

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF AUDITORS

SPECIAL REPORT No 3/2007

**concerning the management of the European Refugee Fund
(2000 to 2004) together with the Commission's replies***(pursuant to Article 248(4), second subparagraph, EC)*

(2007/C 178/01)

TABLE OF CONTENTS

	<i>Paragraph</i>	<i>Page</i>
SUMMARY	I-VIII	3
INTRODUCTION	1-16	3
Background	1	3
The European Refugee Fund	2-9	3
Synthesis of main changes between ERF I and ERF II	10-13	4
Audit scope, objectives and approach	14-16	5
WAS THE DISTRIBUTION OF FUNDS TO MEMBER STATES SOUND?	17-25	5
Basis for the distribution of amounts	17-19	5
Statistical data used as allocation basis were incomplete and not reliable	20-22	6
Differences in interpretation among the Member States distort the basis	23	6
Revisions of previously validated data were not fully taken into account for future distributions or were not adequately documented	24-25	6
WAS THE MANAGEMENT BY THE COMMISSION AND THE MEMBER STATES SOUND?	26-39	7
ERF implementing rules were published late	26	7
Low efficiency of the allocation procedure	27-33	7
Different interpretation of ERF rules by Member States	34-36	8
Positive examples of ERF management	37	8
Monitoring and remedial action by the Commission had insufficient results	38-39	8

	<i>Paragraph</i>	<i>Page</i>
WHAT WAS THE IMPACT OF THE ERF ON NATIONAL EFFORTS IN THE AREA OF ASYLUM?	40-44	9
CONCLUSION	45-50	9
RECOMMENDATIONS	51-54	10
Annex I — Comparison of Community regulations for the 2000 to 2004 European Refugee Fund period (ERF I) and the 2005 to 2010 period (ERF II)		11
Annex II — Distribution of funds per Member State (2000 to 2004)		15
Annex III — ERF allocation procedure of provisional amounts to Member States		16
The Commission's replies		19

SUMMARY

I. The European Refugee Fund (ERF or the Fund) was established in September 2000 for an initial five-year period ending in 2004, with a financial reference amount of 216 million euro. The Fund's creation occurred at a time of increased EU activity in the rapidly evolving field of asylum and immigration.

II. The aim of the ERF was to support and encourage the efforts made by the Member States in receiving and bearing the consequences of receiving refugees and displaced persons. The management of the Fund was shared between the Commission and the Member States. The Commission had the overall responsibility for the correct implementation of the Fund, while the Member States were in charge of carrying out the actual measures. Fundable measures were divided into three groups: conditions for the reception, integration, and repatriation of refugees and displaced persons.

III. The Court carried out an audit of the management of the first phase of the European Refugee Fund (2000 to 2004), focusing on the following:

- was the distribution of funds to Member States sound?
- was the management by the Commission and the Member States sound?
- what was the impact of the ERF on national efforts in the area of asylum?

IV. The distribution of funds was mainly based on the number of third-country nationals and stateless persons, as defined by the ERF, that have entered the Member States. The Statistical Office of the European Communities (Eurostat) was responsible for collecting statistical data on asylum figures from the Member States. No harmonised definitions of the target groups as defined in the ERF rules existed, and Member States applied different interpretations. Thus the basis used for the ERF allocations was not consistent, comparable and reliable. Serious discrepancies in the underlying statistical data were detected. In some cases, the data were changed due to the evolution of the Member States' legislation in the direction of greater harmonisation.

V. The entire annual allocation procedure was cumbersome and its efficiency questionable.

VI. Member States had sole responsibility for the management and administration of projects, while the Commission had to ensure that Member States had smoothly functioning management and control systems. Although shortcomings were detected and some corrective measures were taken by the Commission, not all problems detected in the Member States had yet been resolved.

VII. The Court's audit has shown that some of the provisions of ERF I, in particular the eligibility rules, were open to significant differences of interpretation. The Court recommends, taking account of its findings and the changes already made in ERF II, that appropriate measures be taken to ensure that the ERF is more clearly and precisely targeted for the future.

VIII. Regarding the question of the impact of the ERF on national funding, information was limited both in the Member States and at the Commission. In the light of the projects visited, some positive changes in national efforts were noted, mainly with regard to testing innovatory projects and integrating their results into national strategies.

INTRODUCTION

Background

1. The Treaty of Amsterdam envisages the progressive establishment of an area of freedom, security and justice ⁽¹⁾. Pursuant to this, the European Council agreed in October 1999 in

Tampere (Finland) on a comprehensive programme, fixing political guidelines and operational objectives, including the establishment of a common European asylum system.

The European Refugee Fund

2. The European Refugee Fund (ERF or the Fund) was established in September 2000 for an initial five-year period ending in 2004 ⁽²⁾.

⁽¹⁾ Article 61 of the Treaty establishing the European Communities, as amended by the Treaty of Amsterdam.

⁽²⁾ Council Decision 2000/596/EC of 28 September 2000 establishing the European Refugee Fund (OJ L 252, 6.10.2000).

3. The ERF was created 'to promote a balance in the efforts made by Member States in receiving and bearing the consequences of receiving refugees and displaced persons' ⁽¹⁾. It was to be based on the principle of solidarity between Member States, and it should ensure fair burden-sharing between them.

4. The Fund was to support measures that aim to achieve appropriate reception conditions, as well as integrating refugees and displaced persons into the society of a Member State. In addition, the ERF was to allocate resources to assist refugees and

displaced persons with repatriation, including help in taking an informed decision to return to their country of origin.

5. A financial reference amount of 216 million euro was allocated to the ERF. The final appropriations amounted to 243 million euro, including 49 million euro provided for emergency measures but not used. As of the end of December 2006 the Commission estimates that 141 million euro had been paid. The following table shows the appropriations and commitments for the years 2000 to 2004.

Appropriations and commitments 2000 to 2004

(million euro)

	2000 to 2004		2004		2003		2002		2001		2000	
	Appropriations	Commitments	Appropriations	Commitments	Appropriations	Commitments	Appropriations	Commitments	Appropriations	Commitments	Appropriations	Commitments
Administrative expenditure ERF	3,64	2,19	0,66	0,12	0,73	0,65	0,73	0,53	0,81	0,21	0,72	0,67
Operational expenditure ERF	189,02	189,00	42,27	42,27	42,27	42,27	45,08	44,99	34,19	34,19	25,28	25,28
Administrative expenditure emergency measures ERF	0,96	(*)	0,16	(*)	0,18	(*)	0,18	(*)	0,20	(*)	0,23	(*)
Operational expenditure emergency measures ERF	49,03	(*)	9,82	(*)	9,82	(*)	9,82	(*)	9,80	(*)	9,78	(*)
Total	242,65	191,19	52,91	42,39	53,00	42,92	55,81	45,52	45,00	34,40	36,01	25,95

(*) Appropriations foreseen for emergency needs and not used between 2000 and 2004.

Source: European Commission accounting system.

6. The management of the ERF was shared ⁽²⁾ between the Commission (Directorate-General for Justice, Freedom and Security — JLS DG) and the Member States. The Commission had the overall responsibility for the correct implementation of the Fund, while the Member States were in charge of managing the actual measures. Each Member State had appointed a national authority which handled all communication with the Commission and was responsible for the selection of individual projects and for their financial management and administration.

7. Persons targeted by the ERF were third-country nationals or stateless persons who had refugee status as defined by the Geneva Convention ⁽³⁾, as well as persons benefiting from international or temporary protection. Asylum seekers who had applied for refugee status and persons whose right to temporary protection was being examined in a Member State were also eligible.

8. According to DG JLS, the number of asylum applicants, refugees and persons under protection amounted to approximately 303 000 in 1996, which increased to 475 000 in 1999 and decreased to 374 000 in 2003.

9. Community aid was granted by the European Refugee Fund by means of co-financed actions. The co-financing was established at a maximum of 50 % of the total cost of the measure. This share was increased to a maximum of 75 % for countries covered by the Cohesion Fund. Commission payments to Member States were made in the form of pre-financing, interim and final payments.

Synthesis of main changes between ERF I and ERF II

10. A second phase of the programme (ERF II) has since been launched, covering the period 2005 to 2010 ⁽⁴⁾.

11. The following comparison highlights only the main differences between ERF I and ERF II. It is neither an analysis nor an evaluation of those changes. A detailed comparison between ERF I and ERF II is given in *Annex I*.

⁽¹⁾ Recital 2 of Decision 2000/596/EC.

