



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.05.1996

COM(96) 234 final

95/ 0162 (SYN)

Amended proposal for a

COUNCIL REGULATION (EC)

**on operations to aid uprooted people (refugees, displaced persons
and returnees) in Asian and Latin American developing countries**

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

The amended proposal for which the Commission's approval is sought for transmission to the Council and Parliament is based on the original proposal approved by the Commission on 26 June 1996 (COM (95) 297 final - 95/0162 (SYN)) and the amendments approved by Parliament at its February session that the Commission was able to accept.

Of the amendments approved by Parliament, the Commission can agree to Amendments 1, 2, 3, 5, 6, 8, 9, 10, 11, 17, 21 (paragraph 1 and the first indent of paragraph 2) and 22 which, it believes, usefully flesh out the proposals and explain the underlying principles.

It can also agree to Amendment 4, even though it refers to conflict prevention and the Regulation is designed to deal with the consequences of conflict, and Amendment 7, even though the Regulation applies to situations where the population movement has already taken place.

Amendment 12 has been partially incorporated: the Commission agrees to the addition of the word "support" but cannot incorporate the term "returned displaced persons" since this concept is not well defined as regards either the restriction of operations to developing countries (which would prevent the continuation of aid for uprooted people temporarily residing in developed countries) or the reference to longer-term aid.

Amendment 13 has also been taken on board, despite the fact that it seems too "idealistic" and not easy to implement with the material and human resources available to the Commission.

Moving to Amendment 14, the Commission can agree to some of the proposed improvements regarding the operations that may be financed but not all. In particular, the Commission fully agrees that repatriation should be voluntary but cannot agree to the proposed wording because the effect would be to block all aid to people who might have been repatriated against their will. The principle of voluntary repatriation has thus been included as a recital.

For the same reasons the only part of Amendment 15 that has been incorporated is the new definition of displaced persons.

Most of Amendment 16 has been incorporated, apart from the reference to rehabilitation, which has not been included because other instruments cover this type of operation, and the new definition of ex combatants, since it is important to be sure of extending aid to the former members of the armed opposition.

The following amendments have been rejected by the Commission.

Amendment 18:

The provisions on the means available for the implementation of operations would be too restrictive and ill-suited to the need for speed and flexibility in this type of operation since consulting all the partners on the ground, the parliamentary committee and the NGO

Liaison Committee would strain the Commission's human and material resources to a degree that would be incompatible with speed and flexibility.

Amendment 19:

The suppression of prior examination of Commission projects by the committee made up of Member State representatives is simply not realistic in view of the already stated positions of the Member States. Furthermore, the proposal concerning the award of contracts cannot be accepted since it might lead to preferences being accorded to developed non-member countries.

Amendment 20:

The reasons are:

- it drops the reference to the ALA Committee, whereas this Committee is the appropriate one in view of the nature of the operations covered by the proposed Regulation;
- it would make the Commission hold consultations with the authorities, partner organizations and the beneficiaries in the countries receiving assistance before establishing the general guidelines, a requirement that is too restrictive and likely to produce delays in view of the burden it would place on the Commission's human and material resources;
- it provides that meetings of the Advisory Committee set up under the Regulation should be public, that full minutes sent to Parliament and that a Member of Parliament should take part in these meetings as an observer.

Amendment 21:

It requires the Commission to submit a detailed annual report and the Commission does not have the human or material resources to do this.

Proposal for a Council Regulation No ... of ...

on operations to aid uprooted people (refugees, displaced persons and returnees) in Asian and Latin American developing countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,¹

Having regard to the Convention relating to the Status of Refugees of 28 July 1951 adopted by the United Nations Conference on the Status of Refugees and Stateless Persons, the New York Protocol adopted on 31 January 1967 and other resolutions adopted by the United Nations on policy concerning refugees,

Having regard to the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the 1989 Convention on the Rights of the Child,

Having regard to the Resolution of the European Parliament on assistance to refugees in developing countries adopted on 16 December 1983² and later resolutions,

Whereas the Council and Parliament have called for greater efforts on the part of the Community in this respect;

Whereas the effectiveness of aid for refugees, displaced persons and returnees is dependent on the coordination of aid at European level and with other aid donors, non-governmental organizations and United Nations agencies;

Whereas there is a need to increase efforts aimed at preventing conflict and promoting peaceful solutions to political conflicts or wars that cause population displacements;

Whereas there is growing international recognition of the *de facto* refugee status arising in both generalized and individual situations as defined by the 1984 Cartagena Declaration and in recommendations of the Council of Europe and Parliament;

Whereas the status of refugee may arise as a result of persecution of particular social groups and the principle of non-discrimination must be promoted;

¹ Opinion of ..., OJ No ...; Decision of ..., OJ No ...

