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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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## 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

**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 to 2013 as part of the General programme  
'Solidarity and Management of Migration Flows'**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2) 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) While each Member State contributes to a high and uniform level of control on persons and surveillance of the external borders of the Member States of the European Union within the framework of common rules, some Member States face a heavier burden than others.
- (2) The difference in the burden is explained by the differing situations prevailing in Member States as regards the geography of their external borders, the number of authorised and operative border crossing points, the level of migratory pressure, both legal and illegal, the risks and threats encountered and finally the workload of the national services regarding the examination of visas applications and the issuing of visas.
- (3) Burden-sharing between Member States and the European Union in the management of external borders is one of the five components of the common policy for the management of the external borders, as proposed by the Commission in its Communication of 7 May 2002 'Towards integrated management of the external borders of the Member States of the European Union' and endorsed by the Council in its 'Plan for the management of the external borders of the Member States of the European Union' of 14 June 2002.
- (4) While Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union <sup>(4)</sup> constitutes an important step towards the progressive development of the operational dimension of the European common-integrated-border management system, the implementation of effective and common standards for control and surveillance of the external borders calls for a Community

financial solidarity mechanism in order to support the Member States who bear, for the benefit of the Community, a lasting and heavy financial burden.

- (5) The common corpus of legislation, as defined, in particular, by Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) <sup>(5)</sup>, provides for border checks to help combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security while, at the same time, providing for border checks to be carried out in such a way as to fully respect human dignity.
- (6) The External Borders Fund (hereinafter referred to as 'the Fund') should express solidarity through financial assistance to those Member States that apply the Schengen provisions on external borders.
- (7) Such financial assistance should be structured in such a way as to form a bridge with past financial contributions from the European Union to Member States which at the time of entry into force of this Decision do not yet apply all provisions of the Schengen acquis, without, however, constituting a mere continuation of the actions funded previously from other sources covered by the general budget of the European Union. In such cases, the Fund should assist those Member States preparing for full participation as soon as possible, in accordance with the Hague Programme of 4 and 5 November 2004.
- (8) Moreover, the Fund should take into account specific situations, such as the transit by land of third-country nationals who must necessarily cross the territory of one or more Member States in order to travel between two parts of their own country which are not geographically contiguous, not only in the own interests of the Member State(s) concerned but also of all Member States which have abolished checks at their internal borders. In such cases, the actions to be financed should be exhaustively defined and the allocation of resources should be determined on the basis of a factual assessment of the needs in relation to those actions.
- (9) In order to ensure uniform and high-quality external border control and flexible cross-border traffic, the Fund should contribute to the development of a European common-integrated-border management system which includes all the measures relating to policy, legislation, systematic cooperation, the distribution of the burden, personnel,

<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 349, 25.11.2004, p. 1.

<sup>(5)</sup> OJ L 105, 13.4.2006, p. 1.

equipment and technology taken at different levels by the competent authorities of the Member States, acting in cooperation and, where necessary, together with other actors, utilising, inter alia, the four-tier border security model and integrated risk analysis of the European Union.

- (10) In accordance with Protocol No 5 to the 2003 Act of Accession <sup>(1)</sup> on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, the Fund should bear any additional cost incurred in implementing the specific provision of the *acquis* covering such transit.
- (11) As a complement to the operational cooperation developed under the aegis of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Regulation (EC) No 2007/2004 (hereinafter referred to as 'the Agency') and in addition to the allocation of funds to the Member States, the Fund should also introduce the possibility of a Community response to weaknesses at strategic border points by co-financing specific actions to address those weaknesses, on the basis of a specific amount set aside each year for such actions.
- (12) The Fund should include support for national measures and cooperation between Member States in the area of visa policy and other pre-frontier activities that take place prior to external border controls. The efficient management of activities organised by the consular services of the Member States in third countries is in the interest of the common visa policy as part of a multi-layered system aimed at facilitating legitimate travel and tackling illegal immigration into the European Union, and constitutes an integral part of the European common-integrated-border management system.
- (13) 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.
- (14) Objective criteria should be established to allocate the available annual resources to the Member States. These criteria should be broken down according to the type of border, taking into account the flow and the levels of threat at the external borders of the Member States.
- (15) The application of these criteria should be reviewed in 2010 to enable any new circumstances, including in particular those resulting from changes in the external borders themselves, to be taken into account.
- (16) In view of the mission of the Agency to assist Member States in implementing the operational aspects of external border management and in order to develop complementarity between its mission and the responsibilities of the Member States for the control and surveillance of external borders, the Agency should be consulted by the Commission on draft multiannual programmes submitted by the Member States and on the strategic guidelines prepared by the Commission.
- (17) Moreover, the Commission may request the Agency to provide input into the assessment by the Commission of the impact of the Fund on the development of policy and legislation on external border control, the synergies between the Fund and the tasks of the Agency, as well as the appropriateness of the criteria for allocating the funds between the Member States in the light of the objectives pursued by the European Union in this area.
- (18) This Decision is designed to form part of a coherent framework which also includes 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' <sup>(2)</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 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' <sup>(3)</sup>, and Council Decision 2007/.../EC of ... establishing the European Fund for the Integration of Third-country Nationals for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' <sup>(4)</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.
- (19) Participation in this Fund by a Member State should not coincide with its participation in a future temporary instrument designed to help beneficiary Member States to finance actions at new external borders of the European Union for the implementation of the Schengen *acquis* and external border control.
- (20) The actions supported under this Fund should be in synergy with the actions supported by the Community instruments on external assistance and take place within the framework of the European Union's external relations policy, in particular the strategy for the external dimensions of the area of freedom, security and justice.
- (21) The support provided by the Fund would be more efficient and better targeted if co-financing of eligible actions were based on strategic multiannual programming, drawn up by each Member State in dialogue with the Commission.
- (22) On the basis of strategic guidelines adopted by the Commission, each Member State should prepare a multi-annual programming document taking into account its specific situation and needs and setting out its development strategy that should constitute the framework for preparing the implementation of the actions to be listed in annual programmes.

<sup>(2)</sup> See page 1 of this Official Journal.

<sup>(3)</sup> See page 45 of this Official Journal.

<sup>(4)</sup> Not yet Published in the Official Journal.

<sup>(1)</sup> OJ L 236, 23.9.2003, p. 946.



- (23) In accordance with the implementation methods 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>(1)</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.
- (24) 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 the general principles and necessary functions which all programmes should fulfil.
- (25) Since the Fund may support national measures of a Member State to implement provisions of the Schengen acquis ranging from external border control to visa policy at different levels and locations, more than one authority in any given Member State might be involved. Therefore, Member States should be allowed to designate several certifying and audit authorities or delegated authorities as long as there is a clear allocation of functions for each of these authorities.
- (26) 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.
- (27) 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 the 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.
- (28) 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.
- (29) 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.
- (30) 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.
- (31) Bearing in mind the importance of visibility of Community funding, the Commission should provide guidance to facilitate 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.
- (32) 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 of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management <sup>(2)</sup>.
- (33) Since the objective of this Decision, namely to support the establishment of a European common-integrated-border management system, which covers, inter alia, the management of activities organised by consular and other services of the Member States in third countries as regards the flows of third-country nationals into the territory of the Member States, 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.
- (34) 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>(3)</sup>.
- (35) Since the measure of this Decision relating to the adoption of strategic guidelines is of general scope and are 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.

<sup>(1)</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).

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

<sup>(3)</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).

