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*****|** **REPORT**

on the proposal for a decision of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows' (COM(2005)0123 – C6-0124/2005 – 2005/0046(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Barbara Kudrycka

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a decision of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008-2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ (COM(2005)0123 – C6-0124/2005 – 2005/0046(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0123)¹,
 - having regard to Article 251(2) and Article 63(2)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0124/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development and the Committee on Budgets(A6-0437/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

AMENDMENTS BY PARLIAMENT

Amended ***Proposal*** for a

DECISION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

establishing the European Refugee Fund for the period 2008-2013 as part of the General programme ‘Solidarity and Management of Migration Flows’s

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

¹ OJ C ... / Not yet published in OJ.

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,²

Acting in accordance with the procedure laid down in Article 251 of the Treaty,³

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external borders controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third country nationals.

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, reaffirmed its resolve to create an area of freedom, security and justice. For that purpose, a common European policy on asylum and migration should aim both at fair treatment of third country nationals and better management of migration flows. A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

(2A) This Decision respects fundamental rights and observes the principles as reflected in particular by the Charter of Fundamental Rights of the European Union and by the Geneva Convention.

(2B) With respect to the treatment of persons falling within the scope of this Decision, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

(2C) The «best interests of the child» in compliance with the UN Convention on the Rights of the Child (CRC) should be a primary consideration of Member States when implementing this Decision where applicable.

(3) Implementation of this policy should be based on solidarity between Member States and requires the existence of mechanisms to promote a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons. To that end, a European Refugee Fund was established for the period 2000-2004 by Decision 2000/596/EC⁴. This decision was replaced by Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010⁵. This ensured continued solidarity between Member States in the light of recently adopted Community legislation in the field of asylum, taking account of the experience acquired when

² OJ C ...

³ OJ C...

⁴ OJ L 252, 6.10.2002, p. 12.

⁵ OJ L 381, 28.12.2004.

implementing the Fund for the period 2000-2004.

(4) In the Hague Programme of 4-5 November 2004, the European Council set a series of objectives and priorities with a view to carrying further the development of the Common European Asylum System in its second phase.

(5) In particular, the European Council underlined the need for the European Union to contribute in a spirit of shared responsibility to a more accessible, equitable and effective international protection system and to provide access to protection and durable solutions at the earliest possible stage and called for the development of EU-Regional Protection Programmes, including a joint resettlement programme for Member States willing to participate in such a programme.

(6) The European Council also called for the establishment of appropriate structures involving the national asylum services of the Member States with a view to facilitating practical and collaborative cooperation, towards achieving an EU wide Single Procedure, the joint compilation, assessment and application of Country of Origin Information and addressing particular pressures on asylum systems or reception capacities resulting from factors such as geographic location.

(6A) In light of the scope and the purpose of the Fund, it cannot, in any event, support actions with respect to areas and centres for holding persons in third countries.

(7) In light of the Commission proposals establishing the Fund for the Integration of legally staying third country nationals, the Fund for the return of illegally staying third country nationals (hereafter 'Return Fund') and the external borders Fund for the period 2007-2013, as part of the general programme 'Solidarity and Management of Migration Flows', in particular in view of setting out common management, control and evaluation arrangements, a new European Refugee Fund should be established.

(8) It is necessary to adapt the duration of the Fund to the duration of the multiannual financial framework as set out in the Inter-institutional agreement applicable for the period 2008-2013.

(9) This instrument is designed to form part of a coherent framework ***consisting of this Decision, the Decision of the European Parliament and the Council establishing the External Borders Fund for the period 2007-2013, the Decision of the European Parliament and the Council establishing the European Return Fund for the period 2008-2013, and the Council Decision establishing the European Fund for the Integration of Third-country Nationals for the period 2007-2013***, which aims at addressing the issue of a fair share of responsibilities between Member States as concerns the financial burden arising from the introduction of an integrated management of the Union's external borders and from the implementation of common policies on asylum and immigration, as developed in accordance with Title IV of the Treaty establishing the European Community.

(10) It is appropriate to support ***and improve*** the efforts made by Member States to grant appropriate reception conditions to refugees, displaced persons and ***beneficiaries of***

subsidiary protection, in compliance with Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted⁶, to apply fair and effective asylum procedures and to promote good practice in the field of asylum so as to protect the rights of persons requiring international protection and enable Member States asylum systems to work efficiently.

(11) The integration of refugees into the society of the country in which they are established is one of the objectives of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967. Such persons must be enabled to share the values set out in the Charter of Fundamental Rights of the European Union. To this end, there should be support for action by Member States to promote their social, economic and cultural integration in so far as it contributes to the economic and social cohesion, the maintenance and strengthening of which is one of the Community's fundamental objectives provided for by Articles 2 and 3(1)(k) of the Treaty.

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(13) In light of the Hague Programme, it is necessary to ensure that the Fund's resources are used in the most efficient way to achieve the aims of EU asylum policy, taking into account the need to support resettlement and practical cooperation between Member States, inter alia as a means of addressing particular pressures on reception capacities and asylum systems.

(14) The Fund should also support Member States' efforts relating to the enhancement of their capacity to develop, monitor and evaluate their asylum policies in light of their obligations under Community legislation, in particular with a view to engaging in practical cooperation between Member States.

(15) The Fund should support the voluntary efforts made by Member States to provide international protection and a durable solution in their territories to refugees and displaced persons identified as eligible for resettlement by the United Nations High Commissioner for Refugees (UNHCR), such as the actions that the Member States implement to assess the resettlement needs and transfer the persons concerned to their territories, with a view to granting them a secure legal status and to promoting their effective integration.

(16) It is in the nature of the Fund that it should be able to provide support to voluntary burden-sharing operations agreed between Member States and consisting in the transfer of

⁶ OJ L 304, 30.9.2004, p. 12.

beneficiaries of international protection from one Member State to another, which grants them similar protection, and of applicants for international protection.

(17) The Fund should also be able to offer adequate support to joint efforts by Member States to identify, share and promote best practices and establish effective cooperation structures in order to enhance the quality of decision-making in the framework of the Common European Asylum System.

(18) 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 pursuant to Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof⁷.

(19) It should be possible to use this financial reserve also to support Member States' efforts to address particular pressures situations resulting from sudden arrivals of large numbers of persons who may be in need of international protection and which place significant and urgent demands on Member States' reception facilities or asylum systems. The conditions and the procedure for granting financial assistance in these situations should be laid down.

(20) The support provided by the Fund will be more efficient and better targeted if co-financing of eligible actions is based on *a* multiannual *programme, subject to a mid-term review* and on an annual programme drawn up by each Member State taking into account its situation and needs.

(21) *Whilst it is appropriate to have a fixed amount awarded to each Member State, it remains fair to allocate a large part of the resources proportionally to the burden borne by each Member State through its efforts in receiving refugees and displaced persons, including refugees enjoying international protection within the framework of national programmes.*

(22) Persons granted international protection and a durable solution through resettlement should be included in the numbers of beneficiaries of international protection taken into account for the allocation of resources between Member States.

(23) In order to provide adequate resources for resettlement and in consideration of the declining numbers of asylum seekers in the European Union, the proportion of available

⁷ OJ L 212, 7.8.2001, p. 12.

resources allocated on the basis of the number of persons granted international protection, including through resettlement, should be increased.⁸

(24) Taking into account the importance of the strategic use of resettlement from countries or regions designated for the implementation of Regional Protection Programmes, it is necessary to provide additional financial support for the resettlement of persons from the Western Newly Independent States and sub-Saharan Africa, which were so designated in the Commission Communication on Regional Protection Programmes of 1 September 2005 and the Council Conclusions of 12 October 2005, and from any other countries or regions that will be so designated in the future.⁹

(25) It is equally necessary to provide additional financial support to the resettlement actions targeted at certain particularly vulnerable categories of persons, where resettlement is determined to be the most appropriate response to their special needs.¹⁰

(26) In the context of shared management as referred to in Article 53 (1)(b) of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹¹, the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Communities should be specified and the obligations for the cooperation of the Member States clarified. Applying these conditions will enable the Commission to satisfy itself that Member States are using the Fund in a lawful and correct manner and in accordance with the principle of sound financial management within the meaning of Article 27 **and 48 (2)** of the Financial Regulation.

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(27) Member States should adopt adequate measures to guarantee the proper functioning of the management and control system **and the quality of implementation**. To this end, it is necessary to establish general principles and necessary functions which all programmes shall fulfil.

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(28) In accordance with the principles of subsidiarity and proportionality, Member States have the primary responsibility for the implementation and control of the interventions.

(29) The obligations on the Member States as regards management and control systems, the

⁸ **DELETED** : reservation linked to its reservation to Article 14.

⁹ **DELETED** : reservation linked to its reservation to Article 14.

¹⁰ **DELETED** : reservation linked to its reservation to Article 14.

¹¹ OJ L 248, 16.9.2002, p.1.

certification of expenditure, and the prevention, detection and correction of irregularities and infringements of Community law should be specified to guarantee efficient and correct implementation of their multiannual and annual programmes. In particular, as far as management and control are concerned, it is necessary to establish the modalities by which Member States ensure that the systems are in place and function satisfactorily.

(30) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be *encouraged*.

(31) The effectiveness and impact of actions supported by the Fund also depend on their evaluation *and the dissemination of the results*. The responsibilities of the Member States and the Commission in this regard, and arrangements to ensure the reliability of evaluation *and the quality of the related information*, should be formalised.

(31A) Bearing in mind the importance of visibility of the Community funding, the Commission should provide guidance to facilitate that any authority, non-governmental organisation, international organisation or other entity receiving a grant by this Fund properly acknowledges the support received, taking into account the practice for other instruments under shared management, such as the Structural Funds.

(32) Actions should be evaluated with a view to a mid-term review and impact assessment, and the evaluation process should be incorporated into project monitoring arrangements.

(33) This Decision establishes a financial framework for the entire duration of the programme, which is to be the *prime* reference for the budgetary authority within the meaning of point 37 of the interinstitutional agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and *sound financial management*.¹²

(34) Since the objective of this Decision, namely to promote a balance of effort between Member States in receiving refugees and displaced persons, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the

¹² OJ C 139, 14.6.2006, p. 1.

principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve this objective.

(35) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999¹³, laying down the procedures for the exercise of implementing powers conferred on the Commission.

(35A) In particular, it is necessary to follow the regulatory procedure with scrutiny as regards measures of general scope designed to amend non-essential elements of this Regulation, inter alia by deleting some of those elements or by supplementing this Regulation by addition of new non-essential elements; such measures are referred to in Article 18(4) of this Decision. Concerning the adoption of the strategic guidelines, and for reasons of efficiency, the time-limits applicable in the regulatory procedure with scrutiny should be curtailed.

(36) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 6 September 2005, its wish to take part in the adoption and application of this Decision.

(37) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 27 October 2005, its wish to take part in the adoption and application of this Decision.

(38) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it nor subject to its application.

(39) In accordance with the second indent of paragraph 2 of Article 67 of the Treaty, Council Decision 2004/927/EC of 22 December 2004, providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty,¹⁴ rendered the procedure referred to in Article 251 of the Treaty applicable in the areas covered by Articles 62(1),

¹³ OJ L 184, 17.7.1999, p. 23. Decision amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11)

¹⁴ OJ L 396, 31.12.2004, p. 45-46.

(2)(a) and (3) and 63(2)(b) and (3)(b) of the Treaty.

The European Economic and Social Committee has delivered an opinion¹⁵.

The Committee of the Regions has delivered an opinion¹⁶.

HAS ADOPTED THIS DECISION:

CHAPTER I

SUBJECT-MATTER, OBJECTIVES AND ACTIONS

Article 1

Subject matter and scope

This Decision establishes for the period from 1 January 2008 to 31 December 2013 the European Refugee Fund, hereinafter referred to as « The Fund », as part of *a coherent framework also including the Decision of the European Parliament and the Council establishing the External Borders Fund for the period 2007-2013, the Decision of the European Parliament and the Council establishing the European Return Fund for the period 2008-2013, and the Council Decision establishing the European Fund for the Integration of Third-country Nationals for the period 2007-2013*, in order to contribute to the strengthening of the area of Freedom, Security and Justice *and the application of the principle of solidarity between the Member States*.

This decision defines the objectives to which the Fund contributes, its implementation, the available financial resources and the distribution criteria for the allocation of the available financial resources.

It establishes the Fund's management rules, including financial ones as well as monitoring and control mechanisms based on a share of responsibilities between the Commission and the Member States.

¹⁵ OJ C ...

¹⁶ OJ C ...

Article 2

General Objective of the Fund

1. The general objective of the Fund shall be to support and encourage the efforts made by the Member States in receiving and bearing the consequences of receiving refugees and displaced persons, taking account of Community legislation in these matters by co-financing the actions provided for by this Decision.
2. The Fund shall contribute to the financing of the technical assistance on the initiative of the Member States or the Commission.

Article 3

Eligible actions in the Member States

1. The Fund shall support actions in Member States relating to one or more of the following:
 - (a) reception conditions and asylum procedures;
 - (b) integration of persons referred to in Article 6 whose stay in the Member State is of a lasting and stable nature;

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(c) enhancement of their capacity to develop, monitor and evaluate their asylum policies in light of their obligations under existing and future Community legislation in the field of the common European asylum system, in particular with a view to engaging in practical cooperation activities between Member States.

