

Social Security Committee Opinion 2011/12:SfU8

Right to family reunification of third-country nationals living in the European Union

Summary

In this Opinion the Committee on Social Security considers the Commission Green Paper on the right to family reunification of third-country nationals living in the European Union (COM(2011) 735).

The Commission's aim with this Green Paper is to initiate a public debate on family reunification, highlighting certain issues within the remit of the Directive on the right to family reunification (2003/86/EC).

The Green Paper includes 14 questions on the scope of the Directive, requirements for the right to family reunification, entry and residence of family members, asylum, and questions relating to abuse of the legislation and procedural issues. The Commission invites all stakeholders to reply to these questions and provide information on the application of the Directive by 1 March 2012 at the latest.

Based on the outcome of this consultation, the Commission will consider whether changes should be proposed to the Directive or whether to draw up guidelines for interpreting it.

The Committee, which does not go into the specific questions raised in the Green Paper, shares the Government's view that there is a danger that a possible reopening of negotiations on the Directive could lead to a worsening of the situation as regards the right to family reunification for third-country nationals in the EU.

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The Committee's proposal to the Riksdag

Right to family reunification of third-country nationals living in the European Union

The Committee proposes that the Riksdag take note of the Committee's opinion.

Stockholm, 14 February 2012

On behalf of the Justice Committee

Gunnar Axén

The following Committee members participated in the decision: Gunnar Axén (M), Tomas Eneroth (S), Mikael Cederbratt (M), Lars-Arne Staxäng (M), Eva-Lena Jansson (S), Finn Bengtsson (M), Kurt Kvarnström (S), Ulf Nilsson (FP), Shadiye Heydari (S), Solveig Zander (C), Jasenko Omanovic (S), Saila Quicklund (M), Gunvor G Ericson (MP), Emma Henriksson (KD), David Lång (SD), Annelie Karlsson (S) and Christina Høj Larsen (V).

Description of the item

On 15 November 2011 the Commission published a Green Paper on the right to family reunification of third-country nationals living in the European Union (COM(2011) 735). The purpose of this Green Paper is to initiate a public debate on family reunification, highlighting certain issues within the remit of current Directive No 2003/86/EC of 22 September 2003 on the right to family reunification.

All stakeholders are invited to reply to a number of questions in the Green Paper by 1 March 2012 at the latest.

In accordance with Chapter 10 Section 5 of the Riksdag Act, on 25 November 2011 the Chamber referred the Green Paper to the Committee on Social Security for scrutiny.

On 28 December 2011 the Government presented its explanatory memorandum (2011/12:FPM72) concerning the Green Paper to the Riksdag.

During its preparatory work the Committee held a discussion with the Government about the Green Paper.

The Committee's examination

Background

Under the TFEU, the European Parliament and the Council must, for the purposes of developing a common immigration policy for the EU, acting in accordance with the ordinary legislative procedure, decide on conditions of entry and residence, including those for the purpose of family reunification (Article 79(2)(a)).

Under the Directive on the right to family reunification, common EU rules for the exercise of the right to family reunification of third-country nationals have applied since 2003.

The Directive defines the conditions of entry and residence for non-EU family members joining a non-EU citizen already legally residing in a Member State.

Main content of the Green Paper

The Green Paper states that family reunification today amounts to about one third of all immigration to the EU. About 500 000 migrants a year, accounting for approximately 20% of all residence permits, are third country nationals coming to join non-EU citizens.

The Commission states that when the Directive was adopted it was considered to be only the first step towards harmonisation and that after its adoption it was criticised for establishing only a relatively low level of harmonisation. The Commission also says that both the Stockholm Programme and the European Pact on immigration and asylum identify family reunification as an issue where EU policies should be further developed, especially with regard to integration measures.

The Green Paper makes it clear that the Commission, in its first report on the implementation of the Directive (COM(2008) 610), itself identified national implementation problems and shortcomings with the Directive.

The Commission's aim with the Green Paper is to initiate consultation and a public debate on family reunification, highlighting certain issues within the remit of the Directive. Based on the outcome of this consultation the Commission will decide whether any concrete follow up is necessary, such as modification of the Directive or interpretative guidelines.

Questions in the Green Paper

In the Green Paper the Commission asks questions relating to requirements for the sponsor (the person who is legally resident in a Member State), for example if the correct method and the best way of deciding whether reunification should take place is to impose a requirement that there must be prospects of obtaining the right of permanent residence, or the requirement that the person must have waited a certain length of time before reunification. In the Commission's view, the first requirement allows Member States a margin of interpretation which could lead to legal uncertainty.

The Green Paper also raises the question of whether it is legitimate for a Member State to have a minimum age for marriage which is different from the age of majority in that country, and whether there are ways of preventing forced marriages in the context of family reunification and if so what that way should be.

It also raises the question of applications from minors, and whether the provisions on which family members can be considered for family reunification are adequate and broad enough to take into account the different definitions of the family other than the nuclear family.