- (36) In order to ensure the timely implementation of the Fund, certain provisions of this Decision should apply as from 1 January 2007.
- (37) As regards Iceland and Norway, this Decision constitutes a development of the Schengen acquis which falls within the areas referred to in Article 1, Points A and B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis <sup>(1)</sup>.
- (38) An arrangement should be made to allow representatives of Iceland and Norway to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Agreement in the form of Exchanges of Letters between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning committees which assist the European Commission in the exercise of its executive powers <sup>(2)</sup>, annexed to the Agreement referred to in Recital 37.
- (39) As regards Switzerland, this Decision constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis which falls within the area referred to in Article 1(A) of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decision 2004/860/EC <sup>(3)</sup> on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement.
- (40) An arrangement should be made to allow representatives of Switzerland to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchange of Letters between the Council of the European Union and Switzerland, annexed to the Agreement referred to in Recital 39.
- (41) In order to determine the supplementary rules necessary for the implementation of this instrument, an agreement should be concluded between the Community and Iceland, Norway and Switzerland.
- (42) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and 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. Given that this Decision builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the date of adoption of this Decision whether it will implement it in its national law.

- (43) This Decision constitutes a development of the provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis <sup>(4)</sup> and the subsequent Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland <sup>(5)</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (44) This Decision constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis <sup>(6)</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (45) 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>(7)</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 the Treaty,

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 2007 to 31 December 2013 the External Borders Fund (hereinafter referred to as 'the Fund'), as part of a coherent framework which also includes Decision No 573/2007/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.

<sup>(1)</sup> OJ L 176, 10.7.1999, p. 31.

<sup>(2)</sup> OJ L 176, 10.7.1999, p. 53.

<sup>(3)</sup> OJ L 370, 17.12.2004, p. 78.

<sup>(4)</sup> OJ L 131, 1.6.2000, p. 43.

<sup>(5)</sup> OJ L 395, 31.12.2004, p. 70.

<sup>(6)</sup> OJ L 64, 7.3.2002, p. 20.

<sup>(7)</sup> OJ L 396, 31.12.2004, p. 45.

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

##### Definitions

For the purposes of this Decision:

- 1) 'external borders' means the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports to which the provisions of Community law on the crossing of external borders apply, whether these borders are temporary or not;
- 2) 'temporary external borders' means:
  - (a) the common border between a Member State fully implementing the Schengen acquis and a Member State bound to apply the Schengen acquis in full, in conformity with its Act of Accession, but for which the relevant Council Decision authorising it to fully apply that acquis has not entered into force;
  - (b) the common border between two Member States bound to apply the Schengen acquis in full, in conformity with their respective Acts of Accession, but for which the relevant Council Decision authorising them to fully apply that acquis has not yet entered into force;
- 3) 'border crossing point' means any crossing point authorised by the competent authorities for the crossing of external borders as notified in accordance with Article 34(2) of Regulation (EC) No 562/2006;
- 4) 'Agency' means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union as established by Regulation (EC) No 2007/2004.

#### Article 3

##### General Objectives of the Fund

1. The Fund shall contribute to achieving the following objectives:
  - (a) efficient organisation of control, covering both checks and surveillance tasks relating to the external borders;
  - (b) efficient management by the Member States of the flows of persons at the external borders in order to ensure, on the one hand, a high level of protection at the external borders and, on the other, the smooth crossing of the external

borders in conformity with the Schengen acquis and the principles of respectful treatment and dignity;

- (c) uniform application by border guards of the provisions of Community law on the crossing of external borders, in particular Regulation (EC) No 562/2006;
- (d) improvement of the management of activities organised by the consular and other services of the Member States in third countries as regards the flows of third-country nationals into the territory of the Member States and the cooperation between Member States in this regard.

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

#### Article 4

##### Specific objectives

1. As regards the objective laid down in Article 3(1)(a), the Fund shall support the following specific objectives:
  - (a) implementation of the recommendations, operational standards and best practices resulting from the operational cooperation between Member States in the field of border control;
  - (b) development and application of the measures necessary to improve surveillance systems between border crossing points;
  - (c) introduction of measures or development of effective systems enabling a methodical gathering of relevant information with respect to the evolving situation on the ground close to, at and immediately beyond the external borders;
  - (d) ensuring adequate registration of the number of persons crossing at all types of external borders (land, air, sea);
  - (e) introduction or upgrading a system of collection of statistical and administrative data with respect to the categories of travellers, the number and nature of checks and surveillance measures at the different types of external borders, based on registration and other sources for data collection;
  - (f) setting up an effective, structural, strategic and operational coordination between all authorities operating at border crossing points;
  - (g) improvement of the capacity and the qualifications of border guards in executing their surveillance, advisory and control tasks;
  - (h) improvement of the information exchange at national level between the authorities responsible for external border management and between those authorities and other

authorities responsible for migration, asylum and other related matters;

- (i) promotion of quality management standards.

2. As regards the objective laid down in Article 3(1)(b), the Fund shall support the following specific objectives:

- (a) except with regard to temporary external borders, the development of new working methods, logistical measures and state-of-the-art technology to strengthen systematic controls of persons on entry and exit at border crossing points;
- (b) promotion of the use of technology and specialised training for the staff responsible for its effective exploitation;
- (c) promotion of the exchange of information concerning, and improvement of training in respect of forged or false travel documents, including the development and distribution of common tools and practices for the detection of such documents;
- (d) promotion of efficient, real-time consultation of data at border crossing points through the use of large scale IT systems, such as the Schengen Information System (SIS) and the Visa Information System (VIS), and an effective exchange of information between all border crossing points along the external borders in real time;
- (e) ensuring the optimal implementation at operational and technical level of the results of the risk analyses.

3. As regards the objective laid down in Article 3(1)(c) the Fund shall support the following specific objectives:

- (a) gradual establishment in each Member State of uniform education, training and qualifications of border guards, particularly by implementing the common core curriculum for training as developed by the Agency and by supplementing in a coherent way the activities of the Agency in this field;
- (b) support to and increase of the exchange and secondment of border guards between Member States, complementary to the guidelines and activities of the Agency in this area;
- (c) promotion of the use of compatible state-of-the-art technology along the external borders, whenever this is indispensable for the correct, effective or uniform use of the rules;
- (d) promotion of the capacity of authorities to apply the same procedures and to take consistent, rapid and high quality decisions on the crossing of external borders, including on the issuance of visas;

- (e) promotion of the use of the common Practical Handbook for Border Guards;

- (f) building and upgrading of areas and centres for persons whose entry is refused and for persons who are intercepted after having crossed the border illegally or when approaching the external borders with a view to illegally entering the territory of the Member States;

- (g) upgrading of the security at the premises of border crossing points to secure the safety of border guards and the protection of equipment, surveillance systems and means of transport.

4. As regards the objective laid down in Article 3(1)(d), the Fund shall support the following specific objectives:

- (a) reinforcement of the operational capacity of the network of the immigration liaison officers and promotion of a more effective cooperation through the network between the Member States' services;
- (b) introduction of measures aimed at assisting Member States and carriers in carrying out the obligations imposed on them by virtue of Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data <sup>(1)</sup> and of Article 26 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders <sup>(2)</sup> (hereinafter referred to as 'Schengen Convention') in order to prevent illegal arrivals at the external borders;
- (c) promotion of a more effective cooperation with carriers in the airports of the countries of departure, including uniform training of the carriers' staff on the travel documents;
- (d) promotion of quality management, and good services and facilities in terms of infrastructure in the visa application process;
- (e) promotion of cooperation between Member States in enhancing the capacity of consular services to examine visa applications;
- (f) promotion of common investigative practices, uniform administrative procedures and decisions on visas by the consular services of a Member State located in different third countries;
- (g) promotion of progress towards a systematic and regular cooperation between the consular and other services of different Member States, in particular in connection with

<sup>(1)</sup> OJ L 261, 6.8.2004, p. 24.

<sup>(2)</sup> OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 1987/2006 of the European Parliament and of the Council (OJ L 381, 28.12.2006, p. 4).

the VIS, including pooling of resources and means for visa issuance, exchange of information, surveys and investigations concerning visa applications and the development of common visa application centres;

- (h) promotion of national initiatives aiming at common investigative practices, uniform administrative procedures and decisions on visas by the consular services of different Member States;
- (i) development of common consular offices.

