

Council Decision of 25 June 2007 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the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ (2007/435/EC) (repealed)

COUNCIL DECISION

of 25 June 2007

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’

(2007/435/EC) (repealed)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) 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>,

Having regard to the opinion of the European Parliament<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 borders controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third-country nationals.
- (2) The European Council, at its meeting in Tampere on 15 and 16 October 1999, stated that the European Union must ensure fair treatment of third-country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of European Union citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.
- (3) The integration of third-country nationals in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty. However, having regard to the Treaty, the European Fund for the Integration of third-country nationals (hereinafter referred to as the Fund) should be primarily targeted at newly-arrived third-country nationals, as far as the co-financing of concrete actions supporting the integration process in Member States is concerned.

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- (4) In the Hague Programme of 4 and 5 November 2004, the European Council underlines that to achieve the objective of stability and cohesion within Member States' societies it is essential to develop effective policies. It calls for greater coordination of national integration policies on the basis of a common framework and invites the Member States, the Council and the Commission to promote the structural exchange of experience and information on integration.
- (5) As requested in the Hague Programme, the Council and the representatives of the governments of the Member States established on 19 November 2004 'Common Basic Principles for immigrant integration policy in the European Union' (hereinafter referred to as the Common Basic Principles). The Common Basic Principles assist Member States in formulating integration policies by offering them a thoughtful guide of basic principles against which they can judge and assess their own efforts.
- (6) The Common Basic Principles are complementary to and in full synergy with the Community legislative instruments on the admission and stay of legally residing third-country nationals concerning family reunion and long term residents, and other relevant existing legislative frameworks, including those relating to gender equality, non-discrimination and social inclusion.
- (7) Recalling the Communication of the Commission of 1 September 2005 on a common Agenda for Integration: framework for the integration of third country nationals in the European Union, the Council Conclusions on that Agenda of 1 and 2 December 2005 underline the need to strengthen the integration policies of the Member States and acknowledge the importance of defining a framework at European level for the integration of legally residing third-country nationals in all aspects of society and in particular concrete measures for implementing the Common Basic Principles.
- (8) The failure of an individual Member State to develop and implement integration policies could in different ways have adverse implications for other Member States and the European Union.
- (9) To underpin this programming in the area of integration, the budgetary Authority entered specific appropriations in the general budget of the European Union for the period 2003 to 2006 for the financing of pilot projects and preparatory actions in the field of integration (hereinafter referred to as INTI).
- (10) In the light of INTI and referring to the Commission Communications on immigration, integration and employment and the First annual report on Migration and Integration, it is considered necessary to endow the Community from 2007 with a specific instrument designed to contribute to the national efforts of Member States to develop and implement integration policies which enable third-country nationals of different cultural, religious, linguistic and ethnic backgrounds to fulfil the conditions of residence and to facilitate their integration into European societies, in accordance with the Common Basic Principles and in complementarity with the European Social Fund (hereinafter referred to as ESF).
- (11) To ensure the consistency of the Community's response to integration of third-country nationals, actions financed under the Fund should be specific and complementary

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to actions financed under the ESF and the European Refugee Fund. In this context, specific joint programming arrangements to ensure the consistency of the Community's response to integration of third-country nationals through the ESF and the Fund should be developed.

- (12) Bearing in mind that the Fund and the ESF are under shared management with Member States, arrangements should also be made at national level to ensure consistency in implementation. For that purpose, the authorities of the Member States responsible for the implementation of the Fund should be required to establish cooperation and coordination mechanisms with the authorities designated by the Member States for managing the implementation of the ESF and the European Refugee Fund and to ensure that actions under the Fund should be specific and complementary to actions financed under the ESF and the European Refugee Fund.
- (13) This Decision should be targeted primarily, as far as it concerns the co-financing of concrete actions supporting the integration process of third-country nationals in Member States at actions relating to third-country nationals who are newly arrived. Reference, could be made in this context to Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents<sup>(4)</sup> which refers to the period of five years of legal residence as a requirement with which third-country nationals have to comply in order to qualify for long-term residence status.
- (14) The Fund should also support Member States in enhancing their capacity to develop, implement, monitor and evaluate in general all integration strategies, policies and measures for third-country nationals as well as the exchange of information, best practices and cooperation in and between Member States contributing to enhancing this capacity.
- (15) This Decision is designed to form part of a coherent framework which also includes Decision No 573/2007/EC of the European Parliament and 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<sup>(5)</sup>, Decision No 574/2007/EC of the European Parliament and 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>(6)</sup> and Decision No 575/2007/EC of the European Parliament and 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>(7)</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 3 of the Treaty.
- (16) 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.

