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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.9.2009
COM(2009) 456 final

2009/0127 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" and repealing Council Decision 2004/904/EC

{COM(2009) 447 final}

{SEC(2009) 1127}

{SEC(2009) 1128}

EXPLANATORY MEMORANDUM

Together with this proposal, the Commission is adopting a Communication on the establishment of a Joint EU Resettlement Programme (COM (2009)). It explains the grounds, objectives, context and functioning of the Joint EU Resettlement Programme. This Explanatory Memorandum should therefore be read in combination with this Communication. In order to avoid unnecessary duplications reference is made hereunder to this Communication.

1. CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

The aim of this proposal is to amend the Decision establishing the European Refugee Fund in the light of the establishment of a Joint EU Resettlement Programme. With respect to the objectives of the proposal, further reference is made to the Communication on the establishment of a Joint EU Resettlement Programme (COM (2009)).

• General context: new challenges in asylum policy and the establishment of a Joint EU Resettlement Programme

The European Refugee Fund (ERF) was set up by Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" and repealing Council Decision 2004/904/EC¹, on the basis of Article 63(2)(b) of the Treaty establishing the European Community.

This proposal for a Decision of the European Parliament and of the Council, amending the Decision establishing the European Refugee Fund for the period 2008 to 2013, and the Communication of the Commission to the Council and the European Parliament on the establishment of a Joint EU Resettlement Programme are part of the European Union's efforts to establish a Joint EU Resettlement Programme. They are a response to the requests by the Council to come forward with a proposal for the establishment of a Joint EU Resettlement Programme.

With respect to the background, recent developments and shortcomings of the current situation reference is made to the Communication on the establishment of a Joint EU Resettlement Programme (COM (2009)).

• Existing provisions in this area

This proposal aims to amend the Decision establishing the European Refugee Fund in the light of the establishment of a Joint EU Resettlement Programme. The existing Decision on ERF III contains several provisions with regard to resettlement.

• Consistency with the other policies

This proposal is fully consistent with the policies and objectives with respect to asylum which were identified by the EU over the past years. In the Communication on Regional Protection Programmes, which was adopted by the Commission in September 2005, it was pointed out that resettlement should be central to providing assistance to third countries, and that the Commission would examine the desirability of making a proposal for a more structured approach to resettlement activities. In the Policy Plan on Asylum, adopted on 17 June 2008,

¹ OJ L 144, 6.6.2007, pp. 1-21.

the Commission concluded that resettlement should be further developed and expanded into an effective protection instrument to be used by the EU, so as to meet the protection needs of refugees in third countries and to show solidarity with third countries of first asylum. On 24 July 2008 the Council adopted Conclusions in which it welcomed the presentation by the Commission of the Policy Plan on Asylum foreseeing the presentation of a proposal for the development of a Joint EU Resettlement Programme, in which Member States could participate on a voluntary basis. On 16 October 2008 the European Council adopted the European Pact on Immigration and Asylum. It stated that, among the new initiatives to be taken to complete the establishment of a Common European Asylum System, cooperation with the UNHCR should be strengthened to ensure better protection for people outside the territory of European Union who request protection, in particular by "moving, on a voluntary basis, towards the resettlement within the European Union of people placed under the protection of the Office of the United Nations High Commissioner for Refugees..".

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

Following a wide consultation of all relevant stakeholders on asylum policies, launched with the publication in June 2007 of the Green Paper on the future of the Common European Asylum System (CEAS)², which revealed a broad acknowledgement that resettlement should play a central role in the external asylum policies of the EU, it was concluded in the Policy Plan on Asylum³ that resettlement should be further developed and expanded into an effective protection instrument to be used by the EU.

Concerning this specific proposal, the Commission consulted all Member States and other stakeholders (UNHCR, IOM, ECRE, NGOs). The consultations took place through a questionnaire which was sent out to all Member States, a specific meeting held with a group of stakeholders in December 2008, a meeting of the Committee on Immigration and Asylum held in March 2009 and written input provided by UNHCR, IOM and ECRE.

An Impact Assessment with respect to this proposal was carried out, in which three different policy options and two sub-options were analysed as well as the effects of these options in terms of effectiveness in reaching the objectives, the impacts and the political feasibility and proportionality. A detailed list of consulted parties is included in the Impact Assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposed measures

The proposed measures seek to amend the Decision establishing the European Refugee Fund for the period 2008 to 2013 in order to provide additional financial support for the resettlement of those categories of persons which are annually identified as common EU resettlement priorities for the following year through a Decision to be taken by the Commission. The identification of these priorities will be done on the basis of an indicative forecast of resettlement needs which will be provided by UNHCR in spring (mid-March) each year and in close consultation with the resettlement experts of Member States, UNHCR and

² Green Paper on the future Common European Asylum System (COM (2007) 301).

