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Launch of the Transnational Report Comparing Family reunification procedures across 6 EU Member States

On behalf of Caritas Europa (CE), I would like to thank the organizers for inviting me to present CE views on the family reunification directive. This presentation is based on CE detailed contribution to the EC Green paper on family reunification issued in 2012 and a joint NGOs statement issued in May 2012.

As one of the leading Civil Society Organization (CSO) on the issue of family reunification, CE has repeatedly called on the European Commission and the EU Member States to guarantee the effective right to family life and family reunification for all migrants and beneficiaries of international protection. We believe that it is in the interest of Member States to harmonize practices and legislation in the field of family reunification as family reunification is a part of the integration agenda. We would like to remind that, according to rulings of the ECJ[1], Member States have 3 key obligations:

- to properly implement the EU Family Reunification Directive
- to remove the many legal, financial and practical obstacles to family reunion that exist today
- BUT ALSO far and foremost to PROMOTE Family reunification.

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. Caritas Europa appreciates that the European Commission has initiated 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.

In addition to these measures, we believe that interpretative guidelines (IG) could be a tool to help all Member States to correctly implement the law and adopt better practices to facilitate family reunification. Whilst a working document is currently being prepared by CSOs, my main aim today is to share some thoughts about the interpretative guidelines that are due to be adopted by the Commission this summer.

[1] CJEU, 27 June 2006, European Parliament v. Council, C-540/03; CJEU, 4 March 2010, Rhimou Chakroun, Case C-578/08, paras 43 & 47; CJEU, 6 December 2012, O & S, Joined Cases C-356/11 & C-357/11, para 69.

Today's presentation is not exhaustive but it gives a snapshot of key concerns that should be addressed by the interpretative guidelines in order to address 3 main gaps in states 'practice 1) legal obstacles; 2) financial obstacles 3) practical obstacles.

1. Legal obstacles

1.1. Personal scope

CE deplores that under its current wording the personal scope of the directive is left - to some extent - at Member States' discretion. One example is article 3.1. which held that the directive shall apply where the sponsor is holding a residence permit (…) *"of one year or more who has reasonable prospects of obtaining the right of permanent residence"*. The interpretative guidelines should bring clarity with regards to the concept of *"reasonable prospects"* and ensure that such requirement fully complies with the basic legal principle of legal certainty and legitimate expectations. This would thus ensure that national authorities do not have absolute discretion on the personal scope of the directive. In order to assess the prospects fairly it appears appropriate to handle the application for family reunification at the local competent office.

1.2. Definition of family members

The interpretative guidelines should clarify the definition of the family members and of the dependent relatives entitled to family reunification, based on the principles of 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 the concept of 'dependency' based on an individual assessment of family life. In light of the case law of the ECtHR, it would also be essential to include *de facto* family members (e.g. children which have been living and growing up with a family without necessarily having been formally adopted).

1.3. Minimum age limit for the spouse

We welcome that the large majority of Member States set age limits no higher than the age of majority. Member States need to fight forced marriages from a human rights perspective. While there are many tried-and-test methods at their disposal, there is no evidence that age limits are effective for fighting forced marriages. It shall be stressed that the UK Supreme Court held that the British statutory minimum age requirement of 21 years for spouses violates Article 8 ECHR because it does not serve the legitimate aim it pursued. Further, these age limits can also amount to indirect ethnic discrimination, where adult couples from certain ethnic background are more likely to marry at the age of, for example, 18 and 20. On the basis of evidence collected, we strongly believe that using an age limit to "combat forced marriages and fraud" is arbitrary, unjustified and thus unnecessary. The interpretative guidelines should stress that a blanket age-limit for sponsors and spouses over the age of majority is ineffective, disproportionate, and potentially discriminatory. The country's legal age of majority should in principle be used for third-country national sponsors and reuniting spouses. The IG should clarify that the minimum age limit for spouses should be the age of majority. 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. The interpretative guidelines should clarify the concept of 'fraudulent' as opposed to 'forced marriage'. Based on the good practice developed in countries such as Belgium, the IG should encourage Member States to adopt educational measures and counseling support to fight against forced marriage.

1.4. Guarantee access to independent residence permit

According to Article 15.1 of the Directive, an autonomous residence permit shall be granted after 5 years to the spouse or dependent children. We believe that 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 favorable access is already in place in a handful of Member States.
Particular guidance is needed regarding the implementation of article 15.3. stating that "Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances". Whilst these circumstances shall be defined by the national law, we believe that violence against women and forced marriages should be clearly listed as "particularly difficult circumstances" in line with article 59 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

2. Practical obstacles to Family Reunification

2.1. Lift discriminatory and disproportionate integration measures

Only a few Member States do impose integration conditions today, such as Austria, France, Germany, and especially the Netherlands. Yet, this issue has been highly controversial. As acknowledged by the Commission, those Member states tend to impose integration measures on family members that become in reality pre-entry conditions and additional requirement for family reunification.
The interpretative guidelines should provide additional guidance with regards to the use of the "integration measures". Article 7(2) of the Directive refers to the right for EU Member States "to require third country nationals to comply with integration measures" but does not refer to the possibility to impose integration conditions as a requirement for family reunification.
We appreciate that the European Commission has announced that infringement procedures will more specifically target this issue. First, the IG should clarify that the only condition to apply for FR should be a valid residence permit in a member State. The IG should ensure that pre-entry measures are never used as a legal bar against family reunification.
Second, the IG should encourage the Member States to provide adequate post-arrival integration measures. IG should encourage Member States to provide several means for family members to learn about their new country of residence and promote their willingness to participate in society. Those services should be free and available in several locations across the country. We are strongly concerned that as of 2013, the Netherlands and Latvia will require family members to pay for the costs of the compulsory integration after settling in the receiving country.

2.2. 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. According to our information many legislation fully comply with the directive. Yet, in many Member States, administrative practice falls short of the principles laid out in the directive. Family reunification procedure can last up to 5 years in Spain as the delays for appointment in embassies and consulate abroad are very long. Interpretative guidelines should clarify that the maximum period of 2 years currently foreseen includes all waiting and procedure time, including the appeal. When children are involved, the interpretative guidelines should ensure that the best interest of the child is given priority.

3. Financial obstacles

Studies have highlighted that in some cases, the fees for family reunification are ten times higher than the cost of an identity card. According to the EPC[2], the highest fees are currently employed in the NL – 1550 euros in 2011 against 25.20 euros in Spain.
The recent case law of the CJEU[3] confirms that disproportionate fees are discriminatory and create excessive and disproportionate administrative charges which are liable to create an obstacle to a right conferred by EC the FR Directive. Recent case law of the European Court of Human Rights[4] confirms that such practices are discriminatory as they impede the right to family reunification and access to an effective remedy by a court. The interpretative guidelines should clarify the concept of proportionality of the fees – the conclusions of the Advocate General Yves Bot in the ECJ case C-508/10 to family reunification procedure held within the framework of the LT residence status Directive could be used as useful benchmark. In that case it is reminded that the fees shall not exceed the fees paid by nationals to get similar documents. CSOs have also called on the Member States to perform a detailed individual assessment of the financial situation of the sponsor and his/her family members.

[2] Yves PASCOUAU (in co-operation with Henry Labayle), Conditions for Family Reunification Under Strain – A Comparative Study in 9 EU Member States, King Baudoin Foundation, European Policy Centre and Odysseus Network publishers
[3] CJEU, Commission vs. the Netherlands 26 April 2012.
[4] ECtHR, G.R. vs. the Netherlands of 10 January 2012.