² OJ No C 10/279.

Whereas the principle of "non-refoulement" and of true judicial settlement of cases of human rights violations must be enforced;

Whereas there must be compliance with the principle by which no refugee or displaced person must ever be forced to return to his country or region of origin and any repatriation or return must correspond to the wishes of the persons concerned;

Whereas the specialized bodies and agencies and non-governmental organizations implementing such operations have gained considerable experience in providing assistance to uprooted people;

Whereas the Community wishes aid for uprooted people to be provided in such a way as to help them move from subsistence to self-sufficiency;

Whereas this type of aid is a prerequisite for development and thus makes a major contribution towards achieving the Union's cooperation policy objectives under Article 130u of the Treaty;

Whereas the provision of aid by the European Union does not dispense host governments and donors from the upholding of refugees' human rights in accordance with international conventions;

Whereas administrative rules and procedures applicable to cooperation operations to help uprooted people (refugees, displaced persons and returnees) must be laid down,

HAS ADOPTED THIS REGULATION:

Article 1

The Community shall implement a programme of support and assistance to uprooted people (refugees, displaced persons, returnees and demobilized soldiers) in Asian and Latin American countries to help them in the interim phase between humanitarian aid given in response to a crisis and the provision of rehabilitation or development aid when the situation so allows.

Article 1a

The establishment of democratic structures and the promotion of human rights shall be an integral part of aid programmes for uprooted people in Asian and Latin American developing countries. All the groups concerned and the local host communities shall participate fully in the evaluation of needs and the implementation of aid programmes. Aid and funds shall be accorded to vulnerable groups, including women, children, indigenous communities, the disabled and the elderly.

Article 2

The Community shall support, *inter alia*, the following operations:

1. aid for the subsistence, upkeep and settlement of refugees in the host country;
2. aid and support for the local population in the host area to mitigate the impact of the presence of uprooted people;
3. aid for repatriation;
4. aid for the resettlement of refugees and displaced persons in their places of origin or in another place of their choice, including the possibility of settlement in a third country;
5. aid for the temporary or permanent settlement of displaced persons in other regions within their own country;
6. aid for the economic integration in the host country of refugees who cannot or do not wish to return to their country of origin;
7. aid for socio-economic development and social reintegration, including support for conciliation/mediation in the place of return;
8. aid pending the start-up of rehabilitation or development programmes, comprising: attainment of self-sufficiency in food, the provision of shelter, sanitary installations, drinking water and basic health care, including reproductive health, psychological aid, education and basic infrastructure;
9. aid for the demobilization and reintegration of ex-combatants into civilian life;
10. mine-clearance operations where necessary to allow people to move about in safety and settle, resettle or integrate into the social and economic life of the host country or region or country or region to which they return, plus operations to inform people about mines and the safety measures to take;
- 10a the provision of legal advice and aid to displaced persons wishing to assert their property rights;
- 10b the repair of damage to the environment caused by major population movements;
- 10c specific programmes for displaced women aimed at halting sexual violence, supporting teams of women working on the ground and setting up services exclusively for women to aid victims of rape, treat sexually transmitted diseases and run mother-and-child health programmes;
- 10d aid to keep families together, including programmes to find family members and unify families;
- 10e aid for the judicial settlement of cases of human rights violations affecting uprooted people.