(d) resettlement of persons referred to in Article 6(e);

For the purposes of this Decision, resettlement means the process whereby, on a request from UNHCR based on their need for international protection, third country nationals or stateless persons are transferred from a third country to a Member State where they are permitted to reside with one of the following statuses

- *refugee status within the meaning of Council Directive 2004/83/EC¹⁷ or*
- *a status which offers the same rights and benefits under national and Community law as the refugee status;*

(e) transfer of persons falling under the categories referred to in Article 6(a) and (b) from the Member State which granted them international protection to another Member State where they will be granted similar protection and of persons falling under the category referred to in Article 6(c) to another Member State where their applications for international protection will be examined;

2. As regards reception conditions and asylum procedures, eligible actions shall include the following:

(a) accommodation infrastructure or services;

(aa) structures and training to ensure access to asylum procedures for asylum seekers;

(b) provision of material aid and medical or psychological care;

(c) social assistance, information or help with administrative *and/or judicial* formalities *and information or counselling on the possible outcome of the asylum procedure, including on aspects such as voluntary return;*

¹⁷ OJ L 304, 30.9.2004, p. 12.

- (d) legal aid and language assistance;
- (e) education, language training and other initiatives which are consistent with the status of the person;
- (f) the provision of support services such as translation and training to help improve reception conditions and the efficiency and quality of asylum procedures;
- (g) information for local communities *as well as training for the staff of local authorities*, who will be interacting with those being received in the host country.

(h) transfer of persons falling under the category referred to in Article 6(c) from a Member State where they actually are to the Member State responsible for the examination of the asylum application in question.

3. As regards integration into Member States' society of persons referred to in Article 3(1)(b) and members of their family, eligible actions shall include the following:
 - (a) advice and assistance in areas such as housing, means of subsistence, integration into the labour market, medical, psychological and social care;
 - (b) actions enabling recipients to adapt to the society of the Member State in socio-cultural terms, and to share the values enshrined in the Charter of Fundamental Rights of the European Union;
 - (c) actions to promote durable and sustainable participation in civil and cultural life;
 - (d) measures focusing on education, vocational training, recognition of qualifications and diplomas;
 - (e) actions designed to promote self-empowerment and to enable these persons to provide for themselves;

- (f) actions that promote meaningful contact and constructive dialogue between these persons and the receiving society, including actions which promote the involvement of key partners such as the general public, local authorities, refugee associations, voluntary groups, social partners and the broader civil society;
- (g) measures to support the acquisition of skills by these persons, including language training;
- (h) actions that promote both equality of access and equality of outcomes in relation to these persons' dealings with public institutions.

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4. As regards actions relating to the enhancement of Member States' capacity to develop, monitor and evaluate their asylum policies, the following, in particular, shall be eligible for support from the Fund:

(a) actions promoting the collection, compilation, use and dissemination of Country of Origin Information, including translation;

(b) actions enhancing the capacity to collect, analyse and disseminate statistics on asylum procedures, reception, integration and beneficiaries of international protection;

(c) actions enhancing the capacity to assess asylum applications, including appeals;

(d) actions contributing to the evaluation of asylum policies, such as national impact assessments, surveys among target groups, the development of indicators and benchmarking.

5. As regards actions relating to resettlement, the following, in particular, shall be eligible for support from the Fund:

(a) actions relating to the establishment and development of a resettlement programme;

(b) actions relating to the assessment of potential resettlement cases by the competent Member States' authorities, such as conducting missions to the host country, interviews, medical and security screening;

(c) pre-departure health assessment and medical treatment;

(d) pre-departure material provisions;

(e) pre-departure information measures;

(f) travel arrangements, including the provision of medical escort services;

(g) information and assistance immediately upon arrival, including interpretation services.

6. As regards actions relating to the transfer of beneficiaries of international protection between Member States, the following, in particular, shall be eligible for support from the Fund:

(a) pre-departure information measures;

(b) travel arrangements, including the provision of medical escort services;

(c) information and assistance immediately upon arrival, including interpretation services.

- 7. The actions referred to in paragraphs 2, 3 and 4 shall also be eligible for support from the Fund where they are targeted at the persons referred to in Article 6(e).**
8. Actions provided for by paragraphs 1 to 4 shall, in particular, promote the implementation of the provisions of the relevant Community legislation in the field of the common European asylum system.
9. Actions shall take account of ***gender-related issues, the best interest of children***, the specific situation of vulnerable persons such as ***children***, unaccompanied ***children***, disabled people, elderly people, pregnant women, single parents with minor children, and ***victims of torture, or rape or other serious forms of psychological, physical or sexual violence victims of trafficking or forms of sexual abuse, individuals in need of emergency care and essential treatment of illness***.
10. ***The Fund shall only support actions with respect to accommodation of persons referred to in article 6(c) which is separate from areas or centres solely destined for persons whose entry is refused and for persons who are intercepted after having crossed the border illegally or when approaching the external borders with a view to illegal entry into the territory of the Member States.***

Article 4

Actions of interest to the Community

1. At the Commission's initiative, up to ***10%*** of the Fund's available resources may be used to finance transnational actions or actions of interest to the Community as a whole (“Community actions”) concerning asylum policy and measures applicable to the target groups referred to in Article 6.
2. To be eligible for funding, Community actions shall in particular:
 - (a) further Community cooperation in implementing Community law and good practices, ***including interpretation and translation services supporting such cooperation***;

- (b) support the setting-up of transnational cooperation networks and pilot projects based on transnational partnerships between bodies located in two or more Member States designed to stimulate innovation, facilitate exchanges of experience and good practice and improve the quality of asylum policy;
 - (c) support transnational awareness-raising campaigns;
 - (d) support studies, dissemination and exchange of information on best practices and all other aspects of *asylum policies*, including on the use of state of the art technology *and on cooperation at national level between key partners, such as local and regional authorities, refugee associations and voluntary groups*;
 - (e) support pilot projects, *including innovative projects* and studies exploring the possibility of new forms of Community cooperation and Community law in this area;
 - (f) support development *and application by Member States* of *common* statistical tools, methods and indicators *for measuring policy developments in the field of asylum*;
 - (fa) *offer to networks linking non-governmental organisations which assist refugees and asylum-seekers and which are present in at least 10 Member States structural support intended to facilitate exchanges of experience and sound practice and to ensure that the development of Community asylum policy and practice takes into account the experience gained by non-governmental organisations and the interests of refugees and asylum seekers*;
 - (g) *provide supporting services to Member States in case of duly substantiated emergency situations requiring urgent action.*
3. The annual work programme laying down the priorities for Community actions shall be adopted in accordance with the procedure referred to in Article 52(2).

Article 5
Emergency Measures

1. In the event of temporary protection mechanisms within the meaning of Directive 2001/55/EC being implemented, the Fund shall also finance measures to help the Member States, such measures being separate from, and in addition to, the actions referred to in Article 3.
2. *Without prejudice to paragraph 1, the Fund shall also provide assistance to Member States for the implementation of emergency measures aimed at addressing situations of particular pressures. Such situations are characterised by sudden arrivals at particular points on the borders of large numbers of third country nationals who may be in need of international protection, which place exceptionally heavy and urgent demands on the reception facilities, the asylum system or infrastructure of the Member States concerned and may create risk to human life, well-being or access to protection provided under Community legislation.*
3. *The actions implemented in order to address the situations of particular pressures referred to in paragraph 2 shall be eligible for support from the Fund if:*
 - (a) they are intended to be implemented immediately and cannot be practicably included in the relevant annual programme, and*
 - (b) their duration does not exceed six months.*
4. Eligible emergency measures shall concern 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 linked to the reception of persons concerned and implementation of measures;
- (e) logistical and transport costs.

(f) legal aid and language assistance;

(g) provision of translation and interpretation services, COI expertise and other measures contributing to the rapid identification of persons who may be in need of international protection and to a fair and efficient processing of asylum applications.

5. Measures under paragraph 4 may be supported by expert teams.

Article 6

Target Groups

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

- (a) any third-country national or stateless person having the status defined by the Geneva Convention of 28 July 1951 relating to the Status of Refugees and the 1967 protocol thereto and who is permitted to reside as refugee in one of the Member States;
- (b) any third-country national or stateless person enjoying a form of subsidiary protection within the meaning of Council Directive 2004/83/EC¹⁸;
- (c) any third-country national or stateless person who has applied for one of the forms of protection described in (a) and (b);
- (d) any third-country national or stateless person enjoying temporary protection within the

¹⁸ OJ L 304, 30.9.2004, p. 12.

meaning of Directive 2001/55/EC.

(e) any third country nationals or stateless persons who are resettled in a Member State.

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CHAPTER II PRINCIPLES OF ASSISTANCE

Article 7

Complementarity, consistency and compliance

1. The Fund shall provide assistance which complements national, regional and local actions, integrating into them the priorities of the Community.
2. The Commission and the Member States shall ensure that assistance from the Fund and the Member States is consistent with the activities, policies and priorities of the Community. This consistency shall be indicated in particular in the multiannual programme referred to in Article 19.
3. Operations financed by the Fund shall comply with the provisions of the Treaty and of acts adopted under them.

Article 8

Programming

1. The objectives of the Fund shall be pursued in the framework of *a* multiannual programming period (2008-2013), *subject to a mid-term review in accordance with Article 22A*. The multiannual programming system shall include the priorities and a process of management, decision making, auditing and certification.
2. The multiannual programmes *approved* by the Commission shall be implemented by means of annual programmes.

Article 9

Subsidiary and proportional intervention

1. Implementation of multiannual and annual programmes referred to in Articles 19 and 21 shall be the responsibility of Member States at the appropriate territorial level, in accordance with the institutional system specific to each Member State. This responsibility shall be exercised in accordance with this Decision.
2. The means employed by the Commission and the Member States shall vary according to the size of the Community contribution in relation to audit provisions. Differentiation shall also apply to provisions on evaluation and to the reports on multiannual and annual programmes.

Article 10

Implementation methods

1. The Community budget allocated to the Fund shall be implemented in accordance with Article 53(1)(b) of Council Regulation (EC, Euratom) No 1605/2002, with the exception of the Community Actions referred to in Article 4 and the technical assistance referred to in Article 16.
2. The Commission exercises its responsibility for implementing the general budget of the European Communities by:
 - (a) checking the existence and proper functioning of management and control systems in the Member States in accordance with the procedures described in Article 32;
 - (b) interrupting or suspending all or part of payments in accordance with Articles 41 and 42 if the national management and control systems fail, and by applying any other financial correction required, in accordance with the procedures described

in Articles 45 and 46.

Article 11

Additionality

deleted

Article 12

Partnership

1. Each Member State shall organise, in accordance with current national rules and practices, a partnership with the authorities and bodies which ***are involved in the implementation of the multiannual programme or able to provide a useful contribution to its development according to the Member State concerned.***

Such authorities and bodies may include the competent regional, local, urban and other public authorities,

international organisations and bodies, in particular UNHCR, representing civil society ***such as*** non-governmental organisations ***or*** social partners.

2. The partnership shall be conducted in full compliance with the respective institutional, legal and financial jurisdiction of each partner category.

CHAPTER III
FINANCIAL FRAMEWORK

Article 13
Global resources

1. The financial *envelope* for the implementation of the Fund from 1 January 2008 to 31 December 2013 shall be EUR [**628**] million.
2. The annual appropriations for the Fund shall be authorised by the budgetary authority within the limits of the financial *framework*.
3. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Article 14.

Article 14

Annual distribution of resources for eligible actions in the Member States

1. Each Member State shall receive a fixed amount of EUR 300.000 from the Fund's annual allocation.

This amount shall be fixed at EUR 500.000 per annum for the period 2008-2013 for the states which acceded to the European Union on 1 May 2004.

This amount shall be fixed at EUR 500.000 per annum for Member States which will accede to the European Union in the period **2007**-2013 for the remaining part of the period 2008-2013 from the year following their accession.

2. The remainder of the available annual resources shall be broken down between the Member States as follows:
 - (a) **30%** in proportion to the number of persons admitted in one of the categories referred to in *Article 6 (a), (b) and (e)* over the previous three years;
 - (b) **70%** in proportion to the number of persons referred to in *Article 6(c) and (d)* registered over the previous three years.

For the purposes of this breakdown, persons referred to in Article 6(e) shall not be taken into account under the category referred to in Article 6(a).

3. *[...] Member States shall receive a fixed amount of EUR 4 000¹⁹ for each resettled person falling under one of the following categories:*
 - (a) *persons from a country or region designated for the implementation of a Regional Protection Programme;*
 - (b) *unaccompanied minors;*
 - (c) *minors and women who are at risk, particularly from psychological, physical or sexual violence and exploitation;*

¹⁹ **DELETED** reservation due to the fact that resettlement is financed by the total amount of the Fund and not only by the annual allocation from the Fund to each Member State, based on Article 14.

(d) persons with serious medical needs that can only be addressed through resettlement.

4. Where a Member State resettles a person falling under more than one of the categories referred to in paragraph 3, it shall receive the fixed amount for this person only once.

5. The reference figures shall be the latest statistics produced by the Statistical Office of the European Communities *on the basis of data provided by Member States* in accordance with Community law.

Where Member States have not supplied to the Commission (Eurostat) the statistics concerned, they shall provide provisional data as soon as possible.

*Before accepting these data as reference figures, the Commission (Eurostat) shall evaluate the quality, comparability and completeness of the statistical information in accordance with normal operational procedures. At the request of the Commission (Eurostat), Member States shall provide it with all the necessary information to do so.*²⁰

6. No later than 1 May each year, Member States shall provide the Commission with an estimate of the number of persons referred to in paragraph 3 that they will resettle the following year, including a breakdown by the different categories referred to in this paragraph. The Commission shall communicate this information to the Committee.

