

## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## DECISIONS ADOPTED JOINTLY BY THE EUROPEAN PARLIAMENT AND THE COUNCIL

### DECISION No 573/2007/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 May 2007

**establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the Opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with accompanying measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and the safeguarding of the rights of third-country nationals.
- (2) The European Council, at its meeting in Tampere on 15 and 16 October 1999, reaffirmed its resolve to create an area of freedom, security and justice. For that purpose, a common European policy on asylum and migration should aim both at the fair treatment of third-country nationals and the better management of migration flows. A common policy on asylum, including a Common European Asylum System,

should be a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

- (3) This Decision respects fundamental rights and observes the principles as reflected, in particular, in the Charter of Fundamental Rights of the European Union and the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967 (hereinafter referred to as 'the Geneva Convention').
- (4) With respect to the treatment of persons falling within the scope of this Decision, Member States are bound by their obligations under instruments of international law to which they are party and which prohibit discrimination.
- (5) The best interests of the child should be a primary consideration of Member States when implementing this Decision, in compliance with the UN Convention on the Rights of the Child, where applicable.
- (6) Implementation of this policy should be based on solidarity between Member States and requires mechanisms to promote a balance of efforts between Member States in receiving and bearing the consequences of receiving refugees and displaced persons. To that end, a European Refugee Fund was established for the period 2000 to 2004 by Council Decision 2000/596/EC <sup>(4)</sup>. That decision was replaced by Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the

<sup>(1)</sup> OJ C 88, 11.4.2006, p. 15.

<sup>(2)</sup> OJ C 115, 16.5.2006, p. 47.

<sup>(3)</sup> Opinion of the European Parliament of 14 December 2006 (not yet published in the Official Journal) and Council Decision of 7 May 2007.

<sup>(4)</sup> OJ L 252, 6.10.2000, p. 12.

- period 2005 to 2010 <sup>(1)</sup>. This ensured continued solidarity between Member States in the light of recently adopted Community legislation in the field of asylum, taking account of the experience acquired when implementing the European Refugee Fund for the period 2000 to 2004.
- (7) In the Hague Programme of 4 and 5 November 2004, the European Council set a series of objectives and priorities with a view to further developing the Common European Asylum System in its second phase.
- (8) In particular, the European Council underlined the need for the European Union to contribute in a spirit of shared responsibility to a more accessible, equitable and effective international protection system and to provide access to protection and durable solutions at the earliest possible stage, and called for the development of EU-Regional Protection Programmes, including a joint resettlement programme for Member States willing to participate in such a programme.
- (9) The European Council also called for the establishment of appropriate structures involving the national asylum services of the Member States with a view to facilitating practical and collaborative cooperation, aimed at achieving an EU-wide single procedure, the joint compilation, assessment and application of country of origin information and addressing particular pressures on asylum systems or reception capacities resulting from factors such as geographic location.
- (10) A new European Refugee Fund (hereinafter referred to as 'the Fund') should be established in the light of the establishment of the European Fund for the integration of legally-resident third-country nationals, the European Fund for the return of illegally-resident third-country nationals and the External Borders Fund for the period 2007 to 2013, as part of the General programme 'Solidarity and Management of Migration Flows', in particular with a view to setting out common management, control and evaluation arrangements.
- (11) In the light of the scope and the purpose of the Fund, it should not, in any event, support actions with respect to areas and centres for holding persons in third countries.
- (12) It is necessary to adapt the duration of the Fund to the duration of the multiannual financial framework as set out in the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management <sup>(2)</sup>.
- (13) This Decision is designed to form part of a coherent framework, which also includes Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows' <sup>(3)</sup>, Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows' <sup>(4)</sup>, and Council Decision 2007/.../EC of ... establishing the European Fund for the Integration of Third-country Nationals for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows' <sup>(5)</sup>, which aims to address the issue of fairly sharing responsibilities between Member States as concerns the financial burden arising from the introduction of integrated management of the European Union's external borders and from the implementation of common policies on asylum and immigration, as developed in accordance with Title IV of Part Three of the Treaty.
- (14) It is appropriate to support and improve the efforts made by Member States to grant appropriate reception conditions to refugees, displaced persons and beneficiaries of subsidiary protection, in accordance with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted <sup>(6)</sup>, to apply fair and effective asylum procedures and to promote good practice in the field of asylum so as to protect the rights of persons requiring international protection and enable Member States' asylum systems to work efficiently.
- (15) The integration of refugees into the society of the country in which they are established is one of the objectives of the Geneva Convention. Such persons must be enabled to share the values set out in the Charter of Fundamental Rights of the European Union. To this end, there should be support for action by Member States to promote their social, economic and cultural integration in so far as it contributes to economic and social cohesion, the maintenance and strengthening of which is one of the Community's fundamental tasks provided for in Articles 2 and 3(1)(k) of the Treaty.
- (16) In the light of the Hague Programme, it is necessary to ensure that the Fund's resources are used in the most efficient way possible to achieve the aims of European Union asylum policy, taking into account the need to support resettlement and practical cooperation between Member States, inter alia as a means of addressing particular pressures on reception capacities and asylum systems.

<sup>(3)</sup> See page 22 of this Official Journal.

<sup>(4)</sup> See page 45 of this Official Journal.

<sup>(5)</sup> Not yet published in the Official Journal.

<sup>(6)</sup> OJ L 304, 30.9.2004, p. 12.

<sup>(1)</sup> OJ L 381, 28.12.2004, p. 52.

<sup>(2)</sup> OJ C 139, 14.6.2006, p. 1.

- (17) The Fund should support Member States' efforts relating to the enhancement of their capacity to develop, monitor and evaluate their asylum policies in light of their obligations under Community legislation, in particular with a view to engaging in practical cooperation between Member States.
- (18) The Fund should also support the voluntary efforts made by Member States to provide international protection and a durable solution in their territories to refugees and displaced persons identified as eligible for resettlement by the United Nations High Commissioner for Refugees (UNHCR), such as the actions that the Member States implement to assess the resettlement needs and transfer the persons concerned to their territories, with a view to granting them a secure legal status and to promoting their effective integration.
- (19) It is in the nature of the Fund that it should be able to provide support to voluntary burden-sharing operations agreed between Member States and consisting of the transfer of beneficiaries of international protection, and of applicants for international protection, from one Member State to another which grants them equivalent protection.
- (20) The Fund should also be able to offer adequate support to joint efforts by Member States to identify, share and promote best practices and establish effective cooperation structures in order to enhance the quality of decision-making within the framework of the Common European Asylum System.
- (21) A financial reserve should be established for the implementation of emergency measures to provide temporary protection in the event of a mass influx of displaced persons, pursuant to Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof<sup>(1)</sup>.
- (22) It should also be possible to use that financial reserve to support Member States' efforts to address situations of particular pressure which result from sudden arrivals of large numbers of persons who may be in need of international protection and which place significant and urgent demands on Member States' reception facilities or asylum systems. The conditions and the procedure for granting financial assistance in these situations should be laid down.
- (23) The support provided by the Fund would be more efficient and better targeted if co-financing of eligible actions were based on a multiannual programme, subject to a mid-term review, and on an annual programme drawn up by each Member State taking into account its situation and needs.
- (24) Whilst it is appropriate to award a fixed amount to each Member State, it remains fair to allocate a large part of the available annual resources in proportion to the burden borne by each Member State through its efforts in receiving refugees and displaced persons, including refugees enjoying international protection within the framework of national programmes.
- (25) Persons granted international protection and a durable solution through resettlement should be included in the numbers of beneficiaries of international protection taken into account when allocating the available annual resources between Member States.
- (26) Taking into account the importance of the strategic use of resettlement from countries or regions designated for the implementation of regional protection programmes, it is necessary to provide additional financial support for the resettlement of persons from the Western Newly Independent States and sub-Saharan Africa, which were so designated in the Communication from the Commission to the European Parliament and the Council on regional protection programmes of 1 September 2005 and the Council Conclusions of 12 October 2005, and from any other countries or regions that are so designated in the future.
- (27) It is equally necessary to provide additional financial support to resettlement actions targeted at certain particularly vulnerable categories of persons, where resettlement is determined to be the most appropriate response to their special needs.
- (28) In the context of shared management as referred to in Article 53(1)(b) 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<sup>(2)</sup> (hereinafter referred to as 'the Financial Regulation'), the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Union should be specified and the obligations for the cooperation of the Member States clarified. Applying those conditions would enable the Commission to satisfy itself that Member States are using the Fund in a lawful and correct manner and in accordance with the principle of sound financial management within the meaning of Articles 27 and 48(2) of the Financial Regulation.
- (29) Member States should adopt adequate measures to guarantee the proper functioning of the management and control system and the quality of implementation. To this end, it is necessary to establish general principles and necessary functions which all programmes should fulfil.
- (30) In accordance with the principles of subsidiarity and proportionality, Member States should have the primary responsibility for the implementation and control of the interventions of the Fund.

