

Amended proposal for a Council Decision creating a European Refugee Fund ⁽¹⁾

(2001/C 531 E/07)

(Text with EEA relevance)

COM(2000) 533 final — 1999/0274(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 15 September 2000)⁽¹⁾ OJ C 116 E, 26.4.2000, p. 72.

INITIAL PROPOSAL

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THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

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 Parliament,

Having regard to the opinion of the Economic and Social Committee ⁽¹⁾,

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

Whereas:

(1) The preparation of a common policy on asylum, including common European arrangements for asylum, is a constituent part of the European Union's objective of gradually creating an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

(2) Implementation of such a policy should be based on solidarity between Member States and requires the existence of mechanisms intended to help to achieve a balance in the efforts made by Member States in receiving refugees and displaced persons and bearing the consequences of so doing. To that end, a European Refugee Fund should be established.

(3) It is necessary to support the efforts made by the Member States to grant appropriate reception conditions to refugees and displaced persons, including fair and effective asylum procedures, so as to protect the rights of persons requiring international protection.

(3) It is necessary to support and improve the efforts made by the Member States to grant appropriate reception conditions to refugees and displaced persons, including fair and effective asylum procedures, so as to protect the rights of persons requiring international protection.

⁽¹⁾ OJ C 168, 16.6.2000, p. 20.

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| <p>(4) The integration of refugees into the society of the country in which they are established is one of the objectives of the Geneva Convention and, to this end, there should be support for actions by the Member States to promote their social and economic integration, in so far as it contributes to economic and social cohesion, the maintenance and strengthening of which is one of the Community's fundamental objectives referred to in Articles 2 and 3(1)(k) of the Treaty.</p> <p>(6) It is in the interests of both the Member States and the persons concerned that refugees and displaced persons who are allowed to stay in the territory of the Member States are given the opportunity to provide for themselves by working.</p> <p>(7) Since measures supported by the Structural Funds and other Community measures in the field of education and vocational training are not in themselves sufficient to promote such integration, support should be given for special measures to enable refugees and displaced persons to benefit fully from the programmes which are organised.</p> <p>(8) Practical support is needed to create or improve conditions enabling refugees and displaced persons to take an informed decision to leave the territory of the Member States and return home, should they so wish.</p> <p>(9) Practical ways must be found of testing innovatory actions in this field and exchanges between Member States should be encouraged with a view to identifying and promoting the most effective practices.</p> <p>(10) Account should be taken of the experience acquired during implementation of the Council's joint actions on the reception and voluntary repatriation of refugees, displaced persons and asylum-seekers.</p> <p>(11) As called for by the European Council at its meeting in Tampere on 15 and 16 October 1999, a financial reserve should be established for the implementation of emergency measures to provide temporary protection in the event of a mass influx of refugees.</p> | <p>Unchanged</p> <p>(5) The integration of refugees into the society of the host country could also be helped by supporting the actions taken by non-governmental organisations working to achieve social integration.</p> <p>Unchanged</p> <p>(7) Since measures supported by the Structural Funds and other Community measures in the field of education and vocational training are not in themselves sufficient to promote such integration, support should be given for special measures to enable refugees and displaced persons to benefit fully from the programmes which are organised. For these to be fully effective, the competent non-governmental organisations should be involved in such programmes.</p> <p>Unchanged</p> <p>(11) As called for by the European Council at its meeting in Tampere on 15 and 16 October 1999, a financial reserve should be established for the implementation of emergency measures to provide temporary protection in the event of a mass influx of refugees or displaced persons.</p> |
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| <p>(12) It is fair to allocate resources proportionately to the burden on each Member State to receive refugees and displaced persons.</p> <p>(13) The support provided by the European Refugee Fund will be more efficient and better targeted if the co-financing of eligible actions is based on a request from each Member State taking into account its situation and needs.</p> <p>(14) In order to speed up and simplify co-financing procedures, the responsibilities of the Commission should be distinguished from those of the Member States. Provision should, therefore, be made for the Commission, after examining the Member States' requests for co-financing, to adopt co-financing decisions, while the Member States are to assure the management of the actions.</p> <p>(15) Such decentralised implementation of the actions by the Member States should provide sufficient guarantees as to the details and quality of implementation, the results of actions and their evaluation and sound financial management and its supervision.</p> <p>(16) One way of ensuring that the action of the European Refugee Fund is effective is efficient monitoring; the conditions of such monitoring should be set out.</p> <p>(17) Without prejudice to the Commission's responsibilities for financial control, cooperation between the Member States and the Commission in this regard should be established.</p> <p>(18) The responsibility of the Member States for the pursuit and correction of irregularities and infringements, and that of the Commission where the Member States do not comply with their obligations, should be specified.</p> <p>(19) The effectiveness and impact of the actions supported by the European Refugee Fund also depend on the evaluation thereof and the responsibilities of the Member States and the Commission in this regard, and arrangements to ensure the reliability of evaluation, should be laid down.</p> <p>(20) Actions should be evaluated with a view to their mid-term review and assessment of their impact, and the evaluation process should be incorporated into the monitoring of the actions.</p> | <p>(12) It is fair to take into account, when allocating resources, the relative efforts made by each Member State to receive and support refugees and displaced persons.</p> <p>Unchanged</p> |
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- (21) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾, the measures required for the implementation of the present Decision should be adopted by the advisory procedure provided for in Article 3 of that Decision.
- (22) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to demonstrate solidarity between Member States by achieving a balance in the efforts made by those Member States in receiving refugees and displaced persons and bearing the consequences of so doing, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or impact of the action, be better achieved by the Community. This Decision confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DECISION:

CHAPTER I

OBJECTIVES AND TASKS*Article 1***Establishment and objective of the European Refugee Fund**

1. A European Refugee Fund (hereinafter 'the Fund') shall be established to support and encourage the efforts made by the Member States in receiving refugees and displaced persons and bearing the consequences of so doing.
2. The Fund shall operate from 1 January 2000 to 31 December 2004.

*Article 2***Target groups**

For the purposes of this Decision the target groups shall comprise the following categories:

1. 'refugees', meaning any third-country nationals or stateless persons having the status defined by the Geneva Convention of 28 July 1951 relating to the Status of Refugees and permitted to reside as refugees in one of the Member States and, where appropriate, persons applying to be granted that status;
1. 'refugees', meaning any person having the status defined by the Geneva Convention of 28 July 1951 relating to the Status of Refugees and permitted to reside as refugees in one of the Member States and, where appropriate, persons applying to be granted that status;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

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2. 'displaced persons', meaning any third-country nationals or stateless persons benefiting from temporary protection arrangements in a Member State and, where appropriate, persons applying for such protection.

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*Article 3***Tasks**

1. To achieve the objective described in Article 1, the Fund shall support Member States' actions relating to:

(a) conditions for reception of refugees and displaced persons;

(b) integration of refugees and displaced persons;

(c) where appropriate, voluntary repatriation of those persons; 'voluntary repatriation' means the return of a person to the country of origin, without compulsion, including where the person concerned is the subject of a decision withdrawing the permission to stay granted when they belonged to one of the target groups referred to in Article 2.

2. With regard to the conditions for reception of refugees and displaced persons and procedures, the actions may concern infrastructure or services for accommodation, supply of material aid, social assistance or help with administrative formalities.

3. As regards integration into the society of the Member State of residence of persons having the status of refugees or benefiting from temporary protection arrangements and members of their family, actions may be to provide social assistance in areas such as housing, means of subsistence and healthcare or to enable beneficiaries to adjust to the society of the Member State or to provide for themselves.

4. As regards voluntary repatriation of refugees and displaced persons, including persons from whom this status has been withdrawn or to whom it has been refused or who have withdrawn their application, provided they have not acquired a new nationality and have not left the territory of the Member State, the actions may concern information and advice about voluntary return programmes and the situation in the country of origin and/or general or vocational training and help in resettlement.

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*Article 4***Community actions**

At the Commission's initiative, up to 10 % of the Fund's annual allocation may be used to finance innovatory actions or actions of interest to the Community as a whole, separate from the actions implemented by the Member States, including studies, pilot projects, exchanges of experience, measures to promote cooperation at Community level and assessment of the implementation of those measures, and technical assistance.

At the Commission's initiative, up to 10 % of the Fund's annual allocation may be used to finance innovatory actions or actions of interest to the Community as a whole, separate from the actions implemented by the Member States, including studies, public information, pilot projects, exchanges of experience, measures to promote cooperation at Community level and assessment of the implementation of those measures, and technical assistance.

The Fund may provide 100 % of the funding for those actions.

Unchanged

*Article 5***Emergency measures**

1. The Fund may also be used to finance emergency measures, separate from and in addition to the actions referred to in Article 3, to help one or more Member States in the event of a sudden mass influx of refugees or displaced persons.