⁽²⁾ As defined in Article 53 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002).

⁽³⁾ Convention relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, Treaty Series, Vol. 189, p. 137. Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly Resolution 429 (V) of 14 December 1950 entry into force 22 April 1954, in accordance with Article 43.

⁽⁴⁾ Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010 (OJ L 381, 28.12.2004). Denmark is not participating in the ERF.

Objectives and tasks:

- the objectives remain the same,
- the duration of ERF II will be six years (five years for ERF I),
- the definition of target groups has not changed substantially,
- ERF II introduces multiannual programming periods of three years,
- ERF II describes the actions (reception, integration, voluntary return) in greater detail and also allows for a combination of all three,
- for ERF II the Community actions put the emphasis on transnational actions or actions of interest to the Community as a whole.

Implementation and management provision:

- the management of the ERF remains shared. The responsibilities of the Commission and the Member States are described in greater detail for ERF II,
- the selection criteria have not changed,
- deadlines for the submission of relevant documentation have been extended,
- the distribution of funds continues to be based mainly on statistical data on refugees and asylum seekers.

Financial management and supervision:

- the ERF II co-financing is still 50 % (75 % for Member States covered by the Cohesion Fund). But the 50 % contribution may be increased to 60 % for particularly innovative actions,
- the deadlines and requirements for payments are more precisely indicated for ERF II,
- the first pre-financing is still 50 % of the ERF co-financing, while the second pre-financing may amount to a maximum of 50 % (instead of 30 % for ERF I),
- for ERF II, at least 10 % of the total eligible expenditure must be checked, for ERF I it was 20 %.

Monitoring, evaluation and reports:

- for ERF II the Commission is to carry out regular monitoring in cooperation with the Member States,
- for ERF II, obligations regarding evaluation have been enhanced: the Fund is to be evaluated regularly by the Commission in partnership with the Member States to assess the relevance, effectiveness and impact of actions.

12. A review of the ERF II rules showed that the recommendations presented in this report have not been acted upon in ERF II.

13. The Commission has also proposed a framework programme for the period 2007 to 2013 which would include the ERF.

Audit scope, objectives and approach

14. The Court carried out an audit of the management of the first phase of the European Refugee Fund (2000 to 2004). The objectives of the audit were to conclude on the following questions:

- was the distribution of funds to Member States sound?
- was the management by the Commission and the Member States sound?
- what was the impact of the ERF on national efforts in the area of asylum?

15. In the context of this audit and the annual Statements of Assurance for 2003 and 2004 ⁽¹⁾, the relevant Commission services (DG JLS and Eurostat) in Brussels and Luxembourg were audited. In addition, responsible national authorities and final beneficiaries were visited in the following Member States: Austria, France, Germany, Greece, Italy, Spain, Sweden and the United Kingdom.

16. According to the ERF rules ⁽²⁾, the Commission had to submit a final report to the European Parliament and the Council by 1 September 2005. The Court could not take into consideration the results of the final report, as it was finalised after the completion of the Court's audit.

WAS THE DISTRIBUTION OF FUNDS TO MEMBER STATES SOUND?***Basis for the distribution of amounts***

17. ERF funds were distributed annually and were composed of a small fixed amount and a larger variable amount. The fixed amount has decreased from 500 000 euro per Member State for 2000 to 100 000 euro for 2004.

⁽¹⁾ Chapter 6, pp. 200 to 202, of the Annual Report concerning the financial year 2003 (OJ C 293, 30.11.2004); Chapter 6, pp. 165 to 166, 176 of the Annual Report concerning the financial year 2004 (OJ C 301, 30.11.2005).

⁽²⁾ Article 20 of Decision 2000/596/EC.

18. The variable part of the annual allocation was distributed to the Member States in proportion to the number of third country nationals or stateless persons they had received ⁽¹⁾ during the three years preceding the programme year. 65 % of this allocation was based on the number of asylum seekers, while 35 % of the allocation was based on the number of refugees ⁽²⁾. The distribution of funds for the years 2000 to 2004 is presented in *Annex II*. The description of the allocation procedure is shown in *Annex III*.

19. The basis for the variable part of the annual allocation had to be the most recent figures established by the Statistical Office of the European Communities (Eurostat) ⁽³⁾, which were provided by the Member States

Statistical data used as allocation basis were incomplete and not reliable

20. The Council Decision provided for a transitional period, in which data supplied by Member States could be used if Eurostat statistics were incomplete. This transitional period should have been limited to ERF 2000 and 2001, but it was extended to ERF 2002 and 2003.

21. It took the Commission until 2005, after several years of preparatory actions, to make a proposal on harmonising Community statistics on migration and international protection ⁽⁴⁾. In its proposal the Commission pointed out that 'there are particular concerns about the large amounts of data that are missing from the data collections. There are also serious problems relating to a lack of harmonisation — both in terms of the data sources used and the definitions applied to the statistics' ⁽⁵⁾.

22. Another point is that the reliability of the data is questionable as long as they have been verified at Member State level neither by the Commission nor the Member State.

Differences in interpretation among Member States distort the basis

23. The definition of target groups has been interpreted differently by Member States and changed inside some Member States over the years. In some cases, the data were changed due to the evolution of the Member States' legislation in the direction of greater harmonisation.

⁽¹⁾ Article 3 of Decision 2000/596/EC.

⁽²⁾ Article 10(2) of Decision 2000/596/EC.

⁽³⁾ Article 10(3) of Decision 2000/596/EC.

⁽⁴⁾ Proposal for a regulation of the European Parliament and of the Council on Community statistics on migration and international protection COM(2005) 375 final Brussels, 14 September 2005, 2005/0156 (COD).

⁽⁵⁾ Proposal for a regulation of the European Parliament and of the Council on Community statistics on migration and international protection COM(2005) 375 final Brussels, 14 September 2005, 2005/0156 (COD), p. 4.

- For most countries, the number of asylum applications indicated the number of individuals; in some countries, in contrast, e.g. the United Kingdom and France, it indicated the number of cases (one 'case' may include family members in addition to the principal applicant) ⁽⁶⁾.
- Some Member States (Sweden, Ireland, Finland and Austria) did not make a distinction between first applications and repeated applications.
- For Germany, the 1999 figure for asylum applications indicated the number of cases, but the August 2002 figures indicated the number of individuals ⁽⁷⁾.
- In France major discrepancies were noted between the figures provided in 2002 and 2003. The 2003 ERF figures for asylum applications included persons benefiting from 'territorial asylum', a new category not included in 2002.

Revisions of previously validated data were not taken fully into account for future distributions or were not adequately documented

24. Over the entire ERF I period, some of the figures that had been validated one year were modified in subsequent years.

As an example, a data revision occurred between 2002 and 2003 in France, for which the number of persons declared was increased by 17 606 (the total number of persons declared for France for ERF 2003; cumulative total for the years 1999 to 2001: 238 947).

The revision of official statistics is a common practice and is not criticised as such. Nonetheless, when the Commission revises the statistics *ex post*, it should take account of the revised information not only for current distributions but also for previous years' distributions.

In the case of Italy, the Commission reduced the allocation significantly for 2004 (0,7 million euro) compared with the year 2003 (2,4 million euro), mainly because it was not able to validate the previous years' statistics on the number of persons declared by Italy for the reference period 2001.

In a number of cases, where the allocation of funds was based on modified statistics, there was no documentation available on the reasons why changes had been made either at DG JLS or at Eurostat.

⁽⁶⁾ CIREA (Centre for Information, Discussion and Exchange on Asylum) annual report for 1999 and 2000.

⁽⁷⁾ CIREA annual report for 1999 and 2000 and Monthly statistics on asylum report — August 2002.

25. The difficulties encountered could have been avoided if the ERF had been based on reliable and harmonised data from the beginning. For ERF II the definition of target groups has not changed significantly ⁽¹⁾ and the allocation of funds continues to be based on statistics produced by Eurostat ⁽²⁾ and those statistics have not yet been harmonised.

WAS THE MANAGEMENT BY THE COMMISSION AND THE MEMBER STATES SOUND?

ERF implementing rules were published late

26. As the ERF was a new programme, the Member States ought to have been given clear management guidelines from the start of the programme. The Commission published the rules governing eligibility of expenditure ⁽³⁾ in April 2001, six months after the launch of the ERF. However, the Commission published the detailed rules for management and control systems more than 18 months after ERF had been established.

