

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 18 December 2001

**laying down detailed rules for the implementation of Council Decision 2000/596/EC as regards management and control systems and procedures for making financial corrections in the context of actions co-financed by the European Refugee Fund**

(notified under document number C(2001) 4372)

(2002/307/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2000/596/EC of 28 September 2000 establishing a European Refugee Fund <sup>(1)</sup>, and in particular Article 24 thereof,

Having consulted the Committee set up under Article 21(1) of Decision 2000/596/EC,

Whereas:

- (1) To ensure sound financial management of the assistance granted from the European Refugee Fund (the Fund), the Member States need to establish guidelines for the organisation of the tasks of the authority responsible for implementing co-financed actions.
- (2) To ensure that Community funds are utilised in accordance with the principles of sound financial management, the Member States need to introduce management and control systems that provide a sufficient audit trail, and to lend the Commission any assistance it requires to carry out checks, especially sample checks.
- (3) To ensure that Community funds are used efficiently and appropriately, uniform criteria should be established for the checks carried out by the Member States under Article 18 of Decision 2000/596/EC.
- (4) To ensure uniform treatment of the declarations of expenditure for which assistance is requested from the

Fund under Article 17(2) of Decision 2000/596/EC, a model declaration of expenditure should be produced.

- (5) To allow recovery, pursuant to Article 18(1) of Decision 2000/596/EC, of amounts unduly paid, Member States need to inform the Commission of cases of irregularities detected and the progress of administrative or legal proceedings.
- (6) Article 19(1) of Decision 2000/596/EC lays down that Member States must make the financial corrections required in connection with the individual or systemic irregularity by cancelling all or part of the Community contribution. To ensure that this provision is applied uniformly throughout the Community, it is necessary to lay down rules for determining the corrections to be made and to provide for the Commission to be informed.
- (7) If a Member State fails to comply with its obligations under Article 19(1) of Decision 2000/596/EC or under Article 18, the Commission may itself make the financial corrections under Article 18(4) of the same Decision. Whenever this is possible and feasible, the amount of the correction must be assessed on the basis of individual files and must be equal to the amount of expenditure wrongly charged to the Fund in accordance with the principle of proportionality. Where it is not possible or feasible to quantify the financial impact of the irregularity accurately, or where it would be disproportionate to cancel all the expenditure concerned, the Commission should determine its corrections by extrapolation or at a flat rate based on the extent and financial impact of the irregularity that the Member State has failed to prevent, detect or correct.

<sup>(1)</sup> OJ L 252, 6.10.2000, p. 12.

- (8) Certain detailed rules for making the financial corrections laid down in Article 19(1) of Decision 2000/596/EC should be specified, and the same rules should be made applicable in cases that fall under Article 18(4)(b) of the same Decision.
- (9) Interest rates must be set for interest on account of late payment in respect of any sum received unduly and to be recovered that must be repaid to the Commission under Article 19(3) of Decision 2000/596/EC.
- (10) This Decision is to be applied without prejudice to the provisions on recovery of State aid under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(1)</sup>.
- (11) This Decision is to be applied without prejudice to the provisions of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities <sup>(2)</sup>.

HAS ADOPTED THIS DECISION:

## CHAPTER I

### SCOPE AND DEFINITIONS

#### Article 1

This Decision lays down the detailed rules for implementing Council Decision 2000/596/EC as regards management and control systems for funding granted from the European Refugee Fund (the Fund) and managed by the Member States, and the procedure for making the financial corrections applicable to such funding.

#### Article 2

For the purposes of this Decision the following definition shall be used:

- (a) 'responsible authority': any authority appointed by a Member State under Article 7 of Decision 2000/596/EC;
- (b) 'intermediary organisation': any public administration or non-governmental organisation to which the responsible authority delegates responsibility for implementation under Article 7 of Decision 2000/596/EC.

<sup>(1)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(2)</sup> OJ L 292, 15.11.1996, p. 2.

## CHAPTER II

### MANAGEMENT AND CONTROL SYSTEMS

#### Article 3

1. In application of Article 18(1)(c) of Decision 2000/596/EC, Member States shall address guidelines to the responsible authority and intermediary organisations to which responsibility for implementation has been delegated.

Without prejudice to Article 18(1) of Decision 2000/596/EC, the guidelines shall cover the organisation of the management and control systems necessary to ensure the accuracy, regularity and eligibility of requests for Community funding and shall refer to the generally recognised standards of good administrative practice set out in Annex I.

2. Where all or some of the responsible authority's tasks are delegated to intermediary organisations, the guidelines referred to in paragraph 1 shall lay down detailed rules concerning:

- (a) the clear definition and allocation of tasks, especially as regards management, payment, and checks on and verification of compliance with:
- (i) the conditions laid down in the Commission decisions approving the requests for co-financing referred to in Article 8 of Decision 2000/596/EC,
  - (ii) the rules on eligibility of expenditure set out in Annex 1 to Commission Decision 2001/275/EC <sup>(3)</sup>, and
  - (iii) Community policies and action, especially those relating to the competition rules, public procurement, protecting and enhancing the environment, removing inequalities and promoting equality between men and women;
- (b) the introduction of effective systems ensuring that the intermediary organisations exercise their powers satisfactorily; and
- (c) supplying the responsible authority with information on the effective performance of their tasks and a description of the means deployed.

3. Pursuant to Article 18(1)(b) of Decision 2000/596/EC, Member States shall, no later than two months after this Decision takes effect, send the Commission, in addition to the information contained in the first request for co-financing, a description of the management and control systems they have set in place and of any improvements planned, taking particular account of the generally recognised standards of good administrative practice set out in Annex I.

