



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.5.2002
COM(2002) 225 final

1999/0258 (CNS)

Amended proposal for a

COUNCIL DIRECTIVE

on the right to family reunification

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

This amended proposal for a Directive is in response to the request addressed by the Laeken European Council to the Commission on 14 and 15 December 2001. The right to family reunification has been under discussion in the Council for more than two years, and since progress has been slower and less substantial than expected,¹ the European Council confirmed that the establishment of common rules was an important component of a genuine common policy on immigration.² The European Council reaffirmed its commitment to the policy guidelines and objectives defined at Tampere and noted that while some progress had been made, there was a need for new impetus and guidelines to make up for delays in some areas.³ It accordingly invited the Commission to present an amended proposal by 30 April 2002.⁴

The initial proposal dates from 1 December 1999.⁵ On 6 September 2000, Parliament adopted its opinion in Plenary. It supported the general approach and main orientations of the Commission proposal but called for a restriction in its scope and requested the Commission to amend its proposal accordingly.

The Commission responded to Parliament's proposed amendments by presenting an amended proposal on 10 October 2000.⁶ But the negotiations in the Council, particularly in May 2000 and May and September 2001, were tricky and success did not ensue.

Following the Laeken European Council conclusions, the Commission therefore, in this new amended proposal, is taking a new approach to the points still outstanding. In its concern to preserve what has been achieved in the last two years' negotiations, the Commission has incorporated the compromises reached in the Council.

2. A NEW APPROACH TO ENABLE THE NEGOTIATIONS TO SUCCEED

The new method acknowledges that, to achieve harmonisation of national legislation on family reunification, there are several stages to be gone through. The amended proposal is only the first of these. It is inspired by a certain concern for flexibility on the basis of two main parameters: first, as regards substance, the use of a standstill clause. Second, as regards the time-frame, a deadline for the next stage.

2.1. Flexibility

The new proposal makes for greater flexibility on points where there is still deadlock. For one thing it leaves some room for manoeuvre in national legislation.

¹ Presidency Conclusions, point 38.

² Presidency Conclusions, point 40.

³ Presidency Conclusions, point 37.

⁴ Presidency Conclusions, point 41.

⁵ COM(1999) 638 final.

⁶ COM(2000) 624 final.

For another, it provides in highly limited cases for exceptions to allow adjustment to the current legislation of certain Member States.

2.2. The standstill clause

This clause will ensure that Member States do not use the new derogations if their legislation at the time of adoption of the Directive did not already provide for them. The objective is to ensure that the Directive does not operate paradoxically as a source of fresh divergences between the Member States.

2.3. The deadline clause

With an eye to the adoption of genuine common rules called for both by the Amsterdam Treaty and by the Tampere and Laeken European Councils, this means that the deadline will now be set for the next stage of harmonisation of legislation governing admission for the purposes of family reunification. On this date – two years after transposal of the Directive into national legislation – the provisions that offer the greatest degree of flexibility, which are those that lie at the heart of the negotiations, will be reviewed by way of priority so as to achieve progress towards harmonisation of admissions policy. Of course, apart from this specific deadline, other developments will have to be considered later, notably to govern the family reunification of persons enjoying other forms of subsidiary protection and Union citizens.

2.4. The main changes necessitated by the new approach

– The former Article 4 provided for alignment of family reunification of Union citizens not covered by Community law on free movement of persons on that of citizens who have exercised their right to free movement. It has been deleted as work has begun on recasting Community law on free movement of persons. The Commission proposal for a Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States⁷ governs, among other things, the definition of family members concerned. The alignment of the rights of all Union citizens to family reunification will be reviewed later, once that recasting is complete.

– The provision concerning the age up to which children may be reunified (Article 5(1)) has been revised to provide a specific exception for certain pieces of national legislation. There are strict limits on this derogation. At the same time, a provision has been inserted in the Chapter on refugees specifying that the age limit for reunifying children may in no circumstances be lowered. Article 5(1) will have priority for review two years after the Directive has been transposed into national legislation, under the deadline clause.

– Resources may be checked after reunification, under Article 7(1), when the family members' residence documents are up for renewal. The deadline clause provides for review of this question.

