

Brussels, 11 May 2012

**SUMMARY OF STAKEHOLDER RESPONSES TO THE GREEN PAPER  
ON THE RIGHT TO FAMILY REUNIFICATION OF THIRD-COUNTRY  
NATIONALS**

This document does not present the official position of DG Home Affairs or of the European Commission. It is designed to summarise the views of interested parties who gave comments on the public consultation on family reunification.

The suggestions in this document in no way prejudge either the nature or the form or content of any future action by the European Commission.

## EXECUTIVE SUMMARY

This paper summarizes stakeholder's responses to the Commission's Green Paper on the right to family reunification of third-country nationals<sup>1</sup> under Directive 2003/86<sup>2</sup>. The consultation covered the following topic areas:

- Scope of the application of the Directive
- Requirements for the exercise of the right to family reunification
- Entry and residence of family members
- Asylum related questions
- Fraud, abuse and procedural issues

120 contributions were received, including 24 from Member States.

### *Member States and Turkey*

Most Member States did not advocate reopening the Directive. Many Member States stated that there were no major problems with current provisions and some were concerned that any modifications might limit the competence of Member States. The NL was the only country that explicitly called for a reopening of the Directive. It advocated a series of amendments involve additional restrictions on family migrants and a more binding integration policy stressing migrant responsibility.

Overall, the following key issues emerged across many of the responses from Member States:

- It was generally felt that the discretion of Member States on family reunification given in the Directive should not be reduced.
- Integration was highlighted as a matter of national competence and most Member States opposed binding rules on integration measures at EU level.
- A number of Member States saw a need for clarification, although not necessarily modification, of the Directive on integration measures. Calls for clarification were made by different Member States both in terms of allowing more and fewer integration requirements.
- In most Member States there is little if any systematic information available on the scale of forced marriages and marriages of convenience. DE and the UK were the only countries to provide statistics that attempt to quantify the problem at the population level. A few countries also gave data on the number cases identified by the authorities which tended to be relatively small.
- A number of Member States were content for beneficiaries of subsidiary protection to be included in the Directive, while others opposed the extension of the scope of the Directive to beneficiaries of subsidiary protection, arguing that that status is intended to be temporary only. There was relatively little support for requiring the favourable conditions for refugees to be extended to those on subsidiary protection.
- Most Member States opposed more detailed procedural rules in the Directive.

### *International organisations, social partners and NGOs*

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<sup>1</sup> [http://ec.europa.eu/home-affairs/news/consulting\\_public/0023/2\\_EN\\_ACT\\_part1\\_v8.pdf#zoom=100](http://ec.europa.eu/home-affairs/news/consulting_public/0023/2_EN_ACT_part1_v8.pdf#zoom=100)

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF>

All international organisations, consultative bodies and almost all national NGOs took a pro-family reunification position and sought less restrictive rules, making a number of suggestions for amendments and improvements where the Directive could be strengthened to ensure rights to family life. Many submissions highlighted international human rights obligations and identified areas where current practice denied some third-country nationals the right to family reunification.

However, a number of organisations sounded a note of caution about reopening the Directive on the basis that in the current political climate an updated Directive would be more restrictive and would further exacerbate the disadvantaged position of migrants. Instead, many organisations also called for the publication of guidance on the Directive, and for better enforcement of existing provisions, including infringement procedures.

The following key points were made across a number of contributions from NGOs:

- Almost all NGOs wished for restrictions on the ability to be a sponsor, as well as standstill clauses and waiting period, to be removed.
- Organisations were critical of provisions for a minimum age for spouses, questioning the link between age and forced marriage.
- Views on the definition of family were mixed, but the majority of organisations felt that a wider range of family members, including same sex partners, parents and de facto children, should be eligible. A wider definition was sought particularly for refugees.
- There was strong opposition to pre-entry integration measures from organisations. Most respondents were supportive of post-arrival measures, but there were some concerns about their accessibility.
- It was felt that beneficiaries of subsidiary protection should be covered by the Directive and should be subject to the same favourable rules as refugees. Restrictions on the application of favourable rules were generally opposed.
- NGOs were concerned about there being presumption guilt in terms of fraud and marriages of convenience in some Member States. Organisations called on investigations and DNA testing in particular to only be undertaken if there were doubts and not routinely. There was no consensus as to whether the Directive should be amended to ensure these principles are applied.

## 1 THE GREEN PAPER QUESTIONS

This Green Paper on the right to family reunification of third-country nationals living in the European Union<sup>3</sup> under Directive 2003/86<sup>4</sup> was presented by the European Commission on 15 November 2011 and was published on the Commission's website 'Your voice in Europe' (<http://ec.europa.eu/yourvoice/>) and on the website of the Commission's Directorate-General for Home Affairs ([http://ec.europa.eu/dgs/home-affairs./index\\_en.html](http://ec.europa.eu/dgs/home-affairs./index_en.html)). The public consultation period lasted until 1 March 2012.

The questionnaire had 14 questions, some with several sub-questions, covering the following broad topic areas:

- Scope of the application of the Directive
- Requirements for the exercise of the right to family reunification
- Entry and residence of family members
- Asylum related questions
- Fraud, abuse and procedural issues

The exercise was open to all stakeholders, including Member States, EU institutions, regional and local authorities, candidate countries, third-country partners, intergovernmental and non-governmental organisations, and all state actors and private service providers involved with family members, academia, social partners, civil society organisations and individuals. The Green Paper was available in all EU languages and could be printed off and submitted separately by post, fax or email.

## 2 CONTRIBUTIONS RECEIVED

At the end of the consultation period, 120 responses were received. These were distributed among stakeholder type as follows:

- 24 Member States and Turkey,
- 3 national parliaments,
- 21 international organisations,
- 5 local or regional administrations,
- 46 national organisations (NGOs, social partners, political organisations)
- 19 individuals (including academics in their individual capacity).

All relevant replies are publicly available on the Commission's website<sup>5</sup>.

## 3 OVERALL APPROACH

### *Member States and Turkey*

Most Member States did not advocate reopening the Directive. In answering the Green Paper questions, Member States did make proposals for amendments and clarifications, but these were opinions and not explicit requests for reopening the Directive. Some Member States also called for interpretive guidelines.