This description shall include the following information about each responsible authority:

- (a) the tasks assigned to it;
- (b) the distribution of these tasks within the responsible authority or intermediary organisation in such a way as to ensure that management, payment, and control tasks are sufficiently separate as to ensure sound financial management;

<sup>(3)</sup> OJ L 95, 5.4.2001, p. 27.

- (c) information on any intermediary organisations;
- (d) the procedures for receiving, verifying and endorsing requests for payment and for authorising and paying expenses and entering them in the accounts;
- (e) the provisions governing internal audits or equivalent.

4. The Commission shall examine the management and control systems in cooperation with the Member States and point out any shortcomings as regards the transparency of checks on the operation of the Fund and the performance of the Commission's duties under Article 274 of the EC Treaty.

#### Article 4

1. Member States' management and control systems shall provide an adequate audit trail.

2. An audit trail shall be considered sufficient where it permits:

- (a) reconciliation of the summary accounts certified to the Commission with the individual expenditure records and supporting documents kept at the various administrative levels and by the final beneficiaries, including the organisations or firms responsible for implementing projects; and
- (b) verification of the allocation and transfers of the available Community and national funds.

An indicative description of the information requirements for a sufficient audit trail is given in Annex II.

3. The responsible authority shall introduce procedures to ensure that a record is kept of the location of all documents relating to particular payments made under the national implementation programme in question and that the documents can be produced for inspection if requested by:

- (a) the staff of the authority responsible for handling requests for payment,
- (b) the national audit authorities who will carry out the checks required under Article 5(1) of this Decision,
- (c) the department or body of the responsible authority entrusted with certifying requests for interim and final payment provided for in Article 17 of Decision 2000/596/EC, and
- (d) the officials and authorised representatives of the Commission and the European Court of Auditors.

The officials and agents responsible for controls or those empowered for that purpose may request copies of documents referred to in this paragraph.

4. For a period of five years following the payment by the Commission of the final balance in respect of any project, the responsible authorities shall keep available for the Commission all the supporting documents, i.e. the originals or versions certified to be in conformity with the originals on commonly accepted data carriers, regarding expenditure and checks on the

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

#### Article 5

1. Member States shall organise checks on projects on an appropriate sampling basis, designed in particular to:

- (a) verify the proper operation of the management and control systems in place;
- (b) verify selectively, on the basis of risk analysis, expenditure declarations made at the various levels concerned.

2. The checks shall cover at least 20 % of the total eligible expenditure for each national implementation programme and a representative sample of the projects approved, taking account of the requirements of paragraph 3. Member States shall ensure an appropriate separation between checks and implementation or payment procedures concerning projects.

3. The projects selected shall be identified, the sampling method described and a report produced of the results of all inspections and the action taken with regard to the anomalies or irregularities discovered.

4. The sample of projects to be checked shall:

- (a) include an appropriate mix of types and sizes of projects;
- (b) take account of any risk factors which have been identified by national or Community controls;
- (c) reflect the concentration of projects under certain recipients of grants, so that the main recipients are subject to at least one check before the closure of each form of national implementation programme.

#### Article 6

When carrying out checks, the Member States shall verify the following:

- (a) the effective application of the management and control systems;
- (b) for an adequate number of accounting records, the correspondence of those records with the supporting documents kept by the intermediary organisations to which the responsible authority has delegated certain responsibilities for implementation, the recipients of grants and, where appropriate, the other organisations or firms involved in project implementation;
- (c) the presence of a sufficient audit trail;
- (d) that the nature and date of the expenditure items corresponds to Community requirements, to the requirements specified during the national selection procedure, to the terms of the contract or instrument granting the subsidy and to the works actually executed;

- (e) that the use or intended use of the project is consistent with the objectives set out in the national implementation programme referred to in Article 8 of Decision 2000/596/EC;
- (f) that the Community financial contributions are within the limits provided for in Article 13 of Decision 2000/596/EC or in any other applicable Community provisions and are paid to recipients without any reductions or delays;
- (g) that the appropriate national co-financing has in fact been made available, and
- (h) that the co-financed projects have been implemented in accordance with the requirements of Article 4 and Article 9(1) of Decision 2000/596/EC.

#### Article 7

The checks shall establish whether any problems encountered are of a systemic character, carrying a risk for other projects carried out by the same grant recipient or administered by the same management authority. They shall also identify the causes of such situations, any further examination which may be required and the necessary corrective and preventive action.

#### Article 8

Member States shall inform the Commission each year in the report referred to in Article 20(2) of Decision 2000/596/EC of how they have applied Articles 5, 6 and 7 of this Decision during the preceding year, completing or updating if necessary the description referred to in Article 4(2).

#### Article 9

In the case of forms of assistance in which more than one Member State participates or where there are beneficiaries in more than one Member State, the Member States concerned and the Commission shall agree on the administrative assistance necessary for ensuring proper control.

### CHAPTER III

#### DECLARATIONS OF EXPENDITURE

#### Article 10

1. Declarations of expenditure shall be certified following the model provided in Annex IV by an individual or department within the payment authority operating independently of all authorising departments.
2. For all expenditure it declares to the Commission, the responsible authority shall provide assurance that the national implementation programmes are managed in accordance with all the applicable Community regulations and that the funds are used in accordance with the principles of sound financial

management. This assurance shall certify that the request for co-financing covers only expenditure:

- (a) that was actually incurred by the grant recipients, as defined in Article 2(d) of Decision 2001/275/EC, during the period of eligibility of the programme, as defined in the decisions approving the requests for co-financing, and
- (b) that relates to projects which were selected for co-financing by the national implementation programme in question according to the established selection criteria and procedures and which complied with Community rules throughout the period in which the expenditure was incurred.