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- (17) On the basis of strategic guidelines adopted by the Commission, each Member State should prepare a multiannual 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.
- (18) 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>(8)</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 Article 27 and Article 48(2) of the Financial Regulation.
- (19) Objective criteria should be established to allocate available annual resources to the Member States. These criteria should take into account the total number of third-country nationals legally staying in Member States and the total new admission of third-country nationals over a given reference period.
- (20) 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 the necessary functions which all programmes should fulfil.
- (21) 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.
- (22) 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 the 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.
- (23) 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.
- (24) 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.
- (25) 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.

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- (26) Bearing in mind the importance of visibility of the 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 the Fund, taking into account the practice with respect to other instruments under shared management, such as the Structural Funds.
- (27) This Decision establishes a financial envelope for the entire duration of the programme, within the meaning of point 38 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>(9)</sup> without thereby affecting the powers of the budgetary authority as they are defined by the Treaty.
- (28) Since the objective of this Decision, namely to promote the integration of third-country nationals in the host societies of Member States within the framework of the Common Basic Principles, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, 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 that objective.
- (29) 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>(10)</sup>.
- (30) In order to ensure a timely implementation of the Fund, this Decision should apply from 1 January 2007.
- (31) In accordance with Article 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.
- (32) 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.
- (33) 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,

HAS ADOPTED THIS DECISION:

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## CHAPTER I

### SUBJECT MATTER, OBJECTIVES AND ACTIONS

#### *Article 1*

##### **Subject matter and scope**

1 This Decision establishes for the period from 1 January 2007 to 31 December 2013 the European Fund for integration of third-country nationals (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 No 575/2007/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.

2 Third-country nationals who are on the territory of a third country and who are complying with specific pre-departure measures and/or conditions set out in national law, including those relating to the ability to integrate in the society of this Member State fall under the scope of this Decision.

3 Third-country nationals who have applied for asylum in respect of which a final decision has not yet been taken, or enjoy refugee or subsidiary protection status, or qualify as refugees or are eligible for 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>(1)</sup>, shall be excluded from the scope of this Decision.

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

#### *Article 2*

##### **General objective of the Fund**

1 The general objective of the Fund is to support the efforts made by the Member States in enabling third-country nationals of different economic, social, cultural, religious, linguistic and ethnic backgrounds to fulfil the conditions of residence and to facilitate their integration into the European societies.

The Fund shall primarily focus on actions relating to the integration of newly arrived third-country nationals.

2 In order to further the objective mentioned in paragraph 1 the Fund shall contribute to the development and implementation of national integration strategies for third-country nationals in all aspects of society in particular taking into account the principle that integration

is a two-way dynamic process of mutual accommodation by all immigrants and residents of Member States.

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

### *Article 3*

#### **Specific objectives**

The Fund shall contribute to the following specific objectives:

- (a) facilitation of the development and implementation of admission procedures relevant to and supportive of the integration process of third-country nationals;
- (b) development and implementation of the integration process of newly-arrived third-country nationals in Member States;
- (c) increasing of the capacity of Member States to develop, implement, monitor and evaluate policies and measures for the integration of third-country nationals;
- (d) exchange of information, best practices and cooperation in and between Member States in developing, implementing, monitoring and evaluating policies and measures for the integration of third-country nationals.

