



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.12.1998
COM(1998) 733 final

98/0357 (CNS)

Proposal for a
COUNCIL DECISION
on a Joint Action adopted by the Council on the basis of Article K.3 of the Treaty
on European Union establishing measures to provide practical support in relation to
the reception and the voluntary repatriation of refugees, displaced persons and
asylum applicants

(presented by the Commission)

OVERVIEW

The 1998 General Budget of the European Union contains three linked budget lines relating to refugees, displaced persons and asylum applicants, first introduced by the European Parliament in 1997. The objectives of these budget lines are, respectively:

- to improve reception conditions for asylum seekers and displaced persons and to facilitate access to asylum procedures in the Member States of the European Union¹.
- to facilitate the voluntary return of refugees, displaced persons, and asylum applicants from the European Union to their countries of origin, and their reintegration there².
- to support the integration of refugees in the Member States³.

The two budget lines on reception and voluntary return fall within the field of asylum policy, and are covered by the provisions on justice and home affairs in Title VI of the Treaty on European Union. The budget line on integration falls within the field of social policy, and is a matter to be dealt with under the Treaty establishing the European Community.

In both 1997 and 1998, the Commission has successfully established pilot projects under all three budget lines. In implementing the budget lines, the Commission has taken full account of the need to ensure complementarity both between the various measures established under these three budget lines, and also with other actions taken by the Commission relating to refugees and displaced people, in order to ensure a cohesive and integrated approach. The Commission's experience in relation to all three budget lines has been that there is a great demand for action at the level of the European Union in these fields.

In establishing the budget for 1997, the European Parliament gave a clear indication that the Commission should bring forward proposals for full legal bases for these refugee-related budget lines by the end of 1998, and the Commission subsequently gave a commitment to do so. In the course of the procedure to establish the 1999 budget, the European Parliament has called on the Commission to bring forward a Communication presenting a global approach for refugees, displaced persons and asylum applicants on the basis of the existing actions. In the 1999 budget the integration budget line has been maintained in its present form, but the two budget lines relating to reception and voluntary return have been amalgamated into a single budget line.

The Commission is therefore presenting a package of two complementary proposals, which reflect the objectives of the actions to be undertaken, the existing Treaty arrangements and the structure of the 1999 budget.

¹ B5-803.

² B7-6008.

³ B3-4113.

- The first is for a Community action programme to promote the integration of refugees in the European Union⁴, based on Article 235 of the Treaty establishing the European Community.
- The second is for a Joint action establishing measures to provide practical support in relation to the reception and voluntary repatriation of refugees, displaced persons and asylum applicants⁵, based on Article K.3 of the Treaty on European Union.

Taken together, the two proposals represent a global approach to refugees, displaced persons and asylum applicants. Measures to improve reception conditions in the European Union will focus on asylum applicants and displaced persons, that is to say, persons who have not yet been granted protection or who have been granted a form of temporary protection. Integration measures will focus on people who have been recognised as refugees or, depending on the Member State concerned, granted some other form of protection enabling them to remain, and are therefore suitable candidates for full assimilation into the society of the Member States. Measures to promote voluntary return will cover refugees, displaced people and asylum applicants, reflecting the fact that all individuals seeking or receiving protection in the European Union may nevertheless wish to return to their country of origin when conditions there permit a safe return.

⁴ COM(1998) 731.

⁵ COM(1998) 733.

INTRODUCTORY STATEMENT

The Commission welcomes the fact that, following the entry into force of the Treaty of Amsterdam, immigration and asylum matters will no longer fall within the scope of Title VI of the Treaty on European Union, but will be brought within Community competence under new Title IV of the amended Treaty establishing the European Community. This proposal, which is based on the legal basis currently available under Title VI of the Treaty on European Union, is designed to cover the transitional period during which it can reasonably be expected that ratification of the Treaty of Amsterdam will be completed and the Treaty will enter into force.

It would not be appropriate to postpone this proposal until after the entry into force of the Treaty of Amsterdam. The Commission has given an undertaking to bring forward a proposal for a full legal basis for expenditure in relation to the reception and voluntary return of asylum applicants, displaced persons and refugees before the end of 1998, reflecting the wishes of both the Parliament and the Council in this matter. In addition, early agreement on this proposal would greatly assist effective implementation of the 1999 budget.

