



EUROPEAN COUNCIL
ON REFUGEES AND EXILES

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SUR LES REFUGIES
ET LES EXILES

**Comments from the European Council on Refugees and Exiles
on the Amended Proposal for a
Council Directive on the right to family reunification**

(Brussels, 02.05.2002, COM (2002) 225 final)

The European Council on Refugees and Exiles (ECRE) is a network of some 73 refugee assisting non-governmental organisations in 30 European countries. ECRE welcomes this opportunity to present its main concerns regarding the amended Proposal for a Council Directive on the right to family reunification, published in May 2002. For further information on ECRE's position on the right to family reunification, we refer to our comprehensive *Position on Refugee Family Reunification* (July 2000), which provides detailed recommendations regarding all aspects of the right to family unity during the asylum procedure and the right to family reunification and unity once refugee status is granted.

ECRE is concerned about the implications of the newly amended proposal on third country nationals generally and believes that several provisions in the Proposal may raise concerns with regard to their potential infringement of the right to respect for family life as enshrined in a series of international instruments.¹ Furthermore, we note with concern that the proposed Directive, contrary to the original version of the Proposal, expressly excludes persons enjoying complementary protection from its scope. Given the similarity of the situation and needs of refugees and persons granted complementary forms of protection, ECRE would strongly recommend including this category of persons in the amended Proposal and sees no reason to treat them differently as regards their right to family reunification. We also believe that their exclusion from the scope of the Proposal is contrary to the overall spirit and purpose of the Directive as reflected in its Preamble.² In the following section, however, ECRE focuses its comments only on the rights to family reunification of refugees.

ECRE welcomes the clear commitment in the Preamble to family reunification as “a necessary way of making family life possible” (Para. 8), and to “the obligation to protect the family and respect family life” as “enshrined in many instruments of international law” (Para. 3). We also fully support the recognition of the need to pay “special attention to the situation of refugees” which should trigger more favourable conditions for the family reunification of persons in this category (Para. 10). Additionally, we strongly support the specific provision that Member States are free to apply existing or newly adopted higher standards (Article 3.5.).

¹ Article 8 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) and Articles 17 and 23 of the International Covenant on Civil and Political Rights. See also Article 10 of the International Covenant on Economic, Social and Cultural Rights; Article 9 of the Convention on the Rights of the Child; Article 14 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and Article 16 of the Universal Declaration of Human Rights.

² See Paragraph 3 of the Preamble stating Member States obligation to adopt measures concerning family reunification in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. The paragraph further makes specific reference to the Charter of Fundamental Rights of the European Union.

However, ECRE is extremely concerned by the generally much lowered standards of the amended text as compared to the two previous Proposals³ and regrets the apparent regression from the principles committed to at the Tampere Summit to develop common policies on asylum and migration that aim at “granting [third country nationals] rights and obligations comparable to those of EU citizens” (conclusion 18). We appreciate that the discussion among Member States on family reunification has been controversial. However, we believe that the standards contained in the current Proposal risk resulting in Member States violating their international obligations under relevant human rights treaties, most importantly as regards the right to respect for family life as enshrined in Article 8 of the ECHR. Further, we note that the strategy of flexibility proposed by the Commission allows for high levels of discretion among Member States to reduce already low standards even further. Flexibility may seem to be an obvious option for the Commission and Member States in the search for an agreement on controversial provisions within tight timetables. However, it remains questionable whether including allowances for national derogations from widely agreed minimum standards, so that national particularities can be reflected, is the right approach to the implementation of the Amsterdam Treaty.

In the following, we would like to limit ourselves to three key concerns:

1. the requirement for “reasonable prospects for permanent residence” for the rights contained in the Proposal to be applicable (Article 3);
2. the scope of the refugee family definition (Articles 4 and 10); and
3. the appropriate acknowledgement of the particular situation in which refugees find themselves (Articles 6, 9, 10 and 12).

The comments on the amended proposal are presented in greater detail below. They follow the order of the paper.

