

Amended proposal for a Council Directive on the right to family reunification ⁽¹⁾

(2001/C 62 E/04)

COM(2000) 624 final — 1999/0258(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 10 October 2000)⁽¹⁾ OJ C 116 E, 26.4.2000, p. 66.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas:

(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) 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.

(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.

(2) Measures concerning family reunification must be adopted in conformity with the obligation to protect the family and respect family life which is laid down in a variety of international legal instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. The Union respects the fundamental rights secured by that Convention by virtue of Article 6(2) of the Treaty on European Union.

(3) Measures concerning family reunification must be adopted in conformity with the obligation to protect the family and respect family life which is laid down in a variety of international legal instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. The Union respects the fundamental rights secured by that Convention by virtue of Article 6(2) of the Treaty on European Union.

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(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.

(6) The European Council, at its special meeting in Tampere, 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.

(7) In accordance with the Council and Commission Plan of Action of 3 December 1998 ⁽¹⁾, an instrument on the legal status of legal immigrants should be adopted within two years of the entry into force of the Amsterdam Treaty, and rules on 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 purposes of family reunification, should be prepared within five years.

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

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(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.

(5) In order to evaluate migration flows and to prepare for the adoption of measures by the Council, the Commission needs to have access to statistical data and information on the legal immigration of third-country nationals in each Member State, and in particular on the number of permits issued, and on their type and validity; to this end, Member States must regularly and rapidly make the necessary data and information available to the Commission.

Unchanged

(8) Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third-country 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.

⁽¹⁾ Plan of action on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (OJ C 19, 23.1.1999, p. 1).

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| <p>(9) To ensure protection of the family and the preservation or formation of family life, a right to family reunification should be established and recognised by the Member States. The practical conditions for the exercise of that right should be determined on the basis of common criteria.</p> <p>(10) Special attention should be paid to the situation of refugees and persons enjoying subsidiary protection on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.</p> <p>(12) To avoid discriminating between citizens of the Union who exercise their right to free movement and those who do not, provision should be made for the family reunification of citizens of the Union residing in countries of which they are nationals to be governed by the rules of Community law relating to free movement.</p> <p>(13) Family reunification applies to members of the nuclear family, that is to say the spouse and the minor children. However, if the situation of unmarried couples is treated as corresponding to that of married couples in a Member State, the principle of equal treatment should be respected and provision should be made for unmarried partners to be eligible for reunification.</p> <p>(14) Family reunification should also apply to children of full age and to relatives in the ascending line where, in view of, there are for not separating them from the third-country national residing lawfully in a Member State.</p> <p>(15) 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 appropriate protection to those concerned.</p> | <p>Unchanged</p> <p>(10) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.</p> <p>(11) The scope of this Directive does not extend to family reunification for persons enjoying a subsidiary form of protection; a directive on the rules for admission of persons in this category, which should also cover their right to family reunification, should be adopted as soon as possible.</p> <p>Unchanged</p> <p>(14) Family reunification should also apply to children of full age and to relatives in the ascending line where, for important objective reasons, their personal situation prevents their living, in acceptable conditions and self-sufficiently, separately from their relative, a third-country national residing lawfully in a Member State.</p> <p>(15) A set of rules governing the procedures 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.</p> |
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(16) 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.

Unchanged

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

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

(18) 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,

Unchanged

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions*Article 1*

The purpose of this Directive is to establish a right to family reunification for the benefit of third-country nationals residing lawfully in the territory of the Member States and citizens of the Union who do not exercise their right to free movement. This right shall be exercised in the manner prescribed by this Directive.

Article 2

For the purposes of this Directive:

- (a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community;
- (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;

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(c) 'person enjoying subsidiary protection' means any third country national or stateless person authorised to reside in a Member State pursuant to a subsidiary form of protection in accordance with international law, national legislation or the practice of the Member States;

Deleted

(c) 'applicant for reunification' or 'applicant' means a third-country national residing lawfully in a Member State or a citizen of the Union and applying to be joined by members of his family;

(c) 'applicant for reunification' or 'applicant' means either a third-country national residing lawfully in a Member State or a citizen of the Union applying to be joined by members of his family;

(d) 'family reunification' means the entry into and residence in a Member State by family members of a citizen of the Union or of a third-country national residing lawfully in that Member State in order to form or preserve the family unit, whether the family relationship arose before or after the resident's entry;

Unchanged

(e) 'residence permit' means a permit or authorisation issued by the authorities of a Member State in accordance with its legislation allowing a third-country national to reside in its territory, with the exception of provisional authorisations pending examination of an application for asylum.

