



**COUNCIL OF
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NOTE

from:	European Council on Refugees and Exiles (ECRE)
to :	Migration and Expulsion Working Party
Subject :	European Commission proposal for a Council Directive on the Right to Family Reunification

Delegations will find herewith comments from the European Council on Refugees and Exiles (ECRE) on the above mentioned subject.



**COMMENTS
FROM THE EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE)
ON THE
EUROPEAN COMMISSION PROPOSAL FOR A
COUNCIL DIRECTIVE
ON THE RIGHT TO FAMILY REUNIFICATION¹**

Introduction

This paper aims to provide input to the discussion, launched by the European Commission's Proposal for a Council Directive on the right to family reunification which is currently taking place in the Council and the European Parliament. The paper's structure follows that of the Commission's Proposal.

The following observations do not address all the issues that are raised by the Commission. Instead, they focus on those issues which are of most concern to ECRE. For further information we refer to ECRE's comprehensive position on family reunification of refugees². This Position provides detailed recommendations on the right to family life, family unity during the asylum procedure, the family reunion procedure, priority cases, documentary evidence of family ties, the length of the family reunification procedure, the legal status and rights of family members and the role of NGOs.

Scope of the proposal

ECRE fully supports the view of the Commission that family reunification is a necessary way of making family life possible and facilitating the integration of third country nationals in a Member State. It further welcomes the special attention paid to the situation of refugees and persons enjoying complementary protection and the broad definition of the family unit used in the proposal. It finally commends the Commission's initiative to exempt refugees and people with complementary protection from satisfying housing or income requirements as a precondition for reuniting with family members.

¹ "European Commission Proposal for a Council Directive on the Right to Family Reunification" Brussels, 1.12.1999 COM(1999) 638 final, 1999/0258 (CNS)

² Position by the European Council on Refugees and Exiles on Refugee Family Reunification (May 2000).

ECRE believes that in order for the Directive to provide the framework for the effective exercise of the right to family reunification on the basis of common criteria, there is a need to explicitly state the intention of establishing a set of ***minimum standards*** for family reunification. The right of Member States to introduce or maintain more favourable provisions and practices in their national legislation should also be clearly set out.

Article 3,1

ECRE notes with concern that the proposed Directive does not automatically apply to persons enjoying complementary protection. People falling under this category will need to hold a residence permit for a period of at least one year in order to be eligible for family reunification. ECRE is of the opinion that this provision is contrary to the spirit of the Commission Proposal in its intention to provide for specific treatment for refugees and persons enjoying complementary protection in view of their specific circumstances. This is clearly reflected in provisions with regard to the reunification of dependent family members (Article 5,4), submission and examination of applications (Article 7,4) and practical conditions for the exercise of the right to family reunification (Article 9,3 & Article 10,2).

ECRE recommends that people with a complementary protection status should be listed together with Convention refugees among the categories of people to whom Article 3 applies irrespectively of the duration of their residence permit.

Article 3, 2, (a), (b)

ECRE agrees with the European Commission that the Directive should not apply to third country nationals whose application for recognition of refugee status has not yet given rise to a final decision. It would argue however that the principle of ***family unity*** need to apply to members of the same family who are forced to seek asylum in different countries. EU Member States should facilitate the reunification of such people whilst awaiting the outcome of their asylum applications. Reunification would not only make good sense from a humanitarian perspective. It would also lead to greater efficiency in decision making.

Within this context, ECRE proposes that a link be established between the proposed Directive on family reunification and forthcoming Community legislation for determining which Member State is responsible for considering an asylum application with the purpose of ensuring that there is consistency between these two instruments.

Similarly, it also recommends that a link be established between the proposed Directive on family reunification and the forthcoming Commission Proposal on the temporary protection of displaced persons with the purpose of ensuring consistency.

Article 3, 4

ECRE considers of paramount importance that the right of EU Member States to maintain and introduce more favourable family reunification provisions in their national legislation be explicitly set out in the forthcoming Directive.

Article 5, 4

ECRE fully agrees with the Commission proposal extending the definition of family members beyond the nuclear family. It would argue however that in order to safeguard the right to family life of refugees and people with complementary protection, consideration should be given to differences in the definition of "family" which, in some cultures, might include members of a household with whom there might not be a blood relationship. **In all cases, dependence should be seen in both material, including financial, and emotional terms.**

ECRE proposes that the right to family reunification be extended to the fiancé(e) of a Convention refugee or person granted subsidiary protection in the case where the relationship predates the flight of the principal applicant from his/her country of origin.

Article 6

ECRE particularly welcomes the provisions made for unaccompanied minors who are refugees. **It would urge the European Union to apply the same provisions to unaccompanied minors who have been granted a complementary form of protection.**

As per the comments on Article 5,4 ECRE proposes that the European Union considers differences in the definition of "family" which might include members of a household with whom there might not be a blood relationship. It recommends that in all cases, the "best interests of the child" should be of paramount concern.

Article 8

ECRE is in agreement with UNHCR's view¹ that reasons of public health should not be invoked to deny refugees the right to family reunification. The same exception should also apply in the case of people with complementary protection.

¹ *UNHCR's Comments to the Commission Proposal for a Council Directive on the Right to Family Reunification*, March 2000

Article 12, 2

The Commission proposes that those admitted to Member States as dependent relatives are prohibited from accessing employment or vocational guidance and training. ECRE affirms that lack of access to vocational training and the labour market seriously hinders integration in the host society and therefore conflicts with the Tampere Council's Conclusion stating that *“the European Union must ensure the fair treatment of third country nationals”* and that *“a more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens.”*¹ **ECRE therefore believes that all family members of Convention refugees or persons granted complementary protection should have access to the same socio-economic and other rights as the principal applicant.** These would include independent access to the labour market, education, housing, social welfare benefits, travel documents and integration services upon arrival.

Article 13

The Commission Proposal provides for an autonomous residence permit to be granted to family members at the latest after four years of residence. Here, ECRE would wish to draw a distinction between family members of Convention refugees and people granted complementary protection. It believes that in the event of divorce, separation or death, family members of Convention refugees should be entitled to retain the refugee status with the exception of cases indicated in paragraph 187 of the UNHCR Handbook.²

In the event of divorce or separation, family members of persons granted complementary protection should have the right to apply for independent residency status after a period of one year from arrival. **An independent legal status should be granted automatically to family members of persons with complementary protection in the event of death of the principal applicant as well as in domestic violence cases in the asylum country.**

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¹ Presidency Conclusions, Tampere European Council 15 and 16 October 1999, section 18.

² Handbook on Procedures and Criteria for Determining Refugee Status, UNHCR, Geneva, 1979.