³ Communication from the Commission to the EP, the Council, the European Economic and Social Committee and the Committee of Regions: Policy Plan on asylum, An integrated approach to protection across the EU, COM(2008)360 final.

other stakeholders. For this purpose an annual meeting will be organized in which these experts participate. On the basis of the outcomes of the meeting, the Commission will draft a proposal for a Decision identifying the common EU resettlement priorities, and will submit it for consultation to the management committee of the General Programme 'Solidarity and management of migratory flows' including the ERF III. Within twenty calendar days following the adoption of the Commission Decision on common EU resettlement priorities, Member States will provide the Commission with an estimate of the number of persons whom they will resettle in the course of the following calendar year according to these common EU annual priorities. On the basis of these pledges, Member States will receive additional financial assistance of 4.000 Euros per person to be resettled. Resettlement of the specific categories of persons according to common EU annual priorities needs to be carried out on a request of the UNHCR.

- **Legal basis**

The proposal is based on Article 63(2)(b) of the Treaty establishing the European Community, which is the legal basis of the act being amended.

- **Subsidiarity and proportionality principles**

Community involvement in the asylum field is founded on the need for solidarity among Member States in addressing a challenge that, in an EU without internal borders, cannot be effectively dealt with by individual countries acting alone. This led to adoption by the Community legislator of the *acquis* in the field of asylum, on the basis of specific dedicated legal bases enshrined in the Treaty.

The need to act as regards the Common European Asylum System (CEAS) has already been assessed in recent impact assessment reports, and in particular in the impact assessment on the asylum policy plan, which has pointed specifically to the need to develop a Joint EU Resettlement Programme. There have been repeated calls from the European Council and the European Parliament to develop the CEAS, including its external dimension. The institutions of the Union committed to improving implementation of the *acquis* in the field of asylum clearly expressed the view that strengthening practical cooperation between Member States as well as strengthening the external dimension are key priorities.

The nature of the objectives to be achieved – increasing the strategic use of resettlement, developing external asylum policies – requires an initiative to be taken at the EU level. The other general objectives also require action at EU level. The establishment of a Joint EU Resettlement Programme will be instrumental in ensuring that more EU Member States participate in resettlement and in demonstrating greater solidarity by the EU with third countries in receiving refugees.

The proportionality of the proposal has been assessed in the Impact Assessment. It has been examined how far EU measures should go and whether these are proportionate to the objectives to be reached. This proposal responds effectively to the objectives in a proportionate manner.

4. BUDGETARY IMPLICATION

This proposal complies with the appropriations and programming of the General programme "Solidarity and Management of Migration Flows" until 2013. Furthermore, this proposal to amend the ERF Decision does not alter the general objectives of the ERF and its financial

programming until 2013, as indicated in the proposal, dated 18 February 2009, to amend the ERF Decision with a view to the establishment of the European Asylum Support Office.⁴

As a result of the current proposal very limited additional costs are foreseen with respect to administrative expenses (see Annex).

5. DETAILED EXPLANATION OF THE PROPOSAL

Article 13 (4) and (5)

Article 13, paragraphs (4) and (5) stipulate that Member States will receive, as an additional financial assistance, a fixed amount of 4.000 Euros for each effectively resettled refugee during a respective calendar year who will fall under one of the specific categories which will be defined annually as common EU annual priorities by the Decision of the Commission. Member States will receive this fixed amount per refugee only once in case such refugee would fall under more than one of the specific categories. These annual priorities may relate to geographic regions, nationalities or specific categories of refugees to be resettled.

Article 13 (6)

Article 13 (6) stipulates that these common EU annual priorities will be established annually by a Commission Decision adopted following the consultation of the management Committee of the General Programme "Solidarity and Management of Migration flows".

Article 13 (7)

This paragraph provides for a new deadline for Member States within which they should provide the Commission with an estimate ("pledging") of the number of persons whom they plan to resettle in the course of the following calendar year according to these common EU annual priorities.

Article 13 (8)

Article 13 (8) provides that the results and impacts of the financial incentive for resettlement activities according to the common EU annual priorities shall be included in the mid-term and final evaluation reports on the implementation of the ERF by Member States and the Commission.

Article 20 (2), (3) and (5), third sub-paragraph

These paragraphs provide for setting up a timetable as regards the deadline for the submission of the pledging, necessary for the calculation of annual allocations between Member States, the deadline for the submission of annual programmes by Member States to the Commission and the deadline for the adoption of financing decisions by the Commission. In comparison to the deadlines set up in the current legal base, new deadlines are postponed due to the new procedure for the adoption of the common EU annual priorities for resettlement which will precede the calculation of annual allocations between Member States.

