



EUROPEAN COMMISSION

Brussels, 20.7.2011
COM(2011) 448 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE
AND THE COMMITTEE OF THE REGIONS**

**The application of the criteria for the distribution of resources among the Member
States under the External Borders Fund, the European Fund for the Integration of
third-country nationals and the European Return Fund**

{SEC(2011) 940 final}

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE
AND THE COMMITTEE OF THE REGIONS**

**The application of the criteria for the distribution of resources among the Member
States under the External Borders Fund, the European Fund for the Integration of
third-country nationals and the European Return Fund**

1. BACKGROUND TO THIS REPORT

1.1. The purpose of this report

For the period 2007-2013 the European Union established the General Programme Solidarity and Management of Migration Flows with a total allocation of EUR 4.020 million. The General Programme consists of four Funds and its aim is to address the issue of a fair share of the responsibilities between Member States as concerns the financial burden arising from the introduction of an integrated management of the Union's external borders and from the implementation of common policies on asylum and immigration¹.

The Funds are different from most other EU financial instruments in the sense that they establish a mechanism for allocating their resources to Member States on an annual basis.

For this reason the basic acts establishing the External Borders Fund², the European Fund on the Integration of third-country nationals³ (hereinafter "Integration Fund") and the European Return Fund⁴ require the Commission to submit a report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of the criteria for allocating resources to the Member States and to review whether amendments to these criteria are deemed necessary.

No such obligation exists for the European Refugee Fund, the fourth Fund of the General Programme. Having been established in 2000, the basic act consolidated past experiences, including those with the criteria.

The report presents the approach on the application of the criteria for the distribution of the resources while the accompanying staff working document outlines in detail the results for the Member States. By presenting the data, the methodology used and the results of the application of the criteria, these documents may help inform the thinking of Member States, the other Institutions and stakeholders on the future of EU funding in the area of the management of migration flows under the next multi-annual financial framework.

¹ COM(2005)123 final

² Article 52(3)(a) of Decision No 574/2007/EC (OJ L144, 6.6.2007, p.22)

³ Article 48(3)(a) of Council Decision 2007/435/EC (OJ L168, 28.6.2007, p.18)

⁴ Article 50(3)(a) of Decision No 575/2007/EC (OJ L144, 6.6.2007, p.45)

1.2. The mechanisms for allocating resources under the Funds

The Funds are mainly implemented by the Member States, in the shared method of implementation. Through annual programmes from Member States, the EU budget seeks to support in Member States a structured intervention (capacity building), as well as activities specific to the national or local circumstances in the policy area concerned pursuant to the scope set out in the basic acts. All actions are co-financed within a common framework (EU strategic guidelines).

For each Fund the annual distribution of the available EU financial resources among the Member States is based on specific and objective criteria which reflect the situation of the Member State with regard to the obligations undertaken on behalf of or for the overall benefit of the Union in the policy area concerned: e.g. the size of the external borders to be protected and the number of persons crossing them; the number of legally staying third-country nationals to be integrated into society; the number of return decisions to be implemented. The definition of the criteria is the most concrete expression of the principle of solidarity underlying the Funds in the sense that those Member States most affected by the management of migration flows are meant to benefit the most from EU funding.

Each year the Commission draws upon both EU statistics from EUROSTAT and ad hoc data supplied by Member States to do the calculations. Once the calculations are communicated to the Member States in the year N-1⁵, the EU contribution to the annual programme is known to the Member States and they can start in earnest with the selection of actions to be co-financed for the programmes concerned. These are indicative amounts ("provisional allocations") that will be confirmed or modified once the Budgetary Authority has adopted the EU budget in the year N-1.

1.3. The structure and contents of this report

This report focuses on the calculations for the financial years 2007 – 2011. The calculations are final.

As foreseen during the discussions leading to the adoption of the basic acts, the data collection process was reinforced as a result of the entry into force of Regulation No 862/2007⁶ (henceforth the Migration Statistics Regulation). The application of the Migration Statistics Regulation to the data used for the distribution of the resources under the Funds has served to improve the reliability and comparability of the data. The experiences with the application of the criteria will be examined for each Fund.