Low efficiency of the allocation procedure

27. The allocation procedure was cumbersome in design and subject to delays and inefficiencies in practice. The allocation procedure for ERF I set out in EU legislation was as follows:

- by 1 June the Commission was required to inform Member States of their estimated allocations for the following year,
- Member States had until 1 October to submit a request for co-financing,
- the Commission was required to approve requests for co-financing within three months (i.e. at the latest by the end of December), a Commission decision on co-financing had to be approved,
- the Commission was required to make an initial payment (i.e. 50 % of the sum due) as soon as it had adopted a decision on co-financing (with subsequent interim and final payments).

28. In the context of the distribution of resources to each Member State, it is unclear what role the request for co-financing was intended to play. As explained in paragraph 18 above, allocations were based exclusively on asylum and refugee figures.

⁽¹⁾ Article 3 of Decision 2004/904/EC.

⁽²⁾ Article 17(3) of Decision 2004/904/EC.

⁽³⁾ Article 14(2) of Decision 2000/596/EC.

29. In practice the timetable for allocation and payment was subject to significant delays. In each year there were two, not one, Commission decisions on co-financing: a first decision based on the draft budget for the coming year, and a revised decision based on the budget that was finally adopted. These decisions were typically taken several weeks after the relevant steps in the budgetary procedure. For ERF 2003 the example below illustrates the timetable for all Member States in practice.

- In April 2002 the 2003 preliminary draft budget had been adopted by the Commission
- The 2003 draft budget was established by the Council on 22 July 2002.
- On 19 September 2002 the Commission adopted the decision on the preliminary allocation of funds to the Member States.
- Following the preliminary allocation of funds, the Member States had to submit their requests for co-financing.
- The 2003 final budget was adopted on 19 December 2002.
- On 20 December 2002 the Commission approved the decision on co-financing, which was based on the preliminary allocations communicated to the Member States in September 2002.
- On 12 February 2003 the Commission adopted the decision on the final allocation of funds to the Member States.
- In February and March 2003 submission and analysis of revised requests for co-financing.
- On 20 March 2003 the Commission took a revised decision on co-financing, which was based on the final budget adopted, increasing the Member States' allocations by 3 million euro.

30. The Commission only made payments to Member States after approval of the second, revised, Commission decisions on co-financing.

31. These delays in Commission payments triggered delays in payments by Member States to final beneficiaries, as most Member States could only pay once they had received their share of the Fund. As a result Member States encountered difficulties in respecting the time limits on ERF-funded projects.

32. In general, projects started before the first payments from the Member States had been received. In those cases final beneficiaries had to pre-finance their expenditure: expenditure undertaken before the approval of the Member State's request for co-financing was ineligible for funding under ERF I. This constraint favoured financially stronger organisations and discouraged smaller organisations from making further applications.

33. Under ERF II there have been some modifications in these arrangements:

- the deadlines in paragraph 27 above have all been extended, with a view to resolving the problem in ERF I,
- sums disbursed after 1 January of the year in question may be eligible for support by the Fund regardless of when the request for co-financing is approved (cf paragraph 32 above),
- besides a 50 % initial payment, there may be an interim payment of up to 50 %, compared with 30 % in ERF I.

Different interpretation of ERF rules by Member States

34. The audit revealed differences as regards the interpretation of the repatriation measure, which is indicatively described as providing 'information and advice about voluntary return programmes and the situation in the country of origin'. It may also include 'general or vocational training and help with resettlement' ⁽¹⁾. The Council recognised that 'practical support is needed to create or improve conditions enabling refugees and displaced persons to take an informed decision to leave the territory of the Member State and return home, should they so wish' ⁽²⁾. In some Member States the repatriation measure was to a large extent used to pay asylum seekers' return air fares.

35. Major interpretation differences existed in the Member States over who could apply for repatriation assistance.

Germany and Sweden applied the stricter interpretation of eligible groups, and only funded recognised refugees who were permitted to reside in one of the Member States but who had decided to return to their home countries. In contrast, the United Kingdom and Italy mainly used the repatriation measure to fund failed and rejected asylum seekers, excluding those who had been granted indefinite leave to remain or refugee status.

⁽¹⁾ Article 4(4) of Decision 2000/596/EC.

⁽²⁾ Preamble 7 of Decision 2000/596/EC.

The funding of failed asylum seekers was co-financed by the Fund, even when the decision to return home was not a voluntary one ⁽³⁾. This voluntary element ⁽¹⁾ is highlighted in the ERF rules and has been reinforced in ERF II ⁽⁴⁾.

36. Likewise, the definition of eligible persons whose return to their country of origin might be funded is inadequate, as illustrated below.

In the United Kingdom, failed asylum seekers from Central European countries such as the Czech Republic and Poland, who had sought asylum before EU accession, accounted for the highest numbers of persons whose return flights were funded by the ERF in 2003 (i.e. 332 Czech nationals and 125 Polish nationals).

Individual Member States may apply policies on the individual merits of asylum claims, that is, not based on the country of origin.

Positive examples of ERF management

37. Despite problems in the set-up and management of the ERF, there were numerous examples of good management systems.

Germany and Sweden introduced a well thought-out management system, including procedures, forms and reports, which allowed the national authority to handle a large number of projects. In addition, close monitoring of the projects ensured timely support to final beneficiaries.

Monitoring and remedial action by the Commission had insufficient results

38. The Member States are responsible for the selection, financial management and administration of projects. The Council Decision is intended to provide Member States with the necessary freedom to implement the programme according to their needs. In the first instance, Member States are required to take responsibility for the financial control of an action. In particular, they must ensure that the funds are used in accordance with the principle of sound financial management. In spite of that, the Commission itself is charged with ensuring that Member States have smoothly functioning management and control systems so as to make certain that Community funds are efficiently and correctly used.

⁽³⁾ The European Council on Refugees and Exiles distinguishes between voluntary, mandatory and forced return: 'it is important to distinguish between voluntary repatriation of persons who freely choose to exercise their right to return to their country of origin or habitual residence and those who do not have a legal basis for remaining and consent to return'. European Council on Refugees and Exiles, Statement on Justice and Home Affairs Council 12–13 October 2005, p. 4.

⁽⁴⁾ Article 4(1) of Decision 2004/904/EC.

39. Overall, the Commission carried out monitoring visits for ERF I but could not always ensure sound management practices in all Member States. According to ERF II ⁽¹⁾, the Commission is to carry out regular monitoring in co-operation with the Member States, including evaluating the impact of actions and their complementarity with other Community instruments.

In the United Kingdom the Court detected serious shortcomings (e.g. an inadequate audit trail on project selection, insufficient monitoring of projects). Prior to the Court's audit in early 2005, the Commission had carried out one monitoring visit in 2002 and one *ex post* audit in 2003. Nonetheless, several shortcomings observed have not yet been resolved.

As already discovered by the Commission during a monitoring visit to Austria, certain core tasks of the management of the ERF actions had been delegated by the national authority to a private company. This is not in conformity with the Financial Regulation as regards delegation of tasks to third parties. The corrective action recommended by the Commission was implemented late.

Italy launched one public call for proposals in four years. Furthermore it was restricted to municipalities, thus excluding other potential applicants from taking part in the ERF.

WHAT WAS THE IMPACT OF THE ERF ON NATIONAL EFFORTS IN THE AREA OF ASYLUM?

40. The Court's aim was to analyse whether the creation of the ERF had resulted in a change in national spending in the area of asylum. However, information was limited, both in the Member States and at the Commission. This was partly due to the fact that most Member States did not have specific budget lines for expenditure on refugees or asylum seekers in their national budgets. It was thus not possible to draw a final conclusion on this point.

41. The mid-term evaluation ⁽²⁾ did not examine the additionality of the Fund, but focused instead on how far Member States had co-financed the individual ERF projects. The final report has not been examined as it had not been adopted at the time the audit was carried out.

42. Some indicators of the impact of actions with regard to persons concerned by the three measures were available, but they were not monitored systematically. Similarly, the Commission used Eurostat data on refugees for analysis purposes, but did not systematically compare them with data received from the Member States.

⁽¹⁾ Article 27 of Decision 2004/904/EC.

⁽²⁾ Justice and Home Affairs DG, Mid-term Evaluation of the European Refugee Fund, Final Report, December 2003.

43. In the light of the projects it visited, the Court can state that the ERF produced some positive changes in national efforts, mainly with regard to testing innovatory projects and integrating their results into national strategies.