– The new paragraph 2 in Article 8 also provides for a tightly limited derogation, applicable solely where national legislation already existed when the Directive was

⁷ COM(2001) 257 final.

adopted. It allows authorisations to enter for the purposes of family reunification to be spread over several years, depending on the reception capacity of the Member State concerned. But this period may in no case exceed three years. This provision will also have priority for review two years after the Directive has been transposed.

– The period of validity of the residence document issued to members of the family being reunified with a person entitled to stay permanently (Article 13(2)) has been revised to refer to the proposal for a Directive on the status of long-term residents, thus reinforcing consistency. Family members will now obtain long-term resident status on the basis of the same criteria as the person with whom they are reunified. All these rules concern the European situation; the Member States are free to give more favourable treatment when issuing national permanent residence documents. This flexibility will be reviewed two years after the Directive has been transposed.

– To improve consistency with the long-term resident status introduced by the proposal for a Directive of 13 March 2001,⁸ it is proposed that the upper limit for the grant of autonomous status of family members be set at five years' residence (Article 15(1)). This new limit will harmonise the period for obtaining permanent residence documents and autonomous status and will allow adequate flexibility to reflect different national situations.

⁸ COM(2001) 127 final.

Commentary on the articles

Chapter I: General provisions

Article 1

Article 1 establishes the objective of the proposal. It has been redrafted to further clarify the objective of determining the conditions in which the right to family reunification is exercised in Europe, this right being recognised in existing national legislation and international instruments.

Article 2

The first definition, under (a), concerns third-country nationals. It is specified that stateless persons are also included, this being only implicit in the original proposal. This definition of third-country nationals is now a standard clause in Commission proposals in this field.

The following definitions make no substantial change to the amended proposal for a Council Directive on the right to family reunification presented by the Commission on 10 October 2000.⁹

Article 3

Article 3 has been amended as follows:

- An additional condition has been inserted in the first paragraph: “reasonable prospects of obtaining the right of permanent residence”; the idea is that the right to family reunification would not be open to persons staying only temporarily without the possibility of renewal. The exclusion applies in particular to au pairs, exchange and placement students etc. The paragraph now also does not contain the reference to European Union citizens who have not exercised their right to free movement of persons, following their exclusion.
- The second paragraph undergoes purely formal amendments.
- The third paragraph excludes members of the family of Union citizens from the scope of the proposal. The situation of persons not covered by Community law (because the Union citizen to whose family they belong has never exercised the right to free movement) will be dealt with subsequently in a specific proposal once the provisions governing free movement of persons have been recast.¹⁰
- The fourth paragraph is no longer confined to existing agreements. Given that harmonisation is not total in this field, the Member States could in future conclude other bilateral agreements on matters not covered by the Directive, provided they were compatible with it.

Point (b) now also refers to the amended European Social Charter. This Charter is already in force in several Member States.

⁹ COM(2000) 624 final.

¹⁰ COM(2001) 257 final.

– The fifth paragraph adds a clause relating to more favourable provisions. It allows the Member States to introduce or maintain more favourable conditions for persons exercising the right to family reunification. This provision exists in other instruments of Community law and applies particularly where the aim is to harmonise legislation in several stages.

– The purpose of the standstill clause in the sixth paragraph is to limit the use made of the flexibility or exceptions introduced in certain provisions of the proposal. It amplifies the clause relating to more favourable provisions. While paragraph 5 allows the Member States to maintain or introduce more favourable provisions, they cannot, when amending their national legislation, weaken the common core of provisions put in place by this proposal.

Chapter II: Family members

Article 4

The new drafting of Article 4 involves a number of horizontal amendments.

Given the diversity in national legislation concerning those enjoying the right to family reunification, it does not seem possible for the moment to extend the obligation to allow entry and residence beyond the spouse and minor children. There is therefore a possibility but not an obligation, as regards relatives in the ascending line, dependent adult children and unmarried partners. The optional approach is applied likewise to children of whom custody is shared. In relation to the amended proposal of 10 October 2000, refugees have been withdrawn from the Chapter relating to family members and are now covered by a new Chapter V specifically devoted to them.