#### Article 5

##### Eligible actions in the Member States

1. The Fund shall support actions in the Member States relating to the specific objectives defined in Article 4 and in particular to the following:

- (a) border crossing infrastructures and related buildings, such as border stations, helicopter landing places or lanes or booths for the queuing of vehicles or persons at border crossing points;
- (b) infrastructures, buildings and systems required for surveillance between border crossing points and protection against illegal crossing of the external borders;
- (c) operating equipment, such as sensors, video-surveillance, document examination instruments, detection tools and mobile or fixed terminals for consulting the SIS, the VIS, the European Image Archiving System (FADO) and other European and national systems;
- (d) means of transport for the control of external borders, such as vehicles, vessels, helicopters, and light aircrafts, specially equipped with electronic equipment for the surveillance of the border and the detection of persons in means of transport;
- (e) equipment for real time exchange of information between relevant authorities;
- (f) ICT systems;
- (g) programmes for the secondment and exchange of staff such as border guards, immigration officers and consular officers;
- (h) training and education of staff of relevant authorities, including language training;
- (i) investments in the development, testing and instalment of state-of-the-art technology;
- (j) studies and pilot projects implementing recommendations, operational standards and best practices, resulting from the operational cooperation between Member States in the field of border control;

- (k) studies and pilot projects designed to stimulate innovation, facilitate exchanges of experience and good practice and improve the quality of the management of activities organised by the consular and other services of the Member States in third countries as regards the flows of third-country nationals into the territory of the Member States and the cooperation between Member States in this regard.

2. The Fund shall not support actions with respect to temporary external borders when such actions amount to a structural investment incompatible with the objective of the lifting of controls on persons at these borders, in particular actions referred to in points (a) and (b) of paragraph 1.

#### Article 6

##### Special Transit Scheme

1. The Fund shall provide support to compensate for foregone fees from transit visas and additional costs incurred in implementing the Facilitated Transit Document (FTD) and the Facilitated Rail Transit Document (FRTD) scheme in accordance with Council Regulation (EC) No 693/2003 <sup>(1)</sup> and Council Regulation (EC) No 694/2003 <sup>(2)</sup>.

2. For the purpose of paragraph 1, additional costs means costs which result directly from the specific requirements of implementing the operation of the special transit scheme and which are not generated as a result of the issuing of transit or other visas.

The following types of additional cost shall be eligible for financing:

- (a) investment in infrastructures;
- (b) training of staff implementing the special transit scheme;
- (c) additional operational costs, including salaries of staff specifically implementing the special transit scheme.

3. The foregone fees referred to in paragraph 1 shall be calculated on the basis of the level of fees for transit visas established in Annex 12 to the Common Consular Instructions on visas, within the financial framework set out in Article 14(9).

#### Article 7

##### Community actions

1. At the Commission's initiative, up to 6 % 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 the following objectives:

- (a) contributing to the enhancement of the activities organised by the consular and other services of the Member States in third countries as regards the flow of third-country

<sup>(1)</sup> OJ L 99, 17.4.2003, p. 8.

<sup>(2)</sup> OJ L 99, 17.4.2003, p. 15.

nationals into the territory of the Member States and the cooperation between Member States in this regard, including the activities of air liaison officers and immigration liaison officers;

- (b) promoting the progressive inclusion of customs, veterinary and phyto-sanitary controls in integrated border management activities in line with policy evolution in this field;
  - (c) providing of support services to Member States in duly substantiated emergency situations requiring urgent action at external borders.
2. To be eligible for funding, Community actions listed under paragraph 1(a) and (b) shall in particular:
- (a) further Community cooperation in implementing Community law and good practices;
  - (b) support the setting-up of transnational cooperation networks and pilot projects based on transnational partnerships between consular services from two or more Member States designed to stimulate innovation and facilitate the exchange of experience and good practice;
  - (c) support studies, dissemination and exchange of information on best practices and all other aspects of the general objective of contributing to enhancement of the activities organised by the consular services of the Member States in third countries and the cooperation between Member States in this field, including on the use of state-of-the-art technology;
  - (d) support projects and studies exploring the possibility of new forms of Community cooperation and Community law in this area, in particular common application centres;
  - (e) support the development and application by Member States of common statistical tools, methods and indicators for measuring policy developments in the field of visa policy and consular cooperation.

3. The annual work programme laying down the priorities for Community actions shall be adopted in accordance with the procedure referred to in Article 56(2).

## CHAPTER II

### PRINCIPLES OF ASSISTANCE

#### Article 8

#### **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 21.

3. Operations financed by the Fund shall comply with the provisions of the Treaty and of acts adopted thereunder.

#### Article 9

#### **Programming**

1. The objectives of the Fund shall be pursued within the framework of the multiannual programming period from 2007 to 2013, subject to a mid-term review in accordance with Article 24. 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 10

#### **Subsidiary and proportional intervention**

1. Implementation of multiannual and annual programmes referred to in Articles 21 and 23 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 11

#### **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 7 and the technical assistance referred to in Article 17 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 34;
- (b) withholding or suspending payments, in full or in part, in accordance with the procedures described in Articles 43 and 44, if the national management and control systems fail, and applying any other financial correction required, in accordance with the procedures described in Articles 47 and 48.

3. Countries associated with the implementation, application and development of the Schengen acquis shall participate in the Fund in accordance with this Decision.

4. Arrangements shall be concluded to specify the supplementary rules necessary for such participation, including provisions ensuring the protection of the Community's financial interests and the power of audit of the Court of Auditors.

#### Article 12

### Partnership

1. Each Member 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 the United Nations High Commissioner for Refugees (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 13

### Global resources

1. The financial envelope for the implementation of this Decision from 1 January 2007 to 31 December 2013 shall be EUR 1 820 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 14.

#### Article 14

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

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

- (a) 30 % for external land borders;
- (b) 35 % for external maritime borders;
- (c) 20 % for airports;

(d) 15 % for consular offices.

2. The resources available under paragraph 1(a) shall be broken down between Member States as follows:

- (a) 70 % for the length of their external borders, which will be calculated, on the basis of weighting factors for each specific section, determined in accordance with Article 15 (3)(a); and
- (b) 30 % for the workload at their external land borders, as determined in accordance with paragraph 7(a).

3. The resources available under paragraph 1(b) shall be broken down between Member States as follows:

- (a) 70 % for the length of their external borders, which will be calculated, on the basis of weighting factors for each specific section determined in accordance with Article 15 (3)(b); and
- (b) 30 % for the workload at their external maritime borders, as determined in accordance with paragraph 7(a).

4. The resources available under paragraph 1(c) shall be broken down between Member States according to the workload at their airports, as determined in accordance with paragraph 7(b).

5. The resources available under paragraph 1(d) shall be broken down between Member States as follows:

- (a) 50 % for the number of consular offices of the Member States in the countries listed in Annex I of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement <sup>(1)</sup>; and
- (b) 50 % for the workload as regards the management of visa policy at consular offices of Member States in the countries listed in Annex I to Regulation (EC) No 539/2001, as determined in accordance with paragraph 7(c) of this Article.

6. For the purpose of the annual distribution of resources under paragraph 1 (a) and (b)

- (a) the line between the areas referred to in Article 1 of Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession <sup>(2)</sup>, but not the maritime border north of that line, shall be taken into account even though it does not constitute an external land border for as long as the provisions of Article 1 of Protocol 10 of the 2003 Act of Accession remain applicable;
- (b) 'external maritime borders' shall mean the outer limit of the territorial sea of the Member States as defined according to

<sup>(1)</sup> OJ L 81, 21.3.2001, p. 1. Regulation as last amended by Regulation (EC) No 851/2005 (OJ L 141, 4.6.2005, p. 3).

<sup>(2)</sup> OJ L 161, 30.4.2004, p. 128. Corrected version in OJ L 206, 9.6.2004, p. 51. Regulation as last amended by Commission Regulation (EC) No 1283/2005 (OJ L 203, 4.8.2005, p. 8).

Articles 4 to 16 of the United Nations Convention on the Law of the Sea. However, in cases where long range operations on a regular basis are required in order to prevent irregular migration/illegal entry, this shall be the outer limit of high threat areas. This shall be determined by taking into account the operational data over the past two years as provided by the Member States in question. This definition of 'external maritime borders' is used exclusively for the purpose of this Decision and all operations shall respect international law.