3. At the end of the programme, the final declaration laid down in Annex IV shall be presented by the Member State within six months. Failing this, the Commission shall automatically close the programme and decommit the relevant appropriations.

4. Before submitting a request to the Commission, the responsible authority shall verify the adequacy of the checks carried out. The work performed shall be described in detail in the final report referred to in Article 20(3) of Decision 2000/596/EC. Checks shall cover the physical aspects and effectiveness of projects, as well as their financial and accounting aspects.

### CHAPTER IV

#### FINANCIAL CORRECTIONS BY MEMBER STATES

#### Article 11

1. In the case of systemic irregularities, investigations under Article 19(1) of Decision 2000/596/EC shall cover all the projects liable to be affected.

2. When cancelling all or part of the Community contribution, Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Fund.

3. Member States shall inform the Commission, in a list annexed to the report referred to in Article 20(2) of Decision 2000/596/EC, of any proceedings to cancel assistance initiated in the course of the preceding year.

#### Article 12

1. Where amounts need to be recovered following the cancellation of the Community contribution under Article 18(1)(g) of Decision 2000/596/EC, the department or organisation responsible shall initiate the recovery procedure and inform the responsible authority. Information on recovery shall be passed on to the Commission and the accounts shall be kept in accordance with Article 13 of this Decision.

2. Member States shall inform the Commission in the report referred to in Article 20(2) of Decision 2000/596/EC how they have decided or propose to re-use the funds cancelled.

### Article 13

The responsible authority shall keep an account of amounts recoverable from payments of Community assistance that have already been made and shall ensure that the amounts are recovered without delay. After recovery, the responsible authority shall reduce its next declaration of expenditure to the Commission by an amount equal to the sums recovered, or, if this amount is insufficient, it shall reimburse the Community. The amounts to be recovered shall accrue interest from their due date at the rate laid down in Article 94 of Commission Regulation (Euratom, ECSC, EC) No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation<sup>(1)</sup> of 21 December 1977, as last amended by Regulation (EC) No 1687/2001<sup>(2)</sup>, for the first working day of the month in which the debt is due.

When submitting the report referred to in Article 20(2) of Decision 2000/596/EC, Member States shall send the Commission a list of irregularities detected, indicating the amounts recovered or awaiting recovery and, if appropriate, any administrative or judicial proceedings launched with a view to recovering amounts unduly paid.

## CHAPTER V

### FINANCIAL CORRECTIONS BY THE COMMISSION

### Article 14

1. The amount of financial corrections made by the Commission under Article 18(4)(b) of Decision 2000/596/EC for individual or systemic irregularities shall be assessed wherever possible and practicable on the basis of individual files and be equal to the amount of expenditure wrongly charged to the Fund, having regard to the principle of proportionality.

2. Where it is not possible or practicable to quantify precisely the amount of irregular expenditure or where it would be disproportionate to cancel all the expenditure concerned, the Commission shall base its financial corrections on:

- (a) extrapolation, using a representative sample of transactions that are homogeneous in nature; or
- (b) a flat rate, in which case it shall assess the seriousness of the infringement of the rules and the extent and financial implications of the irregularity established.

<sup>(1)</sup> OJ L 315, 16.12.1993, p. 1.

<sup>(2)</sup> OJ L 228, 24.8.2001, p. 8.

3. Where the Commission bases its position on facts established by auditors from outside its own departments, it shall draw its own conclusions on the financial implications after examining the measures taken by the Member State concerned under Article 18(1) of Decision 2000/596/EC.

4. The period of time within which the Member State concerned may respond to a request under Article 18(3) of Decision 2000/596/EC shall be two months. In duly justified cases, a longer period may be agreed by the Commission.

5. Where the Commission proposes financial corrections determined by extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, on the basis of an examination of the files concerned, that the actual extent of irregularity was less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the files concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in paragraph 4. The Commission shall take account of any evidence supplied by the Member State within the time limits.

6. Where the Commission suspends payments under Article 19(2) of Decision 2000/596/EC, or where, after expiry of the period referred to in paragraph 4, the reasons for the suspension remain or the Member State concerned has not notified the Commission of the measures taken to correct the irregularities, Article 18(4) of Decision 2000/596/EC shall apply.

7. Guidelines on the principles, criteria and indicative scales to be applied by Commission departments in determining the flat-rate corrections are set out in Annex III to this Decision.

### Article 15

1. Any repayment to the Commission under Article 19(3) of Decision 2000/596/EC shall be made by the deadline set in the recovery order drawn up in accordance with Article 28 of the Financial Regulation of 21 December 1977<sup>(3)</sup>. This due date shall be the last day of the second month following the issuing of the order.

2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date referred to in paragraph 1 and ending on the date of actual repayment. The applicable rate of interest shall be that referred to in Article 13 of this Decision.

3. A financial correction under Article 19(2) of Decision 2000/596/EC shall not prejudice the Member State's obligation to pursue recoveries under Article 18(1)(g) of Decision 2000/596/EC and Article 12(1) of this Decision and to recover State aid under Article 14 of Regulation (EC) No 659/1999.

<sup>(3)</sup> OJ L 356, 31.12.1977, p. 1.

