



**UNHCR's Comments on the Amended Proposal of the  
European Commission for a Council Directive on the  
Right to Family Reunification  
(COM (2002) 225 final, 2 May 2002)**

1. On 2 May 2002, the European Commission issued an Amended Proposal for a Council Directive on the Right to Family Reunification (COM(2002) 225 final). The original version of the Proposal had been issued on 1 December 1999 (COM (1999) 638 final) and had been slightly modified on 10 October 2000 (COM(2000) 624 final). UNHCR had commented on the original proposal in a paper issued on 9 March 2001. The present paper reflects the views of UNHCR regarding the Commission's Amended Proposal.<sup>1</sup>

2. UNHCR welcomes that the Amended Proposal retains a number of the positive elements which were contained in the original text. In particular, UNHCR appreciates that the Amended Proposal:

(i) Exempts refugees from needing to establish conditions of support for family members – namely evidence of adequate accommodation, sickness insurance and economic resources.<sup>2</sup>

(ii) Adopts flexible criteria as regards proof of family relationship for refugees, allowing alternative means of proof where the necessary documentary evidence is not available.<sup>3</sup>

(iii) Generally accords members of the family the same residence rights as those accorded to the head of the family and, under certain circumstances, allows them to obtain an autonomous residence permit.<sup>4</sup>

(iv) Generally accords members of the family (as a minimum, members of the nuclear family) the same treatment as that accorded to the head of the family as regards access to education, access to employment and self-employed activity and access to vocational guidance.<sup>5</sup>

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<sup>1</sup> The observations that follow relate mainly to the provisions contained in Chapter V of the Proposal – which specifically deals with refugees. However, comments and references are also made, where appropriate, to provisions contained in other Chapters.

<sup>2</sup> Article 12, para.1.

<sup>3</sup> Article 11, para.2.

<sup>4</sup> Article 13, para.2 and Article 15.

<sup>5</sup> Article 14.

(v) Grants the right to appeal the rejection of an application for family reunion.<sup>6</sup>

(vi) Recognizes the special needs of unaccompanied refugee children, and contains special provisions relating to reunification with their families.<sup>7</sup>

3. UNHCR regrets, however, that some of the suggestions that it made when commenting on the original Proposal, have not been reflected in the Amended Proposal. UNHCR is, in particular, concerned about the fact that the Amended Proposal retains the criterion that family reunification may be refused on grounds of public health.<sup>8</sup> UNHCR considers that reasons of health should not be invoked to deny refugees the right to family reunification.

4. UNHCR further regrets that the scope and contents of the Amended Proposal is in some respects less comprehensive than of the original version, and that some of the standards of treatment as regards refugees are less favourable than those embodied in the previous text. The following are matters of particular concern to UNHCR:

#### Definition of the family

4.1 The definition of the family for the purposes of reunification has been narrowed. The previous version of the Proposal recognized the right to reunion not only to married spouses and their minor children, but also to unmarried couples forming a genuine and stable family unit. It also extended this right to other dependent members of the refugee's family who formed part of the same household. By contrast, the Amended Proposal restricts this right exclusively to the reunification of spouses and minor children, leaving to the discretion of Member States whether or not to authorize the reunification of other members of the refugee's family.<sup>9</sup>

4.2 UNHCR considers that a flexible approach towards this matter is of primary importance if an appropriate response to the humanitarian plight of refugees is to be ensured. It is worth recalling in this connection that the Executive Committee of UNHCR has recommended States to apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family.<sup>10</sup> Accordingly, the notion of "family" should not be exclusively circumscribed to the so-called "nuclear family", but should also encompass those dependent family members who are living in the same household,<sup>11</sup> and, in addition, it should encompass not only legally married couples but also couples forming a genuine and stable unit (including couples of the same sex).

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<sup>6</sup> Article 18.

<sup>7</sup> Article 10, para.3.

<sup>8</sup> Article 6, para.1.

<sup>9</sup> Article 10.

<sup>10</sup> Cf. Conclusions No. 24 (XXXII) of 1981, para.5; and No. 88 (XLX) of 1999, para. (b)(ii).

<sup>11</sup> Cf. UNHCR Handbook, para.185.