### *Article 4*

#### **Eligible actions in the Member States**

1 As regards the objective defined in Article 3(a), the Fund shall support actions in Member States which:

- a facilitate the development and implementation by Member States of admission procedures, *inter alia* by supporting consultation processes with relevant stakeholders and expert advice or information exchanges on approaches which target specific nationalities or categories of third-country nationals;
- b render the implementation of admission procedures more effective and accessible to third-country nationals, *inter alia* by using user-friendly Communication and Information Technology, information campaigns and selection procedures;
- c prepare third-country nationals for their integration into host society in a better way by supporting pre-travel measures which enable them to acquire knowledge and skills necessary for their integration, such as vocational training, information packages, comprehensive civic orientation courses and language tuition in the country of origin.

2 As regards the objective defined in Article 3(b), the Fund shall support actions in Member States which:

- a set up programmes and activities aiming at introducing newly arrived third-country nationals to the host society and enabling them to acquire basic knowledge about the host society's language, history, institutions, socio economic features, cultural life and the fundamental norms and values, as well as complement such existing programmes and activities;
- b develop and improve the quality of such programmes and activities at local and regional level, with a particular emphasis on civic orientation;

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- c reinforce the capacity of such programmes and activities to reach out to particular groups, such as dependants of persons subject to admission procedures, children, women, elderly, illiterate or persons with disabilities;
  - d increase the flexibility of such programmes and activities, in particular through part time courses, fast track modules, distance or E-learning systems or similar models, enabling third-country nationals to complete the programmes and activities while at the same time working or studying;
  - e develop and implement such programmes or activities, targeted at young third-country nationals, with specific social and cultural challenges related to identity issues;
  - f develop such programmes or activities encouraging the admission and supporting the integration process of highly qualified and qualified third-country nationals.
- 3 As regards the objectives defined in Article 3(c) and (d), the Fund shall support actions in and between Member States which:
- a improve the access of third-country nationals to public and private goods and services, *inter alia* by intermediary services, interpretation and translation services and by improving the staff's intercultural capacities;
  - b build sustainable organisational structures for integration and diversity management, promote durable and sustainable participation in civil and cultural life, and develop modes of cooperation between different relevant stakeholders enabling officials at various levels to swiftly gain information about experiences and practices elsewhere and, where possible, to pool resources;
  - c develop and implement intercultural training, capacity building and diversity management, training of staff within public and private service providers, including educational institutions;
  - d reinforce the capacity to coordinate, implement, monitor and evaluate national integration strategies for third-country nationals across the different levels and departments of government;
  - e contribute to the evaluation of admission procedures or the programmes and activities referred to in paragraph 2 by supporting representative surveys among third-country nationals having benefited from them and/or among relevant stakeholders, such as enterprises, non-governmental organisations and regional or local authorities;
  - f introduce and implement schemes to gather and analyse information about the needs of different categories of third-country nationals at local or regional level by involving platforms for consultation of third-country nationals and for exchange of information between stakeholders and by conducting surveys among immigrant communities on how best to respond to those needs;
  - g contribute to the two-way process underlying integration policies by developing platforms for consultation of third-country nationals, exchange of information between stakeholders and intercultural, inter-faith and religious dialogue platforms between communities and/or between communities and policy and decision-making authorities;
  - h develop indicators and benchmarking for measuring progress at national level;
  - i develop high quality monitoring tools and evaluation schemes for integration policies and measures;
  - j increase the acceptance of migration in host societies as well as the acceptance of integration measures through awareness-raising campaigns, particularly in the media.



### Article 5

#### 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 immigration and integration policy.

2 To be eligible for funding, Community actions shall in particular:

- a further Community cooperation in implementing Community law and good practices in the field of immigration and implementing good practices in the field of integration;
- b support the setting-up of transnational cooperation networks and pilot projects based on transnational partnerships between bodies from two or more Member States designed to stimulate innovation, facilitate exchanges of experience and good practice and improve the quality of integration policies;
- c support transnational awareness-raising campaigns;
- d support studies, dissemination and exchange of information on best practices and all other aspects of immigration and integration policies, including for the use of state of the art technology;
- e support pilot projects and studies exploring the possibility of new forms of Community cooperation in the field of immigration and integration and Community law in the field of immigration;
- f support the development and application by Member States of common statistical tools, methods and indicators for measuring policy developments in the fields of immigration and integration.

