to renew ***a*** family member's residence permit on grounds of public policy or domestic security.

2. Member States may withdraw or refuse to renew ***one or more*** family members' residence permit on grounds of public policy or domestic security.

Justification

The situation regulated in the proposal for a directive is not confined to reunification with one single member of the family.

Amendment 43
Article 6, paragraph 3

3. The grounds of public policy or domestic security must be based exclusively on the personal conduct of the family member concerned.

3. The grounds of public policy or domestic security must be based exclusively on the personal conduct of the family member(s) concerned.

Justification

The addition is a preventive measure, even if there is no longer any dangerous or criminal conduct involved.

Amendment 44
Article 6, paragraph 4

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.

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 ground of illness or disability suffered after the issue of the residence permit.

Justification

Amendment 45
Article 7, title

Article 7

Article 7

***Requirements concerning
accommodation, sickness insurance and
material resources***

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 46
Article 8, title

Article 8

Article 8

Length of residence

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 47
Article 8, paragraph 1

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.

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

Justification

A period of two years is excessive and should be reduced to a maximum of one year, with the aim of facilitating as swift an integration as possible.

The waiting period must not exceed one year, otherwise the right to family reunification will in effect be meaningless. This measure should not be applied to refugees or to persons enjoying a subsidiary form of protection, who should be entitled to more favourable conditions than those applicable to the other categories of third-country national.

It is important to stress that the applicant should have stayed lawfully and for a continuous period in the Member State, as it states in the English translation but not in the Danish or other translations, but one year's lawful residence should be sufficient.

Amendment 48 Article 8, paragraph 2

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.

Deleted

Justification

This derogation should be deleted in order to avoid the Member States adopting or maintaining provisions which afford differing solutions to identical cases.

Amendment 49 Article 9, title

Article 9

Article 9

Scope

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 50
Article 10, title

Article 10

Article 10

Family members

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 51
Article 11, title

Article 11

Article 11

Submission and examination of the application

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 52
Article 12, title

Article 12

Article 12

Requirements concerning accommodation, sickness insurance, financial resources and length of residence

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 53
Article 13, title

Article 13

Article 13

General provisions concerning residence documents

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 54
Article 13, paragraph 1

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.

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, ***including transit visas.***

Justification

It is sometimes necessary to cross one or more Member States to get to another. In such cases a transit visa is necessary. The directive should provide for this.

Amendment 55
Article 14, title

Article 14

Article 14

Equal treatment

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 56
Article 15, title

Article 15

Article 15

Autonomous residence permit

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 57
Article 15, paragraph 1

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

1. At the latest after five years of residence, and provided the family relationship still exists, the spouse or – ***where the legislation of the Member State in question considers unmarried couples to have equivalent status to married couples***

applicant.

– unmarried **or registered** partner and **the** child **or children of the applicant or of the spouse, unmarried or registered partner as defined in Article 4, paragraph 1, point (a)** who has reached majority shall be entitled to an autonomous residence permit, independent of that of the applicant.

Justification

Same as for Amendment 22, applied to Article 4(1)(a).

The amendment seeks to reflect and respect the diversity of family relationships that exist in today's society.

Amendment 58 Article 15, paragraph 3

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.

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 **and have been resident for a minimum of one year**. Member States shall lay down provisions ensuring the granting of an independent residence permit in the event of particularly difficult circumstances.

Justification

The aim of the minimum period of residence requirement is to avert potential abuses.

Amendment 59
Article 16, title

Article 16

Article 16

***Refusal of entry and withdrawal or
refusal to renew a residence permit***

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 60
Article 16, paragraph 1, point (c)

(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.

(Does not affect English version.)

Justification

(Does not affect English version.)

Amendment 61
Article 16, paragraph 4

4. Member States may conduct ***specific***

4. Member States may conduct checks and

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.

inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. **Such** checks may also be undertaken on the occasion of the renewal of family members' residence permit.

Justification

The word 'specific' is infelicitous. If there are grounds for suspicion, checks should be carried out for that precise purpose. If there are no grounds for suspicion, no checks should be carried out in order to avoid harassing the persons concerned.

Amendment 62 Article 17, title

Article 17

Article 17

Appraisal of family relationships and length of residence

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 63 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.

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 ***for entry and residence for the purposes of family reunification***, withdraw or refuse to renew a residence permit or decide to order the removal of the applicant or members of his family.