²⁰ The revised wording reflects both the current situation (arrangements between MS and Eurostat, with Eurostat being bound by general rules laid down in Council Regulation (EC) 322/97 of 17 February 1997 on Community statistics) and the future situation (specific Regulation on Community statistics on migration and international protection). The data for the Funds should be treated the same as other data (reference to normal operational procedures).

Article 15
Financing structure

1. The Fund's financial contribution shall take the form of grants.
2. Actions supported by the Fund shall be co-financed by public or private sources, shall be of a non-profit nature and shall not be eligible for funding from other sources covered by the general budget of the European Communities.
3. Fund appropriations shall be complementary to public or equivalent expenditure allocated by Member States to the measures covered by this Decision.
4. The Community contribution to supported projects, as regards actions implemented in the Member States under Article 3 shall not exceed 50% of the total cost of a specific action.

This may be increased to 75% for projects addressing specific priorities identified in the *strategic* guidelines as defined in Article 18.

This shall be increased to 75% in the Member States covered by the Cohesion Fund.

5. *In the framework of the implementation of national programming as set out in Chapter IV, Member States shall select projects for financing on the basis of the following minimum criteria:*
 - (a) *the situation and requirements in the Member State;*
 - (b) *the cost-effectiveness of the expenditure, inter alia in view of the number of persons concerned by the project;*
 - (c) *the experience, expertise, reliability and financial contribution of the organisation applying for funding and any partner organisation;*
 - (d) *the extent to which the projects complement other action funded by the general budget of the European Union or as part of national programmes.*

6. As a general rule, Community financial aid granted for actions supported by the Fund shall be given for a period of no more than three years, subject to periodic progress reports.

6. The Community contribution to support actions implemented under Article 3(4) cannot exceed 15% of the total of the annual resources allocated to each Member State in accordance with Article 14.

Article 16

Technical assistance at the initiative of the Commission

1. At the initiative of and/or on behalf of the Commission, ***subject to a ceiling of EUR 500.000 of the Fund's annual allocation***, the Fund may finance the preparatory measures, monitoring, administrative and technical support measures, as well as evaluation, audit and inspection measures necessary for implementing this Decision.
2. Those actions shall include:
 - (a) studies, evaluations, expert reports and statistics, including those of a general nature concerning the operation of the Fund;
 - (b) ***information*** measures ***for the Member States, the final*** beneficiaries and the general public, ***including awareness raising campaigns and a common database on the projects financed under the Fund***;
 - (c) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;
 - (d) ***the design of a common framework for evaluation and monitoring as well as a systems of indicators, taking into account, where appropriate, national indicators***;

- (e) improvements of evaluation methods and the exchange of information on practices in this field.
- (f) *information and training measures for the authorities designated by Member States in accordance with Chapter V, complementary to the efforts of the Member States to provide guidance to their authorities in accordance with Article 31, paragraph 2.*

Article 17

Technical assistance of the Member states

1. At the initiative of the Member State in question, for each annual programme, the Fund may finance preparatory measures, management, monitoring, evaluation, information and control measures, as well as measures for the reinforcement of the administrative capacity for the implementation of the Fund.
2. The annual amount set aside for technical assistance may not exceed:
 - a) *7% of the total annual amount of co-financing allocated to the Member State plus EUR 30.000 for 2008-2010 and*
 - b) *4% of the total annual amount of co-financing allocated to the Member State plus EUR 30. 000 for 2011-2013.*

CHAPTER IV PROGRAMMING

Article 18

Adoption of strategic guidelines

1. **The** Commission shall adopt strategic guidelines setting out a framework for the intervention of the Fund, taking into account the progress in development and implementation of Community legislation in the area of asylum policy as well as the indicative distribution of the financial resources of the Fund for the period concerned.
2. For each of the objectives of the Fund, those guidelines shall in particular give effect to the priorities of the Community with a view to promoting the implementation of the Common European Asylum System.
3. The Commission shall adopt the strategic guidelines relating to the multiannual programming period on **31 May** 2007 at the latest.
4. The strategic guidelines shall be adopted in accordance with the **regulatory** procedure **with scrutiny** referred to in Article 52(3). **These strategic guidelines, once they are adopted, shall be added to the present Decision as an annex.**

Article 19

Preparation and approval of national multiannual programmes

1. Each Member State shall **propose**, on the basis of the strategic guidelines referred to in Article 18, a draft multiannual programme which shall **consist of** the following elements:
 - (a) **a** description of the current situation in the Member State as regards arrangements for reception, asylum procedures, **counselling of voluntary return**, integration **and resettlement and transfer from another Member State** of the persons covered by Article 6, **as well as the development, monitoring and evaluation of asylum policies**;
 - (b) an analysis of requirements in the Member State in question in terms of

reception, asylum procedures, *counselling of voluntary return*, integration, *and resettlement and transfer from another Member State of the persons covered by Article 6, as well as the development, monitoring and evaluation of asylum policies*;

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- (c) *the* presentation of an appropriate strategy to achieve these objectives and the priorities attached to their attainment, and a description of the actions envisaged to implement these priorities;
- (d) *an* indication of whether this strategy is compatible with other regional, national and Community instruments;
- (e) information on the priorities and their specific targets. Those targets shall be quantified using a limited number of indicators taking into account the proportionality principle. The indicators must make it possible to measure the progress in relation to the baseline situation and the effectiveness of the targets implementing the priorities;
- (f) *a description of the approach chosen for the implementation of the principle of partnership laid down in Article 12*;
- (g) a draft financing plan which sets out, for each priority and each year, the Fund's proposed financial contribution and the overall amount of public or private co-financing;
- (h) implementing provisions for the multiannual programme, *consisting of*
 - *the* designation by the Member State of all the entities stipulated in Article 25;
 - a description of the implementation, monitoring, control and evaluation systems;
 - a definition of the procedures for the mobilisation and circulation of financial flows in order to ensure their transparency;

- the provisions laid down to ensure that the multiannual programme is publicised.

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2. Member States shall submit their draft multiannual programme no later than four months after the Commission has provided the strategic guidelines for the period in question.
3. ***In order to approve the draft multiannual programme, the Commission shall examine:***
 - (a) its consistency with the objectives of the Fund and the strategic guidelines defined in Article 18;
 - (b) the relevance ***of the actions envisaged in the draft in light of the strategy which is proposed;***
 - (c) the compliance of the management and control arrangements set up by the Member State for the implementation of the Fund's interventions with the provisions set out in this Decision;
 - (d) its compliance with Community law and in particular with Community law aiming at ensuring the free movement of persons in conjunction with the directly related flanking measures with respect to external borders controls, asylum and immigration.
4. Where the Commission considers that a ***draft*** multiannual programme is inconsistent with the strategic guidelines ***and/or*** does not comply with the provisions of this decision setting out management and control systems ***or with Community law***, it shall ***invite*** the Member State to ***provide all necessary additional information and, where appropriate,*** to revise the proposed programme accordingly.
5. The Commission shall approve each multiannual programme within ***three*** months

following its formal submission, in accordance with the procedure referred to in Article 52(2).

Article 20

Revision of multiannual programmes

1. At the initiative of the Member State in question or the Commission, **the** multiannual programme shall be re-examined and, if necessary, revised for the rest of the programming period in order to take greater or different account of the Community priorities [...]. Multiannual programmes may be re-examined in the light of evaluations and/or following implementation difficulties.
2. The Commission shall adopt a decision approving the revision of the multiannual programme as soon as possible after the formal submission of a request by the Member State concerned. ***The revision of the multiannual programme shall be done in accordance with the procedure referred to in Article 52(2).***

Article 21

Annual programmes

1. The multiannual programme approved by the Commission shall be implemented by means of annual programmes.
2. The Commission shall provide the Member States, no later than 1 July of each year, with an estimate of the amounts to be allocated to them for the following year from the total appropriations allocated under the annual budgetary procedure, calculated as provided by Article 14.
3. The Member States shall submit to the Commission, no later than 1 November of each year, a draft annual programme for the following year, established in accordance with the multi-annual programme, ***consisting of the following elements:***

- (a) the general rules for selection of projects to be financed under the annual programme;
 - (b) a description of the *actions to be supported under* the annual programme;
 - (c) the proposed financial breakdown of the Fund's contribution between the programme's various actions; and an indication of the amount requested to cover technical assistance under Article 17 for the purpose of implementing the annual programme.
4. When examining the *draft annual programme of a Member State*, the Commission shall take account of the final amount of the appropriations allocated to the Fund under the budgetary procedure.

Within one month of the formal submission of this draft, the Commission shall inform the Member State whether it can approve it or not. If the draft annual programme is inconsistent with the multiannual programme, the Commission shall invite the Member State to provide all necessary information and, where appropriate, to revise the proposed programme accordingly.

The Commission shall adopt the financing decision, approving the annual programme, no later than 1 March of the year in question. The decision shall indicate the amount allocated to the Member State and the period for which the expenditure is eligible.

5. *To take into account duly substantiated emergency situations which were not foreseen at the time of the approval of the annual programme and requiring urgent action, a Member State may revise up to 10% of the financial breakdown of the Funds' contribution between the various actions listed in the annual programme or allocate up to 10% of the break down to other actions in accordance with this Decision. The Commission shall be informed of the revised annual programme.*

Article 22

Special provisions concerning emergency measures

1. Member States shall provide the Commission with a statement of requirements and an implementation plan for the emergency measures provided for by Article 5, including a description of the planned measures and the bodies responsible for implementing them.

2. A Member State requesting assistance from the Fund in order to address a situation of particular pressure described in Article 5(2) shall submit to the Commission an application providing all available relevant information, including:

(a) a detailed description of the current situation, in particular concerning the number of arrivals, the effects on the reception capacities and the asylum system or infrastructure and the urgent needs, as well as a substantiated forecast of possible developments of the situation in the short-term;

(b) a substantiated indication of the exceptional character of the situation, demonstrated by elements which may include recent statistical and other data regarding the inflow of persons at the particular point of the border concerned;

(c) a detailed description of the emergency actions envisaged, their scale, their nature and the partners concerned;

(d) a breakdown of the estimated costs of the actions envisaged.

The Commission shall decide whether the conditions for granting financial assistance for emergency measures from the Fund are fulfilled and on the amount of the financial assistance to be granted on the basis of the information referred to above and any additional relevant information at its disposal. The Commission shall inform Member States on the above-mentioned Decision.

3. Financial assistance from the Fund for the emergency measures provided for by Article 5 shall be limited to a period of six months and shall not exceed 80% of the cost of each measure.
4. **In the event of temporary protection mechanism as referred to in Article 5(1),** available resources shall be distributed among the Member States on the basis of the number of persons benefiting from temporary protection in each Member State as referred to in Article 5(1).

Article 22A

Mid-term review of the multiannual programme

1. ***The Commission shall review the strategic guidelines and where necessary, adopt, on 31 March 2010 at the latest, new strategic guidelines for the period 2011- 2013***
2. ***If such strategic guidelines are adopted, each Member States shall re-examine its multi-annual programme and where appropriate, revise it.***
3. ***The rules in Article 19 on the preparation and approval of national multi-annual programmes shall apply mutatis mutandis for the preparation and approval of these revised multi-annual programmes.***
4. ***The revised strategic guidelines shall be adopted in accordance with the procedure referred to in Article 52(3).***

CHAPTER V

MANAGEMENT AND CONTROL SYSTEMS

Article 23

Implementation

The Commission shall be responsible for implementing this Decision and shall adopt such implementing rules as may be necessary.

Article 24

General Principles in the management and control systems

The management and control systems of multiannual programmes set up by Member States shall provide for:

- (a) **the** definition of the functions of the bodies concerned in management and control and **the** allocation of functions within each body;
- (b) **the respect of the principle of** separation of functions between **and within such** bodies;
- (c) adequate resources for each body to carry out the functions which have been allocated to it throughout the period of implementation of actions financed by the Fund;
- (d) **procedures for ensuring the correctness and regularity of the expenditure declared under the multiannual programmes;**
- (e) reliable accounting, monitoring and financial reporting systems in computerised form;
- (f) **a** system of reporting and monitoring where the **responsible body entrusts the execution** of tasks **to another body;**
- (g) manuals of procedures in relation to the functions to be performed;
- (h) arrangements for **auditing** the functioning of the system;
- (i) systems and procedures to ensure **an adequate** audit trail;
- (j) reporting and monitoring **procedures for** irregularities and **for** the recovery of amounts unduly paid.

Article 25

Designation of authorities

1. For ***implementing its*** multiannual programme ***and annual programmes*** the Member State shall designate the following:
 - (a) a responsible authority: a functional body of the Member State, national public authority or body designated by the Member State ***or a body governed by the private law of the Member State and which has a public-service mission***, which shall be responsible for the management of multi-annual and annual programmes supported by the Fund and shall handle all communication with the Commission ;
 - (b) a certifying authority: national public authority or body ***or individual acting as such body or authority*** designated by the Member State to certify declarations of expenditure and applications for payment before they are sent to the Commission;
 - (c) an audit authority: national public authority or body, ***provided that it is functionally*** independent of the responsible authority ***and the certifying authority***, designated by the Member State and responsible for verifying the ***effective functioning*** of the management and control system;
 - (d) where appropriate, a delegated authority.

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2. The Member State shall lay down rules governing its relations with ***the*** authorities ***referred to in paragraph 1*** and their relations with the Commission.
3. Subject to Article 24(b), ***some or all of the authorities referred to in paragraph 1 may be located within*** the same body.

4. The rules for implementing Articles 26 to 30 shall be adopted by the Commission in accordance with the procedure referred to in Article 52(2).