## CHAPTER VI

**FINAL PROVISIONS***Article 16*

Nothing in this Decision shall prevent Member States from applying national rules on control that are more rigorous than those prescribed here.

*Article 17*

This Decision is addressed to the Member States.

Done at Brussels, 18 December 2001.

*For the Commission*

António VITORINO

*Member of the Commission*

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## ANNEX I

**STANDARDS OF GOOD ADMINISTRATIVE PRACTICE TO ENSURE SOUND FINANCIAL MANAGEMENT OF ASSISTANCE GRANTED UNDER THE EUROPEAN REFUGEE FUND (ARTICLE 3)****1. Compliance with national and Community rules and accuracy of requests for payment**

The responsible authorities or intermediary organisations to which certain tasks have been delegated should verify compliance with national and Community legislation, and especially with the conditions laid down in the national implementation programme approved by the Commission, the rules on the eligibility of expenditure under the Fund, and where appropriate, on competition, public procurement, protecting and enhancing the environment, removing inequalities and promoting equality between men and women, and should confirm that requests for payment are justified and accurate, by checking tendering procedures, awards of contracts, progress in project implementation, payments and the acceptance of works.

These checks shall be carried out by means of a control system. One of the principal tasks of the responsible authority is to monitor the proper functioning of this control system.

**2. Payments and recovery**

- 2.1. The administrative unit responsible for making payments to recipients of grants must be in possession of documents attesting that the grant has been awarded to the individual project and that the required administrative and physical checks have been carried out. Accounting procedures should ensure that declarations are complete, accurate and made in time, and that any error or omission is detected and corrected, in particular by way of verifications and crosschecks made at regular intervals not exceeding three months.

The procedures set in place should ensure that the payment is made only to the claimant, to his bank account or to his assignee. Payment should be executed by the authority's banker or, as appropriate, by a government payments office, or a cheque should be sent where possible within five working days of the amount being charged to the accounts. Procedures should be adopted to ensure that all payments for which transfers are not executed or cheques not cashed in are credited to the Fund. The approval of the authorising official and/or his supervisor may be made by electronic means, provided an appropriate level of security over these means is ensured, and the identity of the signatory is entered in the electronic records.

- 2.2. The above paragraph shall apply by analogy to amounts (forfeited guarantees, reimbursed payments, etc.) that the responsible authority is required to recover on behalf of the Fund. In particular, the authority should set up a system for the recognition of all the amounts due to the Fund. This system should be inspected at regular intervals with the aim of taking action to collect debts that are overdue.

The responsible authority may delegate to another body the task of collecting certain categories of recoverable amount, provided that the conditions laid down in Article 2(b), duly adapted, are met and that the other body reports to the authority at regular and timely intervals, not less than monthly, on all revenues recognised and monies collected.

The responsible authority should introduce procedures to ensure that all claims are processed quickly.

**3. Definition and standardisation of procedures and duties**

- 3.1. The responsible authority should lay down in writing detailed procedures for monitoring project implementation and for receiving, registering and processing claims, including a description of all documents that should be used.
- 3.2. The responsibilities of each official, authorised representative or person empowered for the purpose should be laid down in writing, as should the limit of his powers in relation to finance.
- 3.3. Each official, authorised representative or person empowered for the purpose, who is responsible for authorisation should be in possession of an exhaustive checklist detailing the verifications he is required to carry out, and should insert in all documents supporting any claim his attestation that the checks have been carried out. There shall be evidence of review of the work by a more senior official.
- 3.4. Where claims are processed using a computer system, access to the computer system shall be protected and controlled in such a way that:
- all data entered in the system are properly validated to ensure that input errors are detected and corrected,
  - no data may be entered, modified or validated by anyone other than the authorised officials, representatives or persons empowered to whom individual passwords are attributed,
  - the identity of each official, authorised representative or person empowered entering, or modifying, data or programmes is recorded in an operations log.
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## ANNEX II

**INDICATIVE LIST OF THE INFORMATION REQUIRED FOR THE AUDIT TRAIL (ARTICLE 4)**

An audit trail is deemed to be adequate within the meaning of Article 4(2) where, for a given national implementation programme, the following requirements are met:

1. The accounting records kept at the appropriate management levels shall give detailed information on the expenditure incurred for each co-financed project by recipients of grants. They shall give the date on which documents were drawn up, the amount of each expenditure item, the nature of the accompanying document and the date and method of payment. Necessary documentary evidence (invoices, etc.) shall be attached.
  2. In cases where expenditure items relate only partly to a co-financed project, the accuracy of the allocation of the amount between the co-financed project and other projects shall be demonstrated. The same applies to types of expenditure deemed eligible within limits or in proportion to other costs.
  3. The specifications and the project's financial plan, reports on project progress, documents relating to the grant of aid, tendering procedures and awards of contracts, etc., shall also be kept at the appropriate management level.
  4. For the purpose of notifying expenditure actually incurred to an intermediary body between the recipient(s) of grants that implement the projects and the responsible authority designated under Article 7 of Decision 2000/596/EC, the information required under paragraph 1 shall be combined in a detailed statement of expenditure setting out, for each project, all the expenditure items with a view to calculating the total certified amount. The detailed statements of expenditure constitute supporting documents for the accounting records of the intermediate body.
  5. The intermediary organisations shall keep accounting records for each project and for the total amounts of expenditure certified by the recipients of grants that implement the projects. Intermediate organisations reporting to the responsible authority shall submit to that authority a list of approved projects for each national implementation programme, indicating for each project its full name and that of the recipients of the grant implementing it, the date on which the assistance was granted, the amounts committed and paid, the expenditure period concerned and the total amount of expenditure per measure. This information shall constitute the accompanying file in the accounting records of the responsible authority and the basis for drawing up declarations of expenditure to be submitted to the Commission.
  6. Where the grant recipients implementing the projects report directly to the responsible authority, the detailed statements of expenditure referred to in paragraph 4 shall constitute the accompanying files of the accounting records kept by the responsible authority, which shall draw up the list of co-financed projects referred to in paragraph 5.
  7. Where more than one intermediary body intervenes between the grant recipient(s) implementing the projects and the responsible authority designated under Article 7 of Decision 2000/596/EC, each intermediary body shall require, for its area of responsibility, detailed statements of expenditure drawn up at the lower level to be used as supporting documentation in its own accounts and in respect of which it must report upwards, giving at least the total amount of expenditure for each project.
  8. In cases of computerised data transfer, all the authorities concerned must obtain sufficient information from lower levels to justify their own accounting records and the sums reported upwards, so ensuring a satisfactory audit trail from the total amounts notified to the Commission to the various expenditure items and the supporting documents at the grant recipient/project implementation level.
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## ANNEX III

