

Commission Decision of 5 March 2008 laying down rules for the implementation of Decision No 574/2007/EC of the European Parliament and of the Council establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (notified under document number C(2008) 789) (Only the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are authentic) (2008/456/EC)

PART II

PROVISIONS COMMON TO THE FOUR FUNDS

CHAPTER 4

Reporting irregularities

Article 27

Initial reporting — derogations

1 In accordance with the models in Annexes IV and V, Member States shall report to the Commission any irregularity which has been the subject of a primary administrative or judicial finding in the progress or final reports on implementation of the annual programmes.

The report shall indicate:

- a the Fund, the annual programme and the project concerned;
- b the provision which has been infringed;
- c the date and the source of the first information leading to suspicion that an irregularity has been committed;
- d the practices employed in committing the irregularity;
- e where appropriate, whether the practice gives rise to a suspicion of fraud;
- f the manner in which the irregularity was discovered;
- g the amount of the Community contribution concerned.

However, the following cases need not be reported, except in cases of suspected fraud:

- a cases where the irregularities relate to amounts of less than 10 000 euros chargeable to the general budget of the European Communities;
- b cases where the irregularity consists solely of failure to implement, in whole or in part, a project included in the annual programme owing to the bankruptcy of the final beneficiary;
- c cases brought to the attention of the responsible authority by the final beneficiary voluntarily and before detection by the responsible authority, whether before or after payment of the public contribution;

- d cases detected and corrected by the responsible authority before any payment of the public contribution to the final beneficiary and before inclusion of the expenditure concerned in a declaration of expenditure submitted to the Commission.

2 At the request of the Commission, Member States shall in all cases give further details concerning:

- a where appropriate, the other Member States and third countries involved;
- b the period during which, or the moment at which, the irregularity was committed;
- c the national authorities or bodies which drew up the official report on the irregularity and the authorities responsible for the administrative or judicial follow-up;
- d the date on which the primary administrative or judicial finding on the irregularity was established;
- e the identity of the natural and legal persons involved or of any other participating entities, except where this information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity concerned;
- f the total budget and the public contribution approved for the project and the distribution of its co-financing between the Community and national contributions;
- g the amount of the public contribution affected by the irregularity and the corresponding Community contribution at risk;
- h where no payment of the public contribution referred to under point (g) has been made to the persons or other entities identified, the amounts which would have been unduly paid had the irregularity not been identified;
- i the suspension of payments, where applicable, and the possibilities of recovery;
- j the nature of the irregular expenditure.

3 Where some of the information referred to in paragraph 2, in particular on the practices employed in committing the irregularity and on the manner in which the irregularity was discovered, is not available, Member States shall as far as possible supply the missing information when forwarding subsequent reports of irregularities to the Commission.

Article 28

Reporting of follow-up — Non-recovery

1 Member States shall inform the Commission, with reference to any previous report made under Article 27, of the procedures instituted with respect to all irregularities previously notified and of significant changes resulting from them. This information shall be given in the progress reports or final reports on implementation of the annual programmes in accordance with the models in Annexes IV and V.

The report shall indicate the amounts which have been, or are expected to be, recovered.

2 At the request of the Commission, Member States shall in all cases give further details concerning:

- a any interim measures taken by Member States to safeguard recovery of sums unduly paid;
- b any judicial and administrative procedures instituted with a view to recovering sums unduly paid and to imposing sanctions;
- c the reasons for any abandonment of recovery procedures;
- d the reasons for any abandonment of criminal prosecutions.

Member States shall report to the Commission all administrative or judicial decisions terminating such procedures, or the main points thereof, and shall state, in particular, whether or not the findings are such that fraud is suspected.

Article 29

Contacts with Member States

1 The Commission shall maintain appropriate contacts with the Member States concerned for the purpose of supplementing the information supplied on the irregularities referred to in Article 27 and on the procedures referred to in Article 28 on the possibility of recovery.

2 Independently of the contacts referred to in paragraph 1, the Commission shall inform Member States in cases where the nature of the irregularity is such as to suggest that identical or similar practices could occur in other Member States.

Article 30

Use of information

1 The Commission may use any information of a general or operational nature communicated by Member States under this Decision to perform risk analyses and may, on the basis of the information obtained, produce reports and develop early-warning systems serving to identify risks more effectively.

2 The Commission shall regularly inform the Member States concerned of the use made of information under paragraph 1.