

13552/1/97

REV 1

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

The attached revision of the questionnaire, which has also been issued as Telex No 520, reflects suggestions made by delegations at the meeting of the Migration Working Group on 7 January and subsequently in writing.

It is for consideration under item 2 of the agenda for the Working Group's next meeting on 11 February.

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 family members of those 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 - or claim to - permanent or long-term residence).
- b. 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.
- d. If a waiting period is required, is this waiting period also applicable to nationals of Turkey, Cyprus and Malta which are party to the European Social Charter.
- e. In which of these categories must family reunion be applied for whilst the family members are outside your country?
- f. In what categories and in what circumstances can an application for family reunion be made whilst the family members are already in your country?

2. **Persons entitled**

Under your legislation, who holds the right to family reunification (obligation to give grounds for refusal of admission, legal recourse against refusal, etc.)? Is it the third-country national already resident in the Member State or the family member.

3. **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 (in the sense of the Geneva Convention 1951) still the same as laid down in document 10240/96 ASIM 130? If not, please specify the changes.
- b. In the case of persons who have been granted temporary protection, but not full refugee status within the sense of the Geneva Convention 1951, has the Resolution been considered as applicable? If not, which rules have been applied?

4. Spouses: 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. Do you have specific laws governing polygamous marriages and/or polygamous relationships? If so please give details?
- b. In the case of first admission, is the husband resident in your country free to choose the spouse to be admitted?
- c. Is family reunification with a spouse and her children refused if there is already a spouse living with the resident in your country?
- d. 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).
- e. 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?

5. Unmarried partners

Family reunification with unmarried partners (including same-sex relations and fiancé(e)s) is outside the scope of the Resolution.

Does your policy and/or practice provide for family reunification (or family formation) with unmarried partners (including same-sex relationships and fiancé(e)s)? If so, please specify which relationships are accepted and under what conditions (including legal status and waiting periods as referred to in para 1 of this questionnaire)? How is abuse prevented?

6. Admission of children

According to Principle 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.)? Does this also extend to step-children of one of the partners?
- b. Does it make any difference whether one parent has sole custody of the child or whether custody is shared by parents who are not married to each other, living apart or divorced?

7. Upper age-limit for children joining their parents

According to principal 8 of the Resolution, Member States should agree a maximum age

limit for admission of children of between 16 and 18 years. (Article 26(2) of the draft Convention on the admission of third country nationals, sets the limit at the age of majority for the Member State.)

- a. Up to what age may children join their parents in your country as the law stands at present? What other conditions apply? What are the reasons for the age limit set?
- b. During the past five years have any rules other than the existing ones applied, for example that parents are allowed only a certain time to decide whether their children are to join them? If so please describe the previous legal position and the reasons for the change.

8. 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).

9. 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)?

10. 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.
- e. Does your country take steps to check the authenticity of civil status documents produced in support of an application? If so please describe your practices?

11. Admission of parents

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

12. Family reunification with Students

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

Are members of the families of students admitted to your country for family reunification? If so, what conditions apply?

13. Family reunification quotas

- a. Can all persons meeting the conditions for admission for family reunification purposes enter your country immediately, or are quotas or time-scales applied? If so, what are they?
- b. Does your country set a limit on the total number of family members who may join the person concerned?

14. Requirements of constitutional law

Does the constitution of your country set any conditions regarding legislation on family reunification? If so what are they?

15. Article 8 of the European Convention on Human Rights

How are the obligations resulting from article 8 of the European Convention taken into

account in your policy and practice on family reunification?

16. International Conventions

Do you observe the principle of family reunification on the basis of any international conventions such as bilateral labour conventions entered into in the past?

17. Ability to take employment

Under what conditions are those admitted for family reunification permitted to work? Do you require a period of residence before such permission is given? If so, what is the relevant period?

18. Other conditions

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).

19. 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.
