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of :	Strategic Committee on Immigration, Frontiers and Asylum
on :	29 January 2003
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No.Cion prop.:	8628/02 MIGR 39 - COM(2002) 225 final
Subject :	Amended proposal for a Council Directive on the right to family reunification

I

At its meeting on 6 November 2002 the Strategic Committee on Immigration, Frontiers and Asylum examined the above amended proposal.

Delegations will find in section II below the text of the Articles of the draft Directive, with delegations' comments in footnotes.

II

Amended proposal for a

COUNCIL DIRECTIVE

on the right to family reunification[1]

Chapter I

General provisions

Article 1[2]

The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.

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1 **DELETED** maintained a parliamentary reservation on the Directive.
DELETED maintained a general linguistic reservation on the Directive.

2 In relation with Article 1, the **Working Party** agreed to insert the following clause in the Preamble of the Directive:
Member States may consider that the provisions laid down in this Directive also apply when the family enters altogether.

Article 2

For the purpose 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, including stateless persons;

(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;

(c) "sponsor" means a third-country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

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

(e) "residence permit" means any authorisation issued by the authorities of a Member State allowing a third-country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Regulation 1030/2002 laying down a uniform format for residence permits for third-country nationals.[1]

[1] OJ L 157 of 15 June 2002, page 1.

(f) "unaccompanied minor" means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

Article 3

1. This Directive shall apply where the sponsor is a third-country national residing lawfully in a Member State and holding a residence permit issued by that Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third-country nationals of whatever status.

2. This Directive shall not apply where the sponsor is:

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

   (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;

(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.

3. This Directive shall not apply to members of the family of a Union citizen.

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.

Chapter II

Family members

Article 4

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:

   (a) the sponsor's spouse[1];

   (b) the minor children of the sponsor 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;

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[1] **DELETED** submitted the following compromise suggestion for point a):
a) the sponsor's spouse. ***In cases when the marriage or partnership was contracted after the sponsor had been issued his/her residence permit, Member States may provide that a decision is taken on a discretionary basis having particular regard to the protection of marriage***.
The **Pres** expressed some concern about the suggestion of inserting an optional clause in one of the few still remaining compulsory provisions of the Directive. It recalled that the question raised by **DELETED** was extensively discussed by the **Working Party on Migration and Expulsion**. In particular, it drew attention to the fact that the Working Party indicated Article 16 - which concerns sanctions - rather than Article 4 - whose objective is to define the family members who shall or may be granted family reunification - as the most appropriate provision for addressing this issue. It also noted that the Working Party, with the exception of **DELETED**, agreed to introduce in Article 16 (2), point b), the following provision, which results from a compromise suggestion submitted by the **Pres**:
When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

(c) the minor children including adopted children of the sponsor where the sponsor 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.

(d) the minor children including adopted children of the spouse where the spouse 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.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

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[1] [2]

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:

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[1] **DELETED** maintained a reservation on the last sub-paragraph of paragraph 1. According to **DELETED**, which felt that the derogation contained in this provision is too broad, some restrictions to its application should be envisaged. In particular, it suggested adding some words such as *and arrives indipendently from the rest of his family* after *where a child is aged over 12 years*.

[2] **DELETED** maintained a reservation on the last part of this provision (*provided for by its existing legislation at the date of adoption of this Directive*). In particular it suggested deleting the word *existing*.
The **Pres** suggested replacing the words *date of adoption* with the words *date of implementation*.

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

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 sponsor is in a duly attested stable long-term relationship, or of a third-country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons[1].

Member States may decide that registered partners are treated equally as spouses with respect to family reunification[2].

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

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1 In the framework of the examination of this provision, the **Working Party** agreed to insert the following safeguard clause in the Preamble of the Directive as a recital:
Where a Member State authorises family reunification of the persons referred to in Article 4(2), (3) and (4), this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the Directive..../EC/..... on the status of third-country nationals who are long-term residents.

2 **DELETED** maintained a scrutiny reservation on the second sub-paragraph of paragraph 3.

By derogation to paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor[1].

5. Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum the age of legal majority set by the law of the Member State concerned, before the spouse is able to join him/her[2].

Chapter III

Submission and examination of the application

Article 5

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 sponsor or by the family member or members.

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, 7 and 8, as well as certified copies of family member(s)' travel documents.

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1 **DELETED** maintained a scrutiny reservation on this provision.

2 Pointing out that on the basis of a new regulation, which is currently being considered in Holland but has not yet been adopted, a third-country national may be required to reach the age of twenty one before the spouse is able to join him/her, **DELETED** maintained a scrutiny reservation on this provision.
According to **DELETED**, which recalled that the main objective of paragraph 5 is to prevent and avoid forced marriages, some flexibility might be introduced in this provision. In its view Member States should be granted the possibility of requiring that the sponsor and his/her spouse shall reach an age above the age of majority set by the Member State concerned before the spouse is able to join him/her. In particular it considered that a maximum age of twenty one might be taken into account.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found necessary.

When examining an application concerning the unmarried partner of the sponsor, 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.

3. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application be submitted when the family members are already in its territory[1].

4. The competent authorities of the Member State shall give the person who has submitted the application written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

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.

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[1] **DELETED** submitted the following compromise suggestion for a new sub-paragraph to be introduced in paragraph 3:
By way of derogation, Member States may request that the application for family reunification has to be submitted before the age of fifteen. If the application is submitted after the age of fifteen, the Member States which decide to apply this derogation shall examine other grounds for granting a residence permit.
The **Pres** noted that in the meeting of the **Migration and Expulsion Working Party** held on 14 January 2003, **DELETED** had suggested introducing the same provision in Article 4(1) - see 5508/03, page 7, footnote 2 -.
Feeling that this provision is not simply a procedural one, insofar as it might affect the right to family reunification of minor children from the age of fifteen up to eighteen in cases where the relevant application has not been submitted before the age of fifteen, **DELETED** opposed the **DELETED** suggestion.

Reasons shall be given for the decision rejecting the application. Any 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.

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

Chapter IV

Requirements for the exercise of the right to family reunification

Article 6[1]

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

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

When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from this person.

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[1] The **Strategic Committee** agreed that the following Council declaration concerning Article 6 should be inserted in the minutes of the Council:
The Council considers that the content and the scope of Article 6 of this Directive is without prejudice to the content and the scope of similar clauses on public policy and and public security contained in other EC Directives in the area of legal immigration which are currently being considered or which will be considered by the Council bodies.
The notion of public policy and public security covers also cases in which a third-country national belongs to an association which supports the international terrorism, supports such an association or has extremistic aspirations.

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 7

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

   (a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

   (b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third-country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees/family members of refugees referred to in Article 12 the integration measures referred to in the first sub-paragraph may only be applied once the persons concerned have been granted family reunification[1].

Article 8

Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his family members join him/her.

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[2].

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1 **DELETED** maintained a scrutiny reservation on this provision.

2 **DELETED**, which maintained a reservation on Article 8, pointed out that the maximum duration of the waiting period referred to in this provision should be of at least five years instead of three years.
Most delegations, as well as the **Cion**, felt that five years is too long a period.

Chapter V

Family reunification of refugees

Article 9

1. This Chapter shall apply to family reunification of refugees recognised by the Member States.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.

3. This Chapter is without prejudice to any rules granting refugee status to family members.

Article 10

1. Article 4 shall apply to the definition of family members, except that the third subparagraph of paragraph 1 shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

   (a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(3)(a)[1];

   (b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

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[1] Pointing out that not only the biological parents should be taken into account for the purposes of family reunification, **DELETED** wanted the legal guardians of unaccompanied minors to be covered in point a).
The **Pres** drew attention to the fact that legal guardians are already covered in point b) of this provision. It also pointed out that is more appropriate to cover this category of persons in an optional provision in order to allow Member States a certain discretion, insofar as the rules concerning legal guardians are different in each Member States' national legislation.
Supporting the view expressed by the **Pres**, the **Cion** also expressed some concern about the suggestion of obliging Member States to authorise family reunification of legal guardians, in particular taking into account the need for preventing and avoiding trafficking of minor children.