7. The workload shall be based on average figures over the previous two years for the following factors:

- (a) at external land borders and external maritime borders:
  - (i) the number of persons crossing the external border at authorised border crossing points;
  - (ii) the number of third-country nationals refused entry at the external border;
  - (iii) the number of third-country nationals apprehended after having crossed the external border illegally, including the number of persons apprehended at sea;
- (b) at airports:
  - (i) the number of persons crossing the external border at authorised border crossing points;
  - (ii) the number of third-country nationals refused entry at the external border;
- (c) at consular offices:
  - the number of visa applications.

For 2007, the workload shall be based on the 2005 figures only.

8. The weighting as referred to in paragraphs 2 and 3 shall be determined by the Agency in accordance with Article 15.

9. With respect to the length of the external land borders as referred to in paragraph 2(a), the calculation of the annual distribution of resources shall not take into account temporary external borders. However, it shall take into account the temporary external borders between a Member State which acceded to the European Union by 1 May 2004 and a Member State which acceded after 1 May 2004.

10. The reference figures for the work-load referred to in paragraph 7 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.

11. Where the reference figures are not available as statistics produced by the Commission (Eurostat) in accordance with Community law, Member States shall provide provisional data to the Commission by 1 November of each year for the estimate of the amount to be allocated to them for the following year in accordance with Article 23(2).

Before the Commission accepts these data as reference figures, the Commission (Eurostat) may 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.

12. The allocation of resources referred to in paragraph 1 shall not include the resources allocated for the purpose of Articles 6 and 19. The resources allocated for the purpose of Article 6 shall not exceed EUR 108 million for the period 2007 to 2013.

#### Article 15

#### **Risk Analysis carried out by the Agency for the purpose of the annual distribution of resources**

1. For the determination of the weighting, as referred to in Article 14(8), the Agency shall provide the Commission, by 1 April of each year, with a specific report describing the difficulty in carrying out border surveillance and the situation at the external borders of the Member States, paying special attention to the particular proximity of the Member States to high risk areas of illegal immigration for the previous year taking also into account the number of persons having entered those Member States irregularly and the size of those Member States.

2. The report shall, in accordance with the Common Integrated Risk Analysis Model referred to in Article 4 of Regulation (EC) No 2007/2004, analyse the threats that affected security at external borders of the Member States in the previous year, taking into account the political, economic and social developments in the third countries concerned, in particular in neighbouring third countries, and shall set out possible future trends on migratory flows and unlawful activities at the external borders.

This risk analysis shall be based primarily on the following information gathered by the Agency, provided by Member States or obtained from the Commission (Eurostat):

- (a) the number of third-country nationals refused entry at the external border;
- (b) the number of third-country nationals apprehended when crossing or attempting to cross the external border illegally;



- (c) the number of facilitators intercepted who have intentionally assisted the unauthorised entry of third-country nationals;
- (d) the number of forged or false travel documents and the number of travel documents and visas issued on false grounds which have been detected at border crossing points in accordance with the Schengen Borders Code.

Where the reference figures have not been provided as statistics produced by the Commission (Eurostat) but by Member States, the Agency may request from those Member States the necessary information to evaluate the quality, comparability and completeness of the statistical information. The Agency may request the help of the Commission (Eurostat) in such an evaluation.

3. Finally the report shall, in accordance with paragraphs 1 and 2, identify the current levels of threat at the external borders of each of the Member States and determine the following specific weighting-factors for each section of the external border of that particular Member State:

- (a) external land border:
- (i) factor 1 for normal threat
  - (ii) factor 1,5 for medium threat
  - (iii) factor 3 for high threat;
- (b) external maritime border:
- (i) factor 0 for minimum threat
  - (ii) factor 1 for normal threat
  - (iii) factor 3 for medium threat
  - (iv) factor 8 for high threat.

#### Article 16

##### 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 4 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 20.

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.

#### Article 17

##### 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 systems 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 27, complementary to the efforts of the Member States to provide guidance to their authorities in accordance with Article 33(2).

#### Article 18

#### Technical assistance at the initiative of 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 2007 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.

#### Article 19

#### Specific actions

1. The Commission shall establish each year a list of specific actions to be implemented by the Member States, where appropriate, in cooperation with the Agency, which contribute to the development of the European common-integrated-border management system by addressing weaknesses at strategic border points identified in the risk analysis referred to in Article 15.

2. The annual work programme referred to in Article 7(3), shall set out a framework for the financing of these actions, including objectives and evaluation criteria.

3. The list of selected actions shall be adopted according to the procedure referred to in Article 56(2).

4. Financial assistance from the Fund for specific actions shall be limited to a period of six months and shall not exceed 80 % of the cost of each action.

5. The available annual resources for these actions shall not exceed EUR 10 million. The resources remaining available after the selection referred to in paragraph 3 may be used to finance actions as defined in Article 7.

#### CHAPTER IV

#### PROGRAMMING

#### Article 20

#### 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 external borders and visa policy as well as the indicative distribution of the financial resources of the Fund for the period of the multiannual programme.

2. For the general objectives referred to in Article 3(1)(a), (b) and (c), those guidelines shall, in particular, give effect to the priorities of the Community with a view to the further gradual establishment of the European common-integrated-border management system for external borders and the strengthening of controls at and surveillance of the external borders of the Union.

3. For the general objective referred to in Article 3(1)(d), those guidelines shall, in particular, give effect to the priorities of the Community with a view to the further development of the common visa policy as part of a multi-layered system aimed at facilitating legitimate travel and tackling illegal immigration through the enhancement of handling practices at local consular missions.

4. The Commission shall adopt the strategic guidelines relating to the multiannual programming period by 31 July 2007.

5. The strategic guidelines shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 56 (3). The strategic guidelines, once adopted, shall be annexed this Decision.

#### Article 21

#### Preparation and approval of national multiannual programmes

1. Each Member State shall propose, on the basis of the strategic guidelines referred to in Article 20, a draft multiannual programme which shall consist of the following elements:

- (a) a description of the current situation in that Member State as regards the infrastructure, equipment, means of transport, ICT systems and arrangements for the training and education of staff at the service of the border authorities and of the consular authorities;
- (b) an analysis of requirements in the Member State in question as regards infrastructure, equipment, means of transport, ICT systems and arrangements for the training and education of staff at the service of the border authorities and of the consular authorities and an indication of the operational objectives designed to meet those requirements during the period covered by the multiannual programme;

- (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 12;
- (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.

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 20;
- (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 56(2).

#### Article 22

#### 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 56(2).

#### Article 23

#### Annual programmes

1. The multiannual programmes 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 14.

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 multiannual 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 18 for the purpose of implementing the annual programme.

4. 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 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.

5. 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 24

##### 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 21 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 56(3).

#### CHAPTER V

##### MANAGEMENT AND CONTROL SYSTEMS

#### Article 25

##### Implementation

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

#### Article 26

##### 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 27

##### 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 which has a public service mission, which shall be responsible for the management of the multiannual programme and annual programmes supported by the Fund and shall 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 26(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 28 to 32 shall be adopted by the Commission in accordance with the procedure referred to in Article 56(2).

#### Article 28

##### 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 2007 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 29

##### Tasks of the responsible authority

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

It shall in particular:

- (a) consult partners in accordance with Article 12;
- (b) submit to the Commission proposals for multiannual and annual programmes to which Articles 21 and 23 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 16(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 cofinanced 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 51 are carried out within the time limits laid down in Article 52(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 45;

(l) ensure that the audit authority receives, for the purposes of carrying out the audits defined in Article 32(1), all necessary information on the management procedures applied 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 35(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 18.

#### Article 30

##### 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 28.

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 31

##### 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 18,

provided that the prerogatives of this authority as described in Article 27 are respected.