Article 3

1. The beneficiaries shall be uprooted people originating from, or provisionally established in, any of the developing countries of Asia and Latin America.
 - (a) refugees are defined in the Convention relating to the Status of Refugees, which was adopted on 28 July 1951 by the United Nations Conference on the Status of Refugees and Stateless persons, as " any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country";
 - (b) "displaced persons" are persons or groups who have fled their place of origin but have remained within the borders of their country for reasons similar to those set out

in the 1951 Convention and who are in need of protection but do not enjoy the status of refugee as defined by that Convention;

- (c) "returnees" are persons or groups who, having fled their place of origin, then decide of their own free will or because of the situation, to return to their country or region of origin.
2. Aid shall also be available for:
- (a) the local population of the host country, whose social, economic and administrative resources are drawn on for the reception and assistance of refugees and displaced persons, for the purpose of enabling them to carry out longer term projects designed to bring about the self-sufficiency and integration or reintegration of these persons;
 - (b) demobilized former soldiers of regular armies and members of armed opposition movements, plus their families and grassroots support.
 - (b)a persons in need of international protection because of serious threats to their life, liberty or security arising from persecution, armed conflict or serious disruption of public order.

Article 4

Partners in the implementation of specialized and technical assistance may be non-governmental organizations, local organizations, United Nations agencies, international aid organizations, national, regional and local authorities, and other suitable organizations.

Article 5

1. The means deployed in implementing operations referred to in Article 2 shall include studies, technical assistance, training and other services, supplies, works, and audits and evaluation and monitoring missions.
2. Community financing may also cover investment expenditure, excluding the purchase of real estate, and running costs, whether in foreign exchange or local currency, in accordance with the requirements of implementing the operation.
3. Systematic efforts shall be deployed to raise a contribution, especially in financial form, from participants or partners who will enjoy the benefits of the operation (countries, local communities, businesses, etc.) within the limits of what is possible and depending on the nature of the operation.
4. Co-financing shall also be sought, in particular from the Member States and multilateral, regional or other organizations. The necessary measures shall be taken to show that the aid supplied under this Regulation comes from the Community.

5. The Commission shall, in order to ensure the consistency and complementarity of operations financed by the Community and by Member States with a view to maximizing their effectiveness, take all necessary coordination measures, including:

- (a) the setting-up of an electronic information exchange system on the operations which are or may be financed by the Community and the Member States;
- (b) on-the-spot coordination of operations through regular meetings and exchanges of information between Commission and Member State representatives in the recipient country.

Article 6

Financial aid under this Regulation shall take the form of grants.

Article 7

1. The Commission shall be responsible for appraising, approving and managing the operations covered by this Regulation in accordance with the budgetary and other procedures in force, in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities.

2. Decisions relating to grants of more than ECU 5 million for individual operations financed under this Regulation and any changes resulting in an increase of more than 20% in the sum initially approved for such an operation shall be adopted under the procedure laid down in Article 8.

3. All financing agreements or contracts concluded under this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks according to the usual procedures laid down by the Commission under the rules in force, in particular those of the Financial Regulation applicable to the general budget of the European Communities.

4. Where the measures or operations are the subject of financing agreements between the Community and the host country, such agreements shall stipulate that the payment of taxes, duties and or other charges is not covered by the Community.

5. Participation in invitations to tender and the award of contracts shall be open on equal terms to all natural and legal persons of the Member States and of the host countries. It may be extended to other developing countries.

6. Supplies shall originate in the Member States, the host country or other developing countries. In exceptional cases, where circumstances warrant, supplies may originate elsewhere.

Article 8

1. The Commission shall be assisted by an Advisory Committee made up of representatives of the Member States and chaired by the representative of the Commission, namely the ALA Committee set up under Article 15 of Council Regulation No 443/92/EEC adopted on 25 February 1992.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; each Member State shall have the right to ask for its position to be recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

3. There shall be an exchange of views once a year on the basis of a report by the Commission representative on the general guidelines for operations in the coming year.

Article 9

At the end of each budget year, the Commission shall present a report to Parliament and the Council summarizing the operations financed in the course of that year and evaluating the implementation of this Regulation over that period.

The report shall provide detailed information about those with whom contracts have been concluded.

The report shall also summarize any independent evaluations of specific operations.

Article 10

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

This Regulation shall be subject to review five years after its entry into force.

Done at Brussels, ...

For the Council,
The President

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