<sup>(1)</sup> OJ L 212, 7.8.2001, p. 12.

<sup>(2)</sup> OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

- (31) The obligations on the Member States as regards management and control systems, the certification of expenditure, and the prevention, detection and correction of irregularities and infringements of Community law should be specified in order to guarantee efficient and correct implementation of their multiannual and annual programmes. In particular, as far as management and control are concerned, it is necessary to establish the arrangements by which Member States ensure that the relevant systems are in place and function satisfactorily.
- (32) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be encouraged.
- (33) The effectiveness and impact of actions supported by the Fund also depend on their evaluation and the dissemination of their results. The responsibilities of the Member States and the Commission in this regard, and arrangements to ensure the reliability of evaluation and the quality of the related information, should be formalised.
- (34) Bearing in mind the importance of visibility of Community funding, the Commission should provide guidance facilitating the proper acknowledgement of the support received by any authority, non-governmental organisation, international organisation or other entity receiving a grant under this Fund, taking into account the practice with respect to other instruments under shared management, such as the Structural Funds.
- (35) Actions should be evaluated with a view to a mid-term review and impact assessment, and the evaluation process should be incorporated into project monitoring arrangements.
- (36) This Decision establishes a financial envelope for the entire duration of the programme, which constitutes the prime reference for the budgetary authority during the annual budgetary procedure, according to point 37 of the Interinstitutional Agreement on budgetary discipline and sound financial management.
- (37) Since the objective of this Decision, namely to promote a balance of effort between Member States in receiving refugees and displaced persons, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve this objective.
- (38) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (39) Since the measure of this Decision relating to the adoption of strategic guidelines is of general scope and is designed to amend non-essential elements of this Decision, inter alia by deleting some of those elements or by supplementing this Decision by the addition of new non-essential elements, it should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. On grounds of efficiency, the normal time-limits for the regulatory procedure with scrutiny should be curtailed for the adoption of the strategic guidelines.
- (40) Decision 2004/904/EC should be repealed.
- (41) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 6 September 2005, its wish to take part in the adoption and application of this Decision.
- (42) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 27 October 2005, its wish to take part in the adoption and application of this Decision.
- (43) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application.
- (44) In accordance with the second indent of paragraph 2 of Article 67 of the Treaty, Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty <sup>(2)</sup> rendered the procedure referred to in Article 251 of the Treaty applicable in the areas covered by Articles 62(1), (2)(a) and (3) and 63 (2)(b) and (3)(b) of that Treaty.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

<sup>(2)</sup> OJ L 396, 31.12.2004, p. 45.

HAVE ADOPTED THIS DECISION:

CHAPTER I

**SUBJECT-MATTER, OBJECTIVES AND ACTIONS**

*Article 1*

**Subject matter and scope**

This Decision establishes for the period from 1 January 2008 to 31 December 2013 the European Refugee Fund (hereinafter referred to as 'the Fund'), as part of a coherent framework which also includes Decision No 574/2007/EC, Decision No 575/2007/EC, and Decision 2007/.../EC, in order to contribute to the strengthening of the area of freedom, security and justice and the application of the principle of solidarity between the Member States.

This Decision defines the objectives to which the Fund contributes, its implementation, the available financial resources and the distribution criteria for the allocation of the available financial resources.

It establishes the Fund's management rules, including financial rules, as well as monitoring and control mechanisms, based on the sharing of responsibilities between the Commission and the Member States.

*Article 2*

**General objective of the Fund**

1. The general objective of the Fund shall be to support and encourage the efforts made by the Member States in receiving, and in bearing the consequences of receiving, refugees and displaced persons, taking account of Community legislation on those matters, by co-financing the actions provided for in this Decision.

2. The Fund shall contribute to the financing of technical assistance at the initiative of the Member States or the Commission.

*Article 3*

**Eligible actions in the Member States**

1. The Fund shall support actions in Member States relating to one or more of the following:

- (a) reception conditions and asylum procedures;
- (b) integration of persons referred to in Article 6 whose stay in a particular Member State is of a lasting and stable nature;
- (c) enhancement of Member States' capacity to develop, monitor and evaluate their asylum policies in the light of their obligations under existing and future Community legislation relating to the Common European Asylum

System, in particular with a view to engaging in practical cooperation activities between Member States;

- (d) resettlement of persons referred to in Article 6(e). For the purposes of this Decision, resettlement means the process whereby, on a request from UNHCR based on a person's need for international protection, third-country nationals or stateless persons are transferred from a third country to a Member State where they are permitted to reside with one of the following statuses:

- (i) refugee status within the meaning of Article 2(d) of Directive 2004/83/EC, or
- (ii) a status which offers the same rights and benefits under national and Community law as refugee status;

- (e) transfer of persons falling within the categories referred to in Article 6(a) and (b) from the Member State which granted them international protection to another Member State where they will be granted similar protection and of persons falling within the category referred to in Article 6 (c) to another Member State where their applications for international protection will be examined.

2. As regards reception conditions and asylum procedures, eligible actions shall include the following:

- (a) accommodation infrastructure or services;
- (b) structures and training to ensure access to asylum procedures for asylum seekers;
- (c) provision of material aid and medical or psychological care;
- (d) social assistance, information or help with administrative and/or judicial formalities and information or counselling on the possible outcomes of the asylum procedure, including on aspects such as voluntary return;
- (e) legal aid and language assistance;
- (f) education, language training and other initiatives which are consistent with the status of the person concerned;
- (g) the provision of support services such as translation and training to help improve reception conditions and the efficiency and quality of asylum procedures;
- (h) information for local communities as well as training for the staff of local authorities, who will be interacting with those being received in the host country;
- (i) transfer of persons falling within the category referred to in Article 6(c) from the Member State where they are located to the Member State responsible for the examination of their asylum application.

3. As regards the integration into Member States' societies of persons referred to in paragraph 1(b) and members of their family, eligible actions shall include the following:

- (a) advice and assistance in areas such as housing, means of subsistence, integration into the labour market, medical, psychological and social care;
- (b) actions enabling such persons to adapt to the society of the Member State in socio-cultural terms, and to share the values enshrined in the Charter of Fundamental Rights of the European Union;
- (c) actions to promote durable and sustainable participation in civil and cultural life;
- (d) measures focusing on education, vocational training, or recognition of qualifications and diplomas;
- (e) actions designed to promote self-empowerment and to enable such persons to provide for themselves;
- (f) actions that promote meaningful contact and constructive dialogue between such persons and the receiving society, including actions which promote the involvement of key partners such as the general public, local authorities, refugee associations, voluntary groups, social partners and the broader civil society;
- (g) measures to support the acquisition of skills by such persons, including language training;
- (h) actions that promote both equality of access and equality of outcomes in relation to such persons' dealings with public institutions.

4. As regards actions relating to the enhancement of Member States' capacity to develop, monitor and evaluate their asylum policies, the following, in particular, shall be eligible for support from the Fund:

- (a) actions promoting the collection, compilation, use and dissemination of country of origin information, including translation;
- (b) actions enhancing the capacity to collect, analyse and disseminate statistics on asylum procedures, reception, integration and beneficiaries of international protection;
- (c) actions enhancing the capacity to assess asylum applications, including appeals;
- (d) actions contributing to the evaluation of asylum policies, such as national impact assessments, surveys among target groups, the development of indicators and benchmarking.