**GUIDELINES ON THE PRINCIPLES, CRITERIA AND INDICATIVE SCALES TO BE APPLIED BY COMMISSION DEPARTMENTS IN DETERMINING FINANCIAL CORRECTIONS UNDER ARTICLES 18 AND 19 OF DECISION 2000/596/EC**

## 1. PRINCIPLES

The purpose of financial corrections is to restore a situation where 100 % of the expenditure declared for co-financing from the Fund is in line with the applicable national and Community rules and regulations. This allows the establishment of a number of key principles for the Commission departments to apply in determining financial corrections:

- (a) Irregularity is defined in Article 1(2) of Regulation (EC) No 2988/95 <sup>(1)</sup>. Irregularities can be one-off or systemic.
- (b) A systemic irregularity is a recurrent error due to serious failings in management and control systems designed to ensure correct accounting and compliance with the rules and regulations in force.
  - If the applicable rules and regulations are respected, and all reasonable measures are taken to prevent, detect and correct fraud and irregularity, no financial corrections will be required.
  - If the applicable rules and regulations are respected, but the management and control systems need to be improved, pertinent recommendations should be made to the Member State, but no financial corrections need be envisaged.
  - Where only errors relating to sums of less than EUR 4 000 are found, the Member State should be urged to correct the errors without opening financial correction proceedings under Article 18(4) of Decision 2000/596/EC.
  - If there are serious failings in the management or control systems which could lead to systemic irregularities, in particular failures to respect the applicable rules and regulations, financial corrections should always be made.
- (c) The amount of the financial correction will be assessed wherever possible on the basis of individual files and be equal to the amount of expenditure wrongly charged to the Fund in the cases concerned. Specifically quantified corrections for each individual project concerned are not always possible or practicable, however, or it may be disproportionate to cancel the entire expenditure in question. In such cases, the Commission has to determine corrections on the basis of extrapolation or at flat rates.
- (d) Where there is evidence that individual quantifiable irregularities of the same type have occurred in a great number of other projects, or throughout a measure or programme, but it is not cost-effective to determine the irregular expenditure for each project individually, the financial correction may be based on extrapolation.
  - Extrapolation can be used only where a homogeneous population or subset of projects can be identified and shown to have been affected by the deficiency. In this case, the results of a thorough examination of a representative sample of the individual files concerned selected at random are extrapolated to all the files making up the population identified, in accordance with generally accepted auditing standards.
- (e) In the case of individual breaches or systemic irregularities whose financial impact is not precisely quantifiable because it is subject to too many variables or is diffuse in its effects, such as those resulting from a failure to undertake checks effectively in order to prevent or detect the irregularity or to comply with a condition of the assistance or a Community rule, but where it would be disproportionate to refuse all the assistance concerned, flat rates should be applied.
  - Flat rate corrections are determined in accordance with the seriousness of the deficiency in the management and control system or the individual breach and the financial implications of the irregularity. A list of what the Commission considers to be key and ancillary elements of systems for the purpose of assessing the seriousness of deficiencies is given in section 2.2 and an indicative scale of flat rates for corrections in section 2.3. Flat rate corrections are applied to all expenditure under the measure or measures concerned unless the deficiencies were limited to certain areas of expenditure (individual projects or types of project), in which case they are applied to those areas of expenditure only. The same expenditure will not normally be subject to more than one correction.
- (f) In areas where there is a margin for discretion in evaluating the gravity of the infringement, as in cases of disregard of environmental conditions, corrections shall be subject to the following conditions: a significant failure to respect the rules and a clearly identifiable link with the action receiving Community funding.

<sup>(1)</sup> OJ L 312, 23.12.1995, p. 1.

- (g) Irrespective of the kind of corrections proposed by the Commission, the Member State is always given the opportunity to demonstrate that the real loss or risk to the Fund and the extent or gravity of the irregularity was less than that assessed by the Commission services. The procedure and time limits are set out in Article 14(4) and (5) of this Decision.
- (h) Unlike corrections made by Member States under Article 19(1) of Decision 2000/596/EC, financial corrections decided by the Commission under Article 19(2) of the same Decision always involve a net reduction to the Community funding committed to the programme concerned.
- (i) Where the Member State's audit system — Court of Auditors, internal or external audits — has detected the irregularities and the Member State takes appropriate corrective action under Article 19(1) of Decision 2000/596/EC within a reasonable period of time, no financial corrections can be imposed by the Commission under Article 19(2) of Decision 2000/596/EC and the Member State is free to re-use the funds. In other cases the Commission may make corrections on the basis of the findings of national audit bodies, as where an EU audit body establishes the irregularity. When the Commission bases its position on the facts established and fully documented by other EU audit bodies, it will form its own conclusions regarding their financial consequences, after examining any replies from the Member State.

