



## **Seventh meeting of the EUROPEAN INTEGRATION FORUM**

### **"Public Hearing on right to family Reunification of Third Country Nationals living in the EU"**

Brussels, 31 May-1 June 2012

#### **BACKGROUND PAPER**

### **Introduction**

In November the European Commission launched a public consultation on the right to family reunification of third-country nationals (Directive 2003/86/EC), to collect opinions on improving rules on family reunification at EU level and to provide factual information and data on the application of the Directive. The first part of consultation process involved the publication of a Green Paper inviting written responses by 1 March. A thematic analysis of the responses has been produced.

The public hearing is to be thought of as the oral part of the consultation, allowing for further discussion to complement the written element. It was agreed to conduct the public hearing as a part of the European Integration Forum, a platform for dialogue with civil society managed by the European Commission in co-operation with the European Economic and Social Committee (EESC).

The public hearing will take the form of an extended forum, involving both members of the Forum who are experts on migrants' integration, as well as all those with an interest in family reunification who contributed in writing to the public consultation, including representatives of national governments.

The event will group questions from the Green Paper into four thematic panels. For each panel, speakers from Member States and NGOs were invited on the basis of their contribution/positions on the different topics, to ensure that each panel reflects the range of different views held by different stakeholder groups.

### **Panel 1: Integration Measures**

The first panel will concentrate on integration measures framed by the questions of the Green Paper to explore whether such measures efficiently serve the purpose of integration. In particular, the discussion will cover how integration measures as applied in national family reunification legislation contribute to the integration process in practice. The panel will also consider whether pre-entry measures lead to undue barriers for family reunification, and if restrictions on their use should be set to prevent them unlawfully limiting the right to family reunification.

Relevant questions from the Green Paper:

- *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? (Q5)*
- *Would you consider it useful to further define these measures at EU level? (Q5)*
- *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? (Q5)*

**Panel 2: The Right to family reunification in the application process (need for individual assessment/best interest of the child, length of the procedure, fees)**

The second panel will concentrate on the right to family reunification in the application process, putting emphasis on the legal requirement to take into account applicants' individual circumstances such as disability, illiteracy, low education etc. when making decisions on applications.

Attention will be paid to the two horizontal articles in the Directive (Article 5(5) and Article 17) which require Member States to take into account the best interest of the child and to make an individual assessment when rejecting applications. Procedural rules, e.g. fees, will also be examined in light of the obligation to ensure the right to family reunification.

The panel will attempt to look for examples of how the horizontal articles and procedural rules should be used in practice, e.g. through for example "hardship clauses" thought for individuals facing particularly difficult circumstances such as illiteracy. It will also discuss the problems applicants and authorities may encounter in dealing with applications.

Relevant questions from the Green Paper:

- *How could the application of these horizontal clauses be facilitated and ensured in practice?(Q14)*
- *Is the administrative deadline laid down by the Directive for examination of the application justified? (Q13)*
- *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? (Q12)*

**Panel 3: Asylum related issues**

The third panel will deal with the asylum specific parts of the family reunification process. Recognised refugees have rights to family reunification under the Directive and their special circumstances are taken into account, which means that they do not have to comply with all the rules applicable to other migrant groups, e.g. income requirements or integration measures before admission. The panel will discuss if these current rules for refugees are sufficient.

In addition, it will be discussed if beneficiaries of subsidiary protection should be allowed to have family members join them under EU law and if so, whether they should be subject to the same favourable rules as refugees.

Relevant questions from the Green Paper:

- *Should the family reunification of third country nationals who are beneficiaries of subsidiary protection be subject to the rules of the Family reunification Directive? (Q8)*

- *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)? (Q8)*
- *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? (Q9)*
- *Should family reunification be ensured for wider categories of family members who are dependent on the refugees, if so to which degree? (Q9)*
- *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? (Q9)*

#### **Panel 4: Misuse of the right? Forms and scale of frauds**

The fourth panel will address issues related to fraud. The Green Paper acknowledges the lack of data on certain abuses of the Directive, with specific reference to marriages of convenience. To address this evidence gap, a study conducted by the European Migration Network<sup>1</sup> on the reported form and scale of fraud in the Member States will be presented.

The panel will discuss how fraud can best be prevented and detected, and whether more should be done at EU level to improve efficiency in the fight against misuse.

Relevant questions from the Green Paper:

- *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? (Q10)*
- *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? (Q11)*

---

<sup>1</sup> Focus study on marriages of convenience and false declarations of parenthood, to be published by 31 May 2012