5. As regards actions relating to resettlement, the following, in particular, shall be eligible for support from the Fund:

- (a) actions relating to the establishment and development of a resettlement programme;
- (b) actions relating to the assessment of potential resettlement cases by the competent Member States' authorities, such as conducting missions to the host country, interviews, medical and security screening;
- (c) pre-departure health assessment and medical treatment;
- (d) pre-departure material provisions;
- (e) pre-departure information measures;
- (f) travel arrangements, including the provision of medical escort services;
- (g) information and assistance immediately upon arrival, including interpretation services.

6. As regards actions relating to the transfer of beneficiaries of and applicants for international protection between Member States, the following, in particular, shall be eligible for support from the Fund:

- (a) pre-departure information measures;
- (b) travel arrangements, including the provision of medical escort services;
- (c) information and assistance immediately upon arrival, including interpretation services.

7. The actions referred to in paragraphs 2 and 3 shall also be eligible for support from the Fund where they are targeted at the persons referred to in Article 6(e).

8. Actions provided for in paragraphs 1 to 6 shall, in particular, promote the implementation of the provisions of the relevant Community legislation in the field of the Common European Asylum System.

9. Actions shall take account of gender-related issues, the best interests of children, the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of torture, or rape or other serious forms of psychological, physical or sexual violence or abuse, victims of trafficking, and individuals in need of emergency care and essential treatment of illness.

10. The Fund shall only support actions with respect to accommodation of persons referred to in Article 6(c) which is separate from areas or centres solely destined for persons whose

entry is refused or for persons who are intercepted after crossing an external border illegally or when approaching an external border with a view to entering the territory of the Member States illegally.

#### Article 4

##### Community actions

1. At the Commission's initiative, up to 10 % of the Fund's available resources may be used to finance transnational actions or actions of interest to the Community as a whole (hereinafter referred to as 'Community actions') concerning asylum policy and measures applicable to the target groups referred to in Article 6.
2. To be eligible for funding, Community actions shall, in particular:
  - (a) further Community cooperation in implementing Community law and good practices, including interpretation and translation services supporting such cooperation;
  - (b) support the setting-up of transnational cooperation networks and pilot projects based on transnational partnerships between bodies located in two or more Member States designed to stimulate innovation, facilitate exchanges of experience and good practice and improve the quality of asylum policy;
  - (c) support transnational awareness-raising campaigns;
  - (d) support studies, dissemination and exchange of information on best practices and all other aspects of asylum policies, including on the use of state-of-the-art technology and on cooperation at national level between key partners, such as local and regional authorities, refugee associations and voluntary groups;
  - (e) support pilot projects, including innovative projects, and studies exploring the possibility of new forms of Community cooperation and Community law in this area;
  - (f) support development and application by Member States of common statistical tools, methods and indicators for measuring policy developments in the field of asylum;
  - (g) offer to networks linking non-governmental organisations which assist refugees and asylum seekers and which are present in at least 10 Member States structural support intended to facilitate exchanges of experience and sound practice and to ensure that the development of Community asylum policy and practice takes into account the experience gained by non-governmental organisations and the interests of refugees and asylum seekers;
  - (h) provide Member States with support services in the event of duly substantiated emergency situations requiring urgent action.

3. The annual work programme laying down the priorities for Community actions shall be adopted in accordance with the procedure referred to in Article 52(2).

#### Article 5

##### Emergency measures

1. In the event of temporary protection mechanisms within the meaning of Directive 2001/55/EC being implemented, the Fund shall also finance measures to help the Member States, such measures being separate from, and in addition to, the actions referred to in Article 3.
2. Without prejudice to paragraph 1, the Fund shall also provide assistance to Member States for the implementation of emergency measures aimed at addressing situations of particular pressure. Such situations are characterised by the sudden arrival at particular points on the borders of a large number of third-country nationals who may be in need of international protection, which place exceptionally heavy and urgent demands on the reception facilities, the asylum system or infrastructure of the Member State(s) concerned and may give rise to risks to human life, well being or access to protection provided under Community legislation.
3. The actions implemented in order to address the situations of particular pressure referred to in paragraph 2 shall be eligible for support from the Fund if:
  - (a) they are intended to be implemented immediately and cannot practicably be included in the relevant annual programme; and
  - (b) their duration does not exceed six months.
4. Eligible emergency measures shall concern the following types of action:
  - (a) reception and accommodation;
  - (b) provision of means of subsistence, including food and clothing;
  - (c) medical, psychological or other assistance;
  - (d) staff and administration costs linked to the reception of persons concerned and implementation of the measures;
  - (e) logistical and transport costs;
  - (f) legal aid and language assistance;
  - (g) provision of translation and interpretation services, country of origin information expertise and other measures contributing to the rapid identification of persons who may be in need of international protection and to a fair and efficient processing of asylum applications.
5. Measures under paragraph 4 may be supported by expert teams.

*Article 6***Target groups**

For the purposes of this Decision the target groups shall comprise the following categories:

- (a) any third-country national or stateless person having the status defined by the Geneva Convention and who is permitted to reside as a refugee in one of the Member States;
- (b) any third-country national or stateless person enjoying a form of subsidiary protection within the meaning of Directive 2004/83/EC;
- (c) any third-country national or stateless person who has applied for one of the forms of protection described in points (a) and (b);
- (d) any third-country national or stateless person enjoying temporary protection within the meaning of Directive 2001/55/EC;
- (e) any third-country national or stateless person who is being or has been resettled in a Member State.

## CHAPTER II

**PRINCIPLES OF ASSISTANCE***Article 7***Complementarity, consistency and compliance**

1. The Fund shall provide assistance which complements national, regional and local actions, integrating into them the priorities of the Community.
2. The Commission and the Member States shall ensure that assistance from the Fund and the Member States is consistent with the activities, policies and priorities of the Community. This consistency shall be indicated in particular in the multiannual programme referred to in Article 18.
3. Operations financed by the Fund shall comply with the provisions of the Treaty and of acts adopted thereunder.

*Article 8***Programming**

1. The objectives of the Fund shall be pursued within the framework of the multiannual programming period from 2008 to 2013, subject to a mid-term review in accordance with Article 22. The multiannual programming system shall include the priorities and a process for management, decision making, auditing and certification.
2. The multiannual programmes approved by the Commission shall be implemented by means of annual programmes.

*Article 9***Subsidiary and proportional intervention**

1. Implementation of multiannual and annual programmes referred to in Articles 18 and 20 shall be the responsibility of Member States at the appropriate territorial level, in accordance with the institutional system specific to each Member State. This responsibility shall be exercised in accordance with this Decision.
2. In relation to audit provisions, the means employed by the Commission and the Member States shall vary according to the size of the Community contribution. The same principle shall apply to provisions on evaluation and to the reports on multiannual and annual programmes.

*Article 10***Implementation methods**

1. The Community budget allocated to the Fund shall be implemented in accordance with Article 53(1)(b) of the Financial Regulation, with the exception of the Community actions referred to in Article 4 and the technical assistance referred to in Article 15 of this Decision.
2. The Commission shall exercise its responsibility for implementing the general budget of the European Union by:
  - (a) checking the existence and proper functioning of management and control systems in the Member States in accordance with the procedures described in Article 32;
  - (b) withholding or suspending payments, in full or in part, in accordance with the procedures described in Articles 41 and 42, if the national management and control systems fail, and applying any other financial correction required, in accordance with the procedures described in Articles 45 and 46.

*Article 11***Partnership**

1. Each Member State shall organise, in accordance with current national rules and practices, a partnership with the authorities and bodies which are involved in the implementation of the multiannual programme or which, according to the Member State concerned, are able to make a useful contribution to its development.

Such authorities and bodies may include the competent regional, local, urban and other public authorities, international organisations, in particular UNHCR, and bodies representing civil society, such as non-governmental organisations or social partners.

2. Such partnership shall be conducted in full compliance with the respective institutional, legal and financial jurisdiction of each partner category.