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<sup>3</sup> [http://ec.europa.eu/home-affairs/news/consulting\\_public/0023/2\\_EN\\_ACT\\_part1\\_v8.pdf#zoom=100](http://ec.europa.eu/home-affairs/news/consulting_public/0023/2_EN_ACT_part1_v8.pdf#zoom=100)

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF>

<sup>5</sup> [http://ec.europa.eu/home-affairs/news/consulting\\_public/consulting\\_0023\\_en.htm](http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0023_en.htm)

Reasons for not reopening the Directive given included that there are no major problem with the current provisions (AT, BE, CZ Senate, DE, FI, HU, LU, LV, PL); that the current Directive adequately balances harmonisation with flexibility for Member States and that a modification of the Directive might limit the competence of Member States (BE, CZ Senate, DE, FI, LV) or that it might result in less liberal provisions being introduced (SE, this opinion is also shared by the Swedish Parliament). Some Member States also called for a focus on ensuring proper implementation of existing rules before changes are made to the Directive (LV) or for evaluations of the impact of existing practice, including interactions with other directives (LT). The UK contribution focused on tackling fraud, with a particular focus on forced marriages and marriages of convenience.

NL was the only country that explicitly called for a reopening of the Directive. It advocated a series of amendments, which it argues will help Member States to 'maintain a balance between private and general interests'. The proposed amendments involve additional restrictions on family migrants and a more binding integration policy stressing migrant responsibility<sup>6</sup>.

#### *International organisations, social partners and NGOs*

All 21 international organisations held a pro-family reunification position and sought less restrictive rules. Many submissions highlighted areas where current practice by certain Member States denied some third-country nationals, particularly those with fewer financial resources and lower qualifications, the right to family reunification. Most submissions also pointed to international human rights obligations, particularly the right to family unity and the rights of the child.

The submissions made suggestions for amendments and improvements in relation to the specific questions. However a number of organisations (AEDH, ECRE, ENAR, EUW, Red Cross EU office, Save the Children<sup>7</sup>) stated that they would not recommend reopening the Directive as there was a risk in the current political climate that an updated Directive would be more restrictive and would further exacerbate the disadvantaged position of migrants. The Council of Europe Committee on Migration, which favoured modifying the Directive, also stressed that under no circumstances should any reform lead to a diminution of standards.

Many organisations also called for the publication of guidance on the Directive, and for better enforcement of existing provisions, including infringement procedures (Caritas Europe, Christian Group, Council of Europe Committee on Migration, COFACE, ECRE, ENAR, EWL, ILGA-Europe, Red Cross EU office, Save the Children).

Almost all national stakeholders held a pro family reunification position motivated by the protection of human rights and improved integration, with a small number of exceptions, most notably the Dutch VVD parliamentary group which held the same position as the NL government. A number of organisations also cautioned against reopening the Directive in case this leads to more restrictive conditions.

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<sup>6</sup> Suggestions included; Introducing an educational requirement for both spouses; considering any previous illegal residence a threat to public policy and hence a ground for refusal of family reunification; Allowing an income requirement of 120% of the minimum wage; Allowing Member States to test whether the ties of the family members are with the intended host country are closer than with the country of origin; and Raising the highest minimum age for admission of spouses allowed under the Directive to 24 years.

<sup>7</sup> A list of international organisations and their abbreviations can be found in the Annex.

## *Contributions of individuals*

The following provisions were discussed pleading for a less restrictive approach: the minimum age for the sponsor's spouse, the possibility to introduce a waiting period before granting the residence permit, and the discretion in determining the fees for processing the applications.

One third of the individual contributions have come from the NL referring to the national rules. Contributors were evenly split between supporters of a stricter and of a more liberal approach to family reunification. Many contributions expressed views on integration measures putting language tests into question in view of the considered abusive practices of some Member States using such tests to limit the right to family reunification.

## **4 RESPONSES TO THE SPECIFIC QUESTIONS**

### **4.1 SCOPE OF THE APPLICATION**

#### ***Q1: Eligible sponsors***

Under the Directive, sponsors must have a valid residence permit and reasonable prospect of obtaining the right to permanent residence. The latter condition leaves a margin for interpretation which could lead to legal insecurity. In addition, the Directive allows Member States to introduce a waiting period of up to 2 years before reunification can actually take place. The Green Paper asked if those criteria were the correct approach.

#### *Member States and Turkey*

Views on both criteria were mixed, with around half the Member States saying they were reasonable and should not be amended, and around half suggesting amendments or calling for the criteria to be removed from the Directive.

On the requirement for 'reasonable prospect for the right of permanent residence at the time of applications' AT, BE, CY, CZ, EE, EL, FR, LU, MT and PL felt this was a suitable criterion and should be kept. Other Member States (HU, IT, LV, LT, MT, PT, RO, SE) highlighted that the meaning of 'reasonable prospect' was unclear and they therefore supported either a less restrictive definition or a withdrawal of the criterion. These States did not use this restriction in their own national law. Turkey specifically stated that the definition needed to be more concrete to avoid countries using their discretion to make the Directive fully inapplicable. NL felt that the clarification should explicitly state that this excluded certain types of temporary migrants. RO considered that the criterion ignores the increasing importance of circular migration and that the concept of the family sponsor is unclear and limits reunification for certain types of migrants and therefore should be more clearly defined.

BG thought that the 'one year or more' requirement for residence permits was open to interpretation and that a precise time period should be given.

On the two year waiting period, AT, BE, CY, CZ, EE, EL, FR, LT, MT, NL, PL felt that this criterion was reasonable. Others (BG, DE, FI, HU, IT, LV, PT, SE) stated that this was not included in their national law, while LU is considering abolishing it. HU specifically supported more favourable rules, while PT thought that minimum residence is not a good way

to assess who can qualify as a sponsor. BG does not operate a waiting period, but felt any decision to remove this provision from the Directive should lie with Member States using it.

### *International organisations, social partners and NGOs*

Almost all stakeholders who answered this question argued that the two restrictions on who can be a sponsor should be removed, or made less restrictive on the grounds that they undermine international human rights legislation with regards to the right to enjoy family life and the principle of the best interest of the child. There was also a consistent call for clarification of terms. The IOM stated that more flexibility should be applied to vulnerable migrants, such as victims of trafficking.

The majority of organisations who provided a view on this point raised concerns that the 'reasonable prospect of permanent residence' requirement is not an objective criterion (e.g. COMECE, Council of Europe, ENAR, ETUC, European Union of Women, International Commission of Jurists, IOM, Red Cross EU Office), therefore if kept should be more clearly defined and clearly stated what conditions must be met to meet this criterion (e.g. Care for Europe, COMECE, European Union of Women, TDHI).

It was highlighted that the criterion could be used to deny entry to almost all third-country nationals (e.g. ENAR) and is highly likely to lead to violations of the right to family life (e.g. International Commission of Jurists).

The arguments to remove the waiting period condition were sometimes put in the context of the length of time already taken for administrative procedures, which can result in several years of delay and can be detrimental to the right to family life (e.g. ETUC). NGOs felt that if the provision was not removed, it should be shortened (e.g. COMECE, ENAR, CoordEurop) or it should be made clear that the two years must include all waiting and procedure time (e.g. Christian Group).