One successful United Kingdom project concerned a one-to-one refugee mentoring scheme, whereby volunteer mentors, who are nationals of the host country assist refugees to adapt and integrate into the society of the country granting them asylum. A personal integration scheme was designed which included language training, getting to know the city of residence and persons outside the refugee community, learning how to handle administrative issues and assistance with finding employment. The project is now being financed with national funds

44. In other cases the ERF had a positive effect on national asylum policy, as it triggered the creation *ex novo* of national programmes.

The Italian National Asylum Programme was made possible thanks to ERF co-funding, and aims to receive and assist asylum seekers and refugees throughout the national territory. It was initiated by the Ministry of the Interior, UNHCR and the National Association of Italian Municipalities (ANCI).

CONCLUSION

45. The European Refugee Fund allocated its resources according to statistical data. The Court found that these data were not complete, consistent, comparable and reliable. It took the Commission until 2005, after several years of preparatory actions, to propose a regulation on the harmonisation of statistics (see paragraphs 20 to 22).

46. Certain implementing rules were published late by the Commission, leaving the Member States without clear instructions in the start-up phase of the ERF. The cumbersome administrative process for the allocation of funds led to payment delays in the Member States (see paragraphs 26 to 33).

47. The Council Decision lacked clarity in defining the ERF key terms (e.g. eligible target groups or fundable measures, see paragraphs 34 to 36). The Commission did not always guide Member States to help them avoid ambiguities in the interpretation of the rules. Although no systematic misuse of the rules was observed, they were not applied in an equal way by the Member States.

48. The Commission could not always ensure sound management practices in the Member States (see paragraph 39).

49. There were limited data available on the impact of the ERF on national efforts in the area of asylum (see paragraphs 40 to 42).

50. The result of the final report could not be taken into consideration as it had not been adopted at the time the audit was carried out (see paragraphs 16 and 41).

RECOMMENDATIONS

51. The Commission should continue its efforts to harmonise the statistical data. Whilst harmonising the statistical data, the Commission should lay down measures to allow the verification of data.

52. The Commission has revised the statistical data. When the Commission revises the statistics *ex post*, it should take account of the revised information when distributing funds.

53. If the Commission cannot guarantee that the statistics are reliable and that the allocation of funds is in proportion to the number of refugees and asylum seekers received, other ways of allocating the funds, such as fixed amounts, should be considered.

54. The Court's audit has shown that some of the provisions of ERF I, in particular the eligibility rules, were open to significant differences of interpretation. The Court recommends that the Commission, the Parliament and the Council should consider, in the light of the Court's findings and the changes already made in ERF II, whether they wish the ERF to be more clearly and precisely targeted for the future.

This Report was adopted by the Court of Auditors in Luxembourg at its meeting of 21 March 2007.

For the Court of Auditors
Hubert WEBER
President

ANNEX I

**Comparison of Community regulations for the 2000 to 2004 European Refugee Fund period (ERF I)
and the 2005 to 2010 period (ERF II)**

INTRODUCTION

This comparison is based on the following documents:

- Council Decision 2000/596/EC of 28 September 2000,
- Commission Decision 2001/275/EC of 20 March 2001,
- Commission Decision 2002/307/EC of 18 December 2001,
- Council Decision 2004/904/EC of 2 December 2004,
- Explanatory Memorandum and proposal for a Council Decision SEC 2004/161 establishing the European Refugee Fund for the period 2005 to 2010,
- Extended Impact Assessment. Commission Staff Working paper, SEC (2004) 161, 12.2.2004.

The following comparison highlights only the main differences between ERF I and ERF II. It is neither an analysis nor an evaluation of those changes.

I. OBJECTIVES AND TASKS

	The 2000 to 2004 programme	The 2005 to 2010 programme
Objective	The European Refugee Fund is a financial instrument, the prime objective of which is to support and encourage the efforts made by the Member States in receiving and bearing the consequences of receiving refugees and displaced persons.	
Time period	5 years, from 1 January 2000 to 31 December 2004.	6 years, from 1 January 2005 to 31 December 2010.
Target groups	Five target groups: <ol style="list-style-type: none"> 1. Geneva convention 2. <u>international protection granted by a MS</u> 3. persons who have applied for protection cf. points 1 or 2 4. <u>temporary protection in a MS</u> 5. <u>persons whose right to temporary protection is being examined in a MS.</u> (Article 3, 2000/596/EC)	Four target groups: <ol style="list-style-type: none"> 1. Geneva convention 2. <u>subsidiary protection within the meaning of Council Directive 2004/83/EC</u> 3. persons who have applied for protection cf. points 1 or 2 4. <u>temporary protection within the meaning of Directive 2001/55/EC</u> (temporary protection/mass influx). (Article 3, 2004/904/EC)
Programming	No multiannual programmes, annual appropriations.	Multiannual programming for two three-year periods. For each programme phase, the Member States have to present multiannual programmes to the Commission. (Article 15, 2004/904/EC)

Actions	<p>There are three different types of measures by the Member States: condition of reception, integration, and repatriation.</p> <p><u>Reception</u></p> <ul style="list-style-type: none"> — infrastructure or services for accommodation, — supply of material aid, — health care, — social assistance, — help with administrative and judicial formalities, incl. legal assistance. <p><u>Integration</u></p> <ul style="list-style-type: none"> — social assistance in the area of housing, means of subsistence and health care, — actions to enable beneficiaries to adjust to the society or to provide for themselves. <p><u>Repatriation</u></p> <ul style="list-style-type: none"> — information and advice about voluntary return programmes and the situation in the country of origin, — general or vocational training and help in resettlement. <p>(Article 4, 2000/596/EC)</p>	<p>A combination of the actions (reception, integration, voluntary return) is allowed.</p> <hr/> <p>Possible actions to be funded are in parts more specific.</p> <hr/> <p>There are eligible actions relating to reception conditions and asylum procedures (accommodation, medical and psychological care, social assistance, education, language training).</p> <hr/> <p>There are more eligible actions relating to integration (actions to promote participation in civil and cultural life; education, vocational training, recognition of qualifications and diplomas; actions to promote the integration of these persons involving local authorities, the general public or refugee associations, voluntary groups, social partners).</p> <hr/> <p>Eligible actions relating to voluntary return include: information and advisory services, information on the country or region of origin, general or vocational training, actions which facilitate the organisation and implementation of national voluntary return programmes.</p>
		<p>Special emphasis is put on the specific situation of vulnerable persons.</p> <p>(Article 4 to 7, 2004/904/EC)</p>
Community actions	<p>The eligible actions concern the following areas: studies, exchanges of experience and steps to promote cooperation, assessment of the implementation of measures and technical assistance.</p> <p>(Article 5, 2000/596/EC)</p>	<p>Community actions put emphasis on transnational actions or actions of interest to the Community as a whole.</p> <p>(Article 8, 2004/904/EC)</p>

II. IMPLEMENTATION AND MANAGEMENT PROVISION

	The 2000 to 2004 programme	The 2005 to 2010 programme
Implementation	<p>The Member States shall be responsible for the implementation of actions supported by the Fund. A responsible authority (public administration) shall be appointed to communicate with the Commission.</p>	<p>The Member State appoints a responsible authority. This must be a functional body of the Member State or a national public body. Some or all of the implementation tasks may be delegated to a public administration or private-law body governed by the law of the Member State and having a public-service mission.</p>
		<p>Respective responsibilities of the Commission, the Member State and the responsible authority are described in greater detail.</p>
	<p>No minimum conditions for the responsible authority.</p> <p>(Article 7, 2000/596/EC)</p>	<p>Minimum conditions for the responsible authority established.</p> <p>(Articles 12 to 13, 2004/904/EC)</p>
Request for co-financing	<p>The Member State submits a request for co-financing each year.</p> <p>(Article 8, 2000/596/EC)</p>	<p>According to the multiannual programming, the Member State shall propose a draft multiannual programme based on guidelines provided by the Commission.</p> <p>(Article 15, 2004/904/EC)</p>