Justification

Clarification of the text.

Amendment 64
Article 17 a (new)

Article 17a

Penalties

Member States shall lay down the rules applicable to infringements of the national provisions adopted pursuant to this Directive and shall adopt all the necessary measures to ensure that they are implemented.

The penalties provided for must be effective, proportionate and dissuasive.

Member States shall notify the Commission of the content of these measures by 31 December 2003 at the latest, and of any subsequent amendment to them immediately.

Justification

This article sets out a normal and necessary clause in Community law, laying down penalties in the event of infringement of the national provisions adopted pursuant to the Directive, and granting the Member States discretionary powers to decide them.

Amendment 65
Article 18, title

Article 18

Article 18

Guarantees concerning legal processes

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 66 Article 18, paragraph 1

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.

Any decision as a result of which an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered ***must be duly substantiated. The person concerned shall be notified of the decision in writing. This notification shall specify the appeal procedures available, and the time limits for lodging such appeals with the administrative and judicial authorities of the Member State in question.***

Justification

The basic principle of the rule of law in any country is that that country should be governed by and subject to its own legal norms, and consequently that any administrative or judicial decision affecting the subjective rights of individuals should be adopted in accordance with procedures over which both administrative and judicial control can be exercised.

Amendment 67 Article 18, title

Article 19

Article 19

Reports

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 68
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.

Every five years, 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. ***The Member States shall supply the Commission with all the information needed to draw up that report.***

Justification

The Member States should have to send all the relevant information on implementation of the directive to the Commission so that it can draw up a report on the subject.

Amendment 69
Article 19, title

Article 19

Article 19

Transposition into national legislation

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 70
Article 20, paragraph 1

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.

Member States shall bring into force the ***national*** laws, regulations and administrative provisions necessary to comply with this Directive not later than [31 December 2003]. They shall forthwith inform the Commission thereof, ***and also inform it immediately of any subsequent amendments thereto.***

Justification

The Commission, which is the impartial guarantor of correct implementation by the Member States of legislation passed by the Community institutions, must be kept permanently informed of the transposition of the Directive into national law and of any subsequent amendments to the relevant legislation.

Amendment 71
Article 21, title

Article 21

Article 21
Entry into force

Justification

Same as for Amendment 14, applied to Article 1.

Amendment 72
Article 22, title

Article 22

Article 22

Addressees

Justification

Same as for Amendment 14, applied to Article 1.

EXPLANATORY STATEMENT

INTRODUCTION

There is no doubt that the phenomenon of immigration is one of the major challenges facing modern societies in the twenty-first century.

We are witnessing a gigantic increase in cross-border migration and one which cannot be compared with population movements in other periods of history.

The European Union is home to twelve million legal immigrants from third countries.

In recent years, great political debate has been triggered and continues to centre on migrant workers, legal and illegal immigration, asylum seekers and subsidiary protection seekers and other categories of immigrants, and on those immigrants' families, who account for a significant part of overall immigration.

Everyone knows that for some years now entry and residence on the ground of family

reunification has represented the main avenue of legal immigration for third-country nationals in almost all the Member States and in the OECD countries.

This family immigration comprises not only family reunification in the strict sense of the term (reunification of family members with a third-country national already resident) but also the constitution of a family (when family bonds are established after the third-country national has entered a country).

The proportion of persons authorised to enter a country as ‘family members’ as a percentage of total immigration varies from 40% to 50%, with this figure being higher in some Member States like France and the United Kingdom, and in other third countries such as the United States and Canada.

Without playing down the scale of this facet of legal immigration, it is important to highlight the fundamental role that family reunification plays in the integration of third-country nationals legally resident in the European Union. Indeed, the presence of family members contributes to greater stability and better assimilation, by allowing these people to lead a normal family life.

The majority of family members granted entry by virtue of their right to family reunification have a major advantage in comparison to other types of immigrants, in that they have very close ties with one person, the applicant, already established in the host country. This enhances enormously their prospects for integration.

Likewise, the rights conferred on immigrants who are granted entry as family members are fundamental factors that will undoubtedly facilitate their integration in the host country.

II.- RIGHT TO FAMILY REUNIFICATION OF THIRD-COUNTRY NATIONALS LEGALLY RESIDENT IN THE EUROPEAN UNION

Legislation on family reunification should be governed by two principles, which should also apply to any legislation on immigration. These principles are those of ‘equality’ and ‘security’.