The Commission has therefore brought forward an instrument which has its legal basis within Article K of the Treaty on European Union. It has, however, taken account of the changes in the institutional arrangements for dealing with immigration and asylum matters which the Treaty of Amsterdam will bring about. The proposal therefore envisages that in the 1999 budgetary year, the management arrangements which applied in 1997 and 1998 should be retained, but in the 2000 budgetary year the management procedures which will apply resemble those which are used for measures which fall within full Community competence.

The forward-looking approach set out above is designed to offer the Council the opportunity to adopt rapidly an instrument which will provide an appropriate transitional legal basis. The Commission then envisages bringing forward a further proposal for a Council decision, based on the Treaty establishing the European Community, to provide a legal basis for the budgetary year 2001 onwards. This decision would be intended to establish a global approach to actions relating to asylum applicants, displaced persons and refugees, taking full account of developments resulting from the entry into force of the Treaty of Amsterdam.

If, however, the current proposal is not adopted before the entry into force of the Treaty of Amsterdam, the Commission will bring forward a revised proposal based on the Treaty establishing the European Community shortly after the entry into force of the Treaty of Amsterdam.

EXPLANATORY MEMORANDUM

A. BACKGROUND

In 1997, the general budget of the European Union contained two new budget lines relating to asylum applicants, displaced persons and refugees. Budget line B5-803 was intended to cover the development of admission arrangements and reception facilities for asylum applicants and displaced persons, taking account of the idea of shared responsibility between the Member States. Budget line B7-6008 was designed to support measures to assist the voluntary return and reintegration in their countries of origin of asylum applicants and displaced persons who were receiving temporary protection in one of the Member States of the European Union.

On 22 July 1997, the Council adopted two joint actions providing one-year legal bases for these budget lines: the joint action concerning the financing of specific projects in favour of displaced persons who have found temporary protection in the Member States and asylum-seekers⁶, which related to B7-6008; and the joint action concerning the financing of specific projects in favour of asylum-seekers and refugees⁷, which related to B5-803. The Commission proceeded by establishing a total of fifty pilot projects under these two budget lines in 1997, as described in the "Report from the European Commission to the European Parliament on the implementation in 1997 of budget lines B7-6008 and B5-803 relating to asylum seekers, displaced persons and refugees"⁸.

The 1998 general budget of the European Union again made funds available for the reception and for the voluntary return of asylum applicants, displaced persons and refugees. On 27 April 1998, the Council agreed to renew the two joint actions adopted in 1997 for a further year⁹. The Commission has since established a further series of projects under both budget lines.

The European Parliament asked the Commission to bring forward a fully-fledged legal basis for these two budget lines by the end of 1998. Similarly, the Commission gave an undertaking to the Council when the 1997 joint actions were adopted that it would bring forward a proposal for a full legal basis for the two budget lines by the end of 1998. This undertaking was repeated when the two joint actions were renewed in 1998.

⁶ 97/477/JHA OJ L 205, 31.7.1997, p. 3.

⁷ 97/478/JHA OJ L 205, 31.7.1997, p. 5.

⁸ Commission staff working paper SEC(1998) 1263, 16.7.1998.

⁹ Joint Action of 27 April 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the financing of specific projects in favour of displaced persons who have found temporary protection in the Member States and asylum seekers, 98/304/JHA, OJ L 138, 9.5.1998, p. 6; Joint Action of 27 April 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the financing of specific projects in favour of asylum-seekers and refugees, 98/305/JHA, OJ L 138, 9.5.1998, p. 8.

B. SCOPE OF THE PROPOSAL

This proposal brings together measures on improving reception conditions and access to asylum procedures on the one hand, and measures to facilitate voluntary repatriation and reintegration on the other, within a single legal instrument. The intention is to establish an instrument which will allow the Union to respond flexibly to the changing needs and pressures which face it, and which will take account of the principle of shared responsibility between the Member States.

(i) Reception and support for procedures

In order to give full effect in the long term to the principle of shared responsibility between the Member States, the Commission believes that it is necessary to ensure that all Member States are able to receive asylum applicants and displaced persons according to a common minimum standard. Although it will take some considerable time for the European Union to experience the full effects of such an effort, in the long term such a strategy should prove beneficial both to persons in need of international protection and to Member States themselves.

For persons seeking international protection, the benefits of minimum standards with regard to adequate means of subsistence and asylum procedures are self-explanatory. Both the Treaty on European Union and the Treaty of Amsterdam effectively guarantee that measures in the field of asylum must be consistent both with the 1951 Convention relating to the Status of Refugees and with the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁰. If the rights guaranteed by these instruments are to be enjoyed in practice, it is essential that the procedures for seeking protection are both fair and accessible, and that persons seeking international protection have sufficient subsistence support to allow them to exercise their rights effectively.