III. FINANCIAL MANAGEMENT

	The 2000 to 2004 programme	The 2005 to 2010 programme
Financial provision	216 million euro. (Article 2, 2000/596/EC)	114 million euro for the period 2005 to 2006. The annual appropriations will be authorised by the budgetary authority within the limits of the financial perspective. (Article 2, 2004/904/EC)
Financing structure	The contribution from the Fund shall not exceed 50 % of the total cost of the measure. The proportion may be increased to 75 % in Member States covered by the Cohesion Fund. (Article 13, 2000/596/EC)	The contribution from the Fund shall not exceed 50 % of the total cost a specific action. But this may be increased to 60 % for particularly innovative actions and to 75 % in Member States covered by the Cohesion Fund. The contribution shall not exceed 80 % of the total cost of specific Community actions. (Article 20, 2004/904/EC)
Technical and administrative assistance	A sum not exceeding 5 % of a Member State's total allocation may be set aside for technical and administrative assistance. (Article 12, 2000/596/EC)	In addition to 7 % of the annual amount set aside for technical and administrative assistance, a further 30 000 euro is added . (Article 18, 2004/904/EC)
Annual breakdown	In the ERF I the fixed amount was degressive: 500 000 euro for the year 2000 and 100 000 euro for year 2004. (Article 10, 2000/596/EC)	Fixed amount of 300 000 euro, abolishing the degressive element of ERF I. Special aid of 500 000 euro for the new Member States for the first three years of phase II. (Article 17, 2004/904/EC)
Payments	Initial and interim payments and balance.	First pre-financing payment, second pre-financing payment and balance.
	As soon as the Commission decision is adopted , an initial payment of 50 % of the amount shall be made.	A pre-financing payment of 50 % of the amount shall be made within sixty days following the adoption of the co-financing decision .
	An interim payment of up to 30 % shall be made once the Member State states that it has actually spent half of the initial payment .	A second pre-financing payment shall be made no more than three months after the Commission has approved a report on the implementation of the annual work programme and a declaration of expenditure accounting for at least 70 % of the amount of the initial payment. The amount shall not exceed 50 % of the total amount or the balance of the amount for selected projects minus the first pre-financing payment.
	Balance shall be paid within three months of approval of the accounts submitted by the Member States and the annual report on implementation of the programme. (Article 17, 2000/596/EC)	Balance shall be paid no more than three months after the Commission has approved the annual programme's final implementation report and the final declaration of expenditure. (Article 23, 2004/904/EC)
Resources for Community actions	At the Commission's initiative, up to 5 % of the Fund's available resources may be used to finance innovatory actions or actions of interest to the Community as a whole. Besides, the Fund may provide up to 100 % of the funding. (Article 5, 2000/596/EC)	Up to 7 % of the Fund's available resources may be used to finance Community actions, emphasis is put on transnational actions or actions of interest to the Community as a whole concerning asylum policy and measures applicable to refugees and displaced persons. The ERF may provide up to 80 % of the funding. (Article 8, 2004/904/EC)

IV. MONITORING, EVALUATION AND REPORTS

	The 2000 to 2004 programme	The 2005 to 2010 programme
Checks	The checks shall cover at least 20 % of total eligible expenditure. (Article 5, 2002/307/EC)	The checks shall cover at least 10 % of the total eligible expenditure for each annual implementing programme. (Article 25, 2004/904/EC)
Monitoring and evaluation	The responsible authority shall take measures to monitor and evaluate actions. (Article 20, 2000/596/EC)	The Commission shall carry out monitoring and evaluation of the Fund in cooperation with the Member States . (Article 27, 2004/904/EC)
Follow-up arrangements	Detailed rules for eligibility of expenditures and reports on implementation. (2001/275/EC)	
Reports by the Member States	The responsible authority 1) shall submit each year a summary report on the implementation of the action in progress; 2) will send the Commission within six months of the deadline fixed in the co-financing decision for the execution of expenditure a final report consisting of: — Financial accounts and a report on the implementation of the action. — An assessment report of the execution and of the effect of the actions implemented. No separate evaluation of impact of programme. (Article 20, 2000/596/EC)	The responsible authority 1) shall include clauses in the agreements and contracts which oblige to submit progress reports on the implementation and a detailed final implementation report. 2) shall submit no more than nine months after the eligibility deadline for expenditure laid down in the co-financing decision for each annual programme a final implementation report and a final declaration of expenditure. The Member States shall submit: 1) An evaluation report on the implementation of actions co-financed no later than 31 December 2006. 2) An evaluation report on the results and impact of actions co-financed no later than 30 June 2009. 3) An evaluation report on the results and impact of actions co-financed no later than 30 June 2012. (Article 28, 2004/904/EC)
The recipients of reports submitted by the Commission and type of reports	The Commission shall submit to the European Parliament and the Council a: 1) Mid-term report (2002). 2) Final report (2005). (Article 20, 2000/596/EC)	The Commission shall submit to the Parliament, the Council, the Economic and Social Committee and the Committee of the regions a: 1) Intermediate report on the results achieved and on qualitative and quantitative aspects of implementation of the Fund, together with any proposed amendments no later than 30 April 2007. 2) Intermediate evaluation report and a proposal on the Fund's future development no later than 31 December 2009. 3) Ex post evaluation report no later than 31 December 2012. (Article 28, 2004/904/EC)

ANNEX II

DISTRIBUTION OF FUNDS PER MEMBER STATE (2000 to 2004)

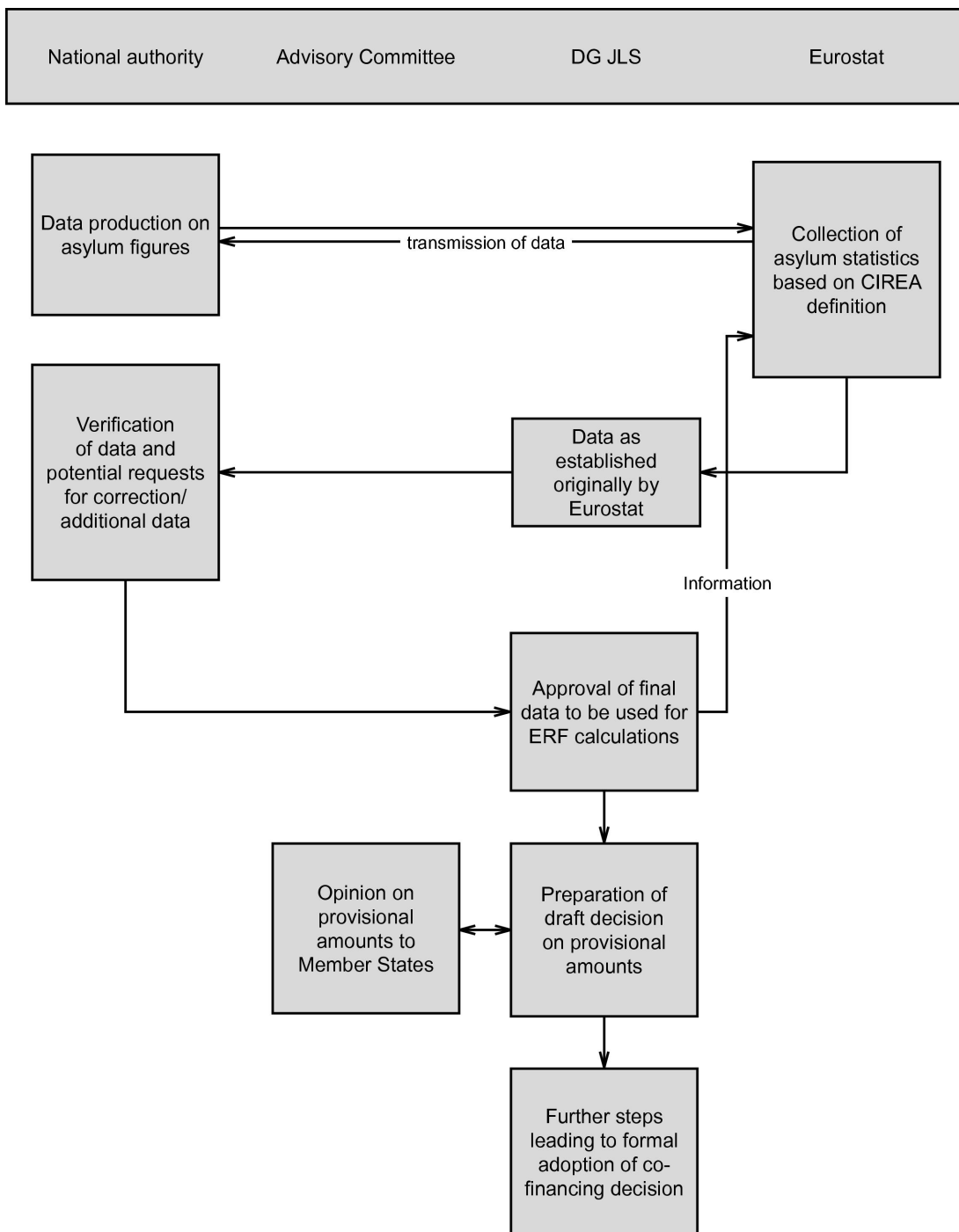
(euro)