Most national organisation also wished to clarify and remove the reasonable prospect criterion and the waiting period. This was usually on the grounds of the rights to family life, but the Austrian Chamber of Commerce also noted that sponsor requirements are a barrier and may mean that highly qualified workers may choose to move to countries with fewer conditions, and that this suggests that countries should remove barriers to increase their competitiveness. Some stakeholders also argued that reunification should not be restricted to permanent migrants, but also medium term temporary migration (Deutscher Juristinnenbund) or that reunification should be independent of the length of stay (DE Die Linke and Diakonie Bundesverband Caritas, NL Meijers Committee). The West of Scotland Regional Equality Council noted that migration patterns can often be circular and short term but still lead to permanent residence.

### ***Q2: Minimum age of spouse and forced marriages***

The Directive currently allows a minimum age (up to 21) for spouses, which may be higher than the age of majority. This clause was introduced to prevent forced marriages, although it is difficult to estimate how big a problem forced marriages are. The Green Paper asked if the minimum age provision was legitimate, and if there were other ways of preventing forced marriages within the context of family reunification. Stakeholders were also asked to provide

any national evidence they had on the scale of forced marriages, and how these related to the minimum age.

### *Member States and Turkey*

Views on the minimum age provision were mixed. Some Member States felt that it should be retained (AT, BE, CY, CZ, DE, EE, FI, IRL, MT), while others thought that it should be reduced to the same age as the age of majority or marriage (BG, FR, PT, SK, SE, TR, RO). This view was also held by Turkey), or stated that there was no national law specifying a minimum age (EL, HU, LV). BG felt that a higher minimum age ran counter to the objective of the Directive to ensure the right to family reunification.

LU and Turkey argued that a minimum age was not the way to prevent forced marriages, while EE and FI highlighted that there is no evidence on whether forced marriages and spouses' ages are related. BE and DE thought that a minimum age of 21 could offer some, but not absolute, protection against forced marriages, and MT also stated that a higher age was a safeguard. CZ and NL supported increasing the minimum age to 24, and LT also felt that a higher age limit should be allowed.

CY suggested that requiring the marriage to have existed for at least a year prior to application would also protect against forced marriages, while FR proposed non-systematic inquiries in the countries of origin and has launched a dedicated website. BE also described its relevant activities in criminal law and support services.

With regards to statistics, a number of Member States (CZ, LV, LT, PL, RO, SK) stated that their country had experienced problems with forced marriages. Additionally, several countries said that there was no evidence available (AT, BE, BG, EE, FI, IT, LU, PT, FR, RO). DE described forced marriages as a serious problem and stated that there were 3,400 relevant registered counselling cases in 2008, although several appointments may be related to one and the same case. Similarly, the UK Forced Marriage Unit had provided support in 1500 cases in 2010. The UK argued that the actual scale is larger, and provides an estimate of between 5,000 and 8,000 reported cases in England in 2009 based on data from local and national organisations. SE also stated that it had only found eight cases of forced marriages between September 2010 and 2011.

### *International organisations, social partners and NGOs*

All organisations that answered this question thought that the provision allowing Member States to set a minimum age higher than the age of majority should be removed.

A number of organisations pointed out that there was little or no evidence that the introduction of age limits helps combat forced marriages (e.g. Care for Europe, Christian Group, COMECE, ECRE, ENAR, ETUC, EWL, IOM, Red Cross EU office). Forced marriages were seen as a wider problem also affecting individuals not covered by the Directive and that would most helpfully be addressed through criminal law, education and psycho-social assistance rather than family reunification legislation (e.g. ETUC, EWL).

Within the remit of the Directive, the Christian Group, Coface, CoordEurop, ECRE and the EWL felt that granting autonomous permits to family members as soon as possible would

increase the likelihood that women in forced marriages or experiencing domestic violence would come forward.

Several of these organisations called for further research in on the link between age and forced marriage and argued that until evidence showing that age limits are justified as a proportionate measure to fight forced marriages can be provided, the minimum age rule should be removed (COMECE, Christian Group, ECRE, ENAR, EWL, IOM, Red Cross EU office). However, ETUC did acknowledge that procedures of such as interviews may help detect instances of forced marriage.

Some organisations (e.g. ENAR and ETUC) also highlighted the lack of statistics on forced marriages and the IOM urged that negative practices found among certain communities should not become a reason for stereotypical treatment of migrants as a whole. The EWL was concerned that in some Member States women's rights are being compromised for the sake of controlling immigration, resulting in unlawful and discriminatory treatment.

National organisations were generally opposed to a minimum age rule, arguing that it neither protects from forced marriages nor increases integration. The Arbeitsgemeinschaft Deutscher Familienorganisationen pointed to a study conducted in 2011 by the German Ministry of Family which found no evidence that younger women are disproportionately affected by forced marriage. A number of organisations discussed measures against forced marriages independent of migration law, such as support services, education and prevention in schools, or criminal law. The NL VVD parliamentary group called for the age to be raised to 24.

### ***Q3: standstill clauses***

The Directive allows countries to introduce two 'standstill clauses': (1) children over 12 arriving independently of their families can be asked to prove they meet integration conditions; and (2) children over 15 may be required to enter under grounds other than family reunification. The first restriction is used by DE only, which limits the right to unification for children over 16 to those where the prospects for integration are positive. The second standstill clause is not used by any Member States.

#### *Member States and Turkey*

A majority of Member States answering this question were content to remove the standstill clauses in line with the UN Convention on Rights of the Child (BG, CZ, HU, IT, LT, LU, PL, PT, RO and Turkey). EE, EL and SE further stated that they do not use them. BE, LV, MT and AT were content with removal but stated that the final decisions about removing the clauses should lie with those Member States using them or having lobbied for their inclusion.

CY felt it was too early to decide and NL though only clauses that were not used at all should be removed. DE, as the only user, wished to retain the first clause on the basis that children's integration ability is higher at younger ages. FR also felt that the 12 year clause should be retained in case Member States wish to introduce such measures at a later date. Regarding children older than 15, FR thought interpretative guidelines could help.

#### *International organisations, social partners and NGOs*

All the international organisations that provided a view on the standstill clauses (AEDH, Care for Europe, Caritas Europe, Council of Europe Committee on Migration, CIEMI, COMECE, ENAR, ETUC, International Commission of Jurists, International Lesbian, Gay, Bisexual, Trans and Intersex Association, IOM, Red Cross EU Office, TDHIF) felt that these should be removed on the grounds that they are unnecessary and incompatible with international human rights law on the rights of the child.