## Beneficiaries of subsidiary protection

4.3 While the original version of the Proposal accorded the right to family reunion to beneficiaries of subsidiary protection who met certain specified conditions, the Amended Proposal excludes this category of persons from its scope of application.<sup>12</sup>

4.4 Considering that the humanitarian needs of persons benefiting from subsidiary protection are not different from those of Convention refugees, UNHCR submits that there is no valid reason to treat these two categories of persons differently as regards their entitlement to family reunification. UNHCR's concern about the exclusion of beneficiaries of subsidiary protection from the scope of the Amended proposal is heightened by the absence of any provisions on the right to family reunion in the draft Directive on minimum standards for the qualification as a refugee or beneficiary of subsidiary protection.

## Qualifying period of residence

4.5 The previous version of the Proposal exempted refugees from the need to complete a certain period of residence before allowing their family members to join them. The Amended Proposal makes this exemption discretionary.<sup>13</sup>

4.6 While it may be understood that a qualifying period of residence may be required for the family reunification of ordinary aliens, there is wide consensus that the reunification of the families of refugees should be treated as a matter of priority and that it should be implemented as soon as possible. It is recalled in this connection that the Executive Committee of UNHCR has expressed the desirability that countries of asylum and countries of origin, "support the efforts of the High Commissioner to ensure that the reunification of separated refugee families takes place with the least possible delay".<sup>14</sup>

5. In addition, UNHCR wishes to submit the following suggestions for amendments to specific provisions of the present text:

### Article 3, paragraph 1

5.1 According to this provision, a third-country national applying for family reunification with members of his or her family who are also third-country nationals, must possess a residence permit valid for one year or more, and must have "reasonable prospects of obtaining the right of permanent residence". In connection with the latter requirement, the Proposal's Explanatory Memorandum indicates that the aim of it is to exclude from the application of the Directive persons who stay only temporarily in the Member State, such as au pairs or exchange and placement students.

5.2 In the light of the above explanation it may be concluded that refugees will always be eligible for family reunification. Nevertheless, in order to avoid any possible misunderstanding, UNHCR suggests that the text of the Directive should specifically

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<sup>12</sup> Article 3, para.2(c).

<sup>13</sup> Article 12, para.2.

<sup>14</sup> Conclusion No. 24 (XXXII) of 1981, para.2.

provide that the requirement of having “reasonable prospects of obtaining the right of permanent residence” will not apply to persons admitted as refugees.

Article 16, paragraph 1(b)

5.3 According to this Article, Member States may withdraw or refuse to renew the residence permit granted to family members, in case the applicant and his or her family members do not or no longer live in a full marital or family relationship.

5.4 This provision is at variance with UNHCR’s longstanding position on this matter, as expressed in paragraph 187 of its Handbook on Procedures and Criteria for Determining Refugee Status.<sup>15</sup> UNHCR therefore strongly suggests that an exception in relation to refugees be included in the Directive.<sup>16</sup>

6. UNHCR hopes that the concerns raised above will be given due consideration during the re-examination of the Proposal, and that the humanitarian principles to which mention has been made, specifically applicable to the treatment of refugees and other persons of concern to UNHCR, will be appropriately reflected in the final text.

(UNHCR Geneva)  
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<sup>15</sup> Paragraph 187 of UNHCR’s Handbook reads: “Where the unity of a refugee’s family is destroyed by divorce, separation or death, dependants who have been granted refugee status on the basis of family unity will retain such refugee status unless they fall within the terms of a cessation clause; or if they do not have reasons other than those of personal convenience for wishing to retain refugee status; or if they themselves no longer wish to be considered as refugees”.

<sup>16</sup> UNHCR notes that Article 15(3) of the Amended Proposal provides for the issuance of an independent residence permit to family members in the case of widowhood, divorce, separation or death of any family member in the descending or ascending line. While that provision UNHCR goes some way towards meeting UNHCR’s concerns, it cannot be seen as sufficient insofar, according to this provision, Members States are under no obligation to issue such an independent residence permit before the person concerned has completed five years of residence in their territory. Before the completion of such period, the issuance of an independent residence permit to the member of the family remains a matter of administrative discretion.