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REPORT

on the proposal for a Council directive on the right to family reunification
(COM(1999)638 – C5-0077/2000 – 1999/0258(CNS))

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

Rapporteur: Graham R. Watson

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)

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PROCEDURAL PAGE

By letter of 11 February 2000 the Council consulted Parliament, pursuant to Article 63(1)(c) of the EC Treaty, on the proposal for a Council directive on the right to family reunification (COM(1999)638 - 1999/0258 (CNS)).

At the sitting of 18 February 2000 the President of Parliament announced that she had referred this 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 (C5-0077/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Ewa Klamt rapporteur at its meeting of 17 January 2000.

The committee considered the Commission proposal and the draft report at its meetings of 22 March 2000, 22 May 2000, 5 June 2000 and 13 July 2000.

At the last meeting it adopted the draft legislative resolution by 25 votes to 13. But following the vote on the amendments, the rapporteur requested that her name be removed from the final report. The committee therefore decided to submit the report in the name of the chairman, Graham R. Watson.

The following were present for the vote: Graham R. Watson, chairman and rapporteur; Niall Andrews, Mary Elizabeth Banotti, Maria Berger (for Olivier Duhamel), Alima Boumediene-Thiery, Kathalijne Maria Buitenweg (for Patsy Sörensen), Rocco Buttiglione, Marco Cappato, Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Marcello Dell'Utri, Gérard M.J. Deprez, Anne Ferreira (for Jillian Evans, pursuant to Rule 153(2) of the Rules of Procedure), Michael Gahler (for Christian von Boetticher, pursuant to Rule 153(2) of the Rules of Procedure), Adeline Hazan (for Gerhard Schmid), Jorge Salvador Hernández Mollar, Karin Jöns (for Elena Ornella Paciotti, pursuant to Rule 153(2) of the Rules of Procedure), Anna Karamanou, Sylvia-Yvonne Kaufmann (for Giuseppe Di Lello Finuoli), Ewa Klamt, Margot Keßler, Timothy Kirkhope, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, William Francis Newton Dunn (for Enrico Ferri), Raimon Obiols i Germa (for Michael Cashman, pursuant to Rule 153(2) of the Rules of Procedure), Arie M. Oostlander (for Bernd Posselt), Hubert Pirker, Martine Roure (for Joke Swiebel), Ingo Schmitt (for Hartmut Nassauer), Martin Schulz, Sérgio Sousa Pinto, Fodé Sylla, Charles Tannock (for Thierry Cornillet, pursuant to Rule 153(2) of the Rules of Procedure), Anna Terrón i Cusí, Anne E.M. Van Lancker (for Gianni Vattimo) and Jan-Kees Wiebenga.

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

The report was tabled on 17 July 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a Council directive on the right to family reunification (COM(1999)638 – C5-0077/2000 – 1999/0258(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1)
Recital - 1 (new)

- 1. Immigration policy comes within the range of policies in respect of which the Council, both through flanking measures related to the free movement of persons and autonomous measures, adopts legislative instruments aimed at progressively establishing an area of freedom, security and justice throughout the territory of the Member States (Article 61(a) and (b) of the EC Treaty);

Justification:

Although the Commission proposal only deals with one aspect of the immigration issue, it is appropriate to place the initiative in the context of what is one of the main political objectives set out in the Amsterdam Treaty.

(Amendment 2)
Recital 1

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 specifically refers to entry and residence** for the purpose of family reunion.

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 reunion.

¹ OJ C 116, 26.4.2000, p. 66.

Justification:

The text proposed by the Commission does not accurately reflect the text of the Treaty. Furthermore, it is important to point out what other areas of legislation are related to family reunification.

(Amendment 3)

Recital 3

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.

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. ***The data and information necessary for the common evaluation, and for the adoption of the decisions referred to must be subsequently made available to the Commission.***

Justification:

The addition clears up an ambiguity: the inadequacy and lack of comparability of the data made available by the Member States have significant implications for the Commission's work on initiating legislation.

(Amendment 4)

Recital 6

Family reunification is a necessary way of making family life possible. It helps to create ***a socio-cultural environment facilitating the integration*** of third-country nationals in the Member State, which also

Family reunification is a necessary way of making family life possible. It helps to create socio-cultural ***stability which, with due respect for the cultures and traditions*** of third-country nationals, ***facilitates the***

serves to promote economic and social cohesion, a fundamental Community objective stated in Article 2 and Article 3(1)(k) of the EC Treaty.

integration of those nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in Article 2 and Article 3(1)(k) of the EC Treaty.

Justification:

These terminological changes make the Commission's text more precise and thorough. Integration should not lead to a kind of assimilation of third-country citizens nor to the destruction of their national identity.

(Amendment 5)
Recital 11

Family reunification should also apply to children of full age *and to relatives in the ascending line* where, in view of their personal situation, there are important objective reasons for *not separating them from* the third-country national residing lawfully in a Member State.