One of the main principles underpinning the Dublin Convention is that the Member State responsible for an asylum applicant's presence on the territory of the Member States of the European Union is responsible for considering the asylum application. This will very often be the Member State which the asylum applicant first entered. If practical effect is to be given to this principle, it is essential that people who wish to seek international protection have an effective opportunity to apply for asylum in the first Member State they reach, irrespective of which Member State that is, and that they are provided with adequate means of subsistence during the asylum procedure. Such measures could help to reduce secondary migration movements within the European Union.

The approach set out above is fully in line with the agenda set by the Treaty of Amsterdam. The amended Treaty establishing the European Community specifically envisages that, within five years of the Treaty of Amsterdam's entry into force, the Council will adopt measures on minimum standards on the reception of asylum seekers in the Member States (Article 63(1)(b)), and minimum standards on procedures in

¹⁰ In relation to existing treaty arrangements, see Articles F(2) and K.2(1) of the Treaty on European Union. For the period following the entry into force of the Treaty of Amsterdam, see Article 6 of the amended Treaty on European Union and Article 63(1) of the amended Treaty establishing the European Community.

Member States for granting or withdrawing refugee status (Article 63(1)(d)). In addition, the Amsterdam Treaty envisages measures for giving temporary protection to displaced persons (Article 63(2)(a)) and measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons (Article 63(2)(b)). The Commission's current proposals in the latter two areas¹¹, which are at present based on the Treaty of European Union, deal explicitly with the social rights to be accorded to the beneficiaries of a temporary protection regime, and envisage that, in relation to these social rights, the Union could give practical effect to the principle of shared responsibility through financial measures, including reception projects based on budget line B5-803.

(ii) Voluntary repatriation and reintegration

Properly constructed measures to facilitate voluntary repatriation and reintegration bring real benefits to Member States, countries of origin and the returnees themselves. Returnees can begin to rebuild their lives in their countries of origin. In turn, they can bring back skills and knowledge which are needed in their countries of origin. Member States which have borne the financial consequences of receiving refugees, displaced persons and asylum applicants will also see a reduction in the costs which they have to bear.

Community funding for voluntary return measures is intended to promote increased cooperation between the Member States in this field. It will be possible to explore innovative approaches and identify best practice, so that all Member States will be able to make use of the results and apply the lessons learned if they choose to do so.

The target group who can benefit from voluntary return measures is broad in scope, including displaced persons, asylum applicants and recognised refugees.

One response adopted by practically all Member States to help those fleeing the conflict in the former Yugoslavia was to offer special temporary protection arrangements so that accelerated decisions on admission could be made whilst postponing the full procedures needed for the purpose of asylum application. The Commission's proposal which is designed to promote a common approach at the level of the Union to the introduction and phasing out of temporary protection regimes has already been referred to above¹². Temporary protection is by definition limited to the time during which the conditions in the country of origin do not allow a safe and dignified return of the individuals involved. Part of the rationale for temporary protection is that, when the situation in the regions concerned has substantially improved, it becomes possible to reallocate resources to others in need. Provided the situation in the country of origin improves sufficiently within a reasonable time scale, temporary protection implies the eventual return to their country of origin of persons no longer in need of international protection¹³. The

¹¹ Amended proposal for a joint action concerning temporary protection of displaced persons, OJ C 268, 27.8.1998, p.13; proposal for a joint action concerning solidarity in the admission and residence of the beneficiaries of the temporary protection of displaced persons, OJ C 268, 27.8.1998, p. 22.

¹² See footnote 6.

¹³ Article 13 of the amended proposal for a joint action on the temporary protection of displaced persons (footnote 6) envisages consideration of long-term protection measures in cases where the Council has not phased out a temporary protection regime five years after its introduction.

Commission's amended proposal for a joint action concerning temporary protection of displaced persons envisages that when a temporary protection regime is phased out, priority should be given to the furtherance of voluntary repatriation¹⁴. Voluntary return measures have already played an important role in relation to the return of displaced persons to the former Yugoslavia.