	ERF 2004	ERF 2003	ERF 2002	ERF 2001	ERF 2000	Total ERF 2000 to 2004
Austria	2 230 280	2 007 650	1 938 106	1 454 754	912 382	8 543 173
Belgium	2 131 527	2 381 192	2 729 083	1 869 725	1 233 201	10 344 727
Finland	392 633	524 730	671 256	673 606	651 387	2 913 612
France	4 041 961	5 067 825	4 133 681	3 156 228	2 255 055	18 654 750
Germany	8 113 022	9 935 792	10 324 675	8 391 364	6 218 899	42 983 751
Greece	459 296	439 481	535 611	629 043	652 057	2 715 489
Ireland	919 091	981 675	965 573	709 110	632 205	4 207 654
Italy	741 665	2 396 268	3 460 943	2 741 881	1 956 105	11 296 861
Luxembourg	171 648	299 703	411 195	481 073	528 972	1 892 591
Netherlands	2 972 103	3 239 737	4 175 006	3 642 650	2 984 949	17 014 444
Portugal	123 370	304 394	457 006	518 816	534 238	1 937 823
Spain	665 287	786 229	933 064	837 462	745 291	3 967 333
Sweden	2 691 652	2 869 672	3 326 823	2 555 672	1 808 621	13 252 440
UK	10 877 221	8 923 101	8 764 928	4 819 118	2 902 640	36 287 008
Acceding countries	3 626 695					3 626 695
Community action	2 113 550	2 113 550	2 254 050	1 709 500	1 264 000	9 454 650
Total	42 271 000	42 271 000	45 081 000	34 190 000	25 280 000	189 093 000

Source: Commission Decisions for the periods 2000 to 2004.

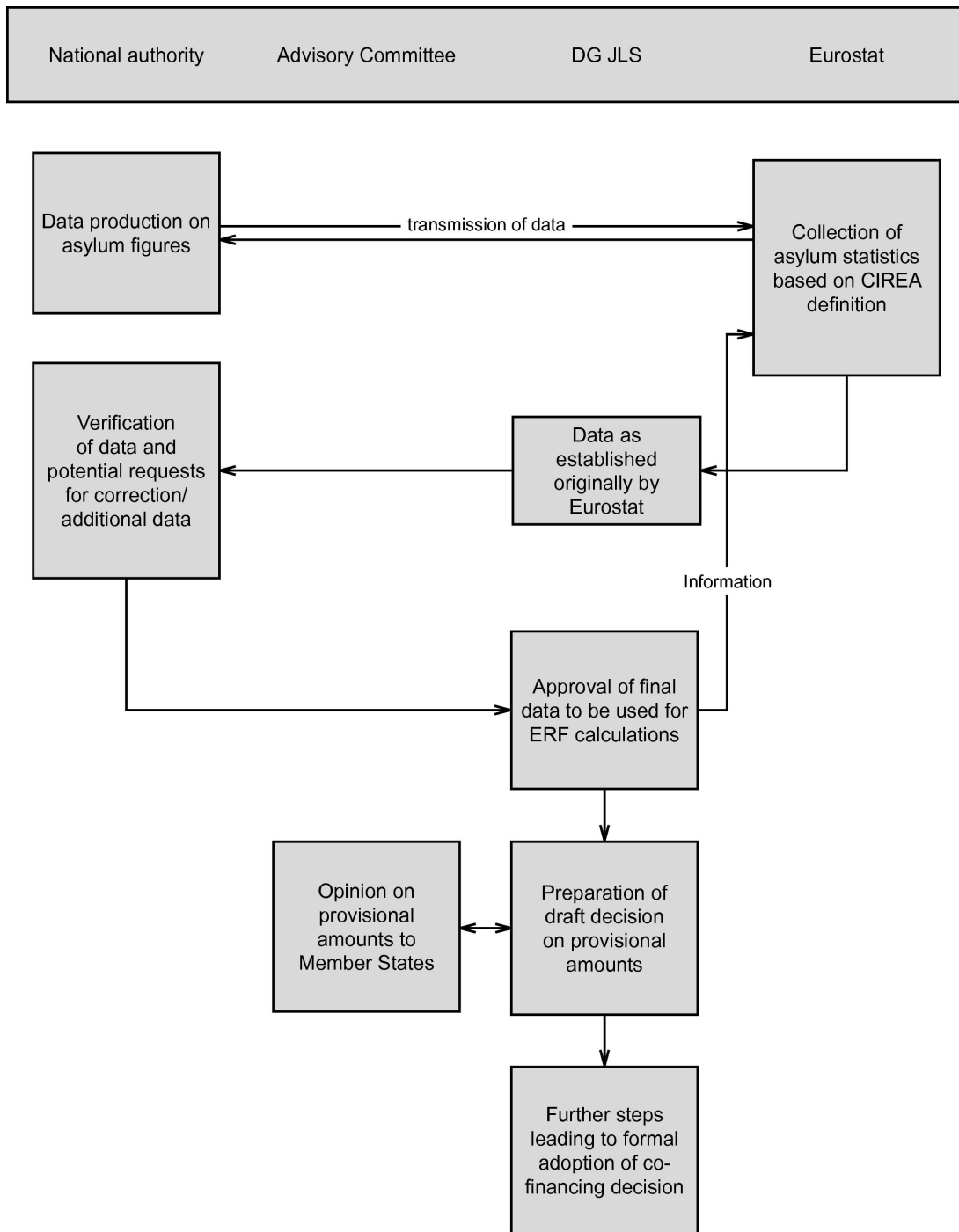
ANNEX III

ERF allocation procedure of provisional amounts to Member States 2000 to 2001



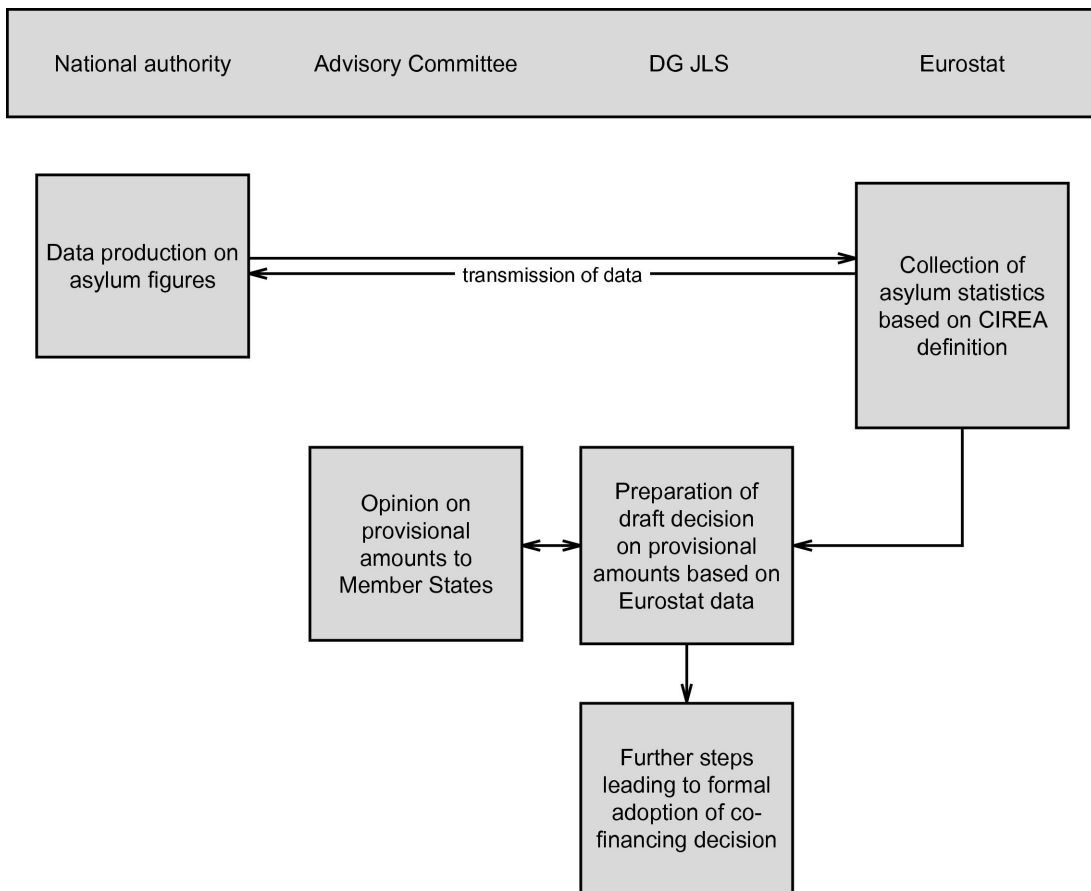
Source: European Commission.