Chapter I, General Provisions

Article 3 (1): ECRE is concerned by the new provision that now restricts the application of the directive to persons holding a residence permit ‘for a period of validity of one year or more’, who have reasonable prospects of becoming permanent residents. This provision allows for considerable discretion by individual Member States regarding the interpretation of what constitutes “reasonable prospects” and risks undermining the purpose of the directive as a whole. As confirmed in Paragraph 8 of the Preamble, family reunification creates stability for refugees and allows them to better integrate into the economic and social life of their new societies, a fundamental objective of the Community (Art. 2 and 3 (1)(k) of the Treaty). The Explanatory Memorandum states that the intention of Article 3 (1) is to not open the right to family reunification to persons staying only ‘temporarily without the possibility of renewal’. ECRE believes that this rationale is sufficiently reflected in the provision even without the added specification of ‘reasonable prospects’. We therefore **recommend deleting from Article 3 (1) the clause of ‘reasonable prospects of obtaining the right of permanent residence’**. **At a minimum, refugees should be explicitly exempted from its application.**

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

Article 6 (1): Article 6 (1) allows Member States to reject an application for entry and residence of family members on public health grounds among others. ECRE does not believe that health reasons should be invoked to deny refugees the right to family reunification and would therefore **recommend incorporating a derogation from Article 6 (1)** into Chapter V on the family reunification of refugees.

³ See COM (1999) 638 final, 1999/0258 (CNS) of 1 December 1999 and COM(2000) 642 final, 1999/0258 (CNS) of 10 October 2000. ECRE comments were provided on both proposals in April and October 2000 respectively.

Chapter V, Family reunification of refugees

Article 9 (2): ECRE welcomes the Proposal's acknowledgement, as reflected in a set of specific provisions, of the particular situation of refugees who are separated from their families as a result of persecution and flight. But we consider that in addition to family relationships that predate the recognition of refugee status, **the right to family reunification should also be extended to the fiancé(e) of a refugee where the relationship predates the flight of the principal applicant from his/her country.**

Article 10 (2): Despite the positive pledges in the Preamble, the Proposal adopts a most restrictive concept of the family unit, comprising only of spouses and minor children. By making the definition of family contained in Article 4 applicable to refugees, the Proposal leaves the important question of unmarried partners and their children, of ascending relatives and adult children to the discretion of Member States. This very restrictive family definition may raise issues in terms of its compliance with Article 8 of the ECHR and other relevant provisions of international law. Additionally, it risks critically diminishing the effective integration of refugees into host societies, a point stressed by UNHCR.⁴ In line with Paragraph 10 of the Preamble, ECRE **recommends Article 10 (2) to read: "Member States shall authorise family reunification for other family members ..."**

ECRE welcomes in Article 10 the exemption of refugees from the provision under Article 4 (1) that allows Member States to introduce the age limit of 12 years for children to reunite with their parents. However, we remain concerned by the fact that the other provisions of Article 4 still apply to refugees without taking their particular situation into account. The optional admission of children when custody is shared and under the condition that the other party has agreed (Article 4 (1)(c)), for example, fails to acknowledge that refugees may often find themselves separated during flight and it may therefore be extremely difficult to obtain agreement from the other parent whose whereabouts may be completely unknown. We believe that **an amendment should be made exempting refugee children from this provision.**

As regards the requirement for minor children not to be married in order to be eligible for the right to family reunification (Article 4 (1)), ECRE would **recommend the introduction of a qualification concerning the level of emotional and other dependency on the parents** before the applications from minor married children are rejected.

Similarly, Article 4 (2)(b) allows Member States to authorise the entry or residence of adult unmarried children and their spouses where "they are objectively unable to provide for their own needs on account of their state of health". ECRE would argue that in order to safeguard the right to respect for family life, due consideration should be given to significant cultural differences as regards the interpretation of 'family'. **The dependence of an adult unmarried child on its parents should not be assessed only in terms of its state of health and ability to materially sustain itself, but should be seen in its financial, as well as psychological and cultural aspects.**

We are also deeply concerned by the discretion given to Member States to require applicants and their spouses to be of a minimum age (at least the age of legal majority) before they are able to join each other in a Member State. Given particularly the recent developments at national level in at least one Member State regarding the introduction of an age limit for spouses who are third country nationals to join each other in the Member State, ECRE is worried about this provision that may raise issues regarding undue interference in the private and family life of refugees as protected under Article 8 of the ECHR. ECRE thus **recommends that a derogation from Article 4 (5) be included in Article 10.**

⁴ UNHCR Note on Family Protection Issues, EC/49/SC/CRP.14, June 1999, point 16: "the family unit has a better chance of successfully...integrating in a new country rather than individual refugees. In this respect, protection of the family is not only in the best interest of the refugees themselves but is also in the best interests of the States."

Article 12: Article 12 (2) seeks to exclude refugees from the provision allowing Member States to impose a waiting period before family members can join. This is clearly stated in the Explanatory Memorandum. In order to clarify this purpose in the actual text of the Directive, ECRE **recommends rephrasing the clause into “the Member States *shall not require the refugee ...*”**

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