## CHAPTER III

## FINANCIAL FRAMEWORK

## Article 12

## Global resources

1. The financial envelope for the implementation of this Decision from 1 January 2008 to 31 December 2013 shall be EUR 628 million.

2. The annual appropriations shall be authorised by the budgetary authority within the limits of the Financial Framework.

3. The Commission shall make indicative annual breakdowns by Member States in accordance with the criteria established in Article 13.

## Article 13

## Annual distribution of resources for eligible action in the Member States

1. Each Member State shall receive a fixed amount of EUR 300 000 from the Fund's annual allocation.

This amount shall be raised to EUR 500 000 per annum for the period 2008 to 2013 for Member States which acceded to the European Union on 1 May 2004.

This amount shall be raised to EUR 500 000 per annum for Member States which accede to the European Union during the period from 2007 to 2013 for the remaining part of the period from 2008 to 2013 as from the year following their accession.

2. The remainder of the available annual resources shall be broken down between the Member States as follows:

- (a) 30 % in proportion to the number of persons who fall into one of the categories referred to in Article 6(a), (b) and (e) admitted over the previous three years;
- (b) 70 % in proportion to the number of persons who fall into one of the categories referred to in Article 6(c) and (d) registered over the previous three years.

For the purposes of this breakdown, persons referred to in Article 6(e) shall not be taken into account under the category referred to in Article 6(a).

3. Member States shall receive a fixed amount of EUR 4 000 for each resettled person falling into one of the following categories:

- (a) persons from a country or region designated for the implementation of a Regional Protection Programme;
- (b) unaccompanied minors;

(c) children and women at risk, particularly from psychological, physical or sexual violence or exploitation;

(d) persons with serious medical needs that can only be addressed through resettlement.

4. Where a Member State resettles a person falling within more than one of the categories referred to in paragraph 3, it shall receive the fixed amount for this person only once.

5. The reference figures shall be the latest statistics produced by the Commission (Eurostat), on the basis of data provided by Member States in accordance with Community law.

Where Member States have not supplied the Commission (Eurostat) with the statistics concerned, they shall provide provisional data as soon as possible.

Before accepting these data as reference figures, the Commission (Eurostat) shall evaluate the quality, comparability and completeness of the statistical information in accordance with normal operational procedures. At the request of the Commission (Eurostat), Member States shall provide it with all the necessary information to do so.

6. By 1 May each year, Member States shall provide the Commission with an estimate of the number of persons referred to in paragraph 3 whom they will resettle the following year, including a breakdown by the different categories referred to in that paragraph. The Commission shall communicate this information to the Committee referred to in Article 52.

## Article 14

## Financing structure

1. Financial contributions under the Fund shall take the form of grants.

2. Actions supported by the Fund shall be co-financed by public or private sources, shall be of a non-profit nature and shall not be eligible for funding from other sources covered by the general budget of the European Union.

3. Fund appropriations shall be complementary to public or equivalent expenditure allocated by Member States to the measures covered by this Decision.

4. The Community contribution to supported projects, as regards actions implemented in the Member States under Article 3, shall not exceed 50 % of the total cost of a specific action.

This may be increased to 75 % for projects addressing specific priorities identified in the strategic guidelines referred to in Article 17.

The Community contribution shall be increased to 75 % in the Member States covered by the Cohesion Fund.

5. Within the framework of the implementation of national programming as set out in Chapter IV, Member States shall select projects for financing on the basis of the following minimum criteria:

- (a) the situation and requirements in the Member State concerned;
- (b) the cost-effectiveness of the expenditure, inter alia in view of the number of persons concerned by the project;
- (c) the experience, expertise, reliability and financial contribution of the organisation applying for funding and any partner organisation;
- (d) the extent to which the project complements other actions funded by the general budget of the European Union or as part of national programmes.

6. As a general rule, Community financial aid for actions supported by the Fund shall be granted for a period of no more than three years, subject to periodic progress reports.

7. The Community contribution to supporting actions implemented under Article 3(4) shall not exceed 15 % of the total of the annual resources allocated to each Member State in accordance with Article 13.

#### Article 15

##### Technical assistance at the initiative of the Commission

1. At the initiative of and/or on behalf of the Commission, subject to a ceiling of EUR 500 000 of the Fund's annual allocation, the Fund may finance preparatory measures, monitoring, administrative and technical support measures, as well as evaluation, audit and inspection measures necessary for implementing this Decision.
2. Those measures shall include:
  - (a) studies, evaluations, expert reports and statistics, including those of a general nature concerning the operation of the Fund;
  - (b) information measures for the Member States, the final beneficiaries and the general public, including awareness-raising campaigns and a common database of projects financed under the Fund;
  - (c) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;
  - (d) the design of a common framework for evaluation and monitoring as well as a system of indicators, taking into account, where appropriate, national indicators;
  - (e) improvements in evaluation methods and the exchange of information on practices in this field;
  - (f) information and training measures for the authorities designated by Member States in accordance with Article 25,

complementary to the efforts of the Member States to provide guidance to their authorities in accordance with Article 31(2).

#### Article 16

##### Technical assistance at the initiative of the Member States

1. At the initiative of a Member State, for each annual programme, the Fund may finance preparatory measures, management, monitoring, evaluation, information and control measures, as well as measures for the reinforcement of the administrative capacity for the implementation of the Fund.
2. The amount set aside for technical assistance under each annual programme may not exceed:
  - (a) for the period 2008 to 2010, 7 % of the total annual amount of co-financing allocated to that Member State plus EUR 30 000; and
  - (b) for the period 2011 to 2013, 4 % of the total annual amount of co-financing allocated to that Member State plus EUR 30 000.

#### CHAPTER IV

##### PROGRAMMING

#### Article 17

##### Adoption of strategic guidelines

1. The Commission shall adopt strategic guidelines setting out a framework for the intervention of the Fund, taking into account progress in the development and implementation of Community legislation in the area of asylum policy as well as the indicative distribution of the financial resources of the Fund for the period of the multiannual programme.
2. For each of the objectives of the Fund, those guidelines shall in particular give effect to the priorities of the Community with a view to promoting the implementation of the Common European Asylum System.
3. The Commission shall adopt the strategic guidelines relating to the multiannual programming period by 31 July 2007.
4. The strategic guidelines shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 52 (3). Those strategic guidelines, once adopted, shall be annexed to this Decision.

#### Article 18

##### Preparation and approval of national multiannual programmes

1. Each Member State shall propose, on the basis of the strategic guidelines referred to in Article 17, a draft multiannual programme which shall consist of the following elements:
  - (a) a description of the current situation in that Member State as regards arrangements for reception, asylum procedures,

counselling for voluntary return, integration, and resettlement and transfer from another Member State of persons covered by Article 6, as well as the development, monitoring and evaluation of asylum policies;

- (b) an analysis of requirements in the Member State in question in terms of reception, asylum procedures, counselling for voluntary return, integration, and resettlement and transfer from another Member State of persons covered by Article 6, as well as the development, monitoring and evaluation of asylum policies;
- (c) the presentation of an appropriate strategy to achieve those objectives and the priorities attached to their attainment, and a description of the actions envisaged to implement those priorities;
- (d) an indication of whether that strategy is compatible with other regional, national and Community instruments;
- (e) information on the priorities and their specific targets. Those targets shall be quantified using a limited number of indicators, taking into account the proportionality principle. The indicators must make it possible to measure the progress in relation to the baseline situation and the effectiveness of the targets implementing the priorities;
- (f) a description of the approach chosen for the implementation of the partnership principle laid down in Article 11;
- (g) a draft financing plan which sets out, for each priority and each annual programme, the Fund's proposed financial contribution and the overall amount of public or private co-financing;
- (h) the provisions laid down to ensure that the multiannual programme is made public.

2. Member States shall submit their draft multiannual programme to the Commission no later than four months after the Commission has provided the strategic guidelines for the period in question.

