



**UNHCR'S COMMENTS TO THE COMMISSION PROPOSAL FOR A COUNCIL
DIRECTIVE ON THE RIGHT TO FAMILY REUNIFICATION
(COM (1999) 638)**

1. Introduction

Family reunification is a fundamental principle of refugee protection that derives directly from the universally recognized right of the family to protection by society and by the State.

Pursuant to its responsibility to provide international protection to refugees, UNHCR seeks to ensure that refugee families who have been separated during or as a result of the refugee flight, be entitled to reunite. Ordinarily, such reunion will only be possible in the country where one of the members of the family has been granted asylum.

UNHCR, accordingly, welcomes that the draft Directive on Family Reunification elaborated by the European Commission, addresses the question of family reunification of refugees. More generally, UNHCR considers that an orderly management of migratory pressures stemming from family reunion expectations of ordinary aliens, may significantly contribute to reducing the misuse of asylum procedures for purely migratory purposes.

2. Consistency of the proposals with refugee protection principles

UNHCR considers that, by and large, the provisions of the draft Directive are in keeping with international principles relating to the reunification of refugee families. UNHCR welcomes, in particular, that the draft Directive:

- Reaffirms the right of the family to protection by society and the by State and acknowledges that family reunification is a necessary way of making a success of the integration of third-country nationals residing lawfully in the Member States.
- Adopts liberal criteria as regards the definition of the family group, recognizing the validity of claims for reunion not only made by legally married spouses and their minor children, but also by unmarried couples forming a genuine and stable family unit (including couples of the same sex), as well as by other dependent members of the refugee's family such as ascending relatives who have no other means of family support in the country of origin, and adult children who are unable to fend for themselves because of their state of health.
- Adopts flexible criteria as regards proof of family relationship, admitting alternative means of proof where the refugee cannot provide relevant documentary evidence.
- Exempts refugees from the need to fulfil the qualifying conditions that apply (or may apply) to ordinary aliens, namely, evidence of adequate accommodation, sickness

insurance for all members of the family, stable and sufficient economic resources, and a minimum period of residence.

- Generally accords members of the family the same residence rights as the refugee and, under certain circumstances, allows them to obtain an autonomous residence permit.
- Accords members of the family the same treatment as nationals as regards access to education, access to employment and self-employed activity and access to vocational guidance.
- Contains provisions aimed at facilitating family reunion, including the issuance of visas without charge, and the possibility to process, in exceptional circumstances or on humanitarian grounds, an application submitted when the family member is already residing in the territory of the Member State concerned.
- Accords the right to appeal against the rejection of the application for family reunion.
- Contains special provisions relating to unaccompanied minors and affirms that, when examining an application for family reunion due regard must be had to the best interests of minor children.

UNHCR strongly encourages EU Member States to adopt these proposals by the Commission since, insofar as they relate to refugees, they fully reflect international protection principles.

3. UNHCR's concerns

UNHCR wishes to draw attention to some aspects of the draft Directive which, in its view, may require clarification or further elaboration.

(a) Beneficiaries

UNHCR notes that the draft Directive does not necessarily apply to refugees falling under its extended mandate, namely, to persons fleeing indiscriminate violence arising in situations of war or conflict. In conformity with the draft Directive, such refugees will be entitled to family reunion in the same manner as Convention refugees only if they:

- (i) are allowed to remain in the territory of the member State under a subsidiary protection regime; and,
- (ii) are granted a residence permit for a period of at least one year.

Thus, the entitlement of these refugees to family reunion is not automatic but ultimately depends upon a discretionary measure by the host State.

UNHCR considers that, save in cases of mass influx where a temporary protection regime may be instituted, refugees under its extended mandate should be accorded a complementary (or subsidiary) form of protection which should entitle them to family reunification in the same manner as Convention refugees. This means that their entitlement should not be made dependent on the length of their permit to stay.

UNHCR would, therefore, recommend that refugees fleeing indiscriminate violence arising in situations of war or conflict, be listed in the Directive among the categories of persons to whom it applies (Article 3), and that they be accorded the same treatment as Convention refugees, save in case that they form part of a sudden and mass influx of asylum-seekers in connection with whom a temporary protection regime has been instituted.

(b) Exclusion grounds

UNHCR has no objections to the exclusion from the benefits of the Directive of members of the family based on grounds of national security and public order (or the equivalent expressions used in the draft, “domestic security” and “public policy”). It, however, considers that reasons of health should not be invoked to deny refugees the right to family reunification. This position is consistent with the accepted interpretation of the Convention as regards grounds for expulsion under Article 32.

(c) Unaccompanied minors

In connection with the treatment of unaccompanied minors, UNHCR would recommend that a provision be included 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.

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