

General programme "Solidarity and Management of Migration Flows": European Refugee Fund (ERF) 2008-2013

2009/0127(COD) - 08/03/2012 - Council position

The representatives of the Council, the Parliament and the Commission engaged in contacts with a view to concluding an agreement at the stage of the **Council's position at first reading** on the proposal for Decision 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.

In order to merge the positions of the two institutions and taking into account the agreement reached during their meetings, the Council focused on the following issues:

Establishment of common EU priorities (Article 1(1)(a)) : as a result of the informal contacts between the Council and the Parliament, the Council amends the Commission's proposal by **listing the resettlement priorities** in the Decision as opposed to the initial suggestion by the Commission according to which the common EU resettlement priorities would be established in the comitology procedure on an annual basis. Since the current European Refugee Fund covers the period until the end of 2013, there is effectively only one programming year left under the current Fund. It is, therefore, justified to list in this Decision the priorities for that year only and set out a mechanism for the establishment of the common EU resettlement priorities in the instrument creating a new fund for the period 2014-2020.

With a view to the programming year of 2013, **the Council position provides that Member States shall communicate by 1 May 2012 to the Commission an estimate of the number of persons they intend to resettle in the course of 2013** according to the priorities set out in the Decision. Since no mechanism for the establishment of EU resettlement priorities on an annual basis is foreseen in the Council's position, all the provisions in the Commission's proposal related to annual programming cease to be relevant.

Common EU resettlement priorities for 2013 (Article 1(1)(a), Recitals 3, 4 and 5): the common EU resettlement priorities for 2013 as set out in the Council's position cover:

- persons from a country or region designated for the implementation of a Regional Protection Programme;
- persons belonging to a specific vulnerable group or refugees from a specific country or region.

The first two sets of priorities are formulated as general ones and they draw closely on the categories set out in Article 13(3) of Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013. In comparison with Decision No 573/2007/EC the Council's position adds the following vulnerable groups to the list:

- survivors of violence and torture;
- as well as persons in need of emergency resettlement or urgent resettlement for legal or physical protection needs.

This addition is justified as both of these categories of persons also fall within the UNHCR resettlement priorities.

The third set of priorities is referred to as **specific common EU priorities for 2013** and the list of these priorities can be found in the Annex to this Decision. As explained in Recital 3, this list of specific common EU priorities for 2013 is **established on the basis of the UNHCR resettlement criteria** and the UNHCR annual resettlement forecast taking into account where EU common action would have a significant impact in addressing the protection needs.

The Council position also adds Recital 5 which is an update of Recital 26 of Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013. In Recital 5, the Council's position updates information concerning the current countries and regions designated for the implementation of regional protection programmes.

The fixed amount to be received for each resettled person (Article 1(1)(b), Recital 6): as a result of the informal contacts with the Parliament, the Council's position amends the Commission's proposal by proposing a higher fixed amount for each resettled person to be received from the Fund by those Member States that have not used the Fund for this purpose before. Whereas Article 13(3) of Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 provides that Member States receive a fixed amount of EUR 4000 for each person resettled according to the priorities set out in the Decision, **the Council position foresees an amount of EUR 6000** for each resettled person for those Member States which shall receive the fixed amount from the Fund for the first time and an amount of **EUR 5000 for those Member States which have received the fixed amount from the Fund only once before**. The purpose of this amendment is to encourage those Member States that have not done so until now to launch resettlement programmes.

Legal basis: in his letter to the Chair of the Permanent Representatives Committee of 10 February 2012 in which he indicated that he would recommend to the members of LIBE Committee and the Plenary, in its second reading, to accept the agreement reached on the Decision without amendments, the Chair of LIBE Committee requested the addition of Article 80 TFEU to the legal basis of this Decision. However, in view of the Council, Article 80 cannot constitute a legal basis for the adoption of this act since it does not confer powers to adopt legal acts upon the Union's institutions. The Council, by way of a compromise, therefore, decided to add Recital 2 which refers to Article 80 TFEU and the principles therein.

European Parliament amendments: in its position, the Council accepts in whole, in part or in principle some of the EP's amendments. **However, the Council does not accept amendments relating to the procedure for defining common EU resettlement priorities on an annual basis (delegated acts)**. The Council position takes a different approach and establishes a list of common EU resettlement priorities for **2013** which is the only programming year left under the current European Refugee Fund.

In conclusion, the Council's Position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. COREPER endorsed this compromise at its meeting on 22 February 2012. Prior to that, the Chair of the European Parliament's LIBE Committee in a letter dated 10 February 2012 to the Chairman of COREPER had indicated that if the compromise text is transmitted to Parliament as Council's position at first reading, he will recommend to the members of LIBE, and subsequently to the plenary, that the Council's position be accepted without amendments in Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.