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Subject : **Proposal for a Decision of the European Parliament and the Council
establishing the European Return Fund for the period 2008-2013 as part of
the General programme ‘Solidarity and Management of Migration Flows’**

At its meeting on 24 February 2006 the Working Party completed the second reading of the above proposal and started a third reading, considering in particular some compromise suggestions submitted by the Presidency.

The outcome of proceedings is set out in the Annex.

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND COUNCIL

establishing the European Return Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows'¹

TITLE I

Objectives and general rules

CHAPTER I

SUBJECT MATTER, OBJECTIVES AND ACTIONS

¹ FR, which wanted the deletion of the expression *as part of the General programme "Solidarity and Management of Migration Flows"*, maintained a general reservation on the Fund, as well as on its Article 1. In its view a clause underlining the link between this Fund and the Commission Communication *General programme "Solidarity and Management of Migration Flows"* could only be inserted in the Preamble as a recital.

Article 1

Subject matter and scope

¹This decision establishes for the period from 1 January 2008² to 31 December 2013 the European Return Fund, hereinafter referred to as « The Fund », as part of the General programme "Solidarity and Management of Migration Flows", in order to contribute to the strengthening of the area of Freedom, Security and Justice³.

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.

¹ In relation with Article 1 **DE** made a general remark whereby in the Fund a certain amount of money should be reserved to FRONTEX in order to enable this Agency to perform its tasks of assisting Member States in the preparation and organisation of joint removal operations.

² **EL**, **ES** and **NL** maintained reservations on the fact that the Fund on Return will become operational only in 2008, thus leaving a gap with regard to 2007.

The **Cion** restated that the Fund will become operational only in 2008 for three main reasons:

- the implementation of the preparatory actions in the area of return for 2005/2006, which are expected to start only in 2006 and to be completed only by the end of 2007;

- the limited resources available and

- its relationship with the European Refugee Fund (ERF): the new ERF, under the General Programme, is also expected to start functioning on 1st January 2008.

³ **ES**, supported by **EL**, **IT**, **HU** and **SI** suggested inserting the following sentence at the end of this provision:

...and to the implementation of the principle of solidarity among Member States as concerns a fair share of the responsibilities arising from the introduction of a common integrated return management.

While expressing some doubts about the existence of a link between the principle of solidarity and the introduction of a common integrated return management, as it appears in the **ES** suggestion, **BE** and **NL** pointed out that they would not oppose such an addition.

Noting that the entire General Programme and the Return Fund are based on the principle of solidarity, **FR**, supported by **DE**, **SI** and **UK**, felt that it would not be appropriate to restate this concept in Article 1 and opposed the **ES** suggestion. **FR** took the view that recital 16 of the proposal (*This instrument is designed to form part of a coherent framework entitled the General Programme 'Solidarity and management of Migration Flows', which aims at addressing the issue of a fair share of responsibility 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 immigration and asylum, as developed in accordance with Title IV of the Treaty establishing the European Community*) entirely covers the **ES** concerns.

Article 2

General Objectives of the Fund

- 1 The general objective of the Fund shall be to support the efforts made by the Member States to improve the management of return in all its dimensions through the use of the concept of integrated management, taking account of Community legislation in this field.
2. The Fund shall contribute to the financing of the technical assistance on the initiative of the Member States or the Commission.

Article 3

Specific objectives

1. The Fund shall contribute to the following specific objectives:
 - (a) The introduction and improvement of the organisation and implementation of integrated return management by Member States;
 - (b) The enhancement of the co-operation between Member States in the framework of integrated return management and its implementation;
 - (c) The promotion of an effective and uniform application of common standards on return according to the policy development in the field¹.

¹ The **Working Party** agreed to insert in recital 12 (which lists a series of instruments adopted in the area of return), a reference to the new proposal for a Directive of the European Parliament and of the Council on minimum standards and procedures in Member States for returning illegally staying third-country nationals, submitted by the **Cion** in September 2005 (see 12125/05 MIGR 41 CODEC 750 COMIX 579).