Further information on the methodology, the data collection and an overview and comparative analysis of the results of the application of the data under the Funds is presented in the staff working document.

⁵ The allocations are indicative as the total Fund's appropriations are subject to the approval of the final budget of the European Union by its budgetary authority by the end of the year. Furthermore, they are also provisional as subject to formal approval by the Commission.

⁶ Regulation No 862/2007 of the EP and of the Council on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L.199, 31.7.2007, p.23).

2. THE GENERAL FRAMEWORK FOR THE CALCULATIONS

2.1. Key principles on data supply and cooperation between Member States and Commission

From the outset, for all the Funds, the following principles have been leading in the co-operation between Member States and the Commission, including EUROSTAT, to ensure the optimal application of the provisions on the distribution keys of the basic acts:

- (1) It is first and foremost the responsibility of the Member States to provide accurate and reliable data relevant for the allocations of resources to Member States. According to the basic acts, the reference figures shall be "the latest statistics produced by the Commission (EUROSTAT) on the basis of the data provided by Member States in accordance with Community law". Moreover, Member States have "to provide provisional data as soon as possible" for the Funds where data has not been supplied to the Commission (EUROSTAT) or where the statistics are not produced by the Commission (EUROSTAT) at all, as well as the information necessary to enable the Commission to check those data⁷.
- (2) In case of non-compliance, the ultimate consequence of the failure to deliver a particular category of data in accordance with the basic act concerned will be that the required field in the table used for the distribution of the resources will remain empty, except where it would benefit a Member State.

For EU statistics key checks on statistical quality are in place. EUROSTAT is implementing a quality assurance programme and as part of its wider efforts to ensure that Member States are complying with the requirements of EU statistical law, it works with national data suppliers to assess and ensure the correct application of the Migration Statistics Regulation.

2.2. A constant improvement in work methods and data quality

The Commission and the Member States have worked together from the outset to ensure the availability and comparability of data. A general framework on co-operation was set up and existing data collections and sources were examined jointly. In the summer of 2007, the results for the 2007 and 2008 financial years were communicated to the Member States. These first experiences were evaluated and some improvements were made. It was decided to work as much as possible on the basis of pre-filled templates from EUROSTAT and to formalise working relationships (network of statistical contact points). The work methods have thus been stabilised and Member States are fully familiar with them.

From the 2010 financial year, the first data sets (2008 reference year) collected under the terms of the Migration Statistics Regulation were used.

⁷ Article 12 of the Integration Fund, Article 13 of the European Refugee Fund and Article 14 of the External Borders Fund and Return Fund

3. THE SPECIFIC FRAMEWORK FOR CALCULATION UNDER EACH FUND

3.1. The External Borders Fund

3.1.1. *The criteria in the basic act*

Articles 14 and 15 of Decision 574/2007/EC (hereinafter "EBF basic act") define the criteria for the distribution of the annual resources of the Fund among the Member States. To express solidarity with the Member States who bear, for the benefit of the EU, a lasting and heavy financial burden, the provisions lay down objective criteria broken down according to the type of border, taking into account the flow and the levels of threat at the external borders of the Member States.

Article 14 provides that the total amount available for the Fund has to be broken down between the Member States as follows:

- (1) 30% for external land borders
- (2) 35% for external maritime borders
- (3) 20% for airports
- (4) 15% for consular offices.

Ad 1+2. As regards land and maritime borders, 70% is allocated with respect to the length of the external border, where appropriate, extended thanks to weighting factors. The remaining 30% is allocated on the basis of the work-load in managing the border (defined by the average figures over the previous two years of the number of persons crossing the borders at authorised border crossing points, the number of third country nationals refused at the external border and the number of persons apprehended after having crossed the external border illegally).

The length of the maritime borders is defined as the outer limit of the territorial sea of the Member States as defined according to the United Nations Convention on the Law of the Sea; however, the outer limit can be extended in case of long range operations conducted on a regular basis in order to prevent irregular migration/illegal entry at high threat areas.