In the context of family reunification, ‘equality’ means two things:

(a) equal treatment, to the extent that this is possible, between the families of immigrants and the families of European citizens, as this will foster the equitable treatment of the racial, ethnic, religious and cultural minorities of which immigrants frequently form a large part;

(b) equal treatment for men and women, in accordance with the fundamental right of equality between the sexes enshrined in international human rights legislation and in the constitutions of the Member States.

The principle of ‘security’ is of similar importance, since the granting of resident status forms a vital part of any policy for integrating immigrants into the host society.

The rules on the family reunification of third-country nationals are already partially addressed in Community legislation. The provisions concerning the free movement of EU citizens within the European Community apply to members of their families, be they nationals of another Member State or of a third country. EU citizens exercising their right of free movement are entitled to be accompanied by their family, or to be united with it, whatever the nationality of any of its members.

However, Community legislation makes no provision for family reunification in cases where the applicants are third-country nationals, nor to that of refugees or other categories of immigrants. The reason for this is that there was a lack of a Community-level legal base prior to the entry into force of the Treaty of Amsterdam in May 1999, which introduced into the EC Treaty a new Title IV on visas, asylum, immigration and other policies related to free movement of persons.

The conditions under which third-country nationals legally resident in the Member States can exercise the right to family reunification are still regulated almost exclusively by national legislation, which varies greatly from one Member State to another.

Some Member States recognise the right to family reunification, and this principle is enshrined in their constitutions, while others allow for the possibility of discretionary family reunification on the basis of the category and legal status of the third-country nationals concerned.

In all cases, exercising of the right to family reunification is subject to certain conditions, such as respect for public order and safety, adequate accommodation and sufficient resources, or the establishing of a waiting period, the rules on which vary enormously from one Member State to the next.

It should also be emphasised that a great many of the rules concerning the right to family reunification, which in part transcend national legislation, derive from the international legal framework, the most important legal instruments of which are:

- The Universal Declaration of Human Rights;
- The 1996 international pacts on Civil and Political Rights and on Economic, Social and Cultural Rights;
- Convention No 143 of the International Labour Organisation;
- The International Convention on the Protection of the Rights of All Migrant Workers and their Families, adopted by the UN General Assembly in December 1990;
- The final act of the Conference adopting the Geneva Convention on the Status of Refugees of 28 July 1951;
- The Convention on the Rights of the Child of 20 November 1989;
- The European Convention on the Protection of Human Rights and Fundamental Freedoms, which is of prime importance since Article 8 thereof enshrines the right to respect for private and family life, and Article 12 enshrines the right to marry and to found a family;
- The European Social Charter;
- The European Convention of 1977 on the Legal Status of Migrant Workers.

The Charter of Fundamental Rights of the European Union, proclaimed in Nice on

7 December 2000, also recognises the right to respect for private and family life (Article 7) and the right to marry and to found a family (Article 9).

The extent to which each of these instruments is legally binding varies greatly since some Conventions have only been ratified by a few Member States, while others have not even entered into force owing to non-ratification.

Nevertheless, all of them recognise the right to family reunification and award prime consideration to the best interests of the child.

Of particular importance in this area is the case law of the European Court of Human Rights, which has not recognised an unrestricted right to the reunification of third-country nationals legally resident in a Member State and their family members. However, the case law of the Court restricts the discretionary exercising of powers by public authorities in the field of the control of entry into national territory and in cases of expulsion.

It was for this reason that the Tampere European Council of 15 and 16 October 1999 emphasised the need to guarantee fair treatment of third-country nationals legally resident in the Member States. In the same way, Point 18 of the Presidency Conclusions proclaimed that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens.

III. – AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE ON THE RIGHT TO FAMILY REUNIFICATION.

The Commission presented its first initiative on legal immigration on 1 December 1999, in the form of a proposal for a Council directive on the right to family reunification¹. After Parliament had adopted its opinion on 6 September 2002² the Commission presented an amended proposal on the right to family reunification³ on 10 October 2002, which met with serious difficulties when debated in the Council.

It was for this reason that Point 41 of the Presidency Conclusions of the Laeken European Council of 14 and 15 December 2001 invited the Commission to present an amended proposal with regard to family reunification⁴ before 30 April 2002. It is that proposal which forms the subject of this report.