## 2. CRITERIA AND SCALES FOR FLAT-RATE CORRECTIONS

### 2.1. Criteria

As noted in paragraph 1(c) above, flat-rate corrections may be envisaged when the information resulting from the enquiry does not permit the financial impact of an individual case or several cases of irregularities to be evaluated precisely by statistical means, or by reference to other verifiable data, but does lead to the conclusion that the Member State has failed to carry out adequate verification of the eligibility of claims accepted.

Flat-rate corrections should be considered when the Commission finds a failure to adequately effect any control which is explicitly required by a regulation, or implicitly required in order to respect an explicit rule (the limiting of aid to a certain type of project, for example), and whose absence could lead to systemic irregularity. They should also be considered where the Commission finds serious deficiencies in management and control systems resulting in large-scale breaches of applicable rules and regulations, or where it detects individual breaches. Flat-rate corrections can also be appropriate when the Member States' own control departments discover such irregularities but the Member State fails to take appropriate corrective action within a reasonable period of time.

In determining whether a flat-rate financial correction should result and, if so, at what rate, the general consideration shall be the assessment of the degree of risk of loss to which the Fund was exposed as a consequence of the control deficiency. Thus the correction should be in compliance with the principle of proportionality. The specific elements to be taken into account should include the following:

1. whether the irregularity is related to an individual case, multiple cases or all cases;
2. whether the deficiency relates to the effectiveness of the management and control system generally, or to the effectiveness of a particular element of the system, i.e. the operation of particular functions necessary to ensure the legality, regularity and eligibility of expenditure declared for co-financing from the Fund under the applicable national and Community rules (see section 2.2 below);
3. the importance of the deficiency within the totality of the administrative, physical and other controls foreseen;
4. the vulnerability to fraud of the measures, having regard particularly to the economic incentive.

### 2.2. Classification of elements of management and control systems for the purpose of applying flat rates of financial corrections for system deficiencies or individual breaches

Management and control systems for the Fund consist of various elements or functions of greater or lesser importance for ensuring the legality, regularity and eligibility of expenditure declared for co-financing. For the purpose of assessing flat rate corrections for deficiencies in such systems or individual cases of irregularity, it is useful to classify the functions of management and control systems into key and ancillary elements.

Key elements are those designed and essential to ensure the legality and regularity and indeed the substance of projects supported by the Fund, ancillary elements those that contribute to the quality of a management and control system and help ensure that the system keeps performing well in relation to its key functions.

The list below contains the majority of elements of good management and control systems and good audit practice. The seriousness of deficiencies and individual breaches varies considerably, and cases will therefore be assessed by the Commission, having regard, in particular, to section 2.4.

#### 2.2.1. Key elements for ensuring eligibility for co-financing

1. Provision and application of procedures for grant applications, appraisal of applications, selection of projects for funding and selection of contractors/suppliers, appropriate publication of calls for grant applications according to the procedures for the programme concerned:
  - (a) compliance, where applicable, with rules on publicity, equality of opportunity and public procurement, and with Treaty rules and principles of equality of treatment and non-discrimination where EC public procurement directives are not applicable;
  - (b) appraisal of grant applications in accordance with programme criteria and procedures, including compliance with rules on environmental impact assessment, equality of opportunity legislation and policies;
  - (c) selection of projects for funding:
    - projects selected correspond to objectives and published criteria of programme;
    - reasons for acceptance or rejection of applications are clearly set out;
    - observance of State aid rules;
    - observance of eligibility rules;
    - inclusion of terms and conditions of funding in approval decision.
2. Adequate verification of delivery of co-financed products and services and of eligibility of expenditure charged to programme by the responsible authority designated under Article 7 of Decision 2000/596/EC and the intermediary organisations between the grant recipient and the responsible authority:
  - (a) verification of the reality of 'deliverables' (services, works, supplies, etc.) against plans, invoices, acceptance documents, experts' reports, etc., and, where appropriate, on the spot;
  - (b) verification of observance of conditions of grant approval;
  - (c) verification of the eligibility of expenditure for which a claim is made;
  - (d) adequate follow-up of all outstanding questions before acceptance of claim;
  - (e) maintenance of an adequate and reliable accounting system;
  - (f) maintenance of the audit trail at all levels from grant recipient up through the system;
  - (g) taking reasonable measures to obtain assurance that the declarations of expenditure the responsible authority certifies to the Commission are correct insofar as:
    - expenditure was effected within the eligible period in projects selected for co-financing in accordance with normal procedures and all applicable terms and conditions,
    - the co-financed projects have actually been carried out.
3. Sufficient quantity and quality of sample checks on projects and adequate follow-up:
  - (a) carrying out sample checks on at least 20 % of total eligible expenditure in accordance with Article 5 of this Decision, supported by a report on the work done by the auditor;
  - (b) the sample is representative and the risk analysis adequate;
  - (c) adequate separation of duties to ensure independence;
  - (d) follow-up to checks, ensuring:
    - appropriate assessment of results and financial corrections where appropriate,
    - action at a general level to correct systemic irregularities.

