

Caritas Europa – Migration Commission

4, Rue de Pascale, B-1000 Bruxelles

CCME – Churches' Commission for Migrants in Europe

174, Rue Joseph II, B-1000 Bruxelles

***COMECE – Commission of the Bishops' Conferences of the European Community
- Working group on Migration -***

42, Rue Stévin, B-1000 Bruxelles

ICMC – International Catholic Migration Commission

4, Rue De Pascale, B-1040 Bruxelles

Position on EU Commission Proposal for a Council Directive on the right to family reunification [COM (1999) 638 final]

CCME, the Working Group on Migration of the COMECE secretariat and ICMC represent Christian churches throughout Europe, Roman Catholic, Orthodox, Protestant and Anglican, as well as church agencies particularly concerned with migrants and refugees. From this background, we wish to comment on the EU Commission's proposal for a Council Directive on the right to family reunification.

I. General Comments

1. For Christian churches, safeguarding family is a priority: it constitutes a universally recognized right of the family to protection by society and the state (Universal Declaration of Human Rights, Art. 16.3). The protection of the family is equally recognised by the European Convention on Human Rights and further emphasised in the jurisprudence of the European Court of Human Rights. It cannot be limited to citizens of a country; but must apply to all residents.
2. We recognise and appreciate that the EU Commission has based its proposal on the above mentioned principles. We wish to commend those who have elaborated this proposal for seriously dealing with the various situations third-country nationals are experiencing in the Member States.
3. We welcome the expressed concern for minors and securing children's right to live with their families as stipulated in the Convention on the Rights of the Child (1989) as well as the principle of taking decisions with regard to family reunification considering the well being of the child.

4. We particularly welcome the important distinction between migrants and refugees, as refugees are the most vulnerable group among third-country nationals and are in need of special protection and assistance.
5. We welcome the EU Commission's proposal particularly as a contribution to a European immigration policy. We would like to underline that family reunion is not only an integral part of a coherent immigration policy, but important to foster a coherent social policy throughout the European Union.
6. We share the opinion that family reunification is an important aspect of integration policies. In providing for families to live together, solidarity among family members is facilitated. While this is important emotionally as well as socially, it is also beneficial economically. All these aspects are important facets of integration.

II. Comments on certain provisions:

1. Children

- 1.1. The right of children to live with their parents is particularly foreseen in this proposal, which is in line with the Convention on the Rights of the Child. Given the various situations in the Member States, we particularly welcome the clarification in **Art. 5 No. 3** that considers as minors the children who have not reached the particular Member State's age of majority. We consider it important to end the inequality of children in comparison to Member State nationals.
- 1.2. Concerning **Art. 5 No. 1 (c)**, the uniting person may in some Member States encounter difficulties concerning the recognition that the child is under his/her sole custody. Some Member States do not provide for sole custody. In other countries, sole custody is automatically accorded to either the mother or the father not leaving a choice to the parents. In such cases, we recommend that the absence of sole custody should not necessarily be a barrier to family reunification, if there is consent of the other parent. We support the Commission in advising that the well being of the child should be the guiding principle in these cases.
- 1.3. Although we agree to the principles set out in **Art. 5 No. 2**, there may be a contradiction to **Art. 5 No. 1 (c)**: It ought to be the privileged right of the parents to decide whether the child should live with either of them. From practical experience, we would say that this applies to a very small number of persons; therefore we feel it could be termed more generously without fear of uncontrollable influx. There should remain no difference in legal status between children of the uniting person, regardless of their parents being married, unmarried, divorced or in a polygamous situation.
- 1.4. While we are aware, that the concept of extended family is not so common in European countries, we would wish to point to the fact, that in many countries children are – often as a result of AIDS or civil war – raised by persons not belonging to their own family, but considered to be part of the family they live in. While the proposed directive would provide for adopted children, the above mentioned category is not included. We feel that some provision should be made for such cases, e.g. in case of no other family link.

2. Family

- 2.1. Other family members, particularly in ascending line and children of majority age, are only entitled to unite with their family, if they can prove that they are fully dependent and do not have other family links. Practically, this excludes caring for parents, when there are other children in the country of origin, and no freedom of choice is given to the family. Practical experience tells that the "*worst case scenario*" of the "last family link", as **Art. 5 No.1 (d)** provides, is very difficult if not impossible to prove. Moreover, we wish to argue that this condition is not at all necessary as long as the uniting person can prove he/she has sufficient means to take care of his or her relatives. We consider that such a situation shows an example of family solidarity which should not be prevented.
- 2.2. For the same reason the same principle should apply to unmarried children who have reached the majority age and who are dependent on their parents, regardless of the reason for this. **Art. 5 No. 1 (e)** should therefore not be limited to the reason of the child's state of health, which would be in coherence with the existing legislation concerning the family reunification of EU nationals.
- 2.3. Although the directive touches also the right to found a family (Art. 2 (e) defines family reunification as the right to *form a family community*), it does not include it in its scope, as **Art. 5 No. 1 (a)** does not mention the rights of the fiancée. We do not regard as sufficient to leave the situation of fiancée solely to the legislation of the Member State. Without providing for the founding of the family, any legal text on family reunification would be incomplete and incoherent. It would even fall short of the general aims of the directive. In order to prevent misuse, a trial period could be foreseen for these cases.