2. In the situation referred to in paragraph 1, eligible emergency measures cover the following types of action:

- (a) reception and accommodation;
- (b) provision of means of subsistence, including food and clothing;
- (c) medical, psychological or other assistance;
- (d) staff and administration costs incurred as a result of the reception of persons and implementation of the measures.

The Fund may also be used to finance public information concerning the obligation of Member States to persons seeking international protection, and their obligations in the context of the European Union's asylum policy, including public awareness campaigns to supplement other actions.

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CHAPTER II

DETAILED PROVISIONS*Article 6***Implementation**

The Member States shall be responsible for implementation of actions supported by the Fund.

To this end, each Member State shall appoint a responsible authority which shall handle all communication with the Commission. That authority shall be a public administration but may delegate its responsibility for implementation to another public administration or non-governmental organisation.

*Article 7***Requests for co-financing**

1. Member States shall send the Commission, in accordance with the timetable set out in Article 10, a request for the co-financing of the actions referred to in Article 3 which describes:

- (a) the requirements justifying the implementation of actions eligible for support from the Fund;
- (b) actions planned for and during the period covered by this Decision;
- (c) funding from the Member State and, where applicable, from the organisation(s) involved;
- (d) the system put in place by the Member State to:
 - (i) select actions and ensure the procedure is transparent;
 - (ii) manage, monitor, check and evaluate actions;
 - (iii) encourage coordination between actions and communication between the people responsible for implementing them on the ground;
 - (iv) ensure proper publicity for the Community's contribution to funding.

The request shall contain, for each of the aspects referred to in the first subparagraph, sufficiently detailed information to enable the Commission to take a fully informed decision.

2. The request referred to in paragraph 1 shall be the subject of concertation with the Commission.

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*Article 8***Selection criteria**

Member States shall have sole responsibility for the selection of individual actions and for the financial management and administration of actions supported by the Fund with due respect for Community policies and the criteria for eligibility.

Following a call for proposals, actions shall be presented by public authorities (national, regional or local, central or devolved), education or research institutions, training establishments, the social partners, government agencies, international organisations or non-governmental organisations, operating individually or in partnerships with a view to obtaining funding from the Fund.

The responsible authority shall select actions on the basis of the following criteria:

- (a) the situation and requirements in the Member State;
- (b) the cost-effectiveness and benefit of the expenditure, in view of the number of persons concerned by the action;
- (c) the innovatory nature of the measures and the scope for using the results to strengthen cooperation between the Member States or enable other Member States to benefit from experience;
- (d) the experience, expertise, reliability and financial contribution from the organisation applying for funding and any partner organisation;
- (e) the extent to which the actions complement other actions funded by the budget of the European Communities or as part of national programmes.

Furthermore, the responsible authority shall ensure

that the actions are based on the principles of partnership between all those involved and participation, in particular by the beneficiaries, in their conception and implementation

Member States shall have primary responsibility for the selection of individual actions and for the financial management and administration of actions supported by the Fund with due respect for Community policies and the criteria for eligibility.

Following a public call for proposals, actions shall be presented by public authorities (national, regional or local, central or devolved), education or research institutions, training establishments, the social partners, government agencies, international organisations or non-governmental organisations, operating individually or in partnerships with a view to obtaining funding from the Fund.

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Furthermore, the responsible authority shall ensure:

— that the actions are based on the principles of partnership between all those involved and participation, in particular by the beneficiaries, in their conception and implementation;

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that they encourage a multi-dimensional approach incorporating coordinated action in all relevant areas and taking account of the complexity of the beneficiaries' position in the host society;

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— that they encourage a multi-dimensional approach incorporating coordinated action in all relevant areas and taking account of the complexity of the beneficiaries' position in the host society;

— that the continuity of the programmes and actions can be ensured, where necessary, over several years.

*Article 9***Distribution of resources**

Available resources shall be distributed proportionally between the Member States as follows:

- (a) 65 % in proportion to the average number of persons having applied for a form of international protection registered over the previous three years; and
- (b) 35 % in proportion to the number of persons granted refugee status or temporary protection over the previous three years.

The reference figures shall be the most recent figures established by the Statistical Office of the European Communities.

Unchanged

*Article 10***Timetable**

The actions shall be implemented between 1 January 2000 and 31 December 2004.

The Commission shall provide the Member States by 1 July each year at the latest with an estimate of the amounts to be allocated to them for the following year from the total amounts allocated within the framework of the annual budgetary procedure.