Your rapporteur is aware of the difficulty of reaching an agreement on matters as sensitive as those relating to immigration, the specific approach to which and the rules governing which differ greatly from one Member State to another.

Your rapporteur nevertheless considers that the current proposal has been divested of its original ambition, that its scope has been reduced, and that instead of harmonising national legislation upwards it is harmonising it downwards, with a view to arriving at a lowest common denominator for the current laws governing this area in the various Member States.

¹ COM(1999) 638.

² Watson report (A5-020/2000)

³ COM(2000) 264.

⁴ COM(2002) 225.

Hence your rapporteur's proposals for amendments aimed at broadening the notion of 'family members' to include unmarried couples and adult unmarried children and relatives in the ascending line who enjoy no other form of support and are dependent on the applicant.

Other proposals for amendments relate to the introduction of a non-discrimination clause, guarantees with regard to legal process and provision for a system of penalties for infringing national implementing rules.

Lastly, your rapporteur proposes certain technical amendments giving each article a heading with a view to making the text of the legislative proposal more easily accessible.

28 January 2003

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the amended proposal for a Council directive on the right to family reunification
(COM(2002) 225 – C5-0220/2002 – 1999/0258(CNS))

Draftsman: Maria Berger

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Maria Berger draftsman at its meeting of 20 June 2002.

It considered the draft opinion at its meetings of 23 and 28 January 2003.

At the latter meeting it adopted the following amendments unopposed by 27 votes, with 1 abstention.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley, Ioannis Koukiadis, Bill Miller, vice-chairmen; Maria Berger, draftsman; Ward Beysen, Philip Charles Bradbourn (for Paolo Bartolozzi), Bert Doorn, Enrico Ferri (for Anne-Marie Schaffner), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Heidi Anneli Hautala, Piia-Noora Kauppi (for Rainer Wieland), Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Marcelino Oreja Arburúa (for The Lord Inglewood), Diemut R. Theato, Marianne L.P. Thyssen, Joachim Wuermeling and Stefano Zappalà.

SHORT JUSTIFICATION

The comments made by the Legal Affairs Committee in its opinion adopted in July 2000 also apply to this second initiative on harmonisation in the area of family reunification. One of the three amendments tabled on that occasion (relating to Article 7(1)(a)) was, we are pleased to note, accepted by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and adopted by Parliament in plenary, and has been incorporated into the Commission's current proposal (COM(2002) 225).

That is not the case with the other two amendments tabled (relating to the current Article 7(2) and Article 16(4)). They remain valid, however, as the legal ambiguity which was criticised on the previous occasion has not been addressed in the new proposal. Your draftsman therefore proposes that these amendments be retabled.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Article 6, paragraph 3

3. The grounds of public policy or domestic security must be based exclusively on the personal conduct of the family member concerned.

Deleted

Justification

Consistency with Member States' legislation on public policy and security.

Amendment 2 Article 7, paragraph 2

2. The Member States may set the conditions relating to accommodation,

2. The Member States may set the conditions relating to accommodation,

¹ OJ C xxx

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.***

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.

Justification

On closer examination, the second sentence of paragraph 2 leads to additional difficulties of interpretation. In particular, it leads to ambiguity as to the ‘drift’ of the protection which it suggests providing.

Amendment 3 Article 12, paragraph 3 (new)

3. By way of derogation from Article 15, in cases of reunification of families of refugees, family members’ right of residence shall be dependent on the refugee’s right of residence.

Justification

This amendment to the Commission proposal is necessary in order to avoid a situation in which the refugee loses his right of residence and is asked to return to his native country when the reason for seeking refuge ceases to apply or, for example, as a result of an end to civil war in his native country, whilst the members of his family independently have the right of residence on the basis of Article 15. The ultimate effect would be to lead, via the right to family reunification, to a right of residence for refugees.

Amendment 4 Article 16, paragraph 4

4. Member States may conduct ***specific*** checks and inspections where there is

4. Member States may conduct checks and inspections where there is reason to suspect

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.

that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. **Such** checks may also be undertaken on the occasion of the renewal of family members' residence permit.

Justification

The word 'specific' is infelicitous. If there are grounds for suspicion, checks should be carried out for that precise purpose. If there are no grounds for suspicion, no checks should be carried out in order to avoid harassing the persons concerned.