

RELEX - 005

Brussels, 18 December 2002

OPINION

of the

Committee of the Regions

of 20 November 2002

on the

Amended Proposal for a Council Directive on the Right to Family Reunification

COM(2002) 225 final – 1999/0258 (CNS)

The Committee of the Regions

HAVING REGARD TO the Amended Proposal for a Council Directive on the right to family reunification (COM(2002) 225 final – 1999/0258 (CNS));

HAVING REGARD TO the decision of the Council of 23 May 2002 to consult the Committee of the Regions on this matter, under the first paragraph of Article 265 of the Treaty establishing the European Community;

HAVING REGARD TO the decision of its Bureau on 12 March 2002 to instruct Commission for External Relations to draw up the relevant opinion;

HAVING REGARD TO the meeting of the European Council at its special meeting at Tampere on 15 and 16 October 1999, which acknowledged the need for harmonisation of national legislation on the conditions for the admission and residence of third country nationals, to be based on a common evaluation both of economic and demographic trends within the Union and the situation in the countries of origin;

HAVING REGARD TO the European Council at its special meeting at Tampere on 15 and 16 October 1999 stating that the European Union should ensure fair treatment of third country nationals lawfully residing on the territory of Member States, and that a more vigorous integration policy should aim at granting them rights and obligations comparable with those of citizens of the

European Union;

HAVING REGARD TO the Council of Europe report in July 2000 on Diversity and Cohesion: new challenges for the integration of immigrants and minorities;

HAVING REGARD TO the decision of the Laeken European Council on 14 and 15 December 2001 to confirm that a genuine policy on immigration implies the establishment of common standards on procedures for family reunification;

HAVING REGARD TO the opinion of the Committee of the Regions on Immigration Policy and Asylum Policy (CdR 93/2002 fin)¹ adopted on 16 May 2002;

HAVING REGARD TO the reference by the European Council at its meeting in Seville on 21 and 22 June 2002 to the need to develop a European Union common policy on immigration and to the integration of immigrants lawfully present in the Union: and the decision by the Council to adopt provisions on the status of long-term permanent residents by June 2003;

HAVING REGARD TO the opinion of the European Economic and Social Committee on the Amended Proposal for a Council Directive on the right to family reunification (CES 857/2002);

HAVING REGARD TO the draft opinion (CdR 243/2002 rev. 1) adopted on 26 September 2002 by the Commission for External Relations (Rapporteur: **Ms Ruth Coleman**, Executive Member of North Wiltshire District Council (UK/ELDR));

WHEREAS fair, common rules on family reunification will contribute to the successful integration of third country nationals and their families in the receiving society and into the labour market;

WHEREAS in many of the Member States, there is a serious shortage of skilled workers, particularly in the health, IT and education sectors, which has a damaging effect on the competitiveness of the European Union: a common policy which meets the need for integration and family reunification of migrant workers will help to attract appropriately qualified third country nationals to work in the European Union;

WHEREAS differential cultural ties, historical and geographical factors have led to a diversity of policies and procedures in different Member States for dealing with applications for family members to join third country nationals for the purpose of family reunification;

WHEREAS in order to achieve appropriate certainty both for applicants and for Member States, there needs to be a common Union-wide policy on family reunification that protects the family and preserves family life;

WHEREAS the imminence of the enlargement of the European Union gives added urgency to the need to achieve a common Union-wide policy on family reunification;

WHEREAS local and regional authorities have an important role in integrating third country nationals and their families into civil society and into the labour market within the European Union;

adopted the following opinion at its 47th plenary session, held on 20/21 November 2002 (meeting of 20 November):

1. The views of the Committee of the Regions

The Committee of the Regions

1. **welcomes** the proposal that a set of rules governing the procedure for examination of applications for family reunification should be effective and manageable, taking into account the normal workload of the Member States administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned;
2. **is concerned that** the revised proposal indicates a move away from a rights based approach to family reunification to a procedural approach and deplores the fact that the original objective to "set the right to family reunification", as formulated in the initial proposal of the Commission in 1999, has been diluted to set a minimum common base of "conditions in which the right to family reunification is exercised". Special treatment for exceptional cases should be taken into account;
3. **welcomes** the proposals in Article 3(6) that this Directive may not have the effect of introducing less favourable conditions than those which already exist in each Member State;
4. **is concerned** that, in Article 4, admission of family members is only mandatory in respect of traditional or nuclear families (applicant's spouse and minor children including adopted children). Different rules would apply as between the various Member States on how other family members would be treated, leading to confusion and possible litigation;
5. **is concerned**, in particular, about the likely different treatment of unmarried partners, illegitimate children and adult dependants of the applicant in different Member States: and that this different treatment may lead to appeals under the Convention on Human Rights, regarding respect for family life;
6. **notes** that, in Articles 4(3) and 5(2) of the proposed Directive, Member States may authorise the entry and residence of unmarried partners in a stable long-term relationship or a registered partnership with the applicant. It further notes that in many countries outside the European Union there is no provision for registered partnerships, either for a man and woman or for same-sex partners. It **is concerned** that the Directive is silent as to the rights of same-sex partners in a stable long-term relationship, or of the rights of the children of such partnerships;
7. **welcomes** the greater flexibility whereby Member States will have discretion to accept applications submitted either when the family is outside their territory or already in their territory;
8. **welcomes** the harmonisation of the time limits for determination of an application laid down in Article 5(4), but **is concerned** that the consequences of no decision being taken by the end of the time limit shall be determined by National Legislation and that in some cases this could lead to rejection by means of administrative delay. The Committee further **notes** that this is likely to lead to different outcomes on similar cases in different Member States and the possibility of litigation in the European Court of Justice;
9. **is concerned** that, apart from the emergency procedures in Article 15 which Member States may choose to adopt, the proposed directive is silent on the status of family members following divorce, separation from or death of the applicant;
10. **is concerned** that the proposed Directive is silent on the question of the cost of visas

for family members of third country nationals;

