

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Decision	2009/0127(COD) Procedure completed
General programme "Solidarity and Management of Migration Flows": European Refugee Fund (ERF) 2008-2013	
Amending Decision 573/2007/EC	2005/0046(COD)
Subject	7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF)

Key players				
European Parliament	Committee responsible	Rapporteur	Appointed	
	LIBE Civil Liberties, Justice and Home Affairs		20/03/2012	
		Vers/ALE	TAVARES Rui	
	Former committee responsible			
	LIBE Civil Liberties, Justice and Home Affairs			
	Former committee for opinion			
	AFET Foreign Affairs		The committee decided not to give an opinion.	
	DEVE Development		The committee decided not to give an opinion.	
	EMPL Employment and Social Affairs		The committee decided not to give an opinion.	
	Committee for opinion on the legal basis	Rapporteur for opinion	Appointed	
	JURI Legal Affairs		25/01/2012	
		PPE	LECHNER Kurt	
Council of the European Union	Council configuration	Meeting	Date	
	Justice and Home Affairs (JHA)	3151	08/03/2012	
European Commission	Commission DG	Commissioner		
	Justice and Consumers	REDING Viviane		

Key events			
02/09/2009	Legislative proposal published	COM(2009)0456	Summary
17/09/2009	Committee referral announced in Parliament, 1st reading		
27/04/2010	Vote in committee, 1st reading		Summary
29/04/2010	Committee report tabled for plenary, 1st reading	A7-0125/2010	
18/05/2010	Results of vote in Parliament		
18/05/2010	Debate in Parliament		

18/05/2010	Decision by Parliament, 1st reading	T7-0160/2010	Summary
08/03/2012	Council position published	06444/2/2012	Summary
15/03/2012	Committee referral announced in Parliament, 2nd reading		
21/03/2012	Vote in committee, 2nd reading		
22/03/2012	Committee recommendation tabled for plenary, 2nd reading	A7-0063/2012	Summary
28/03/2012	Debate in Parliament		
29/03/2012	Decision by Parliament, 2nd reading	T7-0104/2012	Summary
29/03/2012	Final act signed		
29/03/2012	End of procedure in Parliament		
30/03/2012	Final act published in Official Journal		

Technical information

Procedure reference	2009/0127(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Decision
	Amending Decision 573/2007/EC 2005/0046(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 080; Treaty on the Functioning of the EU TFEU 078-p2
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/09082

Documentation gateway

Legislative proposal	COM(2009)0456	02/09/2009	EC	Summary
Document attached to the procedure	COM(2009)0447	02/09/2009	EC	Summary
Document attached to the procedure	SEC(2009)1127	02/09/2009	EC	
Document attached to the procedure	SEC(2009)1128	02/09/2009	EC	
Committee draft report	PE430.976	26/02/2010	EP	
Amendments tabled in committee	PE439.334	05/03/2010	EP	
Committee report tabled for plenary, 1st reading/single reading	A7-0125/2010	29/04/2010	EP	
Text adopted by Parliament, 1st reading/single reading	T7-0160/2010	18/05/2010	EP	Summary
Commission response to text adopted in plenary	SP(2010)3805	24/06/2010	EC	
Council statement on its position	06977/2012	01/03/2012	CSL	

Specific opinion	JURI	PE483.773	05/03/2012	EP	
Council position		06444/2/2012	08/03/2012	CSL	Summary
Commission communication on Council's position		COM(2012)0110	09/03/2012	EC	Summary
Committee draft report		PE485.875	15/03/2012	EP	
Committee recommendation tabled for plenary, 2nd reading		A7-0063/2012	22/03/2012	EP	Summary
Text adopted by Parliament, 2nd reading		T7-0104/2012	29/03/2012	EP	Summary
Draft final act		00013/2012/LEX	29/03/2012	CSL	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Decision 2012/281](#)
[OJ L 092 30.03.2012, p. 0001](#) Summary

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

PURPOSE: to amend Decision No 573/2007/EC establishing the European Refugee Fund in the light of the establishment of a Joint EU Resettlement Programme.

PROPOSED ACT: Decision of the European Parliament and of the Council

BACKGROUND: 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".

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 (ERF III), 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.