2. Integrated return management shall include in particular the development and implementation by the competent authorities of a Member State of integrated return plans¹ which
- are based on a comprehensive assessment of the situation in the Member State with respect to the targeted population or a targeted specific issue concerning return and the challenges with respect to the operations envisaged (such as those related to obtaining travel documents and other practical obstacles to return), taking into account, where appropriate, the relevant caseload. The comprehensive assessment shall be drawn up in co-operation with all relevant authorities and partners; and
 - aim to achieve a wide set of measures encouraging voluntary return schemes of third country nationals who do not or no longer fulfil the conditions for entry and stay² on its territories, and, where necessary, implementing enforced return operations with respect to these persons, in full compliance with humanitarian principles and respect for their dignity; and
 - include a planning and/or time table and, where appropriate, foresee a periodic evaluation mechanism allowing for adjustment of the planning and assessment of the impact of the plan in practice.

¹ In relation with this provision **DE** raised the question that the Fund should support measures and actions which have an added value at European level. In its view cross border actions have such an added value. It suggested including the notion of 'added value' in the proposal. In order to cover this concern, the Pres suggested adding the following new recital in the Preamble:
Return plans implementing integrating return management may be supported by Community funding where they add value to existing national actions. They are presumed to have added value if they involve measures improving the co-operation of the Member States in the area of voluntary and forced return.

The Pres also suggested to amend the introductory sentence of this paragraph as follows:
Integrated return management shall include in particular the development and implementation by the competent authorities of a Member State of integrated return plans which have an added value at Community level. The integrated return plans may provide for joint actions to be implemented by various Member States or national projects, that pursue Community objectives, which:

DE supported this suggestion, while **ES, FR, HU** and **NL** preferred to revert to the original Commission proposal. **NL** felt that the notion of added value is already contained in Article 2 on *General Objectives* of the Fund. **BE**, while supporting the introduction of a reference to added value in the text of the proposal, said that other clauses can also be envisaged.

² The WP agreed to replace, throughout the text, the wording *illegally staying third-country nationals* with the wording *third country nationals who do not or no longer fulfil the conditions for entry and stay*.

3. Integrated Return Plans shall focus in particular on effective and sustainable returns through such actions as efficient information at pre-departure stage, travel arrangements, transit in the country of return for both voluntary and enforced return. As far as possible, incentives for voluntary returnees, such as enhanced return assistance¹, may be foreseen in order to promote voluntary return.

Where Member States consider it appropriate, they may include the provision of reception and reintegration support.

¹ **FR** and **SE** maintained reservations on the notion of *enhanced return assistance*.

Article 4

Eligible actions in the Member States

1. Actions relating to the objective laid down in Article 3(1), point a), and in particular the following, shall be eligible for support from the Fund¹:
 - (a) Establishment or improvement of an effective, stable and lasting operational co-operation of Member States' authorities with consular authorities and immigration services of third countries, with a view to obtaining travel documents for the return of third country nationals and ensuring speedy and successful removal procedures;
 - (b) Promotion and facilitation of voluntary returns of third country nationals who do not or no longer fulfil the conditions for entry and stay, in particular through assisted voluntary return programmes, with a view to ensuring the effectiveness and sustainability of returns;
 - (c) Simplification and implementation of enforced returns of third country nationals who do not or no longer fulfil the conditions for entry and stay, with a view to enhancing the credibility and integrity of immigration policies and reducing the period of custody of persons waiting for forced removal.
2. Actions relating to the objective laid down in Article 3(1), point b), and in particular the following, shall be eligible for support from the Fund:
 - (d) Co-operation in the gathering and provision to potential returnees of information on the country of origin;
 - (e) Co-operation in developing effective, stable and lasting operational working relationships between Member States' authorities and consular authorities and immigration services of third countries, to facilitate consular assistance in obtaining travel documents for the return of third country nationals and ensuring speedy and successful removal procedures;

¹ DE, which raised the question of the 'added value' of the return measures (see footnote 1 on page 5), maintained a reservation on paragraph 1.