Family reunification should also apply to children of full age (*seven words deleted*) where, in view of their personal situation, there are important objective reasons (*five words deleted*) for *them being unable to live in acceptable conditions and self-sufficiently separately from their relative*, a third-country national residing lawfully in a Member State.

Justification:

The proposed amendment is aimed at bring the text closer into line with actual situations which occur.

(Amendment 6)
Recital 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 fair* and offer proper *protection* to those concerned.

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 *possible to manage efficiently and transparent taking account of the normal average workload of the Member States' administrations* and

offer proper *legal certainty* to those concerned.

Justification:

It is important to take account of the administrative burden in the Member States. The concept of legal certainty seems more appropriate than that of 'protection'. The details of the procedures must be public knowledge and applicants must have access to all the information under consideration in their particular case.

(Amendment 7)
Recital 13

The integration of family members should be promoted. To that end, they should **be** granted a status independent of that of the applicant after a period of residence in the Member State. They should have access to education, employment and vocational training.

The integration of family members should be promoted. To that end, **they should have the opportunity of being** granted a status independent of that of the applicant after a period of residence in the Member State. They should have **the possibility of** access to education, employment and vocational training.

Justification:

The proposed formulation seems more appropriate for a draft directive.

(Amendment 8)
Recital 14

Effective, proportionate and dissuasive measures should be taken to **avoid** and penalise breaches of the rules and procedures relating to family reunification.

Effective, proportionate and dissuasive measures should be taken to **prevent** and penalise breaches of the rules and procedures relating to family reunification.

Justification:

The verb 'prevent' is more appropriate.

(Amendment 9)
Article 3a (new)

- 1. Notwithstanding this directive Member States may maintain or introduce more favourable arrangements or rules under national law for family reunification and the integration of families.**
- 2. The implementation of this directive may in no circumstances be used to justify lowering the level of protection already guaranteed by the Member States in regard to family reunification in the areas covered by the directive.**

Justification:

It is important to stress that the directive is designed to lay down minimum standards. The amendment recognises the Member State's right to offer better conditions than those set out in the proposed directive. The amendment is also in line with the customary position in international conventions on human rights, Article 63 of the EC Treaty and EU practice in other areas, such as the environment and social and consumer issues.

The Commission defines the objective in recital 15 as follows: 'This directive confines itself to the minimum required to achieve those objectives' and in several respects leaves the arrangements for family reunification to the Member States. However, several Member States have more extensive social integration measures in place for integration and family reunification in particular. As a European directive must not involve a lowering of the level of protection achieved in the various Member States, the proposed text in paragraph 2 safeguards more favourable national provisions.

(Amendment 10)
Article 7(1)

1. In order to exercise his right to family reunification, the applicant shall submit an application for entry and residence of **a member** of his family to the competent authorities of the Member State where he resides. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 5, 8 and, where applicable, 9 and 10. The application shall be submitted when the family member is outside the territory of the Member State.

1. In order to exercise his right to family reunification, the applicant shall submit an application for entry and residence **of one or more members** of his family to the competent authorities of the Member State where he resides. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 5, 8 and, where applicable, 9 and 10. The application shall be submitted when the family member is outside the territory of the Member State.

Justification:

The situations dealt with by the draft directive are not restricted (Article 5) to reunification involving a single family member.

(Amendment 11)
Article 8(1) and (2)

1. The Member States may refuse to allow the entry and residence of a family member on grounds of public policy, domestic security or public health.

1. The Member States may refuse to allow the entry and residence of **one or more** family members on grounds of public policy, domestic security or public health. ***Any decision so to do must be well-argued and must be accompanied by a highly detailed justification.***

Justification:

The situations governed by the proposed directive are not restricted (Article 5) to reunification involving only one family member.

A Member State cannot ‘justify’ its decision to deny entry simply by saying ‘application rejected on public order grounds’. Applicants must understand why an application has been rejected so that they do not submit further applications if these cannot be accepted or, on the other hand, so that they can supply further information in support of their application.

(Amendment 12)
Article 9(1)(a)

(a) **adequate** accommodation, that is to say accommodation that would be regarded as **normal** for a comparable family living in the same region of the Member State concerned;

(a) accommodation, that is to say accommodation that would be regarded as **adequate** for a comparable family living in the same region of the Member State concerned;
The suitability of the accommodation shall be assessed on the basis of objective, measurable criteria;

Justification:

The purpose of this amendment is to clarify terms in the interests of greater objectivity with a view to subsequent development of this directive.

(Amendment 13)
Article 9(1), last sentence

Where the first subparagraph cannot be applied, resources shall be **deemed sufficient if they are** equal to or higher than the level of the minimum social security pension paid by the Member State.

Where the first subparagraph cannot be applied, resources shall be **(five words deleted)** higher than or **at least** equal to the level of the minimum social security pension paid by the Member State.

Justification:

Since it is not possible to define precisely what constitute 'sufficient' resources, it is preferable to delete the reference and only use measurable criteria.

(Amendment 14)
Article 9(2)

2. The conditions relating to accommodation, sickness insurance and resources provided for by paragraph 1 may be set by the Member States only 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.