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).

## CHAPTER II

### PRINCIPLES OF ASSISTANCE

#### Article 6

##### 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.

In particular, to ensure the consistency of the Community's response to integration of third country nationals, actions financed under this Fund shall be specific and complementary to actions financed under the European Social Fund and the European Refugee Fund.

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 16.

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

#### *Article 7*

### **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 20. The multiannual programming system shall include the priorities and a process of management, decision-making, auditing and certification.

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

#### *Article 8*

### **Subsidiary and proportional intervention**

1 Implementation of multiannual and annual programmes referred to in Articles 17 and 19 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 9*

### **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 5 and the technical assistance referred to in Article 14. Member States and the Commission shall ensure compliance with the principle of sound financial management.

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 30;
- b withholding or suspending payments in full or in part in accordance with the procedures described in Articles 39 and 40 if the national management and control systems fail, and applying any other financial correction required, in accordance with the procedures described in Articles 43 and 44.

## Article 10

### 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 and bodies representing civil society such as non-governmental organisations, including migrant organisations, or social partners.

This partnership shall include at least the implementing authorities designated by Member States for the purpose of the management of the interventions of the European Social Fund and the responsible authority of the European Refugee Fund.

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 11

### Global resources

1 The financial envelope for the implementation of actions financed by the Fund for the period from 1 January 2007 until 31 December 2013 shall be EUR 825 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 12.

## Article 12

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

1 Each Member State shall receive a fixed amount of EUR 500 000 from the Fund's annual allocation.

This amount shall be fixed at EUR 500 000 *per annum* for Member States which will accede to the European Union during the period from 2007 to 2013, for the remaining part of the period from 2007 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:

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- a 40 % in proportion to the average of the total number of legally residing third-country nationals in Member States over the previous three years; and
  - b 60 % in proportion to the number of third-country nationals who have obtained an authorisation issued by a Member State to reside on its territory over the previous three years.
- 3 However, for the purpose of the calculation referred to in paragraph 2(b), the following categories of persons shall not be included:
- a seasonal workers, as defined under national law;
  - b third country nationals admitted for the purposes of studies, pupil exchange, unremunerated training or voluntary service in accordance with Council Directive 2004/114/EC<sup>(12)</sup>;
  - c third country nationals admitted for purposes of scientific research in accordance with Council Directive 2005/71/EC<sup>(13)</sup>;
  - d third country nationals who have received a renewal of an authorisation issued by a Member State or a change of status, including third-country nationals who acquire long-term resident status in accordance with Council Directive 2003/109/EC.

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.

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 13*

#### **Financing structure**

- 1 The Fund's financial contribution 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 as defined in Article 16.  
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;

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- 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 14

##### 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 the 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 data base on the 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 Chapter V, complementary to the efforts of the Member States to provide guidance to their authorities in accordance with Article 30(2).

#### Article 15

##### 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.

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## CHAPTER IV

### PROGRAMMING

#### *Article 16*

#### **Adoption of strategic guidelines**

1 The Commission shall adopt strategic guidelines setting out a framework for the intervention of the Fund, taking into account the progress in development and implementation of Community legislation in the area of immigration and other areas related to the integration of third-country nationals as well as the indicative distribution of the financial resources of the Fund for the period concerned.

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 Common Basic Principles.

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 procedure referred to in Article 52(2).

#### *Article 17*

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

1 Each Member State shall propose on the basis of the strategic guidelines referred to in Article 16 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 implementation of national integration strategies in light of the Common Basic Principles and, where available, as regards the development and implementation of national admission and introduction programmes;
- b an analysis of requirements in the Member State in question in terms of the national integration strategies and, where available, admission and introduction programmes, and an indication of operational objectives designed to meet these requirements during the period covered by the multiannual programme;
- c the presentation of an appropriate strategy to achieve these objectives and the priorities attached to their attainment, and a description of the actions envisaged to implement these 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 principle of proportionality. The indicators shall 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 principle of partnership laid down in Article 10;
- 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 a description of measures taken to ensure complementarity of actions with those financed under the ESF;
- i 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 defined in Article 16;
  - 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 borders controls, asylum and immigration.