– The spouse and minor children are covered by paragraph 1: if the conditions laid down by the proposed Directive are satisfied, the Member States are required to authorise entry and residence by way of family reunification.

Regarding adopted children, a detail has been added to the previous proposal: apart from a decision taken by the relevant authority in the Member State or a decision recognised by it, a decision that is fully enforceable by virtue of the international obligations assumed by the relevant Member State may also be concerned.

Concerning children whose custody is shared, Member States are allowed to authorise family reunification subject to the conditions laid down by point(c) of paragraph 1.

The age limit up to which children may join their parents was one of the key questions of the negotiations on family reunification. It has been felt that the Member States should retain some room for manoeuvre to examine whether the child meets the conditions for integration beyond a certain age, provided their legislation provided for this at the time of adoption of the Directive and a case-by-case approach is followed.

– Different rules, described in paragraph 2, are laid down for relatives in the ascending line and adult children. Here again, subject to the conditions laid down in the proposal for a Directive, Member States have the possibility of authorising entry and residence by way of family reunification. This possibility must be provided for by legislation or regulation. Relatives in the ascending line have been defined more precisely: only first-degree relatives in the direct ascending line are covered (meaning father and mother but not grandparents or uncles and aunts).

- The rules applicable to unmarried partners are similar to those for relatives in the ascending line and adult children described above. The third paragraph distinguishes between unmarried partners, who must be in a stable long-term relationship with the applicant, and registered partners, to whom this condition does not apply precisely because the partnership is registered. Entry and residence are extended to their unmarried minor children, including adopted children.
- The Commission incorporates a new provision allowing the Member States to impose a minimum age on the applicant and his or her spouse – which may not exceed the age of legal majority – to combat the practice of forced marriages, at least where minors are concerned.
- Lastly, there is a change in paragraph 4 to deal with polygamy. It is now drafted in more general terms and refers now to spouse rather than wife.

Chapter III: Submission and examination of the application

Article 5

In this Article the Commission incorporates a series of amendments inspired by points agreed in the Council.

Paragraph 1: The family reunification procedure can be launched by the applicant himself or by one or more members wishing to come from the country of origin to join him. Consequently, the application may be submitted to the authorities in the host Member State or to the consular authorities of the relevant Member State in the family's country of origin. This will allow the two types of procedures applied by the Member States to be reconciled.

Paragraph 2: The application must be accompanied not only by documentary evidence of family relationships and compliance with the conditions for family reunification but also by the family members' travel documents. The travel documents are listed in the table of documents allowing the holder to cross the external borders to which a visa can be attached, annexed to the Decision of the Schengen Executive Committee of 16 December 1998 concerning the Manual of documents to which a visa may be affixed.¹¹

It might be worth backing up these forms of documentary evidence with interviews with the various family members or investigations. In the same spirit, since it is by definition to provide formal documentary evidence of a stable relationship between unmarried partners, the Member State will act on the basis of the three items listed in the third subparagraph.

Paragraph 3: The principle that the application must be submitted while the family members are outside the Member State is maintained; but the exceptions are more flexible. They are now in the discretion of the Member States, which may examine an application from family members already in the territory in appropriate cases.

Paragraph 4: The total duration of the procedure for examining the application is lengthened as national administrative procedures cannot be shortened. It may be extended in exceptional cases where the absence of evidence of family relationships creates the need for additional investigations.

¹¹ (SCH/ Com ex(98) 56).

Where the administrative authority does not react, this is interpreted differently depending on the national legislation relating to administrative procedures. This aspect is clarified in the third subparagraph of paragraph 4.

Paragraph 5 already took over the forms used in the Convention on the Rights of the Child; the reference is now explicit.

Chapter IV: Requirements for the exercise of the right to family reunification

Article 6

The only change to this Article is to specify in paragraph 2 that the residence permit for family members may be withdrawn, or renewal may be refused, on grounds of public policy and domestic security. Although it is not strictly indispensable, this amendment, in conformity with the spirit of the original proposal, follows directly on from the Commission working paper on the relationship between safeguarding internal security and complying with international protection obligations and instruments,¹² and there is a consensus on it in the Council.

