

SCHEDULE

linking the position of the Committee on Migration, Refugees and Displaced Persons with the questions posed by the European Commission in its Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)

Please note that links are made only to the questions on which the Committee on Migration, Refugees and Displaced Persons has dealt with in its position paper.

Q1

Are these criteria (reasonable prospect for the right of permanent residence at the time of application as regulated in Article 3 and a waiting period until reunification can actually take place as regulated in Article 8) the correct approach and the best way to qualify the sponsors?

The Committee considers the condition requiring a sponsor to have a reasonable prospect of obtaining the right of permanent residence problematic because of the possibility to exclude almost anybody. See paragraph 15 of the position paper.

Q2

Is it legitimate to have a minimum age for the spouse which differs from the age of majority in a Member State? Are there other ways of preventing forced marriages within the context of family reunification and if yes, which?

Do you have clear evidence of the problem of forced marriages? If yes how big is this problem (statistics) and is it related to the rules on family reunification (to fix a different minimum age than the age of majority)?

The Committee considers that allowing a minimum age for a spouse which differs from the age of legal majority raises fundamental rights issues. It also links the problem to another problem, which is the need for autonomous residence permits to protect those who benefit from family reunion but later find themselves in a vulnerable position (for example victims of domestic violence). See paragraphs 12 and 16 of the position paper.

Q3

Do you see an interest in maintaining those standstill clauses which are not used by Member States, such as the one concerning children older than 15?

The Committee is in general concerned by the derogation clauses and optional clauses and in particular those that are used only by a few or none of the EU member states. Consideration should be given to withdrawing these in a modified Directive. See paragraphs 9 and 10 of the position paper.

Q4

Are the rules on eligible family members adequate and broad enough to take into account the different definitions of family existing other than that of the nuclear family?

Throughout the Committee's paper there is call for a wider definition of "family" going beyond the nuclear family in order to tie up more closely with the concept of family life under the European Convention on Human Rights and the findings of the European Court of Human Rights. See paragraphs 11 and 19 and the case-law of the Court cited in footnote 5.

Q5

Do these measures efficiently serve the purpose of integration? How can this be assessed in practice? Which integration measures are most effective in that respect?

Would you consider it useful to further define these measures at EU level?

Would you recommend pre-entry measures? If so, how can safeguards be introduced in order to ensure that they do not de facto lead to undue barriers for family reunification (such as disproportionate fees or requirements) and take into account individual abilities such as age, illiteracy, disability, educational level?

The Committee believes that it is preferable to keep to a minimum the conditions that states can impose, and also to better harmonise the situation to avoid differing levels between states. It also welcomes the suggestion 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. See paragraph 14 of the position paper.

Q6

In view of its application, is it necessary and justified to keep such a derogation in the Directive to provide for a three year waiting period as from the submission of the application?

The Committee did not deal with this issue.

Q7

Should specific rules foresee the situation when the remaining validity of the sponsor's residence permit is less than one year, but to be renewed?

The Committee considers that conflicts between the validity of different permits needs to be addressed. Therefore specific rules are required. See paragraph 16 of the position paper.

Q8

*Should the family reunification of third country nationals who are beneficiaries of subsidiary protection be subject to the rules of the Family reunification Directive?
Should beneficiaries of subsidiary protection benefit from the more favourable rules of the Family reunification Directive which exempt refugees from meeting certain requirements (accommodation, sickness insurance, stable and regular resources)?*

The Committee is clear on subsidiary protection, namely that family reunion should also apply to this category of persons and that they should be able to benefit from the more favourable rules of the Family Reunification Directive. See paragraph 18 of the position paper.

Q9

*Should Member States 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 to the territory of a Member State?
Should family reunification be ensured for wider categories of family members who are dependent on the refugees, if so to which degree?
Should refugees continue to be required to provide evidence that they fulfil the requirements regarding accommodation, sickness insurance and resources if the application for family reunification is not submitted within a period of three months after granting the refugee status?*

With regard to whether family reunification should be ensured for wider categories of family members one can refer also to the response to question 4 above. The Committee is in favour of covering wider categories of family members who are dependent on the refugee. See paragraphs 11 and 19 of the position paper and also the case-law of the Court cited in footnote 5.

Q10

Do you have clear evidence of problems of fraud? How big is the problem (statistics)? Do you think rules on interviews and investigations, including DNA testing, can be instrumental to solve them? Would you consider it useful to regulate more specifically these interviews or investigations at EU level? If so, which type of rules would you consider?

The Committee did not deal with this issue.

Q11

Do you have clear evidence of problems of marriages of convenience? Do you have statistics of such marriages (if detected)? Are they related to the rules of the Directive? Could the provisions in the Directive for checks and inspections be more effectively implemented, and if so, how?

The Committee did not deal with this issue.

Q12

Should administrative fees payable in the procedure be regulated? If so, should it be in a form of safeguards or should more precise indications be given?

The Committee's general position on restrictive provisions (including financial provisions) is that they should not to be over restrictive. Some form of harmony, keeping also in mind the danger of discrimination against certain persons, should be kept in mind. See paragraphs 10 and 12 of the position paper.

Q13

Is the administrative deadline laid down by the Directive for examination of the application justified?

The Committee did not deal with this issue.

Q14

How could the application of these horizontal clauses be facilitated and ensured in practice?

The Committee did not deal with this issue.