3. In order to approve the draft multiannual programme, the Commission shall examine:

- (a) the draft multiannual programme's consistency with the objectives of the Fund and the strategic guidelines referred to in Article 17;
- (b) the relevance of the actions envisaged in the draft multiannual programme in the light of the strategy which is proposed;
- (c) the compliance of the management and control arrangements set up by the Member State for the implementation of the Fund's interventions with the provisions of this Decision;
- (d) the draft multiannual programme's compliance with Community law and, in particular, with Community law aiming at ensuring the free movement of persons in

conjunction with the directly related accompanying measures with respect to external border controls, asylum and immigration.

4. Where the Commission considers that a draft multiannual programme is inconsistent with the strategic guidelines and/or does not comply with the provisions of this Decision setting out management and control systems or with Community law, it shall invite the Member State concerned to provide all necessary additional information and, where appropriate, to revise the draft multiannual programme accordingly.

5. The Commission shall approve each multiannual programme within three months of its formal submission, in accordance with the procedure referred to in Article 52(2).

#### *Article 19*

### **Revision of multiannual programmes**

1. At the initiative of the Member State in question or the Commission, the multiannual programme shall be re-examined and, if necessary, revised for the rest of the programming period in order to take greater or different account of Community priorities. Multiannual programmes may be re-examined in the light of evaluations and/or following implementation difficulties.

2. The Commission shall adopt a decision approving the revision of the multiannual programme as soon as possible after the formal submission of a request to that effect by the Member State concerned. The revision of the multiannual programme shall be carried out in accordance with the procedure referred to in Article 52(2).

#### *Article 20*

### **Annual programmes**

1. The multiannual programme approved by the Commission shall be implemented by means of annual programmes.

2. The Commission shall provide the Member States, by 1 July of each year, with an estimate of the amounts to be allocated to them for the following year from the total appropriations allocated under the annual budgetary procedure, calculated as provided for by Article 13.

3. Member States shall submit to the Commission, by 1 November of each year, a draft annual programme for the following year, established in accordance with the multi-annual programme and consisting of the following elements:

- (a) the general rules for selection of projects to be financed under the annual programme;
- (b) a description of the actions to be supported under the annual programme;
- (c) the proposed financial breakdown of the Fund's contribution between the programme's various actions; and an indication of the amount requested to cover technical assistance under Article 16 for the purpose of implementing the annual programme.

4. By way of derogation from paragraph 3, Member States shall submit the draft annual programmes for 2008 to the Commission by 1 March 2008.

5. When examining the draft annual programme of a Member State, the Commission shall take account of the final amount of the appropriations allocated to the Fund under the budgetary procedure.

Within one month of the formal submission of the draft annual programme, the Commission shall inform the Member State concerned of whether it can be approved. If the draft annual programme is inconsistent with the multiannual programme, the Commission shall invite that Member State to provide all necessary information and, where appropriate, to revise the draft annual programme accordingly.

The Commission shall adopt the financing decision approving the annual programme by 1 March of the year in question. The decision shall indicate the amount allocated to the Member State concerned and the period for which the expenditure is eligible.

6. To take into account duly substantiated emergency situations which were not foreseen at the time of the approval of the annual programme and which require urgent action, a Member State may revise up to 10 % of the financial breakdown of the contribution from the Fund between the various actions listed in the annual programme or allocate up to 10 % of the breakdown to other actions in accordance with this Decision. The Member State concerned shall inform the Commission of the revised annual programme.

#### Article 21

##### Special provisions concerning emergency measures

1. Member States shall provide the Commission with a statement of requirements and an implementation plan for the emergency measures provided for in Article 5, including a description of the planned measures and the bodies responsible for implementing them.

2. A Member State requesting assistance from the Fund in order to address a situation of particular pressure, as described in Article 5(2), shall submit to the Commission an application providing all available relevant information, including:

- (a) a detailed description of the current situation, in particular concerning the number of arrivals, the effects on reception capacities, the asylum system or infrastructure and the urgent needs, as well as a substantiated forecast of possible developments in the situation in the short-term;
- (b) a substantiated indication of the exceptional character of the situation, demonstrated by elements which may include recent statistics and other data regarding the inflow of persons at the particular point of the border concerned;
- (c) a detailed description of the emergency measures envisaged, their scale, their nature and the partners concerned;
- (d) a breakdown of the estimated costs of the measures envisaged.

The Commission shall decide whether the conditions for granting financial assistance for emergency measures from the Fund are fulfilled and set the amount of financial assistance to be granted on the basis of the information referred to above as well as any additional relevant information at its disposal. The Commission shall inform Member States of that decision.

3. Financial assistance from the Fund for the emergency measures provided for in Article 5 shall be limited to a period of six months and shall not exceed 80 % of the cost of each measure.

4. In the event of the implementation of the temporary protection mechanism, as referred to in Article 5(1), available resources shall be distributed among the Member States on the basis of the number of persons benefiting from temporary protection in each Member State as referred to in Article 5(1).

#### Article 22

##### Mid-term review of the multiannual programme

1. The Commission shall review the strategic guidelines and, where necessary, adopt, by 31 March 2010, revised strategic guidelines for the period 2011 to 2013.

2. If such revised strategic guidelines are adopted, each Member State shall re-examine its multiannual programme and, where appropriate, revise it.

3. The rules laid down in Article 18 on the preparation and approval of national multiannual programmes shall apply mutatis mutandis to the preparation and approval of these revised multiannual programmes.

4. The revised strategic guidelines shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 52(3).

#### CHAPTER V

##### MANAGEMENT AND CONTROL SYSTEMS

#### Article 23

##### Implementation

The Commission shall be responsible for implementing this Decision and shall adopt such implementing rules as may be necessary.

#### Article 24

##### General principles of management and control systems

The management and control systems of multiannual programmes set up by Member States shall provide for:

- (a) the definition of the functions of the bodies concerned in management and control and the allocation of functions within each body;
- (b) respect for the principle of separation of functions between and within such bodies;

- (c) adequate resources for each body to carry out the functions which have been allocated to it throughout the period of implementation of actions co-financed by the Fund;
- (d) procedures for ensuring the correctness and regularity of the expenditure declared under the annual programmes;
- (e) reliable accounting, monitoring and financial reporting systems in computerised form;
- (f) a system of reporting and monitoring where the responsible body entrusts the performance of tasks to another body;
- (g) manuals of procedures in relation to the functions to be performed;
- (h) arrangements for auditing the functioning of the system;
- (i) systems and procedures to ensure an adequate audit trail;
- (j) procedures for reporting and monitoring irregularities and for the recovery of amounts unduly paid.

#### Article 25

##### Designation of authorities

1. For the implementation of its multiannual programme and annual programmes the Member State shall designate the following:
  - (a) a responsible authority: a functional body of the Member State, national public authority or body designated by the Member State or a body which is governed by the private law of the Member State and has a public service mission, which shall be responsible for the management of the multiannual programme and annual programmes supported by the Fund and handle all communication with the Commission;
  - (b) a certifying authority: a national public authority or body, or individual acting as such a body or authority, designated by the Member State to certify declarations of expenditure before they are sent to the Commission;
  - (c) an audit authority: a national public authority or body, provided that it is functionally independent of the responsible authority and the certifying authority, designated by the Member State and responsible for verifying the effective functioning of the management and control system;
  - (d) where appropriate, a delegated authority.

2. The Member State shall lay down rules governing its relations with the authorities referred to in paragraph 1 and their relations with the Commission.

3. Subject to Article 24 (b), some or all of the authorities referred to in paragraph 1 of this Article may be located within the same body.

4. The rules for implementing Articles 26 to 30 shall be adopted by the Commission in accordance with the procedure referred to in Article 52(2).

#### Article 26

##### Responsible authority

1. The responsible authority shall meet the following minimum conditions.

It shall:

- (a) have legal personality, except where it is a functional body of the Member State;
- (b) have the infrastructure required for easy communication with a wide range of users and with the responsible bodies in the other Member States and the Commission;
- (c) work in an administrative context allowing it to carry out its tasks correctly and avoiding any conflict of interest;
- (d) be in a position to apply Community fund management rules;
- (e) have financial and management capacities proportionate to the volume of Community funds which it will be called upon to manage;
- (f) have at its disposal personnel with appropriate professional qualifications for administrative work in an international environment.