3. Refugees

- 3.1. **Art. 3 No. 1** does not necessarily include "non-convention" refugees fleeing indiscriminate violence arising in situations of war and of conflict who fall under UNHCR's extended mandate. We recommend, in line with UNHCR, that such refugees be included in the list of groups under **Art. 3 No. 1 (b)**.
- 3.2. The humanitarian value of accommodating other family members as provided in **Art. 5 No. 4** has been proved during the Kosovo crisis. In addition to the action undertaken by Member States many refugees have been welcomed and taken care of by family members already residing in one of the EU Member States.
- 3.3. The protection of unaccompanied minors as provided for by **Art. 6** reflects the particular attention these children deserve and as outlined in the UN Convention on children's rights. This provision should be maintained and complemented by a provision to the effect that the reunification of these minors with their families should be treated as a matter of urgency and, to this effect, the tracing of the family should be undertaken as soon as possible.

4. Residence permit

- 4.1. We strongly support the stipulations of **Art. 13** to grant an autonomous residence permit for a spouse and adult children. **Art. 13 (3)** is an important tool to deal with injustices arising from certain situations. However, as it refers to extreme hardships, we consider that no minimum period should apply.
- 4.2. We support **Art. 12** to grant family members access to employment, education and training. But we do not favour the general limitations as set out in **Art. 12 (2)**. For example, disabled or sick children of majority age may not be able to sustain themselves in the country of origin and therefore obtain the right to join their family. Still, they may be able to work in the country of their parents' residence. For disabled persons work and employment are of considerable meaning and constitute a tool for integration. To exclude them from such options would amount to discrimination which we oppose. Education might be a similar case. As long as their right to unite is solely based on health reasons – as stipulated in **Art. 5 (e)**, we regard the exclusion as unnecessary. If, however, **Art. 5 (e)** is broadened in scope – which we advocate – we would appreciate a regulation which avoids discrimination.

5. Conditions and Procedures:

- 5.1. We welcome the provision in **Art. 11** to grant visa to family members free of charges. With regard to **Art. 11 (2)**, we would ask for more clarification with regard to children reaching the age of majority during such a period. They should not lose their right to stay with their family, if their residence permit has been issued for only one year.
- 5.2. We are aware that the conditions outlined in **Art. 9** are a very difficult sphere due to the very different present regulations in Member States. However, we would urge that these conditions should be valid and proven at the time of application. If a person cannot meet them at a later stage of the procedure, this should not be to the disadvantage of the family.
- 5.3. The criteria, which need to be met, should be kept on the basis of minimum social welfare. Instead of adequate housing we suggest the wording "sufficient living space in comparison to the lowest level in the respective Member State" in Art. 9, 1 (a). We would welcome, if Art. 9, 1 (b) could be complemented by the obligation to provide access to affordable insurance schemes.
- 5.4. As the core family, particularly children, are entitled to protection by the state, the reunification of parents and minors should not be subject to these conditions. The universally recognised rights of the family should in this case be a priority to Member States' budgetary concerns. Moreover, this would avoid discriminative treatment in comparison to present legislation on the family reunification of Member State nationals.
- 5.5. As long as sufficient means are a prerequisite to family reunification (see above, point 2.1.), we cannot see any good reason for a waiting period of one year in which persons are deprived of their right to family life. **Art. 7 and 10** together could make

1-½ years which can cause serious damage to family life. From social experience, separation often leads to estrangement and break-up of families. In order to secure the values of family communities, we regard it as of utmost importance to let the family unite as quickly as possible.

- 5.6. While we have no objections to the exclusion from family reunification based on grounds of national security and public order (**Art. 8**) given the entire context of the current proposal, we consider that reasons of health should not be invoked to deny the right to family reunification. We wish to underline that the public order reasons eventually given for a rejection would have to be specified. In any case, the principle of proportionality is of utmost importance in this context.
- 5.7. In our opinion, Member States may undertake specific checks as stipulated in **Art. 14 (2)** only in case of well founded suspicion. A legal clarification along this line would assure the protection of the universally recognised respect for privacy and family life (Art. 8 (1) European Convention of Human Rights).
- 5.8. We consider the right of appeal as provided for in **Art. 16** of great importance. However, this right would be incomplete without the explicit statement of a suspensive effect for this appeal.

We would welcome, if the proposal could explicitly state that it provides for a "minimum framework for family reunification" in order not to exclude more generous regulations existing in some Member States. While we agree to the principle of harmonising the relevant legislation in the EU, the practice of minimum framework is common also in other spheres of EU competence, e.g. social affairs and employment.

We wish to urge the EU Council to speedily finalise the negotiations on this proposal, in the spirit on which this proposal is based, and to clarify some of the contradictions. We would welcome if this directive could be decided upon as quickly as possible in order to establish third-country nationals' right to family life. This would be to the benefit of the societies in the Member States as it abolishes inequality and implements a fundamental human right for all.

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This position is supported by:

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