

13552/97

LIMITE

ASIM 254

NOTE

from : the United Kingdom Presidency

to : the Migration Working Group

N° prec. docs. : WGI 1497 REV 1, 10669/1/96 ASIM 140 REV 1, 8285/97 ASIM 106,
8928/97 ASIM 124, 8929/97 ASIM 125

Subject: Questionnaire on family reunification

As part of a review of the 1993 Resolution on the harmonisation of national policies on family reunification, the Dutch Presidency initiated a discussion of Member States' policies in this area. It was apparent that a number of changes had taken place in the intervening period and significant differences existed. The United Kingdom Presidency believes there may be scope for further harmonisation in this important area and proposes to carry this work forward by means of the following questionnaire. It also believes that Member States' responses to the questionnaire will aid discussion of that part of the Commission's draft convention on rules for the admission of third-country nationals which concerns family reunification.

QUESTIONNAIRE ON FAMILY REUNIFICATION

1. Notion of "expectation of permanent or long-term residence"

(para 6 of introduction of Resolution WGI 1497 REV 1, and principle 1)

The Resolution applies only to third country nationals who are lawfully resident within the territory of a Member State on a basis which affords them an expectation of permanent or long-term residence.

- a. Please list the categories of third country nationals whom you regard as falling within this definition (expectation of permanent or long-term residence).
- b. In which of these categories do you require a third country national to be lawfully resident before family members can be admitted for the purpose of family reunification? In which of these categories do you allow admission of family members at the same time as the principal subject?
- c. Is a minimum period of lawful residence required as a condition for allowing family reunification? If so, please specify for which categories and for which period.

2. Refugees

Refugees are outside the scope of the Resolution (para 9 of the introduction).

- a. Are the rules and practice in your Member State regarding the right to family reunification for refugees still the same as laid down in document 10240/96 ASIM 130? If not, please specify the changes.

3. Polygamous marriages (and relationships)

According to Principle 5 of the Resolution a wife and her children will not be admitted for the purpose of family reunification if the marriage is polygamous and the resident already has a wife living with him in the territory of a Member State.

- a. In the case of first admission, is the husband resident in your country free to choose

which spouse is to be admitted?

- b. Is family reunification with a spouse and her children refused if there is already a spouse living with the resident in your country?
- c. Can family reunification with a spouse and her children also be refused if another spouse who was already admitted to stay in your country has obtained an independent right of residence and lives apart from her husband? If so, please specify the details (for example, if there has been at a relevant moment a polygamous situation with these two or more spouses).
- d. Can family reunification with a spouse/partner/children also be refused if there is already a non-married partner living with the resident in your country?

4. Admission of children

According to Principles 6 and 7 of the Resolution, Member States reserve the possibility of admitting children who are the offspring of the resident or of his/her spouse but who are not of the couple involved; and of admitting adopted children.

- a. Has your country used the possibility offered by these Principles to admit these categories of children; and if so, under what conditions (parental authority, custody of the child etc.)?

5. Independent residence status for family members

According to the Resolution (Principle 12) family members may, within a reasonable period of time following their admission, be authorised to stay on a personal basis independently from the person whom they joined on the basis of family reunification.

- a. Does your national policy and/or practice provide for an independent residence status for family members? If so, what kind of status can be obtained and under what conditions? Please distinguish between married partners, non-married partners and children if appropriate.
- b. Does the independent status give a right to work?

If so, under what conditions (work permit, etc)?

- c. In order to obtain an independent residence permit, must the family relationship have ended or is it also possible to obtain an independent residence permit while the family relationship (marriage or children living with parents) still subsists?
- d. Please describe specific policies, if any, for spouses in a vulnerable situation (victims of sexual harassment, abuse, exploitation, or if return to the country of origin is not advisable, for example for divorced women with young children).

6. General conditions for family reunification

According to Principle 16 of the Resolution, Member States reserve the right to make the entry and stay of family members conditional upon the availability of adequate accommodation and of sufficient resources to avoid a burden being placed on the public funds of the Member State concerned, and on the existence of sickness insurance.

- a. How do you interpret the notion of "availability of adequate accommodation?"
- b. How do you interpret the notion of "sufficient resources to avoid a burden being placed on the public funds of the Member State?"
- c. Can an authorization to stay on the basis of family reunification be withdrawn or not extended if one of these conditions is no longer fulfilled (Principle 11)?

7. Identification of family members

Although the identification of family members is not covered by the Resolution, there are sometimes problems with the identification of family members and their relationship with the resident in a Member State especially if the family members cannot show valid documents.

- a. What kind of methods or procedures does your country use to establish the identity of a family member and his or her relationship with the resident in your country?
- b. On whom lies the burden of proof in this regard: the family member or the administration?

- c. Is it possible to refuse admission if the identity or the family relationship is, or remains, doubtful?
- d. If your country uses methods such as a blood test please explain the procedure, effect and costs.

8. Admission of parents

- a. Do you allow family reunification with parents or other family members? If so, which, and under what conditions?

9. Article 8 of the European Convention on Human Rights

- a. Are the obligations under article 8 of the European Convention taken into account in your policy and practice on family reunification? If so, please describe how the rights under article 8 are observed in your policy and in individual cases.

10. Other conditions

- a. Are there any other conditions for family reunification relevant in this regard but not covered in the Resolution or in the answers to the questions above (for example, minimum age for the admission of spouses).

11. Scope for further work

Please state your views on the possibility of further work in this area with a view to closer harmonisation of Member States' policies and procedures.