Article 3

1. This Directive applies where the applicant for reunification is:

- (a) a third-country national residing lawfully in a Member State and holding a residence permit issued by that Member State for a period of at least one year;
- (b) a refugee, irrespective of the duration of his residence permit;
- (c) a citizen of the Union not exercising his right to free movement,

if the applicant's family members are third-country nationals, irrespective of their legal status.

2. This Directive shall not apply where the applicant for reunification is:

- (a) a third-country national applying for recognition of refugee status whose application has not yet given rise to a final decision;

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(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.

3. This Directive shall not apply to family members of citizens of the Union exercising their right to free movement of persons.

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, which entered into force before the date of entry into force of this Directive;
- (b) the European Social Charter of 18 October 1961 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

Article 4

By way of derogation from this Directive, the family reunification of third-country nationals who are family members of a citizen of the Union residing in the Member State of which he is a national and who has not exercised his right to free movement of persons, is governed *mutatis mutandis* by Articles 10, 11 and 12 of Council Regulation (EEC) No 1612/68 ⁽¹⁾, and by the other provisions of Community law listed in the Annex.

CHAPTER II

Family members*Article 5*

1. The Member States shall 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:

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(c) a third-country national authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

Unchanged

⁽¹⁾ OJ L 257, 19.10.1968, p. 2.

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- (a) the applicant's spouse, or an unmarried partner living in a durable relationship with the applicant, if the legislation of the Member State concerned treats the situation of unmarried couples as corresponding to that of married couples;
- (b) the minor children of the applicant and of his spouse or unmarried partner, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision recognised by that authority;
- (c) the minor children including adopted children of the applicant or his spouse or unmarried partner, where one of them has custody and the children are dependent on him or her; where custody is shared, the agreement of the other parent shall be required;
- (d) the relatives in the ascending line of the applicant or his spouse or unmarried partner who are dependent on them and have no other means of family support in the country of origin;
- (e) children of the applicant or his spouse or unmarried partner, being of full age, who are objectively unable to satisfy their needs by reason of their state of health.

2. 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; the entry and residence of children of another spouse shall be authorised if the best interests of the child so require.

3. The minor children referred to in points (b) and (c) of paragraph 1 must be below the age of majority set by the law of the Member State concerned and must not be married.

4. Where the applicant is a refugee or a person enjoying subsidiary protection, the Member States shall facilitate the reunification of other family members not referred to in paragraph 1, if they are dependent on the applicant.

5. Third-country nationals residing in a Member State for the purpose of study may not be joined by the relatives in the ascending line as defined in point (d) of paragraph 1.

4. Where the applicant is a refugee, the Member States shall facilitate the reunification of other family members not referred to in paragraph 1, if they are dependent on the applicant.

Unchanged

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Article 6

If the refugee is an unaccompanied minor, the Member States may:

- (a) authorise the entry and residence for the purposes of family reunification of his relatives in the ascending line without applying the conditions laid down in Article 5(1)(d);
- (b) authorise the entry and residence for the purposes of family reunification of other family members not referred to in Article 5, where the minor has no relatives in the ascending line or such relatives cannot be traced.

CHAPTER III

Submission and examination of the application*Article 7*

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.

2. By way of derogation from paragraph 1, the Member State concerned shall examine an application submitted when the family member is already residing in its territory, in exceptional circumstances or on humanitarian grounds.

3. After examining the application, the competent authorities of the Member State shall give the applicant written notification of the decision within a period which may not exceed six months. Reasons shall be given for the decision rejecting the application.

4. If the applicant is a refugee or a person enjoying subsidiary protection and cannot provide documentary evidence of the family relationship, the Member States shall have regard to other evidence of the existence of the family relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.

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 members are outside the territory of the Member State.

2. By way of derogation from paragraph 1, the Member State concerned shall examine an application submitted when the family members are already residing in its territory, in exceptional circumstances or on humanitarian grounds.

Unchanged

4. If the applicant is a refugee and cannot provide documentary evidence of the family relationship, the Member States shall have regard to other evidence of the existence of the family relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Unchanged

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CHAPTER IV

Practical conditions for the exercise of the right to family reunification*Article 8*

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.