IMPACT ASSESSMENT: the impact assessment examines 3 different options and 2 sub-options as well as their respective effects. These can be summarised as follows:

Option 1: maintenance of status quo:

Option 2: medium option: under this option it is envisaged to develop further structured political cooperation through the establishment of a political framework and to underpin it via the financial component. It is foreseen that a political framework will be created which would set political and strategic priorities with respect to resettlement. Under this option practical cooperation will also be developed by the [European Asylum Support Office](#) (EASO). The following measures are also provided: (i) setting of common EU annual priorities with respect to resettlement, both with respect to nationalities and specific categories of refugees to be resettled; (ii) Member States would receive extra financial assistance under the ERF III, if they resettle according to these common EU annual priorities; (iii) ensuring an integrated approach between resettlement, external asylum policies and EU external policies as a whole.

Within the 2nd option, two sub-options are identified. The difference between these sub-options relate only to the mechanism which is foreseen for the political framework.

- Sub-option 2A provides for the establishment of a new Committee on resettlement under Comitology rules.
- Sub-option 2B provides for the use of existing structures.

Option 3: maximum option: under this option it is considered that a fully developed EU wide resettlement scheme will be established. Resettlement would be carried out jointly in terms of priority setting and also in terms of implementation. However, this option is considered to be very ambitious and has been abandoned due to its lack of feasibility at the current stage of the Union's policy on this issue.

Conclusion: sub-option 2B is preferred option on grounds of political feasibility and proportionality. There is a strong preference among a majority of Member States to build on existing consultation and decision making mechanisms. The current political situation is positive towards resettlement but reluctant to create any new formal structure, because of the bureaucratic burden this might entail and the fear that Member

States' freedom to decide on priorities themselves would be reduced. From the perspective of proportionality the use of existing structures is considered preferable, if this is as effective in reaching the objectives and if it is expected to have the same impacts.

CONTENT: 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.

Annual resettlement priorities: 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 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 20 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.

These annual priorities may relate to geographic regions, nationalities or specific categories of refugees to be resettled.

Additional financial assistance for a resettled refugee: on the basis of these pledges, Member State will receive, as an additional financial assistance, a fixed amount of EUR 4000 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.

Timetable: the proposal provides for the setting up of 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;
- 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.

BUDGETARY IMPLICATIONS: the proposal complies with the appropriations and programming of the General programme "Solidarity and Management of Migration Flows" until 2013. Furthermore, it does not alter the general objectives of the ERF and its financial programming until 2013. Only a very limited additional costs are foreseen with respect to administrative expenses (a total of EUR 158 000 for the period 2010-2013).

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

PURPOSE: to define the general framework for the Joint EU Resettlement Programme.

CONTENT: resettlement is the relocation of refugees, who are recognized by UNHCR as being in need of international protection, from the first country of asylum (mostly in the third world) to another country where they receive permanent protection. Resettlement offers solutions to refugees who can not return to their country of origin, and who can not be integrated locally in the country of first asylum. Resettlement is the transfer of refugees from outside EU territory to an EU Member State (not to be confused with the resettlement of refugees within the EU which is aimed to share the burden between the Member States).

Resettlement in figures: the number of refugees worldwide is around 10 million. Around 5% out of them are in need of resettlement. Only a small proportion of these refugees are effectively resettled. There is therefore a structural discrepancy between the needs and the humanitarian response. Only a small part of the refugees who are resettled each year are resettled to the EU. Out of the 65 596 refugees who departed for resettlement in 2008, 4 378 refugees departed to the EU. This contrasts sharply with the numbers of resettled refugees who were taken in by the USA and other traditional resettlement countries in the industrialized world.

Resettlement: a sustainable solution: resettlement in a third country is one of three so-called 'durable solutions' available to refugees and is essential in that it offers solutions to refugees for whom no other durable solution is available. Resettlement is generally carried out with the UNHCR acting as an intermediary. It targets those refugees whose protection needs have already been clearly established and has the advantage for the recipient country of being an orderly procedure, and for the refugee of being a process which guarantees his/her physical safety.

Shortcomings in the current system: it should be recalled that the large majority of refugees worldwide find themselves outside of the EU, mainly in Asian and African countries. Global resettlement needs are much greater than the resettlement places which are available worldwide. The principal objective of joint EU action on resettlement should therefore be to involve more Member States in resettlement activities and to provide for an orderly and secure access to protection for those resettled. At the same time, it should serve to demonstrate greater solidarity to third countries in receiving refugees.