The Member States shall present the request for co-financing referred to in Article 7 to the Commission within two months of the date on which this Decision takes effect.

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The Commission and the Member State shall adopt the final list of actions accepted by common accord within three months of submission of the request for co-financing.

Each year, the Commission and the Member State may, on the basis of the annual report provided for in Article 18, make proposals for amendments to the list or the nature of the actions.

The Commission and the Member State shall, in any event, by 1 June 2002 at the latest, revise the list or nature of the actions on the basis of the mid-term evaluation provided for by Article 18 and shall make the necessary changes by common accord.

CHAPTER III

FINANZIAL PROVISIONS*Article 11***Financing structure**

For any given measure, the contribution from the Fund shall not exceed 50 % of the total cost of the measure.

That proportion may be increased to 75 % in Member States covered by the Cohesion Fund.

*Article 12***Eligibility**

1. Expenditure may not be considered eligible for support from the Fund if it has actually been paid before the date on which the Member State's request for co-financing is approved by the Commission. That date shall constitute the starting point for the eligibility of expenditure.

2. The Commission shall adopt the rules governing eligibility of expenditure in accordance with the procedure referred to in Article 19(2).

*Article 13***Decision on co-financing from the Fund**

After examining the request for co-financing, the Commission shall, in accordance with the procedure referred to in Article 19(2), adopt the decision on co-financing by the Fund. The decision shall state the amount allocated to the Member State.

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*Article 14***Budget commitments**

Community budget commitments shall be made on the basis of the Commission decision on co-financing.

*Article 15***Payments**

1. Payment by the Commission of the contribution from the Fund shall be made to the responsible authority in accordance with the corresponding budget commitments.

2. As soon as the Commission decision on the contribution from the Fund is adopted, an initial payment, representing 50 % of the amount, shall be made to the Member State for the year in question.

An interim payment of up to 30 % shall be made when the Member State states that it has actually spent half of the initial payment.

The balance shall be paid within three months of approval of the accounts submitted by the Member State and the annual report on implementation of the programme.

CHAPTER IV

CHECKS AND EVALUATION*Article 16***Checks**

1. Without prejudice to the Commission's responsibility for implementing the general budget of the European Communities, Member States shall take responsibility in the first instance for the financial control of the actions. To that end, the measures they shall take shall include:

- (a) verifying that management and control arrangements have been set up and are being implemented in such a way as to ensure that Community funds are being used efficiently and correctly;
- (b) providing the Commission with a description of these arrangements;
- (c) ensuring that the actions are managed in accordance with the applicable Community rules and that the funds placed at their disposal are used in accordance with the principles of sound financial management;

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- (d) certifying that the declarations of expenditure presented to the Commission are accurate and ensuring that they result from accounting systems based on verifiable supporting documents;
- (e) preventing, detecting and correcting irregularities, notifying these to the Commission in accordance with the rules and keeping the Commission informed of the progress of administrative and legal proceedings;
- (f) cooperating with the Commission to ensure that Community funds are used in accordance with the principle of sound financial management;
- (g) recovering any amounts lost as a result of an irregularity detected and, where appropriate, charging interest on late payments.

2. The Commission, in its responsibility for the implementation of the general budget of the European Communities, shall ensure that Member States have smoothly functioning management and control systems so that Community funds are efficiently and correctly used.

To that end, without prejudice to the powers of the Court of Auditors or the checks carried out by the Member States in accordance with national laws, regulations and administrative provisions, Commission officials or servants may, in accordance with arrangements agreed with the Member States in the framework of the cooperation described in paragraph (1)(f), carry out on-the-spot checks, including sample checks, on the operations financed by the Fund and on management and control systems with a minimum of one working day's notice. The Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. Officials or servants of the Member State concerned may take part in such checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the correctness of one or more transactions. Commission officials or servants may take part in such checks.

3. After completing the necessary verifications, the Commission shall suspend the interim payments in the following situations:

- (a) a Member State is not implementing the actions as agreed in the co-financing decision;

or

- (b) all or part of an action justifies neither part nor the whole of the co-financing from the Fund.

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In those cases, the Commission shall, stating its reasons, request that the Member State submit its comments and, where appropriate, carry out any corrections within a specified period of time.

4. At the end of the period set by the Commission, the Commission may, if no agreement has been reached and the Member State has not made the corrections and taking account of any comments made by the Member State, decide within three months to:

(a) reduce the interim payment referred to in Article 15(2);

or

(b) make the financial corrections required by cancelling all or part of the contribution of the Fund to the action in question.