Requirements for the exercise of the right to family reunification

The Directive contains an 'optional clause' which allows the Member States to insist that third-country nationals comply with integration measures.

The renewed European Agenda for the Integration of third-country nationals contains specific recommendations to Member States on the provision of language courses, reflecting migrants' varying needs at different stages of their integration process and on introductory programmes for newly-arrived migrants.

The Commission asks whether it would be useful to further define integration measures at EU level and whether pre-entry measures should be recommended. If so, how could safeguards be introduced to ensure that the measures did not *de facto* lead to undue barriers to family reunification.

On the question of reception capacity, the Green Paper suggests that it might be one of the factors taken into account when considering an application, but cannot, in the Commission's view, be interpreted as authorising a quota system or waiting period for reunification. The particular circumstances of specific cases must be taken into account. The Commission asks if it is necessary and justified to retain the possibility of taking account of reception capacity.

Asylum, etc.

Third-country nationals who are beneficiaries of subsidiary protection are excluded from the scope of the Directive.

One of the Commission's questions is whether third country nationals who are beneficiaries of subsidiary protection should be covered by the Directive and whether they should be covered by the more favourable rules which exempt refugees from meeting requirements for the sponsor to have accommodation, sickness insurance and stable and regular resources.

Another question is whether the Member States should continue to have the possibility to limit the application of the more favourable provisions of the Directive to refugees whose family relationships predate their entry into the country.

The Commission also asks whether family reunification should be ensured for wider categories of family members who are dependent on the refugee for support, and if so to what extent.

Fraud, abuse and procedural issues

The Commission's questions also touch on whether there is clear evidence of problems of fraud, for example where people lie about family ties, and if so how widespread such problems are and whether interviews and investigations, including DNA tests, can help solve them. Would it in that case be useful to regulate these interviews or investigations at EU level? There is also a question on whether there is clear evidence of problems of marriages of convenience and if so whether they are related to the rules of the Directive.

The Commission also asks whether the administrative deadline laid down in the Directive for examining an application (nine months) is justified.

There are two horizontal mandatory clauses in the Directive. On the one hand, Member States must have due regard to the best interests of minor children when examining an application, and on the other they must take account of the nature of the person's family relationships, the stability of these relationships, the duration of his or her residence in the Member State and the existence of family, cultural and social ties with his or her country of origin. According to the Green Paper, the latter provision means that Member States must make an individual examination of each case.

The Commission asks how the application of these horizontal clauses could be facilitated and ensured in practice.

Government

The Government's explanatory memorandum on the Green Paper states that amendments to the Family Reunification Directive can be expected to have an effect on Swedish legislation. It also says that the Government is not aware of any clearly stated positions from other Member States or institutions.

The Government's preliminary position on the Green Paper is that a renegotiation of the Reunification Directive could lead to stricter rules. The Government does not therefore recommend revision of the Directive.

Committee

The Committee has already given its opinion to the EU authorities in connection with the Commission's proposal for a Directive on the right to family reunification (COM(2000) 624) (Opin. 2000/01:SfU7y). One of the reasons given by the Commission for its proposal for a Directive is that the European Union must ensure fair treatment of third-country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim to grant them rights and obligations comparable with those of citizens of the European Union. To ensure protection of the family and the preservation or formation of family life, a right to family reunification should therefore be established and recognised by the Member States. In its opinion the Committee stated, among other things, that there was a clear advantage of the proposal for a Directive, namely that the right to family reunification in the Member States would be governed by common rules. It would probably strengthen the right to family reunification in certain Member States. However, the Committee expressed regret that subsidiary protection status – on a proposal from the European Parliament – was no longer covered by the proposal

for a Directive. The Committee also said that, since the proposal for a Directive – as it understands it – is designed as a minimum directive, it will be possible for Sweden to have more generous rules than those laid down in the Directive. Despite this positive contribution, the Committee was highly critical of parts of the proposal, including the ‘seriousness test’.

In 2006 Parliament passed the Government’s proposal for transposing the Directive into Swedish law (prop. 2005/06:72, Rep. 2005/06:SfU8, rskr. 2005/06:190).

The Committee notes to begin with that the aim of committees’ examination reports is, among other things, to increase transparency regarding the work of the EU. The responsibility for presenting a formal opinion to the Commission lies with the Government. That being so, the Committee sees no need to answer the Commission’s questions in detail.

The purpose of the Green Paper is to launch a wider discussion on the rules in the Directive and on whether greater harmonisation within the EU is desirable. The Commission also states that this wider discussion may lead to proposals for changes to the Directive.

The Committee points out that the Directive as it stands is based on minimum rules which allow the Member States to have more favourable provisions in their national legislation than those laid down in the Directive. The Committee agrees with the Government that any renegotiation of the Directive could lead to a strengthening of the provisions. In the Committee’s assessment, there is therefore no reason at the present time to reopen negotiations on the Directive.

The Committee proposes that the Riksdag take note of the Committee’s opinion.

ANNEX

List of proposals discussed

Green Paper on the right to family reunification of third-country nationals living in the European Union (COM(2011) 735).