National organisations were generally also in favour of removing the standstill clauses.

## **4.2 REQUIREMENTS FOR THE EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION**

### *Q4: Eligibility of family members*

The Directive requires Member States to ensure reunification with nuclear family members, and allows them to include other family members in their national legislation. Around half of the Member States have chosen to also allow reunification for the parents of the sponsor or their spouse. The Directive also requires Member States who recognise same sex marriage to also cover this in their family reunification legislation. Similarly, where registered partners are recognised in family reunification legislation this must include registered same sex partners. The Green Paper asked stakeholders if the rules on eligible family members are adequate and take into account different definitions of family other than nuclear.

#### *Member States and Turkey*

Almost all Member States who answered this question (AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, LV, LT, LU, MT, NL, PL, PT, SK) stated that the current rules are satisfactory and that the decision which additional family members to include should lie with Member States. FR and RO noted that they do not recognise same sex marriage. HU, IT and SE stated that their own national legislation defines family more broadly, and RO believed in extending the rights to family reunification to other family members which are not currently covered by the Directive definition, e.g. those in a situation of non-contractual guardianship. Turkey called for parents to be included in the definition.

#### *International organisations, social partners and NGOs*

Some organisations felt that the rules of the Directive on the eligibility of family members should remain as they are, with Member States being allowed to decide whether to include additional family members (Care for Europe, COMECE, IOM). However, most organisations that provided a response on this question called for a broader interpretation to meet requirements of human rights law which applies to a wider definition of family (CIEMI, Caritas Europe, Council of Europe Committee on Migration, ECRE, ENAR, ETUC, International Commission of Jurists, Red Cross EU office, Save the Children, TDHIF).

Generally, organisations favoured a definition based on de facto family ties involving financial and/or emotional dependency. Specific groups mentioned by different organisations included parents, same sex partners, non-biological children who have lived as part of the family, children of the spouse, long term unmarried partners, parents-in-law, as well as partners and children in polygamous relationships. ILGA-Europe argued that same sex relationships must be accepted even if the country does not recognise them and highlighted

cases where persecution on the grounds of sexual orientation makes it impossible to provide evidence of the relationship. COMECE argued that marriage should be discussed separately from non-marriage cohabitation and should not be put on the same level.

Support for a wider definition of family was also strong from national NGOs.

#### ***Q5: Integration measures***

The Directive contains an optional clause which enables Member States to require third-country nationals to comply with integration measures.

A few Member States have introduced integration measures. DE and FR require applicants to demonstrate basic language skills before entry, or, in the case of FR, attendance at language courses. In NL, family members must pass an integration test covering language and knowledge of Dutch society which can only be taken in the country of origin. In DE and NL certain groups are exempted from the pre-entry requirements. A few Member States (AT, CY, EL, FR) also require family members to participate in integration courses or to pass exams after admission. In LT and UK such tests are a condition of permanent residence.

The Green Paper asked if integration measures serve the purpose of integration and which integration measures are the most effective. It also asked if such measures should be defined at EU level. It further invited stakeholders' view on pre-entry measures.

#### ***Member States and Turkey***

There was a wide variety of views presented by Member States. Member States described the practice in their countries which ranged from no integration measures at all (HU, EL) to compulsory participation in pre- and post-entry classes and the passing of tests (DE and NL). CZ suggested a list of optional integration measures that may be considered, a view shared by the Czech Senate.

Most Member States who answered this aspect of the question (AT, BE, BG, FI, DE, EE, FR, HU, IRL, LV, LT, MT, NL, PL, SK) opposed any definition of integration measures at EU level, and any limits placed on countries' ability to introduce such measures. DE, NL and FR in particular stressed that integration is a national competence. HU highlighted the different cultural and historic backgrounds of Member States and therefore felt that any provisions should remain optional. NL and MT also argued that which integration measures are most effective depends on the specific migration context and society and therefore should not be regulated at EU level. IRL does not operate language or integration testing but stated that it can see the rationale for doing so.

Some Member States suggested changes to the rules on this issue wishing to give Member States more flexibility to introduce restrictive provisions. AT and DE, as well as a number of German Länder, would like the Directive to be amended to explicitly allow for pre-entry measures, stressing the importance of language ability in facilitating quick integration, while NL sought latitude for Member States to revoke residence permits when family members fail to meet integration conditions. CZ felt that integration measures should be set for both the sponsor and the family member.

Other Member States favoured a less restrictive approach. CY, LV, LU and SE opposed compulsory integration measures. BG opposed compulsory measures for children on the grounds of the UN convention of the Rights of the Child.

BG, FI, PT, RO and SK as well as Turkey expressed their clear opposition to pre-entry integration requirements on the grounds that they compromise the right to live as a family, particularly for those with fewer financial resources and qualifications. FI pointed out that pre-entry measure raised a number of legal and administrative problems as well as issues around equal treatment. RO felt that post-arrival measures are most effective and highlighted the difficulty of implementing pre-entry measures in some third-countries. PT argued that pre-departure integration measures can hamper integration and called on the Directive to be in line with the Common Agenda on Integration, focusing on language courses on arrival. It highlighted the importance of recognition of qualification and targeted services. LU stated that pre-entry measures are not feasible in LU and that they contradict the idea of abolishing the waiting period. SK also highlighted the importance of taking into account cognitive abilities and individual circumstances such as illiteracy, as well as age.

RO thought that integration measures should be defined at EU level to harmonise practice and that it should be compulsory for Member States to integrate foreigners within a certain time period after entry. PL was of the opinion that it would be useful to specify integration measures at EU level to eliminate the risk of placing an undue burden on family reunification. CY thought that guidelines defining integration measures on a broad basis at EU level would be useful. EL favoured EU level guidelines ensuring that integration measures must be accessible and tailored to individual requirements, but believed that the choice of whether to offer or require integration measures should be up to Member States.

#### *International organisations, social partners and NGOs*

Some organisations were concerned about the use of integration measures by certain countries, arguing that these were in practice aimed at reducing immigration rather than promoting integration, and as such were in breach of the Directive (e.g. AEDH, ETUC). The Council of Europe Committee on Migration also considered that the admissibility of pre-entry and integration measures should depend on whether they serve the purpose of facilitating integration and whether they respect the principle of proportionality.

A number of organisations explicitly opposed pre-entry integration requirements and tests (Care for Europe, Christian Group, COMECE, CoordEurope, ECRE, European Women's Lobby). Reasons given were that integration measures are more effective if performed in the host country and that there is no evidence that preliminary integration facilities actually work as a factor of integration. It was also argued that pre-entry measures are not proportionate and contravene the right to family unity. Organisations also pointed out that pre-entry measures are often inaccessible and unaffordable. ECRE argues that the distinction between integration measures and integration conditions for entry should be clearly defined in the Directive and that the Commission should monitor the impact of integrations conditions and evaluate their impact on vulnerable groups.

