

## **64 NGOs call the EU Member States and the European Commission to safeguard family life of migrants and refugees**

On the occasion of the public hearing on family reunification of third country nationals living in the EU, we, the undersigned organisations, call on the European Commission and EU Member States to guarantee the effective right to family life and family reunification for all migrants and beneficiaries of international protection. It is in the interest of Member States to harmonize practices and legislation in the field of family reunification. We remind that **Member States have the obligation to properly implement the EU Family Reunification Directive** and to remove the many legal and practical obstacles to family reunion that exist today.

While all Member States could improve their family reunification practices, a growing number are infringing the Directive's minimum standards. In 2008, the European Commission published a report acknowledging that Member States were not in compliance with several articles in the Directive. Since then however, no legal action has been undertaken. We call on the **European Commission to update the evaluation done in 2008, and to start infringement procedures** against the Member States that are not complying with the current EU rules. We also encourage the European Commission to establish an on-going mechanism to monitor Member States' implementation of the Directive and its practical impact on migrant families. **Based on the 2008 report, as well as our expertise in this field, we consider that infringement procedures** against Member States could already be started, in particular in relation to non-transposition or incorrect transposition of the Directive with regards to visa facilitation, excessive requirements on fees for family reunification, proportionality of integration measures and additional material conditions, and evidence requirements in particular for beneficiaries of international protection.

**In addition to these measures, we believe that interpretative guidelines could be a tool to help all Member States** to correctly implement the law and adopt better practices to facilitate family reunification. Any action taken should involve relevant stakeholders such as civil society actors or the European Parliament.

Family is vitally important in the lives of all people, including migrants. Family reunification, a fundamental human right under EU law, enables families to live in dignity and helps their integration in society. Various research projects have found positive effects of family reunification and negative effects of restrictive policies and extended periods of separation, both for migrants and for the societies they live in.

We believe that the EU Family Reunification Directive provides the right objectives and minimum standards. The Member States are supposed to implement the right to family reunification by respecting human rights standards, including Article 8 of the European Convention on Human Rights and Article 7 of the EU Charter of Fundamental Rights. Member States must also respect key principles of law, such as proportionality, the best interest of the child and non-discrimination. This Directive also provides the opportunity for more favourable practices, which many Member States already apply. We believe that issues like forced marriages and marriages of convenience are better addressed through means other than family reunification legislation, such as sustained educational measures and counselling support for victims and access to an independent legal status. Restrictive family reunification policies and procedures can leave family members with few other

options that entering the country irregularly or over-staying their visa. Their irregular migration status restricts their basic rights and opportunities for integration while opening them up to exploitation and abuse.

Our organisations and members are monitoring the transposition of the Directive and are confronted with shortcomings in our day-to-day work assisting migrants and beneficiaries of international protection. Our responses to the consultation on Family reunification identified a number of common issues that should be taken into account in this upcoming process.

**We call on the EU Member States and the European Commission to address the following issues:**

- **Remove practical obstacles to family reunification**, such as high fees, complicated documentation, and difficult access to visas and travel documents for family members, particularly for beneficiaries of international protection. In some cases, the fees for family reunification are 10 times higher than the cost of an identity card. Recent case law of the European Court of Human Rights (ECtHR) confirms that such practices are discriminatory.
- **Make the waiting periods and length of procedures as short as possible.** The longer the waiting period or procedure, the more difficult family life becomes. When children are involved, the best interest of the child has to be given priority.
- **Evaluate the proportionality and accessibility of integration measures for family reunification.** Member states impose integration measures on family members that became in reality pre-entry conditions and additional requirement for family reunification. Indeed, most Member States do not impose any integration conditions. Only a few Member States do impose such integration conditions today, such as Austria, France, Germany, and especially The Netherlands.
- **Make equality and proportionality guiding principles of any material or housing conditions.** The income and housing conditions required by many Member States cannot become obstacles to family reunification. In some countries, reuniting families are expected to meet conditions that the average family in the country could not. We ask Member States not to require economic resources above the level of social assistance or minimal wage and to allow the inclusion of some social benefits in the calculation of these resources.
- **Beneficiaries of subsidiary protection must be entitled to the same favourable rules as refugees**, in line with the practices in many EU Member States and the on-going EU legal harmonisation on asylum, most recently the Qualification Directive and Long-Term Residence Directive.
- **Clarify that the minimum age limit for spouses should be the age of majority and reassess how to fight forced marriages.** Some Member States allow for family reunification of spouses depending on age limit higher than 18 years old, which are arbitrary or excessive age limits. We find higher age limits to be discriminatory, unjustified, and ineffective for promoting integration or fighting forced marriages. Most Member States impose majority as the age limit of reuniting couples.
- **Clarify the definition of the family members and of the dependent relatives entitled to family reunification, based on proportionality and non-discrimination.** Currently, only married couples and their minor unmarried children are entitled to family reunification under the Directive. Guidance

should address how Member States can include other family members and define dependency based on an individual assessment of family life.

- **Guarantee access to independent residence permit.** Family members need to have access to an individual independent residence permit as early as possible, before the 5 years period, without any additional conditions. This more favourable access is already in place in a handful of Member States.

Brussels, 31 May 2012

*Caritas Europa*



*European Council for Refugees and Exiles (ECRE)*



*Red Cross / EU Office*



*Confederation of Family Organisations in the European Union (COFACE)*



*Jesuit Refugee Service Europe (JRS)*



*European Network Against Racism (ENAR)*



*The European Region of the International Lesbian, Gay, Bisexual, Trans- and Intersex Association (ILGA)*



*European Womens' Lobby (EWL)*



*Platform for International Cooperation on Undocumented Migrants (PICUM)*



*Pax Christi International*



*European Association for the defence of Human Rights (AEDH)*



*Churches' Commission for Migrants in Europe*



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