Ad 3. As regards airports, the allocation is calculated according to the work-load to manage the air borders (defined by the average figures over the previous two years of the number of persons crossing the borders at authorised border crossing points and the number of third country nationals refused at the external border).

Ad 4. For consular offices the allocation is calculated according to the number of consular offices and the number of visa applications (work-load).

Article 15 sets out the framework for the calculation of the weighting factors for external land and maritime borders. The Frontex Agency has been entrusted with the task of identifying the levels of threat at each external border section (high, medium, normal risk for land borders and high, medium, normal, minimum risk for maritime borders). The reports are based on data sent by Member States border control authorities to the Frontex Agency within the

framework of the Frontex Risk Analysis Network (FRAN). The data categories mentioned in the EBF basic act are the primary sources.

3.1.2. The data collection

The calculation of the distribution of the resources under the Fund is complex since it requires the annual collection of many different categories of data derived from different sources. Due to the complexity of the different data to collect, the Commission issued detailed specific guidelines to Member States. New guidelines were issued regularly, taking into account the development of the legal and operational framework as well as the information obtained over the previous years. Besides asking for data strictly necessary for the calculation of the allocation, the Commission requested supplementary data with the aim of validating the former.

The EBF basic act acknowledges that only for certain work load data the reference figures can be EU statistics and, in this sense, the situation under the External Borders Fund differs fundamentally from the other Funds for which the bulk, if not all of the data, are compiled as EU statistics.

The data was collected as follows:

- as regards the length of the external borders and the number of airports, data were provided directly by Member States and validated by the Commission, by cross-checking different sources (i.e. official Websites of Ministries of Member States, Schengen evaluation reports etc);
- as far as visa applications are concerned, the data on Schengen visas (i.e. short-stay visas, transit visas, airport transit visas) were obtained from the Council data collection, whereas the number of consular offices was obtained from Member States and validated through the information available via the Council;
- the data on refusals and apprehensions were based on the data collection on enforcement actions against illegal immigration; and
- the data on the number of passengers crossing at the external borders were provided directly by the Member States.

For some Member States, the main data suppliers under the Fund, the interpretation and measurement proved difficult at times. It was sometimes considered difficult to define the cases where there is actually a "crossing of the maritime external border" in the sense of the Fund and what is meant by the "number of persons apprehended after having crossed the border illegally". In other cases, even when the factor was fully understood, some Member States had difficulties in providing accurate figures, because data were either not collected as such or not collected according to the criteria in the EBF basic act, as a result of which only estimates could be provided. Furthermore, difficulties were encountered in interpreting the definition of long range operations and in the definition of the extended maritime border.

3.1.3. Overall assessment of the application of the criteria

In conclusion, despite some difficulties in applying all the factors defined for the distribution of the resources, it has proved possible to collect the necessary data to apply the criteria in accordance with the basic EBF act and to deliver the calculation of the provisional allocations

to Member States in time for them to be able to use them for the preparation of their annual programmes.

The results of the application of the criteria are outlined in the SEC document. The final distribution of the resources shows that the main beneficiaries of the Fund were the Member States with the highest responsibility in implementing the common policy for the management of external borders:

- Spain, Greece and Italy receive 48% of the Fund's allocation for the period 2007-2011.
- Furthermore, if France, Malta, and Cyprus are added to the three main beneficiaries, the distribution of the Fund shows that 60% of the financial assistance is concentrated on Member States bordering on the Mediterranean sea and the Canary islands area.
- At the same time, Member States having a land border in the East (Poland, Hungary, Finland, Slovenia, Romania, Lithuania, Estonia, Bulgaria, Latvia, and Slovakia) account for 25% of the total allocation.
- The results confirm the purpose of the Fund as an instrument of financial solidarity on integrated border management in the EU.

3.2. The European Fund for the Integration of third-country nationals

3.2.1. The criteria in the basic act

Article 12 of the basic act defines the criteria for the distribution of the annual resources of the Fund among the Member States (hereinafter the "IF basic act")⁸.