ERF allocation procedure of provisional amounts to Member States 2002 to 2003



Source: European Commission.

ERF allocation procedure of provisional amounts to Member States 2004



Source: European Commission.

THE COMMISSION'S REPLIES

SUMMARY

I. The European Refugee Fund (ERF) was set up in September 2000 following the entry into force of the Treaty of Amsterdam on 1 May 1999. It is the very first Community legal instrument adopted in the field of asylum and immigration under this new Treaty (Article 63 TEC).

The European Refugee Fund is an innovatory financial instrument which is designed to support and encourage the efforts made by Member States in receiving and bearing the consequences of receiving refugees and displaced persons in a European context where action has to be taken in what are emergency situations.

II. The Commission has overall responsibility for the implementation of the Community budget (under the Treaty) but the ERF's legal basis provides that 'Member States shall be responsible for implementing national actions supported by the Fund'.

IV. The purpose of gathering statistical data for the purposes of calculating the budget allocations for each Member State is to ensure funds are distributed according to genuine needs. The Fund's legal basis provides that data concerning refugees and displaced persons for the last three years should be used but these data are constantly changing. This puts the Commission in a dilemma which it is addressing but which will never be totally overcome. For the period 2000 to 2004, the Commission nevertheless considers it has used an equitable approach for the distribution of funds between Member States and this has been confirmed by an independent external evaluation.

V. The procedure for adopting co-financing decisions for the Member States, which was adapted during negotiation of the ERF I legal basis, is hampered by the slight incompatibility between the EU's budgetary procedure timetable and that for ERF I's programming phase. In order to comply with the legal basis and, above all, to enable Member States to plan the projects they intend to implement, the Commission decided to adopt provisional decisions at the end of the preceding year on the basis of the preliminary draft budget and then to adopt amended decisions following the approval of the final budget.

VI. According to the ERF's legal basis the Commission must ensure Member States have smoothly functioning control systems. The corrective measures available to the Commission under the shared management approach (suspension of payments or financial corrections) often take time to implement as Member States have the right to respond and only have an impact in the medium term. The amendments to the Financial Regulation which came into force at the start of 2007 clarify the responsibilities of those involved in shared management.

VII. In the Commission's view, differences in the implementation of measures reflect the Fund's philosophy, which is based on joint guidelines and the tailoring of measures to national objectives and needs. The ERF's limited resources make it impossible to meet all objectives in the same way in each Member State and the Commission considers that any interpretation is acceptable as long as it complies with the general guidelines.

The framework programme on solidarity and management of migration flows has given the European Union four financial instruments with more detailed objectives and scope which will overcome most of the concerns expressed by the Court.

VIII. As regards evaluation of the impact of ERF 2000 to 2004, since the Court's audit the Commission has published an evaluation based on a study by independent experts which gives a very positive verdict on the Fund's achievements despite its small budget over this five-year period.

INTRODUCTION

2. The European Refugee Fund (ERF) is the very first Community legal instrument to be adopted in the field of asylum and immigration.

6. A shared management approach was chosen to implement the Fund to highlight the fact that the aid provided under this instrument is more effective and better targeted if co-financed projects take account of the situation and needs in each Member State. According to the Council decision, the Commission is assisted by a Committee, consisting of representatives of the Member States, which is responsible in particular for adopting the rules governing eligibility of expenditure.

10 and 11. The Commission has proposed that the Council adopt some of the improvements called for by the Court in the annual reports covering previous years. On the basis of the Commission's proposals the Council has accepted amendments to the legislation for the period 2005 to 2010 which will simplify the implementing arrangements.

Target groups have been more carefully defined for ERF II as a result of the adoption of new Community directives on asylum.

13. The Commission has proposed new financial instruments for the period 2007 to 2013 under a framework programme on solidarity and management of migration flows. The rules governing these financial instruments resolve many of the problems highlighted by the Court in its report.

16. The final evaluation of ERF 2000 to 2004 follows a long series of analyses by the Member States and the Commission. The Commission had external consultants carry out a comprehensive evaluation of the ERF 2000 to 2004. The consultants presented their 1 125-page report in March 2006.

The Commission does, however, acknowledge that the final report published in December 2006 should have been sent to the other Institutions by September 2005.

WAS THE DISTRIBUTION OF FUNDS TO MEMBER STATES SOUND?

20 to 22. The Commission shared the budgetary resources based on data available, in constant dialogue with Member States. There was no common statistical definition in 2000 of the target groups and the methodology for collecting statistics on asylum claims. The Member States' annual data collection exercises were not specifically related to the Commission's requirements.

The harmonisation in this field (definition of terms, procedure of data collection) took longer than expected. The Commission has put in place tools to improve the quality and reliability of the data collection. This process has improved gradually between 2000 and 2004 and is still on going. This reflects the complexity of the asylum systems and the large differences between the Member States in terms of how asylum applications and decisions are defined and counted. The availability of the statistical data required for the allocation of the Fund was reduced due to the absence of specific statistical legislation obliging Member States to supply asylum data to Eurostat. Certainly in the first years of this data collection, much data was not yet systematically and timely supplied by Member States. The provisional approach therefore had to be continued longer than expected.

Meanwhile, the Commission brought forward a proposal in September 2005 for a Regulation of the European Parliament and of the Council on Community statistics on migration and international protection (COM (2005) 375 final). This proposal represents an important step towards harmonised Community statistics on migration and asylum and should further improve the situation.

The Commission did not have a mandate to undertake audits of the asylum systems or the statistical data produced.

23. Some of the differences in interpretation of statistical data are due to differing national legislation but the data are still reliable. The Commission recognises that the gathering of statistical data was hampered by a number of factors but considers that, in the final analysis, it has done its utmost to draw up an equitable basis for the allocation of funds and this has been confirmed by the external independent evaluation of ERF I.

24. In some cases, Eurostat stated that it was unable to comment on or check alternative data proposed for the ERF allocation by Member States. This took place only when Member States failed to supply appropriate metadata, when disaggregations by month and/or citizenship were not supplied (meaning that the internal consistency of the data could not be tested) or when there were unexplained discrepancies with data previously supplied.

The Commission considers that it already takes account of the variability of statistics in calculating budget allocations by Member State since these allocations are based on the previous three years, i.e. the impact of *ex post* revisions is spread over time. It is the Commission's view that *ex post* adjustment of allocations by Member States is not feasible.

The Commission acknowledges that in the process of establishing the statistics to be used for the allocation for the first two years of the ERF I the outcome of exchanges of information between Member States and the Commission should have been better documented. However, efforts were undertaken, as in the case of Italy, to make the adjustments in the best possible way. The communication procedures in place between Eurostat and the Member States in order to establish the asylum statistics reflect accepted practice adopted for other areas of statistics. This is a transparent process and offers adequate opportunities for Member States to check and validate/revise their national data.

25. Harmonised statistical data were not yet available at EU level when the ERF was set up and the Commission proposed a pragmatic and fair approach to the Council and Parliament.

WAS THE MANAGEMENT BY THE COMMISSION AND THE MEMBER STATES SOUND?

26. Delays at the beginning of a new programme are inevitable for the adoption of implementing rules. The Commission recognises that there was a certain delay ⁽¹⁾ caused by the necessary consultations with the Member States and translation deadlines. However the Commission worked closely with the Member States during the elaboration of the implementing rules, therefore the delays in finalisation of the texts did not contribute to the difficulties of the Member States in administering the programme.

⁽¹⁾ Decision 2000/596/CE establishing the European Refugee Fund was adopted on 28 September 2000. The Commission adopted Decision C(2001) 736 on eligibility of expenditure and reports on implementation in the context of actions co-financed by the ERF on 20 March 2001. The Commission adopted Decision C(2001) 4372 on the management and control systems as well as the process for the implementation of financial corrections on 18 December 2001.