The IOM was the only organisation that explicitly stated that it is content with pre-entry measures within certain parameters. It felt that entry requirements are legitimate but should be tailored to the integration policy purpose and be proportionate. It pointed out that it has a longstanding worldwide experience on migrant training provision and can confirm the

benefits of information provision and training before migration takes place. However, it stressed that measures should not serve as a basis for precluding family reunification based on testing the knowledge acquired during the pre-entry testing.

Most organisations had no objections to the principle of post-arrival integration measures, although a number stressed that accessibility of language and integration courses often needs to be improved, that integration programmes should always be affordable to migrants and that whenever attendance is compulsory they should be free of charge (Caritas Europe, Christian Group, COMECE, ETUC, ENAR, ETUC, Red Cross EU office). Some organisations also made the point that decisions on the application for family reunification in relation to passing tests should take into account specific individual circumstances of vulnerable persons, e.g. illiteracy (e.g. Council of Europe Committee on Migration, ENAR).

The EUW proposed that immigrants should be obliged to participate in an integration course after arrival, but also that it should be mandatory for governments to develop integration plans which include (1) improved organisation of integration courses; (2) promotion of early language learning; (3) initiatives for education, training and integration in the labour market; (4) enhancements of the educational situation of migrant girls and women; and (5) local integration.

Many national organisations expressed their opposition to compulsory integration measures, particularly pre-entry measures. The situation of people with low education or illiteracy was raised and it was argued that the Directive should be amended or guidelines published to ensure cases are assessed on a case by case basis and integration measures are tailored to individual needs. The German Verband Binationaler Familien provided a number of case studies where language requirements have unduly delayed or prevented family reunification. Finally the Italian Associazione Comunità Papa Giovanni XXIII thought that with some exceptions language courses should be compulsory after entry.

#### ***Q6: Waiting period in relation to reception capacity***

The Directive provides for derogation applicable only to those Member States who took reception capacity into account at the time of the Directive's adoption. It allows for a waiting period of three years counted from the submission of the application. The derogation is used only by AT, which had a quota system in place prior to the Directive. The Green Paper asked if it was necessary to keep this derogation.

#### ***Member States and Turkey***

The majority of Member States who answered this question (BG, CY, EE, DE, HU, LV, PL, PT, RO) were content for the derogation to be removed. FI and LU stated that they could not give an opinion on the usefulness of the derogation as they did not use it. EE, EL and SE also reiterated they did not use it. BE, CZ, LV, MT and NL stated that the decision to remove the derogation lay with AT. AT wished to retain the derogation, because it felt that the quota system in place since 1993 had proved effective. However, it also pointed out that Austrian law allowed for the waiting period to be removed under certain conditions.

### *International organisations, social partners and NGOs*

All international organisations that provided a view on the derogation relating to reception capacity felt that this should be removed (Care for Europe, Caritas Europe, COMECE, ENAR, ETUC, International Commission of Jurists, ILGA-Europe, IOM, Red Cross EU office, TDHIF). IOM argued that for the time being, clarifications provided by the European Court of Justice are sufficient guidance with regard to the application of the derogation.

National organisations who commented on this issue felt that the waiting period should be removed. The Austrian Chamber of Commerce pointed out that a 3 year waiting period can lead to valuable time being lost during which children could attend school in Austria, improving their integration.

## **4.3 ENTRY AND RESIDENCE OF FAMILY MEMBERS**

### ***Q7: Rules for sponsor's permit valid less than one year***

The Green Paper highlighted the situation where sponsors have residence permits valid for less than one year but to be renewed. In this case two rules in the Directive are potentially in conflict: (1) that family members' residence permits should be granted for at least one year; and (2) that residence permits granted to family members should not be longer than those for sponsors. The Green Paper asked if specific rules should be developed for this situation.

### *Member States and Turkey*

A number of Member States (BG, CY, CZ, DE, EL, MT, NL, PL) wished for the Directive to be amended to provide specific rules on this situation. CZ and NL simply asked for clarification to remove inconsistencies, BG, CY, DE, EL and MT wanted the Directive to state that family members should not be granted permits longer than those of the sponsor, while PL called for rules to ensure that this issue does not become a barrier to family reunification.

AT, EE, HU, LV and LT did not think that specific rules should be introduced and argued that national law was adequate and LU favoured pragmatic solutions over fixed rules. Within this, HU, LV and LT also stated that permits validity should be the same for family members and sponsors. This view was also held by BE, IT, PT and SE, who did not give an opinion whether the Directive should specify rules.

### *International organisations, social partners and NGOs*

Care for Europe, COMECE, CIEMI, Council of Europe and IOM welcomed rules on this issue to clarify the situation, but did not provide further details. CIEMI believed that the periods of validity of the sponsors and family members' permits need not be the same. COFACE did not think a specific rule should be introduced, since this would further complicate the already complex procedural landscape, and instead called for decision procedures to be sped up. ETUC sought a clarification the Directive that the periodic expiring of sponsor's permits should not become a barrier to reunification. ILGA-Europe felt that the rule that permits should always be granted for a year should take precedence.

Some organisations used their response to this question to call for family members to have the same legal status as the sponsor and be independent of the sponsor (e.g. Caritas Europe, COFACE, Council of Europe, ECRE).

Views from national organisations who commented on this question were mixed. Some felt that permits for sponsors and family members should be for the same length while some felt family members' permits should be valid for longer.

#### **4.4 ASYLUM RELATED QUESTIONS**

##### ***Q8: Beneficiaries of subsidiary protection***

Beneficiaries of subsidiary protection are not included in the scope of the Directive. However, the Stockholm Programme called for a uniform status of protection. The Green Paper therefore asked if the scope of the Directive should be extended to include beneficiaries of subsidiary protection. It also asked if this group should benefit from the more favourable rules which exempt refugees from meeting certain resource requirements (accommodation, sickness insurance, stable and regular resources).

##### *Member States and Turkey*

Many Member States (CY, FR, HU, LT, LU, NL, RO and SE) wished to include beneficiaries of subsidiary protection in the Directive. BG and EE stated that they make no distinction between refugees and those under subsidiary protection. PT also thought the rules should be discussed in the context of the forthcoming Common European Asylum System. FI thought explicitly extending the Directive was not necessary, as rights for those on subsidiary protection were already guaranteed through human rights legislation.