- (f) Design of joint integrated return plans and their implementation, including joint voluntary return programmes on specific countries or regions of origin, former residence or transit;
- (g) Studies on the current situation and possibilities for enhancing administrative co-operation among Member States in the field of return as well as on the role of international and non-governmental organisations to be played in this context;
- (h) Exchange of information, support and advice in dealing with the return of particularly vulnerable groups;
- (i) Organization of seminars for practitioners on best practices focusing on specific third countries and/or regions;
- (j) Joint measures enabling the reception of readmitted persons in countries of origin, former residence or transit;
- (k) Joint development of actions to ensure the durable reintegration of persons in the country of origin or former residence^{1,2}

¹ **ES** and **FR** maintained reservations on point k). Also **PL**, which pointed out that the proposal should focus on forced return, maintained a reservation on point k). According to **ES** and **FR** the measures referred to in point k), as well as the measures under l), should be financed by Funds in the area of the external relations, such as AENEAS, rather than by this Fund.

The **Cion** took the view that it is preferable to maintain the funding of the reintegration measures under k), insofar as they are aimed at ensuring the effectiveness of return. It also drew attention to the fact that in the last indent of Article 5, which refers to reintegration measures, clearly points out that such measures will be funded "where Member States consider it appropriate".

Also **BE** preferred maintaining the possibility of funding referred to in point k).

DE suggested adding, both in k) and l), the words *where applicable*.

² The WP agreed to delete former point (l) of this provision (*Joint measures to monitor the situation of returnees and sustainability of their situation after return*).

- (l) Joint measures to monitor the situation of returnees and sustainability of their situation after return.
3. Actions relating to the objective laid down in Article 3(1), point c), and in particular the following, shall be eligible for support from the Fund¹:
- (m) Enhancement of the capacity of competent authorities to take high quality return decisions as quickly as possible;
 - (n) Enhancement of the capacity of competent administrative authorities to execute/enforce speedily removal decisions in full respect of human dignity and the relevant European security standards regarding such operations;
 - (o) Enhancement of the capacity of judicial bodies to more quickly assess return decisions appealed;
 - (p) Organization of seminars and joint training for the staff of the competent administrative, law enforcement and judicial bodies concerning legal and practical aspects of return operations;
 - (q) Enhancement of the capacity of competent administrative authorities to effectively implement common arrangements on mutual recognition and joint return operations, including the recommendations, operational standards and best practices defined by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union in the area of return.

¹ In general terms, **NL** observed that paragraph 4, as well as paragraph 3, make reference to standards of the EU action in the area of return, whose scope and content, at this stage, is not yet clear.
BE maintained a reservation on paragraph 3. Expressing doubts on the added value at EU level for the actions listed in this provision, which should more appropriately be implemented by Member States, it suggested deleting paragraph 3.
The **Cion** observed that in its view all the measures listed in paragraph 3 would be of benefit to all Member States.
SE also entered a reservation on paragraph 3. This delegation said that, while it supports the idea of measures aimed at promoting the exchange of experience, it does not see the need for funding the actions designed for national decision making authorities listed in this paragraph.

4. Actions provided for by paragraphs 1 to 3 shall, in particular, promote the implementation of the provisions of the relevant Community legislation in the field of the common European immigration and return policy.
5. 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 violence¹.