27. The ERF was based on the principle of allocation of funds and programming at Member State level, both on an annual basis. Consequently the Commission had to reconcile prior national programming with the need to adjust allocations according to the amounts approved by the budgetary authority. Programming principles were improved for the subsequent ERF 2005 to 2013 phase but the approach was the same. Given the unavoidable time required for examination and approval of annual programmes, the Commission had no choice but to ask Member States to draw up their programmes on the basis of provisional budgetary data and to adjust them in the light of the final data.

28. Under the Fund's legal basis co-financing requests enable Member States to define their annual programming of actions between the measures eligible under the ERF with justifications in terms of national needs rather than simply take over the overall budget allocations.

29. The Commission takes the view that the example of 2003 demonstrates the incompatibility of the EU's budgetary procedure timetable and that for ERF I programming. The initial timetable proposed by the Commission was changed during negotiation of the legal basis.

Individual co-financing decisions by Member States are preceded by a decision allocating funds between Member States, by the transmission and analysis of Member States' annual programmes and consultation of the Committee of Member States' representatives. Each of these stages takes several weeks.

31 to 33. Under ERF II, the Commission is able to disburse up to 100 % of funds for the second pre-financing given to the Member States. Consequently, the Member State has the possibility to disburse up to 100 % to the final beneficiary, without prejudice to the Member State's own payment procedures. The new scheduling of payments will be beneficial to all organisations, regardless of their size.

34 and 35. The main objective of having a financial instrument based on shared management was to enable Member States to tailor general measures to national needs. The fact that objectives vary from one Member State to the next within the constraints of the Fund's legal basis is considered by the Commission to be evidence of the correct use of the ERF by Member States and a guarantee of its effectiveness. The evaluation carried out by the Commission on the basis of a report by external experts for the ERF 2000 to 2004 phase demonstrated the effectiveness and worth of this approach. The Commission considers that the repatriation measure could be used to co-finance return flights. The list of measures in the legal basis illustrating the concept of prior information and advice is indicative only.

In some Member States repatriation actions were limited initially so that pilot studies could be carried out before they were introduced as general practice.

Co-financing of voluntary repatriation of failed or rejected asylum seekers is eligible under the ERF's legal basis and the Statement by the ECRE (European Council on Refugees and Exiles) reflects a position which has nothing to do with the ERF's scope and implementing rules.

36. The Commission considers the definition of persons eligible for repatriation is generally adequate.

Co-financing of the repatriation of any national from a non-EU country, including candidate countries before the entry into force of the acts of accession, is compatible with the ERF.

Consequently there was no question of applying different treatment to non-EU nationals according to whether or not they came from candidate countries or belong to target groups for the measures co-financed by the ERF (reception, integration or return).

37. The positive examples mentioned by the Court demonstrate that the legal provisions and guidance provided by the Commission have helped the Member States which wished to do so to build sound control systems.

39. The Commission considers that monitoring covers all contacts with Member States and not simply on-the-spot visits. The meetings of the Committee of Member State representatives have, for example, provided an opportunity for specific guidance to be given on the ERF's rules.

The Commission has established a programme of on-the-spot visits to assist Member States within the constraints of its available resources even though it is not required to do so under the ERF I legal basis.

In view of the serious problems found by the Commission in the United Kingdom, the Director-General of DG JLS entered a reservation about this situation in his annual reports for 2004 and 2005. The Commission has proposed a 5 % financial correction for 2000 and 2001 reflecting the United Kingdom's responsibility for the shortcomings observed and this has been accepted by the United Kingdom. The closure procedure for 2002 to 2004 has not yet been completed.

The excessive volume of delegated tasks in Austria was identified by the Commission during a monitoring visit and immediately pointed out to the national authorities. The type of delegated task was changed under the new tendering procedure when contracts were renewed.

In the light of the Court's findings relating to Italy, the Commission has set in train two measures: an *ex post* inspection of ERF 2000 to 2004 and a monitoring visit to check control systems for ERF II. The *ex post* inspection, which is being finalised, will make a detailed examination of the way in which the ERF was implemented and check that the procedures used for calls for proposals were compatible with the provisions governing the Fund's legal basis.

At a more general level the Commission will ensure that the shortcomings noted by the Court are corrected when annual programmes are closed and, where applicable, during its monitoring visits.

WHAT WAS THE IMPACT OF THE ERF ON NATIONAL EFFORTS IN THE AREA OF ASYLUM?

41. The ERF is based first and foremost on the idea of solidarity between Member States so that the costs of reception, integration and repatriation of refugees and displaced persons are spread equally within the EU. Council Decision 2000/596/EC does not contain any reference to public spending obligations, and this is why additionality was not a issue for ERF I.

42. The Commission did not make a systematic comparison but it did publish a Commission working paper ⁽¹⁾ in December 2006 summarising several months of analysis of ERF projects in the Member States. Its conclusions are based on an evaluation by independent experts who give a very positive verdict on the Fund's achievements despite its limited budget over the five years in question.

43. The evaluation carried out by the Commission also demonstrated that:

- social, material and medical assistance was provided in difficult circumstances under the projects carried out, which directly concerned over 600 000 persons,
- the organisations which carried out the projects take a very positive view of the Fund,
- seen from the angle of the Member States, some of which have more budgetary resources than others in the field of asylum, the Fund has helped to gradually establish a common asylum policy governed by Community legislation.

CONCLUSION

45. The Commission believes it ensured an equitable allocation of the ERF budget appropriations from 2000 to 2004 despite statistical constraints. The ultimate objective of gathering statistical data is to correctly assess the burden on each Member State so that the cost of ERF projects can be spread fairly throughout the European Union. The quality of statistical data is gradually being improved.

⁽¹⁾ SEC(2006) 1636, Final evaluation of the European Refugee Fund for the period 2000 to 2004.

46. The Commission acknowledges that there was a significant delay in publishing some of the ERF's implementing rules. The implementing rules were presented to, and discussed by, the Committee of Member State representatives well before their adoption. The fund allocation procedure under ERF I was not perfect and some simplifications have already been made. The Commission considers the current procedure is the only way of ensuring ERF funds are deployed as quickly as possible in the Member States on the basis of detailed annual programmes which have been given the Commission's prior approval.

47. Although it will of course continue its efforts to provide clarification and guidance to the Member States on the ERF's rules, the Commission believes that differences in the way Member States implement national projects reflect the fact that projects are tailored to national needs rather than different interpretations of the Fund's legal basis.

48. The Commission has played an advisory and monitoring role in relation to the Member States even though monitoring was not an obligation laid down in the Fund's legal basis. Member States, however, bear prime responsibility for implementing projects. The Commission can play a supervisory and even disciplinary role but can never itself correct shortcomings or problems in Member States' control systems. Whenever necessary, the Commission takes the across-the-board corrective measures provided for in the Fund's legal basis.

49 and 50. The Commission was late, as it has acknowledged, in publishing the conclusions of the ERF evaluation for the period 2000 to 2004. Annual evaluations were nevertheless carried out in each Member State. Despite its small budget the ERF has helped a huge number of persons (600 000). In many Member States it has helped to adapt or strengthen asylum legislation and practices.

RECOMMENDATIONS

51. The Commission accepts the recommendation for greater harmonisation of statistics. It will work out with Member States ways of ensuring more effective validation of data. The Commission considers that a slight risk of poor quality data has to be accepted in view of the nature of the information gathered.

The Regulation proposed by the Commission in September 2005 on asylum and immigration statistics should overcome this problem once it starts to have an impact on the gathering of asylum data and the Commission and Member States will have to work together more closely.

The new ERF (2008 to 2013) will include actions enhancing the capacity to collect, analyse and disseminate statistics.

52. The Commission accepts the recommendation concerning the need to make use of the revised statistics but considers it already takes account of *ex post* revisions of data for previous years by using the most up-to-date data for the previous three years to allocate funds for a reference year. This procedure is compatible with the Fund's legal basis and the annual nature of the Community budget.

53. The current statistical approach used as a basis for the allocation of funds is the result of detailed and difficult discussions with the Council during the negotiation of the Fund's legal basis. The allocation of fixed amounts has already been used on occasion (minimum threshold by Member State), but the Commission does not believe it can go further in this direction or that

funds can be allocated totally on a fixed amount basis without calling into question the ERF's fundamental objective which is to spread the burden of managing refugees and displaced persons within the European Union.

54. The Commission accepts the recommendation that discussions be initiated with the Council and Parliament on the clarity and precision of the eligibility rules. It would, however, point out that there was an in-depth discussion of eligible projects and target groups during negotiation of the legal basis for ERF 2008 to 2013. The issue of persons eligible for repatriation will be resolved when the European Return Fund comes into force.