Overall framework of the EU Resettlement Programme: taking account of the shortcomings of the current situation, a joint EU resettlement programme should be put in place in order to: (i) increase the humanitarian impact of the EU by ensuring that it gives greater and better targeted support to the international protection of refugees through resettlement; (ii) enhance the strategic use of resettlement by ensuring that it is properly integrated into the Union's external and humanitarian policies generally, and (iii) better streamline the EU's resettlement efforts so as to ensure that the benefits are delivered in the most cost-effective manner.

To that end, the Commission is proposing the amendment of the ERF III Decision (No 573/2007/EC) in order to provide additional incentives for Member States to engage in resettlement, and so as to ensure that resettlement priorities agreed at the EU level are effectively backed up by appropriate financial support.

1) Guiding Principles for a Joint EU Resettlement Programme: the programme is based on the following guiding principles: (i) participation by

Member States in resettlement should remain voluntary. There are currently considerable differences between Member States with respect to the numerical targets and specific caseloads they wish to resettle, the legal criteria which are used for deciding who to resettle, and the partners through which resettlement is carried out; (ii) the scope of resettlement activity in the EU should be widened by familiarising as many Member States as possible with resettlement, and enhancing their required experience and capacity to carry out resettlement; (iii) the mechanism which is established should allow for adaptability to changing circumstances. In order to use resettlement strategically it should be possible to revise resettlement priorities annually. Adaptability is required also in order to respond to evolving needs with respect to practical cooperation on resettlement between Member States; (iv) UNHCR should participate because of its international mandate and the pivotal role it plays in resettlement worldwide. The involvement of the International Organisation for Migration (IOM) is important as well, given its role with respect to logistical and practical aspects of resettlement activity worldwide. International and local NGOs with specific know-how and experience concerning resettlement, as well as local authorities, should also be involved, particularly with respect to the reception and integration of resettled refugees; (v) the development of a common EU approach to the resettlement of refugees from third countries should be incremental and, with experience, the scope of the programme could be further developed.

2) Components of the Joint EU Resettlement Programme: the Programme will primarily consist of a mechanism which allows for the setting of common annual priorities on resettlement and more effective use of the financial assistance available through the ERF "pledging" exercise. This will be complemented by strengthened practical cooperation, enhanced effectiveness of external asylum policies and a regular evaluation of the Joint Resettlement Programme. Different phases of the mechanism are as follows:

The current ad hoc Resettlement Expert Group will be developed into a body which meets on a regular basis. All Member States, including both resettlement and non-resettlement countries, will participate, as well as other stakeholders. The Resettlement Expert Group will prepare for the identification of common annual EU priorities, which will subsequently be the basis for a draft decision by the Commission. These priorities will be based on an indicative forecast of resettlement needs which will be provided by UNHCR in spring each year. The Commission proposes common priorities with the financial underpinning of the European Refugee Fund. A mechanism will be put in place through which EU-wide common resettlement priorities are established annually by means of a Commission decision. Priorities could apply both to geographic regions and nationalities as well as to specific categories of refugees to be resettled, including emergency cases. The EU could, for example, prioritize the resettlement of Iraqi refugees from Syria and Jordan, Somali refugees from Kenya, or Sudanese refugees from Chad. In identifying these priorities, coherence will be ensured with EU external policies generally. This framework will allow, on an annual basis, for the identification of newly arising or priority resettlement needs. In particular for vulnerable groups, such as children or unaccompanied minors, it would allow for a more in-depth analysis of the most crucial needs and priorities.

It is therefore proposed that the ERF III Decision should be amended, so that Member States which resettle according to the common EU annual priorities would receive financial assistance under the ERF III Decision. This currently provides that additional financial assistance is granted to Member States if they pledge to resettle refugees who fall under four specific categories. This provision would be amended to render the current mechanism more dynamic and adaptable. It should, however, be underlined that Member States would remain free to carry out resettlement of other categories of refugees. The proposal to amend the ERF III decision is presented by the Commission together with this Communication.

The Commission will cooperate with different stakeholders to identify these priorities as swiftly as possible. Before the end of the current (2009) Swedish Presidency, a first set of priorities could already be identified.

Lastly, the communication goes on to discuss enhanced practical cooperation through the [European Asylum Support Office \(EASO\)](#) and pilot projects and best practices on resettlement. It also discusses the increased effectiveness of EU external asylum policies through close cooperation with the UNHCR and improved coordination with EU external policies.

