



**COUNCIL OF
THE EUROPEAN UNION**

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STATEMENT OF THE COUNCIL'S REASONS

Subject : Position at first reading with a view to the adoption of a Decision of the European Parliament and of the Council 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
= Statement of the Council's reasons
Adopted by the Council on 8 March 2012

I. INTRODUCTION

On 2 September 2009, the Commission adopted the proposal for a 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.

On 18 May 2010, the European Parliament adopted its position at first reading with a view to the adoption of the Decision. The Council was not in a position to approve the Parliament's position and adopted its position at first reading on 8 March 2012 in accordance with Article 294 of the Treaty.

II. OBJECTIVE OF THE PROPOSAL

The objective of the proposal is to contribute to the setting up of a Joint EU Resettlement Programme. While the Communication of the Commission to the Council and the European Parliament on the establishment of a Joint EU Resettlement Programme from 2 September 2009 sets out the political context and guiding principles for such a programme, the proposal suggests a mechanism for the identification of common EU resettlement priorities on an annual basis. The creation of a Joint EU Resettlement Programme would serve the purpose of better coordinating EU's approach to resettlement and encouraging more Member States to start resettlement activities.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

General

The negotiations took place in a policy context shaped by the Hague Programme which sets out the objectives and the instruments in the field of justice and home affairs for the period 2005 - 2010 and subsequently by the Stockholm Programme covering the period 2010-2014. In both cases, the European Council expressed its commitment to further develop the Common European Asylum System through amending the legislative framework and strengthening practical cooperation. The European Council also emphasised the importance of developing the external dimension of asylum by cooperating with countries and regions of origin. In the Hague Programme the European Council called for the development of EU Regional Protection Programmes which would *inter alia* include a joint resettlement programme for Member States willing to participate in it. In the Stockholm Programme, the European Council encouraged the voluntary participation of Member States in the joint EU resettlement scheme and increase the number of resettled refugees.

In accordance with Articles 3 and Article 4a(1) of the Protocol No 21 on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of the present Decision, but Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

In accordance with Articles 1 and 2 of the Protocol No 22 on the Position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of the Decision and is not bound by it or subject to its application.

Key issues

In line with the provisions of the Joint Declaration on practical arrangements for the co-decision procedure¹, 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. With a view to reconciling the position of both institutions and taking account of the agreement reached in those contacts, the Council adopts 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 its position at first reading introducing the following key modifications to the Commission proposal:

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.

¹ OJ C 145, 30.6.2007, p. 5.

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 4000 EUR for each person resettled according to the priorities set out in the Decision, the Council position foresees an amount of 6000 EUR 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 5000 EUR 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.

Addition of Recital 2

The Council's position amends the Commission's proposal by adding Recital 2. In his letter to the Chair of the Permanent Representatives Committee of 10 February 2012 (doc. 6370/12) 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 amendments 2, 3 and 4. The Council does not accept amendments 1, 5, 6, 7, 8, 9, 10, 11 as these concern a procedure for defining common EU resettlement priorities on an annual basis. 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.

IV. 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.