Article 26

Responsible authority

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1. The responsible authority shall meet the following minimum conditions. It shall:
 - (a) have legal personality, except where it is a functional body of the Member State;
 - (b) have the infrastructure required for easy communication with a wide range of users and with the responsible bodies in the other Member States and the Commission;
 - (c) work in an administrative context allowing it to carry out its tasks correctly and avoiding any conflict of interest;
 - (d) be in a position to apply Community fund management rules;
 - (e) have financial and management capacities proportionate to the volume of Community funds which it will be called upon to manage;
 - (f) have at its disposal personnel with appropriate professional qualifications [...] for administrative work in an international environment.
2. The Member State shall provide the responsible authority with adequate funding so that it can ***continue to*** carry out its tasks properly throughout the period 2008-2013.
3. ***The Commission may assist the Member States in the training of staff, in particular as regards the correct application of Chapters V to IX of this Decision.***

Article 27

Tasks of the responsible authority

1. The responsible authority shall ***be responsible for*** managing ***and implementing the multi-annual programme in accordance with the principle of sound financial management.***

It shall in particular:

- (a) consult ***partners in accordance with*** Article 12;
- (b) submit to the Commission proposals for multiannual and annual programmes defined in Articles 19 and 21;
- (c) organise and advertise calls for tenders and proposals ***if appropriate;***
- (d) organise selection and award procedures for ***co-financing actions under the*** Fund in accordance with the principles ***set out in Article 15, paragraph 5;***
- (e) receive payments made by the Commission, and make payments to the ***final*** beneficiaries;
- (g) ***monitor*** the delivery of the co-financed products and services and that the expenditure declared for actions has actually been incurred and complies with Community and national rules;
- (h) ensure that there is a system for recording and storing in computerised form accounting records of each action under the annual programmes and that the data on implementation necessary for financial management, monitoring, control and evaluation is collected;
- (i) ensure that ***final*** beneficiaries and other bodies involved in the implementation of actions co-financed by the Fund maintain either a separate accounting system or an adequate accounting code for all transactions relating to the ***action without***

prejudice to national accounting rules;

- (j) ensure that the evaluations of multi-annual programmes referred to in Article 49 are carried out within the time limits laid down in this Decision and meet the quality standards agreed between the Commission and the Member State;
 - (k) set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements referred to in Article 43;
 - (l) ensure that the audit authority receives for the purposes of carrying out the audits defined in Article 30(1) all necessary information on management procedures operated and the projects co-financed by the Fund;
 - (m) ensure that the certifying authority receives all necessary information on the procedures and *verifications* carried out in relation to expenditure for the purpose of certification;
 - (n) draw up and submit to the Commission *progress and final* reports *on the implementation of the annual programmes, declarations* of expenditure certified by the certifying authority and *requests* for payment *or, where appropriate, declaration of reimbursement*;
 - (o) carry out information and advisory activities; and disseminate results of supported actions;
 - (p) cooperate with the Commission and the responsible authorities in the other Member States.
 - (q) *verify the implementation by the final beneficiaries of the guidelines referred to in Article 33(6).*
2. The responsible authority's management activities for projects implemented in the

Member States can be financed under the technical assistance arrangements referred to in Article 17.

Article 28

Delegation of tasks by the responsible authority

1. Where all or some of the responsible authority's tasks are delegated to a delegated authority, the responsible authority shall define the scope of the tasks delegated, and set out detailed procedures for the implementation of the delegated tasks, which shall comply with the conditions laid down in Article 26.
2. These procedures shall include supplying the responsible authority with regular information on the effective performance of the delegated tasks and a description of the means employed.

Article 29

Certifying authority

1. The certifying authority [...] shall:
 - (a) certify that:
 - the **declaration** of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,
 - the expenditure declared complies with applicable Community and national rules and has been incurred in respect of actions selected in accordance with the criteria applicable to the programme and complying with Community and national rules;
 - (b) ensure for the purposes of certification that it has received adequate information from the responsible authority on the procedures and **verifications** carried out in relation to expenditure included in **declarations** of expenditure;

- (c) take account for the purposes of certification of the results of all audits carried out by or under the responsibility of the audit authority;
 - (d) maintain accounting records in computerised form of expenditure declared to the Commission;
 - (e) ensure the recovery of any Community financing found to have been unduly paid as a result of irregularities detected, together with interest where appropriate, keeping an account of amounts recoverable and repaying amounts recovered to the *general budget of the European Communities*, where possible by deducting them from the next *declaration* of expenditure.
2. The certifying authority's activities relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 17, provided that the prerogatives of this authority as described in Article 25 are respected.

Article 30

Audit authority

1. The audit authority shall:
- (a) ensure that audits are carried out to verify the effective *functioning* of the management and control system;
 - (b) ensure that audits are carried out on actions on the basis of an appropriate sample to verify expenditure declared; the sample shall represent at least 10% of the total eligible expenditure for each annual programme;
 - (c) present to the Commission within six months of the approval of the multi-annual programme an audit strategy covering the bodies which will perform the audits referred to under *subparagraphs* (a) and (b), *ensuring* that the main beneficiaries

of co-financing by the Fund are audited and that audits are spread evenly throughout the programming period.

2. Where the designated audit authority under this decision is also the designated audit authority under Decisions....., and, or where common systems apply to two or more of these Funds, a single combined audit strategy may be submitted under paragraph 1(c).
3. ***For each annual programme, the*** audit authority shall draft a report which shall comprise:
 - (a) an annual audit report setting out the findings of the audits carried out in accordance with the audit strategy in respect of the annual programme ***and*** reporting any shortcomings found in the systems for the management and control of the programme.
 - (b) an opinion, ***on the basis of the controls and audits that have been carried out under the responsibility of the audit authority***, as to whether the ***functioning of the*** management and control system ***provides*** reasonable assurance ***that declarations*** of expenditure presented to the Commission ***are correct and that the underlying transactions are legal and regular.***
 - (c) a declaration assessing the validity of the ***request*** for payment of the final balance and the legality and regularity of the expenditure ***concerned.***
4. ***The*** audit authority shall ensure that ***the audit work takes account of*** internationally accepted audit standards.
5. The ***audit*** relating to projects implemented in the Member States can be financed under the technical assistance arrangements referred to in Article 17, provided that the prerogatives of this authority as described in Article 25 are respected.

CHAPTER VI
RESPONSIBILITIES AND CONTROLS

Article 31

Responsibilities of the Member States

1. Member States shall be responsible for ensuring sound financial management of multi-annual and annual programmes and the legality and regularity of underlying transactions.
2. They shall ensure that responsible authorities and any delegated authority, certifying authorities, audit authorities and any other bodies concerned receive adequate guidance on setting up the management and control systems referred to in Articles 24 to 30 to ensure that Community financing is used efficiently and correctly.
3. The Member States shall prevent, detect and correct irregularities. They shall notify these to the Commission, and keep the Commission informed of the progress in the administrative and legal proceedings.

When amounts unduly paid to a *final* beneficiary cannot be recovered, the Member State is responsible for reimbursing the amounts lost to the *general* budget of the European Communities *when it is established that the loss has been incurred as a result of its fault or negligence*.

4. Member States shall be primarily responsible for the financial control of actions and shall ensure that management systems and audits are implemented in such a way as to guarantee that Community funds are used properly and effectively. They shall provide the Commission with a description of these systems.

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5. The detailed rules for implementing paragraphs 1 to 4 shall be adopted in accordance

with the procedure referred to in Article 52(2).

Article 32

Management and control systems

1. Prior to the ***approval of the*** multi-annual programme ***by the Commission, in accordance with the procedure referred to in Article 52(2)***, the Member States shall ensure that management and control systems have been set up in accordance with Articles 24 to 30. They shall be responsible for ensuring that the systems function effectively throughout the programming period.
2. Member States shall submit to the Commission, together with ***their*** draft multiannual programme, a description of the organisation and procedures of the responsible authorities, delegated authorities and certifying authorities, and the internal audit systems operating in ***these*** authorities and bodies, the audit authority, and any other bodies carrying out audits under its responsibility.

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3. ***The Commission shall review the application of this provision in the context of the preparation of the report set out in Article 50(3).***

Article 33

Responsibilities of the Commission

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 32 that Member States have set up management and control systems that comply with Articles 24 to 30, and on the basis of the annual audit reports and its own audits, that the systems function effectively during the ***programming*** period.
2. Without prejudice to audits carried out by Member States, Commission officials or

authorised Commission representatives may carry out on-the-spot audits to verify the effective *functioning* of the management and control systems, which may include audits on actions included in the annual programmes, with a minimum of *three* working days' notice. Officials or authorised representatives of the Member State concerned may take part in such audits.

3. The Commission may require *a Member State* to carry out on-the-spot checks to verify the correct functioning of the systems or the correctness of one or more transactions. Commission officials or authorised Commission representatives may take part in such audits.
4. The Commission shall, in cooperation with the Member States, ensure that appropriate information, publicity and follow-up are provided for actions supported by the Fund.
5. The Commission shall, in cooperation with the Member States, ensure that actions are consistent with, and complementary to, other relevant Community policies, instruments and initiatives.
6. *The Commission shall lay down guidelines to ensure the visibility of the funding granted under this Decision.*

Article 34

Cooperation with the control bodies of the Member States

1. The Commission shall cooperate with the audit authorities to coordinate their respective control plans and audit methods and shall immediately exchange the results of audits carried out on management and control systems in order to make the best possible use of control resources and to avoid unjustified duplication of work.

The Commission shall provide its comments on the audit strategy presented under Article 30 not later than three months.

2. In determining its own audit strategy, the Commission shall identify those *annual* programmes

which it considers satisfactory on the basis of its existing knowledge of the management and control systems.

CHAPTER VII

FINANCIAL MANAGEMENT

Article 35

Eligibility – declarations of expenditure

1. All declarations of expenditure shall include the amount of expenditure incurred by *final* beneficiaries in implementing the actions and the corresponding contribution from public or private funds.
2. Expenditure shall correspond to the payments effected by the beneficiaries. It shall be justified by receipted invoices or accounting documents of equivalent evidential value.
3. Expenditure may be considered eligible for support from the Fund only if it is actually paid no earlier than 1 January of the year referred to in the *financing* decision

approving the annual programme indicated in Article 21(4). The co-financed actions must not have been completed before the starting date for eligibility.

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4. The rules governing eligibility of expenditure within the framework of actions implemented co-financed by the Fund in the Member States under Article 3 shall be adopted in accordance with the procedure provided for by Article 52(2).

Article 36

Completeness of payment to beneficiaries

Member States shall satisfy themselves that the responsible authority ensures that the **final** beneficiaries receive the total amount of the contribution from public funds as quickly as possible. No amounts shall be deducted or withheld, nor any further specific charge or other charge with equivalent effect shall be levied that would reduce these amounts for the **final** beneficiaries, *provided that the final beneficiaries meet all the requirements regarding the eligibility of actions and expenses.*

Article 37

Use of the euro

- 1. Amounts set out in the draft multi-annual and annual programmes of the Member States referred to in respectively Articles 19 and 21, certified declarations of expenditure, requests for payments referred to in Article 27(1)(n) and expenditure mentioned in the progress report on the implementation of the annual programme referred to in Article 39(4) and the final report on the implementation of the annual programme referred to in Article 51 shall be denominated in euro.*
- 2. Commission financing decisions, approving the annual programmes of Member States referred to in Article 21(4), commitments and payments shall be denominated and carried out in euro.*
- 3. Member States which have not adopted the euro as their currency on the date of the request for payment shall convert into euro the amounts of expenditure incurred in national currency. This amount shall be converted in euro using the monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the responsible authority of the programme concerned. This rate shall be published electronically by the Commission each month.*
- 4. When the euro becomes the currency of a Member State, the conversion procedure set out in the preceding paragraph shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.*

Article 38

Commitments

Community budgetary commitments shall be made annually on the basis of the Commission **financing** decision, *approving the annual programme* referred to in Article 21(4).

Article 39

Payments - Prefinancing

1. Payments by the Commission of the contribution from the Funds shall be made in accordance with the budget commitments.
2. Payments shall take the form of pre-financing and payment of the balance. They shall be made to the responsible authority designated by the Member State.
3. A pre-financing payment representing 50% of the amount allocated in the **financing** decision, **approving the annual programme** shall be made to the Member State within sixty days following the adoption of **that** decision.
4. A second pre-financing payment shall be made no more than three months after the Commission has approved, **within two months of the formal submission**, a progress report on **the** implementation of the annual programme and a certified declaration of expenditure drawn up in accordance with Articles 29(1)(a) and 35 accounting for at least **60%** of the amount of the initial payment. The amount of the second pre-financing payment made by the Commission shall not exceed 50% of the total amount allocated by the financing decision, **approving the annual programme and**, in any event, **where a Member State has committed nationally an amount less than the amount indicated in the financing decision, approving the annual programme**, the balance of the amount of Community funds actually committed by the Member State for selected projects under the annual programme minus the first pre-financing payment.
5. **Any interest** generated by pre-financing payments shall be **posted** to the programme concerned, **being regarded as a resource for the Member State as national public contribution and shall be declared to the Commission at the time of the final declaration** of expenditure **of the programme concerned**.
6. The amounts paid as pre-financing shall be cleared from the accounts when the annual programme is closed.