This draft joint action envisages that voluntary return measures financed under it should also be open to recognised refugees. In the preparatory stage which preceded this proposal, the Council and Commission agreed that measures facilitating voluntary repatriation should also be open to persons who have been granted a permanent residence permit in one of the Member States¹⁵. This was based on the premise that return programmes should not be restricted only to persons for whom a durable solution has not been found. In the case of the conflict in the former Yugoslavia, some Member States responded by granting refugee status, rather than a form of temporary protection, to the vast majority of persons in need of international protection who arrived on their territory. Although the recognition of refugee status usually leads in due course to the granting of a permanent residence permit in the Member States, this does not imply that refugees who wish to return voluntarily to their country of origin should be denied the opportunity to do so or the necessary assistance.

There is also scope for voluntary return measures to focus on asylum applicants. This applies to asylum applicants who have not yet received a final decision on their asylum application. In particular, some people are brought to the Member States by traffickers and advised to apply for asylum in order to remain on the territory of the Member States, despite the fact that they do not face a risk of persecution and therefore have no realistic chance of being recognised as refugees. Such people would be given the opportunity to participate in projects which could lead to them voluntarily withdrawing their asylum applications and returning permanently to their countries of origin. In many cases this would be in the best interests of the persons concerned and would also relieve pressure on Member States' asylum procedures. It also applies to applicants whose claims have been finally refused but who have not yet left the territory of the Member States. Refused asylum applicants may be granted permission to remain in accordance with other international obligations or on humanitarian grounds, or they may qualify for or have been granted admission in some other capacity. If, however, this is not the case, they will generally be in an irregular situation, and they will no longer be entitled to remain on the territory of the Member States. The Commission, in its 1994 Communication to the Council and the European Parliament on Immigration and Asylum Policies¹⁶, has argued that in relation to persons found in an irregular situation, the best form of repatriation remains voluntary return. Voluntary return schemes can prove cost-effective when compared with the costs involved in involuntary repatriation, and can therefore be attractive to governments. Equally, the possibility of returning voluntarily after appropriate preparations rather than being forcibly expelled can be attractive to the people involved. Expulsion, whilst it may be judged to be a necessary component of immigration control, may be regarded as an instrument of last resort in relation to persons in an irregular situation who are not prepared to depart voluntarily. The Commission

¹⁴ Article 4(3) of the joint action (see footnote 6).

¹⁵ Minute statement No 3, made in both 1997 and 1998, on the occasion of the adoption of the joint actions referred to in footnotes 1, 2 and 4.

¹⁶ COM(94) 23 final, 23.2.1994. See especially paragraphs 111-112.

noted in its 1994 Communication that Member States had encountered difficulties in implementing forced repatriation policies¹⁷, and experience since then suggests that the situation has not changed. This joint action would therefore offer support to Member States in exploring voluntary return schemes as a real and practical alternative to a policy based solely on costly and difficult enforcement action.

(iii) Implementation of the measures

It is not necessary for the legal basis to contain provisions on every aspect of the implementation of the measures on reception and voluntary repatriation. The joint action specifies that the Commission is responsible for managing the measures, and refers explicitly to the obligation for it to do so in conformity with the provisions of the Financial Regulation. In implementing the joint action, the Commission will issue guidelines to assist potential applicants and provide them with details of the administrative procedure to be followed.

The Commission intends to specify in the guidelines that applications from both national, regional and local governmental bodies on the one hand, and from non-governmental organisations (NGOs), international non-governmental organisations (INGOs), and international organisations on the other are eligible for financing. The key criterion will be that applicants must operate on a not-for-profit basis. The Commission considers it important to strike an appropriate balance between governmental and non-governmental organisations. Governmental organisations have a key role to play, for instance in constructing reception infrastructure within the Union, if the measures are to contribute towards achieving an equitable balance of responsibility between the Member State. Equally, the independence of non-governmental organisations may mean that they may be better placed to provide displaced persons with services such as counselling to explore the possibility of voluntary return. The Commission will also emphasise the practical nature of the support to be provided under this joint action.

C. COMMENTS ON INDIVIDUAL ARTICLES

Article 1

This Article defines the general terms of the measures to be established under the joint action, and provides for Community financing. Emphasis is placed on the practical nature of the measures to be supported. The intention is to provide practical and concrete support in the fields of reception and voluntary return. The joint action seeks to promote a comprehensive integrated approach in both of the fields which it covers.