4 Where the Commission considers that a draft multiannual programme is inconsistent with the strategic guidelines 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 to provide all necessary information and, where appropriate, to revise the draft multiannual programme accordingly.

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

#### *Article 18*

### **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 the 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 19*

### **Annual programmes**

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

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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 by Article 12.

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 15 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.

#### *Article 20*

##### **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 multi-annual programme and where appropriate, revise it.

3 The rules laid down in Article 17 on the preparation and approval of national multi-annual programmes shall apply *mutatis mutandis* for the preparation and approval of these revised multi-annual programmes.

4 The revised strategic guidelines shall be adopted in accordance with the procedure referred to in Article 52(2).



## CHAPTER V

### MANAGEMENT AND CONTROL SYSTEMS

#### *Article 21*

#### **Implementation**

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

#### *Article 22*

#### **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) the respect of the principle of separation of functions between and within such bodies;
- (c) adequate resources for each body or department 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 execution 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 23*

#### **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 or national public authority or body designated by the Member State or a body governed by the private law of the Member State and which has a public service mission, which shall be responsible

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- 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 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 22(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 24 to 28 shall be adopted by the Commission in accordance with the procedure referred to in Article 52(2).

#### *Article 24*

##### **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 and language skills 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 and uninterruptedly 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 25*

##### **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 10;

- b submit to the Commission the proposals for multiannual and annual programmes to which Articles 17 and 19 refer;
  - c set up a cooperation mechanism with the managing authorities designated by the Member State for the purposes of the implementation of the actions under the ESF and the European Refugee Fund;
  - d organise and advertise calls for tenders and proposals, if appropriate;
  - e organise the selection of projects for co-financing under the Fund in accordance with the criteria set out in Article 13(5);
  - f receive payments made by the Commission, and make payments to the final beneficiaries;
  - g ensure consistency and complementarity between co-financing under the Fund and from other relevant national and Community financial instruments;
  - h 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;
  - i 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 is collected;
  - j 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;
  - k ensure that the evaluations of the Fund referred to in Article 47 are carried out within the time limits laid down in Article 48(2) and meet the quality standards agreed between the Commission and the Member State;
  - l 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 41;
  - m ensure that the audit authority receives, for the purposes of carrying out the audits defined in Article 28(1), all necessary information on management procedures operated and the projects co-financed by the Fund;
  - n 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;
  - o 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;
  - p carry out information and advisory activities; and disseminate results of supported actions;
  - q cooperate with the Commission and the responsible authorities in the other Member States;
  - r verify the implementation by the final beneficiaries of the guidelines referred to in Article 31(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 15.

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### Article 26

#### **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 precisely 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 24.

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 27

#### **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 15, provided that the prerogatives of this authority as described in Article 23 are respected.

### Article 28

#### **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 573/2007/EC, No 574/2007/EC and No 575/2007/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 15, provided that the prerogatives of the audit authority as described in Article 23 are respected.

## CHAPTER VI

### RESPONSIBILITIES AND CONTROLS

#### *Article 29*

#### **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 22 to 28 to ensure that Community financing is used efficiently and correctly.

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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 the 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 30*

### **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 22 to 28. 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 multi-annual 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 2013, set out in Article 48(3).

#### *Article 31*

### **Responsibilities of the Commission**

1 The Commission shall satisfy itself in accordance with the procedure laid down in Article 30 that the Member States have set up management and control systems that comply with Articles 22 to 28, 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 on actions included in the annual programmes, with a minimum of three working day's 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 an on-the-spot check 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.

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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 32*

### **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 28 within not more than three months after 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 33*

### **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 19(4). The co-financed actions must not have been completed before the starting date for eligibility.

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

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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 52(2).