Article 40

Payment of balance

1. The Commission shall pay the balance provided it has received the following documents ***no later than*** nine months ***after the*** eligibility ***deadline for expenditure laid down*** in the ***financing*** decision, ***approving the annual programme***:
 - (a) a certified declaration of expenditure, duly drawn up in accordance with Articles 29(1)(a) and 35 and a request for payment of the balance or declaration of reimbursement;
 - (b) the final report ***on the implementation of*** the annual programme ***as*** set out in Article 51;
 - (c) the ***annual*** audit report, opinion and declaration provided for in Article 30(3).

The payment of the balance is subject to the acceptance of the final ***report on the implementation of the annual programme*** and of the ***declaration assessing the*** validity ***of*** the request for payment of the balance.

2. If the responsible authority fails to provide the documents required in paragraph 1 by the due date and in an acceptable format, the Commission shall decommit any part of the budget commitment of the corresponding annual programme that has not been used for payment of the pre-financing.
3. The automatic cancellation procedure defined in paragraph 2 shall be suspended, for the amount of the projects concerned, where legal proceedings or administrative appeal having ***suspensive*** effects are ongoing at Member State level at the time of submission of the documents defined in paragraph 1. The Member State shall, in the partial final report submitted, give detailed information on such projects, and send reports on progress made with regard to these projects every 6 months. Within three months of the conclusion of the legal proceedings or administrative appeal procedure, the Member

State shall present the documents required in paragraph 1 for the projects concerned.

4. The nine months period referred to in paragraph 1 shall be interrupted if the Commission has adopted a decision suspending payments of the co-financing for the relevant annual programme in accordance with the provisions of Article 42. The period shall start to run again from the date when the Commission decision referred to in Article 42(3) has been notified to the Member State.
5. Without prejudice to the provisions of Article 41, the Commission shall, within six months of receiving the documents referred to in paragraph 1, inform the Member State of the amount of expenditure recognised by the Commission as chargeable to the Fund, and of any financial corrections deriving from the difference between declared expenditure and the expenditure recognised. The Member State shall have three months to present its comments.
6. Within three months of receiving the Member State's comments, the Commission shall decide on the amount of expenditure recognised as chargeable to the Fund, and recover the balance arising from the difference between final recognised expenditure and the sums already paid to the Member States.
7. Subject to available funding, the Commission shall pay the balance within no more than sixty days from the date on which it accepts the documents referred to in paragraph one above. The balance of the budgetary commitment shall be decommitted within six months following the payment.²¹

²¹ **DELETED** suggested adding the following new paragraph:

"Any delay in effecting the payment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be the rate applied by the European Central Bank to its principle refinancing operation, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date fall, increased by 3,5 %."

Article 41

Interruption

1. The payment deadline shall be interrupted by the authorising officer by delegation within the meaning of Regulation (EC, Euratom) No 1605/2002 for a maximum period of six months if

a) in a report of a national or Community audit body there is evidence to suggest a significant deficiency in the functioning of the management and control systems,

b) that officer has to carry out additional verifications following information coming to his notice which alerted him that expenditure in a certified declaration of expenditure is linked to a serious irregularity which has not been corrected.

2. The Member State and the *certifying* authority *shall be informed* immediately of the reasons for the interruption. The *interruption shall be ended* as soon as *the necessary measures have been taken by the Member State*.

deleted

Article 42

Suspension

1. All or part of the pre-financing and balance payments may be suspended by the Commission when:
 - (a) there is a serious deficiency in the management and control system of the programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken; or
 - (b) expenditure in a certified *declaration* of expenditure is linked to a serious irregularity which has not been corrected; or

- (c) a Member State has not complied with its obligations under Articles 31 and 32.
2. The Commission may decide to suspend pre-financing and balance payments after having given the Member State the opportunity to present its observations within a period of three months.
 3. The Commission shall end suspension of pre-financing and balance payments when it considers that the Member State has taken the necessary measures to enable the suspension to be lifted.
 4. If the required measures are not taken by the Member State, the Commission may adopt a decision to cancel *all or part of* the Community contribution to the annual programme in accordance with Article 46.

Article 43

Conservation of documents

Without prejudice to the rules governing State aid under Article 87 of the Treaty, the responsible *Authority* shall ensure that all the supporting documents regarding expenditure and audits on the *programmes* concerned are kept available for the Commission and the Court of Auditors *for a period of five years following the closure of the programmes as defined in Article 40(1)*.

This period shall be interrupted either in the case of legal proceedings or at the *duly motivated* request of the Commission.

The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.

CHAPTER VIII
FINANCIAL CORRECTIONS

Article 44

Financial corrections established by
the Member States

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 the conditions for the implementation or control of *programmes* and **making** the required financial corrections.

2. The Member States shall make the financial corrections required in connection with the individual or systemic irregularities detected in actions or annual programmes. The corrections made by the Member States shall consist in recovering all or part of the Community contribution. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Fund.

Member States shall include in the *final report on the implementation of the annual programme referred to in Article 51* a list of cancellation proceedings initiated for the annual programme concerned.

The corrections made by the Member State shall consist in cancelling all or part of the Community contribution, and, where the amount is not repaid in the time allowed by the relevant Member State, default interest shall be due at the rate provided for by Article 47(2).

3. In the case of systemic irregularities the Member State shall extend its enquiries to cover all operations liable to be affected.

Article 45

Audit of accounts and financial corrections by the Commission

1. 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 authorised Commission representatives may 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 *three working days'* notice. The Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. Officials or authorised representatives 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 authorised Commission representatives may take part in such checks.

2. If, after completing the necessary verifications, the Commission concludes that a Member State is not complying with its obligations under Article 31, it shall suspend the pre-financing or final payment in accordance with Article 42.

Article 46

Criteria for the corrections

1. ***The Commission may make financial corrections by cancelling*** all or part of the Community contribution to an annual programme ***where, after carrying out the necessary examination,*** it concludes that:
 - (a) there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme;
 - (b) expenditure contained in a certified ***declaration*** of expenditure is irregular and

has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph;

- (c) a Member State has not complied with its obligations under Article 31 prior to the opening of the correction procedure under this paragraph.

The Commission shall decide after having taken into account any comments made by the Member State.

2. The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied. Where the case of irregularity relates to a *declaration* of expenditure for which a positive assurance had previously been given in accordance with Article 30(3)(b) in an annual report, there will be a presumption of a systemic problem giving rise to the application of a flat-rate or extrapolated correction, unless the Member State can provide proof within three months to rebut this presumption.
3. The Commission shall, when deciding the amount of a correction, take account of the importance of the irregularity and the extent and financial implications of the deficiencies found in the annual programme concerned.
4. Where the Commission bases its position on the facts established by auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences, after examining the measures taken by the Member State concerned under Article 32, the reports of notified irregularities and any replies from the Member State.

Article 47
Repayment

1. Any repayment due to be made to the *general budget of the European Communities* shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of the Council Regulation (EC, Euratom) No 1605/2002.²² This due date shall be the last day of the second month following the issuing of the order.
2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, increased by three and a half percentage points.

Article 48

Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 46.

CHAPTER IX
MONITORING, EVALUATION AND REPORTS

Article 49

Monitoring and evaluation

1. The Commission shall carry out regular monitoring on the Fund in cooperation with the Member States.
2. The Fund shall be evaluated by the Commission in partnership with the Member States to assess the relevance, effectiveness and impact of actions in the light of the general objective referred to in Article 2 *in the context of the preparation for the report set out in Article 50(3)*.
3. The Commission shall also look at the complementarity between the actions

²² OJ L 248, 16.9.2002.

implemented under the Fund and those pursued under other relevant Community policies, instruments and initiatives.

Article 50

Reporting obligations

1. In each Member State the responsible authority shall take the necessary measures to ensure project monitoring and evaluation.

To that end, the agreements and contracts it concludes with the organisations responsible for the implementation of the actions shall include clauses laying down an obligation to submit regular and detailed reports on the state of progress of implementation and completion of the assigned objectives, ***which shall be the basis for respectively, the progress and final reports on the implementation of the annual programme.***

deleted

2. The Member States shall submit to the Commission no later than 30 June 2012 for the period 2008-2010 and 30 June 2015 for the period 2011-2013 respectively, an evaluation report on the results and impact of actions co-financed by the Fund.
3. The Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions no later than 31 December 2012 for the period 2008-2010 and 31 December 2015 for the period 2011-2013 respectively, an ex post evaluation report.

Article 51

Final report *on the implementation of the annual programme*

1. The **report** shall include the following information in order to obtain a clear view of the implementation of the **programme**:
 - (a) the financial and operational implementation of the annual programme;
 - (b) the progress made implementing the multiannual programme and its priorities in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, of the indicators;
 - (c) the steps taken by the responsible authority to ensure the quality and effectiveness of implementation, in particular:
 - monitoring and evaluation measures, including data collection arrangements;
 - a summary of any significant problems encountered in implementing the operational programme and any measures taken;
 - the use made of technical assistance.
 - (d) the measures taken to provide information on and make public the annual and multiannual programmes.
2. The report shall be judged acceptable where **it** contains all the information listed in paragraph 1. The Commission shall reach a decision on the content of the report submitted by the responsible authority within two months ***of having received all the information referred to in paragraph 1, which shall be acknowledged to the Member States.*** If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

CHAPTER X
FINAL PROVISIONS
Article 52
Committee

1. The Commission shall be assisted by the common Committee “Solidarity and Management of Migration flows”, established by the Decision establishing the External Borders Fund for the period 2007-2013 as part of the General programme ‘Solidarity and Management of Migration Flows’/... (this Decision and the decisions, and)²³ (“the “committee”).
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. *Where reference is made to this paragraph, the regulatory procedure with scrutiny laid down in Article 5a(1) to (4) and 5 (b) and Article 7 of Council Decision 1999/468/EC, shall apply, having regard to the provisions of Article 8 thereof. The time-limits laid down in Article 5a (3c), (4b) and 4(e) of Council Decision 1999/468/EC shall be set at six weeks.*
4. The Committee shall adopt its Rules of Procedure.

²³ (References will be inserted to decisions establishing the Return Fund, the External Borders Fund and the Integration Fund).

Article 53

Review

The European Parliament and the Council shall review this Decision on the basis of a proposal from the Commission by 30 June 2013 at the latest.

Article 54

Transitional provisions

- 1 This Decision shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Commission on the basis of Decision 2004/904/EC, or any other legislation which applies to that assistance on 31 December 2007.
2. When adopting decisions on cofinancing under this Fund, the Commission shall take account of measures adopted on the basis of Decision 2004/904/EC before the entry into force of this Decision which have financial repercussions during the period covered by that cofinancing.
3. Sums committed for cofinancing approved by the Commission between 1 January 2005 and 31 December 2007 for which the documents required for closure of the programmes have not been sent to the Commission by the deadline for submitting the final report shall be automatically decommitted by the Commission no later than 31 December 2010, giving rise to the repayment of amounts unduly paid.

Amounts relating to operations or programmes which have been suspended due to legal proceedings or administrative appeals having suspensory effect shall be disregarded in calculating the amount to be automatically decommitted.

4. Member States shall submit to the Commission no later than 30 June 2009 an evaluation report on the results and impacts of actions cofinanced by the Fund concerning the period 2005-2007.
5. The Commission shall submit to the European Parliament, the Council, the Economic

and Social Committee and the Committee of the Regions no later than 31 December 2009, an intermediate report on the results achieved and on qualitative and quantitative aspects of implementation of the Fund for the period 2005-2007.

Article 55

Repeal

Decision 2004/904/EC is hereby repealed with effect from 1 January 2008.

Article 55A

Entry into force

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

Article 56

Application

This Decision shall apply from 1 January 2008, *with the exception of Articles 14, 18, 19, 21, 23, 25, 31(2), 31(5), 32, 35(4) and 52 that shall apply at the date when the present Decision shall enter into force..*

Article 57

Addressees

This Decision is addressed to the Member States.

22.3.2006

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a decision of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows'
(COM(2005)0123 – C6-0124/2005 – 2005/0046(COD))

Draftsperson: Tatjana Ždanoka

SHORT JUSTIFICATION

In order to achieve a greater coherence and simplicity of the Union's migration policy, the Commission is proposing a '*Framework programme on Solidarity and Management of Migration Flows for the period 2007-2013*'. The programme foresees the creation of four funds: the European Refugee Fund, the European Return Fund, the External Borders Fund and the European Fund for the Integration of Third -country nationals.

The new programme aims to support the internal policies of the Union and create a mechanism for burden sharing between the Member States in dealing with migrants and asylum seekers, guaranteeing proper border control at the Union's external borders and visa policies.

The main body of the proposal for a decision on the Refugee Fund is of a technical nature, reaching beyond the terms of reference of the Committee on Foreign Affairs. However, reinforcing the external dimension of the area of freedom, security, prosperity and justice of the EU and its neighbouring countries is a matter at the heart of the European foreign policy. It goes without saying that the success of the Union's migration and asylum policy depends on the effectiveness of co-operation with the countries of origin and transit.

Your draftsperson supports the proposed structure of the framework programme and stresses that the funds should form a coherent package. Further, a coherent and global approach to EU migration policy presupposes complementarity and synergy between all related internal regulatory instruments, as well as the new external policy instruments, in particular with the ENPI and a new thematic programme providing assistance to the third countries. Thereby, close co-operation with the UN Commissioner for Human Rights and the full implementation of the international conventions are imperative prerequisites for a fair, coherent and successful

policy.

The proposal for the European Refugee Fund foresees a continuation of the already running programme, with its second phase already begun (2005-2010), with the modification that a part of the funding for the voluntary return is now covered under the Return Fund.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission²⁴

Amendments by Parliament

Amendment 1
Recital 2 a (new)

(2a) This Decision respects the fundamental rights and observes the principles recognised in particular by the Universal Declaration of Human Rights, by the European Convention on Human Rights, by the Charter of Fundamental Rights of the European Union, by the Geneva Convention Relating to the Status of Refugees and by the Convention on the Rights of the Child.