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

3. 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.

Article 9

1. When the application for family reunification is submitted, the Member State concerned may ask the applicant to provide evidence that he has:

(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;

(b) sickness insurance in respect of all risks in the Member State concerned for himself and the members of his family;

(c) stable and sufficient resources, that is to say resources which are higher than or equal to the level of resources below which the Member State concerned may grant social assistance;

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.

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.

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

Unchanged

(a) accommodation which is at least equivalent in size to that provided as social housing and which meets general health and safety standards in force in the Member State concerned;

Unchanged

(c) stable resources which are higher than or equal to the level of resources below which the Member State concerned may grant social assistance;

Where the first subparagraph cannot be applied, resources must be higher than or at least equal to the level of the minimum social security pension paid by the Member State.

Unchanged

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3. Paragraph 1 shall not apply if the applicant is a refugee or a person enjoying subsidiary protection.

Article 10

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

2. Paragraph 1 shall not apply if the applicant is a refugee or a person enjoying subsidiary protection.

CHAPTER V

Entry and residence of family members*Article 11*

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.

2. The Member State concerned shall grant the family member a renewable residence permit of the same duration as that held by the applicant. If the applicant's residence permit is permanent or for an unlimited duration, the Member States may limit the duration of the family member's first residence permit to one year.

Article 12

1. The applicant's family members shall be entitled, in the same way as citizens of the Union, to:

- (a) access to education;
- (b) access to employment and self-employed activity;
- (c) access to vocational guidance, initial and further training and retraining.

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.

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3. Paragraph 1 shall not apply if the applicant is a refugee.

Unchanged

2. Paragraph 1 shall not apply if the applicant is a refugee.

Unchanged

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 persons every facility for obtaining the requisite visas, including transit visas where required. Such visas shall be issued without charge.

2. The Member State concerned shall grant the family members a renewable residence permit of the same duration as that held by the applicant. If the applicant's residence permit is permanent or for an unlimited duration, the Member States may limit the duration of the family members' first residence permits to one year.

Unchanged

2. Member States may restrict access to employment or self-employed activity by relatives in the ascending line or children of full age to whom Article 5(1)(d) and (e) applies.

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Article 13

Unchanged

1. At the latest after four 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 applicant.

2. The Member States may issue an autonomous residence permit to children of full age and to relatives in the ascending line to whom Article 5(1)(d) and (e) applies.

3. In the event of widowhood, divorce, separation or death of relatives in the ascending or descending line, persons who have entered by virtue of family reunification and have been resident for at least one year, may apply for an autonomous residence permit. Where necessary by reason of particularly difficult situations, Member States shall accept such applications.

CHAPTER VI

Penalties and redress*Article 14*

1. Member States may reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew a residence permit, where it is shown that:

- (a) entry and/or residence was obtained by means of falsified documents or fraud;
- (b) the marriage or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

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

Article 15

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 withdraw or refuse to renew a residence permit or decide to order the removal of the applicant or members of his family.

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Article 16

Where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered, the applicant and the members of his family have the right to apply to the courts of the Member State concerned.

Article 17

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The Member States shall notify those provisions to the Commission by the date specified in Article 19 at the latest and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER VII

Final provisions*Article 18*

No later than two years after the deadline set by Article 19 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.

Article 19

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 20

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 21

This Directive is addressed to the Member States.

ANNEX

Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health ⁽¹⁾.

Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families ⁽²⁾.

Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State ⁽³⁾.

Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services ⁽⁴⁾.

Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity ⁽⁵⁾.

Council Directive 90/364/EEC of 28 June 1990 on the right of residence ⁽⁶⁾.

Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity ⁽⁷⁾.

Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students ⁽⁸⁾.

⁽¹⁾ OJ 56, 4.4.1964, p. 850/64.

⁽²⁾ OJ L 257, 19.10.1968, p. 13.

⁽³⁾ OJ L 142, 30.6.1970, p. 24.

⁽⁴⁾ OJ L 172, 28.6.1973, p. 14.

⁽⁵⁾ OJ L 14, 20.1.1975, p. 10.

⁽⁶⁾ OJ L 180, 13.7.1990, p. 26.

⁽⁷⁾ OJ L 180, 13.7.1990, p. 28.

⁽⁸⁾ OJ L 317, 18.12.1993, p. 59.