#### Article 32

##### 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 cofinancing 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 Decision No 573/2007/EC, Decision No 575/2007/EC and Decision 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 arrange-

ments referred to in Article 18 provided that the prerogatives of the audit authority as described in Article 27 are respected.

## CHAPTER VI

### RESPONSIBILITIES AND CONTROLS

#### Article 33

#### Responsibilities of the Member States

1. Member States shall be responsible for ensuring sound financial management of multiannual 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 26 to 32 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 56(2).

#### Article 34

#### Management and control systems

1. Before the Commission approves the multiannual programme, in accordance with the procedure referred to in Article 56(2) the Member States shall ensure that management and control systems have been set up in accordance with Articles 26 to 32. 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 for the period 2007 to 2010 referred to in Article 52(3).

#### Article 35

#### Responsibilities of the Commission

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 34 that the Member States have set up management and control systems that comply with Articles 26 to 32, 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 36

#### 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 32 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 37

##### 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 23(4). The co-financed actions must not have been completed before the starting date for eligibility.

By way of exception, the period for which expenditure is eligible shall be fixed at three years for the expenditure implementing the actions supported under the 2007 annual programmes.

4. The rules governing eligibility of expenditure within the framework of implemented actions co-financed by the Fund in the Member States under Article 4 shall be adopted in accordance with the procedure referred to in Article 56(2).

#### Article 38

##### 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 39

##### Use of the euro

1. Amounts set out in the draft multiannual and annual programmes of the Member States referred to in Articles 21 and 23 respectively, certified declarations of expenditure, requests for payments referred to in Article 29(1)(n), expenditure mentioned in the progress report on the implementation of the annual programme referred to in Article 41(4) and the final report on the implementation of the annual programme referred to in Article 53 shall be denominated in euros.

2. Commission financing decisions approving the annual programmes of Member States referred to in the third

subparagraph of Article 23(4), 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 40

##### 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 23(4).

#### Article 41

##### Payments — Prefinancing

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 31(1)(a), and Article 37 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 42

##### 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 31(1)(a) and Article 37, 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 53;
- (c) the annual audit report, opinion and declaration provided for in Article 32(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 44. The period shall start to run again from the date when the Commission decision referred to in Article 44(3) has been notified to the Member State.

5. Without prejudice to Article 43, 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 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 43

##### 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 44

##### 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 33 and 34.

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 net amount or cancel the Community contribution to the annual programme in accordance with Article 48.

#### Article 45

### 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 42(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 46

### 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 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 49(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 53 a list of cancellation procedures initiated for the annual programme concerned.

#### Article 47

### 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 33, it shall suspend the pre-financing or payment of the balance in accordance with Article 44.

#### Article 48

### 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 33 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 32(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 34, the reports of notified irregularities and any replies from the Member State.

#### Article 49

### 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 50

### Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 46.

#### CHAPTER IX

### MONITORING, EVALUATION AND REPORTS

#### Article 51

### Monitoring and evaluation

1. The Commission shall carry out regular monitoring of 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 objectives referred to in Article 3 in the context of the preparation for the reports set out in Article 52(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.

4. As a part of the report for the period 2007 to 2010 referred to in Article 52(3)(c), the Commission shall assess the impact of the Fund on the development of the policy and legislation on external border control, assess the synergies between the Fund and the tasks of the Agency as well as the appropriateness of the criteria established to allocate the funds between the Member States in light of the objectives pursued by the European Union in this area.

#### Article 52

### 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 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:

- (a) by 30 June 2010, an evaluation report on the implementation of actions co-financed by the Fund;
- (b) by 30 June 2012 for the period 2007 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:

- (a) by 30 June 2010, a report to review Articles 14 and 15, together with proposals for amendments if deemed necessary;
- (b) by 31 December 2010, an intermediate report on the results achieved and on qualitative and quantitative aspects of implementation of the Fund, together with a proposal on the Fund's future development;
- (c) by 31 December 2012 for the period 2007 to 2010 and 31 December 2015 for the period 2011 to 2013 respectively, an ex-post evaluation report.

*Article 53***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.

3. The Commission shall communicate to the Agency the approved final reports on the implementation of the annual programme.

## CHAPTER X

**TRANSITIONAL PROVISIONS***Article 54***Preparation of the multiannual programme**

- 1. By way of derogation from Article 20, Member States shall:
  - (a) as soon as possible after 7 June 2007 but no later than 22 June 2007, designate the national responsible authority referred to in Article 27(1)(a), as well as, where appropriate, the delegated authority;

- (b) by 30 September 2007, submit a description of the management and control systems referred to in Article 34 (2).

2. By 1 July 2007, the Commission shall provide Member States with:

- (a) an estimate of the amounts allocated to them for the financial year 2007;
- (b) estimates of the amounts to be allocated to them for the financial years 2008 to 2013, on the basis of an extrapolation of the calculation for the estimate for the financial year 2007, bearing in mind the proposed annual appropriations for the years 2007 to 2013 as set out in the Financial Framework.

*Article 55***The preparation of the 2007 and 2008 annual programmes**

1. By way of derogation from Article 23, the following time table shall apply for implementation in the financial year 2007 and 2008:

- (a) by 1 July 2007, the Commission shall provide Member States with an estimate of the amounts allocated to them for the financial year 2007;
- (b) by 1 December 2007, Member States shall present the draft annual programme for 2007 to the Commission;
- (c) by 1 March 2008, Member States shall present the draft annual programme for 2008 to the Commission.

2. As concerns the 2007 annual programme, expenditure actually disbursed between 1 January 2007 and the date on which the financing decision approving the annual programme of the Member State concerned is adopted may qualify for support from the Fund.

3. To allow for the adoption in 2008 of financing decisions approving the annual programme for 2007, the Commission shall make the Community budgetary commitment for 2007 on the basis of the estimate of the amount to be allocated to the Member States, calculated as provided by Articles 14 and 15.

## CHAPTER XI

**FINAL PROVISIONS***Article 56***Committee**

1. The Commission shall be assisted by the common Committee 'Solidarity and Management of Migration Flows', established by this Decision.

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 57*

**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 58*

**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 7 June 2007, with the exception of Articles 14, 15, 20, 21, 23, 27, Article 33(2), Article 33(5), Article 34, Article 37(4) and Article 56 which shall apply from 1 January 2007.

*Article 59*

**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

**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 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 63(2)(b) and 63(3)(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.
- (3) An effective Community return policy is a necessary complement to a credible legal immigration and asylum policy as well as an important component in the fight against illegal immigration. Considerable budgets are earmarked by Member States with a view to implementing return programmes and forced return operations. Common action of the European Union in this field, backed with appropriate financial means from the Community, could support Member States, underline the necessity of the return of illegal residents and contribute to enhanced solidarity among Member States.
- (4) On 28 February 2002, the Council adopted the Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union <sup>(4)</sup> in which it

stressed that re-admission and return policy constitutes an integral and vital component in the fight against illegal immigration and identified two elements on which a Community return policy should be based, namely common principles and common measures, within the framework of improving administrative cooperation between Member States.

- (5) The Council's Return Action Programme of 28 November 2002, based on the Commission's Communication of 14 October 2002 on a Community return policy on illegal residents, addresses the entire chain of action with respect to return management in Member States, covering both forced and voluntary return of third-country nationals as well as the central stages of return, including preparation and follow-up.
- (6) The European Council, at its meeting in Thessaloniki on 19 and 20 June 2003, called on the Commission to examine all aspects relating to a separate Community instrument on return in order to support, in particular the priorities as set out in the Return Action Programme.
- (7) The Council Conclusions on the priorities for the successful development of a common re-admission policy of 2 November 2004 emphasise that Community re-admission agreements make an important contribution to an effective joint migration management and play a valuable role in the fight against illegal immigration. They are an important element in the framework of the dialogue and cooperation between the European Union and the countries of origin, former residence and transit of illegal immigrants.
- (8) Following the Conclusions of 8 June 2004 in which the Council called on the budgetary authority to make preparatory actions available and invited the Commission to take into account its view on the development of integrated return plans in close cooperation with Member States, preparatory actions were initiated for the period 2005 and 2006.
- (9) The European Council, at its meeting in Brussels on 4 and 5 November 2004, called in 'The Hague Programme' for launching the preparatory phase of a European Return Fund (hereinafter referred to as 'the Fund') and the establishment of the Fund by 2007, taking into account the evaluation of the preparatory phase.