Article 5

Eligible measures in the Member States²

Actions supported may include the following measures³:

- ⁴In all cases of return, pre-return information, including return assistance⁵, and translation costs of this information and assistance, procurement of indispensable travel documents, costs of necessary pre-return medical checks, costs of travel and food for returnees and escorts, including medical staff and interpreters, accommodation for escorts, including medical staff and interpreters, specific assistance to vulnerable groups such as children or people with disabilities, costs of transportation in the Member State and up to the country of return and co-operation with the authorities of the country of origin, former residence or transit;
- Additionally, in the case of forced return of third country nationals who do not or no longer fulfil the conditions for entry and stay, costs of travel, food and temporary accommodation for returnees and their escorts, including medical staff and interpreters, from the participating Member State in the organising Member State prior the departure in case of joint return operations;

¹ The **Pres** suggested deleting paragraph 5 and moving its content to the Preamble as a recital. **SE** maintained a scrutiny reservation on this suggestion.

² **DE** entered a scrutiny reservation on this provision, linked with the reservations it entered on Article 4.

³ **DE** suggested adding, at the end of the introductory sentence, the words *to the extent that they lead to the strengthening of the cooperation of the Member States*. **EL, IT, PL** and **FI** maintained reservations on this suggestion.

⁴ The first, the second, the third, the fourth and the fifth indent of Article 5 result from a compromise suggestion submitted by the Presidency.

SE entered a scrutiny reservation on this compromise suggestion.

⁵ Various delegations, and in particular **IT** and **NL**, wondered what is the meaning and the scope of the concept of *return assistance*, which appears in the first as well as in the third indent of this provision.

The **Cion** felt that this concept ought to be clarified. One possibility might be including a reference to *improvements of return assistance* and indicate some possible actions in this sense in Article 4. It also pointed out that the notion of *comprehensive pre-return assistance*, which is evoked in the third indent, should be defined in the Decision.

- Additionally, in the case of voluntary return of third country nationals who do not or no longer fulfil the conditions for entry and stay, comprehensive pre-return information¹, including return assistance, and translation costs of this information and assistance, essential expenses before return and costs of transportation from the international entry point of the country of return to the final destination in the country of return;
- Additionally², initial expenses after return, transport of the returnee's personal belongings, adequate temporary accommodation for the first days after arrival in the country of return in a reception centre or a hotel in case of further travel to a final destination, training and employment assistance and limited start-up support for economic activities where appropriate;
- Education and training of staff of the competent administrative, law enforcement and judicial bodies, secondments of these categories of staff from other Member States in order to develop adequate pre-return assistance and counselling, to ensure an effective and uniform application of common standards on return and enhance cooperation, as well as missions to assess the results of return policies in third countries³;
- In the case of operational co-operation with consular authorities and immigration services of third countries with a view to obtaining travel documents and ensuring speedy removal procedures, cost of travel and accommodation in the Member States for the staff of the authorities and services responsible for the identification of third country nationals and the verification of their travel documents;

¹ See footnote 5 on page 10.

² **DE**, as well as **FR**, preferred reinserting at the beginning of this indent the words *and where considered appropriate by Member States*, which appeared in the original Commission proposal.

The **Pres**, as well as **NL**, felt that this addition would be superfluous and unnecessary, insofar as it results clearly from this provision that is up to the Member States to choose the measures that they consider appropriate.

In this context and in response to a query on the meaning of the expression *actions supported may include the following measures* in the introductory part of this provision, the **Cion** clarified that the list of measures contained in Article 5 is exhaustive. However, Member States are entitled to choose, in the individual circumstances, the measures that they deem appropriate among those listed in this Article.

Moreover, **PL** raised again its suggestion to delete the last part of this indent, pointing out that such measures are already covered in the last indent of Article 5 (*training and employment assistance and limited start-up for economic activities where appropriate*).

The **Pres** said that it will consider submitting a new compromise suggestion, taking into account the remarks raised by **DE**, **FR** and **PL**.

³ **SE**, supported by **NL**, maintained its position that this provision is too far reaching. In its view support should be given only to joint seminars and to exchange of experience, while measures such as those listed in this provision, which have a purely national and internal impact, should not be funded.