Article 7

Following the debates in the Council, the optional conditions as to housing and resources have been fleshed out without jeopardising the spirit of the original proposal. Stability of resources is evaluated by reference to their function, nature and regularity.

The second subparagraph of paragraph 1 allows those Member States which provide for this to check compliance with these conditions again after the family members are in the country. This check will be made on the occasion of the first renewal of the family members' residence permits. It is also provided that the Member State must have regard to the contributions of all the members of the family.

Paragraph 2 is unchanged.

Article 8

The optional waiting period prior to authorisation of entry of family members has been raised from a maximum of one year to two years. The Commission considers that the compromise on this flexibility still provides an adequate basis for harmonising legislation.

The second subparagraph establishes a specific derogation to reflect current national legislation limiting family reunification on the basis of the reception capacity. The effect of such limits is that applications for family reunification are spread over several years. The relevant Member States may opt to refrain from authorising the entry of all the family members whose applications have been accepted in the year in which they were submitted. But they cannot impose a waiting period of more than three years from the date of the application.

¹² COM(2001) 743 final.

Chapter V: Family reunification of refugees

Article 9

Chapter V contains all the specific provisions applicable to family reunification of refugees: they apply by way of derogation from the ordinary rules in the other Chapters. But the Member States may confine this scheme to refugees whose family relationships existed prior to recognition of refugee status under paragraph 2, on the understanding that the situation of these families warrants the application of more favourable treatment by way of priority.

Article 10

Article 10 brings together two provisions already in the original Commission proposal though in different Articles:

- the possibility of extending family reunification to other family members and not just those defined in Article 4, provided they are dependent on the applicant (Article 10(3)). It is further provided that the Member States may in no circumstances reduce below the legal age of majority the age up to which refugees' children are entitled to family reunification.
- the authorisation of entry and residence for members of the family of a refugee who is an unaccompanied minor. In the specific case of a refugee who is an unaccompanied minor, the power to authorise the reunification of his relatives in the ascending line or, if there are none, his legal guardian or some other member of his family in the first degree, has been converted into an obligation for the Member States in accordance with the International Convention on the Rights of the Child (Article 10(4)).

Article 11

Article 11 provides for the application of common rules for submitting and examining applications. Paragraph 2 provides for a derogation – already in the Commission's earlier proposal – whereby a decision rejecting the application may not be based solely on the fact that the refugee cannot produce all the requisite documents: in such a case, the Member State must examine all other items of evidence of family relationships.

Article 12

On the same principle as Article 11, Article 12 introduces a derogation concerning the material conditions for the exercise of the right to family reunification. Here again a provision already in the earlier Commission proposal is taken over. Refugees are not subject to the housing, health-care insurance and stable resources conditions. This derogation applies solely for the reunification of the spouse and minor children.

The application of another optional condition – the possibility of imposing a waiting period before being joined by family members – is also excluded. Here again a derogation already in the earlier Commission proposal is taken over.

Chapter VI: Entry and residence of family members

Article 13

1. Paragraph 1 maintains the obligation for Member States to facilitate the issue of the requisite visas once family reunification has been accepted but is silent on the question of the

cost, as the Member States do not seem ready at the moment to accept the principle of issuing them free of charge.

2. The principle of granting family members a renewable residence permit of the same duration as that held by the applicant has been maintained. This proposal for a Directive basically applies the rules of the proposed Directive concerning the status of third-country nationals who are long-term residents¹³ to situations in which the applicant enjoys that status. But it does not provide for more favourable conditions for acquisition of the status by family members.

Article 14

The Commission is adopting the solution that has emerged in the Council, which proposes aligning the right of access to education, employment and vocational training for family members on the applicant's rights rather than on those of Union citizens. This will avert the risk of differences in treatment within one and the same family.

These rights of access are optional for relatives in the ascending line and adult children.

Article 15

This provision makes the distinction between a permanent residence permit and an autonomous permit. The legislation in most Member States does not distinguish the two aspects but merges them in a single status: the holder of a permanent right of residence holds a residence permit that is autonomous of the sponsor. The amendment made here solves the difficulty by harmonising the upper limit from which autonomous status must be given on the period of residence needed to acquire long-term resident status.