CZ, FI, DE, LV, MT and SK did not think that beneficiaries of subsidiary protection should be included. Several Member States highlighted the often temporary nature of protection needs, e.g. DE and AT argued that while some people under subsidiary protection have the same protection needs, others do not, and therefore decisions should be made on a case by case basis. MT argued that the Stockholm Programme seeks harmonisation between people with the same status in different Member States, and not between refugees and those on subsidiary protection. It also highlighted the resource consequences for Malta of including those under subsidiary protection. BE, EE and LV thought that national law was sufficient and the decision should lie with Member States.

CY, FR, NL, PT, RO and SE explicitly stated that the favourable conditions for refugees should be extended to those under subsidiary protection. HU, LT and LV did not wish to extend the conditions. LV argued that the more favourable condition might be a pull factor for migrants.

##### *International organisations, social partners and NGOs*

Almost all organisations that answered this question stated that beneficiaries of subsidiary protection should be included within the Directive, and should be subject to the same provisions as refugees (Care for Europe, Caritas Europe, Christian Group, COMECE, Council of Europe, ECRE, ENAR, International Commission of Jurists, ILGA-Europe, IOM, Red Cross EU office, TDHIF, UNHCR). It was pointed out that both groups have the same access

to rights in international legislation, and differential treatment would be discriminatory. ENAR stressed that while the Directive should be amended, it should not be re-opened.

ETUC argued that refugees and other third-country nationals who are beneficiaries of subsidiary protection should maintain their specific status in the framework of the specific legislation concerning subsidiary protection and/or asylum, in order to avoid any confusion between different situations.

National organisations working with refugees argued that beneficiaries of subsidiary should be included in the Directive and subject to the same conditions as refugees, in light of international refugee and human rights laws.

### ***Q9: The scope of the more favourable refugee conditions***

The Directive allows Member States to limit the application of the more favourable rules for refugees by restricting them to (1) family relationships that were formed prior to entry to the Member States; and (2) applications made within three months of the granting of refugee status. The Green Paper discussed reasons why these limitations may not adequately take into account the particularities of refugees' situations and asked if Member States should continue to be able restrict the favourable conditions in this way.

In addition, the Green Paper asked whether family reunification should be ensured to a wider range of family members for refugees including all those who are dependent on them.

#### *Member States and Turkey*

All those Member States that provided a view on the question of restricting favourable conditions to pre-entry relationships only stated that the rules should be maintained as they are (AT, BE, BG, CZ, EE, FR, HU, LV, LT, MT, NL). SE stated that it does not apply this restriction.

Views were more mixed on the requirement for refugees to make an application within the first three months to benefit from the favourable conditions. AT, BE, EE, FR, NL, MT and PL thought that this rule should remain as it is, while other countries wished to extend this deadline to 6 months (HU), 1 year (PT) or however long the integration programme lasts (LT). BE also stated that its own deadline was 12 months.

On family, CY, HU and LV favoured a wider definition, while AT, BE, BG, DE, EE, FI, FR, LT, LU and MT wished to retain the rules as they are. FR noted that rights for spouses, partners and the ascendants of minor refugees are guaranteed by the Geneva Convention and therefore felt that the rules in the Directive do not need to be extended.

#### *International organisations, social partners and NGOs*

All the organisations that provided responses on refugees wished for the restrictions on the favourable conditions to be removed, or amended to be more liberal. The International Commission of Jurists stated that the limiting of the application of more favourable conditions for refugees to pre-entry family relationships and to three months are counter to both international refugee and international human rights law. AEDH argued that requirements imposed to refugees are not justified unless Member States develop much more

comprehensive services for refugees. ETUC favoured a special channel for the reunification of the refugee's family, without the requirements asked to other migrants and also felt that the Directive should provide for effective mechanisms of social inclusion and integration, currently absent from some national legislation.

On limiting the favourable conditions to pre-entry relationships, AEDH, Care for Europe, Caritas Europe, COMECE, CoordEurop, Council of Europe, ETUC, IOM and UNHCR called for the restriction to be removed as it does not take into account the specific situation of refugees. It was argued that asylum procedures are often very lengthy and that therefore many beneficiaries of protection have spent many years in the Member States before being recognised as refugees, and may have formed a family during this time.

On the requirement to make the application within three months, Care for Europe, Caritas Europe, Council of Europe, COMECE, ECRE, ETUC, IOM and UNHCR felt that this should be removed because it again did not take into account the specific situation of refugees. Refugees may not know if their family members are still alive or where they are, and tracing can be a lengthy process. UNHCR argued that as a minimum, the three months should apply to when the application is introduced and not to when all the documents are provided.

Relating to the definition of the family, almost all organisations felt that this should be wider than the nuclear family (AEDH, Caritas Europe, COMECE, ECRE, IOM, Red Cross EU Office, UNHCR). IOM and the Red Cross EU office stated that family reunification should be ensured for wider categories of family members who are dependent on the refugees, based on the principle of dependency in line with the interpretation of the ECHR. UNHCR recommended the adoption of guidelines defining clearly what is understood as dependency. ECRE supported, as a minimum, the inclusion of unmarried long term partners and any resultant children, long term same sex partners and children not related by blood that lived as part of the family. It also argued that emotional, psychological and physical dependency as well as financial dependency should be taken into account. Care for Europe was the only organisation to argue that a wider definition should remain at national discretion.

National organisations generally opposed the restrictions and the favourable conditions, for the same reasons also given by international organisations. A wider definition of family was also sought by NGOs that answered the asylum related questions. The British Red Cross highlighted that often refugees do not have documentary evidence because it is not usually possible to formalise adoption agreements in crisis zones, and because same sex partners are rarely registered because such relationships are not recognised and often criminalised. It therefore argued that assessments of applications should be conducted on a case by case basis. The Dutch Council for Refugees stated that the concept of 'practical family ties' as currently applied in the NL is illegal.

In addition to answering the questions, UNHCR also made some suggestions to help address the specific obstacles faced by beneficiaries of international protection:

- Beneficiaries of international protection should receive appropriate information in a timely manner and a manner they understand;
- There should be the possibility for the sponsor to apply in his/her country of asylum. Applications for visas should also be more accessible, e.g. in country of asylum;
- Specific application forms adapted to the needs of beneficiaries of international protection should be developed;

- Beneficiaries of international protection should not be rejected based solely on the lack of documentary evidence. Guidelines on the evidence required to establish family links should be developed. UNHCR's guidance on the use of DNA testing should be followed.

#### **4.5 FRAUD, ABUSE, PROCEDURAL ISSUES**

##### ***Q10: Fraud***

The Directive provides for the possibility to carry out interviews and conduct other investigations into family reunification applications. These investigations must be proportionate, ie. they must not make family reunification impossible, and must respect fundamental rights to privacy and to family life. A number of Member States have introduced DNA testing, which is not mentioned in the Directive. The Green Paper invited stakeholders to provide any evidence they have on the scale of fraud, and asked for their views on regulating rules for investigations at EU level.