11. **notes** that third country nationals with the right of long-term residence in one Member State may successfully apply to bring their families to join them. It **is concerned** that if they then exercise their right to seek employment in another Member State (COM (2001) 127 final) their families may not be allowed to follow them due to differing rules on family reunification as between Member States. This treatment may be contrary to the obligation to protect the family and respect family life that the proposed Directive seeks to foster;
12. **is concerned** that the UK, Denmark and Ireland have exercised their rights under the respective Protocols for these Member States to opt out of participation in the proposed Directive. It is concerned that:
 - a. these Member States, with their different history and experiences, will have no input into the common rules on the right to family reunification, and
 - b. if they choose to adhere to the Directive at a later date, the common rules eventually adopted by the EU may well not meet their needs;
13. **notes** that, under the Dublin Convention, applicants face a limited choice when seeking admission to the European Union, either to a Member State with which they have a previous connection, such as a family member who is already resident, or to the country in which they first arrive. It **believes** therefore that it is vitally important that a common system on family reunification applies across the European Union;
14. **is greatly concerned** that the lack of a common system of rules for family reunification will lead to many potential problems when enlargement of the European Union takes place. If there is no common set of rules, there will be an even greater diversity of systems for family reunification which vary from Member State to Member State. The Committee **therefore welcomes** the proposal in Article 20 of the Directive for Member States to bring the necessary laws, regulations and procedures into force no later than 31 December 2003;
15. **considers** that, in respect to assisting the reunification of families, many local and regional authorities (together with other partners) are prompted to provide a certain number of services, such as:
 - a. specialist services which may be required outside the norm of provision to many EU Member State nationals e.g. provision of information in a relevant language, particular medical or psychological care,
 - b. services connected with the integration of new residents into civil society and the workplace,

- c. routine services e.g. housing or education; however, the cost of providing these services will fall disproportionately on certain local and regional authorities;
16. **underlines** the belief that family reunification contributes to socio-cultural stability and facilitates the integration of non-Member State nationals in Member States. However, social integration cannot exist without equitable access to education, employment and vocational training;
 17. **believes** that if different rules apply in different Member States, this will lead to confusion as to the potential outcome of any particular application and to potential litigation based on human rights or on the rights of children. It **further believes** that such confusion will lead to delay in the determination of applications and appeals and that local and regional authorities may be required to provide support services to applicants over a lengthy period.
2. **The Committee of the Regions' recommendations**

The Committee:

1. **supports** the introduction of a common system of rules regarding the reunification of families of third country nationals lawfully resident within the territory of the Member States, which is consistent, transparent and fair in order to offer appropriate certainty of outcome both to applicants and to Member States;
2. **recommends** that the mandatory definition of the family should be extended to include unmarried partners in an established partnership, illegitimate children and adult dependants of the applicant;
3. **recommends** that the rights of unmarried partners in established relationships or registered partnerships to family reunification should be extended to include the rights of same-sex partners in such a relationship and to the children of such relationships;
4. **recommends** that the right of family members to remain within the EU following a divorce, separation from or death of the applicant should be included in the Directive;
5. **recommends** aligning the right of access to education, employment and vocational training on that of European citizens;
6. **recommends** that failure by a Member State to make a decision on an application within the time limits laid down in the Directive should mean that the application is accepted;
7. **urges** Member States to reconsider the possibility of issuing visas free of charge to family members of third country nationals seeking family reunification;
8. **recommends** that a family that has been admitted to a Member State to join a third country national for the purpose of family reunification should have the right to accompany the third country national to another Member State in which he/she obtains employment, even if, at that time, the family members have not achieved autonomous residence permits;
9. **recommends** to the Commission that it consider a more comprehensive set of

common rules on family reunification before enlargement of the European Union takes place, which will also be adopted by the new Member States;

10. **recommends** that Member States should provide appropriate and sufficient resources for local and regional authorities (and partner organisations) to provide the necessary support services to assist reunification of families of third country nationals lawfully resident in the territories of the Member States.
11. **urges** the Commission to consider the social aspects of family reunification alongside the humanitarian aspects, in particular access to the labour market which would reduce the possibility of dependency on local and regional governments.

Brussels, 20 November 2002.

The President

The Secretary-General

of the

of the

Committee of the Regions

Committee of the Regions

Albert Bore

Vincenzo Falcone

¹ OJ C 278 of 14.11.2002, p. 44

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CdR 243/2002 fin FR/ET/ht

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