The issue of an autonomous residence permit to relatives in the ascending line and adult children remains discretionary.

The derogation clause has been amended slightly and no longer imposes a minimum period of residence for persons wishing to obtain an independent residence permit in situations identified by paragraph 3 (situations of distress).

Chapter VII: Penalties and redress

Article 16

The scope and consequences of the original Article have been spelled out in greater detail. Provision is now made for all the situations in which applications may be rejected and family members' residence permits may be withdrawn or not renewed.

Point (a) of paragraph 1 should be read in parallel with the provisions defining the conditions for family reunification and determining the situations in which the permit may be withdrawn or not renewed.

Point (b) refers to the concept of effective marital and family life, and the purpose is to combat departures from the true object of reunification – the maintenance or recreation of the family unit.

¹³ COM (2001)127.

Point (c) makes specific provision for unmarried partners and specifies the means of combating abuse of this type of reunification.

Paragraph 2 seeks to combat fraud and marriages, adoptions and partnerships of convenience. It has been amplified to cover all possible situations.

Paragraph 3 specifies that if the applicant's right of residence comes to an end, the members of his family must leave the Member State with him since their right of residence depends on his right. This provision will no longer apply where the family members have obtained autonomous residence rights and consequently the right to stay in the Member State irrespective of the applicant's right of residence.

Paragraph 4 fleshes out the original provision and adds that specific checks and inspections may be conducted at the time of renewal of the family members' residence permits.

Article 17

Unchanged.

Article 18

The principle of access to the courts is maintained. It is specified that *de facto* and *de jure* redress facilities must be available and leaves it for national legislation to determine the procedures for applying it.

Chapter VIII: Final provisions

Article 19

This Article inserts the deadline clause, one of the three elements of the new Commission approach, and lists the Articles for which proposals for amendment will be presented by way of priority. The Articles concerned are those which as matters stand offer considerable flexibility that must be restricted at the next stage of the harmonisation process.

Article 20

The Member States are required to transpose the Directive by 31 December 2003.

Article 21

This Article lays down the date when the Directive enters into force.

Article 22

The Directive is addressed to the Member States.

Amended proposal for a

COUNCIL DIRECTIVE

on the right to family reunification

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,¹⁴

Having regard to the opinion of the European Parliament,¹⁵

Having regard to the opinion of the Economic and Social Committee,¹⁶

Having regard to the opinion of the Committee of the Regions,¹⁷

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.
- (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.
- (3) Measures concerning family reunification must be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

¹⁴ OJ C [...], [...], p. [...] .

¹⁵ OJ C [...], [...], p. [...] .

¹⁶ OJ C [...], [...], p. [...] .

¹⁷ OJ C [...], [...], p. [...] .

- (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.
- (6) The European Council, at its special meeting in Tampere on 15th and 16th October 1999, 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) The Laeken European Council on 14 and 15 December 2001 reaffirmed its commitment to the policy guidelines and objectives defined at Tampere and noted that there was a need for new impetus and guidelines to make up for delays in some areas. It confirmed that a genuine common policy on immigration implied the establishment of common standards on procedures for family reunification and called on the Commission to present a new amended proposal.
- (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 Treaty.
- (9) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.
- (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.
- (11) Family reunification applies to members of the nuclear family, that is to say the spouse and the minor children. It is for States to decide whether they wish to extend this category and authorise family reunification for relatives in the ascending line, children who are of full age and unmarried partners.
- (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 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.

- (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 must enjoy access to education, employment and vocational training on the same terms as the person with whom they are reunited.
- (14) Effective, proportionate and dissuasive measures should be taken to prevent and penalise breaches of the rules and procedures relating to family reunification.
- (15) 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,

HAS ADOPTED THIS DIRECTIVE:

Chapter I

General provisions

Article 1

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

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) "applicant for reunification" or "applicant" means either a third-country national residing lawfully in a Member State and 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 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 an authorisation of whatever type issued by a Member State which grants right of residence within its territory. This definition shall not include temporary permission to reside in the territory of a Member State for the purposes of processing an application for asylum or a residence permit.