##### *Member States and Turkey*

Statistical evidence on fraud cases in general was not available. LT, LV and RO stated that fraud is not a significant problem in their countries, while NL and IRL noted that it is widespread and CZ stated that false documents represent a serious problem. In BE and AT only some cases were proven, but the countries argued that the lack of statistics does not mean that there are few cases. This view was also held by LU. CZ and HU pointed out that most fraud cases in their countries involved EU citizens and were therefore not relevant to the family reunification Directive. FR suggests that fraud in France mainly involves children.

In terms of specifying rules at EU level, DE, FR, IRL, LV, LT, MT and NL opposed rules and thought that procedural details should be left up to Member States to define. The German Bundesrat opposed any rules that go beyond the protection of fundamental rights. NL stressed that the scope for investigations should not be limited. FR argued that it would not be possible to harmonise the way interviews are conducted but thinks useful to have interpretative guidelines.

Some of those Member States who supported rules at EU level nevertheless pointed out that these should be of a general nature, with flexibility for Member States to set the procedural details (EL, HU, LU, PT). EE favoured guidelines to changes to the Directive. IRL also sought guidelines, specifically on whether time limits can be suspended if investigations are ongoing and on negative immigration histories as a reason for rejection. BG stated that rules on investigations should be regulated at EU level and should be proportionate to ensure fundamental rights.

Another theme within the group of Member States favouring rules was DNA testing. CY and SK welcomed guidance on this issue while AT and CZ stated that voluntary tests should be specifically mentioned as permissible in the Directive. PT sought some harmonisation on DNA tests, but did not favour a standard procedure. BE also proposed better collaboration and exchange of best practice between Member States.

Turkey stated that investigations of fraud violate human rights legislation on family unity, respect for family life and respect for private life and raised concerns that there is a presumption of guilt in many countries. In contrast, IRL noted that the burden of proof lay

entirely with the state and argued that this hampered detection of fraud. It therefore sought a better balance on the onus of proof.

### *International organisations, social partners and NGOs*

Several organisations raised concerns that in some Member States there was a presumption of fraud and that some Member States investigate all couples, which was described as an invasion of privacy and disproportionate given that the vast majority of relationships are genuine (CIEMI, Christian Group, COMECE, CoordEurop). It was argued that there should be a general presumption of the validity of marriage and investigations should be proportionate.

ILGA-Europe and UNHCR thought that there should be guidance on investigating fraud, or that the Directive could include indications of the framework parameters for interviews, investigations and testing, establishing links with considerations of fundamental rights. Christian Group and IOM thought that the way fraud is investigated should be closely monitored.

A number of organisations also stated that DNA testing should only be used as a last resort if either doubts are extremely grave or it is requested by applicants. It should not be routinely deployed (CoordEurop, COMECE, ECRE, ILGA-Europe, IOM, Red Cross EU office). Several organisations also stated that tests should be free or at least affordable to applicants.

ETUC stated that if there is proof of fraud encouraged by loopholes or ambiguities in the current legislation, they should be further analysed and discussed in order to improve the current legislation.

A few national organisations addressed fraud directly. The Spanish Integration Forum, Deutscher Juristinnenbund, Diakonie Bundersverband Caritas and Arbeitsgemeinschaft der Deutschen Familienorganisationen thought that many checks and inspections currently being conducted were inappropriate and in invasion of privacy. Investigations should be used only in extreme individual cases and the burden of proof should be with the government.

Caritas Luxembourg argued that fraud is often the last resort when it is impossible to provide necessary documents due to conditions in the home countries. It called on Member States to be more flexible in allowing alternatives to documents such as interviews and investigations. It believed that this should be regulated at EU level. The Finnish Red Cross noted that interviews to prove family relationships are necessary but was concerned about the quality of these. It called for them to only be conducted by specially trained personnel equipped with sufficient cultural competence, with special attention to children.

### ***Q11: Marriages of convenience***

The Directive highlighted marriages of convenience as a specific type of fraud and invited stakeholders to provide evidence on the scale of the problem, and whether confirmed cases are related to the rules of the Directive. It also asked if the provisions in the Directive could be more effectively implemented.

### *Member States and Turkey*

A few countries provide statistics on the scale of marriages of convenience. Generally in most countries numbers are relatively small: in FI, 200 applications were denied on these grounds in 2011, in PT 58 cases were prosecuted in 2010, and in SK there were 42 suspected cases in 2011, 41 of which involved a Slovak national. In contrast, the German Bundesrat States that there were 994 cases in the country in 2010. The UK provides statistics indicating that there were 1741 suspected cases of marriages of convenience reported by civil registrars in 2011, up from 452 in 2005. It is not known what proportion of these cases were proven.

A number of countries also said that marriages of convenience were found regularly (AT, DE and NL). LV stated that statistics were 'comparatively insignificant' but that this did not mean that there was not a problem. MT said that 'there have been cases' and BE that marriage of convenience was a problem. CZ, IT and HU again stated that cases found mainly involved EU citizen, while FR also found that marriages of convenience mainly involve French citizens.

With regards to improving the Directive rules or their implementation, BE, EE, EL, LV and LT believed that current provisions are sufficient, while AT, NL, PT and RO argued that the rules should be changed. AT and NL wished to ensure that the scope for Member States to address marriages of conveniences should not be limited. PT thought that the Directive should criminalise marriages of convenience. BG favoured common rules on marriages of convenience.

DE suggested that issuing autonomous residence permits after only three years may deter people from entering into a marriage of convenience, while FI discussed the use of the assessment factors for marriages of convenience listed in the EU Council Resolution of 4 December 1997<sup>8</sup>. EL highlighted the importance of cooperation with countries of origin.

### *International organisations, social partners and NGOs*

A few organisations discussed marriages of convenience separately from the wider issue of fraud and the questions on minimum age. Some contributions stated that marriages of convenience are a minor phenomenon when compared to the majority of relationships that are genuine and that rules should be made for the majority and not for exceptions (CIEMI, CoordEurop, European Women's Lobby).

Care for Europe appreciated that marriages of convenience are a problem, but thought that issuing the initial residence permit for 1 year only offers an opportunity to check and therefore no further provisions are required. ETUC and IOM argued that marriages of convenience are not encouraged by the provisions in the Directive and that their prosecution can be effectively conducted by the criminal and/or civil jurisdiction at national level.

