

Bundesrat

.02.12

Resolution

of the Bundesrat

Commission Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)

COM(2011) 735 final.

At its 892nd sitting on 10 February 2012 the Bundesrat adopted the following position pursuant to Sections 3 and 5 EUZBLG (Act on cooperation between the Federal State and the Länder in matters relating to the European Union):

1. The Bundesrat has reservations about the Commission's consideration of more specific rules regarding interviews and investigations by the authorities responsible in the case of indications of infringements or fraud (Question 10 of the Green Paper). Public authorities in Germany have to observe the principle of proportionality and fundamental rights and guarantee due process. Authorities' use of discretion and their decision-making processes cannot be predetermined in abstract and general provisions of a directive. Although no statistical surveys have been carried out on cases of abuse or fraud, authorities' room for manoeuvre must not be unnecessarily restricted if they are to be able to react properly in individual cases.
2. Regarding Question 11 of the Green Paper, the Bundesrat would point out that there is significant potential for abuse in the case of marriages of

convenience, as shown by police crime statistics. The corresponding statistics of the Federal Ministry of the Interior show a total of 994 cases in 2010. The general preventive effect of checks, which must be in keeping with the fundamental rights of the persons concerned, should on no account be underestimated. The Bundesrat is therefore opposed to restrictive conditions at EU level which go beyond protecting the fundamental rights of the persons concerned.

3. The Bundesrat rejects EU provisions on administrative fees (see Question 12 of the Green Paper) since rules on costs which are geared to the principle of covering costs and also the value of the matter for the persons concerned should continue to be a matter for national regulation.
4. The Bundesrat is in favour of maintaining the nine-month processing deadline laid down in the Directive (see Question 13 of the Green Paper). The average processing time taken by the immigration authorities in Germany is in fact slightly less but in exceptional individual cases the processing time may be longer.
5. The Bundesrat will transmit this opinion directly to the Commission.