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

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Rui TAVARES (GUE/NGL, PT) on the proposal for 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.

It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

List of refugees considered as common EU annual priorities given their vulnerability: Members propose to set up a list of priority refugees which shall be considered, in any event, as common EU annual

priorities, independently of annual priorities with respect to geographic regions and nationalities:

- children and women at risk, particularly from psychological, physical or sexual violence or exploitation,
- unaccompanied minors where resettlement is in their best interest, in compliance with the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child,
- persons having serious medical needs that require special treatment, in particular conditions that can be treated only following resettlement,
- survivors of violence and torture,
- persons in need of emergency or urgent resettlement for legal and protection needs.

Incentives for Member States taking part in the resettlement programme for the first time: in order to encourage more Member States to take part in resettlement actions, additional financial support should be given to those Member States taking part in the resettlement programme for the first time. Members propose that for those Member States that apply for funding for the first time, the fixed amount for each resettled person shall be EUR 6 000 in the first calendar year and EUR 5 000 in the second. In subsequent years the fixed amount shall be EUR 4 000 for each resettled person. The additional amount that new participating Member States receive in the first two years of their participation shall be invested in the development of a sustainable resettlement programme.

Delegated acts: in order to guarantee the European Parliament's prerogatives when the priorities are defined, Members propose to apply the

procedure of Article 290 TFEU (delegated acts) which means that the Commission should carry out appropriate consultations during its preparatory work, including at expert level. In addition, in order urgently to update those common EU annual priorities in the event of unforeseen emergencies, the Commission should be empowered to adopt delegated acts under the urgency procedure.

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

The European Parliament adopted by 512 votes to 81 with 7 abstentions a resolution setting out its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) on the proposal for 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, and amended the Commission proposal as follows:

List of refugees considered as common EU annual priorities given their vulnerability: Parliament proposes to set up a list of priority refugees which shall be considered, in any event, as common EU annual priorities, independently of annual priorities with respect to geographic regions and nationalities:

- children and women at risk, particularly from psychological, physical or sexual violence or exploitation,
- unaccompanied minors where resettlement is in their best interest, in compliance with the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child,
- persons having serious medical needs that require special treatment, in particular conditions that can be treated only following resettlement,
- survivors of violence and torture,
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General programme "Solidarity and Management of Migration Flows": European Refugee Fund (ERF) 2008-2013

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 EPs 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.

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

In its communication concerning the position of the Council on the adoption of a 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, the Commission states that the Common Position satisfies the Commission's original objective to ensure more refugee resettlement to the European Union by increasing both the numbers of resettled refugees and the number of the Member States having ongoing national resettlement schemes.

The issue of delegated acts: the Commission recalls that the Council's position is a result of a long negotiation process. Following the first reading position of the European Parliament (issued on 18 May 2010), the co-legislators did not reach a compromise due to the institutional issue of the choice of procedure for the establishment of annual resettlement priorities at European level (delegated vs. implementing acts procedure).

The stalemate in negotiations was overcome with the proposal submitted by the Presidency in late December 2011. The compromise proposal is based on the fact that the European Refugee Fund runs only up to the end of 2013. This means that the pledging exercise to take place in 2012 is the last one under the present Fund. This, in turn, implies that there is no need to establish a procedure for setting annual resettlement priorities, as such priorities will only be defined once before the present Fund ceases to exist. The solution found is to insert the specific EU resettlement priorities for 2013 as an integral part of the Decision in Annex I.

Further to the first reading position of the European Parliament (adopted on 18 May 2010), an agreement on the substance of the proposal was finally reached between the co-legislators on the outstanding issues in a Trilogue on 9 February 2012.

The only open point concerned the legal basis for this proposal.

On 10 February the Chairman of the LIBE Committee sent a letter to the Council Presidency confirming the agreement of the rapporteurs and the Shadow-rapporteurs on the text supported by the Council, and stating that if that text was to be transmitted formally to the European Parliament during a forthcoming plenary session as the Council's First Reading Position for this legislative proposal, he would recommend that the Members of the LIBE committee and subsequently the plenary session accept it without amendments. Coreper on 22 February confirmed the agreement on the text to be submitted to the Council for adoption.