Amendment 2
Recital 3

(3) Implementation of this policy should be based on solidarity between Member States and requires the existence of mechanisms to promote a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons. To that end, a European

(3) Implementation of this policy should be based on solidarity between Member States and ***should take place, in full respect of international human rights standards and principles as defined in particular by the Geneva Convention, in cooperation with civil society organisations in Member***

²⁴ Not yet published in OJ.

Refugee Fund was established for the period 2000-2004 by Decision 2000/596/EC. This decision was replaced by Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010. This ensured continued solidarity between Member States in the light of recently adopted Community legislation in the field of asylum, taking account of the experience acquired when implementing the Fund for the period 2000-2004.

States and the UN High Commissioner for Refugees. Implementation also requires the existence of mechanisms to promote a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons. To that end, a European Refugee Fund was established for the period 2000-2004 by Decision 2000/596/EC. This decision was replaced by Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010. This ensured continued solidarity between Member States in the light of recently adopted Community legislation in the field of asylum, taking account of the experience acquired when implementing the Fund for the period 2000-2004.

Amendment 3
Recital 7 a (new)

(7a) While implementing this Decision, the Commission and Member States will take account of the special needs of the most vulnerable persons such as minors (especially unaccompanied minors), disabled persons, elderly persons, pregnant women, single parents with children, victims of torture or rape or other serious forms of psychological and/or physical violence, victims of trafficking or forms of sexual abuse, and individuals in need of special medical treatment.

Amendment 4
Article 2, paragraph 1

1. The general objective of the Fund shall be to ***support and encourage the efforts made*** by the Member States in receiving ***and bearing the consequences of receiving*** refugees and displaced persons, ***taking account of*** Community legislation ***in these matters by co-financing the*** actions

1. The general objective of the Fund shall be to ***promote and provide support for the measures taken*** by the Member States in receiving refugees and displaced persons ***and handling the consequences arising therefrom, in the light of the applicable*** Community legislation ***and that of the***

provided for by this Decision.

countries of origin or transit. The actions provided for by this Decision shall be co-financed.

Justification

The objectives of the Fund should be defined taking into account the situation of the refugees and displaced persons in their countries of origin or transit. Use should be made of possibilities for pre-emptive action, before the persons leave the country.

Amendment 5

Article 3, paragraph -1 (new)

-1. Funding of holding centres outside the territory of the European Union may not be provided from the Fund.

Amendment 6

Article 3, paragraph 5

5. Actions provided for ***by paragraph*** 1 to 4 shall, ***in particular***, promote the implementation of the provisions of the relevant Community legislation in the field of the common European asylum system.

5. Actions provided for ***in paragraphs*** 1 to 4 shall ***be carried out in full respect of international human rights standards and the Geneva Convention. They shall*** promote the implementation of the provisions of the relevant Community legislation in the field of the common European asylum system.

Justification

The actions financed should be carried out in full respect of international human rights standards and the Geneva Convention relating to the Status of the Refugees.

Amendment 7

Article 3, paragraph 6

6. Actions shall take account of the specific situation of vulnerable persons such as

6. Actions shall take account of ***gender-related issues, the best interests of minors,***

minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, **and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.**

the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, **victims of torture or rape or other serious forms of psychological and/or physical violence, victims of trafficking or forms of sexual abuse, and individuals in need of special medical treatment.**

Amendment 8
Article 3, paragraph 6 a (new)

6a. The Member States shall seek to involve relevant civil society organisations when carrying out actions provided for in paragraphs 1 to 4.

Justification

The involvement of the civil society is crucial for successful implementation of the Union's common immigration and asylum policy.

Amendment 9
Article 4, paragraph 1

1. At the Commission's initiative, up to **7%** of the Fund's available resources may be used to finance transnational actions or actions of interest to the Community as a whole (“Community actions”) concerning asylum policy and measures applicable to the target groups referred to in Article 6.

1. At the Commission's initiative, up to **15%** of the Fund's available resources may be used to finance transnational actions or actions of interest to the Community as a whole (“Community actions”) concerning asylum policy and measures applicable to the target groups referred to in Article 6.

Justification

A higher percentage of the Fund's available resources is necessary for further Community cooperation in implementing Community law and good practices as well as to support the setting-up of transnational cooperation networks designed improve the quality of return policy and the transnational awareness-raising campaigns.

Amendment 10

Article 6, paragraph 2

2. Third country national means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty.

2. Third country national means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty **and is not a stateless person.**

Justification

For the purposes of this Decision the target groups comprise the following categories mentioned in Article 6, paragraph 1: any third-country national or stateless person enjoying a form of subsidiary protection within the meaning of Council Directive 2004/83/EC[23]; any third-country national or stateless person enjoying temporary protection within the meaning of Directive 2001/55/EC. Therefore for the purposes of this Decision the notion "third country national" may not include the category "stateless person".

Amendment 11
Article 7, paragraph 2

2. The Commission and the Member States shall ensure that assistance from the Fund and the Member States is consistent with the activities, policies and priorities of the Community. ***This consistency shall be indicated in particular in*** the multiannual programme referred to in Article 19.

2. The Commission and the Member States shall ensure that assistance from the Fund and the Member States is consistent with the activities, policies and priorities of the Community ***and in particular with*** the multiannual programme referred to in Article 19. ***The actions referred to in paragraph 1 of this Article shall be carried out in synergy with the Union's external assistance instruments, in particular with the European Neighbourhood Policy Instrument.***

Justification

The new ENPI regulation foresees cooperation in the field of justice and home affairs, including on issues such as asylum and migration and the fight against and prevention of terrorism and organised crime. A new thematic programme to be addressing challenges common to the neighbouring countries and the Member States should be complementary to the Funds, which address the internal policies and create a solidarity mechanism between the Member States.

Amendment 12
Article 7, paragraph 3 a (new)

3a. The Member States shall seek to work closely with the UN High Commissioner for Refugees and to achieve synergy in their actions in the field of immigration and asylum policy.

Justification

A synergy is needed in the planning of efforts in the field of immigration and asylum policy between the Member States, who are daily involved in the policy implementation, and the UNHCR, the UN agency, who is operational in the field and can be of assistance for the Members States.

Amendment 13
Article 12, paragraph 1, point (b a) (new)

(ba) the UN High Commissioner for Refugees.

PROCEDURE

Title	Proposal for a decision of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows'
References	COM(2005)0123 – C6-0124/2005 – 2005/0046(COD)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	AFET 22.6.2005
Enhanced cooperation	
Draftsman Date appointed	Tatjana Ždanoka 21.7.2005
Discussed in committee	23.2.2006 20.3.2006
Date amendments adopted	21.3.2006
Result of final vote	for: 44 against: 2 abstentions: 4
Members present for the final vote	Angelika Beer, Panagiotis Beglitis, André Brie, Elmar Brok, Philip Claeys, Véronique De Keyser, Giorgos Dimitrakopoulos, Ana Maria Gomes, Alfred Gomolka, Richard Howitt, Jana Hybášková, Toomas Hendrik Ilves, Michał Tomasz Kamiński, Helmut Kuhne, Vytautas Landsbergis, Emilio Menéndez del Valle, Francisco José Millán Mon, Pasqualina Napoletano, Annemie Neyts-Uyttebroeck, Baroness Nicholson of Winterbourne, Raimon Obiols i Germà, Cem Özdemir, Justas Vincas Paleckis, Alojz Peterle, Tobias Pflüger, João de Deus Pinheiro, Mirosław Mariusz Piotrowski, Hubert Pirker, Paweł Bartłomiej Piskorski, Libor Rouček, José Ignacio Salafrañca Sánchez-Neyra, Jacek Emil Saryusz-Wolski, György Schöpflin, Gitte Seeberg, Marek Maciej Siwiec, István Szent-Iványi, Konrad Szymański, Charles Tannock, Inese Vaidere, Ari Vatanen, Karl von Wogau, Luis Yañez-Barnuevo García, Josef Zieleniec
Substitutes present for the final vote	Alexandra Dobolyi, Glyn Ford, Patrick Gaubert, Jaromír Kohlíček, Miguel Angel Martínez Martínez, Aloyzas Sakalas, Tatjana Ždanoka
Substitutes under Rule 178(2) present for the final vote	

13.2.2006

OPINION OF THE COMMITTEE ON DEVELOPMENT

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a European Parliament and Council decision establishing the European Refugee Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows'
(COM(2005)0123 – C6-0124/2005 – 2005/0046(COD))

Draftsman: Fernando Fernández Martín

SHORT JUSTIFICATION

1. A solidarity framework programme

Under the title 'Framework Programme on Solidarity and the Management of Migration Flows for the period 2007-2013',²⁵ the European Commission is proposing three decisions of the Council and the European Parliament (subject to the codecision procedure) and one Council decision (subject to the consultation procedure). The idea behind these proposals is to give greater coherence to the European Union's immigration policy, and to harmonise it. Ratification by all the Member States of the Treaty establishing a Constitution for the European Union would have made the institutions' task easier, but the legal instruments currently available to the European Union should be sufficient to allow us to make progress in this area.

The intention of the proposal is to increase solidarity among the Member States in managing and funding the costs engendered by receiving immigrants. Immigration is a priority for the European Union, as the Commission and Parliament have stated on several occasions. It should be stressed that the budgets of the four funds provided for under this package should not be transferable among themselves. The Committee on Development must therefore be sure to make clear in the debate on the financial perspectives that, in order to achieve this shared management objective, no reduction whatsoever in the current budget of the instruments can be tolerated, and that in fact an increase would be desirable.

2. Setting up a European Refugee Fund for the period 2008-2013

Set up, inter alia, in response to calls by the European Parliament in 2000, the European

²⁵ COM(2005)0123, 6.4.2005.

Refugee Fund (ERF) has been instrumental in laying the foundations of collective action by the Community for the reception of asylum-seekers and has also helped to provide for temporary protection in the event of a mass influx of displaced persons. The second phase of the ERF – 2005 to 2010 – has just begun, taking into account the new Community regulatory framework on asylum policy. This being the case, the present proposal provides for an extension of this instrument until 2013, with the first multiannual tranche up to 2007 as provided for in the current regulation, and two further tranches – 2008-2010 and 2011-2013 – under the new framework programme. The Fund amounts to a total of € 1,184 million for the period from 2008 to 2013.

3. The rapporteur's position

Given that the burden of implementing the standards adopted in the European Union (e.g. the Schengen acquis) is currently shared unequally among the Member States, a solidarity mechanism is needed, and should as its first priority guarantee equal treatment for refugees, asylum-seekers and migrants, in complete compliance, it goes without saying, with recognised human rights standards.

It must also be borne in mind that the discussions on 'solidarity' should not simply be about the Member States, but that the concept of 'solidarity' should apply to all the countries involved, including third countries. This being the case, the rapporteur welcomes a deepening of the ongoing discussions on the benefits that development policy could bring to an effective migration policy. Events in recent months in the Spanish enclaves of Ceuta and Melilla have once again underscored a need that was already obvious: 'more development for less migration'. With this in mind, the rapporteur takes the view that a balance must be struck between security and solidarity with immigrants.

Since these are guidelines for the framework programmes for a whole financial perspective, the texts only outline parameters, the details of which will be filled in by multiannual programmes. For this reason, these proposals do not lend themselves to detailed amendment; furthermore, the texts taken overall seem to take account of the discussions of the past few years. The concrete form that the proposals eventually take must be carefully monitored.

Nonetheless, the rapporteur proposes giving greater importance to certain aspects of the Refugee Fund. Firstly, the link between refugees and development policy is to be included in the article on the general objectives of the proposal. Immigration policy has two dimensions – internal and external. It is therefore essential to lay down clear mechanisms to give an operational, coordinated character to the two dimensions. The rapporteur takes the view that regulated immigration provides a guarantee that immigrants' human rights and living and working conditions are respected. In any event, support for developing countries and full collaboration between the European Union and those countries are essential to the success of any immigration policy.

Given the unceasing efforts to harmonise Community measures, the rapporteur considers it extremely modest to set aside only 7% of the budget for Community actions, particularly given that one of the calls made in the Hague Programme²⁶ – as cited in the proposal – is for the establishment of 'appropriate structures involving the national asylum services of the

²⁶ Given the conclusions reached by the European Council at its meeting of 4 and 5 November 2004 in Brussels.

Member States with a view to facilitating practical and collaborative cooperation'. Likewise, it is not enough to put in place asylum procedures; guaranteed access to these procedures must also be ensured. In addition, a key element in the discussion on a European Refugee Fund is, in the opinion of the rapporteur, that of reinforcing respect for human rights. This concept must be included as a matter of urgency in the provisions relating to the adoption of strategic guidelines and the drafting of multiannual programmes.

Bearing in mind these comments and the question of monitoring practical implementation, the rapporteur can only support this proposal for a decision as a necessary step towards a common asylum policy for the European Union.

AMENDMENTS

The Committee on Development calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission²⁷

Amendments by Parliament

Amendment 1 Article 2, paragraph 1

1. The general objective of the Fund shall be to support and encourage the efforts made by the Member States in receiving and bearing the consequences of receiving refugees and displaced persons, taking account of Community legislation in these matters by co-financing the actions provided for by this Decision.