In reply to a query from **NL** concerning the meaning of the expression *as well as missions to assess the results of return policies in third countries*, the **Cion** clarified that such actions are intended to monitor if the return policies – for instance, a voluntary return programme – are efficiently implemented.

- ¹In the case of reintegration measures to enhance the sustainability of return pursuant to the notion of integrated return management and, where Member State consider it appropriate, cash incentives² and other short term measures necessary to launch the progress of reintegration for the returnee’s personal development such as training, placement and employment assistance, start up support for economic activities and post-return assistance and counselling, as well as measures enabling Member States to offer appropriate arrangements for welcoming returnees in third countries upon their arrival³.

Article 7

Target Groups⁴

1. For the purposes of this Decision the target groups shall comprise all third country nationals who do not or no longer fulfil the conditions for entry and stay⁵ in a Member State.

¹ **FR** raised the issue of the existence of a dividing line between measures related to return and measures which could be considered more appropriately as promoting development. The **Cion** noted that the intention of the Fund is to cover all the process of return with measures which are addressed to individuals. The measures which are aimed at providing assistance to capacity building and which involve the cooperation of the third countries concerned will need to be financed via other Funds in the area of RELEX, such as AENEAS.

² **EE** and **SE** expressed some concerns on the possibility of providing *cash incentives*. With respect to the cash incentives, the **Cion** pointed out that the idea is to support financially the reintegration of returnees. This may include providing a modest amount of money to help the returnees, for instance, to start up a small business.

³ **PL** reiterated its suggestion to delete the last part of this provision (starting with *as well as measures...*) should be deleted. While saying that its intention was to make a distinction between general measures devoted to the development of the individuals concerned, and other measures that can be adopted by Member States, the **Cion** said that this issue needs to be further considered.

⁴ The **Pres** drew attention to the fact that this provision might be amended on the basis of the outcome of the discussions, which are currently taking place in the Strategic Committee on Immigration, Frontiers and Asylum, on the division in funding of voluntary return issues between the European Refugee Fund and the European Return Fund

⁵ **NL** suggested replacing the words *entry and stay* with the words *entry and/or stay*.

2. This shall include third country nationals who are not or no longer in need for international protection¹ because their application for asylum has been rejected by a final decision under the respective national legal systems or because their status has been revoked, ended or not been renewed (by a final² decision) in accordance with national and Community law.
3. Third country national means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty.

¹ In response to **ES**, which wanted the current wording (*who are not or no longer in need for international protection*) with the wording *who are not or no longer entitled to international protection*, the **Cion** said that the clause contained in the text is the standard clause which is used in the EU asylum instruments.

² **ES** entered a reservation on the word *final*. On this issue, and in response to a **FR** query, the **Cion** said that the notion of final decision should be interpreted in the sense that the person concerned has exhausted all the appeals or at a previous stage he/she made an appeal on which there was a negative decision and he/she did not continue the appeal procedure, the decision then becoming final

Article 15

Annual distribution of resources for eligible actions in the Member States¹

1. ²Each 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 2008 – 2013 for the remaining part of the period 2008 - 2013 following the year of their accession.

¹ With respect to the wish expressed by various delegations, the **Pres** said that it is its intention to have this provision considered by the Strategic Committee.

² **DE** expressed concerns on the flat rate amount. It felt that such a fixed amount should be allocated if there is a need for the Member State concerned or for financing common actions. **ES** pointed out that, instead of reinforcing the infrastructure, priority should be given to supporting return measures.

NL wondered why the Fund provides for a different fixed amount for the old Member States and for the newcomers.

EE (which entered a scrutiny reservation on this provision), together with **HU, MT, PL, SI** and **SK** supported the approach adopted by the **Cion**. Those delegations took the view that allocating a higher fixed amount to the newcomers is justified in the light of the solidarity principle and to the fact that many of the new Member States have an external border. **PL** felt that a more substantial amount would need to be allocated to the new Member States, with a view to compensating the financial burden that they have to cover.