Article 3

1. This Directive shall apply where the person applying for reunification 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 applicant 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 for persons to whom it applies.
6. Article 4(1), (2) and (3), the second subparagraph of Article 7(1)(c) and Article 8 may not have the effect of introducing less favourable conditions than those which already exist in each Member State on the date of adoption of this Directive.

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 applicant's spouse;
 - (b) the minor children of the applicant 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;
 - (c) the minor children including adopted children of the applicant or his/her spouse where one of them 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 points (b) and (c) 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.

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:
 - (a) first-degree relatives in the direct ascending line of the person applying for reunification 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 applicant 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 applicant is in a duly attested stable long-term relationship, or of a third-country national who is bound to the applicant by a registered partnership in accordance with

Article 5(2), and the unmarried minor children, including adopted children, of such persons.

4. 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, without prejudice to the provisions of the 1989 Convention on the Rights of the Child.
5. Member States may require the applicant and his/her spouse to be of a minimum age, and in any event the age of legal majority, before the spouse is able to join him/her.

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 applicant or by the family member or members.
2. The application shall be accompanied by family member(s)' travel documents and 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.

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

When examining an application concerning the unmarried partner of the applicant, 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 when the family members are outside the territory of the Member State in which the applicant resides.

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

4. The competent authorities of the Member State shall give the applicant/family member(s) 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, but shall in no case exceed twelve months.

Reasons shall be given for the decision rejecting the application. The 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, in accordance with the 1989 Convention on the Rights of the Child.

Chapter IV

Requirements for the exercise of the right to family reunification

Article 6

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, domestic security or public health.
2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or domestic security.
3. The grounds of public policy or domestic security must be based exclusively on the personal conduct of the family member concerned.
4. 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 applicant or family member(s) to provide evidence that the applicant 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 in the Member State concerned for himself and the members of his family;
 - (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 this subparagraph cannot be applied, resources must be no less than the level of the minimum social security pensions paid by the Member State. The stable resources criterion shall be evaluated by reference to the nature and regularity of the resources.

The Member State may require the applicant to satisfy the conditions set out in paragraph 1 when renewing the residence permits of his family members for the first time.

Where the applicant does not meet the said conditions, Member States shall take into account family members' contributions to the household income.

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

Article 8

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

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.

Chapter V

Family reunification of refugees

Article 9

1. This Chapter shall apply to family reunification of refugees.
2. Member States may confine the application of this Chapter to refugees whose family relationships predate their refugee status.

Article 10

1. Article 4 shall apply to the definition of family members, except that the third subparagraph of paragraph 1(c) 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 shall:
 - (a) 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(2)(a);

- (b) authorise the entry and residence for the purposes of family reunification of his 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.

Article 11

1. Subject to paragraph 2, Article 6 shall apply to the submission and examination of the application.
2. Where a refugee cannot provide documentary evidence of the family relationship, the Member States shall have regard to other evidence 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 of accommodation, sickness insurance and stable resources.
2. By way of derogation from Article 8, the Member States may 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.

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, Member States shall grant such persons every facility for obtaining the requisite visas.
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 has long-term resident status, the Member States shall issue to family members a renewable residence permit of at least one-year's duration, until they satisfy the conditions laid down by Directive .../.../EC¹⁸ for obtaining long-term resident status in their own right.

¹⁸ OJ C [...], [...], p. [...] .

Article 14

1. The applicant's family members shall be entitled, in the same way as the applicant, 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 restrict access to employment or self-employed activity by relatives in the ascending line or children of full age to whom Article 4(2) applies.

Article 15

1. At the latest after five 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 4(2) applies.
3. In the event of widowhood, divorce, separation, or death of relatives in the ascending or descending line, an independent residence permit may be issued to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an independent residence permit in the event of particularly difficult circumstances.

Chapter VII

Penalties and redress

Article 16

1. Member States may also 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;
 - (b) where the applicant and his family member(s) do not or no longer live in a full marital or family relationship.
 - (c) where it is found that the applicant 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.
3. The Member States may withdraw or refuse to renew the residence permit of a family member where the applicant'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.

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

Article 18

The Member States shall ensure that the applicant and/or the members of his/her family have the *de facto* and *de jure* right to apply to the courts 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 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]. 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*.

Article 22

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*