#### 2.2.2. Ancillary elements:

- (a) satisfactory administrative controls in the form of standard checklists or equivalent means and proper documentation of results, to ensure for instance:
  - that claims have not been paid before and transactions (contracts, receipts, invoices, payments) are separately identifiable;
  - reconciliation within the accounting system of declarations and expenditure recorded;

- (b) proper supervision of claims processing and authorisation procedures;
- (c) satisfactory procedures to ensure proper dissemination of information about Community rules;
- (d) ensuring timely payment of Community funding to beneficiaries.

### 2.3. Indicative scales of flat-rate corrections

#### 100 % correction

The rate of correction may be fixed at 100 % when the deficiencies in the Member State's management and control system are, or an individual breach is, so serious as to constitute a complete failure to comply with Community rules, so rendering all the payments irregular.

#### 25 % correction

When a Member State's application of its management and control system is gravely deficient, and there is evidence of widespread irregularity, and negligence in countering irregular or fraudulent practices, a correction of 25 % is justified, as it can then reasonably be assumed that the freedom to submit irregular claims with impunity will occasion exceptionally high losses to the Fund. A correction at this rate is also appropriate for irregularities in an individual case which are serious but do not invalidate the whole project.

#### 10 % correction

When one or more key elements of the system do not function or function so poorly or so infrequently that they are completely ineffective in determining the eligibility of the claim or preventing irregularity, a correction of 10 % is justified, as it can reasonably be concluded that there was a high risk of widespread loss to the Fund. This rate of correction is also appropriate for individual irregularities of moderate seriousness in relation to key elements of the system.

#### 5 % correction

When all the key elements of the system function, but not with the consistency, frequency, or depth required by the regulations, then a correction of 5 % is justified, as it can reasonably be concluded that they do not provide a sufficient level of assurance of the regularity of claims, and that the risk to the Fund was significant. A 5 % correction can also be appropriate for less serious irregularities in individual projects in relation to key elements.

The fact that the way in which a system operates is perfectible is not in itself sufficient grounds for a financial correction. There must be a serious deficiency of compliance with explicit Community rules or standards of good practice and the deficiency must expose the Fund to a real risk of loss or irregularity.

#### 2 % correction

When performance is adequate in relation to the key elements of the system, but there is a complete failure to operate one or more ancillary elements, a correction of 2 % is justified in view of the lower risk of loss to the Fund, and the lesser seriousness of the infringement.

A 2 % correction will be increased to 5 % if the same deficiency is established in relation to expenditure after the date of the first correction imposed and the Member State has failed to take adequate corrective measures for the part of the system at fault after the first correction.

A correction of 2 % is also justified where the Commission has informed the Member State, without imposing any correction, of the need to make improvements to ancillary elements of the system that are in place but do not operate satisfactorily, but the Member State has not taken the necessary action.

Corrections are only imposed for deficiencies in ancillary elements of management and control systems where no deficiencies have been identified in key elements. If there are deficiencies in relation to ancillary elements as well as in key elements, corrections are only made at the rate applicable to the key elements.

### 2.4. Borderline cases

Where the correction resulting from a strict application of these guidelines would be disproportionate, a lower rate of correction may be proposed.

For example, where the deficiencies arose from difficulties in the interpretation of Community rules or requirements (except in cases where it should reasonably be expected that the Member State raise such difficulties with the Commission), and the national authorities took effective steps to remedy the deficiencies as soon as they were brought to light, this mitigating factor may be taken into account and a lower rate or no correction may be proposed. Similarly, due regard should be paid to claims of legal certainty when the deficiencies were not reported following earlier audits by the Commission's services.

In general, the fact that deficient management or control systems were improved immediately after the deficiencies were reported to the Member State is not considered as a mitigating factor when assessing the financial impact of the systemic irregularities before the improvement was made.

#### 2.5. Basis of assessment

Whenever the situation in other Member States is known, the Commission shall make a comparison between them to ensure equal treatment in the assessment of the rates of correction.

The rate of correction should be applied to that part of the expenditure placed at risk. When the deficiency results from a failure by the Member State to adopt an appropriate control system, then the correction should be applied to the entire expenditure for which that control system was required. When there is reason to suppose that the deficiency is limited to that of a particular authority's or region's application of the control system adopted by the Member State, the correction should be limited to the expenditure controlled by that authority or region. When the deficiency relates for example to verification of the criteria for eligibility for a higher rate of aid, then the correction should be based on the difference between the higher and lower rate of aid.

The correction should normally concern the expenditure of the measure over the period being examined, for example one financial year. However, when the irregularity results from systemic deficiencies, which are evidently long-standing and affecting several years' expenditure, then the correction should concern all the expenditure declared by the Member State while the system deficiency obtained until the month in which it was remedied.

When several deficiencies are found in the same system, the flat rates of correction are not cumulated, the most serious deficiency being taken as an indication of the risks presented by the control system as a whole<sup>(1)</sup>. They are applied to the expenditure remaining after deduction of the amounts refused for individual files. In the case of the Member State's non-application of penalties prescribed by Community law, the financial correction should be the amount of the penalties not applied, together with 2 % of the remaining claims, as the non-application of penalties increases the risk that irregular claims will be submitted.

#### 3. APPLICATION AND EFFECT OF NET FINANCIAL CORRECTIONS

Where the Member State agrees to make the financial correction proposed in the procedure under Article 19(1) of Decision 2000/596/EC, the Commission need not impose a net reduction in the funding, but may allow the Member State to reallocate the sums released. However, financial corrections imposed by the Commission under Article 19(2) of Decision 2000/596/EC after completion of the procedure laid down by Article 18(3) and (4) of the same Decision will in all cases involve a net reduction in the indicative allocation of assistance from the Fund.