2. The conditions ***and evidence*** relating to accommodation, sickness insurance and resources provided for by paragraph 1 may be set by the Member States only 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.

Rest deleted

Justification:

The reference to evidence makes the text proposed by the Commission more precise in relation to procedural requirements.

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

(Amendment 15)
Article 11(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. The Member States shall grant such person every facility for obtaining the requisite visas, including transit visas where required. Such visas shall be issued without charge.

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***. The Member States shall grant such person every facility for obtaining the requisite visas, including transit visas where required. Such visas shall be issued without charge.

Justification:

The situations governed by the draft directive are not restricted (Article 5) to reunification involving only one family member.

(Amendment 16)

Article 12(2)

2. Points (b) and (c) of paragraph 1 shall not apply to relatives in the ascending line or to children of full age to whom Article 5(1)(d) and (e) applies. (Deleted)

Justification:

As concerns the offspring of the head of the family who have reached majority and suffering from serious health problems, as well as relatives in the ascending line, who clearly constitute a material and social burden on the applicant's family, it would be preferable not to deny them the opportunity of access to professional training and possibly work. Involvement in training or guidance courses or work would be important factor in encouraging integration.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council directive on the right to family reunification (COM(1999)638 – C5-0077/2000 – 1999/0258(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(1999)638²),
 - having regard to Article 63 of the EC Treaty,
 - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0077/2000),
 - 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 (A5-0201/2000),
1. Approves the 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. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

² OJ C 116, 26.4.2000, p. 66.

18 April 2000

**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 proposal for a Council directive on the right to family reunification
(COM(1999)638 – C5-0077/2000 – 1999/0258(CNS))

Draftsman: Maria Berger

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Maria Berger draftsman at its meeting of 29 February 2000.

It considered the draft opinion at its meetings of 27 March and 17 April 2000.

At the latter meeting it adopted the amendments below by 10 votes to 0, with 11 abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Rainer Wieland and Ward Beysen, vice-chairmen; Maria Berger, draftsman; Luis Berenguer Fuster, Charlotte Cederschiöld, Willy C.E.H. De Clercq, Raina A. Mercedes Echerer, Francesco Fiori (for Antonio Tajani pursuant to Rule 153(2)), Janelly Fourtou, Gerhard Hager, Heidi Anneli Hautala, The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Donald Neil MacCormick, Hans-Peter Mayer, Manuel Medina Ortega, Bill Miller, Gary Titley and Diana Paulette Wallis.

Short justification

Article 63 of the EC Treaty *empowers* the Council, within a period of five years after the entry into force of the Treaty of Amsterdam, to adopt certain measures on immigration policy, including family reunion (Article 63(3)(a) of the EC Treaty). For this reason the Commission submitted the proposal under consideration on 1.12.1999.

We welcome the proposal and regard it as on the whole *positive*, since there is a real need for harmonisation in the area of family reunion which can best be fulfilled by the adoption of a directive (leaving the Member States a degree of latitude with regard to arrangements).

The effects of implementing the proposal may vary from one Member State to another. We should recall in this respect that the number of third-country nationals in the various Member States is as follows: L 16 290, FIN 65 673, GR 116 128, P 129 214, DK 198 404, B 341 074, SW 345 234, ES 349 214, NL 487 960, A 647 540, I 751 043, UK 1 321 400, F c. 2 300 000, D 5 515 801.³ When evaluating these figures it is necessary to take into account the fact that the law on citizenship varies from one country to another.

For many Member States, the introduction of the proposed system will in some cases have far-reaching effects on the arrangements previously in force. The proposed system, which is based on objective criteria, will for example mean the abolition of quotas and target figures.

³ Source: Eurostat, Luxembourg. Figures are for 1998, however, in the case of GR, I and the UK the 1997 figures were used and in the case of France the statistics given in the 1997 Fischer Weltalmanach. In the case of Ireland there are no figures with regard to third-country nationals but the total number of foreigners is 117 000.

The aim of the three amendments proposed by the draftsman is to remove certain ambiguities in the drafting of the text. Those amendments are justified separately.

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 Commission

Amendments by Parliament

(Amendment 1)
Article 9(1)(a)

(a) *adequate* accommodation, *that is to say accommodation* that would be regarded as *normal* for a comparable family living in the same region of the Member State concerned;

(a) accommodation that would be regarded as *adequate* for a comparable family living in the same region of the Member State concerned;

(Amendment 2)
Article 9(2)

The conditions relating to accommodation, sickness insurance and resources provided for by paragraph 1 may be set by the Member States only 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.*

The conditions relating to accommodation, sickness insurance and resources provided for by paragraph 1 may be set by the Member States only 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, paragraph 2 leads to ambiguity as to the 'drift' of the protection which it suggests providing.

(Amendment 3)
Article 14(2)

Member States shall undertake *specific* checks where there are grounds for suspicion.

Member States shall undertake checks where there are grounds for suspicion.

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.