According to Article 12(1), each Member State shall receive a fixed amount of EUR 500.000 from the Fund's annual allocation.

Article 12(2) establishes the criteria for the distribution of the remaining available annual resources between the Member States:

- (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 (IF1 "stock of legally residing third-country nationals"); 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 (IF2 "flows of legally residing third-country nationals").

For the stock data, figures reflecting data for four reference dates are taken into account in order to calculate the average population over three years.

According to Article 12(3) of the IF basic act, for the purposes of the calculation referred to in Article 12(2)(b), the following categories of persons should be excluded:

- *seasonal workers*, as defined under national law;

⁸ Council Decision 2007/435/EC (OJ L 168, 28.6.2007, p.18)

- third-country nationals admitted for the purposes of *studies, pupil exchange, unremunerated training or voluntary service* in accordance with Council Directive 2004/114/EC;
- third-country nationals admitted for purposes of *scientific research* in accordance with Council Directive 2005/71/EC;
- 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.

Lastly, the basic act provides that data on asylum seekers, refugees and beneficiaries of subsidiary protection in accordance with Directive 2004/83/EC and on persons having double citizenship, including one of a Member State should also be excluded.

3.2.2. Data collection

The Commission provided detailed guidelines to the Member States on the definitions of the data. National sources and definitions in the area of migration data vary considerably and the importance to exclude some different data categories poses a challenge when the data source is more based on demographic considerations instead of the administrative status of the individuals (i.e. whether they are legally staying and on which type of permit).

For the 2007 to 2009 financial years, the data required by the IF basic act were collected under a combination of, on the one hand, the informal, but regular, data collection on stock of third-country nationals managed by EUROSTAT (for Article 12(2)(a)); and, on the other hand, ad hoc requests to the Member States for obtaining data on third-country nationals who have obtained an authorisation to reside in Member States (for Article 12(2)(b)), in the context of a pilot data base on residence permits.

The adoption and the entry into force of the Migration Statistics Regulation have had a significant impact. The work methods were adapted. With a genuine residence permits data collection pursuant to Article 6 of the Migration Statistics Regulation, in principle all data required under the IF basic act, i.e. both stock and flows, can now be based on EU statistics.

In view of the mandatory deadline for provision of residence permits statistics under Migration Statistics Regulation (i.e. end of June of each year) and the time needed for data verification, it has become practice to re-examine the data used for provisional allocations communicated and where appropriate, to issue a revision of the provisional allocations so as to take into account the latest data validated by EUROSTAT.

For some Member States it proved difficult to exclude data on asylum seekers and beneficiaries of international protection, given the particularities of national data sources. In some cases, recourse had to be taken to estimates on the basis of a cross reference with asylum data collections. For others the exclusion of renewals required additional work. For some others, it proved necessary to adjust data in the light of the definition of authorisation to reside. Lastly, only very few Member States provide residence permit data on a voluntary basis in advance as requested by EUROSTAT.

Prior to the application of the Migration Statistics Regulation many additional checks were undertaken by the Commission, in close co-operation with the data suppliers. The application

of the Migration Statistics Regulation provides adequate assurance of the comparability and quality of the data. Moreover for some specific cases, such as the exclusion of certain data categories, additional checks continue to be undertaken in order to ensure the plausibility of the data provided by the Member States.

3.2.3. Overall assessment of the application of the criteria

In conclusion, it has proved possible to collect the necessary data to apply the criteria in accordance with the IF basic act and to deliver the calculation of provisional allocations to Member States in time for them to be able to use them for the preparation of their annual programmes, although, given the time table on the provision of the data in the Migration Statistics Regulation, in some cases a revision cannot be excluded.

The results of the application of the criteria are outlined in the SEC document. The five main beneficiaries are Italy, United Kingdom, Spain, Germany and France, accounting for nearly 70% of the allocations. In light of the size of the immigration to these Member States and the challenges faced by the EU in this area in the period 2007-2010, the results confirm the purpose of the Fund as an instrument of financial solidarity for the development of integration policies in the EU.