<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 C 142, 14.6.2002, p. 23.

- (10) In November 2004 the Council took note of the Presidency's report on an analysis of reported best practices of return to specific countries. The report stated ample possibilities and a need for more practical cooperation between Member States in the practice of return. The report indicated possibilities for a more integrated approach, on both national and Community level, of return policy as well as general policies. Also, the report identified best practices by Member States regarding the voluntary or forced return of third-country nationals to their country of origin or transit, such as the promotion of Assisted Voluntary Return Programmes for sustainable return, return counselling, and the organisation of joint return operations, including charter flights.
- (11) It is necessary to endow the Community with an instrument designed to support and encourage the efforts made by the Member States to improve the management of return in all its dimensions, on the basis of the principle of integrated return management, and with a view to supporting a fair and effective implementation of common standards on return, as established under Community legislation on return.
- (12) No funding should be provided for in 2007 under this Decision, in order to be able to take into account the results of preparatory actions on return in 2005 and 2006, on the basis of a report by the Commission on the evaluation of the preparatory actions.
- (13) The common standards concerned are in particular Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals <sup>(1)</sup> and its corollary, Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on expulsion of third-country nationals <sup>(2)</sup>, and Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders <sup>(3)</sup>.
- (14) This concerns also future Community instruments, such as an instrument on common standards on procedures in Member States for returning illegally staying third-country nationals, which should create a level playing field in the European Union on return procedures and would therefore define conditions for and the margin within which Member States take return measures.
- (15) Member States should ensure that actions under the Fund respect the obligations derived from fundamental rights, laid down in particular in the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), the Charter of Fundamental Rights of the European Union, the Geneva Convention relating to the Status of Refugees of 28 July 1951 as supplemented by the New York Protocol of 31 January 1967, and other relevant international instruments, such as the 1989 United Nations Convention on the Rights of the Child, where applicable.
- (16) Bearing in mind that collective expulsion is prohibited under Protocol 4 to the European Convention on Human Rights, only persons who are the subject of individual removal orders should be returned via joint return operations eligible for funding under this Decision.
- (17) 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.
- (18) As stated in the Return Action Programme, approved by the Council on 28 November 2002, and constantly reaffirmed in the European Union instruments in this area, such as in particular the Council Conclusions on voluntary return of 2 November 2005, voluntary return is an important component of a balanced, effective and sustainable approach to the return.
- (19) Eligible actions within the scope of the integrated management of return should take account of the specific situation of vulnerable persons.
- (20) To enhance efficiency in return management at national level, the Fund should also cover actions relating to voluntary return of persons who are not under an obligation to leave the territory, such as applicants for asylum who have not yet received a negative decision, or persons enjoying a form of international protection within the meaning of 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>(4)</sup>, or persons enjoying temporary protection within the meaning of 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>(5)</sup>.
- (21) A primary objective of this Decision should be the promotion of integrated return management at national level. Member States are encouraged to implement return operations in the light of integrated return action plans, which analyse the situation in the Member State with

<sup>(1)</sup> OJ L 149, 2.6.2001, p. 34.

<sup>(2)</sup> OJ L 60, 27.2.2004, p. 55.

<sup>(3)</sup> OJ L 261, 6.8.2004, p. 28.

<sup>(4)</sup> OJ L 304, 30.9.2004, p. 12.

<sup>(5)</sup> OJ L 212, 7.8.2001, p. 12.

respect to the targeted population, set targets with respect to the operations envisaged and, in cooperation with relevant stakeholders, such as United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM), offer return schemes focusing on effective and sustainable returns through various measures. Where appropriate, integrated return plans should be regularly assessed and adjusted.

- (22) To promote the voluntary return of persons, in particular persons who are under no obligation to leave the territory, provision should be made for incentives for such returnees, such as preferential treatment by providing enhanced return assistance. This kind of voluntary return is both in the interests of a dignified return of returnees, as well as of the authorities in terms of cost-effectiveness. Member States should be encouraged to give preference to voluntary return.
- (23) However, from a policy point of view, voluntary and enforced return are interlinked and have a mutually reinforcing effect and Member States should be encouraged in their return management to reinforce the complementarity of the two forms. There is an obvious need to carry out forced returns in order to safeguard the integrity of the immigration and asylum policy of the European Union and the immigration and asylum systems of the Member States. Thus the possibility of forced return is a prerequisite for ensuring that this policy is not undermined and for enforcing the rule of law, which itself is essential to the creation of an area of freedom, security and justice. This Decision should therefore support actions of Member States to facilitate enforced return.
- (24) Moreover, the major obstacles experienced by Member States in the field of return often occur in relation to forced returns. One important obstacle is uncertainty concerning the identity of the person concerned and/or his or her lack of the necessary travel documents. In order to overcome such problems, Member States should be encouraged to improve the cooperation with consular services of third countries and to increase the exchange of information and operational cooperation among themselves as regards the cooperation with such services.
- (25) It is also imperative for this Decision to support, in those Member States which consider it appropriate, specific measures for returnees in the country of return in order first to ensure effective return to their town or region of origin under good conditions and second to enhance their durable reintegration in their community. Such measures should not consist of assistance to the third country as such and should only be eligible for funding when and insofar as there is a necessary continuation with activities initiated and in the main carried out in the territory of the Member States under an integrated return plan.
- (26) Moreover, those measures should be in synergy with the actions supported by the Community instruments on external assistance, in particular the thematic programme on asylum and migration.
- (27) This Decision is designed to form part of a coherent framework which also includes 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' <sup>(1)</sup>, 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 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' <sup>(2)</sup> and Council Decision 2007/.../EC of ... establishing the European Fund for the Integration of Third-country Nationals for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' <sup>(3)</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.
- (28) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, established in accordance with Council Regulation (EC) No 2007/2004 <sup>(4)</sup> (hereinafter referred to as 'the Agency'), has as one of its tasks to provide the necessary assistance for organising joint return operations by Member States and identify best practices on the acquisition of travel documents and the removal of third-country nationals illegally present in the territories of the Member States. Accordingly, the Agency should ensure that the conditions for an effective coordinated return effort between Member States are met, whilst leaving the implementation and organisation of the joint return operations to the competent national services. Therefore, the Agency should be able to use resources made available by Community actions in this Decision.
- (29) The support provided by the Fund would be more efficient and better targeted if co-financing of eligible actions were based on strategic multiannual programming, drawn up by each Member State in dialogue with the Commission.
- (30) On the basis of strategic guidelines adopted by the Commission, each Member State should prepare a multi-annual programming document taking into account its specific situation and needs and setting out its development strategy that should constitute the framework for the implementation of the actions to be listed in the annual programmes.

<sup>(1)</sup> See page 1 of this Official Journal.

<sup>(2)</sup> See page 22 of this Official Journal.

<sup>(3)</sup> Not yet published in the Official Journal.

<sup>(4)</sup> OJ L 349, 25.11.2004, p. 1.



- (31) 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>(1)</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.
- (32) The Commission should establish the indicative breakdown of available commitment appropriations using an objective and transparent method.
- (33) 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.
- (34) 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.
- (35) 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 the 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.
- (36) 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.
- (37) 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.
- (38) 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.
- (39) 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.
- (40) 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, within the meaning of point 37 of 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>.
- (41) Since the objective of this Decision, namely to promote the return of illegally staying third-country nationals within the framework of common standards and the principle of integrated return management, 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 in order to achieve this objective.
- (42) 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>(3)</sup>.
- (43) 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.
- (44) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and 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.
- (45) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty

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

<sup>(3)</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>(1)</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).

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.