National organisations' views on marriages of convenience tended to stress the low numbers involved vis-a-vis genuine cases, and raised concerns about presumptions of guilt and excessive investigations in some Member States, as discussed in relation to fraud generally. The Italian Associazione Comunita Papa Giovanni argued that marriages of convenience are caused by restrictive immigration policies rather than the Directive.

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<sup>8</sup> [http://europa.eu/legislation\\_summaries/other/133063\\_en.htm](http://europa.eu/legislation_summaries/other/133063_en.htm)

## ***Q12: Fees***

There is currently no harmonisation of fees to be paid for family reunification, which has resulted in very different fee levels between countries. The Green Paper asked for views on whether fees should be regulated and what form such regulation should take.

### *Member States and Turkey*

Almost all Member States that answered this question opposed the setting of specific fees at EU level (AT, BE, CY, CZ, DE, EE, EL, FI, FR, DE, HU, LV, LT, LU, MT, NL, PT, RO). DE and AT argued that different wage levels and costs of living across the EU make harmonisation inappropriate. AT, CY, FR and LT highlighted the different administrative costs incurred by States on issuing permits and felt that fees should reflect this. LU argued that harmonisation of family reunification fees via the Directive could lead to inconsistencies in the costs of different residence permits within the country.

PT and RO stated that the Directive should specify that fees should be proportional and should not hamper family reunification, but did not explicitly seek the inclusion of rules. MT also felt that the Directive should state that fees should be proportional and based on services actually provided when processing the applications.

BG is the only country to seek regulation of fees and thought that this should be done taking into account the average salary in each Member State.

### *International organisations, social partners and NGOs*

A number of organisation wished for the Directive to regulate fees or provide binding guidance, setting either maximum fees or an upper level based on the cost of living or average earnings of the country of destination (Care for Europe, Caritas Europe, COMECE, CoordEurop, ENAR, ETUC European Women's Lobby). TDHIF and ECRE argued that administrative fees can hamper family reunification. Some organisations thought that there should be no fees (CIEMI), no fees for DNA testing and other additional investigations (ETUC, ENAR) or that fees should be reduced for beneficiaries of international protection (Red Cross EU office).

The International Commission of Jurists' position was that while international human rights law does not prohibit administrative fees, it does exclude fees that would make family reunification impossible. The IOM thought that general safeguards against excessive fees were preferable to specific ceilings.

Generally, national organisations were in favour of regulating fees, particularly in relation to DNA tests. The Diakonie Bundersverband Caritas noted cases where costs for visas and pre-integration training and tests were up to 7000 Euros and argued that 50% of the costs should be borne by the government, or that the language requirement should be removed.

## ***Q13: Length of procedure***

The Directive currently sets an absolute deadline of nine months from the date when the application was lodged within which a decision must be given. Member States can extend this deadline, typically by three months, in exceptional circumstances. The Green Paper asked if

the deadline is justified.

#### *Member States and Turkey*

The majority of States were content with the deadline as it is (AT, BE, BG, CZ, EE, EL, FR, LT, LU, NL, PL, PT, SK, SE). A number of suggestions for changes were also made, including shortening the deadline to 30 days (RO), 6 months (CY) or saying the deadline was disproportionately long (HU and Turkey). Turkey pointed out that while 9 months was intended as a maximum, it had become ordinary practice in some Member States. BG and LV also stated that their deadline was one month and they had not faced any problems, EE that it was 2 months, BE that it was 6 months, while IT had increased its deadline from 90 to 180 days. DE argued that the 9 months should start from when the applicant had submitted all relevant paperwork, and FI also FR also felt that extensions to the 9 months are justified if applicants cannot supply the required documents and interviews or DNA tests are necessary.

#### *International organisations, social partners and NGOs*

Some organisations argued that the 9 month administrative deadline is justified but there should be a much more restrictive approach to extensions (Care for Europe, COMECE, ILGA-Europe). ENAR also thought that there should be no extensions and that 9 months was too long already. CoordEurope and TDHIF also felt that procedures generally take too long, which undermines right to family life. UNHRC stressed that efforts should be made to process applications as quickly as possible.

Several national organisations stated that in many cases, the length of procedures was excessive and undermined the right to family reunification.

#### ***Q14: horizontal clauses***

There are two horizontal clauses in the Directive, relating to (1) the rights of the child, stating that the child's interest must be a primary consideration in all actions relating to children and (2) an obligation to take account of individual circumstances when examining each case. The Green Paper sought suggestions on how the application of the horizontal clauses could be ensured in practice.

#### *Member States and Turkey*

Most Member States felt that there was no problem in this areas and the horizontal clauses did not require changes (AT, BE, CY, DE, FR, LT, LU, MT, NL, PL, RO, SK). EE sought information exchange and application guidelines. CZ stated that Member States should do more to ensure compliance with the clauses in practice. Turkey sought clarification of the term 'minor children' in the first horizontal clause.

#### *International organisations, social partners and NGOs*

A number of different points were made in relation to horizontal causes: Care for Europe called for better training for officials making decisions; COMECE argued that the best interests of the child should be considered at all stages, not just examination; CoordEurope felt that horizontal clauses must be consolidated into law without needing recourse to the courts and that a third horizontal clause should be added ('The Right to family life is a

universal right'); the International Commission of Jurists stated that the location and wording of the horizontal clauses in the Directive may contribute to national authorities disregarding the principle of the best interests of the child and argued that the language should be changed and additional text included; TDHIF argued that in order to make the principle of the best interests of the child effective, there must be a requirement to provide a statement of motivation for judgements and administrative decisions and that decisions should be opened to judicial review.

## **ANNEX: LIST OF INTERNATIONAL ORGANISATIONS SHOWING ABBREVIATIONS**

1. AEDH - Association Européenne pour la Défense des Droits de l'Homme
2. Caritas Europe
3. CARE for Europe
4. CCME - Churches' Commission for Migrants in Europe
5. CIEMI - Centre d'information et d'études sur les migrations internationales
6. Coface - Confederation of Family Organisations in the EU
7. COMECE - Commission of the Bishops' Conferences of the European Community
8. CoordEurop - Coordination Européenne pour le Droit des Etrangers à Vivre en Famille
9. Council of Europe (the Committee on migration, refugees and displaced persons of the Parliamentary Assembly)
10. ECRE - European Council of Refugees and Exiles
11. ENAR - European Network Against Racism
12. ETUC - European Trade Union Confederation
13. European Union of Women
14. European Women's lobby
15. International Commission of Jurists
16. ILGA-Europe - International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe
17. IOM – International Organisation for Migration
18. Red Cross /EU Office (representing the EU National Red Cross Societies)
19. Save the Children EU office
20. TDHIF - Terre des Hommes International Federation
21. UNHCR – United Nations High Commissioner for Refugees