3.3. The European Return Fund

3.3.1. The criteria in the basic act

Article 14 of the basic act defines the criteria for the annual distribution of resources among the Member States (hereinafter the "RF basic act").

According to Article 14(1), each Member State shall receive a fixed amount of EUR 300.000 from the Fund's annual allocation. The amount shall be raised to EUR 500.000 for those Member State which acceded to the EU on and after 1 May 2004.

Article 14(2) establishes the criteria for the distribution of the remaining available annual resources between the Member States:

- (a) 50% in proportion to the total number of third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of the Member State and who are subject to a return decision under national and/or Community law, i.e. an administrative or judicial decision or act, stating or declaring the illegality of stay and imposing an obligation to return ("third-country nationals subject to a return decision");
- (b) 50% in proportion to the number of third-country nationals who have actually left the territory of the Member States following an administrative or judicial order to leave, whether undertaken voluntarily or under coercion ("effective returns").

The RF basic act provides that from these categories should be excluded third-country nationals who, being present in a transit zone of a Member State, were refused entry and

third-country nationals who are returned to another Member State, in particular pursuant to the "Dublin Regulation" for asylum seekers⁹.

The RF basic act requires the collection of three reference years for the data for both categories.

3.3.2. *The data collection*

Member States were requested to provide data available respecting the guidelines from the Commission and in particular the following points:

- (1) For the third-country nationals subject to return decisions, to count all third-country nationals who were subject to a removal order during the year in question (and not the stock of third-country nationals who remain in the MS, subject to a return decision, at the end of the year) and to count only one order per person, thus identifying the work load for the Member State in terms of the individual caseload resulting from negative asylum and immigration decisions throughout the year;
- (2) For the effective returns, to count all third-country nationals who are actually removed to a third country following an order to leave, including assisted voluntary returns and forced removals, whilst excluding spontaneous voluntary returns.

For the 2008 and 2009 financial exercises the data required by the RF basic act were collected under a combination of, on the one hand, the informal, but regular, data collection on statistics on enforcement actions against illegal immigration managed by EUROSTAT; and, on the other hand, ad hoc requests to the Member States for obtaining data not covered by this data collection. The data collection covered only the data on effected returns, while the ad hoc requests were intended to compile the data on third-country nationals subject to return decisions.

As of the 2010 financial year, the working methods were adapted. The Migration Statistics Regulation could be applied as it foresees the collection of data as of the reference year 2008. Article 7 of the Migration Statistics Regulation covers to a large extent the two categories of data required under the RF basic act.

A difference between the data collected under Article 7 of the Migration Statistics Regulation and the data required under the RF basic act has been overcome by the addition of a voluntary table included in EUROSTAT's regular data collection. The Migration Statistics Regulation does not make it compulsory for Member States to provide data on the number of third-country nationals returned *to third countries*. It just requires the total number of third-country nationals who have been returned following an order to leave (although the Dublin Regulation cases are excluded). The additional voluntary table in the data collection under the Statistics Regulation covers data on effective returns *to third countries*. Under the 2011 budgetary exercise all Member States submitted voluntarily the additional table. Thus, no additional ad hoc request specific to the RF was necessary.

⁹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L50, 25.2.2003, p.1).

For a few Member States there have been some difficulties in submitting the data. This is often due to the nature of the national data sources. Additional revisions were often necessary to ensure the exclusion of asylum seekers and third-country nationals in transit zones. It also appeared that in some Member States the number of return decisions was lower than the number of effective returns. This, in principle illogical situation originated, according to the Member States concerned, from the fact that certain third-country nationals were returned without the previous issuance of a return decision, under the framework of specific bilateral agreements or arrangements they had with third countries. To allow a proper assessment of these data, Member States were requested to provide to the Commission, in an explanatory note to the data, all the relevant information on such bilateral agreements or arrangements, including the number of third-country nationals returned disaggregated by citizenship. Depending on the case management of the migratory flows, variations have occurred.