- (46) 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.
- (47) 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>(1)</sup> rendered the procedure referred to in Article 251 of the Treaty applicable in the areas covered by Article 62(1), (2)(a) and (3) and Articles 63(2)(b) and (3)(b) of the Treaty,

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 Return Fund (hereinafter referred to as 'the Fund') as part of a coherent framework, which also includes Decision No 573/2007/EC, Decision No 574/2007/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 the efforts made by the Member States to improve the management of return in all its dimensions through the use of the concept of integrated management and by providing for joint actions to be implemented by Member States or national actions that pursue Community objectives under the principle of solidarity, taking

account of Community legislation in this field and in full compliance with fundamental rights.

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

##### Article 3

#### Specific objectives

1. The Fund shall contribute to achieving the following specific objectives:

- (a) the introduction and improvement of the organisation and implementation of integrated return management by Member States;
- (b) the enhancement of the cooperation between Member States within the framework of integrated return management and its implementation;
- (c) the promotion of an effective and uniform application of common standards on return in line with policy developments in this field.

2. Integrated return management shall include, in particular, the development and implementation, by the competent authorities of the Member States, of integrated return plans which:

- (a) are based on a comprehensive assessment of the situation in the Member State with respect to the targeted population in a targeted specific issue concerning return and the challenges with respect to the operations envisaged (such as those related to obtaining travel documents and other practical obstacles to return), taking into account, where appropriate, the relevant caseload. The comprehensive assessment shall be drawn up in cooperation with all relevant authorities and partners;
- (b) aim to achieve a wide set of measures encouraging voluntary return schemes of third-country nationals, in particular for those who do not or no longer fulfil the conditions for entry and stay on its territories and, where necessary, implementing enforced return operations with respect to such persons, in full compliance with humanitarian principles and respect for their dignity;
- (c) include a plan and/or time table and, where appropriate, provide for a periodic evaluation mechanism allowing for adjustment of the plan and assessment of the impact of the plan in practice; and
- (d) include, where Member States consider it appropriate, measures to facilitate cooperation between the competent administrative, law enforcement and judicial bodies, where appropriate at different levels of government.

3. Integrated Return Plans shall focus in particular on effective and sustainable returns through such actions as efficient

<sup>(1)</sup> OJ L 396, 31.12.2004, p. 45.

information at pre-departure stage, travel arrangements, transit in the country of return for both voluntary and enforced return. As far as possible, incentives for voluntary returnees, such as return assistance, may be provided for in order to promote voluntary return.

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

#### Article 4

##### Eligible actions in the Member States

1. Actions relating to the objective laid down in Article 3(1)(a), and in particular the following, shall be eligible for support from the Fund:

- (a) the establishment or improvement of an effective, stable and lasting operational cooperation of Member States' authorities with consular authorities and immigration services of third countries, with a view to obtaining travel documents for the return of third-country nationals and ensuring speedy and successful removals;
- (b) the promotion of ways and means to provide information on return as early as possible in asylum and immigration procedures and to encourage individually third-country nationals to make use of the possibility of voluntary return;
- (c) the facilitation of voluntary returns of third-country nationals, in particular through assisted voluntary return programmes, with a view to ensuring the effectiveness and sustainability of returns;
- (d) developing modes of cooperation between different levels of national, regional, local, urban and other public authorities enabling officials to swiftly gain information on return experiences and practices elsewhere and, when possible, to pool resources;
- (e) the simplification and implementation of enforced returns of third-country nationals who do not or no longer fulfil the conditions for entry and stay, with a view to enhancing the credibility and integrity of immigration policies and reducing the period of custody of persons waiting for forced removal.

2. Actions relating to the objective laid down in Article 3(1)(b), and in particular the following, shall be eligible for support from the Fund:

- (a) cooperation in the gathering and provision to potential returnees of information on the country of origin, former residence or transit;
- (b) cooperation in developing effective, stable and lasting operational working relationships between Member States' authorities and consular authorities and immigration

services of third countries, to facilitate consular assistance in obtaining travel documents for the return of third-country nationals and ensuring speedy and successful removals;

- (c) design of joint integrated return plans and their implementation, including joint voluntary return programmes on specific countries or regions of origin, former residence or transit;
- (d) studies on the current situation and possibilities for enhancing administrative cooperation among Member States in the field of return as well as on the role of international and non-governmental organisations to be played in this context;
- (e) exchange of information and best practices, support and advice in dealing with the return of particularly vulnerable groups;
- (f) organisation of seminars for practitioners on best practices, focusing on specific third countries and/or regions;
- (g) joint measures enabling the reception of readmitted persons in countries of origin, former residence or transit;
- (h) joint development of actions to ensure sustainable return of persons to the country of origin or former residence.

3. Actions relating to the objective laid down in Article 3(1)(c), and in particular the following, shall be eligible for support from the Fund:

- (a) enhancement of the capacity of competent authorities to take high quality return decisions as quickly as possible;
- (b) enhancement of the capacity of competent administrative authorities to implement or enforce speedily removal decisions with full respect for human dignity and the relevant European security standards regarding such operations;
- (c) enhancement of the capacity of judicial bodies to more quickly assess return decisions appealed;
- (d) organisation of seminars and joint training for the staff of the competent national, regional, local, urban and other competent administrative, law enforcement and judicial bodies concerning legal and practical aspects of return operations;
- (e) enhancement of the capacity of competent administrative authorities to effectively implement common arrangements on mutual recognition and joint return operations, including the recommendations, operational standards and best practices defined by the Agency in the area of return.

4. Actions provided for by paragraphs 1, 2 and 3 shall, in particular, promote the implementation of the provisions of the relevant Community legislation in the field of the common European immigration and return policy.

#### Article 5

##### Eligible measures in the Member States

Actions supported may include the following measures:

- (1) in all cases of return, information to third-country nationals on return in general, counselling to individuals on the possibilities for voluntary return, translation costs, procurement of indispensable travel documents, costs of necessary pre-return medical checks, costs of travel and food for returnees and escorts, including medical staff and interpreters, accommodation for escorts including medical staff and interpreters, costs of transport in the Member State and up to the country of return and cooperation with the authorities of the country of origin, former residence or transit;
- (2) in all cases of return, specific assistance for vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence;
- (3) additionally, in the case of forced return of third-country nationals who do not or no longer fulfil the conditions for entry and stay, costs for travel, food and temporary accommodation of returnees and their escorts from the participating Member State in the organising Member State prior the departure in case of joint return operations;
- (4) additionally, in the case of voluntary return of third-country nationals who do not or no longer fulfil the conditions for entry and stay, assistance to returnees in preparing the return, as well as essential expenses before return;
- (5) additionally, in the case of voluntary return of third-country nationals who are not under an obligation to leave the territory of the Member States and in other cases, where considered appropriate by Member States, limited financial contribution for initial expenses after return, transport of the returnee's personal belongings, adequate temporary accommodation for the first days after arrival in the country of return in a reception centre or a hotel if necessary, training and employment assistance and limited start-up support for economic activities where appropriate;
- (6) education and training of staff of the competent administrative, law enforcement and judicial bodies, secondments of these categories of staff from other Member States, in order to ensure an effective and uniform application of common standards on return and the respect of obligations

under international instruments affecting the treatment of returnees, and enhance cooperation, as well as missions to assess the results of return policies in third countries;

- (7) in the case of operational cooperation with consular authorities and immigration services of third countries with a view to obtaining travel documents and ensuring speedy removal procedures, cost of travel and accommodation in the Member States for the staff of the authorities and services responsible for the identification of third-country nationals and the verification of their travel documents;
- (8) in the case of reintegration measures for third-country nationals who are not under an obligation to leave the territory of a Member State, cash incentives and other short term measures necessary to launch the progress of reintegration for the returnee's personal development such as training, placement and employment assistance, start-up support for economic activities and post-return assistance and counselling;
- (9) in the case of reintegration measures for third-country nationals who do not or no longer fulfil the conditions for entry and stay, where Member States consider it appropriate, cash incentives and other short term measures necessary to launch the progress of reintegration for the returnee's personal development such as training, placement and employment assistance, start-up support for economic activities and post-return assistance and counselling, as well as measures enabling Member States to offer appropriate arrangements for welcoming returnees in third countries upon their arrival.