2. The Member State shall provide the responsible authority with adequate funding so that it can continue to carry out its tasks properly throughout the period 2008 to 2013.

3. The Commission may assist the Member States in the training of staff, in particular as regards the correct application of Chapters V to IX.

#### Article 27

##### Tasks of the responsible authority

1. The responsible authority shall be responsible for managing and implementing the multi-annual programme in accordance with the principle of sound financial management.

It shall in particular:

- (a) consult partners in accordance with Article 11;
- (b) submit to the Commission proposals for multiannual and annual programmes to which Articles 18 and 20 refer;

- (c) organise and advertise calls for tenders and proposals if appropriate;
- (d) organise the selection of projects for co-financing under the Fund in accordance with the criteria set out in Article 14(5);
- (e) receive payments made by the Commission, and make payments to the final beneficiaries;
- (f) ensure consistency and complementarity between co-financing under the Fund and from other relevant national and Community financial instruments;
- (g) monitor the delivery of the co-financed products and services and check that the expenditure declared for actions has actually been incurred and complies with Community and national rules;
- (h) ensure that there is a system for recording and storing in computerised form accounting records of each action under the annual programmes and that the data on implementation necessary for financial management, monitoring, control and evaluation are collected;
- (i) ensure that final beneficiaries and other bodies involved in the implementation of actions co-financed by the Fund maintain either a separate accounting system or an adequate accounting code for all transactions relating to the action without prejudice to national accounting rules;
- (j) ensure that the evaluations of the Fund referred to in Article 49 are carried out within the time limits laid down in Article 50(2) and meet the quality standards agreed between the Commission and the Member State;
- (k) set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements referred to in Article 43;
- (l) ensure that the audit authority receives for the purposes of carrying out the audits defined in Article 30(1) all necessary information on management procedures operated and the projects co-financed by the Fund;
- (m) ensure that the certifying authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
- (n) draw up and submit to the Commission progress and final reports on the implementation of the annual programmes, declarations of expenditure certified by the certifying authority and requests for payment or, where appropriate, statements of reimbursement;
- (o) carry out information and advisory activities and disseminate results of supported actions;

- (p) cooperate with the Commission and the responsible authorities in the other Member States;
- (q) verify the implementation by the final beneficiaries of the guidelines referred to in Article 33(6).

2. The responsible authority's management activities for projects implemented in the Member States may be financed under the technical assistance arrangements referred to in Article 16.

#### Article 28

##### Delegation of tasks by the responsible authority

1. Where all or some of the responsible authority's tasks are delegated to a delegated authority, the responsible authority shall define the scope of the tasks delegated, and set out detailed procedures for the implementation of the delegated tasks, which shall comply with the conditions laid down in Article 26.

2. These procedures shall include supplying the responsible authority with regular information on the effective performance of the delegated tasks and a description of the means employed.

#### Article 29

##### Certifying authority

1. The certifying authority shall:

- (a) certify that:
  - (i) the declaration of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,
  - (ii) the expenditure declared complies with applicable Community and national rules and has been incurred in respect of actions selected in accordance with the criteria applicable to the programme and complying with Community and national rules;
- (b) ensure for the purposes of certification that it has received adequate information from the responsible authority on the procedures and verifications carried out in relation to expenditure included in declarations of expenditure;
- (c) take account for the purposes of certification of the results of all audits carried out by or under the responsibility of the audit authority;
- (d) maintain accounting records in computerised form of expenditure declared to the Commission;
- (e) verify the recovery of any Community financing found to have been unduly paid as a result of irregularities detected, together with interest where appropriate;

- (f) keep an account of amounts recoverable and amounts recovered under the general budget of the European Union, where possible by deducting them from the next declaration of expenditure.

2. The certifying authority's activities relating to projects implemented in the Member States may be financed under the technical assistance arrangements referred to in Article 16, provided that the prerogatives of this authority as described in Article 25 are respected.

#### Article 30

##### Audit authority

1. The audit authority shall:
  - (a) ensure that audits are carried out to verify the effective functioning of the management and control system;
  - (b) ensure that audits are carried out on actions on the basis of an appropriate sample to verify expenditure declared; the sample shall represent at least 10 % of the total eligible expenditure for each annual programme;
  - (c) present to the Commission within six months of the approval of the multiannual programme an audit strategy covering the bodies which will perform the audits referred to under points (a) and (b), ensuring that the main beneficiaries of co-financing by the Fund are audited and that audits are spread evenly throughout the programming period.
2. Where the designated audit authority under this Decision is also the designated audit authority under Decisions No 574/2007/EC, No 575/2007/EC and 2007/.../EC, or where common systems apply to two or more of these Funds, a single combined audit strategy may be submitted under paragraph 1(c).
3. For each annual programme, the audit authority shall draft a report which shall comprise:
  - (a) an annual audit report setting out the findings of the audits carried out in accordance with the audit strategy in respect of the annual programme and reporting any shortcomings found in the systems for the management and control of the programme;
  - (b) an opinion, on the basis of the controls and audits that have been carried out under the responsibility of the audit authority, as to whether the functioning of the management and control system provides reasonable assurance that declarations of expenditure presented to the Commission are correct and that the underlying transactions are legal and regular;
  - (c) a declaration assessing the validity of the request for payment or statement of reimbursement of the final

balance and the legality and regularity of the expenditure concerned.

4. The audit authority shall ensure that the audit work takes account of internationally accepted audit standards.

5. The audit relating to projects implemented in the Member States may be financed under the technical assistance arrangements referred to in Article 16, provided that the prerogatives of the audit authority as described in Article 25 are respected.

#### CHAPTER VI

##### RESPONSIBILITIES AND CONTROLS

#### Article 31

##### Responsibilities of the Member States

1. Member States shall be responsible for ensuring sound financial management of multi-annual and annual programmes and the legality and regularity of underlying transactions.
2. Member States shall ensure that responsible authorities and any delegated authority, certifying authorities, audit authorities and any other bodies concerned receive adequate guidance on setting up the management and control systems referred to in Articles 24 to 30 to ensure that Community financing is used efficiently and correctly.
3. Member States shall prevent, detect and correct irregularities. They shall notify these to the Commission, and keep the Commission informed of the progress in the administrative and legal proceedings.

When amounts unduly paid to a final beneficiary cannot be recovered, the Member State concerned shall be responsible for reimbursing the amounts lost to the general budget of the European Union when it is established that the loss has been incurred as a result of its fault or negligence.

4. Member States shall be primarily responsible for the financial control of actions and shall ensure that management and control systems and audits are implemented in such a way as to guarantee that Community funds are used properly and effectively. They shall provide the Commission with a description of these systems.

5. The detailed rules for implementing paragraphs 1 to 4 shall be adopted in accordance with the procedure referred to in Article 52(2).

#### Article 32

##### Management and control systems

1. Before the Commission approves the multi-annual programme, in accordance with the procedure referred to in Article 52(2), the Member States shall ensure that management

and control systems have been set up in accordance with Articles 24 to 30. They shall be responsible for ensuring that the systems function effectively throughout the programming period.

2. Member States shall submit to the Commission, together with their draft multiannual programme, a description of the organisation and procedures of the responsible authorities, delegated authorities and certifying authorities, and the internal audit systems operating in those authorities and bodies, the audit authority, and any other bodies carrying out audits under its responsibility.

3. The Commission shall review the application of this provision in the context of the preparation of the report set out in Article 50(3).

#### Article 33

### Responsibilities of the Commission

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 32 that the Member States have set up management and control systems that comply with Articles 24 to 30, and on the basis of the annual audit reports and its own audits, that the systems function effectively during the programming period.

2. Without prejudice to audits carried out by Member States, Commission officials or authorised Commission representatives may carry out on-the-spot checks to verify the effective functioning of the management and control systems, which may include audits of actions included in the annual programmes, with a minimum of three working days' notice. Officials or authorised representatives of the Member State concerned may take part in such audits.

3. The Commission may require a Member State to carry out on-the-spot checks to verify the correct functioning of the systems or the correctness of one or more transactions. Commission officials or authorised Commission representatives may take part in such checks.