Article 11

1. Subject to paragraph 2, Article 5 shall apply to the submission and examination of the application.

2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall have regard to other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Article 12

1. By way of derogation from Article 7, the Member States shall not require the refugee/family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in this provision[1].

2. By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

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[1] **DELETED** maintained reservations on this provision.
DELETED pointed out that, according to its national legislation, in cases where the family members of a refugee can be reunited with the sponsor in a safe third-country, they are requested to prove that they meet the relevant requirements in order for them to be reunited in **DELETED**.
For that reason it submitted the following suggestion, to be introduced as a second sentence in paragraph 1:
Where family reunification is possible under reasonable conditions in a safe third country, Member States may, however, require such evidence.
DELETED noted that, according to applicable **DELETED** law, if the application for family reunification is submitted after three months from the moment when the refugee has been issued a residence permit, the family members of a refugee are required to meet the condition of appropriate financial resources

Chapter VI

Entry and residence of family members

Article 13

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, the Member State concerned shall grant such persons every facility for obtaining the requisite visas.

2. The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

3. The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

Article 14

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to[1]:

(a) access to education;

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[1] Noting that in Austria third-country nationals enjoy equal treatment, **DELETED** pointed out that their access to the labour market is subject to an authorisation and maintained a reservation on paragraph 1 (in particular on points b) and c)). **DELETED** maintained a scrutiny reservation on this provision.
DELETED, which questioned in particular the Community competence in the area of access to employment, submitted the following compromise suggestion (which is inspired, in particular as far as paragraph 2 is concerned, from the clause contained in Article 11(2) of the Directive laying down minimum standards for the reception of asylum seekers in Member States - see 15398/02 ASILE 78, page 15 -):

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:
(a) access to education;
~~(b) access to employment and self-employed activity;~~
(b) ~~(c)~~ access to vocational guidance, initial and further training and retraining.

*2. **Member States shall decide according to national legislation the conditions under which family members may exercise an employed or self-employed economic activity.** Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(3) applies.*

This compromise suggestion, supported by **DELETED**, was opposed by **DELETED**.
The **Pres** submitted the following an alternative compromise suggestion:

1. The sponsor's family members shall be entitled, in the same way as the sponsor, 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. Member States may decide according to national legislation the modalities under which family members may exercise an employed or self-employed economic activity.

3.*~~2.~~ Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(3) applies.*

This compromise suggestion was supported by **DELETED**. **DELETED** entered a scrutiny reservation. While favouring it, **DELETED** felt that its draft should be further considered and improved. **DELETED** wondered whether it is not appropriate to delete paragraph 3. The **Cion** preferred replacing, in the new paragraph 2, the words *may exercise* with the words *shall exercise*.
The **Pres** said that this issue needs to be further considered.

(b) access to employment and self-employed activity;

(c) access to vocational guidance, initial and further training and retraining.

2. Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(3) applies.

Article 15

1. At the latest after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first sub-paragraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to children of full age and to relatives in the direct ascending line to whom Article 4(3) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

Chapter VII

Penalties and redress

Article 16

1. Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

   (a) where the conditions laid down by this Directive are not or are no longer satisfied;

   When renewing the residence permit, where the sponsor has no sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 7(1)(c), the Member State shall take into account the contributions of the family members to the household income.

   (b) where the sponsor and his/her family member(s) do not or no longer live in a full marital or family relationship.

   (c) where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

(a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

(b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.[1]

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy the autonomous right of residence under Article 15.

4. Member States may conduct specific 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.

[1] See footnote 1 on page 6.

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/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.

Article 18

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

Chapter VIII

Final provisions

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.

Article 20

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than [31 December 2003][1]. 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 21

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

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[1] The P**res** suggested setting the date of 30 June 2004.
DELETED felt that for the implementation of the Directive a longer period (eighteen or twenty four months) should be taken into account.
The **Pres** felt that this issue needs to be further considered.

Article 22

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President