#### Article 6

##### Community actions

1. At the Commission's initiative, up to 7 % 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 return policy and measures applicable to the target groups as referred to in Article 7.
2. To be eligible for funding, Community actions shall, in particular:
  - (a) further Community cooperation in implementing Community law and good practices;
  - (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 the exchange of experience and good practice and improve the quality of return policy;
  - (c) support transnational awareness-raising campaigns;

- (d) support studies, dissemination and exchange of information on best practices and all other aspects of return policies, including on the use of state-of-the-art technology, in particular to encourage more comparative research relating to the impact of past and present return programmes;
- (e) support pilot projects and studies exploring the possibility of new forms of Community cooperation and Community law in this area;
- (f) support the development and application by Member States of common statistical tools, methods and indicators for measuring policy developments in the field of return, in particular with a view to the dissemination of statistics disaggregated according to voluntary and forced returns;
- (g) support the development and regular updating, in cooperation with the Agency, of a common handbook on best practices in the field of return, including on escorts;
- (h) provide Member States with support services in case 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 7*

##### **Target groups**

1. For the purposes of this Decision the target groups shall comprise:
  - (a) all third-country nationals who have not yet received a final negative decision in relation to their request for international protection in a Member State and who may choose to make use of voluntary return, provided they have not acquired a new nationality and have not left the territory of that Member State;
  - (b) all third-country nationals enjoying a form of international protection within the meaning of Directive 2004/83/EC, or temporary protection within the meaning of Directive 2001/55/EC in a Member State, and who choose to make use of voluntary return, provided they have not acquired a new nationality and have not left the territory of that Member State;
  - (c) all third-country nationals who do not or no longer fulfil the conditions for entry and/or stay in a Member State and who, in accordance with the obligation to leave the territory of that Member State, make use of voluntary return;

- (d) all other third-country nationals who do not or no longer fulfil the conditions for entry and/or stay in a Member State.

2. Third-country national means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty.

#### CHAPTER II

##### **PRINCIPLES OF ASSISTANCE**

#### *Article 8*

##### **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 19.
3. Operations financed by the Fund shall comply with the provisions of the Treaty and of acts adopted thereunder.

#### *Article 9*

##### **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 10*

##### **Subsidiary and proportional intervention**

1. Implementation of multiannual and annual programmes referred to in Articles 19 and 21 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 11***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 6 and the technical assistance referred to in Article 16 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 12***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 13***Global resources**

1. The financial envelope for the implementation of this Decision from 1 January 2008 to 31 December 2013 shall be EUR 676 million.

2. The annual appropriations for the Fund 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 14.

*Article 14***Annual distribution of resources for eligible actions 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 those Member States which acceded to the European Union on 1 May 2004.

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

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

(a) 50 % in proportion to the total number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and/or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return, over the previous three years;

(b) 50 % in proportion to the number of third-country nationals who have actually left the territory of the Member State following an administrative or judicial order to leave, whether undertaken voluntarily or under coercion over the previous three years.

3. The third-country nationals referred to in paragraph 2 shall not include:

(a) third-country nationals who, being present in a transit zone of a Member State, were refused entry;

(b) third-country nationals who are to be returned by a Member State to another Member State, in particular pursuant to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national <sup>(1)</sup>.

4. 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.

<sup>(1)</sup> OJ L 50, 25.2.2003, p. 1.

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.

#### Article 15

##### 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 as referred to in Article 18.

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.

#### Article 16

##### 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 systems 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 17

##### Technical assistance at the initiative of 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 cofinancing allocated to that Member State plus EUR 30 000; and
  - (b) for the period 2011 to 2013, 4 % of the total annual amount of cofinancing allocated to that Member State plus EUR 30 000.

## CHAPTER IV

## Article 19

## PROGRAMMING

**Preparation and approval of national multiannual programmes**

## Article 18

**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 return and measures taken by the Community in the area of illegal immigration as well as the indicative distribution of the financial resources of the Fund for the period of the multiannual programme.

2. For the objectives of the Fund referred to in Article 3(1)(a) and (b), those guidelines shall, in particular, give effect to the priorities of the Community with a view to promoting:

- (a) the return of third-country nationals who are not in the possession of passports or other identity documents;
- (b) the return of third-country nationals not covered under Community re-admission agreements or national bilateral re-admission agreements, with a view to strengthening the obligation of a State under international law to re-admit its own nationals;
- (c) the return to a particular country of third-country nationals and stateless persons who have come from or have resided in that country but not as nationals of that country;
- (d) the return of persons who are under no obligation to leave the territory of the Member States, such as applicants for asylum who have not yet received a negative decision and persons enjoying a form of international protection within the meaning of Directive 2004/83/EC or temporary protection within the meaning of Directive 2001/55/EC;
- (e) the return of particularly vulnerable groups.

For the objective of the Fund referred to in Article 3(1)(c), those guidelines shall, in particular, give effect to the priorities of the Community to promote the knowledge of the common standards across the European Union and the integration of those standards into daily return management processes in the administrative authorities of the Member States.

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). These strategic guidelines, once adopted, shall be annexed to this Decision.

1. Each Member State shall propose, on the basis of the strategic guidelines referred to in Article 18, a draft multiannual programme which shall consist of the following elements:

- (a) a description of the current situation in the Member State as regards the principle of integrated return management, the cooperation with consular authorities and immigration services of third countries, the measures and policies relating to voluntary return and enforced return, with disaggregated data, insofar as they are available, between voluntary and forced returns, the approach towards reintegration measures and sustainability of return, capacity building of competent administrative and judicial authorities and the cooperation with other Member States in relation to the above;
- (b) an analysis of requirements in the Member State in question in terms of the cooperation with consular authorities and immigration services of third countries, the measures and policies relating to voluntary return and enforced return, the approach towards reintegration measures and sustainability of return, capacity building of competent administrative and judicial authorities and the cooperation with other Member States in relation to the above and an indication of the operational objectives designed to meet those requirements during the period covered by the multiannual programme;
- (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 for 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 12;
- (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 cofinancing;
- (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.



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 18;
- (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 20

##### 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 21

##### Annual programmes

1. The multiannual programme approved by the Commission shall be implemented by means of annual work 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 14.

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 multiannual 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 17 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 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 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 19 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 shall 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 multiannual programme in accordance with the principle of sound financial management.

It shall in particular:

- (a) consult partners in accordance with Article 12;
- (b) submit to the Commission proposals for multiannual and annual programmes to which Articles 19 and 21 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 15(5);
- (e) receive payments made by the Commission, and make payments to the final beneficiaries;
- (f) ensure consistency and complementarity between cofinancing 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 the management procedures applied 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 17, 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 of 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 cofinancing 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 Decision No 573/2007/EC, Decision No 574/2007/EC and Decision No .../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 17, provided that the prerogatives of the audit authority as described in Article 24 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 multiannual 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 multiannual 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 for the period 2008 to 2010 referred to 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 31 that 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 21(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 19 and 21 respectively, certified declarations of expenditure, requests for payments referred to in Article 27(1)(n) and 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 21(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 21(5).

## Article 39

**Payments — Prefinancing**

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 40(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 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 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 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:

- (a) by 30 June 2010, an evaluation report on the implementation of actions co-financed by the Fund;
- (b) 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:

- (a) by 30 June 2010, a report on the application of the criteria set out in Article 15 for the annual breakdown of resources between Member States; together with proposals for amendments if deemed necessary;
- (b) by 31 December 2010, an intermediate report on the results achieved and on qualitative and quantitative aspects of implementation of the Fund, together with a proposal on the Fund's future development;
- (c) 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

#### 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 14, 18, 19, 21, 22, 25, Article 31(2), Article 31(5), Article 32, Article 35(4) and Article 52, which shall apply from 7 June 2007.

##### Article 55

#### 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