The application of the Migration Statistics Regulation provides adequate assurance of the comparability and quality of the data. Moreover for some specific cases, such as the one in which the return decisions are higher than effective returns, additional checks were undertaken in order to ensure the plausibility of the data provided by the Member States.

3.3.3. Overall assessment of the application of the criteria

In conclusion, despite some minor difficulties in ensuring uniform application of the definitions imposed by the logic of the RF basic act, it proved possible to collect the necessary data to apply the criteria in accordance with the RF basic act and to deliver the calculation of the provisional allocations to Member States in time for them to be able to use them for the preparation of their annual programmes.

The results of the application of the criteria are outlined in the SEC document. The three main beneficiaries are Greece, United Kingdom and Spain. Together with France, Italy and Germany, these countries account for nearly 67% of the allocations. In light of the size of the migratory pressure on these countries and bearing in mind the shift in flows of irregular entries over the years from the Spanish coast (Canary Islands) towards the Central Mediterranean route to the Greek borders with Albania and Turkey, the results confirm the purpose of the Fund as an instrument of financial solidarity for return management in the EU.

4. CONCLUDING REMARKS

The basic acts for the four Funds came into force in the summer of 2007, a few weeks before the first calculations for the resources to Member States were due.

Thanks to the preparatory work between the Commission and the Member States on the data for the allocations in anticipation to the entry into force, the Commission was in a position to submit to the Member States, as required, by July 2007 the information on the allocations for 2007 and 2008. Together with the extrapolations for the period 2009-2013, these figures guided the Member States in setting the indicative financial framework as the basis of the multiannual strategy for the implementation of the Funds.

In the course of the 2007-2011 financial years, the principles and work methods for data collection, gradually established and defined each year, have come to bear fruit; the last exercise has shown how they have increasingly simplified and facilitated the work on the

calculations. The methodology used has proved effective. Thus, the Commission was able to submit the calculations to the Member States in general on time.

The Migration Statistics Regulation is increasingly the backbone of the system for data collection under the Return Fund and the Integration Fund. The system put in place for data collection on the External Borders Fund, while different, is also proving adequate. The checks put in place in either system, while not always optimal given inherent limitations in data sources, validation tools and the administrative capacity for data analysis in the EU, form nevertheless a solid basis on which to continue making the calculations for future financial years. In terms of the definitions of the data collection, some differences may remain between the Migration Statistics Regulation and the criteria laid down in the basic acts. In practice, solutions have been found on a bilateral basis and efforts to further improve the co-operation and exchange of data between Member States and the Commission, including EUROSTAT, will continue. EUROSTAT monitors the quality of the data used in the compilation of the reference figures – whether these data are supplied under the specific statistical legislation or on the basis of voluntary agreements. However, this monitoring and quality control is limited to normal statistical practices and reflects the usual distribution of tasks and responsibilities between EUROSTAT and national data suppliers. It should be noted that the compilation of European Statistics is a co-operative process that greatly depends on the reliability of the data supplied by national authorities.

Given the particular importance of ensuring the quality of the statistics used for the allocation of the four Funds, a specific quality assurance programme has been put in place by EUROSTAT and there will be on going work to continue quality improvements.

While the Commission was in general able to deliver the final calculations on time thanks to all these factors, it has to be recognised that the amount and complexity of the data to be collected and verified each year imposes a recurrent administrative burden on the Member States and the Commission. There may be more cost-effective ways of ensuring the application of distribution keys which seek to express the principle of solidarity underlying the Funds.

The results of the application of the criteria, as laid down in detail in the staff working document accompanying this Communication, are generally perceived as satisfactory. The application of the criteria has served the objectives as defined by the European Parliament and the Council in the basic acts establishing the Funds of the General Programme Solidarity and Management of Migration Flows since they have converged the bulk of the EU resources available around those Member States most affected by the challenges posed by the management of migration flows of third-country nationals into the EU. Under these circumstances, it is not deemed necessary to come forward with proposals to amend the criteria.