The main differences between the Common Position and the original Commission proposal are set out below:

- Establishment of common EU priorities (Article 1(1)(a)): the Common Position lists the resettlement priorities in the Decision as opposed to the initial proposal by the Commission according to which the common EU resettlement priorities were to be established in the comitology procedure on an annual basis. Since the current European Refugee Fund covers the period until the end of 2013, the Decision establishes resettlement priorities for one year only. It is, therefore, in line with Commission's proposal to list the priorities for that year in this Decision. A mechanism for the establishment of the common
- EU resettlement priorities is provided for in the instrument creating a new Asylum and Migration Fund for the period 2014-2020.
- Common EU resettlement priorities for 2013 (Article 1(1)(a)): the common EU resettlement priorities for 2013 as set out in the

Common Position cover 3 sets of priorities. 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 Common 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. 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. This list 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. This is in line with the Commission's proposal.

- The fixed amount to be received for each resettled person (Article 1(1)(b)): the Common Position amends the Commission proposal by proposing a higher fixed amount for each person resettled according to the priorities to be received from the Fund by those Member States that have not used the Fund for this purpose before. The Common 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.

Legal basis of the proposal: the Commission proposal of 2009 was originally based on Article 63 (2) (b) TEC but the Omnibus Communication on consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures indicated Articles 78 and 80 TFEU (the latter on internal EU solidarity) as the new legal basis. The reference to this article, together

with article 78 TFEU, aimed at underlining that the purpose of the proposed measures was to ensure a "balance of efforts" as mentioned in former article 63 TEC. However, the Council is of the opinion that the correct Lisbonisation of the legal basis is art. 78 (2) (g) TFEU, and that art. 80 TFEU cannot constitute a legal basis, not even a complementary one.

On 13 February the DK Presidency issued a paper with two options, one of which was to propose an inclusion of a recital including a reference to Article 80 TFEU. The Coreper on 15 February decided to keep only art. 78 (2) (g) TFEU as the legal basis for the proposal. This position was confirmed by Coreper on 22 February. The text was forwarded for the adoption by the Council on March 8.

Although not in line with the Omnibus Communication, the Commission may support the legal basis to be composed solely of art. 78 (2) (g) TFEU as the non-inclusion of Article 80 TFEU which does not as such constitute a legal basis does not affect the substance of the proposal and is in line with the equivalence tables of the Lisbon Treaty. Furthermore, it is consistent with recent MFF proposals in home affairs area which have been adopted with no reference to article 80 TFEU. The recital as added can be supported by the Commission as it underlines the importance of Solidarity in the Common European Asylum System and makes explicit reference to art. 80 TFEU.

The European Parliament asked the Commission to issue a Declaration on its future right of initiative with regard to the choice of legal bases. The Commission agreed to this request. The text of the Declaration is the following: The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, supports the final text; however it notes that this is without prejudice to its right of initiative with regard to the choice of legal bases, in particular in reference to the future use of Article 80 TFEU.

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

The Committee on Civil Liberties, Justice and Home Affairs adopted the recommendation for second reading contained in the report drafted by Rui TAVARES (Greens/EFA, PT) in which it recommends the European Parliament to approve, unamended, the Council 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'.

The committee also recommends that the European Parliament approves the joint statement to the resolution in which it declares that the future decision shall give a concrete expression, in its enacting provisions, to the principle of solidarity, namely in the form of new financial incentives to encourage resettlement by Member States.

In order to ensure its immediate adoption, the European Parliament has agreed to the wording of the Decision in its present form, in a spirit of compromise, whereby explicit reference to Article 80 TFEU is limited to a recital of the Decision. The European Parliament affirms that the adoption of this Decision is without prejudice to the range of legal bases available, in particular concerning the future use of Article 80 TFEU.

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

The European Parliament adopted, without a vote, a legislative resolution on the Council 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'.

The European Parliament approved the Council position at first reading, as well as its statement annexed to this resolution in which it states that the decision, as adopted, shall give a concrete expression, in its enacting provisions, to the principle of solidarity, namely in the form of new financial incentives to encourage resettlement by Member States.

In order to ensure its immediate adoption, the European Parliament has agreed to the wording of the Decision in its present form, in a spirit of compromise, whereby explicit reference to Article 80 TFEU is limited to a recital of the Decision. The European Parliament affirms that the adoption of this Decision is without prejudice to the range of legal bases available, in particular concerning the future use of Article 80 TFEU.