4. The Commission shall, in cooperation with the Member States, ensure that appropriate information, publicity and follow-up are provided for actions supported by the Fund.

5. The Commission shall, in cooperation with the Member States, ensure that actions are consistent with, and complementary to, other relevant Community policies, instruments and initiatives.

6. The Commission shall lay down guidelines to ensure the visibility of the funding granted under this Decision.

#### Article 34

### Cooperation with the audit authorities of the Member States

1. The Commission shall cooperate with the audit authorities to coordinate their respective audit plans and methods and shall

immediately exchange the results of audits carried out of management and control systems in order to make the best possible use of control resources and to avoid unjustified duplication of work.

The Commission shall provide its comments on the audit strategy presented under Article 30 within not more than three months of its receipt.

2. In determining its own audit strategy, the Commission shall identify those annual programmes which it considers satisfactory on the basis of its existing knowledge of the management and control systems.

For those programmes, the Commission may conclude that it can rely principally on the audit evidence provided by the Member States and that it will carry out its own on-the-spot checks only if there is evidence to suggest shortcomings in the systems.

## CHAPTER VII

### FINANCIAL MANAGEMENT

#### Article 35

### Eligibility — declarations of expenditure

1. All declarations of expenditure shall include the amount of expenditure incurred by final beneficiaries in implementing the actions and the corresponding contribution from public or private funds.

2. Expenditure shall correspond to the payments effected by the final beneficiaries. It shall be justified by receipted invoices or accounting documents of equivalent evidential value.

3. Expenditure may be considered eligible for support from the Fund only if it is actually paid no earlier than 1 January of the year referred to in the financing decision approving the annual programme referred to in the third subparagraph of Article 20 (5). The co-financed actions must not have been completed before the starting date for eligibility.

4. The rules governing eligibility of expenditure within the framework of implemented actions co-financed by the Fund in the Member States under Article 3 shall be adopted in accordance with the procedure referred to in Article 52(2).

#### Article 36

### Completeness of payment to final beneficiaries

Member States shall satisfy themselves that the responsible authority ensures that the final beneficiaries receive the total amount of the contribution from public funds as quickly as possible. No amounts shall be deducted or withheld, nor shall any further specific charge or other charge with equivalent effect be levied that would reduce these amounts for the final beneficiaries, provided that the final beneficiaries meet all the requirements regarding the eligibility of actions and expenses.

*Article 37***Use of the euro**

1. Amounts set out in the draft multiannual and annual programmes of the Member States referred to in Articles 18 and 20 respectively, certified declarations of expenditure, requests for payments referred to in Article 27(1)(n), expenditure mentioned in the progress report on the implementation of the annual programme referred to in Article 39(4) and the final report on the implementation of the annual programme referred to in Article 51 shall be denominated in euros.

2. Commission financing decisions approving the annual programmes of Member States referred to in the third subparagraph of Article 20(5), Commission commitments and Commission payments shall be denominated and carried out in euros.

3. Member States which have not adopted the euro as their currency on the date of the request for payment shall convert into euros the amounts of expenditure incurred in national currency. This amount shall be converted into euros using the monthly accounting exchange rate of the Commission for the month during which the expenditure was entered in the accounts of the responsible authority of the programme concerned. This rate shall be published electronically by the Commission each month.

4. When the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 3 shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

*Article 38***Commitments**

Community budgetary commitments shall be made annually on the basis of the Commission financing decision approving the annual programme referred to in the third subparagraph of Article 20(5).

*Article 39***Payments — Pre-financing**

1. Payments by the Commission of the contribution from the Fund shall be made in accordance with the budget commitments.

2. Payments shall take the form of pre-financing and payment of the balance. They shall be made to the responsible authority designated by the Member State.

3. A first pre-financing payment representing 50 % of the amount allocated in the financing decision approving the annual programme shall be made to the Member State within sixty days following the adoption of that decision.

4. A second pre-financing payment shall be made no more than three months after the Commission has approved, within two months of the formal submission of a request for payment by a Member State, a progress report on the implementation of the annual programme and a certified declaration of expenditure

drawn up in accordance with Article 29(1)(a) and Article 35 accounting for at least 60 % of the amount of the initial payment.

The amount of the second pre-financing payment made by the Commission shall not exceed 50 % of the total amount allocated by the financing decision approving the annual programme and, in any event, where a Member State has committed nationally an amount less than the amount indicated in the financing decision approving the annual programme, the balance of the amount of Community funds actually committed by the Member State for selected projects under the annual programme minus the first pre-financing payment.

5. Any interest generated by pre-financing payments shall be posted to the annual programme concerned, being regarded as a resource for the Member State as national public contribution and shall be declared to the Commission at the time of the declaration of expenditure relating to the final report on the implementation of the annual programme concerned.

6. The amounts paid as pre-financing shall be cleared from the accounts when the annual programme is closed.

*Article 40***Payment of balance**

1. The Commission shall pay the balance provided it has received the following documents no later than nine months after the eligibility deadline for expenditure laid down in the financing decision approving the annual programme:

- (a) a certified declaration of expenditure, duly drawn up in accordance with Article 29(1)(a) and Article 35, and a request for payment of the balance or statement of reimbursement;
- (b) the final report on the implementation of the annual programme as set out in Article 51;
- (c) the annual audit report, opinion and declaration provided for in Article 30(3).

The payment of the balance shall be subject to the acceptance of the final report on the implementation of the annual programme and of the declaration assessing the validity of the request for payment of the balance.

2. If the responsible authority fails to provide the documents required in paragraph 1 by the due date and in an acceptable format, the Commission shall decommit any part of the budget commitment of the corresponding annual programme that has not been used for payment of the pre-financing.

3. The automatic cancellation procedure defined in paragraph 2 shall be suspended, for the amount of the projects concerned, where legal proceedings or administrative appeals having suspensive effects are under way at Member State level when the documents defined in paragraph 1 are submitted. The Member State shall, in the final report submitted, give detailed information on such projects, and send reports on progress made with regard to these projects every six months. Within

three months of the conclusion of the legal proceedings or administrative appeal procedure, the Member State shall present the documents required in paragraph 1 for the projects concerned.

4. The nine-month period referred to in paragraph 1 shall cease to run if the Commission adopts a decision suspending payments of the co-financing for the relevant annual programme in accordance with Article 42. The period shall start to run again from the date when the Commission decision referred to in Article 42(3) has been notified to the Member State.

5. Without prejudice to Article 41, the Commission shall, within six months of receiving the documents referred to in paragraph 1 of this Article, inform the Member State of the amount of expenditure recognised by the Commission as chargeable to the Fund, and of any financial corrections deriving from the difference between declared expenditure and the expenditure recognised. The Member State shall have three months to present its comments.

6. Within three months of receiving the Member State's comments, the Commission shall decide on the amount of expenditure recognised as chargeable to the Fund, and recover the balance arising from the difference between the final recognised expenditure and the sums already paid to that Member State.

7. Subject to available funding, the Commission shall pay the balance within no more than sixty days from the date on which it accepts the documents referred to in paragraph 1. The balance of the budgetary commitment shall be decommitted within six months following the payment.

#### Article 41

### Withholding of payments

1. The payment shall be withheld by the authorising officer by delegation within the meaning of the Financial Regulation for a maximum period of six months if:

- (a) in a report of a national or Community audit body there is evidence to suggest a significant deficiency in the functioning of the management and control systems;
- (b) that officer has to carry out additional verifications following information coming to his notice which alerted him that expenditure in a certified declaration of expenditure is linked to a serious irregularity which has not been corrected.

2. The Member State and the responsible authority shall be informed immediately of the reasons for the payment being withheld. The payment shall be withheld until the necessary measures are taken by the Member State.

#### Article 42

### Suspension of payments

1. All or part of the pre-financing and payments of the balance may be suspended by the Commission when:

- (a) there is a serious deficiency in the management and control system of the programme which affects the reliability of the

procedure for certification of payments and for which corrective measures have not been taken; or

- (b) expenditure in a certified declaration of expenditure is linked to a serious irregularity which has not been corrected; or
- (c) a Member State has not complied with its obligations under Articles 31 and 32.