In the area of admission and reception, the scope covers both reception conditions as such and procedural measures to ensure that asylum procedures are fair and accessible to persons who wish to seek international protection. The scope of the measures is limited to improving reception conditions and procedures in the Member States of the European Union. Reception-related measures outside the Union could not be financed under this joint action (although it should be noted that in relation to the applicant countries, funds are available under the PHARE programme for institution building in the

¹⁷ *Supra* footnote 11.

justice and home affairs area). The article refers to the reception of asylum applicants and displaced persons, but does not refer to refugees. In the relatively rare cases where people have already been recognised as refugees before they arrive on the territory of the Member States, they will anyway be immediately eligible to benefit from integration measures financed under the Community budget.

In the area of voluntary return, measures may cover preparation for and facilitation of return, as well as reintegration in the country of origin. This clearly implies that return-related expenditure both in the Member States of the European Union and in countries of origin will be eligible for Community financing under this Joint Action. Return related projects are open to refugees, as well as asylum applicants and displaced persons. This reflects the fact that many people who have been granted permanent status in one of the Member States may nevertheless eventually wish to explore the possibility of return to their country of origin, if the conditions there have changed sufficiently. In both 1997 and 1998, the Council and the Commission made a joint declaration confirming that the relevant funds could be used to finance projects to assist the voluntary return of third-country nationals who held a permanent residence permit in one of the Member States.

Article 2

This Article provides definitions of the target group of the joint action. For the terms "asylum applicants" and "displaced persons", different definitions are used for the purposes of reception and of voluntary return. In both cases, the definition of "displaced persons" is slightly broader than normal, covering both temporary and subsidiary forms of protection.

For the purpose of reception, "displaced persons" includes both the actual beneficiaries of a temporary protection regime or subsidiary forms of protection, and people who are waiting for a decision on whether they will qualify for such protection. This reflects the fact that it may be necessary to provide reception assistance to people as soon as they arrive on the territory of the Member States, before it has been possible to determine their status. For the purpose of return, however, the definition of "displaced persons" is restricted to the actual beneficiaries of a temporary protection regime and recipients of subsidiary forms of protection.

The definition of "asylum applicants" for the purpose of reception is conventional, in that it refers to persons who have lodged asylum claims in respect of which a final decision has not yet been taken. This definition is based on the one found in the Dublin Convention. For the purpose of return, however, the definition has been extended to include "refused" asylum applicants whose claims for asylum have been finally rejected, but who are still present on the territory of the Union. This definition will allow Member States to explore the possibility of voluntary return as an alternative to expulsion in relation to failed asylum applicants.

Article 3

This Article and the following Article provide details of the substantive areas covered by the joint action. This Article sets out the five principal areas of activity in the field of reception.

Point (a) is concerned with reception infrastructure itself, that is to say accommodation for asylum applicants and displaced persons, including reception centres. This reflects the fact that the quality and quantity of reception facilities varies significantly across the Member States of the European Union. Further investment is necessary to support Member States which are not adequately equipped to ensure that asylum applicants and displaced persons seeking international protection can be accommodated in suitable conditions on their territory.

Point (b) is concerned with procedural measures to ensure the fairness, efficiency and accessibility of asylum determination procedures. The Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures¹⁸ identifies a number of key requirements, and these are listed in this joint action. Measures to improve reception conditions are insufficient in themselves, and must be accompanied by actions to ensure that people who wish to seek international protection have access to fair and efficient asylum procedures.

Point (c) relates to social provision for asylum applicants and displaced persons. This indent takes account, inter alia, of the Commission's proposal for a joint action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons. It will also be increasingly important in future years as the Union develops minimum standards for the reception of asylum applicants.

Point (d) is concerned with assistance for vulnerable groups. In relation to unaccompanied minors, the Council resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries¹⁹ identifies good practice in relation to both reception conditions and asylum procedures. The indent also refers explicitly to victims of torture and rape, and people with particular medical needs, in recognition of the fact that it may be necessary to adapt reception arrangements and/or support during asylum procedures to meet the special needs of such people.

Point (e) is concerned with public awareness measures. Citizens of the European Union are often either not informed at all about international obligations towards asylum applicants and the European Union's asylum policy or else have certain misconceptions. Horizontal public awareness measures to address this problem are compatible with the objective of bringing the Union closer to its citizens. Public awareness measures may be particularly appropriate in cases where it is necessary to explain the purpose of a measure financed under this joint action, such as the construction of a reception centre, to the local population.

Article 4

This Article sets out the principal measures which would be eligible for funding in relation to voluntary repatriation and reintegration in the country of origin. Paragraph 1 sets out the three principle types of measure for which funding will be available.

¹⁸ OJ C 274, 19.9.1996, p. 13.

¹⁹ OJ C 221, 19.7.1997, p. 23.