A net correction is automatically made if the Commission considers that the Member State has not taken satisfactory account of conclusions on irregularities detected by Community or national bodies and/or if the irregularity is related to a serious deficiency in the management or control system of the Member State or of the management or payment authorities.

Any sum due to the Commission as a result of net corrections is to be paid together with interest under Article 19(3) of Decision 2000/596/EC and in accordance with Article 15(2) of this Decision.

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<sup>(1)</sup> See also section 2.3 (2 % correction).

## ANNEX IV

EUROPEAN COMMISSION

EUROPEAN REFUGEE FUND

**Declaration of expenditure and request for payment**

(to be sent via the official channels to Unit 1 of DG Justice and Home Affairs, Rue de la Loi/Wetstraat 200, B-1049 Brussels)

Name of programme: .....

Commission Decision No ..... of .....

## CERTIFICATION

I, the undersigned ....., representing the authority responsible for implementing the European Refugee Fund under Article 7 of Decision 2000/596/EC ....., certify that all the eligible expenditure corresponding to the contribution from the European Refugee Fund and its national counterparts (public or private, as the case may be), was paid by the grant recipients in accordance with the progress of the programme, after ..... and totalled: ..... (precise amount to two decimal places).

The attached statement of expenditure, broken down by measure, is an integral part of this certificate.

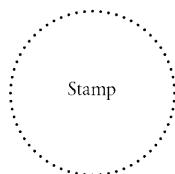
I also certify that the project is progressing in accordance with the objectives set out in the Commission decision approving the request for co-financing and with the provisions of Decision 2000/596/EC, in particular as regards application of management and financial control procedures to the project with a view to ensuring that the service has been properly performed (delivery co-financed products and services) and the expenditure actually incurred, that irregularities are prevented, detected and corrected, that fraud is prosecuted and that sums unduly paid are recovered.

The supporting documentation is and will remain available for at least five years following the payment of the balance by the Commission.

I certify that:

1. the statement of expenditure is accurate and originates from accounting systems based on verifiable supporting documents, and
2. the statement takes account of recoveries made, the income of the projects financed under the programme and any interest collected.

Date: .....



.....  
(Name in capital letters)

.....  
(Position and signature of competent authority)

## EXPENDITURE BY MEASURE

Commission reference number:

Name:

Date:

| Measures                 | Total eligible expenditure paid (in euro) <sup>(1)</sup> |       |         |                   |         |       |
|--------------------------|--|-------|---------|-------------------|---------|-------|
|                          | Public   |       |         |                   | Private | Total |
|                          | Community (ERF)  | State | Regions | Local authorities |         |       |
| (A) Reception            |  |       |         |                   |         |       |
| (B) Integration          |  |       |         |                   |         |       |
| (C) Voluntary return     |  |       |         |                   |         |       |
| (D) Technical assistance |  |       |         |                   |         |       |
| Total                    | 0,00   | 0,00  | 0,00    | 0,00              | 0,00    | 0,00  |
| ERF total                |  |       |         |                   |         |       |

<sup>(1)</sup> The exchange rate applied to Member States not in the euro area will be that of the penultimate Commission working day of the month preceding the month in which the expenditure was entered in the accounts by the payment authority responsible for the measure concerned.

*Appendix*

Appendix to the statement of expenditure: amounts recovered since the last declaration of expenditure included in this declaration of expenditure (grouped by measure):

|  |  |
|--|--|
| Amount to be repaid                            |  |
| Debtor   |  |
| Issue date of the collection document          |  |
| Authority which issued the collection document |  |
| Actual recovery date                           |  |
| Amount recovered                               |  |



## REQUEST FOR PAYMENT

Name of measure: .....

Commission reference (CCI number): .....

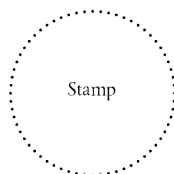
Under Article 17 of Decision 2000/596/EC, I, the undersigned (name in capitals, stamp, capacity and signature of the competent authority), request payment of ..... EUR as an intermediate/final payment <sup>(1)</sup>. This request for payment is admissible on the following basis:

|  |  |
|--|--|
| (a) The description of the procedure provided for in Article 8(2)/the final report (delete where appropriate) required under Article 20(3) of the Decision | <input type="checkbox"/> has been transmitted<br><input type="checkbox"/> is attached  |
| (b) The decisions taken by the management authority are within the total amount allocated from the Fund to the measures in question                        |  |
| (c) If recommendations for improving the monitoring and management systems have been sent by the Commission  | <input type="checkbox"/> they have been followed<br><input type="checkbox"/> explanations have been provided<br><input type="checkbox"/> no recommendations  |
| (d) Financial corrections under Article 19(1) of the Decision  | <input type="checkbox"/> have been made<br><input type="checkbox"/> have been commented on<br><input type="checkbox"/> no expenditure has been included<br><input type="checkbox"/> no measures required |
| (f) No certified expenditure is part of a measure containing State aid not yet approved  | <input type="checkbox"/> not suspended<br><input type="checkbox"/> no expenditure has been included  |

Payment should be made to:

|  |  |
|--|--|
| Recipient                                    |  |
| Bank   |  |
| Address of branch                            |  |
| Account number                               |  |
| Account holder (if different from recipient) |  |

Date.....

.....  
(Name in capital letters).....  
(Position and signature of competent authority)

<sup>(1)</sup> Delete where appropriate.