2. The Commission may decide to suspend pre-financing and payments of the balance after having given the Member State the opportunity to present its observations within a period of three months.

3. The Commission shall end suspension of pre-financing and payments of the balance when it considers that the Member State has taken the necessary measures to enable the suspension to be lifted.

4. If the necessary measures are not taken by the Member State, the Commission may adopt a decision to cancel all or part of the Community contribution to the annual programme in accordance with Article 46.

#### Article 43

### Conservation of documents

Without prejudice to the rules governing State aid under Article 87 of the Treaty, the responsible authority shall ensure that all the supporting documents regarding expenditure and audits on the programmes concerned are kept available for the Commission and the Court of Auditors for a period of five years following the closure of the programmes in accordance with Article 40(1).

This period shall be interrupted either in the case of legal proceedings or at the duly substantiated request of the Commission.

The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.

#### CHAPTER VIII

### FINANCIAL CORRECTIONS

#### Article 44

### Financial corrections by Member States

1. Member States shall in the first instance bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or the conditions for the implementation or control of programmes and making the required financial corrections.

2. Member States shall make the financial corrections required in connection with the individual or systemic irregularities detected in actions or annual programmes.

Corrections made by the Member States shall consist in cancelling, and if applicable, recovering all or part of the Community contribution. Where the amount is not repaid in the

time allowed by the relevant Member State, default interest shall be due at the rate provided for in Article 47(2). Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Fund.

3. In the event of systemic irregularities the relevant Member State shall extend its enquiries to cover all operations liable to be affected.

4. Member States shall include in the final report on the implementation of the annual programme referred to in Article 51 a list of cancellation procedures initiated for the annual programme concerned.

#### Article 45

### Audit of accounts and financial corrections by the Commission

1. Without prejudice to the powers of the Court of Auditors or the checks carried out by the Member States in accordance with national laws, regulations and administrative provisions, Commission officials or authorised Commission representatives may carry out on-the-spot checks, including sample checks, on the actions financed by the Fund and on management and control systems with a minimum of three working days' notice. The Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. Officials or authorised representatives of the Member State concerned may take part in such checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the accuracy of one or more transactions. Commission officials or authorised Commission representatives may take part in such checks.

2. If, after completing the necessary verifications, the Commission concludes that a Member State is not complying with its obligations under Article 31, it shall suspend the pre-financing or payment of the balance in accordance with Article 42.

#### Article 46

### Criteria for the corrections

1. The Commission may make financial corrections by cancelling all or part of the Community contribution to an annual programme where, after carrying out the necessary examination, it concludes that:

- (a) there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme;
- (b) expenditure contained in a certified declaration of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph;

- (c) a Member State has not complied with its obligations under Article 31 prior to the opening of the correction procedure under this paragraph.

The Commission shall decide after having taken into account any comments made by the Member State.

2. The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied. Where the irregularity relates to a declaration of expenditure for which a reasonable assurance had previously been given by the audit authority in accordance with Article 30(3)(b), there will be a presumption of a systemic problem giving rise to the application of a flat-rate or extrapolated correction, unless the Member State can provide proof within three months to rebut this presumption.

3. The Commission shall, when deciding the amount of a correction, take account of the importance of the irregularity and the extent and financial implications of the deficiencies found in the annual programme concerned.

4. Where the Commission bases its position on the facts established by auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences, after examining the measures taken by the Member State concerned under Article 32, the reports of notified irregularities and any replies from the Member State.

#### Article 47

### Repayment

1. Any repayment due to be made to the general budget of the European Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of the Financial Regulation. 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 and ending on the date of actual payment. The rate of such interest shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, increased by three and a half percentage points.

#### Article 48

### Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 44.

## CHAPTER IX

**MONITORING, EVALUATION AND REPORTS***Article 49***Monitoring and evaluation**

1. The Commission shall carry out regular monitoring on the Fund in cooperation with the Member States.

2. The Fund shall be evaluated by the Commission in partnership with the Member States to assess the relevance, effectiveness and impact of actions in the light of the general objective referred to in Article 2 in the context of the preparation for the reports set out in Article 50(3).

3. The Commission shall also consider the complementarity between the actions implemented under the Fund and those pursued under other relevant Community policies, instruments and initiatives.

*Article 50***Reporting obligations**

1. In each Member State the responsible authority shall take the necessary measures to ensure project monitoring and evaluation.

To that end, the agreements and contracts it concludes with the organisations responsible for the implementation of the actions shall include clauses laying down an obligation to submit regular and detailed reports on the state of progress of implementation and completion of the assigned objectives, which shall be the basis for, respectively, the progress and final reports on the implementation of the annual programme.

2. The Member States shall submit to the Commission by 30 June 2012 for the period 2008 to 2010 and by 30 June 2015 for the period 2011 to 2013 respectively, an evaluation report on the results and impact of actions co-financed by the Fund.

3. The Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions by 31 December 2012 for the period 2008 to 2010 and by 31 December 2015 for the period 2011 to 2013 respectively, an ex-post evaluation report.

*Article 51***Final report on the implementation of the annual programme**

1. The final report on the implementation of the annual programme shall include the following information in order to obtain a clear view of the implementation of the programme:

(a) the financial and operational implementation of the annual programme;

(b) the progress made in implementing the multiannual programme and its priorities in relation to its specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, of the indicators;

(c) the steps taken by the responsible authority to ensure the quality and effectiveness of implementation, in particular:

(i) monitoring and evaluation measures, including data collection arrangements,

(ii) a summary of any significant problems encountered in implementing the operational programme and any measures taken,

(iii) the use made of technical assistance;

(d) the measures taken to provide information on and make public the annual and multiannual programmes.

2. The report shall be judged acceptable where it contains all the information listed in paragraph 1. The Commission shall reach a decision on the content of the report submitted by the responsible authority within two months of having received all the information referred to in paragraph 1, which shall be acknowledged to the Member States. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

## CHAPTER X

**FINAL PROVISIONS***Article 52***Committee**

1. The Commission shall be assisted by the common Committee 'Solidarity and Management of Migration flows', established by Decision No 574/2007/EC.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and (5)(b) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The time-limits laid down in Article 5a(3)(c), (4)(b) and (4)(e) of Decision 1999/468/EC shall be set at six weeks.

*Article 53***Review**

The European Parliament and the Council shall review this Decision on the basis of a proposal from the Commission by 30 June 2013.

*Article 54***Transitional provisions**

1. This Decision shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Commission on the basis of Decision 2004/904/EC, or any other legislation which applies to that assistance on 31 December 2007.

2. When adopting decisions on co-financing under this Fund, the Commission shall take account of measures adopted on the basis of Decision 2004/904/EC before 7 June 2007 which have financial repercussions during the period covered by that co-financing.

3. Sums committed for co-financing approved by the Commission between 1 January 2005 and 31 December 2007 for which the documents required for closure of the programmes have not been sent to the Commission by the deadline for submitting the final report shall be automatically decommitted by the Commission by 31 December 2010, giving rise to the repayment of amounts unduly paid.

Amounts relating to operations or programmes which have been suspended due to legal proceedings or administrative appeals having suspensory effect shall be disregarded in calculating the amount to be automatically decommitted.

4. Member States shall submit to the Commission by 30 June 2009 an evaluation report on the results and impacts of actions co-financed by the Fund concerning the period 2005 to 2007.

5. The Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions by 31 December 2009, a report on the results achieved and on qualitative and quantitative

aspects of implementation of the Fund for the period 2005 to 2007.

*Article 55***Repeal**

Decision 2004/904/EC shall be repealed with effect from 1 January 2008.

*Article 56***Entry into force and application**

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Decision shall apply from 1 January 2008, with the exception of Articles 13, 17, 18, 20, 23 and 25, Article 31(2), Article 31(5), Article 32, Article 35(4) and Article 52 which shall apply from 7 June 2007.

*Article 57***Addressees**

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 23 May 2007.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

G. GLOSER