In the absence of a decision to do either (a) or (b) the interim payments shall immediately cease to be suspended.

*Article 17***Financial corrections**

1. The Member States shall, in the first instance, bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or conditions for the implementation or supervision of an action and making the financial corrections required.

The Member State shall make the financial corrections required in connection with the individual or systemic irregularity. The corrections made by the Member State shall consist in cancelling all or part of the Community contribution. The Community funds released in this way may be re-used by the Member State for actions in the same field of action referred to in Article 3, in compliance with the arrangements to be defined in accordance with the procedure referred to in Article 19.

2. If, after completing the necessary verifications, the Commission concludes that a Member State has not complied with its obligations under paragraph 1 of this Article, Article 16(3) and (4) shall apply.

3. Any sum received unduly and to be recovered shall be repaid to the Commission, together with interest on account of late payment.

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*Article 18***Monitoring and evaluation**

1. In each Member State the responsible authority shall take whatever measures are necessary to monitor and evaluate actions.

To that end, the agreements and contracts it enters into with organisations charged with implementing the actions shall contain clauses requiring them to present at least one report a year detailing progress made with regard to implementation of the action and achievement of the objectives attributed to it.

2. The responsible authority shall send the Commission each year financial accounts and a detailed report on implementation of the actions in accordance with the rules adopted by the Commission by the procedure referred to in Article 19(2).

Furthermore, the responsible authority shall arrange for:

- (a) an independent mid-term evaluation to be carried out of the implementation of the actions, with a view to the revision provided for in Article 10,
- (b) an independent evaluation of the implementation and impact of the actions, after completion of the programme.

A sum not exceeding 1 % of the Member State's total allocation may be set aside for this purpose.

The evaluation report shall be attached to the final report.

3. The Commission shall submit a mid-term report to the European Parliament and the Council by 31 December 2002 at the latest and a final report by 1 June 2005 at the latest.

CHAPTER V

THE COMMITTEE*Article 19***The Committee**

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

2. Wherever reference is made to this paragraph, the advisory procedure set out in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) of that Decision.

3. The Committee may consider any question relating to this Decision, raised by the chairman or by a representative of a Member State.

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CHAPTER VI

SPECIAL PROVISIONS CONCERNING EMERGENCY MEASURES*Article 20***Special provisions concerning emergency measures**

1. Without prejudice to Articles 6 to 19, the provisions of paragraphs 2 to 5 of this Article shall apply to the implementation of the emergency measures provided for in Article 5.
2. Financial assistance from the Fund shall be limited to a period of six months and shall not exceed 80 % of the cost of each measure.
3. The Member State or Member States affected by a mass influx as referred to in Article 5(1) shall provide the Commission with a statement of requirements and a plan for the implementation of the emergency measures, including a description of the planned measures and the bodies responsible for their implementation.
4. The Commission shall examine and select the projects submitted by the Member State or Member States, taking account of the criteria laid down in Article 8.
5. Where appropriate, available resources shall be distributed between the Member States as follows:
 - (a) 80 % shall be distributed on the basis of the number of persons having entered each Member State as part of the mass influx referred to in Article 5(1); and
 - (b) 20 % shall be distributed on the basis of the quality of the projects put forward.

CHAPTER VII

TRANSITIONAL PROVISIONS*Article 21***Transitional provisions**

For implementation of this Decision in the first year, the Commission shall inform the Member States of the estimated amounts allocated to them within two weeks of the date on which this Decision takes effect. If the Statistical Office of the European Communities does not yet have the statistics required by Article 9, the figures used shall be those supplied by the Member States; in that case the Commission shall adopt, in accordance with the procedure referred to in Article 19(2), the rules for interpreting the statistics supplied by the Member States.

By way of derogation from Article 12, for the year 2000, expenditure actually paid between 1 January 2000 and approval of the request for co-financing may be eligible for support from the Fund.

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CHAPTER VIII

FINAL PROVISIONS*Article 22***Implementation**

1. The Commission shall be in charge of the implementation of this Decision.
2. Where necessary, the Commission shall adopt any other provisions required for the implementation of this Decision in accordance with the procedure referred to in Article 19(2).

*Article 23***Review clause**

The Council shall review this Decision on the basis of a proposal from the Commission by 31 December 2004 at the latest.

*Article 24***Addressees**

This Decision is addressed to the Member States.