As regards the statement of the Council: the Council states that this Decision is without prejudice to the negotiations on the Multiannual Financial Framework for 2014-2020 and consequently also for the negotiations on the [Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund for the period 2014-2020](#), including whether specific common EU resettlement

priorities, based inter alia on geographical criteria, shall be stipulated in the Regulation on the Asylum and Migration Fund for 2014-2020.

As regards the declaration of the Commission: the Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, supports the final text; however it notes that this is without prejudice to its right of initiative with regard to the choice of legal bases, in particular in reference to the future use of Article 80 TFEU.

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

PURPOSE: to amend Decision No 573/2007/EC establishing the European Refugee Fund in the light of the establishment of a Joint EU Resettlement Programme.

LEGISLATIVE ACT: Decision No 281/2012/EU 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.

BACKGROUND: the European Refugee Fund (ERF) was set up by [Decision No 573/2007/EC](#) of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows".

In light of the establishment of a Joint EU resettlement programme aimed at increasing the impact of the Unions resettlement efforts in providing protection to refugees, and at maximising the strategic impact of resettlement through a better targeting of those persons who are in greatest need of resettlement, common priorities with respect to resettlement should be formulated at the level of the Union.

For this purpose, specific common Union resettlement priorities for 2013, as listed in the Annex added to Decision No 573/2007/EC of the European Parliament and of the Council by this Decision, are to be established on the basis of two categories : (i) the first of which should include persons belonging to a specific category falling within the United Nations High Commissioner for Refugees (UNHCR) resettlement criteria, and (ii) the second one should include persons from a country or region which has been identified in the UNHCR annual resettlement forecast and where common action by the Union would have a significant impact in addressing protection needs.

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. This is the case for the resettlement of persons from Tanzania, eastern Europe (Belarus, Republic of Moldova and Ukraine), the Horn of Africa (Djibouti, Kenya and Yemen) and North Africa (Egypt, Libya and Tunisia), and from any other countries or regions that are so designated in the future.

In order to encourage more Member States to engage in resettlement actions, it is equally necessary to provide additional financial support to those Member States that decide to resettle persons for the first time.

This is the aim of this amending Decision.

CONTENT:

According to the Decision, Member States will receive a fixed amount for each person resettled from one of the following categories:

- persons from a country or region designated for the implementation of a Regional Protection Programme;
- persons belonging to a vulnerable groups, such as women and children at risk, unaccompanied minors, survivors of violence and torture, persons having serious medical needs that can be addressed only through resettlement, persons in need of emergency resettlement or urgent resettlement for legal or physical protection needs;
- persons indicated on the list of specific common EU priorities for 2013.

The general rule is that Member States will receive a lump sum of EUR 4000 for each person resettled according to the agreed priorities, as is currently the case.

The following two exceptions are new:

- Member States who apply for financial support from the European Refugee Fund for the first time will receive a lump sum of EUR 6000 per resettled person.
- Member States who have already received EU support once in the course of the previous years will get a lump sum of EUR 5000 per resettled person.

To facilitate the calculation of funding needs through the European Refugee Fund for 2013, member states are asked to provide the Commission by 1 May 2012 with an estimate of the number of persons per category they plan to resettle in 2013.

Report: the results and impact of the financial incentive for resettlement actions on the basis of the priorities listed in the Decision shall be reported by the Member States in the report and by the Commission in the report on the implementation of the European Refugee Fund.

Annex: a list of the specific common Union resettlement priorities for 2013:

- Congolese refugees in the Great Lakes Region (Burundi, Malawi, Rwanda, Zambia);
- Refugees from Iraq in Turkey, Syria, Lebanon and Jordan;
- Afghan refugees in Turkey, Pakistan and Iran;
- Somali refugees in Ethiopia;
- Burmese refugees in Bangladesh, Malaysia and Thailand;
- Eritrean refugees in eastern Sudan..

European Parliament declaration on solidarity: it should be noted that the European Parliament adopted a declaration at the time of adoption of the text in which it stressed that the decision, as adopted, will give concrete expression to the principle of solidarity between Member States namely in the form of new financial incentives to encourage resettlement by Member States.

A recital has been included in the text of the final decision which stipulates that Article 80 of the Treaty on the Functioning of the European Union provides that the policies of the Union set out in the Chapter on border checks, asylum and immigration and their implementation are to be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States, and that, whenever necessary, Union acts under the said Chapter are to contain appropriate measures to give effect to that principle.

ENTRY INTO FORCE: 31.03.2012.