#### *Article 34*

### **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 35*

### **Use of the euro**

1 Amounts set out in the draft multi-annual and annual programmes of the Member States referred to in Articles 17 and 19 respectively, certified declarations of expenditure, requests for payments referred to in Article 25(1)(o) and expenditure mentioned in the progress report on the implementation of the annual programme referred to in Article 37(4) and the final report on the implementation of the annual programme referred to in Article 49 shall be denominated in euros.

2 Commission financing decisions, approving the annual programmes of Member States referred to in the third subparagraph of Article 19(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 in euros using the monthly accounting exchange rate of the Commission in 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 36*

### **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 19(4).



### Article 37

#### 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 60 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 of 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 27(1)(a) and Article 33 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 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 38

#### 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 27(1)(a) and Article 33 and a request for payment of the balance or a statement of reimbursement;
- b the final report on the implementation of the annual programme, as set out in Article 49;
- c the annual audit report, opinion and declaration provided for in Article 28(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.

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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 months period referred to in paragraph 1 shall cease to run if the Commission has adopted a decision suspending payments of the co-financing for the relevant annual programme in accordance with Article 40. 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 39, 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 60 days from the date on which it accepts the documents referred to in paragraph 1. The balance of the budgetary commitment shall be decommitted six months following the payment.

#### *Article 39*

#### **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 40

### 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 29 and 30.

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 the 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 44.

## Article 41

### 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 38(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.

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## CHAPTER VIII

### FINANCIAL CORRECTIONS

#### *Article 42*

#### **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 45(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 49 a list of cancellation procedures initiated for the annual programme concerned.

#### *Article 43*

#### **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 29, it shall suspend the pre-financing or payment of the balance in accordance with Article 40.

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#### Article 44

### 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 29 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 the Article 28(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 30, the reports of notified irregularities and any replies from the Member State.

#### Article 45

### 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.

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#### *Article 46*

### **Obligations of Member States**

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 42.

## CHAPTER IX

### **MONITORING, EVALUATION AND REPORTS**

#### *Article 47*

### **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 48(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 48*

### **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:

- 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 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 2009, a report on and a review of the application of the criteria set out in Article 12 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 2007 to 2010 and 31 December 2015 for the period 2011 to 2013 respectively, an ex post evaluation report.

#### *Article 49*

### **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 multi-annual 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 multi-annual 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

### **TRANSITIONAL PROVISIONS**

#### *Article 50*

### **Preparation of the multi-annual programme**

- 1 By way of derogation from Article 17, Member States shall:
  - a as soon as possible after 29 June 2007 but not later than 14 July 2007, designate the national responsible authority referred to in Article 24(1)(a), as well as, where appropriate, the delegated authority;
  - b by 30 September 2007, submit the description of the management and control systems referred to in Article 31(2).

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- 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 by the Financial Framework.

#### *Article 51*

### **Preparation of the 2007 and 2008 annual programmes**

- 1 By way of derogation from Article 19, 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 Article 12.

## CHAPTER XI

### **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 (hereinafter referred to as the Committee).

2 Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

#### *Article 53*

### **Review**

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 2007.

*Article 55*

**Addressees**

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

Done at Luxembourg, 25 June 2007.

*For the Council*

*The President*

A. SCHAVAN

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- (1) Opinion of 14 February 2006 (OJ C 88, 11.4.2006, p. 15).
- (2) Opinion of 16 November 2005 (OJ C 115, 16.5.2006, p. 47).
- (3) Opinion of 14 December 2006 (not yet published in the Official Journal).
- (4) OJ L 16, 23.1.2004, p. 44.
- (5) OJ L 144, 6.6.2007, p. 1.
- (6) OJ L 144, 6.6.2007, p. 22.
- (7) OJ L 144, 6.6.2007, p. 45.
- (8) 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).
- (9) OJ C 139, 14.6.2006, p. 1.
- (10) OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).
- (11) OJ L 304, 30.9.2004, p. 12.
- (12) OJ L 375, 23.12.2004, p. 12.
- (13) OJ L 289, 3.11.2005, p. 15.