1. The general objective of the Fund shall be to support and encourage the efforts made by the Member States in receiving and bearing the consequences of receiving refugees and displaced persons, taking account of Community legislation in these matters ***and of the legislation of the countries of origin and the general principles of development policy***, by co-financing the actions provided for by this Decision.

Justification

The general objectives of the Refugee Fund cannot really be defined without also taking account of refugees' reasons for leaving their countries. This is why the objectives must include not only supporting the efforts made by the Member States, but also the existing possibilities for action before the refugees leave their own countries, such as the bilateral

²⁷ Not yet published in OJ.

clauses between the Union and the countries of origin, and the positive impact of realising the Millennium Development Objectives.

Amendment 2
Article 3, paragraph 2, point (-a) (new)

(-a) information and access to asylum procedures for asylum-seekers;

Justification

It is not enough to set up the structures for asylum procedures – asylum-seekers must also, most importantly, be guaranteed access to these structures. This may also imply an information policy in asylum-seekers' countries of origin. This is why it is important to include this right to information and access in the eligible measures under the financial instrument.

Amendment 3
Article 3, paragraph 2, point (g)

(g) information for local communities who will be interacting with those being received in the host country.

(g) information for local communities ***and training for staff of local authorities and reception facilities*** who will be interacting with those being received in the host country.

Justification

It is very important that people received by local bodies are perceived in a positive light. In order to achieve this positive image, it is certainly important that local populations should be sensitised, but for this to be effective it is more important still that staff of local authorities and reception facilities should be appropriately trained.

Amendment 4
Article 3, paragraph 6

6. Actions shall take account of the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

6. Actions shall take account of the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, ***while***

guaranteeing first and foremost, and for all measures, full respect for human rights laws.

Justification

Absolute priority must be given to full respect for human rights laws throughout the measure. In view of the often precarious situation of asylum-seekers, human dignity, over which current practices still all too often ride roughshod, must be respected in the procedures followed.

Amendment 5
Article 4, paragraph 1

1. At the Commission's initiative, up to 7% of the Fund's available resources may be used to finance transnational actions or actions of interest to the Community as a whole ("Community actions") concerning asylum policy and measures applicable to the target groups referred to in Article 6.

1. At the Commission's initiative, up to **15%** of the Fund's available resources may be used to finance transnational actions or actions of interest to the Community as a whole ("Community actions") concerning asylum policy and measures applicable to the target groups referred to in Article 6.

Justification

The 7% of the budget set aside for Community actions within this instrument is nowhere near enough to realise the ambition set out as an objective in the proposal of bringing '...collective benefits at EU level through the implementation of coordinated or joint actions' (p.9). In order to facilitate 'practical and collaborative cooperation' (p. 10), a higher percentage is definitely necessary.

Amendment 6
Article 5, paragraph 2, point (e a)(new)

(ea) legal assistance and interpretation and translation services.

Justification

In the emergency measures provided for in Article 5, the proposal mentions the need for 'medical, psychological or other assistance' (Article 5(2)(c)). The wording 'other assistance' is very vague, and in our view it is just as important that asylum-seekers should be informed of their rights and obligations as that they should receive medical assistance. Legal advice that the asylum-seeker can understand is therefore essential, and must be mentioned specifically in the emergency measures.

Amendment 7
Article 9, paragraph 1

1. Implementation of multiannual and annual programmes referred to in Articles 19 and 21 shall be the responsibility of Member States **at the appropriate territorial level**, in accordance with the institutional system specific to each Member State. This responsibility shall be exercised in accordance with this Decision.

1. Implementation of multiannual and annual programmes referred to in Articles 19 and 21 shall be the responsibility of **the competent authority in the** Member States, in accordance with the institutional system specific to each Member State. This responsibility shall be exercised in accordance with this Decision.

Justification

The internal structures of the Member States vary enormously. Management and implementation of the multiannual programmes should therefore take place in accordance with the laws and internal structures of each Member State (whether territorial or not).

Amendment 8
Article 18, paragraph 2

2. For each of the objectives of the Fund, those guidelines shall in particular give effect to the priorities of the Community with a view to promoting the implementation of the Common European Asylum System.

2. For each of the objectives of the Fund, those guidelines shall in particular give effect to the priorities of the Community with a view to promoting the implementation of the Common European Asylum System, **while guaranteeing full respect for human rights laws.**

Justification

Absolute priority must be given to full respect for human rights laws throughout the measure. In view of the often precarious situation of asylum-seekers, human dignity, over which current practices still all too often ride roughshod, must be respected in the procedures followed.

PROCEDURE

Title	Proposal for a European Parliament and Council decision establishing the European Refugee Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows'
References	COM(2005)0123 – C6-0124/2005 – 2005/0046(COD)
Committee responsible	LIBE
Committee(s) asked for opinion(s) Date announced in plenary	DEVE 22.6.2005
Enhanced cooperation Date announced in plenary	
Draftsman Date appointed	Fernando Fernández Martín 31.8.2005
Previous draftsman	
Discussed in committee	14.11.2005 1.12.2005 25.1.2005
Date adopted	25.1.2005
Result of final vote	+: 22 -: 0 0: 1
Members present for the final vote	Margrietus van den Berg, Danutė Budreikaitė, Marie-Arlette Carlotti, Thierry Cornillet, Nirj Deva, Fernando Fernández Martín, Hélène Goudin, Filip Andrzej Kaczmarek, Glenys Kinnock, Wolfgang Kreissl-Dörfler, Maria Martens, Miguel Angel Martínez Martínez, Gay Mitchell, Toomas Savi, Frithjof Schmidt, Jürgen Schröder, Anna Záborská, Mauro Zani
Substitute(s) present for the final vote	Milan Gaľa, Linda McAvan, Manolis Mavrommatis, Anne Van Lancker, Gabriele Zimmer
Substitute(s) under Rule 178(2) present for the final vote	
Observations (information available in one language only)	

28.3.2006

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a decision of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008 - 2013 as part of the General programme "Solidarity and Management of Migration Flows"
(COM(2005)0123 – C6-0124/2005 – 2005/0046(COD))

Draftswoman: Kathalijne Maria Buitenweg

SHORT JUSTIFICATION

The Commission proposed a *new Heading 3* on Citizenship, Freedom, Security and Justice in its proposals for the next financial framework of the Union (2007-2013) presented to Parliament and Council²⁸ with a total allocation of **EUR 24,705 billion** out of which 65% were proposed to be addressed to the completion of an Area of Freedom, Security and Justice. In its resolution of 8 June 2005 "Policy Challenges and Budgetary Means of the Enlarged Union 2007-2013"²⁹ Parliament proposed an increase of **EUR 1 billion** (2004 prices) specifying that it should be dedicated to fundamental rights and the fight against crime. The European Council in its agreement of 15/16. December however proposes an amount of only **EUR 6,630 billion** for this policy area.

I. COMMISSION PROPOSAL

This proposal is one of the four draft decisions which comprise the framework programme "*Solidarity and Management of Migration Flows*"³⁰ presented by the Commission on 6 April 2005 and proposed for a period from January 2007 to December 2013 with a global allocation of EUR 5.866 million in commitment appropriations. Four funds are set up as part of the framework programme: The European Refugee Fund, the External Border Fund, the Integration Fund and the Return Fund.

The present proposal concerns the *European Refugee Fund* which mainly aims at supporting and encouraging the efforts made by the Member States in receiving and bearing the consequences of receiving refugees and displaced persons, including in the case of a sudden

²⁸ COM(2004)0101.

²⁹ P6_TA(2005)0224.

³⁰ COM (2005)0123.

mass influx of displaced persons. The issue of financial support for certain aspects of a Community-wide system of resettlement (Lambert Report)³¹ has however not yet been incorporated in the Commission proposal.

The *target group* comprises:

- *refugees* in the sense of the Geneva Convention of 1951 as amended by the New York Protocol of 1967 who are permitted to reside in one of the Member states, including those who are applying for this status;
- third-country nationals and stateless persons who enjoy subsidiary protection within the meaning of Directive 2004/83/EC, including those who are applying for this status;
- third-country nationals and stateless persons who enjoy temporary protection within the meaning of Directive 2001/55/EC (mass influx of displaced persons).
-
- The Fund shall support actions (eligible actions) in Member States relating to:
 - reception conditions and asylum procedures;
 - integration of persons from the target group whose stay in the Member State is of a lasting and stable nature;
 - voluntary return of persons from the target group except for those that have received a negative decision further to their request for international protection under the Geneva Convention of 28 July 1951 and the 1967 protocol thereto, or a form of subsidiary protection within the meaning of Council Directive 2004/83/EC.
- An amount of EUR 10 million will be annually reserved to cover the first few weeks of action in the case of a mass influx of refugees or displaced persons (emergency measures).

According to the Commission proposal *Member States* will be allocated a fixed amount each year (EUR 300 000). This amount will be higher for the states which acceded to the European Union on 1 May 2004 and for Member States which accede to the European Union in the period 2007 – 2013 (EUR 500 000).

The remainder of the available annual resources will be broken down between Member States as follows:

- 30% in proportion to the number of persons admitted as *refugees* or admitted as *subsidiarily protected persons* over the previous three years;
- 70% in proportion to the number of persons registered over the previous three years as *applicants* for the status of refugee or of subsidiarily protected person or admitted as *temporarily protected person*.

The financial allocation for the Fund for the period 2007-2013 is **EUR 1.184 million** which breaks down as follows:

³¹ Paragraph 8 of EP Resolution P6_TA(2004)0100 of 15 December 2004.

	2007	2008	2009	2010	2011	2012	2013	2014...	TOTAL
Operational Expenditure									
C.A.	60	140	140	150	200	204,2	208,6		1.102,8
P.A.	54,77	105	150	145	175	202,1	206,4	64,52	1.102,8
Administrative Expenditure	1,3	1,6	1,5	1,6	1,85	1,55	1,8		11,2
Emergency Measures	10	10	10	10	10	10	10		70
C.A. + Admin. Expenditure + Emergency Measures	71,3	151,6	151,5	161,6	211,85	215,75	220,4		1.184

II. RAPPORTEUR'S PROPOSALS

The Commission proposal can be welcomed but raises a number of comments:

1. The appropriations indicated in the proposal for a decision are purely for guidance until an agreement is reached on the financial perspective for the period 2007-13. Regarding this particular point, several amendments are tabled.
2. In order to assure coherence and simplification, a common article on implementing measures for the fund to be discussed within the advisory committee is proposed. This article includes the annual work programme the guidelines and the proposals for project selection among other measures to be adopted within the aforementioned committee in order to assure transparency. An amendment is thus proposed to create a new Article 21a.
3. In order to assure an efficient comitology procedure, the Committee on Budget's traditional approach of advocating the use of the advisory procedure should be followed. Thus an amendment to Article 51 is proposed. At the same time however the Parliament should ensure that its legislative powers are respected. To that end amendments are proposed so as not to lose its say over the strategic guidelines which are of a political nature rather than technical implementing measures.
4. It is important to ensure democratic scrutiny by means of suitable arrangements for fund monitoring and evaluation. Amendments have therefore been tabled to the corresponding articles in this respect.
5. It is preferable to finance the emergency measures outside the headings of the financial perspective so as to avoid that every year budgetary appropriations have to remain available in the budget without guarantee of them being used. Several amendments are tabled to meet this objective.

AMENDMENTS

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home

Affairs, as the committee responsible, to incorporate the following amendments in its report:

I. Draft legislative resolution

Amendment 1
Paragraph 1 a (new)

1a. Specifies that the appropriations indicated in the proposal for a decision are purely for guidance until agreement is reached on the financial perspective for the period 2007 and the following years;

Amendment 2
Paragraph 1 b (new)

1b. Calls on the Commission to submit, where appropriate, a proposal to adjust the financial reference amount for this programme once the next multiannual financial framework has been adopted;

Justification

Amendments emphasising that the amounts proposed are subject to confirmation by a possible multiannual financial framework. Once decided, the Commission shall present another legislative proposal in order to determine the final reference amount.

Amendment 3
Paragraph 2 a (new)

2a. Reiterates that any change of the rules concerning shared management pursuant to Article 53(3) of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ("Financial Regulation") should be dealt with horizontally within the framework of the current review of the Financial Regulation.

Justification

The provisions of the Financial Regulation and its implementing rules concerning shared management are extensive and sufficient to deal with the management of all Community funds. Exceptions to the rules of the Financial Regulation should be reduced to the minimum and in principle dealt with within the text of the Financial Regulation itself.

II. Proposal for a Decision

Text proposed by the Commission³²

Amendments by Parliament

³² OJ C ..., 8.12.2005, p.

Amendment 4
Recital 10 a (new)

(10a) Applicant States may have an immediate need for financial assistance to help cover expenditure relating to a mass influx of refugees as described in Council Directive 2001/55/EC. Where an applicant State so requests, advance funding should therefore be made upon receipt of that application, subject to budgetary availability.

Justification

Prevents that each year budgetary appropriations have to remain available in the budget without guarantee of them being used and whilst eating up the margin in the new Heading 3A. It is preferable to finance these measures outside the headings of the financial perspective, following the model of the Solidarity Fund (Council Regulation 2012/2002/EC of 11 November 2002, OJ L 311 of 14.11.2002, and Reform Proposal COM(2005)108 of 6. April 2005.

Amendment 5
Recital 10 b (new)

(10b) It is appropriate to allow a rapid decision to be taken to commit specific financial resources and mobilise them as quickly as possible. Administrative procedures should be adjusted accordingly and confined to the minimum absolutely necessary. To this end, the European Parliament, the Council and the Commission have concluded the Interinstitutional Agreement of 7 November 2002 on the financing of the European Union Solidarity Fund.