FI, FR, which entered a reservation on this provision, as well as **PT** also supported in principle the approach adopted by the **Cion**.

According to the **Cion**, it is appropriate to provide for a fixed amount, which would be intended for funding infrastructure and financial investments, in the light not only of the experience acquired with the ERF, but also in terms of predictability and long-term programming.

2. The remainder of the available annual resources shall be broken down between the Member States as follows¹:
- (a) 70 % in proportion to the total number of third country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision² under national and Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return, over the previous three years;
 - (b) 30% in proportion to the number of third country nationals who have actually left the territory of the Member State following an administrative or judicial order to leave, whether undertaken voluntarily³ or under coercion over the previous three years⁴.

¹ The question of the breakdown suggested by the Cion (70% for (a) and 30% for (b)) was raised by **various delegations**. **DE** said that is still considering this issue; **EL** suggested 60% and 40% and **FI** 50% and 50%.

According to **PT**, special attention needs to be paid to the Member States whose geographical position makes them more vulnerable, vis-à-vis illegal migration.

IT, supported by **EL**, felt that the situation of the Member States which have an external border should be duly taken into account.

With respect to the **IT** suggestion, the **Cion** did not favour the idea of including this new factor among those mentioned in points (a) and (b). In its view the presence of an external border is taken into account in the relevant Fund on external borders, while this Fund should focus on the migratory flows.

In the framework of the consideration of this provision, **various delegations** drew attention to the difficulties that will determine the absence of a uniform terminology as well as of reliable and comparable statistics in this area. The same remark was also made with respect to paragraphs 4 and 5 of this provision.

In particular **HU** and **NL** stressed the need for ensuring coherence and consistency in the framework of the consideration of the different legal instruments in this area, and namely: the Return Fund, the proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals and the statistical Regulation.

² With respect to the terminology used in point (a), as well as in point (b) (*return decision, administrative or judicial order to leave*), the **Cion** said that it will need to be aligned with that of the proposal on common standards and procedures in Member States for returning illegally staying third-country nationals.

³ According to **BE**, which entered a reservation on point b), it should be clarified that the third-country nationals undertaking voluntary return as provided for in this provision are persons who fall under a programme of assisted voluntary return.

The **Cion** said that the expression *undertaken voluntarily* could be interpreted in the sense suggested by **BE**.

⁴ According to **ES**, supported by **PT**, the main criterion for the allocation of the resources should be that contained in point (b), rather than that reflected in point (a).

3. The third country nationals referred to in paragraph 2 shall not include
 - (a) third country nationals who are refused entry in a transit zone by a Member State¹;
 - (b) third country nationals who are to be returned by a Member State to another Member State, in particular pursuant to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.
4. The reference figures are the latest statistics produced by the Statistical Office of the European Communities in accordance with Community law.
5. Where the statistics referred to in paragraph 4 are not available, Member States shall provide the necessary figures.

Article 54

Entry into force

This Decision shall apply from 1 January 2008².

¹ In response to a query from NL, which wondered why no funding would be provided in the case evoked in point (a), the **Cion** said that, in its view, as far as persons whose entry in a transit zone is refused are concerned, the financial burden for the Member States would be very limited. In such cases the return of the person would take place on the basis of other instruments, such as, for example, the ICAO Chicago Convention which obliges air carriers to transport, at their own costs and to their countries of origin, the persons who have used their services for travelling to the country of destination without the necessary travel documents. **FR** suggested amending the wording of this provision in the same way, as it proposed for an identical clause contained in Article 2(2) of the proposal on common standards and procedures in Member States for returning illegally staying third-country nationals (*third-country nationals who have been refused entry in a transit zone of a Member State* should be replaced with a clause such as *third-country nationals who, being present in a transit zone of a Member State, were refused entry*

² See footnote 1 on page 3.