Article 35 (5)

This paragraph provides for the rule of eligibility which will apply for the fixed amount of 4.000 Euros per effectively resettled person according to the common EU annual priorities for resettlement. The fixed amount is granted as a lump sum of 4.000 Euros per each effectively resettled person during a respective calendar year.

⁴ COM (2009) 67 final

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁷,

Whereas:

- (1) In the light of the establishment of a Joint EU Resettlement Programme aiming at increasing the impact of the EU resettlement efforts in providing protection to refugees and maximising the strategic impact of resettlement through a better targeting to those persons who are in greatest need of resettlement, common priorities with respect to resettlement should be formulated at EU level on a regular basis.
- (2) Therefore it is appropriate, that the Commission decides on common EU annual priorities with respect to specific geographic regions and nationalities as well as to the specific categories of refugees to be resettled.
- (3) Taking into account the resettlement needs set up by the Commission Decision on common EU annual priorities for resettlement, it is also necessary to provide additional financial support for the resettlement of persons with respect to specific geographic regions and nationalities as well as to the specific categories of refugees to be resettled, where resettlement is determined to be the most appropriate response to their special needs.
- (4) In this context, it is appropriate to adapt the timetable as regards the deadline for the submission of data necessary for the calculation of annual allocations between the Member States, the deadline for the submission of annual programmes by Member States and the deadline for adoption of financing decisions by the Commission.

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ C , , p. .

- (5) It is also necessary to fix the rules for the eligibility of expenditure for the additional financial support for resettlement,

HAVE ADOPTED THIS DECISION:

Article 1

Decision No 573/2007/EC of the European Parliament and of the Council is amended as follows:

1. Article 13(3) becomes Article 13(4) and reads as follows:

"Member States shall receive a fixed amount of EUR 4000 for each resettled person falling into one of the categories defined by the common EU annual priorities established in accordance with Article 13(6) with respect to geographic regions and nationalities as well as to specific categories of refugees to be resettled."
2. Article 13(4) becomes Article 13(5) and reads as follows:

"Where a Member State resettles a person falling within more than one of the categories referred to in the common EU annual priorities for resettlement established in accordance with Article 13(6), it shall receive the fixed amount for this person only once."
3. Article 13(5) becomes Article 13(3).
4. Article 13(6) is replaced by the following:

"The Commission shall establish the common EU annual priorities for resettlement in accordance with the procedure referred to in Article 52(2)."
5. In Article 13 a new paragraph (7) is inserted and reads as follows:

"Within twenty calendar days following the notification of Commission Decision establishing the common EU annual priorities for resettlement in accordance with Article 13(6), Member States shall provide the Commission with an estimate of the number of persons whom they will resettle according to these common EU annual priorities in the course of the following calendar year. The Commission shall communicate this information to the Committee referred to in Article 52."
6. In Article 13 a new paragraph (8) is inserted and reads as follows:

"The results and impact of the financial incentive for resettlement activities according to the common EU annual priorities shall be reported by the Member States in the report referred to in Article 50(2) and by the Commission in the report referred to in Article 50(3).
7. Article 20(2) is replaced by the following:

"The Commission shall provide the Member States, by 1 September of each year, with an estimate of the amounts to be allocated to them for the following calendar year from the total appropriations allocated under the annual budgetary procedure, calculated as provided for by Article 13."
8. Article 20(3) is replaced by the following:

"Member States shall submit to the Commission, by 1 December of each year, a draft annual programme for the following year, established in accordance with the multiannual programme and consisting of the following elements:

- a) the general rules for selection of projects to be financed under the annual programme;
- b) a description of the actions to be supported under the annual programme;
- c) the proposed financial breakdown of the Fund's contribution between the programme's various actions; and an indication of the amount requested to cover technical assistance under the Article 16 for the purpose of implementing the annual programme."

9. Article 20(5) third subparagraph is replaced by the following:

"The Commission shall adopt the financing decision approving the annual programme by 1 April of the year in question. The decision shall indicate the amount allocated to the Member State concerned and the period for which the expenditure is eligible."

10. In Article 35, a new paragraph (5) is inserted and reads as follows:

"The fixed amount of EUR 4000 for each resettled person allocated to the Member States shall be granted as a lump sum for each person effectively resettled."

Article

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

Additional costs concerning administrative expenditure related to this proposal

EUR million (to 3 decimal places)

	2010	2011	2012	2013	TOTAL
18 01 02 11 01 – Missions	0.009	0.009	0.010	0.010	0.038
18 01 02 11 02 – Meetings and conferences					
18 01 02 11 03 – Committees	0.030	0.030	0.030	0.030	0.120
18 01 02 11 04 - Studies and consultations					
18 01 02 11 05 - Information systems					
2. Total other management expenditure (18 01 02 11)	0.039	0.039	0.040	0.040	0.158