Justification

Prevents that each year budgetary appropriations have to remain available in the budget without guarantee of them being used and whilst eating up the margin in the new Heading 3A. It is preferable to finance these measures outside the headings of the financial perspective, following the model of the Solidarity Fund (Council Regulation 2012/2002/EC of 11 November 2002, OJ L 311 of 14.11.2002, and Reform Proposal COM(2005)108 of 6. April 2005.

Amendment 6
Recital 10 c (new)

(10c) The mechanisms for payment and use of grants under this Decision should reflect the urgency of the situation. Therefore a deadline should be laid down for the use of the financial assistance awarded.

Justification

Prevents that each year budgetary appropriations have to remain available in the budget without guarantee of them being used and whilst eating up the margin in the new Heading 3A. It is preferable to finance these measures outside the headings of the financial perspective, following the model of the Solidarity Fund (Council Regulation 2012/2002/EC of 11 November 2002, OJ L 311 of 14.11.2002, and Reform Proposal COM(2005)108 of 6. April 2005.

Amendment 7
Article 5 a (new)

Article 5a

Applications

As soon as possible and no later than ten weeks after the start of the mass influx of refugees, an eligible State may submit to the Commission an application for assistance from the Fund, providing all available information.

Justification

Prevents that each year budgetary appropriations have to remain available in the budget without guarantee of them being used and whilst eating up the margin in the new Heading 3A. It is preferable to finance these measures outside the headings of the financial perspective, following the model of the Solidarity Fund (Council Regulation 2012/2002/EC of 11 November 2002, OJ L 311 of 14.11.2002, and Reform Proposal COM(2005)108 of 6. April 2005.

Amendment 8
Article 5 b (new)

Article 5b

Advance Funding

Immediately upon receipt of the application referred to in Article 5a, the Commission may, subject to budgetary availability, adopt a decision granting advance funding for the most urgent eligible operations and pay the advance funding to the State concerned in a single instalment without delay.

This shall apply only where the application contains an explicit request for advance funding.

Justification

Prevents that each year budgetary appropriations have to remain available in the budget without guarantee of them being used and whilst eating up the margin in the new Heading 3A. It is preferable to finance these measures outside the headings of the financial perspective, following the model of the Solidarity Fund (Council Regulation 2012/2002/EC of 11 November 2002, OJ L 311 of 14.11.2002, and Reform Proposal COM(2005)108 of 6. April 2005.

Amendment 9
Article 5 c (new)

Article 5c

Budget Procedure

1. If the Commission has concluded that financial assistance should be granted from the Fund, it shall submit to the budgetary authority the proposals needed to authorise appropriations corresponding to the amount determined in accordance with Article 22.

2. Once the appropriations are made available by the budgetary authority, the Commission shall adopt a grant decision, taking into account any advance funding paid pursuant to Article 5b.

Justification

Prevents that each year budgetary appropriations have to remain available in the budget without guarantee of them being used and whilst eating up the margin in the new Heading 3A. It is preferable to finance these measures outside the headings of the financial perspective, following the model of the Solidarity Fund (Council Regulation 2012/2002/EC of 11 November 2002, OJ L 311 of 14.11.2002, and Reform Proposal COM(2005)108 of 6. April 2005.

Amendment 10 Article 13, paragraph 1

1. The financial reference amount for the implementation of *the Fund from 1 January 2008 to 31 December 2013 shall be EUR 1.112,7 million.*

1. The ***indicative*** financial reference amount for the implementation of ***this instrument is set at EUR 1.112,7 million for the period of 6 years starting on 1 January 2008.***

Justification

This amendment emphasises that the amounts proposed are subject to confirmation by a possible multiannual financial framework. Once decided, the Commission shall present a legislative proposal in order to determine the final reference amount.

Amendment 11 Article 14, paragraph 1, subparagraph 3

This amount shall be fixed at EUR 500.000 per annum for Member States which will accede to the European Union in the period **2008** – 2013 for the remaining part of the period 2008 - 2013 from the year following their accession.

This amount shall be fixed at EUR 500.000 per annum for Member States which will accede to the European Union in the period **2007** – 2013 for the remaining part of the period 2008 - 2013 from the year following their accession.

Justification

The decision on the date of the accession of Romania and Bulgaria is before us. These two countries can not be punished by 200.000 euros for 6 years only because they were able to join in 2007.

Amendment 12 Article 15 a (new)

Article 15a

The provisions of the Financial Regulation shall apply. If the Commission intends to depart from those provisions for any

specific needs of the Fund, it shall explicitly and separately inform the European Parliament committee responsible for budgetary matters of this fact.

Justification

Transparency in respect of the application of the provisions of the Financial Regulation. This amendment should be seen together with am. 4 on Article 53, par. -1 new allowing for a mid-term review

Amendment 13
Article 18 a (new)

Article 18a

Before adopting the strategic guidelines referred to in Article 18, on which the multi-annual programme will be based, the Commission shall submit the draft text to the European Parliament and the Council. Within three months of the submission of the draft text, each institution may either suggest amendments, if it considers that the draft text does not meet the objectives laid down by the legislative authority, or object to the adoption of that text and, possibly, ask the Commission to submit a proposal for a legislative act to be adopted in accordance with Article 251 of the Treaty.

Justification

It is imperative that the EP keeps influence over the strategic guidelines, since they are of a political nature rather than purely technical implementing measures. In principle, the EP should insist that the co-decision procedure of Article 251 be maintained for the adoption of the strategy papers. But in order to provide some flexibility for the Commission a procedure is proposed where the strategy papers can be decided upon in comitology, provided that neither of the institutions objects. This would mean that only in case that the draft texts by the Commission meet heavy opposition by the co-legislators, the legislative procedure would have to be followed.

Amendment 14
Article 21 a (new)

Article 21a

Implementing measures

The measures necessary for the implementation of the programme relating to the following matters shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 52:

- (a) the annual work programme;*
- (b) the annual budget and distribution of funds between the various actions of the Fund;*
- (c) the general guidelines for implementing the Fund and the selection criteria and procedures;*
- (d) the distribution of funds among the actions to be managed through the corresponding national authorities;*
- (e) the arrangements for monitoring and evaluating the actions and for the dissemination and transfer of results;*
- (f) the proposals for project selection.*

Justification

An article on the implementing measures has to be introduced in order to separate technical adaptation via committees from political sensitive change, to be done by the co-legislators EP / Council. The traditional approach of the Committee on Budgets is the advisory procedure pursuant to Council Decision 468/1999 in order to assure efficient and speedy procedures. The Commission proposals for project selection may be submitted to the Committee for transparency reasons.

Amendment 15

Article 30, paragraph 1, point (b)

(b) ensure that audits are carried out on actions on the basis of an appropriate sample to verify expenditure declared; the sample shall represent at least **10%** of the total eligible expenditure for each annual programme;

(b) ensure that audits are carried out on actions on the basis of an appropriate sample to verify expenditure declared; the sample shall represent at least **20%** of the total eligible expenditure for each annual programme;

Justification

In its 2003 and 2004 Annual Reports the European Court of Auditors identified shortcomings in the control systems employed in connection with the European Refugee Fund. With a view to remedying such shortcomings in the future, Member States should ensure that measures are administered in a manner consistent with current Community rules by carrying out checks on at least 20% of the total eligible expenditure. This is also in keeping with the recommendation made by the European Court of Auditors.

Amendment 16

Article 49, paragraph 1, subparagraph 1 a (new)

The Commission shall ensure that the actions covered by this Decision are subject to prior evaluation, monitoring and ex post evaluation. It shall ensure that the programme is accessible and is implemented in a transparent manner.

Justification

The programme needs to be monitored and evaluated at the appropriate times, so as to ensure democratic scrutiny.

Amendment 17

Article 49, paragraph 3 a (new)

3a. The Commission shall give the European Parliament and the Council regular and timely information on the implementation of the programme, in particular the use of the available resources.

Justification

The two arms of the budgetary authority should receive regular and early information in order to ensure that the programme is monitored and assessed in an effectively

Amendment 18

Article 50, paragraph 4

4. The Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the

4. The Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee

Committee of the Regions: no later than 31 December 2012 for the period 2008-2010 and 31 December 2015 for the period 2011-2013 respectively, an ex post evaluation report.

and the Committee of the Regions:

(a) no later than ...*, an intermediate report on the results achieved and on qualitative and quantitative aspects of implementation of the Fund, having regard to its objectives, together with a proposal on the Fund's future development. Moreover the Commission shall present annually a short report monitoring the situation of the implementation of the Fund;

(b) no later than 31 December 2012 (for the period 2008-2010) and 31 December 2015 (for the period 2011-2013) respectively, an ex post evaluation report covering the implementation and results of the programme, on completion of its implementation.

**** Three years after the adoption of this Decision.***

Justification

The fund needs to be monitored and evaluated at the appropriate times, so as to ensure democratic scrutiny.

Amendment 19 Article 51, paragraph 2

2. The reports shall be judged acceptable where they contain all the information listed in paragraph 1. The Commission shall reach a decision on the content of the annual report on implementation submitted by the responsible authority within two months. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

2. The Commission shall reach a decision on the content of the annual report on implementation submitted by the responsible authority within two months. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

Amendment 20
Article 52, paragraphs 1 and 2

1. The Commission shall be assisted by the common Committee “Solidarity and Management of Migration flows”, established **by the Decision establishing the External Borders Fund** for the period 2007-2013 as part of the General programme ‘Solidarity and Management of Migration Flows’/... (the “committee”).

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, **having regard to the provisions of Article 8 thereof.**

1. The Commission shall be assisted by the common Committee “Solidarity and Management of Migration Flows” established for the period 2007-2013 as part of the General programme ‘Solidarity and Management of Migration Flows’/... (the “committee”).

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

Justification

Awaiting a decision by the Council on the proposal of the Commission concerning the reform of the comitology regime, the advisory procedure pursuant to Article 3 and 7 of Council decision 1999/468/CE is the Committee on Budgets’ standard approach to ensuring that comitology procedures is effective and transparent.

Amendment 21
Article 53

1. The Commission may submit this Decision for a mid-term review by the end of 2010 in order to improve implementation of the Fund.

The European Parliament and the Council shall review this Decision on the basis of a proposal from the Commission by 30 June 2013 at the latest.

2. The European Parliament and the Council shall review this Decision on the basis of a proposal from the Commission by 30 June 2013 at the latest.

Justification

Providing for some flexibility and improvement of the implementation of the Fund.

PROCEDURE

Title	Proposal for a decision of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008 - 2013 as part of the General programme "Solidarity and Management of Migration Flows"
References	COM(2004)0123 – C6-0124/2005 – 2005/0046(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	BUDG 22.6.2005
Enhanced cooperation – date announced in plenary	
Draftswoman Date appointed	Kathalijne Maria Buitenweg 22.6.2005
Previous drafts(wo)man	
Discussed in committee	23.6.2006
Date adopted	23.6.2006
Result of final vote	+: 26 –: 0:
Members present for the final vote	Richard James Ashworth, Reimer Böge, Simon Busuttil, Gérard Deprez, Valdis Dombrovskis, Hynek Fajmon, Neena Gill, Ingeborg Gräßle, Louis Grech, Catherine Guy-Quint, Jutta D. Haug, Ville Itälä, Anne E. Jensen, Wiesław Stefan Kuc, Janusz Lewandowski, Mario Mauro, Jan Mulder, Giovanni Pittella, Antonis Samaras, Nina Škottová, László Surján, Kyösti Virrankoski, Ralf Walter
Substitute(s) present for the final vote	Kathalijne Maria Buitenweg, Lidia Joanna Geringer de Oedenberg, Peter Šťastný
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	.

PROCEDURE

Title	Proposal for a decision of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows'					
References	COM(2005)0123 – C6-0124/2005 – 2005/0046(COD)					
Date submitted to Parliament	6.4.2005					
Committee responsible Date announced in plenary	LIBE 22.6.2005					
Committee(s) asked for opinion(s) Date announced in plenary	AFET 22.6.2005	DEVE 22.6.2005	BUDG 22.6.2005	EMPL 22.6.2005	CULT 22.6.2005	
Not delivering opinion(s) Date of decision	EMPL 12.1.2006	CULT 16.6.2005				
Enhanced cooperation Date announced in plenary						
Rapporteur(s) Date appointed	Barbara Kudrycka 6.6.2005					
Previous rapporteur(s)						
Simplified procedure – date of decision						
Legal basis disputed Date of JURI opinion						
Financial endowment amended Date of BUDG opinion						
European Economic and Social Committee consulted – date of decision in plenary						
Committee of the Regions consulted – date of decision in plenary						
Discussed in committee	4.10.2005 1.6.2006	1.12.2005 23.10.2006	22.2.2006 .11.2006	3.4.2006	18.4.2006	
Date adopted	6.11.2006					
Result of final vote	+	19				
	-	0				
	0	0				
Members present for the final vote	Mihael Brejc, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Patrick Gaubert, Adeline Hazan, Lívia Járóka, Ole Krarup, Barbara Kudrycka, Romano Maria La Russa, Henrik Lax, Hartmut Nassauer, Martine Roure, Ioannis Varvitsiotis, Stefano Zappalà					
Substitute(s) present for the final vote	Maria da Assunção Esteves, Roland Gewalt, Jeanine Hennis-Plasschaert, Sophia in 't Veld, Kyriacos Triantaphyllides					
Substitute(s) under Rule 178(2) present for the final vote	Salvatore Tatarella					
Date tabled	29.11.2006					
Comments (available in one language only)						