EU Commission – work on family reunification

COFACE conference
'FAMILIES ON THE MOVE'

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DG Migration and Home Affairs
Unit B1: Legal migration and integration
Legal framework

EU level:
• Directive 2003/86/EC: Family members of legally residing third-country nationals
• Directive 2004/38/EC: Family members of mobile EU citizens (free movement rights)

National level:
• Implementation of the Directives
• Falling under national law: family members of non-mobile EU citizens, beneficiaries of subsidiary protection etc.
Family Reunification Directive 2003/86/EC

The essence of the Directive:
- To define the conditions for the exercise of the ensured **right** to family reunification
- A legally residing TCN who fulfils certain conditions as laid down by the Directive should be able to be joined by his/her nuclear family members.

Challenges:
- "First generation Directive", low level of harmonisation, many optional clauses, gaps in personal scope
- MS tendency to opt for more restrictive policies in recent years
CJEU: inherent limits to the discretion of MS

C 540/03, Parliament v. Council:
“imposing a precise obligation on MSs requiring them in cases determined by the Directive to authorise family reunification of certain family members leaving them no leeway in this”

C 578/08 Chakroun:
“may clause in question must be interpreted strictly and the margin for manoeuvre which the MS are recognised as having must not be used in a manner which would undermine the objective of the Directive which is to promote family reunification and the effectiveness thereof”

+ Art. 7 CFR, Art. 8 ECHR and other fundamental rights provisions
Implementation of the Directive

A. Implementation reports (2008)

B. Public consultation: Green paper & Public hearing (2011-2012)

C. Application guidelines (2014) and expert group

D. Fitness Check on legal migration (2017-2018)

E. Conformity assessments and handling of complaints: follow-up with individual MS potentially leading to infringement procedures
Fitness check on legal migration: principles

• Retrospective analysis: from adoption to current situation, with some forecasts
• Evaluation criteria: relevance, coherence, effectiveness, efficiency, EU added value
• Assessing gaps, inconsistencies, overlaps...
• Analysis follows different stages of migration: from pre-application to residence and potential end of stay
• Differentiated approach on scope:
  ▪ In-depth study of the implementation of Directives on Single Permit; Long-term residents; Family reunification
  ▪ Partial study, focusing on relevance and coherence, of more recent Directives (Intra-corporate transfers, Seasonal workers), recently recast (Students & Researchers) and subject to review (EU Blue Card)
Fitness check: structure and timeline

Support study (until February 2018):

- Evidence gathering and consultations on practical implementation

Wide consultations

- Many targeted consultations to stakeholders both on practical application of current legislation and on views on its functioning
- Open public consultation: online questionnaire coming up during spring/summer 2017

The second implementation report of the Family Reunification Directive will be integrated in the Fitness check outcome
Continuous conformity control

Own-initiative monitoring

- The latest full round of conformity studies on family reunification was completed in 2016: follow-up with MS is ongoing
- Contact Group, bilateral meetings
- EU Pilot system
- Infringement procedures

Individual complaints

- Channel through which individuals, lawyers and NGOs bring conformity issues to the Commission's attention
- Initial standardised form + potential follow-up with more information and annexed documents
- COM may address general issues in transposition or application of EU law – this does not replace national redress mechanisms
Thank you for your attention!

More information:

DG HOME
https://ec.europa.eu/home-affairs/index_en

Fitness Check Legal Migration - link to OPC when launched:

EU Immigration Portal
http://ec.europa.eu/immigration